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THE JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

State's Drug Case To Go Forward

Judge Charles Price entered a most important order on October 13th in the State of Alabama's lawsuit against a number of drug companies. The veteran trial judge denied an attempt to have the case dismissed after hearing arguments from both sides. The denial of the defendant's motions will allow the case to proceed. We have contended on behalf of the State, among other things, that the companies fraudulently inflated the price of drugs sold to the Medicaid program in Alabama over a number of years. As a result, the State has been overcharged to the tune of an amount estimated to be over $600 million. There are currently 79 defendants in the case. We believe that the State has a very strong case, and now that the court has entered its order allowing the case to proceed, we can start to get the case ready for trial.

Mississippi Attorney General Sues Drug Companies

Mississippi Attorney General Jim Hood filed a lawsuit on October 20th against 86 drug companies. This lawsuit is basically the same as the one filed in Alabama mentioned above. These companies have overcharged Medicaid patients in Mississippi for prescription drugs. Similar lawsuits have been brought in more than 20 states, including the one we are handling in Alabama, against the drug companies. Thus far states have recovered about $2.5 billion from the various drug companies. It is very clear that the companies have fraudulently cheated the states in the drug program. The conduct of the drug companies has now gotten the attention of some members of the U.S. Senate. For example, Senator Chuck Grassley (R-IA) said recently when he opened a Senate hearing on Medicaid waste, fraud and abuse:

> *These settlements are evidence of systemic, industry-wide problems that need to be addressed.*

Mississippi has spent up to $552 million for prescription drugs for the 720,000 beneficiaries of Medicaid. Nationwide, that figure amounts to more than $30 billion. Currently, Medicaid pays for one of every five dollars spent on prescription drugs. General Hood filed this case after a year or so of research into the merits of the matter. We have learned from discovery in other lawsuits about "insider documents" that show clearly that the companies purposely overcharged the nation's poor who are covered by the government's Medicaid program. The fraudulent pricing has resulted in Mississippi's Division of Medicaid paying grossly excessive prices for the defendants' prescription drugs. The Mississippi lawsuit was filed against many major pharmaceutical companies, including Abbott Laboratories, Bristol-Myers Squibb Co., and Merck & Co.

Our firm, working with the Mississippi firm of Copeland, Cook, Taylor & Bush, P.A., will be representing the State of Mississippi in this lawsuit. We hope to help get a good result for the taxpaying citizens of that state. I am convinced that the companies know they did wrong, but hope to minimize their exposure by delaying the cases as long as they can.

The Governor's Race Heats Up Early

The race for governor has gotten off to a fast and very early start. With candidates already announced for both the Democratic and Republican primaries, and considering that we are just in November, I predict that folks will be pretty well acquainted with the candidates long before Election Day gets here. In fact, they also may get a little tired of hearing political talk so early from the candidates. Personally, I think that campaigning this early is a waste of time. But, times have changed and maybe that's the way to go about it.

Recent polls have shown some surprising results. The biggest surprise so far may be the seemingly strong showing in the polls by Don Siegelman. Time will show how accurate those polls are. In any event, based on what I hear from friends around the state, I predict that there will be fairly close races in both primaries. With the entry of Senator Harri Anne Smith and the

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likely addition of Tuscaloosa businessman Stan Pate, the Republican primary may be the one to really watch. In any event, while the races are off to a most interesting start, I believe most folks are more interested in football than politics at this stage.

Another Candidate for Governor

State Senator Harri Anne Smith (R–Slocomb) will most likely run for governor in the Republican primary next year. I hear that she has been very well received after making her intentions known. Senator Smith told the *Birmingham News* that she is greatly encouraged thus far and has received numerous pledges of support. The Senator comes from a strong political family with strong ties to the old Wallace political machine. If she does run, it appears that she will be a strong contender. I keep hearing that Alfa and the timber folks were looking for a candidate. Maybe they have found her.

Governor's Cabinet Gets Briefing On Ethics

Recently, members of Governor Riley's Cabinet received a briefing on Alabama's ethics law and the state's campaign laws. You may recall that the Governor held a similar session for Cabinet members shortly after he took office in 2003. The purpose of this latest meeting was to update Cabinet members at the start of the campaigns for the 2006 elections. I understand that Jim Sumner, director of the Alabama Ethics Commission, and the Governor's legal adviser, Ken Wallis, spoke to the Cabinet members about laws concerning campaign activities.

I believe the Governor did the right thing in requiring the ethics sessions. But, I would like to see Governor Riley go a step further and push hard for a complete reform of Alabama's election laws. Our laws in Alabama are very weak and are badly in need of a complete overhaul. The campaign finance reform laws need to be upgraded and strengthened before the next election. The bill sponsored by Senator Myron Penn is a good place to start. But, if there is a better plan, now is the time to bring it to the Legislature.

An Outrageous Rate Increase

Alabama Gas Corporation has received a rate increase, which, to put it mildly, is shocking. A typical residential customer of this company will have to pay about $344 more for a year's worth of natural gas under a rate increase that took effect on October 1st. This increase, with the cost going from about $936 to about $1,280, is outrageous. A typical residential customer of Alagasco uses 63,500 cubic feet of natural gas annually. An Alagasco residential customer paid less than $500 for the same amount of natural gas in January 1996. As you know, the state Public Service Commission regulates utilities in Alabama. People affected by this rate increase should be up in arms. If they aren't now, they will be when their bills come in.

Alagasco claims its cost increase is a dollar-for-dollar pass-through to consumers of the higher price it is paying for natural gas from its suppliers. Alagasco also claims it is making no profit from the increase. Apparently, the increase is automatic under PSC rules. Alagasco, the largest natural gas utility in Alabama, has 460,000 customers in central Alabama, including Birmingham, Montgomery, Tuscaloosa, Anniston, Gadsden, Opelika, and Selma.

I agree with PSC member George Wallace Jr. who says that "consumers have been jolted by recent cost increases for both gasoline and natural gas." Somebody in state government needs to investigate this matter fully. Alagasco and its suppliers should be called on the carpet and made to justify this outrageous increase. Because few people in Alabama have any concept of what the PSC does or how it operates, much of what the regulatory agency does—while most important—goes on under the public's radar screen. This appears to be a good time for folks to find out what's really going on. I would encourage Governor Riley, Lt. Governor Baxley, Speaker of the House Hammett, and Attorney General King to look into this rate increase and take whatever action they deem necessary to protect Alabama consumers. A proposal should be presented in the next legislative session to do away with automatic rate increases. Perhaps, a complete overhaul of how we regulate public utilities would be in order.

Alabama Ends Fiscal Year In Better Shape

State government in Alabama ended the fiscal year with $299 million in budget surpluses. Net tax collections, after refunds, totaled $7.1 billion for fiscal 2005, which ended on September 30th. This was an increase of 11% from last year's $6.4 billion. State tax collections make up about 45% of what state government spends, with the remainder coming from the federal government, earnings on state investments, and fees. The personal income tax, which is the state's largest source of tax revenue, was up 11% from the prior year. The sales tax, which is the second highest tax source, was up 6%. The fifth largest tax source, the corporate income tax, increased a whopping 43% over the previous year. The state education budget ended the fiscal year with a surplus of $265 million. The General Fund budget, which finances all non-education programs, ended with a $34 million surplus. While these surpluses are good news, there is still a great deal of uncertainty concerning future revenues. The nation's economic outlook concerns me and a downturn in the economy would affect our tax sources in Alabama.

Source: *Associated Press*

State Pension Plans Doing Well

I have always considered Dr. David Bronner, a financial genius, to be one of the smartest men I have ever encountered. Dr. Bronner has done an outstanding job as Chief Executive of the Retirement Systems of Alabama (RSA). A nationwide survey reveals that the two biggest pension plans run by RSA are ranked in the top half of states for their financial health. That is good news and really came as no surprise. As you probably know, a 14-member board oversees the Teachers' Retirement System in Alabama. The survey by the National Association of State Retirement Administrators, released last month, reviewed 127 pension plans run by states, cities, and school systems nationwide. The survey compared each plan's actuarial funding levels. Alabama did extremely well in the survey's results.

The Teachers' Retirement System is the largest pension plan run by RSA. As of September 30, 2004, it covered 207,336 state education employees and retirees and had assets of $18.7 billion. The Employees' Retirement System, the second-largest pension plan run by RSA, had assets of $8.6 billion and covered 112,687 employees and retirees of state agencies and hundreds of cities, counties, water boards, and other local authorities.

RSA has done an excellent job of managing the assets of the two plans. Dr. Bronner told David White of the *Birmingham News* that returns from the stock and bond markets can move a pension plan's assets, and its funding level, up and down like a roller coaster. Pensions through RSA are guaranteed by law and are backed by tax dollars. A rise or fall in funding levels will affect how much state money lawmakers must contribute to keep RSA in good financial health. As reported by the *News*, RSA has three sources of income: investment returns on assets, contributions from state and local governments, and payroll deductions from covered employees. Most teachers and state-agency employees pay 5% of their paycheck toward retirement. That rate is set by law. The state contribution fluctuates, depending partly on investment returns and partly on whether lawmakers approve pension increases. Alabama is most fortunate to have Dr. Bronner and his folks handling the State's pension plans.

Source: *The Birmingham News*

States Get Hit By The New Drug Plan

In a budget-related matter, the Bush Administration notified all states last month that they would have to pay billions of dollars to the federal government next year to help finance the new prescription drug benefit for people on Medicare. Administration officials said the 2003 Medicare law required them to charge the states, in exchange for taking over the states' Medicaid drug costs. State officials obviously didn't take kindly to this bit of bad news. The Congressional Budget Office estimates that the required state contributions, also known as "clawback payments," will total $6 billion in the current fiscal year and $124 billion from 2006 to 2015. Federal officials say that if states fail to comply, the money could be deducted from federal payments to the states for other programs like Medicaid. At press time, we didn't know how much this will cost Alabama. But, I suspect the amount will not be good news for our state.

II. LEGISLATIVE HAPPENINGS

The Legislative Redistricting Lawsuit Is Still Around

It appears that the legislative redistricting lawsuit, which is pending in a Mobile federal court, may be in trouble. A similar suit decided three years ago should be a serious stumbling block for the plaintiffs in the present suit. A ruling in the earlier suit, brought by Republican voters, upheld the legislative districts that lawmakers drew after the 2000 Census. The redistricting plan was backed at that time by then-Alabama Attorney General Bill Pryor. It was ratified by the Bush Administration's Justice Department. State lawyers in the current suit contend that the earlier suit decided the issue. Based on what I have read and heard from some good sources, it does appear that the latest suit is simply a repeat of the first one. If that is true, the issue can't be adjudicated again.

In both the 2002 case and the new action, each filed in the Southern District of Alabama, Republican voters requested that the courts strike down the lines as unconstitutional political gerrymandering. The current suit may be more "political" than "legal" given that the GOP has announced its plans to take over the Alabama Legislature in 2006. Whether the suit proves to have merit will be in the hands of the judges who have the case before them.

Legislature Asked To Go Back To Meeting Every Other Year

Judge Roy Moore, who is now a Republican candidate for governor, wants lawmakers to go back to biannual sessions. He wants the Legislature to meet in regular session every other year. As you probably know, that's the way it was done for decades before 1976. The switch to annual sessions was approved in a constitutional amendment in 1975. In the early 1960s, only 19 states met annually. There are now only six states—Texas, Arkansas, Montana, Nevada, North Dakota, and Oregon—that meet every other year, according to the National Council of State Legislatures.

Judge Moore believes meeting every other year would curb the power of special interest groups. He says those groups have too much power and I agree with that assessment. I was called by my friend Bob Johnson from *Associ-*

ated Press, who asked me what I thought of Judge Moore's plan. Frankly, I believe lawmakers can get all of their work, except for the budgets, done in one session every two years. My suggestion would be to have one regular session every two years and a shorter session in the off year to prepare that year's budgets. That way you would still have annual budgets. I understand that six states—Connecticut, Louisiana, Maine, New Mexico, North Carolina and Wyoming—currently hold a full-blown session every other year and in the off year have a shorter session that is limited to consideration of specific types of legislation. It was pointed out in the *Associated Press* story that Former Governor Fob James prepared a bill to switch to biennial sessions during his second term as governor in the mid-1990s. That failed to gain any support from either the legislature or the paid lobbyists who love to have the legislators in town as often as possible.

Source: *Associated Press*

III. COURT WATCH

Bush Selects White House Counsel For Supreme Court

As all America now knows, President Bush has nominated White House Counsel Harriet Miers to replace Justice Sandra Day O'Connor on the U.S. Supreme Court. If confirmed by the Senate, Ms. Miers would join Justice Ruth Bader Ginsburg as only the second woman currently on the nation's highest court. Interestingly, this nominee—a longtime friend of the President—has never been a judge. To her credit, she has served as president of the Dallas Bar Association and the Texas State Bar. Frankly, I don't believe prior service as a judge is necessary for a person to be a member of the U.S. Supreme Court. I am more concerned about the nominee's character and what's in her heart. In accepting the nomination, Ms. Miers said:

> *If confirmed, I recognize I will have a tremendous responsibility to keep our judicial system strong and to help insure the court meets their obligations to strictly apply the laws and Constitution.*

Formerly Bush's personal lawyer in Texas, Ms. Miers came with the President to the White House as his staff secretary. For the uninformed, that's the person who is in charge of all the paperwork that crosses the Oval Office desk. Ms. Miers was promoted to deputy chief of staff in June 2003. The nominee was a lawyer in the firm of Locke, Purnell, Rain & Harrell, a firm with more than 200 lawyers. She joined the firm in 1972. After it merged a few years later, with another firm, Ms. Miers became co-manager of Locke Liddell & Sapp. She represented the President when he was governor of Texas in a case involving a fishing house. In 1995, Bush appointed her to a six-year term on the Texas Lottery Commission. The nominee also served briefly as a member-at-large on the Dallas City Council and, as mentioned above, in 1992 she became the first woman president of the Texas State Bar.

Because the nominee has no judicial record, it is difficult to get a good feel for her judicial philosophy. Interestingly, it appears that she has good support from Senate Democrats. It is impossible to predict at this point whether Ms. Miers will shift the Court to the right, but, many Court-watchers say this is the critical swing seat on the Court. Some Senate Republicans say Americans need to know a lot more about the nominee's judicial philosophy and legal background. I believe folks also need to know how she feels on the moral and social issues facing our country. All of this being said, that's why the Constitution requires Senate confirmation for a Supreme Court Justice. The hearings start this month, and I predict Ms. Miers will be confirmed. I hope, she will be a good member of the High Court.

Bar Association Judicial Appointment Proposal Doesn't Suit GOP

Alabama House Minority Leader Mike Hubbard (R-Auburn) has announced that his caucus will oppose the Alabama Bar Association plan relating to state appellate judges. This probably means that the number of votes needed for the bill to be considered won't be around if the plan gets off the ground in the Legislature next year. By taking an official caucus position, the 41 members of the GOP House Caucus have pretty well made sure that the constitutional amendment will lack the votes needed for a Budget Isolation Resolution, which requires a three-fifths vote of House members present before most measures can be considered on the floor. It also ensures enough support for a long-term filibuster, if that is needed. The GOP has made the Bar's plan a partisan issue. It is difficult to understand how the plan could be tagged as a Democratic ploy when it was put together in a totally non-partisan manner, and the Bar committee that recommended the plan included several prominent conservative Republican laywers. *The Birmingham News*, in a very good editorial, says that lawmakers shouldn't "rush to judgment" on the Bar's plan. That is good advice.

GM Hit With Sanctions In Federal Court

General Motors has been hit with a very strong sanctions order for discovery abuse in a Birmingham federal court. GM was first held in contempt in February of this year for violation of a prior discovery order issued by the court. After that order, GM was given an opportunity to purge itself of contempt. But, GM failed to do so and was fined $700,000 on May 29th. In addition, the court struck some of GM's affirmative defenses and denied GM the right to challenge a part of the plaintiff's expert report or opinion. Our firm has a most difficult time with some corporate defendants on discovery issues. This is especially true with the car makers. They make things extremely difficult, and discovery abuse has become much more of a problem. I hope orders like this one will have an effect on the companies.

Citizens' Rights Are Under Attack

The civil justice system in this country has been under constant attack and the attacks are growing in number and intensity. In my opinion, it's critically important to keep the courthouse doors open for ordinary citizens. The jury box is the only place where powerful corporate interests and big money don't dictate outcomes. Over the years, Washington politicians have worked hard to protect corporate wrongdoers. While many legal scholars believed that the tort reform movement had reached its peak, it doesn't appear that the "big bosses" in Corporate America are satisfied. Powerful forces are trying hard to limit even further the rights of individual citizens to justice when they are injured or harmed.

Powerful corporate interests say their companies need protection from people—even when they are responsible for injuring or even killing innocent people—and that's a sad commentary on our times. To get its way, Corporate America spends hundreds of millions of dollars lobbying Congress to avoid being held accountable. Congress should stand up for regular Americans, not selfish corporate interests, and preserve the American right to trial by jury.

U.S. Supreme Court Tackles Environmental Cases

The U.S. Supreme Court will consider three important environmental cases next year. Two of the cases are from Michigan and one from Maine. In one of the cases out of Michigan, the court has set the stage for what could be a landmark ruling on government authority to regulate wetlands and control pollution. At issue is the extent of federal regulation of property rights. The Justices have agreed to take up claims that regulators have gone too far by restricting development of property that is miles away from any river or waterway. With more than 100 million acres of wetlands in the United States, a total as big as California, the stakes are obviously very high. The outcome could have implications for government authority in regulating construction in obviously environmentally sensitive areas.

As you may know, the Army Corps of Engineers regulates work on wetlands, which are home to many plants and animals. Wetlands are broadly defined. The wetlands issue has been before the Court in prior cases. In 2002, Justices deadlocked 4-4 in a case that asked whether farmers should have more freedom to work in wetlands. In 2001, the Court split 5-4 in a ruling that limited the scope of government protection of wetlands.

The 1972 Clean Water Act, which is involved in the Supreme Court cases, draws much of its regulatory authority from the part of the Constitution that gives Congress power to regulate commerce between the states. The same legal reasoning underpins federal environmental and civil rights protections. It is believed that the outcome of the cases currently under review could affect more than land regulations. The Bush Administration took the position that the government has long-standing power to protect waterways, even if that means limits on pollution on nearby land.

The two Michigan cases under review involve projects that are one mile and 20 miles away from a lake or waterway, respectively. In the third Clean Water Act case, filed by the owner of hydroelectric dam projects on the Presumpscot River in Maine that provide electricity for S.D. Warren Co.'s paper mill, the company says it should not be required to get permits just because water flows through the dams. It will be most interesting to see how the Court rules in these highly important cases. The Court's decisions in all three of those cases are crucial for environmentalists, property owners, and developers. The cases clearly give the Court an opportunity to put limits on federal government authority. Arguments in the cases will be scheduled next year. (The cases are Rapanos v. United States, 04-1034, Carabell v. Army Corps of Engineers, 04-1384, and S.D. Warren Co. v. ME Board of Environmental Protection, 04-1527.)

Family Of Hostage Awarded $91 Million Against Iran

On September 12, 1986 Joseph Cicippio, Sr., a native of Pennsylvania, was kidnapped while working for American University in Lebanon. He was held captive until his release in December 1991. Relying upon a law passed by Congress in 1996 that allows Americans to sue nations that the State Department lists as sponsors of terrorism, Cicippio's family members filed suit against the Iranian government. Evidence revealed that the group that held Cicippio captive had close ties to Hezbollah, the paramilitary group financed and controlled by Iran. It should be noted that Iran did not respond to the lawsuit. This is not the first such case filed against that country. There have been several such civil actions filed against that nation for state-sponsored terrorist acts involving U.S. citizens. In 2001, an appeals court ruled that first-degree kin, as well as former hostages, could sue under the 1966 act for duress and loss of companionship.

Throughout this litigation, Cicippio's family members contended that they put their lives on hold and campaigned tirelessly for his release during the five-year ordeal. In a move that will hopefully bring closure to the family, U.S. District Judge Henry H. Kennedy, Jr. issued a default judgment on October 7, 2005 that awarded $6.5 million to each of Cicippio's 14 children and siblings. Cicippio and his wife were allocated $30 million as part of a joint 1998 judgment that awarded $68 million to three former hostages. I am hopeful these awards will be collected from Iran.

Source: *CNN*

The "Sick Of Lawsuits" Campaign

An organization that calls itself "Sick of Lawsuits" (SOL) has rolled out a slick advertising ad campaign attacking injured victims and the lawyers who represent them. The group readily admits to being part of the network of groups called Citizens Against Lawsuit Abuse (CALA), which are state-based organizations formed with the assistance of public relations consultants to the American Tort Reform Association. CALA groups have been established in a number of states, including Alabama, backed by, or sometimes established by, money from the giants of Corporate America. The groups are typically run by hired consultants with training in public relations. The sources and amounts of the funds received by the CALA are largely held in secret.

SOL publicly calls itself a "grassroots campaign" of the CALA groups. But the tax filings and publicly available funding sources reveal that rather than representing average Americans, CALAs actually speak for major corporations seeking to escape liability for the harm they cause consumers. The companies involved include members of the tobacco, insurance, oil, chemical, pharmaceutical, and automobile industries. The following are a few examples of how the groups operate:

- ALABAMA CALA
  The Alabama group, labeled Alabamians Against Lawsuit Abuse, was formed in 1992. Karl Rove picked Alabama as a testing ground for the tort reform movement. We know from experience that he put all of the vast resources at his disposal into that effort, and Alabama citizens are still suffering as a result.

- LOUISIANA CALA
  In 1992, after consulting with national and local industries and its lobbyists in the state, the Tobacco Institute laid out plans to help set up and fund the Louisiana CALA to carry out its agenda. Later that year, then-Philip Morris vice-president Craig Fuller reported to his superiors, "The coalition Philip Morris helped organize, Louisiana Citizens Against Lawsuit Abuse, led the effort to defeat all trial-lawyer advocated tort proposals" for the 1992 legislative session. The CALA also received financial support from Louisiana Power & Light, Freeport-McMoran, Pfizer, Abbott Laboratories, Union Pacific, Georgia Pacific, Texaco, and local businesses.

- LOS ANGELES CALA
  In its first year, the group received donations from a number of major companies, including the Whirlpool Corporation in Michigan. Whirlpool, the world's leading manufacturer and marketer of major home appliances, was at the time a defendant in a California lawsuit brought by environmental groups charging sixteen manufacturers with selling products that can leach dangerous amount of lead into drinking water. The lawsuit settled in 1996.

- HOUSTON CALA
  Past IRS filings for this CALA listed so-called "disqualified funders" or funders with a relationship to the organization such as board membership, trustee, family connections. These include: Sterling Chemicals, First Continental, Adams Insurance, Arthur Andersen & Co., Century Builders Inc., Metro Nations (a real estate firm), Houston Apartment Assn., Cogen Technologies, March Industries, and Southwest Solvents & Chemicals.

- MICHIGAN VOTERS AGAINST LAWSUIT ABUSE
  Michigan Voters Against Lawsuit Abuse (MVALA), which existed in the 1990s, was formed in January 1995 with the support of the Big Three auto manufacturers.

- OHIO CALA
  The Ohio CALA was originally financed by insurers, manufacturers, and health care providers, among others.

- OKLAHOMA CALA
  The Oklahoma CALA, in 1995, ran a statewide initiative campaign to put tort restrictions on the ballot. By March of that year, it had raised $2 million. Its supporters who contributed or pledged at least $50,000 each to this effort were: CITGO Petroleum Corp. of Tulsa, Phillips Petroleum Co. of Bartlesville, The Oklahoma Publishing Co., publisher of *The Oklahoman*; Southwestern Bell Telephone; Boatmen's First National Bank of Oklahoma; American Fidelity Group; Kerr-McGee Corp.; and State Bank & Trust Co. This CALA had many other corporate backers, as well.

Consumer Group Calls Bush A "Lawsuit Hypocrite"

The Center for Justice & Democracy (CJ&D) has labeled the Bush Administration "the worst kind of hypocrite" for, on the one hand, denouncing injured consumers who file lawsuits, while at the same time filing its own case for civil damages against a manufacturer whose defective product endangered the President. I won't go so far as calling them hypocrites, but their position on lawsuits certainly seems to have shifted to suit their own interests. It was revealed a few weeks ago that the Secret Service purchased for use by high-level officials, including President and Mrs. Bush, defective bullet-proof vests from a company called Second Chance Body Armor. In July, the Department of Justice filed a civil case to collect damages against the manufacturer and the maker of the defective fiber used in the vest.

As mentioned in a previous section, the Bush Administration has made destroying the civil justice system a cornerstone of its domestic agenda. The President campaigned on the issue and has strongly supported laws limiting compensation to injured victims and providing immunity to corporations that commit wrongful acts, while denouncing those who have to use the courts. Laurie Beacham, Communications Director for CJ&D, stated:

> *As the President must now know, defective products will inevitably make their way to marketplace, and the irresponsible companies that produce them must be held accountable in court. In fact, sometimes, lawsuits are the only way to force a defective product off the market. We hope this President now ends his reprehensible campaign against injured consumers who go to court to obtain justice. No one likes a hypocrite.*

The Government's lawsuit alleges that the companies knew, years before alerting its customers, that the strength, endurance, and bullet-stopping capacity of the vests were substantially weaker than represented. It only revealed the problem after a California police officer was shot to death and a Pennsylvania officer was seriously wounded while wearing the vest. The Government is seeking money damages for a "civil fraud" under the False Claims Act and common law. Incidentally, a criminal investigation into the matter is also pending.

The Center for Justice & Democracy is a national consumer organization that works hard to protect the civil justice system. It has issued several studies on so-called "tort reform" proponents who seek to take away consumers' rights to go to court, but do not hesitate to run to court when they or family members have been hurt. This is not the "first rodeo" for our President. CJ&D has previously labeled President Bush a "lawsuit hypocrite" for suing a rental car company for an accident involving one of his daughters in which no one was hurt. I certainly don't want to label the President a "hypocrite." But, I will say it's sorta strange that the President likes lawsuits when he perceives his family as victims.

Source: Center for Justice & Democracy

U.S. Supreme Court Rules With ExxonMobil

ExxonMobil has come out "smelling like a rose" in its lawsuit against a Saudi Arabian oil concern. The U.S. Supreme Court rejected an appeal from the Saudi company that has been trying to overturn the bulk of a $417 million judgment it was ordered to pay ExxonMobil Corp. The case, which arose when a joint venture between the two fell apart, was appealed to the High Court from the Delaware Supreme Court, which had allowed the verdict to stand against Saudi Basic Industries Corp., also known as SABIC. The Delaware court found that SABIC secretly added a profit margin to products it supplied to a petrochemical venture between the two companies. The joint venture between ExxonMobil and Saudi Basic Industries dates to 1980, when the two companies formed Yanbu Petrochemical Co. and Exxon Chemical Arabia. A dispute in 1998 over a polyethylene patent led to disclosure of Saudi Basic Industries' profit markups.

ExxonMobil was awarded $92.8 million in damages for what it was overcharged in the joint venture. An additional $324 million was awarded for lost profits because the venture fell apart. The SABIC appeal challenged the lost profits figure, arguing the Delaware courts failed to properly consider a statement from the Saudi Arabian government on how its laws, which were at play in the lawsuit, should be interpreted. You may recall that the case had been to the Supreme Court before. Last year the High Court revived a related federal lawsuit brought by ExxonMobil against SABIC. The Court said that the lower courts should have let the lawsuit continue despite the ongoing Delaware court proceedings. Even though SABIC had already paid the judgment to ExxonMobil, it was still prosecuting the appeal.

Source: *Associated Press*

Lawsuit Filed Against Contractor In Afghan Plane Crash

A lawsuit has been filed against a contractor arising out of a plane crash in Afghanistan that killed three soldiers. The complaint seeks punitive damages in the suit filed in federal court in Orlando on behalf of the soldiers' families. Lt. Col. Mike McMahon of West Hartford, Connecticut, Chief Warrant Officer Travis W. Grogan of Moore, Oklahoma, and Spc. Harley D. Miller of Spokane, Washington died on November 27, 2004, when their plane crashed into a mountain near the Iran border. Three Blackwater USA employees were also killed in the crash. The families initially filed their lawsuit in June, targeting the Melbourne, Florida-based aviation subsidiaries of North Carolina-based Blackwater USA. The original complaint has now been amended to seek punitive damages. Information from a report from the Army's investigation of the crash makes it appear that Blackwater is responsible for this crash and the resulting loss of life. It is alleged that the contractor was not conducting its flight operations in compliance with safety standards and regulations set by the government.

The amended complaint alleges that the contractor "committed numerous egregious violations" of federal air safety regulations relating to crew selection and instruction, communications and flight-locating equipment, pilot oxygen requirements, and flight planning. The CASA 212, a Spanish-made turboprop, crashed at 14,650 feet into a mountain near Afghanistan's western border of Iran. The weather was good at the time. There was nothing wrong with the aircraft according to all reports. There was no enemy fire that occurred. The pilots were newly deployed to the region and as a result were unfamiliar with the route. The pilots failed to file a flight plan and strayed from the normal air route between two bases. Rescue efforts were delayed because the company failed to use the electronic location transmitter. Spc. Miller survived the crash, but died of internal injuries before rescuers arrived two days later.

Source: *Associated Press*

IV. THE NATIONAL SCENE

SENATOR JOHN MCCAIN SHOULD RUN FOR PRESIDENT

It has been reported that Senator John McCain (R-AZ) is considering a run for president in 2008. The Arizona Senator, who ran for president in 2000, was re-elected to a six-year Senate term in 2004. Senator McCain told the *New York Times* last month that he was seriously considering a 2008 bid. But, he will apparently wait until after the 2006 elections to decide about his political future. In my opinion, the Arizona Senator would be a very good President. Clearly, he is not owned by Corporate America and that's good news. The Senator has proved that he would look out for the interests of all Americans and not just the privileged few. Unfortunately, those qualities would most likely keep the GOP political bosses from embracing his candidacy. A race between John McCain and John Edwards would mean that ordinary citizens would have a president again regardless of which candidate won. I don't believe that's what the powerful special interests in Washington want, and in my opinion they will work overtime to make sure it doesn't happen.

CONSUMERS WILL SUFFER

The Bush Administration is working hard at helping its corporate buddies—especially those who are responsible for putting defective products on the market—and that's more bad news for American consumers. Included in proposed federal regulations are provisions that would preempt lawsuits the Bush Administration claims conflict with federal standards. It is quite obvious that the President's advisors want to destroy the U.S. civil legal system and remake it to the liking of Corporate America. The Administration has already started to use the federal regulatory system at the National Highway Traffic Safety Administration and the Food and Drug Administration to achieve its objectives. They know that it's impossible to get any broad-based tort reform through Congress that the large corporations want. That's because the myths of tort reform are easily debunked in public congressional debate. The tort reformers can't handle the "truth" and that's why another approach is needed. Because the regulatory agencies are able to operate well under the public radar screen, that's the route the White House has selected to achieve their goals.

The following is a prime example of how the Administration is operating. On August 19th, NHTSA issued a long-awaited proposal to improve the strength of vehicle roofs, which have been known to cave in during rollovers, causing serious injuries and fatalities. Auto safety groups correctly denounced the proposal as weak and predicted it would do little to save lives. The proposal is actually an update of an existing 1971 standard. Extremely troubling to safety groups was a provision that would, in effect, make it virtually impossible for consumers to sue automobile companies for defective roofs that injure and kill folks in highway crashes such as rollovers. The NHTSA proposal said that, if adopted, "it would preempt all conflicting State common law requirements, including rules of tort law." NHTSA claimed it had struck a "delicate balance" in the proposal between increasing the strength of the roof to protect occupants and making sure cars were not more top-heavy and prone to roll over. The agency said it did not want conflicting state law and judicial interpretations to interfere with safety. That is total nonsense and can't be justified.

As all independent safety engineers know, it is not enough to simply meet "minimum standards" when designing products. A product can meet weak safety standards set by the government and still can be unsafe for use. Manufacturers and drug companies are asking for unconstitutional protection, and that's simply not fair to consumers. I hope the public will become aware of what the Administration is doing and let their elected officials know they won't stand for it.

NHTSA is not the only federal agency working for Corporate America. The FDA has actually intervened in civil cases brought by individuals against drug and medical device manufacturers in an attempt to protect the drug industry. That industry wants total immunity from lawsuits, and the FDA has consistently been in their corner. The conduct of the drug industry has been exposed and the public is now well aware of how bad some of the drug companies have been. Since the tide of public opinion has turned dramatically, not even the Bush White House can defend them.

A PRETTY GOOD CONSUMER AGENDA

With all of the powerful lobbyists hard at work protecting their own "special interests," it is good to know that somebody in Washington is looking out for ordinary folks. The following is an agenda that Public Citizen will continue to push. It has been over 40 years since President John F. Kennedy first articulated a "Consumer Bill of Rights." He said that consumers deserve the right to safety, the right to be informed, the right to choose, and the right to be heard. Other rights have since been added, most importantly the right to redress. Consumer protection and public health and safety should be guaranteed from that bill of rights. Americans citizens are entitled to safer automobiles and consumer products, purer food and drinking water, more reliable drugs and medical devices, a cleaner environment, and safer workplaces. While there have been improvements in some areas, there is much more to do. The work is far from finished.

Today we are seeing special interests launching an unprecedented assault on existing protections. These groups have prevented enactment of crucial missing safeguards and have aggressively sought to limit state authority to enact stronger laws, even where no federal law protects consumers. Recognizing the need for both greater consumer protection and a stronger defense against proposed rollbacks, six leading national consumer organizations propose the following six-point agenda of essential reforms to protect consumer health, safety, and pocketbooks. The following is an agenda that would benefit consumers in this country and which is being pushed by Public Citizen:

- Prohibit Oil and Gasoline Price Gouging and Increase Automobile Fuel Economy: Stop industry mergers that increase oil and gas prices by diminishing competition, and further save consumers money and reduce pollution by raising fuel economy standards on cars, sport utility vehicles (SUVs), and other light trucks.

- Preserve Consumers' Legal Remedies: Oppose efforts undermining consumers' access to justice. Remove limits on HMO accountability to patients and do not impose restrictions on victims of medical malpractice. Ban the use of mandatory arbitration clauses in consumer contracts and oppose limits on consumers' ability to bring class action lawsuits.

- Protect Consumers from Abusive and Predatory Lending: Limit unfair loan terms, mortgage, and credit card practices without undercutting stronger state laws.

- Make Health Care More Affordable: Immediately expand health coverage to all children and lower-income adults. Fix the new Medicare law to allow the government to negotiate lower drug prices, and the private sector to import lower-cost drugs from abroad.

- Protect the Privacy of Sensitive Personal Information: Require both financial companies and Internet sites to protect our confidential information, while preserving the right of states to enact stronger laws.

- Ensure Our Food is Safe to Eat: Require USDA to set and enforce limits on food-borne pathogens. Give USDA authority to mandate recall of tainted meat. Assure controls to protect both human and animal health from "Mad Cow" disease.

This agenda of essential consumer reforms is intended as a guide for federal policymakers and others concerned about consumer issues. The heads of six leading national consumer organizations produced the agenda to underscore its importance. Because the organizations involved and the issues addressed are quite diverse, not every organization addresses or works on each item listed. The groups can, and sometimes do, differ in some details in their approaches on particular issues. But, they are unanimous in their support for pro-consumer action on these issues. You can go to Public Citizen's website (www.citizen.org) for more details on the consumer agenda. I encourage you to take time to do this. If you agree with the agenda, contact your senators and members of Congress to ask them to support it.

Source: Public Citizen

The Chickens Are Coming Home To Roost In Washington

The American people are beginning to wonder how the Republican Party, which came to power in Washington 11 years ago on a pledge to clean up the nation's capitol, could be having so many problems with alleged corruption and ethical problems. It has almost become the "investigation of the day club" in our nation's capitol. The recent indictments of House Majority Leader Tom DeLay are an indication that something is rotten in the heart of the party's internal political structure. Some attribute this to the presence and power of Karl Rove, who is the master of dirty tricks, and who is the obvious mastermind of all that goes on in the Bush Administration. However, much of the questionable activity in Congress had actually started before Rove arrived on the scene. Representative DeLay, who proudly calls himself "The Hammer," has relied on a complex influence-peddling scheme designed to consolidate his own power and that of his party. DeLay has given corporate interests private access to the system so as to steer the wheels of government at the expense of private citizens. I have always believed that DeLay was just another "sleazy politician" who saw an opportunity to work the political system in Washington and seized it. It now looks like I may have been right.

Joan Claybrook, president of Public Citizen, who works extremely hard every day for ordinary citizens, made this astute observation:

> *Americans deserve better from Congress than the culture of corruption and arrogance that DeLay and the majority party have installed. Lawmakers on both sides of the aisle should work together to clean up the corruption and remove the corporate influence that keeps Congress from solving the real problems Americans face every day while it doles out billions to big corporations. Corruption is not based on party affiliation, but there is one party in charge in Washington, and that party has the power to enact change. It should act immediately to do two things. One, replace the dysfunctional ethics committee with an independent agency that*

actually investigates corruption in a nonpartisan way. Two, enact legislation that reforms the corrupt lobbying system and returns the government to the people.

When you consider that other prominent Republicans in Washington are under some type of investigation, it makes one wonder whether the GOP leadership was really serious about cleaning things up. Where I come from there was an old saying that when a person tries to manipulate any system for his or her own good, eventually "that person's chickens will come home to roost." I believe that may well apply to what we are seeing in Washington these days. The following are a few other examples of what is going on that is causing real concern to American citizens:

- An escalation of the criminal investigation into Karl Rove, "Scooter" Libby, and other senior White House officials for the leak of a CIA officer's identity. It wasn't known at press time whether there would be any indictments. I have never believed Rove would be indicted and that belief hasn't changed.

- The Justice Department and the Securities and Exchange Commission's insider trading investigations of Senate Majority Leader Bill Frist and his family's company, HCA, have been in the headlines.

- A senior White House official, David Safavian, was arrested and subsequently indicted. In addition, the Inspector General of the Homeland Security Department announced that the Katrina contracting process, which was said to have been overseen by Safavian and, I believe, by his boss, Karl Rove, has allegedly been riddled with fraud.

- An internal investigation into the Education Department determined that the Administration may have violated the law in selling its education policy initiatives.

- The Abramoff Affair, which involves Jack Abramoff's shocking web of corruption, has been largely lost in the shuffle. Abramoff was the most successful lobbyist of the Bush era - high-profile and super-connected. He was very close to Tom DeLay and the House Republican leadership. Two former staffers, including the recently arrested David Safavian, joined Karl Rove in the White House at senior levels. Recently, Abramoff was arrested by the FBI for a deal involving SunCruz, a cruise line he and an associate bought a few years ago. You could write a book on all of "Casino Jack's" activities that have caused some important figures in Washington some sleepless nights.

Actions Speak Louder Than Words

It has been revealed by the *Atlanta Journal-Constitution* that Ralph Reed, who has condemned gambling as a "cancer on the American body politic," worked five years ago to kill a proposed ban on Internet wagering, on behalf of a company in the online gambling industry. Reed, now a Republican candidate for lieutenant governor of Georgia, helped defeat the congressional proposal despite its strong support among many Republicans and conservative religious groups. At the time Reed was claiming to be totally against gambling of any kind. Among the groups supporting the anti-gambling legislation was the national Christian Coalition organization. Reed had left that group three years earlier to become a political and corporate consultant. Reed fought the anti-gambling ban as a subcontractor to Washington lobbyist Jack Abramoff's law firm. Reed and Abramoff were representing eLottery Inc., a Connecticut-based company that wants to help state lotteries sell tickets online. That was an activity the gambling measure in Congress would have prohibited. Reed was clearly on the side of this gambling concern while publicly proclaiming to be anti-gambling.

Anti-gambling activists say they never knew that Reed, whom they once considered a loyal ally, helped sink the proposal in the House of Representatives. Now some of them, who have criticized other work Reed performed on behalf of Indian tribes that own casinos, say his efforts on eLottery's behalf undermine his image as a champion of public morality. Reed had cultivated that image as a leader of the religious conservative movement in the 1980s and '90s. I hope he was sincere in his beliefs and public pronouncements during that time.

Since his days with the Christian Coalition, Reed consistently has identified himself as a gambling opponent. Speaking at a National Press Club luncheon in Washington in 1996, for instance, Reed called gambling "a cancer" and a "scourge" that was responsible for "orphaning children ... [and] turning wives into widows." Interestingly, in 2004, Reed told the *National Journal*, a publication that covers Washington politics, that his policy was to turn down work paid for by casinos. In that interview, he did not address working for other gambling interests. It's impossible to accept Reed's claims that he didn't know his work against the measure benefited a company that could profit from online gambling. I understand that Jack Abramoff was known as "Casino Jack" at the time he and Reed were closely working together and were very good friends.

It should be noted that Ralph Reed has not been accused of wrongdoing. In any event, it looks like he and his buddy "Casino Jack," have done mighty well financially. It's hard to understand how Reed can talk one way and in public act another way in private. Clearly, he has some "strange bed fellows!" My mother told me years ago that actions speak louder than words. I wish Ralph's mother had given him that very same advice. Had she done so, he wouldn't be taking all of this gambling money.

Source: *Atlanta Journal-Constitution*

Oil Giants Doing Very Well—Which is No Surprise—While Customers Suffer

Americans consume 25% of the world's oil every day. China, the next biggest consumer, uses less than 7% of the world's oil each day. American's huge appetite for oil, combined with the fact that the United States is the world's third largest producer of it (only Saudi Arabia and Russia produce more than we do), creates a strong argument that the United States holds a lot of sway over world oil prices. The energy bill that President Bush signed recently does nothing to address the factors in the United States that are driving oil and gas prices to record highs. Congress and the White House explicitly reject efforts to improve fuel economy standards for our cars and trucks, which account for 70% of our oil consumption. They also refuse to adequately fund fossil fuel alternatives. You can rest assured that the oil companies don't mind this a bit. Since George Bush became President, the largest five oil companies operating in the U.S.—ExxonMobil, ChevronTexaco, ConocoPhillips, BP and Shell—have enjoyed profits of $254 billion. ExxonMobil has led the way with profits of $89 billion. The bosses at the oil companies are feeling good and smiling all the way to the bank, while the American people who buy their gas are suffering. The profits for the companies during the Bush Administration—all records—are as follows:

- ExxonMobil: $89 billion
- Shell: $60.7 billion
- BP: $53 billion
- Chevron Texaco: $31 billion
- ConocoPhillips: $20 billion

Meanwhile, while gas prices continue to go up, no oil company seems willing to turn their profits into consumer savings. So it would seem there is a direct correlation between record gas prices at the pump paid by consumers and record profits enjoyed by oil companies. As Americans "shell" out more dollars at the pump, the profit margin by U.S. oil refiners has shot up 79% from 1999 (the year Exxon and Mobil merged) to 2004.

We have been told by the Bush White House that the energy bill is good for America. But is it? The first question to President Bush should be: does the energy bill hold these price-gougers responsible? Simply put, the answer is no. The bill, once it became law, gave $6 billion in tax breaks and subsidies to oil companies. So it would seem the $52 million in campaign contributions to federal politicians by the oil industry (80% of that total going to Republicans) since 2001 has not only won the oil industry immunity from scrutiny, but has won the oil giants a tremendous amount of taxpayer dollars. This misguided energy policy keeps America on a path of continued dependence on fossil fuels, and guarantees that consumers will continue paying record prices while oil companies rake in their profits.

Source: *Corporate Crime Reporter*

19 Health Care Facilities Probed In Louisiana

A total of six hospitals and 13 nursing homes in Louisiana are currently under investigation in the deaths of dozens of elderly patients following Hurricane Katrina. At issue is whether the facilities mishandled evacuations of patients, abandoned them during the devastating storm, or euthanized patients to spare them pain when rescuers didn't arrive for days. The investigation includes Charity Hospital, New Orleans' major public hospital. At least 140 elderly patients in nursing homes and hospitals died in the storm and its aftermath. It is believed that dozens more who were living independently may also have died.

The Louisiana Attorney General has seized records and other material from Memorial Medical Center in New Orleans, which is owned by Tenet Healthcare Corp. The investigation is being led by the Attorney General's Medicaid fraud control unit, which specializes in investigating and prosecuting "abuse, neglect or exploitation of the elderly and the disabled." The Attorney General's investigators will make several searches of all facilities under investigation. Tenet says that on the Memorial campus, 34 patients died after the hospital was cut off by flood waters. The company said 24 of those patients were in the care of a facility on the hospital grounds run by LifeCare Holdings Inc., a separate company. It will be interesting to see what the investigation uncovers.

Source: *Associated Press*

Top Court Considers Whistleblower Lawsuit

The U.S. Supreme Court is being asked by the Bush Administration to make it harder for government whistleblowers to win lawsuits claiming retaliation. Reports are that Justices "seemed conflicted" on where to draw the line in protecting the First Amendment speech rights of more than 20 million public employees. The case under review involves a lower court ruling in favor of a Los Angeles County prosecutor who said he was demoted and denied a promotion for trying to expose a lie by a county sheriff's deputy in a search warrant affidavit. It was contended that government employees are not entitled to free speech coverage for things they say in the scope of their job, like writing a memo.

In my opinions, employees should know they can't be fired for speaking out when they see wrongdoing. The First Amendment protects government workers from being punished for conduct involving a "public concern" rather than "personal, job-related issues." The High Court is using this case to clarify the protection afforded to whistleblowers. Stephen M. Kohn, a leader with the National Whistleblower Center, made this most interesting observation:

A victory for the government would mean whistleblowers who expose waste, fraud and corruption will have less constitutional protection than Ku Klux Klan members who burn crosses on their front lawns.

The U.S. Court of Appeals for the Ninth Circuit in San Francisco ruled that the prosecutor's speech, a memo questioning the affidavit, was constitutionally protected and that he could pursue a lawsuit. I am hopeful the High Court will decide this case in favor of the whistleblower. In my opinion, with all of the ethical problems currently being revealed in government, along with the massive amount of fraud involved in government contracts, it is critically important to protect government employees who witness wrongdoing and are courageous enough to report it.

Source: *Associated Press*

V. THE CORPORATE WORLD

WHITE COLLAR PROSECUTIONS SLIDE

Federal white collar criminal prosecutions are on the decline, according to a report released recently by the Transactional Records Access Clearinghouse (TRAC). That is not good news because there doesn't appear to be a shortage of "white collar criminals" these days. The report found that while the information from the U.S. Attorneys showed the totals for white collar prosecutions had remained essentially unchanged from 2000 to 2003, the number of prosecutions declined about 10% from 2003 to 2004. Estimates for 2005 indicate that the decline is continuing. The report found marked increases in immigration and weapons enforcement, while drug and white collar prosecutions slid in recent years.

The group, based at Syracuse University, did a case-by-case study of more than half a million individual federal prosecutions. The report showed two broad sorts of change: a large increase in the overall number of cases being prosecuted each year by the government and dramatic shifts in the kinds of matters it brought to court. Unfortunately, the prosecution of white collar criminals has gone in the wrong direction. Hopefully, President Bush and Congress will adequately fund the Justice Department so that all of its responsibilities for prosecuting crime can be carried out.

GIANT ACCOUNTING FIRM RESPONSIBLE FOR $183 MILLION JUDGMENT

A federal judge ruled recently that accounting giant PricewaterhouseCoopers LLC is fully responsible for paying a $182.9 million judgment. This comes from a jury's finding that a predecessor company was negligent in auditing Ambassador Insurance Co. That insurance company, incorporated in Vermont, but operated from North Bergen, New Jersey, collapsed more than 20 years ago. The money will go toward paying the claims of thousands of Ambassador policyholders. Vermont's insurance department seized Ambassador in 1983 after determining it was insolvent. Years later, claims are still being filed against the company.

A jury returned a verdict on July 29th, which awarded $119.9 million to Ambassador policyholders and other creditors. The jury assigned 40% of the liability to New York-based PricewaterhouseCoopers, successor company to Coopers & Lybrand, which Vermont accused of negligent audits of Ambassador. The remaining 60% liability was assigned to the late Arnold Chait, the Ambassador president accused by Vermont of mismanagement. Because the estate of Chait, who died about a decade ago, is believed to have few assets, the State of Vermont asked U.S. District Judge Harold A. Ackerman to find that PricewaterhouseCoopers and the Chait estate could each be considered fully responsible for the entire amount.

Judge Ackerman, who presided over the nearly three-month trial, agreed. That essentially puts the total burden on the accounting firm. The judge said the jury accepted that the allegations against the firm "are inextricably intertwined with the conduct" of Chait. Evidence was presented that the firm and Chait should have told the public as early as 1982 that Ambassador was insolvent. Instead, the accounting firm and Chait worked to "create the illusion of a financially sound and growing corporation." Judge Ackerman wrote in his opinion: "Accordingly, it is apparent that the torts committed by Arnold Chait and Coopers & Lybrand gave rise to a single, indivisible injury to Ambassador and its creditors, shareholders, and claimants." The judge also awarded creditors $63 million in interest after calculating how much the verdict amount of $119.9 million would have generated from May 21, 1985, when Vermont sued.

Vermont charged that Ambassador's financial statements concealed the company's weakness from regulators. The company was liquidated in the late 1980s after Vermont courts upheld the receivership. Because Ambassador was a surplus lines company, writing high-risk policies, it lacked guaranty fund protection in case of insolvency. Had that protection been available, it would have been a "safety net" for policyholders. To date, the receiver has received and evaluated over 20,000 claims from policyholders, of which about 10,000 have been allowed. PricewaterhouseCoopers says it will appeal the verdict.

Source: *The Insurance Journal*

THE FEDERAL GOVERNMENT ALLEGES A $300 MILLION ADELPHIA PLOT

Former Chief Executive Officer John J. Rigas, the founder of Adelphia Communications Corp., and his son, Timothy J. Rigas, have been indicted on charges they and other family members didn't pay $300 million in taxes. John Rigas failed to report income of $143 million, and his son, the company's former chief financial officer, failed to report income of $239 million, according to a federal grand jury indictment. Both the father and son had already been convicted of a massive fraud at the bankrupt cable television company. The two, whose high-profile arrests on television marked the start of an intensified crackdown on corporate scandals, diverted $1.9 billion from the cable company to a network of family owned companies and partnerships for personal use, authorities said.

According to the indictment, the transfers were made to look legitimate by treating them as inter-company payments that were due or loans owed to Adelphia from private entities controlled by the Rigas family. The funds were never repaid, but instead were used personally by the two. The IRS says this should have been taxed as income. Money was spent on such things as property improvements, personal American Express bills, antique furniture, and the construction of a golf course. Apparently, the Rigases also caused other family members not to report as well. The two were each charged with one count of conspiracy to defraud the U.S. government and separate tax-evasion violations for 1998, 1999, and 2000. If convicted on all counts, the two face a maximum of 20 years in prison and a fine of up to $1 million.

The total of the federal taxes owed by the family came to $315.9 million. Adelphia filed for Chapter 11 bankruptcy protection in 2002 after disclosing that it had $2.3 billion in off-balance-sheet debt. The cable operator has now filed its third amended reorganization plan in bankruptcy court. With folks like the Rigas family operating in Corporate America—making the kind of money indicated above—it is no wonder we see so much fraud in the corporate world.

Source: *Associated Press*

Samsung To Pay $300 Million Fine For Price Fixing

Samsung, the world's largest maker of memory chips for computers and other electronic gadgets, will plead guilty to price fixing and pay a $300 million fine, federal officials announced recently. The penalty is the second-largest criminal antitrust fine in history and caps a three-year investigation of the largest makers of "dynamic random access memory" chips, a $7.7 billion market in the United States. The guilty plea by South Korea-based Samsung Electronics Co. Ltd. and its U.S. subsidiary, Samsung Semiconductor Inc., was entered in U.S. District Court in San Francisco. The Justice Department already has secured guilty pleas from two other companies and collected more than $345 million in fines.

Samsung's top competitor, Seoul-based Hynix, agreed earlier this year to plead guilty to price fixing and pay a $185 million fine. Last September, rival Infineon Technologies AG of Germany agreed to a $160 million fine. The government accused the companies of conspiring in e-mails, telephone calls, and face-to-face meetings to fix prices of memory chips between April 1999 and June 2002. The chips are used in digital recorders, personal computers, printers, video recorders, mobile phones, and many other electronics. The government said the victims of the alleged price-fixing were Dell Inc., Compaq Computer Corp., Hewlett-Packard Co., Apple Computer Inc., International Business Machines Corp., and Gateway Inc.

The investigation started in 2002, a year after memory chip prices began to climb even though the high-tech industry was in a tailspin. At the time, the hikes were attributed to tight supplies, although then-Dell Computer CEO Michael Dell blamed them on cartel-like behavior by chip makers. "Price-fixing threatens our free market system, stifles innovation and robs American consumers of the benefit of competitive prices," Attorney General Alberto Gonzales said.

Source: *Associated Press*

Glaxo To Pay $150 Million To Settle Fraudulent Pricing Case

GlaxoSmithKline will pay $150 million to settle allegations by the federal government that the company inflated the prices of two cancer drugs to maximize Medicare and Medicaid reimbursements for health-care providers. Glaxo was accused by the Justice Department of violating the federal False Claims Act with its pricing of Zofran and Kytril, which are mainly used to lessen cancer treatment side effects. The Justice Department said Glaxo allegedly promoted the "spread"—the difference between a drug's federal reimbursement rate and its true price—of Zofran and Kytril to boost their sales. The larger the spread on a drug, the larger the profit or return on investment for the provider.

Because reimbursement from federal programs was based on the fraudulent, inflated prices, the United States contended that GlaxoSmithKline caused false and fraudulent claims to be submitted to federal health-care programs. Assistant Attorney General Peter Keisler of the Justice Department's Civil Division said the government "will not tolerate fraudulent pricing practices designed to reap profits for drug companies and doctors at the expense of health-care programs for the poor and elderly." Any company that commits fraud against the government should be dealt with harshly. Stealing from the poor and elderly is just about as bad as it gets!

This case began with a whistle blower lawsuit by a company called Ven-A-Care of the Florida Keys Inc. Glaxo agreed to provide the government with "accurate" sales and manufacturer's prices for drugs so that it will be allowed to continue supplying providers who do business with the Medicare and Medicaid programs. GlaxoSmithKline, which is based in London, has its U.S. headquarters in Philadelphia, and its Consumer Healthcare division is based outside Pittsburgh.

Source: *Associated Press*

Gambro To Pay $37.5 Million To Settle States' Medicaid Fraud Case

Gambro Healthcare Inc. will pay $37.5 million to 40 states and the District of Columbia to settle allegations that the company used a subsidiary to improperly bill the states' Medicaid programs for providing supplies and equipment to patients undergoing kidney dialysis at home. Massachusetts Attorney General Tom Reilly, who was a leader in this matter, says:

> *This company cost the Massachusetts Medicaid program hundreds of thousands of dollars in overcharges and bills for unnecessary services. At a time when Medicaid makes up a huge portion of the state budget, companies cannot be allowed to illegally inflate their profits at the expense of taxpayers.*

Gambro Healthcare is a supplier of dialysis equipment and products used by Medicaid recipients across the United States. As you probably know, dialysis assists in removing toxins from the blood when a patient's kidneys are unable to do so on their own. In some cases, patients are able to perform a form of dialysis treatment themselves after sufficient training. Gambro violated the law by creating a "shell company," named Gambro Supply Corp., to bill Medicaid programs at the higher reimbursement rate permitted for clinics rather than the lower rate it should have billed for home dialysis. Gambro's billing scheme caused the state Medicaid programs to pay excessive reimbursement.

The settlement also resolves allegations that Gambro caused federal and state healthcare programs to pay for unnecessary tests and services and paid kickbacks in exchange for patient referrals to Gambro clinics. In 2004, Gambro entered into an agreement with the federal government in which the company settled similar allegations regarding bills submitted to the Medicaid program. At the same time, Gambro Supply Corp. pleaded guilty to a charge of health care fraud and paid a substantial criminal fine. As a result of the combined federal and state settlements, Gambro Healthcare has agreed to the terms of a Corporate Integrity Agreement with the Inspector General of the United States Department of Health and Human Services, under which the company's billing practices will be subject to close scrutiny for the next five years. How do the folks who run Gambro sleep at night?

Source: *Corporate Crime Reporter*

Former Merrill Lynch Trader Gets Prison Time

Merrill Lynch's former chief energy trader has been sentenced to 3 1/2 years in prison by a judge who said his theft of $43 million from the brokerage was the action of "an arrogant would-be master-of-the-universe." Daniel L. Gordon, was sentenced by U.S. District Judge Gerard E. Lynch. Gordon, who apologized to the court and said his guilty plea "will serve as my scarlet letter for the rest of my life," was also ordered to pay a $100,000 fine and to forfeit the $43 million.

Last year, Gordon pleaded guilty to wire fraud, money laundering, and conspiracy and promised to testify against others, if necessary, as part of a continuing probe. According to the government, Gordon "fooled" Merrill Lynch & Co. Inc. in 2000 into paying a one-time $43 million premium insurance payment that it thought would guarantee it could buy energy it might need, when it actually was deposited into accounts he controlled. Gordon became president of Merrill Lynch's Manhattan-based energy-trading division, Global Energy Markets, in 2000, two years after he joined the company to start the division. Prosecutors said Gordon arranged the insurance payment after he became aware in the summer of 2000 that Merrill Lynch wanted insurance as a hedge against $500 million in energy obligations it had agreed to with another company. Using a Canadian company in the business of establishing offshore entities, Gordon arranged for a non-U.S. citizen to pose as the head of a shell company, Falcon Energy Holdings, incorporated in Anguilla, British Virgin Islands, prosecutors said.

The government said Gordon lied to Merrill Lynch, calling Falcon an international energy company with investments in power plants and oil fields that was affiliated with a French energy conglomerate that would provide the insurance Merrill Lynch sought. Through other companies and accounts he created. Gordon laundered the money he had stolen from Merrill Lynch, prosecutors alleged. In early 2001, Merrill Lynch sold Global Energy Markets to Allegheny Energy Inc. for $489 million. Gordon became president of Allegheny until August 2002. You can see from that above Gordon knew exactly what he was doing and set out to commit what the judge called "a carefully planned heist." It has to be of concern that he was able to carry out his plan right under the "corporate nose" of Merrill Lynch. Corporate criminals should be prosecuted and, if convicted, given stiff sentences requiring actual jail time. That will put a stop to some of the corporate fraud that we now see on a daily basis.

Source: *Associated Press*

VI. CAMPAIGN FINANCE REFORM

The U.S. Supreme Court

The U.S. Supreme Court is currently considering two important cases relating to campaign finance reform. The two cases can go a long way toward curbing some of the abuses we see in the political system. The first case is out of Vermont and involves limits on donations and spending. The second case is from Wisconsin and involves advertising restrictions. Each of these cases gives the High Court an opportunity to help ordinary citizens who badly want our political system cleaned up.

U.S. Chamber Of Commerce Funneled $1.5 Million Into Political Race

The U.S. Chamber of Commerce has taken on a role in American politics that should be shocking to folks. A petition, filed recently with the Washington State Public Disclosure Commission by Public Citizen, a retired Washington State Supreme Court chief justice, and a distinguished law professor, seeks enforcement action against a U.S. Chamber of Commerce subsidiary for the covert funneling of $1.5 million into the 2004 race for Attorney General in Washington. The U.S. Chamber of Commerce spent the money on attack ads and shielded its involvement by using a front group, according to the petition. The petition calls on the Commission—the state agency with authority to investigate and police campaign finance abuse—to find that a Chamber subsidiary called the Institute for Legal Reform (ILR) violated state law by failing to register with the state, concealing contributions and expenditures, and secretly conspiring to air ads in 2004 against Attorney General candidate Deborah Senn. The petition, filed by retired Washington Supreme Court Chief Justice Robert Utter, Seattle University law professor Joaquin Avila, and Public Citizen details how the Chamber "covertly" launched ads targeting Senn. The front group that was publicly associated with the ads, the Voters Education Committee (VEC), was created by the Chamber's subsidiary, ILR. The ads were paid for with money from a joint Chamber/ILR account. As a matter of public interest, Public Citizen has 4,300 members in Washington State.

The television ad buy was consistent with Chamber activities in 25 other states, according to a VEC representative. In fact, a 2004 *Wall Street Journal* article quoted Chamber employee Stan Anderson discussing the Chamber's efforts to target primarily Democrats in Attorneys General and state Supreme Court justice races throughout the country. Targeted states included Alabama, Indiana, Pennsylvania, Mississippi, Texas, Louisiana, Michigan, West Virginia, Ohio, and Arkansas. The petitioners are asking the Commission to find that the Chamber-sponsored ILR broke the law and to have the Attorney General prosecute the ILR and order it to pay sanctions. Public Citizen President Joan Claybrook stated:

> *The Chamber's covert activities in Washington state mirror its orchestration of campaign attack ads in a number of other states. The Chamber was the pivotal force in organizing, funding and executing a nationwide, systematic plan to secretly hijack elections of attorneys general and state Supreme Court justices with funds garnered from some of the biggest corporations in the country—whose names are not disclosed. The Chamber-funded ads attacked the integrity and reputation of consumer-oriented candidates. This perversion of our democracy must be stopped.*

The U.S. Chamber of Commerce shouldn't be able to evade registration requirements and hide from voters the true origin of campaign financing in political races. Judge Utter, one of the persons filing the petition, stated:

> *To hide from the public the true source of financing of judicial races deprives the public of their ability to judge whether a judge can not only be impartial but also can appear to be impartial, a vital factor in public confidence.*

Details of the Chamber's involvement in the race emerged in the wake of a case launched by the Public Disclosure Commission, which found that the VEC had violated state disclosure rules by failing to register as a political committee and failing to report contributions and expenditures. The commission referred the case to the state Attorney General. Last month, a Superior Court judge agreed that the anti-Senn ads had violated state law. During the case, VEC agents testified that the U.S. Chamber of Commerce was directly involved in the planning, drafting, researching, and implementation of the ads, and that the Chamber had paid for the ads.

When choosing which states to target, the Chamber/ILR conducts polls and does research on candidates, which it did in Washington State, testimony revealed. The petition explains that the effort was so well hidden in Washington that local Chambers of Commerce were unaware of it until after the fact. In fact, the local Chambers registered their disagreement with the anti-Senn campaign once they learned what had happened. Although the Chamber/ILR said it educates voters about issues, Chamber representatives could not explain what issue it was advocating in its anti-Senn ads. This sort of thing has no place in American politics. It is good evidence that we badly need election and campaign finance reform in the U.S.

Source: Public Citizen

The DeLay Message

If nothing else, the DeLay record in Congress and the Texas Congressman's alleged abuse of his office are prime examples of why we badly need a complete overhaul of campaign finance laws on both the national and state levels. The strong-armed tactics of DeLay and his cronies, used to raise millions of dollars in campaign funds, can't be tolerated. Regardless of whether DeLay committed any crime, what he did is wrong. I hope this sordid episode will result in an outcry for reform. If that happens, then "The Hammer" and his cronies will have done the country a real service!

VII. CONGRESSIONAL UPDATE

What Is Congress Up To Now?

Since returning early from its latest recess, Congress has been busy approving aid for the victims of Hurricanes Katrina and Rita. In addition to their work addressing the devastation caused by the two hurricanes, they also have entered into the controversy over the government's slow response to Rita. The Senate meanwhile approved John Roberts as the new Chief Justice of the United States and is gearing up for a second confirmation process. These unexpected issues—the two hurricanes and a second vacancy on the Court—along with legislative work already on the fall agenda, will likely keep Congress in session into December, with a few breaks for holidays.

I hope folks back home let their senators and representatives know when they came back home on break what was on their minds. Perhaps, some even asked for help in protecting their legal rights. Access to a courtroom, the only place where ordinary citizens are on a level playing field with powerful corporations and special interests, should be of concern to all American citizens. But, powerful special interests work on members of Congress daily and not just when they are home on break.

Here are some of the hot button topics:

- Adding to the Deficit: Congress will apparently continue to spend our tax dollars at a record pace. Some describe the atmosphere as like a group of "drunken sailors" out on leave after returning to the port.
- Hurricane bills: In the wake of the recent hurricanes, several bills have been submitted that would give unparalleled legal protection to contractors who are being paid for the rescue, recovery, repair, and reconstruction work.
- Medical Malpractice: This summer the U.S House of Representatives passed the so-called HEALTH Act, which gives sweeping immunity to powerful corporations—like the makers of Vioxx—when they cause harm. This issue is still alive in the Senate and remains a priority of the health care industry.
- Asbestos: The rights of the innocent victims of asbestos poisoning are in jeopardy! The Fairness in Asbestos Injury Resolution Act is still alive in the Senate.
- The Meirs Confirmation: The confirmation process of this nominee will hopefully be handled quickly.
- Campaign Finance Reform: It appears the large corporations and their allies in Washington have kept any proposals off the agenda in Congress.
- The DeLay Issue: The indictments of the powerful Texas Congressman appear to be on the minds of members of Congress. Many are realizing that people back home are sick and tired of this sort of thing. With elections on the horizon, this may be the hottest issue in Washington these days.

Senator Bill Frist Bogged Down In Controversy

It seems like I remember Martha Stewart going to prison on a criminal conviction arising out of "insider trading," or at least lying during an investigation into possible insider trading. I really felt at the time that the federal government was simply making an example of her to discourage others. Now we see a real Washington political boss being targeted in a similar investigation. There can be little question that Nashville, Tennessee hospital company, HCA, Inc., has definitely been an asset for Senator Bill Frist politically. But now it appears that his connections with HCA may be a bigger problem. Saying that he finally decided to clear himself entirely of his shares in the company, Senator Frist is being investigated by the Securities & Exchange Commission and federal prosecutors over the circumstances of a recent stock sale. The sale of HCA stock was made just weeks before a July "earnings warning" from HCA. The powerful Senator has denied any "insider" knowledge regarding the sale and that may ultimately prove to be the case. Now we learn that Senator Frist actually owned stock outside the trust.

Senator Frist claims that he sold his shares in the company because he wanted a clean slate on his HCA holdings before he could potentially run for the White House in 2008. In doing so, he has apparently stumbled over the rules of the blind trust structure he set up to minimize any conflict of interest in his investments. It is most interesting that Frist's family members also "dumped" their stock at about the same time.

The number of HCA shares that Senator Frist sold is not entirely clear. Media reports have said that Senate Ethics Committee filings showed that more HCA stock was put into the trust several years ago. But, these appear to be distributions Senator Frist received from his parent's estate, not new purchases he made. Interviews earlier this year, both with Senator Frist's staff and his older brother, Thomas Frist, Jr., who is also an HCA Director and the company's former Chief Executive, both indicate they believed that the trust managers had been selling the Senator's HCA holdings systematically.

It has troubled me for some time that a powerful Senator, with what appears to be a clear conflict of interest, has been setting important health care policy for the country. This latest episode adds another layer of doubt and questions. I have no inside information on what Senator Frist did or didn't do and am not ready to prejudge his guilt. But, this whole thing doesn't meet the old fashioned "smell test" that most folks where I come from understand.

Source: *Wall Street Journal*

VIII. PRODUCT LIABILITY UPDATE

Schools And Community Groups Should Not Use 15-Passenger Vans

The deadly 15-passenger crash in Utah that occurred a few weeks ago underscores how extremely dangerous these vans are. Universities, churches, seniors' homes, and other groups should discontinue their use until these vans are made safer. In the Utah crash, the driver of the van lost control when a tire blew. The van rolled into a ravine, ejecting all 11 passengers, killing nine of them. Most of the passengers were freshmen at Utah State University. This wasn't the university's first experience with a 15-passenger van. In 2001, six members of the men's volleyball team were injured in a van crash.

The National Highway Traffic Safety Administration (NHTSA) has warned the public that 15-passenger vans have a rollover risk that increases dramatically as the number of occupants increases from fewer to five to more than 10. In May, NHTSA reissued a consumer advisory for 15-passenger van users. This was the third time for the agency to issue a warning in four years. GuideOne Insurance has recommended that the vans carry no more than 10 passengers, that people sit in the forward seats first, and that the rear seats be removed to increase the van's stability. Some insurance companies are even refusing to insure 15-passenger vans. If the vans have to be used, they should be equipped with dual rear wheels.

Fortunately, Congress has finally taken action that will affect these vans. In H.R. 3, the highway bill passed by Congress this summer, lawmakers mandated new rules to limit the propensity of passenger vehicles, including 15-passenger vans, to roll over. The bill also mandates an increase in the strength of vehicle roofs, which will help ensure that people involved in rollover crashes survive. Unfortunately, the effects of these new rules on vehicles won't be seen for five to seven years. I am also afraid that NHTSA will be influenced by the powerful auto industry and not carry out its responsibilities under the congressional mandate. In the meantime, schools and community organizations should avoid the vans altogether if they want to avoid tragedy. By doing so, lives will be saved.

Government Is Investigating Ford And GM Vehicles

The National Highway Traffic Safety Administration (NHTSA) is investigating whether the rear coil spring can fracture and punch a hole in the rear tires of some models of the Ford Taurus and Mercury Sable. In a separate probe, NHTSA is reviewing potential turn signal malfunctions in three General Motors Co. models—the 2002 Chevrolet Malibu, Oldsmobile Alero, and Pontiac Grand Am. NHTSA has opened a preliminary investigation into the 2000-2001 models of the Taurus and Sable sedans after receiving 131 complaints about broken coil springs.

The inquiry involves about 467,000 vehicles. The Taurus was among the best-selling passenger cars in the United States during the two model years. Most of the complaints came from northern states where vehicles are often subject to salt corrosion during the winter. About half of the owners who filed complaints said there were punctures in the rear tires because of the broken coil springs. NHTSA says there have been no crashes, injuries or fatalities linked to the Taurus and Sable review. Ford says it is cooperating with NHTSA.

In the GM case, the agency said it is reviewing nearly 400,000 passenger cars. NHTSA said it has received 42 complaints about a turn signal malfunction that leads to flickering or total failure of the turn signal lights and the indicator on the instrument panel. In 2003, GM conducted a recall of 2000-2001 models of the Malibu, Alero, and Grand Am to replace defective hazard switches that caused the turn signals and hazard lamps to fail. GM said then that the hazard switch caused the problem. In December 2004, GM said it would replace the hazard switch at no cost for 1999-2000 model year vehicles of the Alero, Grand Am, and Malibu sedans under 10 years or 150,000 miles. GM also says it is cooperating with NHTSA in the investigation. NHTSA says there have been no crashes, injuries, or deaths connected to the issue.

Source: *Associated Press*

Jury Awards $30.4 Million In Lawsuit Against Ford

Recently, a Texas jury awarded the family of a teenager who was killed in a rollover of a Ford pickup truck $30.4 million in damages and medical expenses. The jury found that Ford Motor Co. was primarily at fault in the death of a 16-year-old who was killed in a March 2004 accident. The family had sued Ford, contending that the roof of their truck failed to protect the teenage passenger in the crash that caused the Ford truck to roll over. The accident occurred as the teenager was traveling with her parents to Corpus Christi in a 1993 Ford F-150 when their truck was struck by a motorist leaving a fruit stand.

Even though the teenager was properly belted, she was partially ejected from the vehicle during the rollover. At trial, Ford claimed that she wasn't wearing her seat belt. But, Texas Department of Public Safety reports showed that she was in fact wearing her seat belt. The innocent victim spent 18 days in a coma before she died. The trial lasted for three weeks. Ford says it will appeal.

Since the trial, Ford Motor Co. has made some claims about its testing program that were flatly contradicted by one of its own experts during his trial testimony. A Ford spokesman, Dan Jarvis, made the following statement in a Brownsville Herald article published October 18th:

> *Ford Motor Company performs numerous dynamic stability and dynamic rollover tests on all of its vehicles.*

In fact, Jarvis has made numerous statements to that effect in media interviews. A Ford engineer, who was testifying under oath in the trial, clearly contradicted Jarvis' statements. During his testimony, when asked if any dynamic testing to determine the safety of the F-150 had been performed by Ford, Tom Patterson, the Ford engineer, said no. In fact, his exact testimony was:

> *Counsel, I've already stated over and over again that, no, dynamic testing was not done as part of that development program.*

In other testimony, while on cross-examination, Mr. Patterson said that he didn't know of a single time when Ford Motor Company has ever tested occupant protection in a dynamic rollover event. It is extremely difficult to reconcile Ford's contradictory post-trial statements.

It is also interesting that Ford now is trying to permanently seal correspondence and other documents between Ford and Volvo, a wholly owned subsidiary of the Michigan-based auto maker, over differing safety standards. Those documents have appeared in court and were on the Internet. This is a prime example of how Ford has tried to mislead the public on its safety record. This sort of thing shouldn't be tolerated.

Another Verdict Against Ford In A Rollover Suit

Ford Motor Co. will have to pay $3.25 million to the family of a woman killed when the Explorer sport utility vehicle she was driving flipped over in an accident. A South Carolina jury returned the verdict against Ford. A 26-year-old lady was ejected from the vehicle in the April 2000 accident. The jury awarded her family and three passengers $3.95 million in actual damages, finding the Explorer "defective." The jurors were unable to reach a verdict on punitive damages in that phase. U.S. District Judge Patrick Michael Duffy declared a mistrial on that issue on October 17th.

This suit is one of several hundred facing Ford over claims of defects after Explorer rollovers. The company knew the Explorer was prone to rolling over and failed to warn or protect customers. Ford has known that this Explorer had rollover problems as far back as 1989. Ford knew of potentially fatal defects during the development and manufacture of this vehicle and chose not to remedy them. The jury also heard testimony of defects in the Explorer's roof and window glass. The jury also awarded $700,000 to three passengers in the vehicle.

All-terrain Vehicle Injuries And Deaths On The Rise

The federal government estimates 740 people died in all-terrain vehicle (ATV) accidents last year, which sad to say is a new record. The estimated toll, which includes 470 documented cases, compares with an estimated 617 deaths in 2003. The Consumer Product Safety Commission (CPSC) says the 136,000 hospital injuries involving ATVs last year is also an all-time high. One-third of those injured were under 16 years of age. In Alabama, the CPSC says 29 people have died in ATV-related crashes between 2002 and 2004. There were 145 fatalities statewide between 1982 and 2004. The director of product safety at the Consumer Federation of America says the reported numbers are evidence of "a serious national epidemic." The safety group is calling for federal ATV regulations.

Bridgestone/Firestone To Pay Ford $240 Million To Settle Recall Issues

Bridgestone/Firestone North American Tire L.L.C. and Ford Motor Co. have reached a most significant settlement. The agreement is for BFS to pay Ford $240 million to settle remaining financial issues between the companies stemming from the Firestone tire recall in August 2000 and Ford's subsequent tire replacement program in May 2001. In an announcement, BFS said the agreement "settles all remaining matters" between the two companies related to these campaigns.

FDA Seizes Medicine-Dispensing Pumps

The Federal Food and Drug Administration has seized 6,000 Colleague infusion pumps owned by Baxter International Inc. that were linked to deaths and 850 Syndeo syringe pumps used to administer pain medication. United States marshals took the devices from two company facilities in northern Illinois where they were being held. Baxter, based in Deerfield, Illinois, halted shipment of pumps to hospitals and acute medical care facilities earlier this year because of defects. Baxter, the world's biggest maker of blood-disease products, has had three recalls of the Colleague pumps this year. A potential fault in the battery on more than 250,000 pumps may bring the tally of deaths linked to the devices to seven, up from three previously connected to other flaws. Infusion pumps are used to help deliver drugs to patients and keep track of the type and amount of medication received.

Source: *Bloomberg News*

NHTSA Probes Cadillac Vehicle

The National Highway Traffic Safety Administration (NHTSA) has opened a probe into the 2004-2005 models of the Cadillac SRX crossover. NHTSA has identified 10 reported injuries linked to four consumer complaints. According to General Motors, about 30,000 vehicles have the broad sun roof, which became a standard feature on models with V8 engines in 2005. The sun roof exposes the second row of seats when opened and is about 6 square feet (0.5 square meters) in size.

NHTSA is investigating reports that the large sun roof on the Cadillac SRX has shattered while driving at highway speeds, showering passengers with glass. According to one owner, the sun roof on his car collapsed in mid-August, injuring six people while the 2005 model was traveling at 60 to 65 mph. As you know, Cadillac is a unit of General Motors Corp. (GM).

Shatter-Proof Laminated Side Windows

Automotive side windows that resist crowbars are infiltrating the luxury car market, but they could become commonplace if the National Highway and Traffic Safety Administration (NHTSA) writes tougher rules on rollover accidents or if the automotive industry will put safety over profits and voluntarily change its current window construction. Windows made like windshields, with a plastic layer inside, don't shatter when broken. By holding together in a rollover accident, the windows could keep heads, arms, and bodies inside the car.

Nine U.S. auto suppliers have organized as the Enhanced Protective Glass Automotive Association (EPGAA). EPGAA is educating the automotive industry about the benefits of new security and safety glass systems for side and rear vehicle windows. Playing a lead role in automotive development and security measurement activities worldwide, EPGAA supports the goal of achieving total vehicle safety.

Seven consumer, health, and safety organizations are urging NHTSA to follow through with its intended plan to develop a comprehensive, performance-based standard for laminated glass in automotive side and rear windows. According to the U.S. Department of Transportation (DOT), more than 10,000 people were killed in 2001 because of full and partial ejections during rollover and side impact crashes. If the automakers continue to procrastinate, many additional lives will be lost. NHTSA and the automakers should consider, evaluate, and then adopt laminated glass as a technology that could be used to help meet ejection prevention standards.

The following organizations are providing support for the needed change and joined in making the above recommendation:

- Public Citizen
- Center for Auto Safety
- Brain Injury Association of America
- Community Action Partnership
- Advocates for Highway and Auto Safety
- Trauma Foundation
- National Consumers League

NHTSA studied laminated side windows for 10 year before recently deciding not to require them. "Advanced glazing systems have the potential to yield significant safety benefits by reducing partial and complete ejections through side windows, particularly in rollover crashes," NHTSA wrote in its August 2001 final report. "However, these safety benefits are not unique to advanced glazing systems; other safety countermeasures can also prevent ejections." Government tests suggested that, while laminated glass alone could save 537 to 1,305 lives a year, it might also increase a certain category of neck injuries. The EPGAA says the neck injury data are unreliable.

Laminated glass has been used in side windows before, according to auto industry sources. Until cheaper tempered glass became available in the late 1950s, laminated side windows were common. The laminate acts as a safety net, absorbing energy from the contact while keeping the occupant inside the vehicle. Laminated glass should be standard in all cars. If that happens, it will reduce the possibility of brain injury and ejection and enhances the possibility of the glazing adding to the vehicle's structure.

The public will support the concept. According to a 2001 report on emerging technologies by J.D. Power and Associates cited by glass supplier Solutia Inc., "nearly seven out of eight consumers put run-flat tires and side-window security glass at the top of their list of emerging features they would like to have in their next vehicle."

The Audi A8 began offering a heat-treated laminated glass as an option in 1995 and made it standard in 1998. Since then, it has spread to the Mercedes-Benz S and E classes, Peugeot 607 and Volvo's S80, V70 and S60, the BMW 7-series, Volkswagen Phaeton, Lancia Thesis, Porsche Cayenne, Renault Vel Satis, Audi A4, and others. In North America, the Lincoln Navigator and Aviator have the glass in front windows, General Motors Corp. offers it in police car versions of the Impala, and Daimler-Chrysler AG installs it in Mexican versions of its Cirrus and Stratus, according to suppliers.

Given this readily available technology, there is no excuse for any automaker not to include it in every vehicle as standard equipment. Most consumers are not aware that this safer glass exists. Please inquire as to its availability next time you are in the market for an automobile. You can also contact NHTSA and let them know how you feel. It wouldn't hurt to let your senators and members of Congress hear the same message.

IX. MASS TORTS UPDATE

GlaxoSmithKline Misled FDA, Doctors And Patients

GlaxoSmithKline presented misleading results to the Food and Drug Administration (FDA) from a study of the popular asthma drug salmeterol (Serevent, known as Advair when combined with the steroid fluticasone), Public Citizen wrote a letter that was published in an October issue of *The Lancet*. In 1996, the Salmeterol Multicenter Asthma Research Trial was initiated to study tens of thousands of asthma patients who received either salmeterol or a placebo. The study lasted 28 weeks and showed an increased risk of asthma-related death for those taking salmeterol. The results have never been published, although GlaxoSmithKline presented the interim results to the FDA in July 2003. That's when the drug came up for review before the FDA's Pulmonary-Allergy Drugs Advisory Committee. The company submitted final study data to the FDA on August 29, 2003.

But, according to Public Citizen, that data included adverse events that were reported six months after the trial ended and were not to be included, according to the original study protocol. The inclusion of the post-study data reduced the apparent dangers of salmeterol with respect to four critical study outcomes, including asthma-related death. Public Citizen says that GlaxoSmithKline failed to clearly inform the FDA that the final study included data from six months after the trial had concluded until the FDA inquired about the results in April 2004. The FDA had presumed the data were only from the 28-week trial itself, because that was the "period of interest," according to the FDA. Since learning of the suspicious reporting of the study results, the FDA's Pulmonary-Allergy Drugs Advisory Committee on July 13, 2005, recommended strengthening the warning on the labels for both Servent and Advair, but the agency has yet to make a final decision. Public Citizen learned of the misleading data presentation from materials provided to the advisory committee. Dr. Peter Lurie, deputy director of Public Citizen's Health Research Group and co-author of the letter, said:

> *The behavior of GlaxoSmithKline in submitting these faulty data is deplorable. Absent greater transparency at the FDA, we will never know how often this kind of self-serving data analysis occurs.*

It should be noted that Public Citizen listed Serevent as a "Do Not Use" drug in its *Worst Pills, Best Pills* newsletter (www.worstpills.org) in March 2003 because of the interim study results. Salmeterol was dispensed more than 2.1 million times in U.S. pharmacies in 2004. The combination product, Advair, was dispensed more than 16.1 million times in U.S. pharmacies that year.

Source: Public Citizen

Drug Approval Process Criticized

In a recent article in the *New England Journal of Medicine*, Dr. Jerry Avorn, a professor of medicine at Harvard Medical School and the chief of the Division of Pharmacoepidemiology and Pharmacoeconomics at Brigham & Women's Hospital in Boston, criticizes the standards of the FDA's new drug approval process. Dr. Avorn notes that the FDA allows "a minimal standard that would be unacceptable anywhere else in research." He compares the FDA to "a patient with obsessive-compulsive disorder" that is "single-mindedly preoccupied with demanding the meticulous performance of a series of relatively simple acts" such as proving a new medication is superior to placebo in achieving a potentially irrelevant outcome. The FDA's sloppiness, according to Dr. Avorn, is not in the quality of execution it requires but in the questions it asks.

Dr. Avorn discusses several drug-approval decisions to illustrate the problem. Most of the medications discussed are "lifestyle" drugs that are taken for extended periods of time by large numbers of basically healthy people. The drugs are evaluated for the treatment of a real clinical problem, but there may be no clear consensus defining the mild end of the disease-nondisease continuum. This results in aggressive marketing campaigns by the pharmaceutical industry. Weighing the risks and benefits of these drugs is particularly important. Yet, according to Dr. Avorn, the FDA generally does not require such an assessment.

Current regulatory standards for the conditions such as obesity and insomnia can result in important clinical and economic problems. For example, Redux, a popular weight loss drug which was part of the fen-phen diet-pill craze, was approved by the FDA in the 1990s despite concerns that it might cause potentially fatal pulmonary hypertension. Redux was approved in light of the supposedly more worrisome epidemic of obesity that it might help to prevent. As expected, it did cause pulmonary hypertension in some patients. The drug also caused an unexpected side effect, cardiac valvulopathy, and it was withdrawn from the market within a year.

The FDA is reviewing another drug, rimonabant (Acomplia), which is said to reduce appetite, lipid levels, and the desire to smoke. In clinical trials, the drug did induce some weight loss, but there were higher rates of withdrawals of participants from the studies because of neuropsychiatric and gastrointestinal disorders. The FDA has also approved insomnia medications that are superior to placebo in certain laboratory measures. Even though long-term use of the drugs is often anticipated, the studies usually last a few weeks at most. Ramelton (Rozerem) was approved on the basis of studies that found improvements over one or two nights only. Severe insomnia can be a real problem for some individuals, but sleep aids can cause other side effects such as cognitive impairment and increased risk of falling, especially among the elderly. Dr. Avorn questions the ability to weigh the risks against the benefits of long-term use in a sleep laboratory. "The FDA's usual trial standards ignore critical questions, and comparative studies of different agents are not part of the evaluation process."

Because all drugs have side effects, the approvability of a drug should take into account whether its risks are acceptable in light of its real-world effectiveness. Dr. Avorn recommends that the FDA ask questions that more directly assess how long a drug is effective, how the drug's efficacy compares to current treatments, and how the risks and benefits compare. If such studies are not required as part of the approval process, there is no way to ensure they are conducted.

Pharmaceutical companies argue that such requirements would make pre-approval testing too lengthy and expensive. Yet the amount that pharmaceutical companies spend on research and development are less than one-third of what they spend on promoting their drugs. Some pharmaceutical companies even argue that the lowest possible standard of efficacy is good enough. The FDA should use the highest possible standard possible in approving drugs, and the approval should be based on what a new drug actually does for patients.

Source: *New England Journal of Medicine*

U.S. Senator Investigates Guidant

Earlier this year, Guidant Corporation began a round of product recalls. This came shortly after *The New York Times* reported that Guidant had not told doctors, for three years, that their heart device was vulnerable to short circuiting. This dilatory conduct has apparently prompted Senator Charles Grassley (R-IA), the chairman of the Senate Finance Committee, to begin a investigation into whether the company violated a 2003 agreement that required it to alert the government of product problems.

This corporate integrity agreement resulted from a scandal involving a Guidant unit that made stents. In 2003, the unit pled guilty to ten felony counts and agreed to pay $92.4 million to settle corporate and civil charges of failing to notify FDA about device malfunctions and patient deaths related to the stents. On the same day Grassley announced his investigation, Guidant issued yet another advisory to doctors. This time, Guidant warned about its Nexus and Insignia pacemakers, which include nearly 170,000 of the company's top-selling pacemakers. This came after a two-week federal inspection of the company's cardiac unit. Guidant said it is warning doctors that it has identified two types of failure modes in the devices that could cause serious health complications. So far, there have been no reported deaths due to these identified failures. Guidant said that as of September 6th, 36 out of 49,500 devices experienced one type of pacing failure, while 16 out of 341,000 devices suffered a second type of failure.

What's most troubling is the fact that Guidant has known about the problems with these devices since 2003. The FDA says that failures with the Insignia line were first reported in 2003 and occurred as recently as July. Nevertheless, as of September, users had not been informed of the potential for failure, and the company continued to distribute the product. Since June, Guidant has recalled or issued warnings concerning 88,000 heart defibrillators — including its leading seller, the Contak Renewal 3 — and almost 200,000 pacemakers, because of reported malfunctions. The latest advisory is the fifth in three months by the nation's second-largest cardiac-device maker and has renewed questions over its reporting of potential problems and its commitment to consumer safety. According to industry analysts, some 80% of Guidant's heart products are now under recall or an advisory. In the wake of the Guidant debacle, Congressman Edward J. Markey (D-MA) may have said it best:

> *Companies should not be allowed to hide problems until the FDA comes to seek them out. It is not the prerogative of the company to decide whether the defect warrants action—that decision should be left in the hands of the patient with the help of well-informed physicians.*

I wrote of Guidant's pattern of reckless conduct back in August of this year. It is quite shocking to hear of even more evidence that this company seemingly has a policy of not revealing life-threatening problems with its medical devices. I hope Senator Grassley can get to the bottom of this, but I suspect it will take a civil jury verdict to change the ways of this company. So far, this company seems to only thumb its nose at criminal prosecutions and government regulators. That's why it's so important to keep our court system open to victims of corporate abuse and wrongdoing.

An Indiana state court judge has ruled that a lawsuit by medical device maker Guidant Corp. against seven of its product liability insurers may proceed. Superior Court Judge David J. Dreyer recently lifted a stay he had ordered in May 2004 of a lawsuit in which Guidant is trying to get insurers to pay for damages resulting from its problem-plagued abdominal graft. Tens of millions of dollars are potentially at stake. Judge Dreyer had stayed the Marion County case in order to let an Illinois court resolve a fraud claim against Guidant by one of its insurers, Allianz Insurance Co.

The insurers refused to pay claims that had to do with Ancure. Allianz, a German company, said it wasn't obligated to pay because Guidant "deliberately concealed" problems with the graft from Allianz and U.S. regulators. Allianz's policy with Guidant covered

up to $25 million in product liability claims. Guidant is being acquired by Johnson & Johnson of New Jersey.
Source: *The Associated Press*

FDA Asks Bristol And Merck For Safety Data

The Food and Drug Administration has requested further safety data from Bristol-Myers Squibb Co. and Merck & Co. on their experimental oral diabetes drug in order to approve the therapy. The FDA specifically asked for information on the drug's effect on the cardiovascular system. The FDA issued an "approvable" letter to the drug makers, meaning that it expects to approve the Pargluva drug, a treatment for type-2 diabetes, following submission of satisfactory data. Bristol-Myers and Merck said the requested information is from ongoing trials or studies completed since the safety data from its last formal regulatory submission. The companies first applied for FDA approval of Pargluva in December 2004.
Source: *Associated Press*

X. BUSINESS LITIGATION

Retail Groups Sue Visa, MasterCard And Several Banks

Several retail groups have filed an antitrust lawsuit against Visa USA, MasterCard International, and dozens of major U.S. banks, claiming the defendants acted together to set excessive credit card fees. The plaintiffs estimate damages "will range in the tens of billions of dollars." The suit was filed in the U.S. District Court in Brooklyn, New York. Among the defendant banks are Bank of America, Citigroup, and JPMorgan Chase, which are the largest U.S. credit card issuers. It should be noted that MasterCard and Visa already face other retailer lawsuits accusing them of price fixing. The new case involves interchange fees, which retail merchants pay to issuing banks to receive payments for transactions involving the banks' cards. Interchange fees make up the largest component of credit card fees, and have long been a source of controversy between retailers and card companies. The plaintiffs say U.S. interchange rates cost an average household $232 a year. Hank Armour, chief executive of the National Association of Convenience Stores told the *USA Today*:

> *The credit card interchange system serves as a hidden tax, both on merchants and consumers, and raises the costs of all products. These credit card fees have rapidly increased over the past several years.*

The plaintiffs in the new case are the National Association of Convenience Stores, the National Association of Chain Drugstores, the National Community Pharmacists Association, and the National Cooperative Grocers Association. These associations represent operators of more than 138,000 convenience stores, 60,000 pharmacies, and about 120 cooperative groceries, according to the complaint. This lawsuit is similar to a lawsuit filed in July by Kroger, Walgreen, and other retailers accusing Visa of setting fees too high. Visa and MasterCard are associations whose members include thousands of card-issuing banks. It is alleged in the plaintiffs' complaint that:

> *Because their memberships are virtually identical, the Associations communicate frequently, exchange data, and coordinate much of their activity through joint programs, consciously parallel activity and tacit collusion. Actual and potential competition in the general purpose and debit card network services markets was substantially excluded, suppressed and effectively foreclosed.*

This is another example of how large businesses like the judicial system when it suits their needs. I would doubt seriously that the "tort reformers" would classify this suit as a "frivolous lawsuit." I also have to wonder why this isn't a prime candidate for "binding arbitration."
Source: *USA Today*

Miami Judge Approves HMO Settlements With Doctors

A federal judge has approved an estimated $142 million in settlements by two managed health care companies in a massive class action lawsuit by hundreds of thousands of doctors. On September 26th, U.S. District Court Judge Federico Moreno signed off on the settlements reached by Health Net Inc. and Prudential Financial Services with about 950,000 doctors across the country. The settlements bring the number of agreements approved by Moreno to four in the class action lawsuit by doctors and medical societies against ten of the nation's largest HMOs. Under the settlement, Health Net will pay $40 million to active and retired doctors. It will also spend an estimated $80 million to improve the process of dealing with doctors' bill submissions. Prudential will pay $22.2 million to improve managed care and will ensure that other companies follow through on their settlements. Health Net will pay $20 million in attorneys' fees for the doctors. Prudential will pay $5 million.

WellPoint Health Networks Inc. and Anthem Inc., have also reached tentative settlements. Since the legal actions began in 2000 Prudential has been sold to Aetna and Anthem has merged with WellPoint. These latest settlements are significant in the changes that will be made in the treatment and payment to doctors similar to those agreed to by CIGNA and Aetna. A trial is scheduled in January for the four remaining management companies, which are Coventry, United Health Care, Humana, and Pacificare. Suits against the 10 HMOs were combined into a single class action lawsuit and assigned by a panel of federal judges to Judge Moreno. A request was made to combine lawsuits against Blue Cross Blue Shield into a similar class action lawsuit.

Source: *Miami Herald Tribune*

KPMG Settles Suit By Tax Clients

The accounting firm KPMG and a law firm have agreed to pay $195 million to as many as 280 "wealthy investors" who bought four types of questionable shelters. The settlement documents were filed in federal court in Newark, New Jersey. The settlement agreement will have to be approved by the court. The settlement covers four tax shelters known as Blips, Flip, Opis, and SOS that were sold to investors to help them evade billions of dollars in taxes. All but the SOS shelter were cited in the $456 million deferred-prosecution agreement reached last month that allowed KPMG to avoid a criminal indictment.

The settlement covers buyers of the shelters who received legal opinions or representations from KPMG and the law firm of Brown & Wood, now Sidley Austin Brown & Wood, from January 1, 1996 through September 14th of this year. It should be noted that KPMG stopped selling the questionable shelters well before that date. KPMG used other law firms to sell the four shelters, but the settlement covers only those bought through the accounting firm and Brown & Wood. Sidley Austin Brown & Wood will pay about 20% of the $195 million. Sidley Austin Brown & Wood wrote legal opinions relating to the transactions. The size of the civil settlement—which amounts to an average of $696,000 for each eligible investor—hasn't gone over well with all of KPMG's former clients. The tax bills from the shelters for there clients, including interest and penalties, ran into the tens and even hundreds of millions of dollars.

KPMG now has turned its attention to the dozens of civil lawsuits it faces from investors who bought tax shelters that were considered invalid by the Internal Revenue Service. The potential class consisted of about 280 investors. Apparently, investors who have participated in other settlements, including with the IRS, over these four shelters are not eligible to participate in the settlement. Of course, investors who elect not to participate in the settlement can file their own lawsuits against KPMG. There are two other class action lawsuits against KPMG, both pending in federal court in Manhattan. Investors can choose not to take part in the civil settlement, but those who become members of the class have to agree not to sue KPMG or Sidley Austin Brown & Wood. At press time, it wasn't known whether the court had approved the settlement. In a side note, I wonder whether the wealthy plaintiffs in this settlement believe that our civil justice system is "broken." I also wonder whether they would support lawsuits—based on corporate fraud and wrongdoing—by ordinary folks!

Source: *New York Times*

AIG Seeks $18 Billion In Stock From Starr International

American International Group Inc. has asked a court to force a company led by its former chief executive, Maurice R. Greenberg, to relinquish nearly $18 billion in stock set up to benefit AIG executives. AIG, the nation's largest insurance company, has accused the company, Starr International Co. Inc., of breach of contract and unjust enrichment. The claim was made in response to a lawsuit in which Starr International demanded the return of $15 million in art it had allowed AIG to display in its offices before Greenberg was forced out as the company's chief executive officer in March. Greenberg resigned as CEO and chairman of the company amid widening federal and state probes of accounting irregularities. The case is pending in U.S. District Court in Manhattan.

Source: *The Insurance Journal*

Jury Says Johnson & Johnson Stole A Patent From Florida Cancer Specialists

A Florida jury has determined that Johnson & Johnson stole a patent for an implant used in breast cancer detection from two Florida breast cancer specialists. The federal jury ordered the company to pay the pair $2 million. The New Jersey-based company must also agree to give Atlantis surgeon John Corbitt and physician assistant Lori Leonetti, the two plaintiffs, 10% of an estimated $39 million in annual revenue from the implant if Johnson & Johnson wants to continue selling it.

Corbitt and Leonetti contend they developed their idea for the implant to mark where a woman had breast tissue removed for a biopsy, so that doctors could monitor the area for potential health problems. Trial testimony indicated the pair secured a patent for the implant, and spent two years in the late 1990s talking with Johnson & Johnson about manufacturing or marketing it. The company later bought California-based Artemis Medical Inc., which was selling a similar implant by another doctor. That patent wasn't valid because it was approved months after the one Corbitt and Leonetti obtained. It appears that Johnson & Johnson continued marketing the implant even though the company knew Corbitt and Leonetti actually held the valid patent.

Source: *Associated Press*

MCI Settles Fraud Suits With 16 States And The District Of Columbia

MCI has agreed to pay $331 million to 16 states and the District of Columbia to settle claims that it engaged in accounting fraud. The Pennsylvania Attorney General's Office announced the settlement last month. The two settlements dealt with MCI-WorldCom tax filings from 1999 to 2002, in which state authorities alleged transfers between subsidiaries were illegally classified as a business expense exempt from state tax laws. One agreement will give $315 million to 15 states and the District of Columbia, while North Carolina negotiated a separate agreement for $16 million. The money paid under the settlement will constitute 78% of the amount that state investigators said was owed by the company. States involved in the settlement, in addition to Pennsylvania and North Carolina, are Alabama, Arkansas, Connecticut, Florida, Georgia, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, Ohio, and Wisconsin. New Jersey will be the biggest beneficiary at $53 million and Pennsylvania will get the second most at $46.5 million. MCI is negotiating separately with South Carolina.

You will recall that MCI subsidiaries were transferring the money to another MCI subsidiary in Mississippi, a holding company for intellectual property, that was charging them a royalty that was tax exempt under Mississippi law. Our firm, along with two Mississippi firms, represented the State of Mississippi. The transfers were being classified illegally as tax-exempt business expenses in the 15 states and Washington, D.C. The government accused WorldCom officials of commit an $11 billion fraud by making adjustments to the company's financial statements that gave investors a misleading picture of the company's performance. WorldCom declared bankruptcy and is now operating under the name MCI.

Source: *Associated Press*

Boston Scientific To Pay $750 Million To settle suits

Boston Scientific Corp., which is located in Natick, Mass., will pay $750 million to Medinol Ltd. over claims Boston Scientific breached a contract to jointly manufacture stents when it set up a factory in Ireland. The settlement resolves existing lawsuits and established a framework for resolving future disputes. The settlement involves the stent division of Boston Scientific. In one case, Medinol, a Jerusalem-based medical device maker, sought as much as $4.5 billion in damages. The settlement covers all existing lawsuits with Medinol, which apparently is all the outstanding litigation. As you know, stents keep arteries open after the plaque-clearing procedure known as angioplasty.

Microsoft And RealNetworks Settle Lawsuit

RealNetworks Inc. and Microsoft Corp. have settled a lawsuit between the digital media pioneer and its long-time foe. Significantly, this is the last major U.S. antitrust case against Microsoft. This settlement is said to have a goal of helping the two companies better compete against Apple Computer Inc. in the increasingly important business of online audio and video. The settlement starts with a $460 million cash payment that settles all antitrust disputes worldwide that RealNetworks had against Microsoft. RealNetworks also gets $301 million in cash and services—including promotion on Microsoft websites and the software giant's instant-messaging service—that are designed to help its products reach a wider audience. The settlement is the latest in a "peace offensive" Microsoft has launched in recent years, following an antitrust settlement with the U.S. Justice Department.

Source: *Associated Press*

Automakers File Suit Against Marathon Oil

General Motors Corp., Ford Motor Co., and DaimlerChrysler AG have filed suit against Marathon Petroleum Co. LLC. This is the latest move in an ongoing dispute over fuel distributed by the oil company that allegedly contaminated gas tank sensors. Marathon Petroleum, a subsidiary of Houston-based Marathon Oil Corp., is accused by the automobile makers of refusing to keep its agreement to pay $12 million to repair 12,000 vehicles that were damaged by gasoline distributed by the company in the Louisville, Kentucky area in May 2004. Marathon is demanding back the money it paid to the three auto makers and is claiming the fuel met applicable American Society for Testing and Materials standards. The suit was filed against the oil company on September 21st in a Michigan circuit court. The suit seeks to force Marathon to back away from its demand for reimbursement of the $12 million it paid to the auto makers that was needed to replace contaminated parts. This sure does look like a dispute that was better suited for "arbitration!" But, when it suits them, large corporations like the courts just fine.

Source: *Associated Press*

Humana Settles Lawsuit

Humana Inc. has agreed to pay $40 million to settle a class action lawsuit brought by more than 700,000 doctors who claimed they were systematically cheated by many of the nation's major managed care companies. Humana, based in Louisville, Kentucky, also announced that it will pay as much as $18 million in legal fees if the settlement is approved by U.S. District Judge Federico Moreno in Miami.

The agreement recognizes that Humana has spent more than $75 million to upgrade its claims process, including improving speed and accuracy. The doctors' lawsuit contended that managed care companies programmed computers to pay for less intensive services than were actually provided. You will recall that the U.S. Supreme Court in June let stand a lower court ruling that the case could be tried as a class action involving tens of thousands of doctors and retired doctors. The remaining companies—United Healthcare, Coventry and PacifiCare—are scheduled to go to trial in January.

Source: *Associated Press*

XI. INSURANCE AND FINANCE UPDATE

Virginia Judge Dismisses GOP Case Against Its Insurer

I had suspected all along that the GOP's lawsuit against an insurance company was a "frivolous" one. Now it appears that the insurer for the Virginia Republican Party won't have to pay the almost $1 million that the party sought to cover expenses it had incurred in settling an eavesdropping lawsuit. U.S. Magistrate Judge Dennis W. Dohnal dismissed the claim by the GOP against Union Insurance Co., which had declined to make any payment and fought the lawsuit. In December, the party paid 34 Democratic legislators $750,000 to settle a federal complaint alleging the GOP violated the legislators' privacy rights by spying on two conference call discussions of legal strategy in March 2002. The state GOP contended that the liability insurance company breached its contract by not covering the $750,000. The GOP also sought the insurer to cover $200,000 for legal bills from the case. Here's how the judge described the case:

> *The acts complained of arose from a willful violation of a penal statute by agents of the Plaintiff and thus the claims were excluded from coverage. Union had a right to decline coverage.*

The GOP had contended that the eavesdropping was the mischief of rogue operatives acting without party authorization or knowledge. Because the party was a victim and not a culprit, the lawsuit argued, Union should have provided coverage. The lawsuit arose from the illegal intercepts of conference calls Democrats and Governor Mark R. Warner held to discuss the Democratic court challenge to the GOP-drawn reapportionment. Edmund A. Matricardi III, then the state GOP executive director, secretly logged on to both calls, recorded them, and took notes. I had wondered whether I would ever see a frivolous lawsuit and now I can say I have.

UnumProvident Settles With CDI On Disability Claims Handling Practices

Three subsidiaries of UnumProvident Corp. have entered into a significant settlement agreement with the California Department of Insurance. This results from a market conduct examination and investigation of the subsidiaries' disability claims handling practices. As part of the settlement, UnumProvident has agreed to change certain practices and policy provisions related to its California business and consistent with California case law. The settlement also incorporates claims handling practices previously covered by the multistate agreement reached last year with 48 other states, and includes certain additional claim handling changes. Additionally, UnumProvident has agreed to pay a fine of $8 million to the California Insurance Department as part of the settlement.

Under the terms of the settlement, UnumProvident will change a number of provisions specific to California disability policies, including the definition of "total disability." The California Department of Insurance will notify all disability providers who do business in the state of its concerns about the lawfulness of certain provisions contained in present policy language. It will spell out an approach for addressing these concerns. As a part of the settlement, UnumProvident will receive approval from California for the use of new individual and group disability policy forms, which will become available for sale on November 1, 2005.

The California settlement also incorporates the claim reassessment process and the changes in claim handling practices contained in the November 2004 multistate regulatory settlement agreement that was previously ratified by 48 other states. California claimants were included in the 2004 multistate settlement and could choose to participate in that claim reassessment process even though California did not join the multistate agreement. Under the California agreement, reassessment notices will be mailed to approximately 26,000 individuals whose claims were denied or terminated between January 1, 1997, and September 30, 2005. Many of these individuals have already reportedly received reassessment notices under the multistate agreement. Additionally, an individual whose claim denial or termination is upheld in the reassessment may request an independent review by a member of a panel established for that purpose. UnumProvident also said it would amend the multistate settlement agreement to include mailing a notice of the claim reassessment process to approximately 29,500 individuals whose claims were denied or terminated between January 1, 1997, and December 31, 1999. Under the original multistate agreement, claimants during this period could request participation in the reassessment process, but they were not sent a notice.

The amendment will also confirm that eligible claimants in the 1997 to 1999 period who do not receive a notice under the amendment, but who are entitled to request a reassessment, will have until June 30, 2006, to do so. Separately, UnumProvident said it is proceeding with a company plan to offer to reassess private label, acquired, and reinsured block claims, as well as claims administered on behalf of certain employers from January 1, 1997, through January 18, 2005 (and through September 30, 2005 for California residents). These approximately 24,000 claims were not included in the 2004 multistate regulatory settlement, but the offer being made will generally follow the reassessment procedures contained in that agreement. This settlement could substantially alter how insurance is regulated in California—and perhaps the nation as well, if other regulators follow the state's precedent.

Source: *The Insurance Journal*

Insurers Say Hurricane Katrina Will Not Disrupt Market

While property/casualty industry expects insured losses from Hurricane Katrina to reach a record high of $34.4 billion, the Property Casualty Insurers Association of America says insurers will weather the storm of more than 1.6 million claims spread out over six states without the market disruption that occurred following 1992's Hurricane Andrew. According to the ISO Property Claim Services, Louisiana was hardest hit by the storm, suffering $22.6 billion in insured losses and 900,000 claims. Mississippi's insured losses are expected to reach $9.8 billion with 490,000 claims. The insured losses for Alabama are estimated at $1.3 billion and 123,000 claims. These are record setting losses for Louisiana and Mississippi. These damage estimates do not include losses to utilities, agriculture, oil drilling platforms, and property insured under the National Flood Insurance Program (NFIP). Initial property loss estimates for the NFIP are around $20 billion.

Hurricane Katrina also caused significant damage to businesses along the Gulf Coast. The PCS estimates place the insured losses at over $12 billion. These losses are comparable to the total of all insured losses from catastrophes in 2003. If the commercial losses from Katrina were treated as a separate catastrophic event, they would rank only behind Hurricane Andrew, September 11, 2001 and the Northridge, California earthquake in 1994. I hope the insurance companies will pay all valid claims in a prompt and fair manner.

Source: *Insurance Journal*

Class Action Suit Filed Against AIG Over Katrina Claims

A class action suit over Hurricane Katrina has been filed against American International Group (AIG) and its subsidiary, Audubon. The suit, filed by a New Orleans resident whose house was severely damaged in Hurricane Katrina, charges AIG and Audubon have failed to help their policyholders who are in desperate need of assistance after the hurricane. AIG and Audubon were the underwriters and service providers of Louisiana Citizens Fair Plan (FAIR), which provides homeowners' policies of last resort to those who cannot get insurance elsewhere, including many poor people in New Orleans and the surrounding area. The class action suit is on behalf of Louisiana's FAIR plan policyholders, about 400,000 people. The suit alleges that AIG has completely failed to provide any way for its policyholders whose homes have been damaged to initiate a claim or even reach its offices to find out how to do that, or to provide temporary disaster relief provided under their policies. Americans for Insurance Reform (AIR), a New York City-based national coalition of public interest organizations, is supporting the lawsuit. According to AIR cofounder and spokesperson Joanne Doroshow:

> *This is the worst case that we have seen of a complete failure of an insurance company to respond to the immediate and dire situation of its Katrina policyholders. Many FAIR policyholders were struggling economically before the storm hit, and some are now reaching the point of severe impoverishment due to AIG's failure to help them. Many have still not received the temporary living expenses they are entitled to under their policies.*

Over a month after Katrina, AIR's hotline is still receiving calls from people who cannot reach AIG insurance adjusters. Many people whose homes were devastated are still having a difficult time getting through to any AIG representative. Those who get through are often passed around from number to number, with AIG being largely unresponsive. This sort of conduct by an insurance company is inexcusable. They should be bending over backward to help their policyholders. AIR's Hotline number is (888) 450-5545.

Judge Throws Out $700 Million Jury Award In Executive Life Suit

In our last issue, we reported a punitive damage award involving Executive Life. A federal judge has now thrown out the $700 million punitive damages award. The State of California had received the award in a lawsuit stemming from the takeover of failed insurer Executive Life by French investors. In his ruling, U.S. District Court Judge A. Howard Matz concluded that the state's Department of Insurance was not entitled to receive the $700 million awarded by jurors in July as part of their judgment against French company Artemis SA. The court's order states:

> *This order addresses only the question of whether plaintiff (Insurance Commissioner) John Garamendi is entitled to the judgment he seeks, which would include the $700,000,000 punitive damages award. He is not. The court will not include any punitive damages award in the ultimate judgment.*

Judge Matz was forced to rule on the jury's award because the panel ordered only punitive and not compensatory damages, raising questions about whether the punitive award would stand. Lawyers for Artemis argued U.S. Supreme Court precedent established that punitive damages had to be based on compensatory damages. Commissioner Garamendi had expressed confidence the award would stand based on other precedents that allowed punitive damages comparable to a defendant's "ill-begotten gains." The state had argued that Artemis reaped $851 million from selling part of Executive Life's junk bond portfolio. Judge Matz did not issue rulings on other questions pending in the case, including whether the state should receive any restitution. The State of California took over the bankrupt Executive Life in 1991. A year later, Commissioner Garamendi sold its junk bond portfolio for $3.25 billion to an investor group financed by French bank Credit Lyonnais. The junk bonds later jumped in value and were worth billions of dollars more.

In 1999, the state Department of Insurance sued the French investors, claiming they had conspired to effectively give Credit Lyonnais control over all of Executive Life's assets, thereby violating California law at the time, which prohibited foreign governments from owning insurers in the state. Most of the original parties named as civil defendants, including Credit Lyonnais, reached a $600 million out-of-court settlement in February. The state gained another $110 million when Artemis settled criminal allegations. In May, jurors cleared Artemis's owner, billionaire Francois Pinault, of any wrongdoing, but found his company conspired with a subsidiary of Credit Lyonnais and other investors to defraud California regulators. The jury determined Artemis' actions caused harm to Executive Life policyholders.

Source: *Associated Press*

Ex-CEO Of Gen Re May Face SEC Suit

Ronald E. Ferguson, the former chief executive officer of General Re Corporation, received a "Wells notice" in October from the staff of the Securities and Exchange Commission (SEC) in connection with its ongoing investigation of non-traditional insurance products. Ferguson, who stepped down as CEO of General Re Corporation on October 1, 2001, had been providing consulting services to General Re and certain of its affiliates. On May 20, 2005, General Re terminated his consulting services. Under the SEC procedures, the recipient of a Wells notice has the opportunity to respond to the staff before the staff makes its formal recommendation on whether any civil action should be brought by the Commission.

In September, Berkshire Hathaway Inc., revealed that securities regulators might also sue the current chief executive of its General Re Corp. unit, and former and current subordinates, over their roles in a 2000 transaction that helped American International Group Inc. inflate its reserves. General Re CEO Joseph Brandon had received a Wells notice from the SEC indicating the SEC might file a civil suit against him alleging violations of securities laws. Christopher Garand, a former senior vice-president at General Re, and Robert Graham, a current senior vice-president and assistant general counsel, also received notices. As reported previously, the U.S. Justice Department and the SEC have been examining a transaction between General Re and AIG that helped the world's largest insurer improperly increase its reserves by $500 million, according to regulators.

In June, two former General Re executives, John Houldsworth and Richard Napier, pleaded guilty to charges that they helped AIG misstate financial results. Subsequently, they were fired by General Re. Regulators are trying to determine whether General Re actually helped AIG inflate its financial condition. The sweeping probe ultimately uncovered a host of wrongdoing at AIG that prompted the ouster of long-time CEO Maurice "Hank" Greenberg and forced the insurer to restate $3.5 billion of earnings over the past five years. Berkshire Hathaway and its subsidiaries engage in a number of diverse business activities, among which the most important is the property and casualty insurance business conducted on both a direct and reinsurance basis.

We are currently involved in a lawsuit in a Tennessee federal court, where we represent the Tennessee Insurance Commissioner. When we first filed the case, I must confess that, while we knew the defendants' conduct was bad, we had no idea how bad or far-reaching it would turn out to be. We are learning more almost every day, and very little of it is good for the defendants in the case.

An Interesting GOP Candidate In Virginia

Bill Bolling, is running for lieutenant-governor as a Republican in Virginia. Bolling is a former manager of Reciprocal of America and The Reciprocal Group, both based in Richmond, Virginia. As you will recall, these companies are now in receivership in Virginia. As mentioned above, our firm is representing the Honorable Paula Flowers, who is Commerce and Insurance Commissioner of Tennessee, as receiver for three affiliated companies (the RRGs) who are in receivership in Tennessee. Collectively, these companies provided malpractice insurance for doctors, hospitals, and attorneys in multiple states.

The company Bolling worked for previously went into receivership because of mismanagement and massive fraud concerning illegal reinsurance agreements with other companies such as General Reinsurance, First Virginia Reinsurance, and others. In fact, two of the same companies' top executives, Ken Patterson and Carolyn Hudgins, were indicted by the U.S. Attorney in Richmond and have reached plea agreements under which they will both be sentenced to 12-1/2 years in federal prison and ordered to pay restitution.

Bolling defends himself saying that he was one of hundreds of employees and dozens of executives and officers within the company, and that he played no direct role in any wrongdoing with the company or the reinsurance agreements that are being challenged in civil and criminal courts around the country. Many critics claim that the executives, officers, and managers at Reciprocal ran the company into the ground, and also caused the demise of the three Tennessee malpractice carriers at the same time through reinsurance agreements that were not as promised. Furthermore, allegations exist that the scheme was a cover-up to hide millions of dollars in profits being taken by Reciprocal and Gen Re. executives, officers, and affiliated companies.

Bolling's Democratic opponent, Leslie

Byrne, has questioned Bolling's involvement at Reciprocal through several press releases issued recently. Whether the issue will affect voters has yet to be determined. In any event, it will be interesting to see how all of this affects Bolling in his race.

Allied Settles Lawsuit For $100 Million

A class action lawsuit filed by policyholders of the former Allied Mutual Insurance has been settled. A judge approved a payout of at least $100 million to the plaintiffs. Allied was sued in 1998 over its sale to Nationwide Mutual Insurance Co. Policyholders of Allied Mutual sued some of its directors and executives in late 1997, alleging that they had improperly transferred assets of the Des Moines, Iowa-based property-and-casualty insurer to a publicly held subsidiary, Allied Group.

Policyholders, who by law are the owners of mutual insurers, received $110 million from the sale to Nationwide, while stockholders of publicly held Allied Group received $1.57 billion. Under the agreement approved by the court, policyholders who owned insurance contracts with Allied Mutual as of February 18, 1993, are entitled to share in the settlement. Allied's current parent company, Columbus, Ohio-based Nationwide, has agreed to pay them at least $100 million and as much as $135 million. Only about 45,000 policyholders had filed claims as of October 7th. They have until January 10, 2006, to make a request for payment, which in some cases could total as much as 40% of the premiums that they paid during the three years leading up to February 18, 1993. Customers of Allied Mutual who want to request a refund can file a claim by calling (800) 589-7679, or log on to http://www.alliedmutual settlement.com .

Lincoln National Buying Jefferson-Pilot

Insurance provider Lincoln National Corp. is acquiring Jefferson-Pilot Corp. for about $7.5 billion in cash and stock. The deal would combine Lincoln's strengths in life and annuities products with Greensboro-based Jefferson Pilot's sizable presence in fixed and variable universal life and fixed annuities, including equity-indexed annuities and other insurance. The deal, which is expected to close in the first quarter of 2006, will make Lincoln National the top-ranked seller of "universal life product sales." It will also be a leading player in group disability sales and retirement plan assets.

XII. PREMISES LIABILITY UPDATE

Lawsuit Resulting From Explosion At Delaware City Refinery Settled

Motiva Enterprises LLC (Motiva) has agreed to pay $12 million to settle a joint federal-state civil lawsuit arising from a catastrophic explosion in 2001 at the company's former Delaware City refinery that killed one employee, injured several others, and caused a massive discharge of spent sulfuric acid from a ruptured tank. The U.S. Justice Department, the Environmental Protection Agency, and the State of Delaware announced the settlement, which culminated a highly successful effort by the government agencies involved. In addition to the $12 million civil penalty, Motiva will finance a series of environmental projects valued at more than $4 million and reimburse the United States and Delaware for over $170,000 in response costs.

The settlement resolves claims against Motiva under the federal Clean Water Act (CWA), Clean Air Act, CERCLA (the Superfund statute), and numerous state environmental statutes. In 2004, Motiva sold the Delaware City refinery to the Premcor Refining Group Inc. (Premcor), which has agreed to join the settlement and to institute a series of controls valued at approximately $7.5 million, to improve safety at the refinery.

The combined total of nearly $23.7 million in civil penalties, environmental projects, injunctive relief, and response costs is one of the largest settlements secured in an enforcement action involving violations of environmental laws at one facility. The civil penalty is the largest ever collected in Delaware for environmental violations. It is good to report good things done by our government. Companies that fail to adhere to environmental laws not only put our natural resources and wildlife at risk, they risk the lives and the safety of workers and folks in the general area of their facility. The civil settlement is said to reinforce the Justice Department's commitment to seeing that violators will be met with firm and decisive action. I am hopeful others will be deterred from breaking the laws, which can avert future catastrophes.

Source: *Corporate Crime Reporter*

Lawsuit Involving The Collapse Of A Road Sign Is Settled

A lawsuit involving the deaths of three people crushed by a giant billboard that collapsed at a suburban Atlanta shopping center in 2002 has been settled for $12 million. The suit was filed on behalf of two brothers by their parents in Gwinnett County State Court against Trinity Outdoor LLC and Phoenix Structures & Services Inc. Phoenix was acquired by Sun Capital Partners Inc. of Boca Raton, Florida. The brothers and another worker died when a 35,000-pound sign collapsed as the men installed graphics and facings on the billboard. Another man was injured. It is significant that the city of Snellville, Georgia, forced billboard owners to take down all signs in the city for testing after the collapse. Trinity Outdoor was subsequently granted a permit to resurrect the sign back up. The suit was settled following two days of mediation. The trial had been scheduled for October 24th. Two other suits over the billboard collapse had been previously settled.

Lawsuits Stemming From Tropicana Garage Collapse Are Settled

Seven lawsuits stemming from the 2003 collapse of a casino parking garage have been settled. The amount of the settlements are confidential. Four men died and 20 others were injured in 2003 when the top five floors of the garage under construction at the Tropicana Casino and Resort in Atlantic City, New Jersey, collapsed during a concrete pour. Thus far only seven of the 35 suits have been settled. In a report last year, the U.S. Occupational Safety and Health Administration found that the lack of steel reinforcements in the concrete and inadequate support for the completed floors of the parking garage were to blame for the collapse.

Government To Conduct Generator Safety Study

The use of generators is becoming more widespread in our area largely because of the numerous hurricanes this year. Federal investigators are looking into improving portable generator safety. Misuse of the power sources killed at least five people and sickened dozens more after Hurricane Katrina. Many Katrina victims relied on portable generators after the hurricane knocked out most of the power in the Gulf region. As previously reported, portable generators can emit carbon monoxide, a colorless, odorless gas that can kill or severely poison those inhaling the gas in poorly ventilated areas. Hal Stratton, the chairman of the Consumer Product Safety Commission, calls the investigation a priority. He is directing his staff to consider "all potential methods" for improving portable generator safety. The five deaths were among fifty-one cases of carbon monoxide poisoning reported in Alabama, Louisiana and Mississippi after the Hurricane Katrina, according to the federal Centers for Disease Control and Prevention. Four deaths occurred in one Louisiana house where a generator was used. The fifth death occurred in a Louisiana house where a generator was used in an attached garage. Many people are totally unaware of the carbon monoxide hazard that exists when a generator is improperly used. If you are going to use a generator, go to the CPSC website and find out how to use it.

XIII. WORKPLACE HAZARDS

Bank Of America Settles Class Action Suit

Bank of America Corp. has agreed to settle a lawsuit by loan department employees in California who claim the company failed to pay them overtime. The class action lawsuit, filed on September 16th in federal court, claimed the bank owed overtime pay to account executives, trainees, and other workers selling home mortgages and handling personal loans. Under the settlement, Bank of America will pay a total of $9 million to the workers. We are seeing more and more cases involving a failure to pay overtime to employees.

Wal-Mart Can't Clean Up

It appears that the lawsuit brought against Wal-Mart Stores by illegal workers hired by the retail giant will go forward. A U.S. judge has ruled that the lawsuit filed by the undocumented workers can proceed. Wal-Mart will have to answer to charges of not paying these workers fair wages and overtime. It will also have to respond to why its store managers locked the doors on overnight cleaning crews, keeping them prisoner until the doors were opened the next morning to let in bargain-hunting shoppers. Interestingly, Wal-Mart claims a victory because the racketeering charge in the case was dismissed. Many observers considered this to be the heart of the case. But, the claims that the workers were underpaid and mistreated withstood Wal-Mart's motion to dismiss.

In March, Wal-Mart agreed to pay $11 million to end a four-year-old U.S. government criminal investigation into its hiring practices. But it will now have to face the massive class action suit filed on behalf of the workers. U.S. District Judge Joseph Greenaway's decision to let stand the wage charges, which were brought under the Fair Labor Standards Act, helps explain the court's thinking about the claims of undocumented workers. The judge totally rejected Wal-Mart's argument that because the workers are illegal, they can't seek relief under the law. Judge Greenaway wrote in his opinion:

> *This court only joins a growing chorus acknowledging the right of workers to seek relief for work already performed under the Fair Labor Standards Act.*

Significantly, the judge rejected Wal-Mart's assertion that, since the janitors worked for contractors rather than Wal-Mart directly, Wal-Mart was not their employer. Judge Greenaway also rejected Wal-Mart's claim that the wage issue should be dismissed because it had paid above minimum wage to some of the workers and "near" minimum wage to several others. "Simply put," the judge wrote, "payment of 'near' the lawful minimum wage is not payment of the minimum wage." On the allegations of false imprisonment, the workers will have the opportunity, as a class, to recover punitive damages, should they win this issue at trial. Wal-Mart may be premature in claiming a major victory in this case.

Source: *Forbes News Service*

Mississippi High Court Dismisses Monsanto As Defendant In Asbestos Case

The Mississippi Supreme Court has dismissed the Monsanto Co. as a defendant in asbestos litigation in Adams County. Monsanto was among 270 defendants sued by employees at International Paper Co. in Natchez for injuries allegedly resulting from exposure to asbestos products. Some Monsanto products were present at the IP plant. An Adams County judge in 2004 refused to dismiss Monsanto as a defendant. On appeal, Monsanto argued there was no evidence that its products caused the employees' illnesses. The employees said there were exposure issues that should be addressed by a jury.

The Mississippi court adopted what has become called the "frequency, regularity, and proximity test." Many states use that test to determine whether exposure to each defendant's product was a substantial factor in causing the disease. The Supreme Court said the plaintiffs had no evidence that showed that they had any exposure to an asbestos-containing product attributable to Monsanto. The court's opinion read:

> *In asbestos litigation in Mississippi, the proper test to be used is the frequency, regularity, and proximity standard to show product identification of the defendants' actual products, exposure of the plaintiffs to those products, and proximate causation as to the injuries suffered by the plaintiffs.*

Actions By OSHA

The following are a few examples of actions taken by the Occupational Safety and Health Administration (OSHA) recently. I will set out enough of the facts so you can get a flavor of what is going on in the workplace.

A Problem In Alabama

The Occupational Safety and Health Administration has cited two Alabama companies, Rivera Framing and Lifescape Builders, for reportedly exposing workers to fall hazards from unsafe scaffolding at a Vestavia Hills, Alabama, job site. The agency is proposing penalties totaling $142,600. Roberto Sanchez, OSHA's Birmingham area director, stated: "In the Southeast, lack of fall protection is a leading cause of injuries and deaths, particularly among Hispanic construction workers. We are committed to reducing these tragic accidents."

OSHA issued seven repeat citations, with proposed penalties of $108,400, against Rivera Framing for failure to: train employees to recognize and avoid fall hazards; provide employees with fall protection when they work on 10-foot-high scaffolds, and provide workers eye protection when they use nail guns. Improper use of ladders was also cited as repeat. Six additional serious citations, with proposed penalties of $22,800, were issued against the company for exposing employees to falls from improperly erected, defective scaffolds and damaged ladders. General contractor, Lifescape Builders, received six serious citations, with proposed penalties of $11,400, for lack of a safety program; failing to provide workers with fall protection; and allowing debris to accumulate at the site.

Rivera Framing and Lifescape Builders had 15 days in which to contest the citations and proposed penalties before the independent Occupational Safety and Health Review Commission.

Another Problem In Alabama

The U.S. Labor Department's Occupational Safety and Health Administration has cited BF Goodrich for safety and health hazards at its Tuscaloosa, Alabama, tire manufacturing plant. The agency is proposing total penalties of $91,700, following an inspection conducted under OSHA's "site specific targeting program." Roberto Sanchez, OSHA's Birmingham area director, stated:

> *Site specific targeting identifies industries with high injury and illness rates. From that list, establishments are randomly selected for inspection. The goal of the program is to recognize and correct hazards that contribute to worker injuries, illnesses, and deaths.*

OSHA issued 26 serious citations against the company with proposed penalties of $79,000. Cited safety hazards included: failing to protect workers from falls into pits through floor openings and from loading docks and stairways that lacked guardrails; exposing workers to "caught-by" injuries; and electrocutions from unguarded machinery parts and electrical equipment. Citations for health hazards reportedly included failure to: provide employees with proper personal protective equipment, such as gloves, safety glasses and face shields; train employees and implement an emergency response plan and hazard communication program; provide electric grounding for containers of flammable material; and ensure proper drainage systems for storage tanks.

The company also received two repeat citations, with proposed penalties of $12,700, for failing to provide employees with fall protection while working on platforms and lack of a written hazard assessment program. OSHA issues a repeat citation when an employer has been cited previously for a substantially similar condition and the citation has become a final order of the independent Occupational Safety and Health Review Commission.

A Crane Safety Problem

The Occupational Safety and Health Administration has issued citations to Industrial Steel Fabrication Inc., which is based in Hazelwood, Mo., proposing penalties totaling $159,200 for alleged failure to protect workers from unsafe cranes and other hazards. OSHA initiated an inspection of the steel fabrication company in April following receipt of a formal complaint. Citations were issued alleging one willful violation with a proposed penalty of $56,000, ten repeat violations with proposed penalties of $39,200, and 32 serious violations with proposed penalties of $64,000. OSHA's Kansas City Regional Administrator Charles Adkins, CIH, stated:

Employers must provide a safe and healthful working environment and ensure that employees are protected from hazardous conditions. This employer is well aware of the standards that will protect workers from the hazards we found during our inspection, yet did not implement them.

The willful violation concerns hazards associated with the continued use of an overhead crane after unsafe conditions were disclosed by an annual inspection. OSHA defines a willful violation as one committed with an intentional disregard of, or plain indifference to, the requirements of the Occupational Safety and Health Act and regulations. The repeat violations address crane, machine guarding, electrical, welding, noise, hazard communication and training deficiencies. Repeat violations occur when an employer has been previously cited for the same or a substantially similar condition and the citation has become a final order of the Occupational Safety and Health Review Commission. OSHA cited the company in May 2004 for violations of the same standards or the same hazards.

Among the serious violations cited are hazards associated with cranes, lockout/tagout, fire protection, machine guarding, welding, electrical, hazardous materials, respiratory protection and egress. Serious violations occur when there is probability of death or serious physical harm and the employer knew or should have known of the hazard. Industrial Steel Fabrication had 15 working days from receipt of the citations to comply with them, request and participate in an informal conference with the OSHA area director, or contest them before the independent Occupational Safety and Health Review Commission.

A Trenching Accident In Texas

A Texas construction contractor faces a proposed fine of $108,500 following a trenching accident that claimed a worker's life, according to the Occupational Safety and Health Administration. Utility Contractors of America LLC, Lubbock, Texas, a construction company headquartered in Wolfforth, Texas, was cited for two alleged willful and seven alleged serious violations for not protecting employees involved in excavation work from cave-in hazards. The fatal accident occurred on April 5th when the walls of a 33-foot deep trench collapsed at the company's worksite in Lubbock. OSHA has standards to prevent trenching accidents. The company failed to ensure that employees were working within the protective system designed to safeguard workers from potential cave-in hazards. The willful citations were issued for reportedly failing to instruct employees to remain within the confines of a trench shield while working inside the excavation and to provide them with an adequate surface with guard rails while walking over the excavation. A willful citation is issued for violations committed with disregard of or plain indifference to the requirements of the Occupational Safety and Health Act and regulations.

The serious violations included failing to: ensure workers did not use the track hoe bucket to access trenches; provide a ladder within 25 feet of the excavation area; provide adequate protection from overhead loads while installing sewer piping; ensure that a competent person was at the site in the event of a cave-in, and follow manufacturer's instruction on the use and limitations of trench protective systems. OSHA defines a serious violation as one in which there is a substantial probability that death or serious physical harm could result from a hazardous condition about which the employer knew or should have known.

XIV. TRANSPORTATION

Americans Back High-Visibility Crackdowns On DUI

Mothers Against Drunk Driving (MADD) is celebrating its 25th anniversary. MADD is working hard to make our highways safer. One of the things done by MADD is to bring about the use of "sobriety checkpoints" by law enforcement officers. According to the MADD/Nationwide Insurance Survey conducted by Gallup, Americans continue to show overwhelming support for high-visibility crackdowns, such as sobriety checkpoints, to rid the roadways of drunk drivers. Additionally, Americans continue to support many of the research- based solutions MADD advocates for, such as tougher penalties for high-risk drunk drivers and enforcement of primary seat belt laws. Most Americans agree the issue must be tackled. Almost everyone surveyed mentioned DUI as the worst highway safety problem among a laundry list of items.

During the "MADD Celebrates Life" rally, hundreds of MADD activists, victims/survivors, and health and safety leaders from around the country joined this week in the nation's capitol to celebrate the 44% reduction in alcohol-related traffic deaths and 300,000 lives saved, as well as announce the 2005 public survey about drinking of driving. Glynn Birch, national president of MADD, stated:

MADD reminded the country 25 years ago that drunk driving should not be tolerated by placing the faces of loved ones on the cold, *hard statistics that littered our roadways. Now, a quarter century later we challenge the nation to do two things: one, continue to pledge not to drive if they have been drinking to help ensure it won't take another 25 years to substantially reduce drunk driving deaths and injuries, and two, for laws to be passed and for law enforcement to use those tools that we know work: sobriety checkpoints, primary belt laws, and restrictions on high-risk drunk drivers.*

Nine out of 10 Americans (94%) reportedly believe that driving under the influence of alcohol is a major highway safety problem. Additionally, 60% of those surveyed who said they drink alcoholic beverages on occasion said they have operated a vehicle under the influence of alcohol, or close to being under the influence of alcohol, at some point in their lives. The good news is that of all of those surveyed who had reached out to encourage someone not to drive because they thought the person had too much to drink, three in four were successful. The 2005 MADD/Nationwide Insurance Survey conducted by Gallup, was sponsored by Nationwide Insurance, a longtime supporter of MADD. The company should be commended for doing this.

Some of the top 10 methods to reduce drunk driving mentioned by those surveyed included:

- cracking down on high-risk drunk drivers;
- making it illegal to have open containers in a vehicle;
- using sobriety checkpoints; and
- requiring drivers and passengers to wear a seat belt.

It's good to see continued overwhelming public support around the country for one of the most effective ways to reduce drunk driving. Support for sobriety checkpoints jumped from 79% in 1993 to 83% in 2000 to 87% in 2005. Research reportedly proves that general deterrence law enforcement strategies, like checkpoints, are one of the most effective ways to stop drunk driving.

MADD has already charted its next course of action, with a three-year strategic plan to reduce fatalities resulting from drunk drivers by at least 25%. To accomplish this objective, MADD will:

- form strong alliances with every level of law enforcement, including prosecutors;
- achieve maximum seat-belt use;
- support the development of technology to prevent drunk driving;
- improve the performance and accountability of the DUI criminal justice system; and
- promote alternative transportation strategies.

In conjunction with its 25th anniversary, MADD hosted a national conference in Washington through October 1st for hundreds of MADD activists, members, and supporters. Attendees discussed how to further MADD's mission, which is to stop drunk driving, support the victims of this violent crime, and to prevent underage drinking. For more information on the survey and learn more about MADD, visit: http://www.madd.org.

Drunken Driver Must Pay Family $20 Million

A Texas state jury has awarded $20.1 million to the four children of a woman killed in a head-on collision with a drunken driver. The drunken driver had a blood alcohol content three times the legal limit when his pickup crashed into the victim's car on March 5, 2004. The driver, who pleaded guilty to intoxication manslaughter, is currently serving a five-year prison sentence. The jury awarded $5 million in punitive damages to the victim's children and $15.1 million for mental anguish, loss of maintenance, support and companionship.

Lawmakers To Encourage Private Airport Screeners

Congress has decided it was a mistake to put the federal government in charge of aviation security. As a result, it has now changed course and wants private security companies to run airport checkpoints. On October 6th, lawmakers gave airports "legal protection" if they get rid of federal screeners and replace them with private companies. The agreement was reached by a bipartisan committee of House and Senate negotiators after Republican Hal Rogers (R-KY) put the lawsuit protection in the final version of the Homeland Security Department's 2006 spending bill.

It was contended by a lobbyist for the airports that private companies can deploy screeners more efficiently than the federal Transportation Security Administration. The lobbyists claim the private companies can hire them more quickly, to avoid staffing shortages that close checkpoint lanes. An aviation security consultant contended that private companies would weaken security by cutting costs to increase profits. The law that put the federal government in charge of aviation security after the 9/11 attacks was intended to discourage airports from using private screeners.

The push for legal protection began over the summer when San Francisco International Airport said it would stop using a private security company because of lawsuit concerns. The airport is the largest in a pilot program testing whether private companies do a better job than federal screeners. The TSA hires and regulates security companies that staff airport checkpoints. It claims that private screeners undergo the same training and background scrutiny as their TSA counterparts and must receive at least as much in wages and benefits. A major concern is that federal oversight and funding will lessen over time, which the airport lobbyists claim would diminish the security improvements since 9/11. But, it is scary to see private companies take over the screening when you consider how some in Corporate America put profits over safety. Airport security must be a top priority and hopefully Congress hasn't been pushed into doing the wrong thing.

Lives Lost In The New York Harbor Incident

The Ethan Allen, the tour boat that capsized in Lake George in New York, killing 20 elderly passengers is under close scrutiny by federal investigators. They are looking at a host of factors, from whether modifications to the boat over the years had made it less steady to whether the boat was really big enough to carry the 50 people it was allowed to by law. The investigators are also reviewing its operating record to see if it had suffered any mechanical failures. The actions of the boat's captain are also being looked at to see what role he played. Local law enforcement officials say that the boat was being turned when it flipped over. Apparently, the captain was trying to avoid the boat being tossed by a big wake or wave.

The National Transportation Safety Board had its investigators perform a stability test of the Ethan Allen's sister boat, the de Champlain, to see how steady it is in the water when weighed down with the equivalent of 50 passengers. They also plan a battery of more complicated tests on the Ethan Allen. Officials said the fact that the Ethan Allen was not carrying one of the two crew members required by law when it had more than 21 passengers aboard—it was carrying 47 when it flipped over and sank—meant that its owners, Shoreline Cruises, would be served a violation, punishable by a fine of up to $100. The Ethan Allen was owned by Shoreline Cruises. Shoreline Cruises has been in the passenger-boat business on Lake George for more than 27 years. Assuming that the captain was not directly at fault, and considering the fact that the weather was nearly perfect, the possible causes of the capsizing are reduced.

The federal investigators will examine at least five factors: the boat's structural integrity; the force and direction of the wind; the size, number and strength of the waves; whether and how the boat turned in response to those waves; and how people moved around inside the hull. The fact that the boat was recovered, nearly intact, from the bottom of the lake should greatly aid the investigation. If there were any leaks in the bilge—the rounded bottommost part of the boat's hull—water could have seeped in and sloshed back and forth, reducing the boat's stability.

Reportedly, the Ethan Allen was modified in 1997, when its canopy was changed from a canvas top with vinyl windows to a heavier but sturdier wood and fiberglass hard top. I understand that the boat got a new, bigger engine five years ago. And in the bow of the vessel, investigators found seven lead bricks used as ballast, 3½ inches by 17 inches. Because the boat was built in 1966, he said, the Ethan Allen was grandfathered in under an old law, and did not have to submit to additional stability testing, as some newer boats must. At press time, two lawsuits had been filed against the boat's operator and captain. The lawsuits were filed in U.S. District Court in Detroit on behalf of the two plaintiffs who were survivors.

Source: *New York Times*

Shutdown Is Ordered For Operators Of Bus In Fatal Fire

Federal officials have ordered the immediate shutdown of the company that operated the bus involved in a fire that killed 23 hurricane evacuees along a highway in Texas. The Federal Motor Carrier Safety Administration ordered the bus company, Global Limo Inc., off the road because the conditions of its vehicles and drivers "are likely to result in serious injury or death." Global operated the bus that caught fire near Dallas on September 23rd about 16 hours after leaving Houston with residents of a nursing home who were fleeing Hurricane Rita.

Some passengers and the driver escaped, but flames, fed by 18 oxygen tanks that also caused explosions, trapped many of the passengers inside. From the beginning, investigators have focused on the condition of the bus's brakes. A motorist told investigators that he motioned the driver to pull over shortly after seeing a red glow in the right rear wheel hub. The Texas Department of Public Safety says that the right rear brakes on the bus failed because of the loss of bearings, and that the left rear brakes were "not maintained in good working order." The bus was built in 1998 by Motor Coach Industries, based in Schaumburg, Illinois. The National Transportation Safety Board has requested documents from the bus manufacturer and its owner, Century McMynn Leasing of Vancouver, British Columbia. The driver of the bus had been behind the wheel for much too long under stressful circumstances. This bus should never have been in service and lives were lost as a result.

Source: *New York Times*

Wrongful Death Suit Settled With Ambulance Company

The parents of a 26-year-old woman who died after a scuba diving accident have settled a wrongful death lawsuit against the ambulance company that responded to the incident. The lawsuit, which also named Monterey County as a defendant, claimed that negligence, including alleged heroin use by two paramedics, contributed to the 2002 death. The scuba diving instructor was found unconscious in about 15 feet of water at a popular Cannery Row dive spot. She lingered in a coma for four days before dying. Her parents sued

American Medical Response and the county, contending that the ambulance took 12 minutes to reach the beach from nearby Pacific Grove and that paramedics ceased resuscitation efforts after only 22 minutes.

It was reported that the two paramedics had used heroin earlier on the day of the incident. Court documents revealed that one of the men took a leave of absence eight months after the death to receive treatment for alcohol and drug abuse. American Medical Response admitted no liability or wrongdoing, which you know by now is standard practice in settlements. The settlement was reached just before the trial was scheduled to begin. Terms of the settlement are confidential. At press time, Monterey County was very close to finalizing a settlement with the family. Part of that agreement would involve the county improving its emergency response procedures. Incidentally, the county changed its ambulance services provider after the incident.

Alabama Ranks Third In Truck Fatalities

Alabamians are among the most likely to die in a truck wreck, according to figures from the U.S. Department of Transportation. Only Wyoming and Arkansas have more truck crash deaths per capita than Alabama. The state recorded 163 deaths from large truck crashes in 2004. A coalition of road-safety advocates are seeking to derail a possible congressional effort to loosen enforcement of a recent truck-safety rule. Nationwide, almost 5,200 people died in large-truck crashes in 2004, about 12% of vehicular deaths that year. In some truck-related accidents, car drivers are at fault. Research reveals that truckers are less alert after long hours on the road. Truck drivers are typically paid by the mile and often work up to 77 hours of driving a week, under current law. Trucking company representatives claim that crashes where tired truckers are at fault account for a small portion of accidents. But, I can point them to a number of cases our firm has handled over the past year where a driver who had been driving for a long period of time actually went to sleep at the wheel of an 18-wheeler and caused a serious accident.

XV. ARBITRATION UPDATE

An Alabama Award

Congratulations to Josh Wright of Hollis & Wright in Birmingham, Alabama and Joe Cloud of Huntsville, Alabama for their recent outstanding $17.3 million award in an international commercial arbitration proceeding heard in Alabama. Their client Tensor Technologies, Inc. researched and patented neutron-source systems to be used to detect contraband at airports throughout the United States. Such systems would significantly increase security and reduce airport travel delays by quickly and accurately detecting the presence of bombs in packages and luggage. Tensor hired a Canadian company, Ebco Technologies, Inc., to design, manufacture, and produce the contraband detection systems. Ebco's negligence prevented the technology from ever working successfully.

The two companies arbitrated their dispute pursuant to an alternative dispute resolution provision drafted by both parties. The arbitration provision was drafted to be binding on the parties. Experts and fact witnesses testified before the arbitrator over several weeks in Jefferson County, Alabama. The arbitrator rendered his award of $17,308,000.00 in late September 2005.

Investors Win $2.41 Million In WorldCom Case

A Boston couple was awarded $2.41 million in arbitration last month against Citigroup Inc. and analyst Jack Grubman arising out of his tainted recommendations on WorldCom Inc. stock. The couple, Joseph M. Salerno and Beverly T. Salerno, claimed they invested nearly $1.12 million in WorldCom stock from 1998 to 2000 based on Grubman's "enthusiastic recommendations" of the telecommunications company, and then held on to it as the stock declined because his research notes continued to urge "optimism" about the company's future. As we have reported, WorldCom filed for Chapter 11 bankruptcy court protection in July 2002, emerging last year under the name MCI Inc. The couple relied on Grubman's research reports. Even when the stock was heading down, it was portrayed as an opportunity to buy more. The Salernos' arbitration was in the National Association of Securities Dealers' arbitration forum. This was a rare win for investors seeking redress for biased analyst research.

The Salernos, a retired couple who live part of the year in Florida, won $913,000 in compensatory damages and $1.5 million in punitive damages against Citigroup and Grubman. No explanation was given by the three-member arbitration panel on why it awarded punitive damages to the Salernos. Interestingly, the couple had saved up money to invest from Mr. Salerno's management jobs in the supermarket and pizzeria industries. There have been a tremendous number of NASD arbitration cases against the New York-based financial services holding company, alleging tainted research affected investors' brokerage accounts, but the majority of claims have been denied by arbitration panels. The arbitrations increased in number after a 2003 settlement in which Wall Street firms, including Citigroup, agreed to pay $1.4 billion to resolve regulators' allegations that they issued overly optimistic stock research to win investment banking business. A key factor in the Salernos' case was the use of a confidential Citigroup memo that was obtained by discovery in an unrelated WorldCom lawsuit. The March 2002 memo, authored by then-U.S. research head John B. Hoffman, shows Hoffman discussing how instituting a more accurate and balanced stock rating system could hurt the firm's investment banking relationships. This was the first arbitration panel to have the benefit of receiving the Hoffman documents. The memo will be used repeatedly in future arbitrations against Citigroup.

XVI. NURSING HOME UPDATE

Many Nursing Homes Run Risk Of Catastrophic Fires

In an excellent article, *USA Today* reported on October 6th that more than half the nation's 16,000 nursing homes violate federal fire safety standards each year. According to the report, government regulations let thousands of older facilities operate without the sprinklers or smoke alarms often required in buildings used by the public. When inspectors do come across fire safety violations, they rarely impose fines or other penalties that might prompt a home to fix its problems, according to a *USA Today* investigation. Four of every five nursing homes that have had fatal fires over the past five years had gotten waivers from regulators that allowed them to keep doing business despite fire safety deficiencies.

The article in *USA Today* points out that 2,300 nursing home fires are reported each year in the U.S.—or one for every seven nursing homes, according to the National Fire Protection Association, a fire prevention research group. While most of those fires are small and are controlled quickly, a nursing home fire can be a disaster when fire strikes at a poorly protected facility, the results can be devastating. That's what happened in Hartford in February 2003, and again seven months later in Nashville, where 15 patients died at a nursing home with no sprinklers and no smoke alarms in patients' rooms. The nation's 1.4 million nursing home residents run a particularly high risk of dying in fires because many can't get out on their own. Nursing homes are at a particularly high risk for having fires, with big kitchen and laundry operations, heavily loaded electrical systems, and in some cases, residents reportedly smoking inside the facilities.

Since Congress first set minimum fire safety standards for nursing homes 35 years ago, at least 500 people have died in nursing home fires. Hundreds more have been injured. Interestingly, the number of casualties is based on federal studies and data gathered by *USA Today*. It is shocking that no government agency or watchdog group even keeps track. It is not surprising that the 18 worst fires during that period occurred in nursing homes without sprinklers. In those fires an average of 10 residents were killed, according to the *USA Today*. There never has been a case in which fire killed more than two people in a nursing home fully equipped with sprinklers. Yet about 3,500 nursing homes lack sprinkler systems. Federal law mandates that all new nursing homes be built with sprinklers, smoke alarm systems, and other fire protections. But older facilities, often the least resistant to fire, are excused from many of those requirements. Congress has repeatedly failed to act on bills that would require sprinklers in all nursing homes.

Source: *USA Today*

XVII. HEALTHCARE ISSUES

Direct-to-Consumer Drug Ads Must Be Curtailed

I have mentioned the adverse effects of direct-to-consumer (DTC) drug advertising on numerous occasions. In my opinion, the bad clearly outweighs the still-undemonstrated, theoretical benefits of the ads. The federal government must do more to stop misleading ads from reaching consumers. I contend that no DTC drug advertising should be allowed by the Food and Drug Administration (FDA). In testimony before the Senate Special Committee on Aging, Dr. Peter Lurie, deputy director of Public Citizen's Health Research Group, detailed how drug ads—on television, in print and on the web—encourage doctors to prescribe "pricey drugs" to many patients who do not need the medication. Dr. Lurie said:

> *Direct-to-consumer advertising is nothing less than an end-run around the doctor-patient relationship. There is little relationship between our true public health needs and the subjects of direct-to-consumer advertising.*

The choice of drugs for a patient should be left to the prescribing doctor—with assistance, when needed, from a pharmacist. DTC advertising has mushroomed from a $791 million industry in 1996 to $4.1 billion in 2004. Yet the FDA still has not published any regulations regarding DTC ads. The ads drive up the cost of health care because patients are induced to ask their doctors for newer, more expensive medications instead of equally effective, older generics. According to one report, the top 25 DTC-advertised drugs accounted for 41% of the growth in retail drug spending in 1999. Another report showed that the growth in DTC advertisements for the 25 largest therapeutic classes accounted for 12% of drug sales growth from 1999 to 2000 and resulted in an additional $2.6 billion in pharmaceutical expenditures in 2000.

Dr. Lurie believes that the drug industry has demonstrated a gross inability to police itself. He also says the federal government is too slow to pull misleading ads off the air. The federal government should better educate patients, review television drug ads before they air, and be given the ability to levy civil monetary penalties against manufacturers. To read Dr. Lurie's complete testimony, go to http://www.citizen.org/publications/release.cfm?ID=7402.

Source: Public Citizen

FDA Warns Of Risk From Mixed-Up Prescriptions

There are so many prescription drugs on the market that it is no wonder folks get confused when they are taking several medications. Doctors and pharmacists have been warned that mix-ups in prescriptions of three drugs with similar names—but vastly different effects—have led to serious health problems. The drugs in question are:

- Toprol-XL, also known by the generic name metoprolol succinate, which is for treating hypertension, chest pain, and some kinds of heart failure. It is manufactured by AstraZeneca.
- Topamax, also known as topiramate, which is used to treat epilepsy and to prevent migraines. It is made by Ortho-McNeil Neurologics Inc.
- Tegretol, also known as carbamazepine, which is used to treat some kinds of seizures and trigeminal neuralgia, a nerve disorder that causes stabbing head pain. It is manufactured by Novartis.

In letters to doctors and pharmacists, AstraZeneca has asked them to take extra care in prescribing these drugs. The letters were released recently by the Food and Drug Administration (FDA). According to letters from AstraZeneca's chief medical officer, Glenn J. Gormley, patients who received the wrong drugs reported recurrences of seizures, hallucinations, and hypertension. At least one suicide attempt was possibly linked to failing to receive the right drug, Gormley wrote, and at least one patient who erroneously received Toprol-XL experienced a dangerous drop in heart rate. Dr. Gormley asked doctors to write legible prescriptions that include both the brand and generic names of the drugs, and asked pharmacists to double-check drug names against prescriptions. The FDA has oversight over drug names during its approval process.

Source: *Associated Press*

Test Results Cited in Delay of Mall Alert

It is rather shocking that area health officials in our nation's capitol were not notified for five days that sensors on the Mall had detected a potentially dangerous bacterium there in September. The reason given was because subsequent tests were not conclusively positive. The Department of Homeland Security delayed in alerting the federal Centers for Disease Control and Prevention, apparently for the same reason. More than half a dozen sensors showed the presence of tularemia bacteria the morning after thousands of people gathered on the Mall for a book festival and antiwar rally. But, the CDC was not contacted for at least 72 hours.

Representative Thomas M. Davis, III (R-VA) sent letters to Homeland Security Secretary Michael Chertoff and CDC Director Julie Gerberding, calling the notification time frame "alarming." He asked for an accounting of the procedures triggered when the government's "BioWatch network" senses a biological agent. His questions focused on what each agency knew and when it knew it, as well as which local and state officials were called and when. Representative Davis asked a pretty question: "Why weren't these officials notified immediately following the detection?" That is a very good question and it should be answered.

Source: *Washington Post*

FDA Tells Doctors To Stop Using Enteryx

The government has told doctors that they should stop using Enteryx, an injection used to treat acid reflux disease. The Food and Drug Administration (FDA) says it has been connected to serious health problems and, in at least one case, a death. Many of the problems with Enteryx have occurred when it is injected imprecisely, missing its intended destination and passing through the wall of the esophagus, sometimes entering other internal organs or the bloodstream, risking blockage of blood vessels, according to the FDA. It appears that doctors have not always immediately detected a faulty injection. Enteryx is injected as a liquid that solidifies into a spongy material that cannot be removed. When it is injected properly, it strengthens the lower esophagus, helping prevent stomach acid from entering it and causing pain.

The FDA did not provide specific numbers on the number of problems that have been discovered. Although manufacturer Boston Scientific issued a recall on September 23rd, it blamed the problems entirely on faulty injection technique. The FDA also cited at least two instances in which Enteryx was injected properly but patients still developed problems. The death was blamed on Enteryx being injected into the wall of the aorta. The FDA said people who received the injection and are suffering from chest, stomach or side pain, flu-like symptoms, including fever, cough or shortness of breath, or fainting spells should contact their doctor immediately. Boston Scientific is advising people who have received an Enteryx injection in the last 30 days to see their doctor for a follow-up, but the FDA said some problems associated with the injection have occurred seven weeks later.

Source: *Associated Press*

XVIII. ENVIRONMENTAL CONCERNS

GE Agrees To Pay For PCB Cleanup Of Hudson River

General Electric (GE) announced last month that it has finally agreed to conduct the first phase of a project to clean up polychlorinated biphenyls (PCBs) from New York's Hudson River and pay the Environmental Protection Agency (EPA) up to 78 million dollars for the agency's past and future cleanup costs. The terms of the agreement between GE and EPA are spelled out in a consent decree that will be enforced by a U. S. District Court judge. The agreement marks the end of GE's 20-year-long fight with EPA over the cleanup of their PCB mess. GE used polychlorinated biphenyls as a dielectric fluid in electric capacitors manufactured at two facilities in Hudson Falls and Fort Edward. Some of the PCBs were discharged directly into the Hudson River and made their way into the river sediments.

In 1983, the EPA placed the 40-mile stretch of the upper Hudson River on the Superfund list. After the EPA announced that it was ordering GE to implement a dredging project to help clean up the mess, GE filed a constitutional challenge in federal court on the grounds that the EPA was depriving GE of its due process rights and adequate procedural safeguards. In March of this year, GE lost its final legal challenges.

Under the terms of the agreement, the cleanup project will be divided into two phases. In the first phase, GE will have to spend an estimated 150 million dollars to construct a sediment transfer and processing facility. The company will also begin dredging in the spring of 2007. Following the completion of this first phase, the dredging will be evaluated by an independent panel of experts to determine the amount of work that will be required in Phase 2. The agreement does give GE the right to decline to conduct the work for Phase 2 of the project, which would take approximately five years according to the EPA. But, if GE declines to conduct the second phase of the project, the company will be required to reimburse EPA for any costs EPA incurs in completing Phase 2 on its own.

Finally, under the terms of the consent decree, the EPA has reserved the right to sue GE to force them to continue the dredging or reimburse the federal government if GE fails to live up to its end of the agreement. Additionally, GE is also required to pay the State of New York up to 4 million dollars to help fund a public awareness campaign about the risks of eating fish from the Hudson River. Having witnessed first-hand the impact that PCB pollution has had in Anniston, Alabama, we are certainly happy to learn that the EPA has finally managed to hold GE accountable for the PCB pollution released by General Electric into the Hudson River.

XIX. TOBACCO LITIGATION UPDATE

Court Won't Let The Justice Department Push Tobacco Penalty

The U.S. Supreme Court has refused to allow the Bush Administration to pursue a $280 billion penalty against tobacco companies on claims they misled the public about the dangers of smoking. The decision, a major victory for cigarette makers, was not unexpected because the government's case is still pending and the federal judge who presided over the lengthy trial has not yet decided whether tobacco companies are guilty of any wrongdoing. Although the Supreme Court declined, without comment, to intervene now, the case could return to the Court next year. The fight at the High Court was over the amount of money the companies would have to pay in the event the trial judge rules that they violated the RICO Act.

Attorney General Alberto Gonzales had this to say about the ruling: "While the Administration was disappointed, we continue to believe very strongly in this case." William Corr, executive director of Campaign for Tobacco-Free Kids, told the Associated Press that the Justice Department "should not use the Supreme Court's decision as an excuse to let the tobacco companies off the hook with a weak settlement." You will recall that a federal appeals court in Washington had ruled earlier that the government could not pursue the $280 billion, the most ever sought in a civil racketeering trial. The Bush Administration's lawyer Edwin Kneedler told the Court:

> *The government's suit, by any measure, is the most important civil RICO action that the government has ever brought.*

The lawsuit was filed by the Clinton Administration, and Kneedler argued that if the Court did not step in now to deal with this issue, the case may drag on several more years. The tobacco companies' lawyer, Michael Carvin of Washington, said that the Court should give U.S. District Judge Gladys Kessler time to decide the case. It is rather shocking that the government has spent $140 million since 1999 litigating this case. The Justice Department, to its credit, is trying to force tobacco companies to pay those costs.

Source: *Associated Press*

Oklahoma Receives Tobacco Money

Most folks have forgotten about the national settlement reached by the states with the tobacco companies a few years ago. Recently, I read a report where Oklahoma has received more than $435 million from the tobacco industry since 1998. The Master Settlement Agreement requires the industry to make payments to the states in April each year. The settlement, as advertised, was to impose sweeping bans on tobacco advertising, stop the tobacco companies from targeting children, allocate funding for tobacco education efforts, and pay the states about $206 billion in recovery funds.

Oklahoma was the 14th state to sue the tobacco companies. It filed a lawsuit in August 1996, becoming the 14th state to file a lawsuit against the tobacco companies. The lawsuit asked for restraints against the industry and about $1 billion in damages for funds spent for treatment of smoking-related illnesses. Oklahoma's share of the settlement is estimated to be $2.03 billion over the next 25 years. Oklahoma received an additional $268 million awarded to the state for the strategic contribution the state's Attorney General and local lawyers made to the "successful" prosecution of the lawsuit. Interestingly, in Oklahoma the local lawyers' fees were paid by the tobacco industry and did not come from Oklahoma's share of the settlement. Alabama citizens might want to ask a few questions about our state's involvement in the settlement with the tobacco industry. I have never heard anybody in state government explain why Alabama was the only state in the country to use a "private lawsuit" as the conduit for the payment of settlement funds. I also wonder why Alabama only received about one-half of what states like Florida and Mississippi received on a per capita basis from the settlement. I don't guess anybody—including the media—really cares, or maybe they didn't know about it.

XX. THE CONSUMER CORNER

Consumers At Risk For Mad Cow Disease

The U.S. Food and Drug Administration's proposed regulations governing animal feed—critical to preventing the spread of bovine spongiform encephalopathy (BSE)—are still too weak to protect consumers. The proposed rules would ban the use of some cattle tissues in animal feed in an attempt to limit the potential for cross-contamination during feed that is production or the potential for transmitting BSE through mistakenly feeding cattle food intended for other animals. Specifically, the following would be banned:

- the brains and spinal cords of cattle over 30 months of age;
- the brains and spinal cords from cattle that have not been inspected and approved for human consumption; and,
- all tissues from cattle that have not been inspected and approved for human consumption if the brain and spinal cord are not removed.

But the FDA would still allow the brain and spinal cord from younger cattle, as well as other nervous system tissues from all cattle to be used in animal feed. This proposal does not live up to the promise the FDA made to American consumers on January 26, 2004, when the agency announced that it was going to take immediate action to strengthen the firewalls against BSE. At the time, Health and Human Services Secretary Tommy Thompson stated: "Small as the risk may already be, this is the time to make sure the public is protected to the greatest extent possible."

Almost two years after Thompson's statement, gaping holes in the animal feed ban still exist. The current "feed ban," which took effect in 1997, still allows the use of cattle blood, waste from the floors of poultry houses, and processed restaurant and food plate waste to be fed to cattle. The new rules will not address these loopholes and will still allow the use of rendered cattle remains, including some nervous system tissues, in feed for hogs and poultry. Because hog and poultry remains can be put back into cattle feed, the pathways for the disease to spread will still exist.

The rules also fail to meet recommendations made by a team of international animal health experts in February 2004, after their investigation into the U.S. government's response to the first U.S. case of BSE. The international team recommended a complete ban on the use of mammalian protein in cattle feed as a precaution against cross-contamination. The team also called for a ban on the use of bovine specified risk materials (SRMs) in all animal feed. Instead, the proposed rules announced by the agency address only some of the risk materials, ignoring the tonsils, eyes, small intestines, and other tissues that are considered to be SRMs in cattle over 30 months old.

As recently as last month, former FDA Commissioner Dr. Lester Crawford publicly stated that the agency was developing a rule that would parallel changes already under way in Canada, including a complete ban on SRMs in animal feed. Yet the proposal released fails to meet this standard. Feed regulations that are truly protective of animal and public health must incorporate a ban on all bovine SRMs in all animal feed and end the exemptions for blood, plate waste and poultry litter. Until these changes are made by FDA, consumers will remain at risk. I have to wonder—why did we wait until the "cow is out of the barn" to react and then try to get it back in? It would seem that prevention would be the order of the day!

Source: Public Citizen

Landmark Settlement For Disabled Military Family Members

Trial Lawyers for Public Justice (TLPJ) and Disability Rights Advocates (DRA) were instrumental in helping to achieve a settlement that affects military personnel and their families. A significant settlement that will protect thousands of military families from discrimination and retaliation by their landlord has been reached. The settlement includes protection for military families from possible eviction from their homes simply because they have a disabled family member. This settlement provides a model for ensuring the disability rights of military families in private housing on military bases nationwide.

This landmark settlement was reached in *Parents Against Disability Discrimination v. Equity Residential*, a major lawsuit on behalf of military families at Fort Lewis, the U.S. Army west coast headquarters in Washington state. As part of the settlement, the private housing contractor at Fort Lewis (Equity/Fort Lewis Communities, LLC) has agreed to make new housing, sidewalks, parks, playgrounds, and other community facilities at the base truly accessible to residents with disabilities. Equity has further agreed to set up a new process that cuts through red tape and makes it easier for disabled residents at Fort Lewis to request reasonable accommodations, such as wider hallways for wheelchairs or furnace cleaning for family members with severe asthma. And, the settlement provides that the plaintiffs' counsel will help monitor Equity's compliance with the settlement.

Equity Residential should be commended for doing the right—and patriotic—thing for disabled members of military families. It is hard to overstate the significance of this settlement. As the *Seattle Times* pointed out, this lawsuit was the first in the nation to allege systematic disability discrimination since the military began privatizing its on-base housing in 1998. We should all commend the plaintiffs' lawyers in this case. They include: Sid Wolinsky, Monica Goracke, and Roger Heller of Disability Rights Advocates in Oakland, California; TLPJ Staff Attorney Victoria Ni and Brayton-Baron Fellow Leslie Bailey; TLPJ Foundation Past Presidents Paul Stritmatter and Mike Withey of Stritmatter Kessler Whelan Withey Coluccio in Washington; and Christopher Brancart of Brancart & Brancart, P.C. in Loma Mar, California.

Source: Trial Lawyers For Public Justice

XXI. RECALLS UPDATE

Some Recent Recalls

The following recalls may be of interest. All of them involve safety issues.

Mazda Recalls Mazda5 Model To Check Exhaust Fire Reports

Mazda Motor Corp. is halting the sale and production of the 2006 Mazda5 crossover model because a potential heat buildup in the exhaust system could lead to a fire. Mazda has also recalled 2,000 vehicles already sold. In addition to the recalls, Mazda has told dealers not to sell another 700 still on dealership lots. The Mazda5, which seats six but is smaller than a typical minivan, became available in the U.S. for the first time during the summer. Production of the vehicle, expected at 10,000 to 15,000 in North America, has been suspended while the company investigates the incidents.

The recall is based on three reports of fires, which, according to Mazda, appeared to start around the left rear bumper. The auto maker, according to reports, is trying to determine the cause of the problem. Owners were told it may take about four weeks to fix the problem and that time is drawing near.

Kia Recalls 70,000 LD Spectra Sedans

Kia Motors America Inc. has recalled more than 70,000 LD Spectra sedans because the computer operating the air bag system could confuse a child seat for an adult in the front passenger seat. The recall, began in late October, involves vehicles from the 2004-2005 model years. Kia said the recall involved identical circumstances to a recall of the 2004-2005 Hyundai Elantra announced a few weeks ago. Kia says this is a "precautionary measure because the Spectra shares the same platform with the Hyundai Elantra." According to Kia, it is possible the air bag system could misclassify a child seat in the front passenger seat as an adult passenger.

Chrysler Recalls About 583,000 Vehicles

DaimlerChrysler AG's Chrysler Group is recalling about 300,000 vehicles with a potential defect that could prevent the driver from placing the transmission in park. The recall involves some 2005 model year Jeep Liberty, Jeep Wrangler, Chrysler 300 and Dodge Magnum, Dodge Dakota/Mitsubishi Raider pickups and Dodge Durango vehicles equipped with some six-cylinder engines and automatic transmissions. According to Chrysler, a plug inside the transmission may be missing or improperly staked, potentially preventing the driver from placing the shifter in the Park position. Apparently no accidents or injuries have been associated with the recalled defect. Dealers will repair the transmission by installing a bracket at no cost to owners. Until the repair is made, owners should use the parking brake to secure the vehicle when parked.

Chrysler also is recalling about 283,000 Dodge Ram pickups from the 2003—2005 model years that are equipped with diesel engines and automatic transmissions to correct possible inadvertent movement of the vehicles. This is a most interesting recall. Chrysler says no vehicle defect has been identified. The car maker says that some drivers are not fully placing the shift lever in the Park position. If the driver leaves a running vehicle without placing the shifter fully in Park, the vehicle may roll away or, after a delay, move rearward. Dealers will install, at no cost to owners, an alarm that will sound if the driver tries to exit the running vehicle with the shifter not fully placed in the Park position. In the interim, owners are urged to always remove the key from the ignition and engage the parking brake when exiting the vehicle.

Toyota Recalling 75,000 Popular Prius Cars

Toyota Motor Corp. said Thursday it is recalling 75,000 Prius gas-electric hybrid cars because their engines can stall because of an electrical problem. Involved in the recall are some 2004 and early 2005 model year Prius cars. The cars have a gas engine as well as a battery-powered electric motor that can run separately or together to save fuel. In affected vehicles, dashboard warning lights may come on and the gasoline engine shuts down. The vehicle's electric motor will continue operating in a limited capacity, so drivers can steer to the side of the road. The gasoline engine may start working again if the driver restarts the vehicle.

Toyota spokesman Xavier Dominicis said the auto maker began investigating the problem after the National Highway Traffic Safety Administration received 68 reports of Prius engines stalling. No one has been injured by the defect, and it hasn't caused any reported accidents, Dominicis said. NHTSA closed its investigation after Toyota said it would voluntarily recall the vehicles. Owners will be notified starting this month. Toyota dealers will repair affected vehicles for free. The vehicles may need to have their software reprogrammed. Dealers may also apply a waterproof grease that will prevent water from getting into the electrical system. Dominicis stressed that the defect isn't related to the Prius's gas-electric hybrid system and could happen in any vehicle. The Prius was the world's first commercially mass-produced hybrid car, and it remains the most popular. U.S. sales of the Prius more than doubled in the first nine months of this year to 81,042, according to Autodata Corp.

Reebok Children's Fleece Clothing Recalled

Adjmi Apparel Group is recalling about 61,000 Reebok children's fleece pullover/pant sets. The New York company says the zipper slider and pull on the pullovers can detach, posing a choking hazard to young children. No injuries have been reported. Only Reebok fleece pullover/pant sets with navy blue quarter-zip zippers are being recalled. The fleece pullover/pant sets were sold in navy blue/red and navy blue/pink in sizes up to children's size 7. "Reebok" is printed across the front of the pullover. The pullovers have a hood that can be folded under the collar. Some of the recalled pullovers were sold with matching mittens. The recalled products were sold at Gordmans, Mervyns, JC Penney, Kohl's, The Bon, Fred Meyer, Ross, DD's, Edisons, Macy's, AJ Wright, and Reebok Corporate Headquarters retail store in Canton, Mass. from September 2004 through February for between $17 and $36. Consumers should quit using the pullovers immediately. They can contact Adjmi to receive a replacement product.

XXII. SPECIAL PROJECTS

Beasley Allen Disaster Relief Effort

People all over the country have pitched in to help people along the Gulf coast who were victims of the recent hurricanes. That speaks well of the American people as a whole. On a personal note, I am real proud of our employees at Beasley Allen who pitched in to help our neighbors who were victimized by Katrina. Because of the proximity and need, most of their efforts went to help those victims. The following are some of the things done by our employees:

- On September 6th, we sent over 100 bags of personal hygiene items to the Astrodome in Houston, Texas.
- On September 9th, employees from the firm loaded an 18-wheeler full of food, water, and personal items, and delivered them to Daphne, Alabama for distribution.
- Water was supplied by employees to about 1500 state troopers who were serving in south Alabama.
- A number of financial donations were made by our employees. These funds were delivered to Helping Hands, a group of churches meeting needs for the hurricane victims.
- We also had 37 boxes and 5 plastic bags of clothes, toys, books and crayons, toiletries, diapers, paper wear, and other personal items purchased by our folks.
- Donations gathered from our lawyers and employees from Calhoun Foods resulted in 4 pickup loads of clothes, paper goods, and food items being delivered to New Life Church of God In Christ for storm victims.
- Over 100 cases of items such as cereal, paper towels, toilet tissue, body wash, Lysol, coffee, crackers, candles, and other similar items were delivered by the firm to Evangel Temple Church for distribution to storm victims.
- A number of bags filled with personal items were delivered to Gateway Baptist Church for distribution in Ocean Springs, Mississippi.
- We were able to give the Salvation Army a tremendous supply of clothes to be distributed.
- A number of lawyers and other employees made personal donations to a number of relief agencies and charities.
- Several of our folks went down to the coast in Alabama and Mississippi to help out.

Fast Car And Great Crew Result In Pensacola Win

Our race car driven by Grant Enfinger had a great win recently. The Beasley

Allen Super Late Model won the final Blizzard 100 lap race of the season at Pensacola's 5 Flags Speedway on October 13th. Grant and the crew celebrated the team's biggest win ever. I am hopeful this is a preview of coming events. Grant, who says his crew actually won the race for him, only had to pass two cars on the track all night. This was because of the great work getting him in and out of the pit stops. Grant's goal is now to win the Snowball Derby. We are proud of Grant and his crew.

XXIII. FIRM ACTIVITIES

Employee Spotlights

Bill Robertson

Bill Robertson has become our newest lawyer. He was sworn in on October 19th along with other new "admittees." Bill, who worked at the firm during his days in law school as a Staff Assistant in the firm's Nursing Home Section, will now focus his practice on consumer fraud litigation. Bill grew up in Eufaula, Alabama, and graduated from The Lakeside School in 1995. In 1999, he graduated from Auburn University, where he received a B.A. degree in political science. Bill then received his Juris Doctor degree from Thomas Goode Jones School of Law in 2005.

While attending law school, Bill served as Dean of Delta Theta Phi Law Fraternity for two consecutive years and was also a member of the Future Trial Lawyers Association. Bill is married to the former Leslie Gaither of Eufaula. They attend First United Methodist Church in Montgomery and are very active in community affairs. Bill is a very hard worker and will be a very good lawyer. We are pleased to have him with our firm.

Mike Bush

Mike Bush came to work for the firm as an Investigator in January of 1995. He currently works in our Personal Injury/Products Liability Division, as well as helping out with any other investigative needs for the firm. Our investigators keep a very busy schedule. An important part of their work involves helping the lawyers investigate product liability cases. Mike retired from the Montgomery Police Department after 20 years as an accident reconstructionist. Mike and his wife Michelle have two sons, Matthew, 16, and Nolan, 13. Matthew is a starting right tackle for the Alabama Christian Academy football team and Nolan plays the alto saxophone in the Marching Eagle band. Mike enjoys hunting and fishing during his free time. Mike does a good job for the firm and is a valuable employee.

Amy Cobb

Amy Cobb, who has been with the firm for over four years, serves as Legal Assistant to Roger Smith in our Mass Torts Section. Currently, Amy is working on civil claims involving the drug, Vioxx. This is a most difficult job because of the number of cases. It requires Amy to multi-task while meeting crucial deadlines in the preparation of these cases. Amy graduated from Troy State University in 1999 with a bachelor's degree in Criminal Justice. She also received a paralegal certificate from Auburn University in 2002. Amy grew up in Andalusia, but now resides in Millbrook with her husband Josh and their two year old daughter, Peyton. Amy's spare time is spent at her barn. They have three horses that they show at the state and national level. Amy has a palomino American Quarter Horse yearling that placed in the top ten in Amateur Halter at the PHBA World Show held in Tulsa, Oklahoma, this year. She also has an American Paint Horse gelding that she will be campaigning next year in western pleasure and horsemanship classes. Amy is a very good employee and we are pleased to have her with the firm.

Amy Hardeman

Amy Hardeman has been with our firm for a little over two years now. She currently serves as Legal Secretary for Chris Sanspree in our Consumer Fraud Section. Amy previously served as a Staff Assistant in the Mass Torts Section. She attended TSU School of Nursing in Montgomery and plans to resume her nursing studies in the future. Amy enjoys spending time with family and friends, cooking, reading, going to movies, bowling, and, as she puts it, just "hanging out." Amy is a very good employee who has been an important part of the firm.

XXIV. SOME PARTING WORDS

Grand Ole Opry Celebrates 80th Birthday

Years ago I remember when my mother used to listen to the Grand Ole Opry every Saturday night after she got off from work. My brother Billy and I grew up in Clayton listening to folks like Roy Acuff, Hank Snow, Bill Monroe, and Ernest Tubb. While I don't remember it, because I wasn't around, I learned that the first broadcast of the show was November 28, 1925. It was then called the WSM Barn Dance. A white-bearded, 77-year-old fiddler named Uncle Jimmy Thompson, who claimed he could "fiddle the taters off the vine," played a set that began with "Tennessee Waggoner." A gentleman named George D. Hays, known as "The Solemn Old Judge," accidentally came up with the name "Grand Ole Opry" and it stuck.

The Grand Ole Opry helped make household names of stars like Roy Acuff, Minnie Pearl, Hank Williams, and Patsy Cline, to name a few. Fortunately, the show is still around and will soon be celebrating its 80th birthday. Some of the current-day stars such as Garth Brooks, Alison Krauss, Travis Tritt, Ralph Stanley, Diamond Rio, Steve Wariner, Josh Turner, Bill Anderson, Joe Diffie, the Whites, Lee Greenwood, Connie Smith, and John Michael Montgomery got a head start on things last month. The artists performed during the regular shows on October 14th and 15th, capping a week that celebrated eight decades of the longest continually running radio show in the country.

I still enjoy the Grand Ole Opry, and one of my real regrets is that I never got to Nashville for a show in the Ryman Auditorium before the Opry moved to its new location in the 1970s. I visited the old auditorium once but unfortunately there was no show going on at the time. But, just being there brought back some good memories of sitting around a wood stove on a cold winter night at home with my mother, listening to, among other songs, Ernest Tubb singing "Walking the floor over you!"

There was another lasting influence my mother had on me. As far back as I can remember, she was telling me about the power of prayer and how we all had to depend on Jesus as our refuge and strength in both good and bad times. Even though my mother died when I was 15 years old, her Christian witness and influence during the years I had with her gave me a foundation that will last forever. After her death and for a number of years, I really didn't practice my faith at all times. In fact, I began to believe that I could do everything on my own. I found out that this simply wouldn't work—I needed help. Fortunately, it was then I came to realize that my mother had been right—there is no way to get through the trials and tribulations of this world, other than through a relationship with Jesus—and that's a fact. I recall as a small boy my mother telling me "not to worry—that God loved me so much He gave the life of His own Son on the cross" for me. That—I have learned—is the most important thing for all of us. That is really the message that Christians should be spreading all over the world.

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