



THE
JERE BEASLEY REPORT

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A NATIONAL LAW FIRM LOCATED IN MONTGOMERY, ALABAMA

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I. CAPITOL OBSERVATIONS

MONTGOMERY DEATH CASE SETTLED

Our firm settled a wrongful death case that was set for trial on January 9th in Montgomery County Circuit Court. The case involved a 5-year-old child who died as the result of being run over by a large beer distributing truck. The case was brought by the parents against Bama Budweiser of Montgomery, Inc., a wholesale beer distributor of Anheuser-Busch. The vehicle involved was a tractor-trailer unit, which was being driven by a driver with only six months experience with a vehicle of this type. Before his employment by Bama Budweiser, the driver had never before driven a tractor-trailer rig. During discovery, we were surprised to learn that the company had no safety department, even though it had 30 tractor-trailer units and employed 30 drivers. Neither did the company have a safety director or safety officer. There were no regular meetings attended by the drivers where safety was even a subject of discussion. The only training of drivers was done by supervisors who rode with them for a time after the drivers were initially hired. While Anheuser-Busch required a periodic ride with the drivers by supervisors, it appeared this was primarily geared toward sales and marketing. The only written guidelines for the drivers and supervisors dealt with matters relating to the sale of beer.

The tragic incident occurred on April 5, 2005, at a convenience store located on the Troy Highway within the city limits of Montgomery. The child, who was riding his bicycle, was hit by the vehicle in a drive around on the convenience store premises. The driver had been parked while unloading beer at the store. As he started off from a parked position, he was preoccupied with

avoiding hitting the curb on his left as he drove off from his parked location. The driver was using one of his left side mirrors to watch the curb and was not keeping a proper lookout for persons out front in the vehicle's path. The child was first hit when the vehicle was traveling between 2 and 5 miles per hour after traveling around 30 feet. The child and his bicycle were caught under the front bumper, then drug for at least 35 feet under the front of the vehicle before the child slipped loose. The child was then run over by the right rear outside trailer drive tire. According to the investigating officer, the truck then traveled for another 100 feet before coming to a complete stop. Had the driver been keeping a proper lookout at the outset, he would have seen the child and the vehicle could have been stopped in less than 10 feet. Even after hitting the child initially, the vehicle could have been stopped before the child was actually run over. Had the tractor-trailer been stopped at that point, the injuries sustained would have been relatively minor and certainly not life-threatening. The child died on the scene from his injuries.

The case, which was to be tried before Circuit Judge Gene Reese, was settled for a confidential amount just before jury selection. The case was handled by Julie Beasley of our firm, who did an excellent job for the family. The fact that the beer delivery truck was very large and was used for deliveries at stores where people, including children, are expected to be makes training of drivers very important. In this case, we felt that there was a definite need for a structured training program. After the incident, the company made no changes in either its training or safety programs. I hope the company will put a good safety program, including better driver training, in place now that the case has been settled. I sincerely hope that it will do so.

INTERSTATE CRASH CASE SETTLED

Our firm has negotiated a settlement in a wrongful death arising out of an interstate highway crash that occurred in Baldwin County, Alabama. We represented the families of two ladies who were state employees traveling to an educational seminar in Mobile. While stopped in traffic due to a prior accident along with a number of cars, an 18-wheeler plowed into their car at a high rate of speed. The ladies in our car were killed instantly. The families filed suit against the trucking company which

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was based in Tennessee. This tragic case is just another example of how the trucking industry has to do a better job on safety. The amount of the settlement is confidential and there are a few non-monetary matters that have to be done before the settlement will be final. Cole Portis and Julia Beasley handled the case for the firm and did a very good job for our clients.

UPDATE ON AIR POLLUTION VERDICT AGAINST CONTINENTAL CARBON

Last month, U. S. District Judge Mark E. Fuller entered an Order denying the post-trial motions of two defendants in a very serious air pollution case that our firm has been working on. In the motions filed by Continental Carbon and its parent company, China Synthetic Rubber Corporation, the defendants had asked the Court to reverse the jury award of \$20,709,000 entered on behalf of our firm's clients, the City of Columbus, Georgia, Action Marine, Inc., and two individual plaintiffs. In its order, the Court refused to grant the defendants' request for a new trial or reduce the size of the jury's award. The jury's verdict consisted of \$1.9 million in compensatory damages, \$1,294,000 in case-related expenses and \$17.5 million in punitive damages. Although the defendants still have the option of appealing this case to the 11th Circuit Court of Appeals in Atlanta, the District Court's Order is an extremely promising development for our clients who have suffered years of harm due to carbon black air pollution released by the defendants' plant, which is located in Phenix City, Alabama. David Byrne from our firm has been working hard on this case and has done a great job.

SUPREME COURT REJECTS DRUG COMPANIES' APPEAL

We previously reported in the case of *State of Alabama v. Abbott Labs, et al.*

(in which 79 pharmaceutical companies are currently defendants), now pending in the Circuit Court of Montgomery County, Alabama, Circuit Judge Charles Price had denied the pharmaceutical companies' motions to dismiss. Since that time, these defendants decided to challenge Judge Price's order by filing an emergency motion with the Alabama Supreme Court by way of a writ of mandamus. The thrust of the defendants' appeal was to challenge the judge's finding that, under well established law, the statute of limitations does not apply to the sovereign, known in the law as *nullum tempus occurrit reipublicae*. In layman's language, that simply means the statute of limitations doesn't apply to a state such as Alabama.

After the pharmaceutical companies filed their joint writ of mandamus, our firm, along with our co-counsel, Hand Arendall filed a "preemptive response." On Friday, January 20th, the Alabama Supreme Court unanimously denied the defendants' writ of mandamus, thereby affirming the trial judge's prior order.

The State of Alabama views this recent ruling by the Alabama Supreme Court as another positive development in this case against the pharmaceutical industry for price-gouging the state. The ruling will certainly help our discovery efforts in determining what the true price was for these millions of drug prescriptions for which the state was overcharged as a result of the pharmaceutical industry's fraudulent pricing scheme. The amounts of money that the State of Alabama will be due to recover in this case will be very large. In addition, we believe that under the facts as we believe they will unfold, punitive damages will be assessed. We will continue to update our readers on any new developments of a significant nature as they occur in this case.

ALABAMA DENTISTS SUE INSURANCE COMPANY

Our firm has filed suit against Blue Cross and Blue Shield of Alabama (BCBS) on behalf of the Alabama Dental Association. This Association is made up of 1,600 Alabama dentists. Our lawsuit alleges that these dentists have been systematically underpaid by BCBS for their treatment of BCBS insured's. These dentists have been victimized by BCBS longstanding monopolization of Alabama's healthcare market. Primarily, the case focuses on the fraudulent claims practices at Blue Cross. When a dentist treats a patient with BCBS insurance, the dentist submits an invoice for payment of services to BCBS. This invoice is in the form of codes. Each specific treatment or service has a specific code. The lawsuit alleges that BCBS utilizes a computer system to automatically manipulate these codes. This has resulted in the delaying, diminishing, or denying of the dentists' claims. As a consequence, both dentists and patients are adversely affected. Alabama dentists are entitled to be paid in a timely fashion for rendering dental services to BCBS patients. But, BCBS current methods do not properly and fairly handle the claims of these dentists. BCBS has been sued by dentists and physicians in other states for these same fraudulent practices.

ALABAMA HEAD INJURY FOUNDATION DOES GOOD WORK

The Alabama Head Injury Foundation (AHIF) was founded by professionals and families in 1983 to increase public awareness of traumatic brain injury and to stimulate the development of supportive services. Today, AHIF is among the largest state brain injury associations in the nation, with model programs and statewide services. Its mission is to improve the quality of life for survivors of traumatic brain injury and for their families. Whether an injury involving the brain is mild or severe, the

lives of the injured person and their family are changed forever. The impact can be both emotionally and financially devastating. AHIF provides information to help clients and families fully understand the results of injury. AHIF helps them access available resources and provides services and programs that meet the unique needs of individuals with traumatic brain injury as well as spinal cord injury in certain programs. The following traumatic brain injury facts will give you an idea of the need that exists:

- Every 21 seconds another person sustains a traumatic brain injury in the United States.
- Every year, over 1.5 million Americans sustain a traumatic brain injury.
- 5.3 million citizens (2% of U.S. population) live a life with a disability because of a traumatic brain injury.
- In Alabama, over 1,500 people are disabled by traumatic brain injury each year.
- Major causes of brain injuries are motor vehicle crashes (50%), falls (21%), assaults and violence (12%), and sports and recreation (10%).

If you are not familiar with the AHIF, or simply want more information about the organization, I encourage you to go to their website, www.AHIF.org. I believe that after seeing the good work they are doing, you will want to get involved in some manner. If you know of any person who has suffered a brain injury, I highly recommend AHIF as a group to contact.

STATE OF ALABAMA GETS INVOLVED IN DRUG PLAN PROBLEMS

Because of the multitude of problems with the new Medicare drug plan, the State of Alabama will have to provide financial help to 88,000 of Alabama's neediest citizens. This is because these

peoples were unable to get their prescriptions under the new plan. Most all Alabama pharmacists were filing the prescriptions at their own expense. Medicaid Commissioner Carol Herrmann-Steckle told the Associated Press that her agency will temporarily cover the prescription costs for Medicaid participants whose drugs the agency routinely bought before Medicare Part D took effect January 1st. The 88,000 are elderly and disabled people whose low incomes made them eligible for both the federal Medicare program and the state Medicaid program.

These people, known as "dual eligibles," were assigned by the federal Centers for Medicare and Medicaid Services to one of the private prescription plans participating in the Medicare drug program. Local pharmacies were unable to find many of them listed in the computer system after the program began on January 1st. The state Medicaid Agency was to cover the cost of drugs for two weeks. At the end of that time the agency was to review and determine whether Medicare's problems have been resolved. If the problems can be solved within two weeks, it will be a major miracle. The decision to continue paying for the prescription drugs will cost Alabama at least \$15.7 million. Medicaid will ask private insurers who were supposed to pay for the drugs under Medicare Part D to reimburse the state.

The more we learn about the new drug plan, the worse it appears to be. It was passed by Congress primarily to benefit financially the powerful insurance industry and the pharmacy benefit managers, and that's a shame. Governor Riley should be commended for stepping in to help out. But, I suspect the need for the state to help will not go away any time soon.

THE PROBLEMS CAUSED BY THE GOVERNMENT NEW DRUG PLAN CONCERNS ALL OF US

I have discussed the new federal drug plan at length with my brother, Billy Beasley, a pharmacist, who operates two retail drug stores in Barbour County. Billy also serves in the Alabama Legislature and is quite familiar with the Medicaid and Medicare programs. He tells me that the current problems with the new drug plan have been a nightmare for people. As we all know, the cost of Medicaid to the state has been a constant problem for years. Finding adequate funding for the Alabama Medicaid program has been an ongoing one. The state continues to apply a band-aid approach to the program's fiscal problem. As a practicing pharmacist, my brother deals every day with the health care needs of ordinary people and really understands how people have been affected.

Billy foresees an immediate negative impact on the General Fund budget because the State of Alabama will now have to pay back to the federal government about \$40 million under the new drug plan. That's because of complicated changes in the Medicaid and Medicare programs that came with Medicare Part D, the prescription drug plan referred to above that is causing major problems for all states, including Alabama. It appears that the people who were to be the beneficiaries of the new plan were not the top priority for Congress. Last month, I wrote on some of the problems relating to this new drug program and at that time the problems were just beginning to surface. In my opinion, the problems arising from the new drug plan will have to be addressed by Alabama legislators who are trying to develop a budget for the cash-strapped General Fund this year.

My brother, who has spent a considerable amount of time studying the new drug plan, is greatly concerned with what Congress has done to the Ameri-

can people. Billy explained to me that a major factor in the Medicaid funding is the result of “dual eligibility,” where many people in Alabama are eligible for both Medicaid and Medicare benefits. Billy has spent a tremendous amount of time trying to unravel the mysteries of Medicare Part D and, in my opinion, he has become an expert on the subject. Hopefully, he will be able to help the Riley Administration and his fellow legislators deal with this complicated issue.

In between trying to get his business computer software ready for the multiple kinds of insurance cards he expected his customers to present after January 1st and helping people in Barbour County decide what to do, Billy says he has really been swamped. He tells me that people in his area are totally confused over the new plan. Incidentally, there have been price increases from most of the drug companies of about 12% on the average since the plan went into effect. I guess that should have been anticipated since the drug industry virtually wrote the bill that was passed by Congress. When the taxpayers find out that the government can't even **negotiate** the **cost** of drugs with the drug companies, there will be some awfully mad folks around the country. The federal bureaucracy has created a monster and one that will be most difficult to control. The cost to the federal government will be much greater than the public was led to believe during the time the bill was making its way through Congress.

POLITICAL COINCIDENCES

The Bush Administration, using tax dollars, funded political ads touting the Medicare bill and that raised some concerns at the time. However, I didn't realize which media firm got the work. Now the *Associated Press* has reported that the White House gave the \$9 million ad contract to National Media, Inc. I'm sure it was just a coincidence

that this firm was the Bush-Cheney campaign's media firm. It might just be another coincidence that National Media is the primary media firm for the drug industry. This firm had done an ad campaign for the drug industry front group “Citizens For Better Medicine” which spent tens of millions of dollars on ads attacking lawmakers who were fighting at that time for lower prescription drug prices. You may recall the ads showing a fictitious senior citizen named “Flo” on television who preyed on seniors' fears that Congress was going to hurt them. The firm also attacked doctors and pharmacists and made them a target. These connections involving the Bush Administration, the drug industry and National Media may be nothing more than a coincidence, but it sure makes me wonder.

Source: Public Citizen and www.americanprogress.org

THE USDA FAILS MOST GULF COAST STATE FARMERS

Apparently Alabama Agriculture & Industries Commissioner Ron Sparks' criticism of the failure of the U.S. Department of Agriculture (USDA) to help Alabama farmers have paid off. Alabama farmers had been treated badly in the aftermath of Hurricane Katrina. In my opinion, based on what I have learned, the Commissioner's criticism was certainly justified. Up until mid-January, the farmers in our state had received no relief for the damages suffered as a result of the storm. The Commissioner's dissatisfaction with federal relief efforts intensified after the USDA released another \$200 million for relief efforts in Florida. Alabama farmers sustained over \$650 million in damages as a result of Katrina. I was shocked to learn that when Katrina hit, many farmers in our state were still waiting for clean-up checks from Ivan. Until Commissioner Sparks got on the case, the federal government had virtually ignored Alabama farmers' requests for

assistance. Florida's most recent allocation for \$200 million in relief funding will bring the total to over \$1 billion received by that state's agricultural industry from the U.S. Secretary of Agriculture over the last 15 months. Commissioner Sparks asked Alabama's Congressional delegation to push for a release of agricultural funds that are desperately needed for Alabama farmers. Commissioner Sparks had this to say concerning the USDA's failure to act:

We commend the US Senate for their efforts to include funds for disaster victims in the Defense Appropriations bill, but the funds were taken out because of pressure from the House leadership and the White House. I understand that the people in Florida also need help, but Alabama farmers need help and have not received a dime. I have sat and talked with farmers in South Alabama who had tears in their eyes because of the damage they had to their crops and property. They have tried to work through the proper channels to get help, but there are no funds coming in for them. When Secretary Johanns came to tour the destruction caused by Katrina, we couldn't even get him to come to south Alabama. The Secretary wanted these farmers to go up and meet with him hours away in Mississippi. We have even tried to have conference calls with the Secretary and he has been unavailable. The farmers in this area have suffered for long enough. I am not going to stand by while they are ignored by Secretary Johanns. Times of disaster should not be just a photo opportunity for politicians. These farmers need help and they need it now.

As we all know, hurricanes caused extensive agricultural damage in 2005 throughout the Gulf Coast region. Other

states in addition to Alabama have likewise expressed disappointment in the federal government's lack of assistance to farmers. It appears that Louisiana, Mississippi, and Texas are in the same boat with Alabama. For example, Louisiana's combined agriculture losses from both Hurricanes Katrina and Rita are expected to total more than \$2 billion. While Florida's agricultural industry obviously has tremendous needs, all of the states along the gulf coast were hit very hard. Farmers in each of the states have to wonder why they have been ignored by the USDA. We are happy to see Florida farmers, who are deserving, get help from the federal government. But farmers in the other states, who are equally deserving, and are really hurting, need immediate assistance.

Commissioner Sparks is to be commended for his stand. I hope Alabama's congressional delegation will help him out in this battle. I am reasonably sure that Senator Shelby will, and hopefully others will get involved. There was no justifiable excuse for the USDA's failure to respond to the needs of farmers. It took political pressure to get the government agency to listen. Now, the USDA should act!

ANOTHER EFFORT TO REWRITE THE ALABAMA CONSTITUTION

Senator Ted Little and House Speaker Pro Tem Demetrius Newton will try again to set up a convention to rewrite Alabama's 1901 constitution. The two veteran lawmakers have called the document archaic, unjust, and much too long. They have introduced a proposed constitutional amendment in the regular session to let voters decide in November whether they want to hold a convention to write a new constitution. If approved, voters would return to the polls in April 2007 to elect 210 delegates—105 men and 105 women—from the state's 105 state House districts.

Previous efforts in recent years to rewrite the 1901 constitution have failed. Similar efforts to call a constitutional convention have also failed. Supporters of a new constitution have argued that the old document is outdated, has had to be amended more than 700 times (mostly on local matters), and includes racist language. Opponents have argued that the effort to rewrite the constitution is simply an attempt to raise taxes, legalize gambling, and give counties more power. In my opinion, people should be given the opportunity to decide whether they want a new constitution that would protect the interests of all the people of Alabama. Personally, I believe the 1901 Constitution, with all of the amendments, is no longer a workable document and is badly in need of revision.

Lenora Pate, co-chair of Alabama Citizens for Constitutional Reform, says that more than 60,000 Alabama residents have signed a petition calling for a new constitution. She told the Associated Press: "We are still living under a constitution designed for a post-Civil War era, even though we are living in a post-9/11 era." Opponents of a new constitution have already announced they plan to fight the latest effort to rewrite the 1901 document. Senator Little says the latest proposal for a constitutional convention contains safeguards to prevent special interest groups from controlling the proceedings. Candidates for delegate positions would be prohibited from accepting contributions of more than \$100 from any one source, including political action committees. Elections for delegate positions would be nonpartisan. According to the proposed amendment, delegates would meet in July 2007 in the old House chamber at the Alabama Capitol in Montgomery to begin the convention, which would be completed by May 2008. If given the opportunity by the Legislature, and the convention process is completed, Alabama residents would then vote in

November 2008 on approving the new constitution, which if ratified, would go into effect on January 1, 2009. I support the constitutional convention approach and hope the legislators will give the voters a chance to approve it. If this happens, it can be the dawn of a **new day** in Alabama.

Source: Associated Press

MERCK AND MEDCO TO PAY \$7.8 MILLION TO THE STATE OF OHIO

The State of Ohio has won a \$7.8 million award against Merck & Co. and Medco Health Solutions Inc., which is a former Merck subsidiary, for defrauding and violating its legal duties to the State Teachers Retirement System of Ohio (STRS). State Attorney General Jim Petro sued Medco for overcharging the teachers' pension fund. The verdict is the first time a U.S. jury has recognized that a company managing pharmacy benefits has a legal duty to act in the best interest of retirees and pensioners. It will likely have repercussions for the entire pharmacy benefit manager industry. Medco is among the largest PBMs in the industry, and the verdict is the largest to date in favor of a single state against Medco.

The suit was filed in 2003 to recover damages from Medco for overcharging STRS for certain prescription drugs and mail-order dispensing fees, and for wrongfully withholding drug makers' rebates from STRS. The jury found that Medco owed a fiduciary duty to STRS Ohio and breached that duty in the amount of \$915,000. They also found that Medco is liable for constructive fraud and awarded damages in the amount of \$6.9 million. The jury found further that Merck is jointly liable for the actions of Medco, but did not tortiously interfere with the contract or business relationship between STRS and Medco. The jury was unable to reach a verdict on whether Merck and Medco should be forced to pay punitive

damages to STRS for misconduct. That issue will be the subject of another trial that has yet to be scheduled.

Source: The Business Journal

A SNEAK ATTACK BY THE FDA AND THE BIG DRUG COMPANIES

The Food and Drug Administration, at the request of the Bush White House, is doing its best to give drug companies virtual immunity from lawsuits. On January 19th, in what has been labeled by some as a sneak attack, the FDA announced its final rule on new federal requirements for drug warning labels. If the courts follow this new rule, it could have disastrous effects on the rights of people injured by dangerous and unsafe drugs to recover damages under state statutory and common law. In the preamble of the final rule, the FDA states its position that these new federal requirements **preempt** all state tort liability claims based on **inadequate drug warning** labels. Such an attempt to preempt state tort liability, if adopted by the courts, would have significant implications in failure to warn cases. Interestingly, the FDA provided no notice of their intention to include this language in the final rule. In fact, in the notice of proposed rule-making, issued December 22, 2000, the FDA stated:

FDA has determined that this proposed rule does not contain policies that have federalism implications or that preempt State law.

The Bush administration had previously failed to persuade Congress and, with a few exceptions, the courts (where it has filed amicus briefs) to shield drug makers from liability. This new tactic of writing preemption language into federal regulation notices is an attempt to bypass Congress and override consumer protection liability laws. Joan Claybrook, President of Public Citizen, had this to say on what the FDA has done:

This is a sneak attack on consumer rights. President Bush is once again abusing his executive powers, this time in his attempt to protect the big pharmaceutical companies from the consequences of their actions. Thousands of people in this country have died or been seriously injured by drugs approved by the FDA, and this administration is saying it doesn't think people should have any recourse.

In effect, the FDA has, without any statutory authority, declared that federally-approved medication labels preempt state law. The drug industry's goal is to make sure that persons killed or seriously injured by unsafe drugs won't be able to pursue legitimate claims in court against the drug companies. Most likely the effect of what has done is to give drug companies a tool to use in future court cases filed in the future. The companies would be able to claim that they weren't required to warn consumers about any known safety risks because the FDA determined the safety issue didn't warrant inclusion on a medicine's label. The new policy—which addresses state liability laws—has now been written into a broadview drug-labeling rule.

If the proposed changes come about, drug-product safety in the United States could suffer a major setback. When you consider how many drugs were approved by the FDA and later had to be pulled from the market because of serious safety problems, it's obvious this rule—if followed by the courts—will be very bad for people who have to take prescription drugs in this country. As you know, the conduct of pharmaceutical companies and the FDA has been called into serious question in recent months and with good reason. It has been quite obvious over the past several years that the FDA is little more than an extension of the powerful drug industry. Ordinary folks in this country have

no clue what is going on at the FDA. If they actually knew how powerful the drug industry is and what influence the companies exercise over the FDA, it would likely cause a major consumer rebellion against the federal government and the politicians who take the drug industry money.

According to the *Wall Street Journal*, inclusion of the new FDA policy in the drug-labeling rule had caused a great deal of disagreement between FDA career officials and Bush Administration appointees. I really believe that there are dedicated employees at the FDA who badly want the authority to properly regulate the drug companies. Unfortunately, the Bush Administration—at the urging of drug company lobbyists—has pushed this anti-consumer measure through the FDA. I don't believe people will stand for this sort of thing once they realize what is happening. Due to the total lack of notice regarding the FDA's intention to preempt state tort law, there was no opportunity for people to react or comment prior to the issuance of the final rule. The FDA admitted at a press conference called to announce the new rule that the liability provisions were **added behind the scenes**, after the agency **consulted** with the **drug industry**. Inserting language in the final rule counter to the proposed language is highly unusual and deprives organizations such as Public Citizen and individuals their right to comment in the rule-making process.

We are facing a major healthcare crisis in this county caused by the number of unsafe drugs put on the market by drug companies—after FDA approval—and the latest FDA action could add to this crisis. As we all know, the current environment in Washington is very antagonistic to defenders of the civil justice system and the right to a jury trial. Powerful industries, such as the drug industry, that have been unable to win special protections from legislative bodies are now manipulating the

federal rule-making process to attack the civil justice system. The drug industry could never get Congress to do what the FDA has now done concerning preemption. Fortunately, the courts have rejected the preemption argument time and again. The new rule will not take effect until June 30, 2006, which will give time for folks to find out how this new rule will affect them and what's happening to their rights.

It must be emphasized that Congress has never given the FDA the statutory authority required to promulgate rules preempting state tort law in this area. In the opinion of most legal scholars, the FDA has clearly overstepped its authority. I am convinced that the FDA's new rule is unconstitutional under the same analysis the U.S. Supreme Court offered in *Medtronic v. Lohr*, 518 U.S. 470 (1996), which upheld state tort law claims against a medical device manufacturer. The Wall Street Journal recently reported:

Last July, a federal judge in Minnesota turned down a Pfizer request to bar a suit over the antidepressant Zoloft, writing that 'federal labeling laws are minimum standards; they do not necessarily shield manufacturers from state law liability.... state-law protections reinforce and enhance' federal efforts to protect the public.

However, the fact that the drug industry could get the FDA to rewrite the rules so that companies such as Merck and Co. and Pfizer could possibly escape accountability for putting dangerous and deadly drugs on the market is the scariest example yet of how much control these big corporations have over our political process in Washington. The drug companies will stop at nothing to avoid being held accountable when they put unsafe drugs on the market that are harmful to people. What they couldn't get done in Congress, they're trying to accomplish through

this back-door rule-making process. Eliminating the rights of individuals to hold drug companies accountable when they are at fault in putting unsafe drugs on the market will put patients at even greater risk. The FDA's poor record of approving harmful drugs based on limited, and even fraudulent, clinical trials performed by the drug companies has created a most dangerous situation. Both the FDA and the big drug companies share the blame for the serious problems caused when dangerous and unsafe drugs are put on the market. I am confident that the courts will say no to the FDA's opinion on preemption, which is not based on any authority given to the FDA by Congress, and will summarily reject it.

Sources: *The Wall Street Journal*, *Associated Press* and *Public Citizen*

A QUIET POLITICAL SEASON

Thus far 2006 has been a very quiet and uneventful election year in Alabama. I had expected things to pick up significantly by this time, but that certainly hasn't been the case. The primary elections aren't that far away and people may get more in tune with politics in the upcoming weeks. I would encourage folks to get actively involved in political races this year. If ordinary folks don't get involved, their inaction will play right into the hands of the special interest groups. Those well-financed groups will spend whatever it takes to elect candidates of their choice.

JUDGE SETS SIEGELMAN CASE FOR TRIAL

I believe that most folks will agree that Don Siegelman should get his day in court before he has to go before the voters in his attempt to take back the governor's office. A federal judge has set the government corruption trial of the former governor and three co-defendants for May 1st. The case will be tried before U.S. District Judge Mark Fuller in

Montgomery. A verdict in the case should come down well before the Democratic primary on June 6th.

II. LEGISLATIVE HAPPENINGS

SOME ISSUES FACING THE ALABAMA LEGISLATURE

When the legislators came to Montgomery on January 10th, as expected, they found a number of major issues facing them. While some of these issues have been around for a long time, some are relatively new. Because it is an election year, we can expect a lively session. The following are a few of the issues that will challenge the legislators:

- **Education Budget:** With tax collections swelling because of the economic recovery, an extra \$1 billion above this year's \$5.39 billion budget will be available. Governor Riley wants to spend \$500 million of it on school and college construction projects. His Republican opponent for governor, Roy Moore, is calling for a \$500 million tax refund.
- **General Fund Budget:** Tax collections for the budget that finances non-education agencies have not grown like education taxes have. This is where some serious funding problems will arise. Legislators will likely have their own ideas on how to deal with the surplus.
- **Income Tax:** Governor Riley wants to use the projected surplus in the education budget to start a five-year plan to raise the threshold at which Alabamians pay income taxes. The Governor's plan would raise the threshold for a family of four from \$4,600, which is the lowest in the country, to \$15,000 by 2011. That would save taxpayers \$214 million annually.

- **Raises:** The Alabama Education Association is seeking about a 5% raise for school workers. The Alabama State Employees Association will also seek a raise for state workers. Groups representing retired teachers and retired state workers are seeking a 7% hike in pension benefits. Governor Riley recommended pay raises for teachers and state employees.
- **Campaign Finance And Lobbyist Reform:** The scandals in Washington have made the public—including Alabamians—aware of how badly we need reform of our political system. This is the time to act on the state level to pass meaningful reforms of political campaign spending and lobbying activities.
- **Religion:** Bills are being offered to provide a Bible literacy course in public schools, put “God Bless America” on Alabama car tags, and post the Ten Commandments in public schools. Who said this was an election year session?
- **Prisons:** The governor’s prison overcrowding tax force has recommended a package of bills, including providing more drug and alcohol counseling to try to reduce recidivism and adopting voluntary sentencing guidelines that would make sentences for the same crime more consistent from county to county. The prison issue is one that must be faced now. Additional funds for building new prisons must be found. The Alabama prison system is a “ticking time bomb,” and that can no longer be ignored.
- **Tough On Crime Issues:** We need to pass legislation that will strengthen the hands of law enforcement personnel in Alabama. There are a number of areas that should be addressed including the protection of children and women. The prison system needs mentioned above have to be considered when making it tougher on criminals.
- **Property Reappraisals:** Bills have been offered to end annual property reappraisals return to the state’s old system of reappraising property every four years for tax purposes. This appears to be a hot political issue.
- **Eminent Domain:** The governor is backing a proposed constitutional amendment to restrict state, county, and city governments from using eminent domain to obtain private property. The fight will be over whether the constitutional amendment should be like a state law the Legislature passed last year to restrict eminent domain or whether it should be stronger. That would be done by removing a section of last year’s law that allowed governments to use eminent domain to remove blighted areas. According to all polling data, this also is a highly popular political issue.
- **Consumer Issues:** The need to pass strong consumer protection laws is great. Dealing with the evils of predatory lending should be a top priority. As you will probably already know, Governor Riley ignored these issues in his talk to the Legislature.
- A recommendation was made to add five days to the state’s school year for a total of 180 instructional days.
- He proposed pay raises for school teachers and state employees.
- A plan to require lobbyists to report everything they spend on entertaining public officials was suggested.
- Term limits for state legislators were called for. It would restrict serving in each house to 12 years.
- He recommended enacting a constitutional amendment to restrict the use of eminent domain by city, county, and state governments to obtain private property.
- A state sales tax holiday was proposed for back-to-school purchases.
- He called on the Legislature to redefine sweepstakes and bingo to restrict the types of gambling machines used in Alabama.
- Possession of each individual item of child pornography would be a separate offense under the Governor’s proposal.

While this is an ambitious program, it appeared to be well received by most of the legislators. About the worst thing said about the talk was that Governor Riley sounded a lot like Bill Clinton. Because we are in an election year, however, it will be difficult to get many of the more ambitious proposals approved. I had hoped that the governor’s speech would have included a push for stronger consumer protection laws and specifically a plan to stop or at least curtail the evils of predatory lending in Alabama. But, this was not the case. I would have also liked to have heard something on campaign finance reform, which is badly needed in Alabama, mentioned in the speech. Unfortunately, that didn’t happen. Nevertheless, I believe that Governor Riley should add reform of our extremely

HIGHLIGHTS OF GOVERNOR RILEY’S STATE OF STATE ADDRESS

I, like many Alabamians, watched Governor Riley’s State of the State address on January 10th with great interest. The Governor covered a large number of issues and challenged the legislators in a talk that generally has received very high marks. The following are the highlights of the address:

- A tax cut was called for that would affect all Alabamians by raising the threshold where citizens start paying the state income tax.
- He proposed a \$500 million construction program for public schools, two-year colleges, and universities.

weak laws dealing with political campaigns to his legislative program.

ALABAMA WATCH PRESENTS A LEGISLATIVE AGENDA

A good number of supporters joined Alabama Watch on January 10th at the State House for a news conference at which a legislative agenda for the 2006 session was unveiled. Joining Alabama Watch at the event were Alabama Arise, the Appleseed Center, the Community Action Partnership, and The Ordinary People Society. Barbara Evans of Alabama Watch announced the formation of Kids Watch, which is a group of volunteers, made up of parents and grandparents. This group will monitor legislation that affects children. An advisory council consisting of child advocates and parents will be formed to work on legislative issues. Tara Kyser from Kinston, Alabama, will be the volunteer coordinator. Mrs. Kyser and her husband Chris had a baby who died in a home daycare center only hours after he was enrolled there. This tragedy has motivated the couple to get involved in the effort to help other families. There is a definite need for an organized effort of this sort. I would hope that Voices, another group looking out for children in our state, would work with Kids Watch.

Because there are over 500 registered lobbyists in Alabama—with very few of them representing the interests of Alabama consumers—it is good to know that Alabama Watch has an agenda that is consumer-friendly. The “wish list” for the 2006 session announced by Alabama Watch is set out below:

- **Access to the Courts:** Alabama citizens have allowed the basic American right of redress in the courts to be taken away from them. Consumer arbitration, with its up-front expenses and lack of accountability, is a scourge for consumers seeking justice. Alabama Watch believes we must be

mindful of Big Business’ never-ending attempts to take away our right to a jury trial. These attempts include the spreading of fallacies such as the courts are clogged with frivolous lawsuits, and legislation that limits Alabamians’ right to go to court.

- **Children’s Safety:** Despite the passage of the Baby Douglas bill in 2004 and the activism of children’s groups throughout Alabama, our children are still not safe. Kids Watch will monitor legislation that affects children and offer reasonable solutions to problems created by our lack of funding for basic state services. Kids Watch volunteers will connect with children’s organizations to offer support and guidance from a parent’s perspective.
- **Open Government is a right, not a privilege.** The passage of the Open Meetings Act in 2005 was a step forward, but Alabama needs a new Open Records Act as well. Alabama Watch will work with the legislative process to insure that Alabamians have access to affordable public records.
- **Insurance is still a problem.** As long as there is no law to stop insurance companies from charging premiums based on credit ratings, consumers lose. Last year’s storm damage and resulting insurance problems have exposed the insurance industry as callous and profit-driven at the expense of customers. We are calling on all gubernatorial candidates to commit to ending arbitration in insurance so consumers can have their day in court if needed.
- **Landlord Tenant Laws must be changed.** It’s a fairness issue. If a rental property falls into disrepair through no fault of the tenant, the only thing a tenant can do is move. We need substantive changes in our antiquated landlord tenant law that provides fairness to both parties. Alabama

Watch will work with Alabama Arise and the Appleseed Center for reform of landlord tenant laws.

- **Environmental Justice Legislation is a necessity.** The environmental justice legislation should be introduced again. It’s a fair piece of legislation that calls for ADEM to publish demographics of proposed sites for landfills and environmentally dangerous industry. As Alabama attracts more industry, we must insure that our communities of color do not continue to have a disproportionate share of the environmental risk.
- **Our Workers Compensation System is unfair to workers.** The tragedy at the coal mine in West Virginia brings to mind the plight of the surviving families from the Brookwood Mine disaster a few years back. Often times workers are required to work in unsafe conditions. Our workers compensation system does not provide enough benefits for Alabama workers and their families, and it needs reform.
- **Our State Constitution needs reform.** Alabama Watch supports the move for a constitutional convention and a new constitution. We join with ACCR in calling for a vote on a new constitution.
- **Our elderly and disabled citizens must be protected.** Arbitration clauses in nursing home contracts have become commonplace. Arbitration is detrimental to persons placed in nursing homes. We want to see an end to arbitration in nursing home contracts. We want families to be able to install video recorders in patient rooms. A nursing Home Bill of Rights should be passed during this session.
- **Payday Loan interest rates must be lowered.** We see payday loan outlets on nearly every corner in every city, particularly in cities with a

high percentage of military personnel. Since Alabama legitimized the payday lenders their numbers have mushroomed. We realize folks need access to money, even those with bad credit, but the percentage of profit for payday lenders is outrageous. These companies target our military personnel and low income people, getting them in debt and keeping them there. The people who go to payday lenders get deeper and deeper in debt. Payday lenders should be put under the Small Loan Act and their interest rates capped at 37%. It's the right thing to do.

Alabama Watch's legislative agenda is certainly consumer-friendly, as it should be, and that's good. I hope there will be widespread support in the legislature for this agenda. The Governor, Lt. Governor, the President Pro Tem of the Senate, the Speaker of the House, and other legislative leaders should put their power and influence behind bills, that if passed, would improve the lot of Alabama consumers. It should be undisputed that consumers in Alabama are treated by many of our elected officials as second-class citizens. I commend Barbara Evans, her small staff, and the members of Alabama Watch for their dedication and hard work. I encourage you to join Alabama Watch if you haven't done so. You can contact them at 278 Harriet Tubman Road, Lowndesboro, AL 36752, or by phone at (334) 284-0555.

THE DELAY ALABAMA PAC

I was shocked to learn that Tom DeLay, the indicted Congressman from Texas, who is in big trouble both because of his illegal actions in Texas and because of his involvement in the Washington scandal, had actually created a political action committee in Alabama. The DeLay PAC sent money to a **suspect fund** in his home State of

Texas. As you know, the powerful Republican Congressman was indicted in Texas on campaign-finance-related charges. The New York Times Regional Newspapers reported that records in the Alabama Secretary of State's office revealed that DeLay's Alabama PAC, named **Americans for a Republican Majority**, transferred \$25,000 in October 2002 to his Texas PAC, known as Texans for a Republican Majority. Apparently, the transfer occurred one month after the Texas PAC allegedly sent money to Texas state House candidates in violation of state law, according to DeLay's indictment. We don't need folks such as DeLay and Jack Abramoff in our political system at any level. Neither do we need PAC to PAC transfers of campaign money in Alabama. Congress and all state legislative bodies, including that of Alabama, must take all appropriate action required to put a stop to this sort of thing. My question is—why did DeLay need a PAC in Alabama? I wonder how many other states were used by this once powerful politician to do his dirty work.

Sources: Associated Press and New York Times

III. COURT WATCH

ALABAMIAN APPOINTED TO JUDICIAL POST

My long-time good friend, John Nichols, stopped me at church recently and told me about some very good news. He related that Judge James S. Sledge was recently appointed to the position of Chief Copyright Royalty Judge. Judge Sledge, a resident of Gadsden, Alabama, will serve a term of six years. He recently retired as the U.S. Bankruptcy Judge in the Northern District of Alabama, where he served since 1991.

Three highly qualified individuals were appointed to serve as the first

Copyright Royalty Judges. The Copyright Royalty and Distribution Reform Act of 2004, which became effective on May 31, 2005, phased out the previous system and replaced it with the Copyright Royalty Board made up of three permanent judges. It is quite an honor to be selected for this most important position. Judge Sledge will do an outstanding job in my opinion. The reason John Nichols was so proud when he talked to me is that Judge Sledge is his son-in-law. I am happy to report the appointment and wish this distinguished Alabama citizen the very best in his new job.

SUPREME COURT OVERTURNS VERDICT AGAINST MINISTER

The Alabama Supreme Court has overturned the \$1.7 million jury verdict, that had been returned against a Montgomery minister who had an affair with a woman he had counseled about her marriage. The high court, following current Alabama statutory law, reversed the judgment against the minister, who has resigned from his church. The decision was based on a law that bars civil litigation in cases of that sort. Justice Woodall, who wrote the court's opinion, suggested that the Legislature should take action to correct the existing law. He wrote in the opinion:

The very idea that a marriage counselor who owes a duty to a husband and wife can escape liability for the consequences of his extramarital affair with a party to the marriage is, I respectfully submit, absolutely horrid public policy. If I were a member of the Alabama Legislature, I would immediately amend the law.

A husband had sued the minister after discovering the sexual relationship between the minister and his wife in 2000. At the time, the wife was the church secretary. The couple had gone

to the minister for marital advice. Last year, a jury returned a verdict in favor of the husband after hearing the evidence. I agree with Justice Woodall and hope the Alabama Legislature will pass a bill during the current session to correct the existing law. No minister who violates his trust and calling and commits an act of this sort, should be able to escape legal liability to a family he has virtually destroyed. Hopefully, somebody in the Legislature will get involved and introduce the needed legislation and then work hard to get it passed.

Source: *Associated Press*

COURTS FLOODED BY LAWSUITS AFTER KATRINA

Thousands of Katrina victims have had to file suits over flood damage, insurance settlement disputes, alleged wrongful deaths, oil spills, ruined oyster beds, eroded wetlands, evictions, and disputes with contractors involved in rebuilding efforts. The new lawsuits are being filed into a court system that is struggling mightily to recover from the disruptions caused by the flooding and evacuations that followed Katrina, which hit on August 29th. Because of the storm, many of the court systems were virtually shut down. The local courts are now in a struggle to catch up with the backlog of trials, while handling the new litigation related to Katrina. It will be virtually impossible to get juries that reflect the make-up of the population. In some places, getting a jury will be impossible. This will be a big problem because of the area's diminished population. New Orleans presently has an estimated 150,000 to 190,000 residents, down from about 462,000 in 2004. A shortage of jurors — and the court delays that could result — could particularly affect residents and business owners who badly need to resolve insurance disputes. It will especially hard to reschedule jury trials in Orleans Parish, St. Bernard Parish and Plaquem-

ines Parish, the localities hit hardest by flooding. It will now be impossible to get juries that will reflect the demographics of pre-Katrina days.

It has become very much evident that the insurance companies have taken advantage of thousands of homeowners. Many of their policyholders have no home or business and yet owe mortgage payments. They are tired of waiting for answers. This has become another major disaster for these folks. I didn't expect the numbers of lawsuits filed to slow down. In fact, they will likely increase. People are in need and are hurting. Most haven't hired a lawyer because they expected their insurance company to do the right thing and pay claims promptly. Instead, insurance companies have been very slow in paying claims. As a result, thousands of insurance claims are piling up in state courts. More than 50 insurance companies have been sued after refusing to pay for damages. Hopefully, some order will come to a very bad situation and soon.

Source: *USA Today*

A SAMPLING OF MAJOR LAWSUITS PENDING IN LOUISIANA

While there have been a tremendous number of lawsuits filed in Louisiana, some have received more attention than others. These are a few of the more significant lawsuits that have been filed in the federal courts in Louisiana:

- **The Murphy Oil USA Inc. lawsuits:** Several class action suits have been filed against the company, which operates a refinery in St. Bernard Parish. An oil tank at the refinery spilled more than 1 million gallons of crude oil, which contaminated more than 2,500 homes and prompted 19 separate class action lawsuits.
- **The fisheries case:** Several commercial fishermen's groups, including the United Commercial Fishermen's Association and the Louisiana Shrimp

Association, are pursuing a class action lawsuit against oil and gas companies in south Louisiana. The defendants include Shell Pipeline, Chevron, Bass Enterprises Production, and Sundown Energy. The groups allege that more than 9 million gallons of oil escaped the companies' facilities during Katrina and destroyed oyster beds and fishing grounds along the Gulf Coast.

- **The eroding wetlands dispute:** A separate suit against more than a dozen major oil and gas producers alleges that drilling and pipeline activities in southeast Louisiana caused the destruction of marshes that would have limited hurricane damage to New Orleans.
- **The levee-failure lawsuits:** Several suits target the U.S. Army Corps of Engineers and local levee boards, alleging that design and construction defects in the levees holding back Lake Pontchartrain led them to fail and flood the city.
- **The Mississippi River Gulf Outlet suit:** A suit against the Army Corps of Engineers alleges that the 66-mile channel, which was dug in the late 1950s through St. Bernard and Plaquemines parishes to create a shortcut for ships traveling to New Orleans, makes flooding worse in those parishes.

Source: *USA Today*

MCDERMOTT ASBESTOS SETTLEMENT APPROVED

A judge has approved McDermott International Inc.'s plan to settle as many as 300,000 asbestos injury claims. The amount of the settlement ranges from \$375 million to \$955 million in costs for the company, depending on whether Congress creates a national trust fund to handle all such cases. A U.S. district judge signed off on the

agreement, which was in a bankruptcy reorganization plan for the Babcock & Wilcox Co., a wholly owned McDermott unit that has been the target of asbestos claims. Babcock & Wilcox once used asbestos to insulate boilers. McDermott, an offshore energy services and engineering company, put the unit under bankruptcy protection in February 2000.

Part of the settlement hinges on what happens in Congress. As you know, Congress currently is considering the establishment of a \$140 billion trust fund to compensate people sickened by exposure to asbestos. The Babcock & Wilcox settlement calls for \$1.1 billion in insurance payments and a \$350 million payment from McDermott to a separate trust fund handling the Babcock & Wilcox case, regardless of the federal bill's fate. If the bill is not passed and signed into law by November 30th, McDermott will pay an additional \$350 million, along with a \$250 million note. On the other hand, if the bill is passed by November 30th, McDermott will pay only an additional \$25 million.

Source: Associated Press

IV. THE NATIONAL SCENE

ONE OF THE WORST CORRUPTION SCANDALS EVER TO HIT OUR NATION'S CAPITOL

The more we learn about Jack Abramoff, the high-powered Washington lobbyist, the more we realize how widespread the corruption in our nation's capitol actually is. If the scandal were a hurricane, it would be a strong category 5. Abramoff pleaded guilty last month to conspiracy, fraud and tax evasion charges. The most significant development, however, is the fact that this once-powerful man has now agreed to cooperate fully in the federal corruption

probe in Washington. Abramoff, who will face up to 11 years in federal prison and will pay \$26.7 million in restitution, admitted to corrupting government officials and defrauding his own clients out of \$25 million. Abramoff admitted that he did not disclose receiving kickbacks on payments from Native-American tribes to a partner's public relations firm. Abramoff and his politically connected partner, public relations expert Michael Scanlon, had referred to their scheme as the "Gimme Five Program." All of the corruption and outright stealing described by Abramoff is so bad that it reads like fiction. Unfortunately, it is very real, and the magnitude is shaking the very foundation of our federal government. It's quite obvious that Abramoff and Scanlon couldn't have done all the damage they did without the help of politicians in high places. I suspect that some very prominent names—other than those already named—will surface over the coming weeks.

Court documents described how Abramoff and Scanlon cheated clients of Abramoff's lobbying firm by urging them to use Scanlon's public relations firm, which in turn paid Abramoff millions of dollars in kickbacks. Interestingly, Abramoff is a longtime associate of several top GOP leaders, including former House Majority Leader Tom DeLay, Americans for Tax Reform director Grover Norquist, and former Christian Coalition chief Ralph Reed. I am reasonably sure that there are a number of extremely nervous "politicians" in our nation's capitol. How widespread this scandal's net will reach is the topic around Washington these days. I don't believe the public had any idea how bad things had gotten in our nation's capitol.

It shouldn't be overlooked that Scanlon, a former aide to DeLay, has also been cooperating. The cooperation deals worked out with Abramoff and Scanlon will certainly have a wide-

reaching effect in Washington. Federal investigators are said to be looking at about half a dozen members of Congress at present. The probe is said to involve at least two dozen lawmakers and staffers, with many more suspects waiting in the wings. According to a CNN report, Abramoff is said to have thousands of e-mails in which he describes influence-peddling and explains what lawmakers were doing in exchange for the money he was putting into their campaign coffers. Apparently, Abramoff has been cooperating with the Justice Department for months without any kind of plea deal. I hear that a great deal of information has already been produced to the investigators with much more to come. Significantly, Abramoff won't be sentenced until his cooperation with the probe is complete, and that can't be good news for his cadre of "political buddies." I understand that Abramoff has kept extremely good notes and records concerning the web of corruption he and his friends have spun over the past several years. We will most likely see a domino effect once the noose starts to tighten around some political necks. You will find that **financial loyalty** of a political nature doesn't last very long when folks start pleading guilty and cooperating with the prosecutors. My mama told me when I was a small boy that "if you lie down with a dog who has fleas, you will get up scratching." I suspect there are lots of folks "scratching" in Washington.

The court documents allege Abramoff deprived his clients of his honest services by overcharging them to fund the alleged kickback scheme with Scanlon. Listed in the court documents are four Native-American tribes that contracted Abramoff's services. The documents said the tribes gave millions of dollars to Scanlon's firm, which then paid Abramoff 50% of the profits it made. According to the documents:

- Starting in 2001, Abramoff persuaded a Louisiana tribe to pay nearly \$30.5 million for “grassroots work” to a Scanlon company, which, in turn, kicked back nearly \$11.4 million to Abramoff.
- In 2001 Abramoff also persuaded a Mississippi tribe to give nearly \$14.8 million to Scanlon, who funneled nearly \$6.3 to Abramoff.
- A Michigan tribe gave \$3.5 million to Scanlon’s firm in 2002; \$540,000 ended up in Abramoff’s pocket.
- Also in 2002, a Texas tribe gave \$4.2 million to Scanlon, and nearly \$1.9 million found its way to Abramoff

Scanlon pleaded guilty in November to a single conspiracy count as part of a deal with the Justice Department. He agreed to pay about \$19.7 million in restitution for kickbacks he admitted receiving, and promised to testify against Abramoff. I am reasonably sure that the corruption issue will be hot in congressional elections this year. I am told by reliable sources that some very big names will be directly involved in the probe before it’s over. While Abramoff and Scanlon are clearly criminals, they had lots of help from powerful politicians in very high places. Regardless of who all is involved, justice must be done concerning this massive scandal. The guilty must pay the price for their wrongdoing and that means prison time, in my opinion.

CONGRESS MUST ACT PROMPTLY

Congress must pass fundamental lobbying reforms to clean up the horrible mess that exists in Washington. The corruption in our nation’s capitol is said to be much deeper than originally thought. It appears our government in Washington has become rotten to the core, and that is totally unacceptable. Public Citizen, a group that speaks for

ordinary people, has proposed reforms to the lobbying system related to campaign fundraising, including:

- Prohibiting lobbyists from serving as the treasurers of officeholders’ campaign committees or leadership political action committees; and
- Prohibiting lobbyists from making, soliciting or arranging campaign contributions to those whom they lobby, except to members who represent the lobbyists’ own district.

If Congress is unwilling to stem the flow of lobbyist contributions, Public Citizen recommends the following reforms:

- Requiring lobbyists and lobbying firms to disclose their campaign contributions and the amount and dates of any campaign funds raised through fundraising events that the lobbyist or firm sponsored. This provision is contained in legislation recently introduced by Senator John McCain (R-AZ), S. 2128, and Representative Chris Shays (R-CT), H.R. 4575; and,
- Requiring that the original source, conduit and amount of all contributions “bundled” by lobbyists and others be fully disclosed.

In addition to these recommendations, I suggest that Congress close the revolving door between Congress and lobbying firms. That’s a major reason for the current problems in Washington. No member of Congress should be allowed to lobby or work for a firm that performs any kind of lobbying activity in Washington for a period of five years. It should be noted that 43% of members leaving Congress for the private sector since 1998 have gone on to become high paid lobbyists. In fact, a prohibition of that sort of thing should also apply to senior congressional staff and executive branch officials. Specifically, it should apply to persons employed by regula-

tory agencies who leave an agency and go to work for the very companies they were regulating. Hopefully, Congress will take action to prohibit this revolving door.

Source: Public Citizen

PRESIDENT BUSH SHOULD PROVIDE A FULL ACCOUNTING

Public Citizen has called on President Bush to provide a full accounting of the sources of the \$100,000 or more that Jack Abramoff raised for his 2004 presidential campaign. The campaign gave Abramoff the title of a Bush “Pioneer” in 2004 for raising at least \$100,000 in amounts of up to \$2,000 from his friends and associates. Frank Clemente, director of Public Citizen’s Congress Watch, observed:

Abramoff has now pleaded guilty to fraudulently raising hundreds of thousands—if not millions—of dollars to curry favor in Washington. The public deserves to know if any tainted money ended up in the Bush campaign.

Federal disclosure laws do not require individuals who raise, or “bundle,” a large number of separate contributions for political candidates to disclose their role in the fundraising unless they physically handle the checks. President Bush’s 2000 and 2004 campaigns bestowed the title of “Pioneer” on those who raised at least \$100,000 and “Ranger” on those who raised at least \$200,000. The Republican National Committee has announced that Bush’s campaign would donate the \$2,000 that Abramoff, his wife and one of his tribal clients each contributed to the campaign (\$6,000 total) to a charity. But, the campaign has not revealed the sources of the rest of the money Abramoff raised for it and has not announced any intention to return it or donate it to charity. President Bush needs to set an example and reveal just how much money

Abramoff raised for him and who that money came from. I don't believe it's enough for the President to simply say he didn't really know Abramoff very well. The public deserves much more than that.

STATES TAKE ACTION ON THE NEW FEDERAL DRUG PLAN

As previously mentioned, the new Medicare drug program is causing major problems all over the country. Alabama, California, Arkansas and Illinois have joined about half a dozen other states taking emergency measures to help residents struggling to get prescriptions filled under the new program. By necessity, there will be others following their lead. Seniors and disabled citizens are in danger of losing needed medications because of significant problems with the new federal Medicare prescription drug program.

Governor Mike Huckabee was one of the first governors to take action. He declared a public health emergency in Arkansas on January 11th and announced the state would provide short-term aid to pharmacies to help get medicines filled. The Arkansas Governor stated:

It's become apparent that there are a number of people in our state, particularly the elderly and the most frail, who are in a life-or-death risk over getting medication.

Alabama Governor Bob Riley announced on January 15th that Alabama would pay for prescription drugs for poor people in our state for two weeks. It will cost Alabama \$1 million per day for the first two weeks to fill their void. I will be surprised if this cost in Alabama doesn't exceed the estimated \$15.7 million. Illinois officials sent notices to pharmacies last month detailing where to call if Medicare patients can't get medicine. If the problem can't be

resolved by phone, pharmacists will be allowed to bill the State of Illinois for the cost of the drugs. At press time, Rhode Island officials had plans to launch an emergency program.

Governor Huckabee, who is chairman of the National Governors Association, said he spoke with Health and Human Services Secretary Michael Leavitt, and that Leavitt assured him a solution was in the works for Medicare program that started January 1st. Governor Huckabee estimated Arkansas would spend between \$2 million and \$6 million to help pharmacies fill prescriptions that the new federal program is rejecting. He said he hoped the federal government would reimburse the state's expenses.

In some cases, people who enrolled in plans have discovered they aren't listed as participating when pharmacies check their computers. Other beneficiaries found they were listed as owing a \$250 deductible when they should have been paying only a few dollars per prescription. Last month, New Hampshire authorized up to \$500,000 for payments to pharmacists who give a 10-day supply of drugs to people having trouble getting their medicines. South Dakota allowed people who qualify for both Medicare and Medicaid to get a 30-day supply of medicine. Vermont, Connecticut, Massachusetts, and North Dakota had already announced plans to help low-income residents get their medicine if pharmacists were having trouble confirming coverage through the new Medicare benefit.

President Bush, at the urging of the insurance industry, pushed the Medicare bill through Congress. His forces were warned at that time that they were creating an unworkable monster that could wind up being a fiscal disaster. It now appears that the warnings were right on target. As I mentioned last month, I believe that the failures of the new drug plan will be a major campaign issue this year. It was created to benefit insurance companies and pharmacy benefit man-

agers and then the folks receiving the prescription drugs. Hopefully, it will eventually help seniors and the poor in our country. In the meanwhile the plan will likely force some small-town pharmacies into bankruptcy unless they get some permanent relief. The insurance companies and pharmacy benefit managers will rake in tremendous profits, and the people and drug stores will wind up being hurt the most. Congress, at the request of lobbyists for the drug industry, the insurance industry, and the pharmacy benefit managers, and the Bush White House, deleted a provision that would have allowed governments at the federal and state levels to negotiate prices with the drug companies. Does that make any sense? I would like for somebody to explain why the power to negotiate prices was stripped from the bill. It might have something to do with the large price increases put in place by the drug companies since January 1st.

ORGANIZATIONS FACE COMPUTER ATTACK

A recent report should get the attention of every American citizen who runs a business that uses computers. The FBI reports that 9 out of 10 organizations in this country are victims of some sort of computer security incident. Shockingly, one-fifth are hit more than 20 times a year. Almost two-thirds suffer financial loss as a result of the cyber incidents. The 2005 FBI Computer Crime Survey is based on responses from a cross-section of more than 2,000 public and private organizations. Among its findings:

- Frequency of attacks. Nearly nine out of 10 organizations experienced computer security incidents in a year's time; 20% of them indicated they had experienced 20 or more attacks.
- Types of attacks. Viruses (83.7%) and spyware (79.5%) headed the list. More than one in five organizations said they experienced port scans and network or data sabotage.

- **Financial impact.** Over 64% of the respondents incurred a loss. Viruses and worms cost the most, accounting for \$12 million of the \$32 million in total losses.

- **Sources of the attacks.** They came from 36 different countries. The U.S. (26.1%) and China (23.9%) were the source of over half of the intrusion attempts, although masking technologies make it difficult to get an accurate reading.

- **Defenses.** Most said they installed new security updates and software following incidents, but advanced security techniques such as biometrics (4%) and smart cards (7%) were used infrequently. In addition, 44% reported intrusions from within their own organizations, suggesting the need for strong internal controls.

- **Reporting.** Just 9% said they reported incidents to law enforcement, believing the infractions were not illegal or that there was little law enforcement could or would do. Of those reporting, however, 91% were satisfied with law enforcement's response. And 81% said they'd report future incidents to the FBI or other law enforcement agencies. Many also said they were unaware of InfraGard, a joint FBI/private sector initiative that battles computer crimes and other threats through information sharing.

This new survey differs from the annual CSI/FBI Computer Crime and Security Survey conducted by the Computer Security Institute and the FBI. Almost three times as many organizations were surveyed in the new study. The survey focused more on new technologies, where attacks originated, and how organizations responded. There is an urgent need for vigilance against both internal and external cyber assaults. Anybody who operates a business, large or small, should study this survey and use the data as the basis for

making needed changes. The survey can be found at <http://www.fbi.gov/publications/ccs2005.pdf>

Source: *Insurance Journal*

LEGISLATIVE ISSUES TO WATCH NATIONALLY

We mentioned a number of issues facing the Alabama legislature in the Legislative Outlook Section. Many of those issues are not unique to Alabama. Legislative bodies in most states came back into session last month and found common issues awaiting them. Their members will be spending an unusual amount of time dealing with issues that involve other levels of government and will be dealing with a number of issues created especially for them by the federal government.

The best example of the latter is the Medicare Drug Benefit Act passed by Congress. As we all know by now, a prescription drug benefit was added to Medicare in 2003, which gave states a large role in implementing the program. As a result, legislators in all states will be dealing with problems created by the new law, which went into effect on January 1st. As predicted, the states will have to spend large sums to correct problems created by what Congress did. In my opinion, it will be very costly for the states.

There are common issues that will be dealt with in most all states. The following are some of those issues that the legislators will have to grapple with:

- **Reform of the Political System** – I believe people in every state will demand reforms of political campaigns and lobbying activities. This will be the only good thing coming from the Washington scandal.

- **Medicare Part D** – With the Medicare prescription drug benefit having gone into effect the first of January, state lawmakers already know that it is a disaster in the short

term. They will have to see whether it will ever work and whether new legislation will be needed. To recap the issue, as you know, Congress passed the Medicare Modernization Act in 2003, which included the "Part D" drug benefit. But, states have much of the responsibility for implementing the program. Another issue that's likely to cause plenty of consternation is the "clawback" provision of Part D. Under the clawback, states must make monthly payments to the federal government that are intended to compensate the federal government for taking on prescription drug costs previously borne by the states. But lawmakers have argued that states will lose money overall, and some, such as Kentucky, New York and Texas, may pursue legal action. Legislators, however, cannot do much for now, except perhaps to take a stance similar to what New Hampshire adopted last year: refusing to make clawback payments while litigation is pending. I predict that this issue will be around for a good while.

- **Eminent Domain** – As a result of the U.S. Supreme Court's landmark decision, which affirmed the use of eminent domain for economic development, more than 20 state legislatures are likely to consider bills restricting eminent domain this year. Last fall's ruling generated an immediate backlash. A few states, including Alabama, Delaware, Ohio and Texas, have already passed measures restricting eminent domain.

- **Health Insurance** – Legislators will grapple with conflicting impulses when considering health care issues this year. Many want to expand coverage to the nation's 45 million uninsured and improve the quality of care for everyone else. At the same time, Medicaid expenses represent ever-larger shares of state budgets, leading to a desire in some circles to cut

costs. In the face of this conundrum, an increasing number of policy makers are looking to the private sector to shoulder more of the burden, either willingly or forcibly.

- **Property Taxes** – With rapidly rising real estate values hitting homeowners with higher taxes, legislatures across the country will consider cutting property taxes this year. But the impetus behind the bills will have as much to do with school funding and a desire to shift certain taxes from the local level to the state level as it will with any property tax revolt. States that will likely discuss property tax cuts include Alabama, Idaho, Indiana, Nevada, New Jersey, North Dakota, Pennsylvania, South Carolina, and Texas. Because property taxes generally are levied at the local level and often fund public school systems, any discussion of property taxes almost inevitably links to school funding. In my state of Alabama, the annual reappraisal of property has become a hot issue.
- **Immigration** – With immigration issues roiling all levels of government, legislatures will host a variety of spirited immigration-related policy debates. To proponents of stricter enforcement of immigration laws, the increasing focus on illegal immigrants is the result of lawmakers' finally paying attention to the concerns of their constituents.
- **Pension Plans** – Many legislatures will have little choice this year but to invest large sums of new money in state pension systems or to pursue overhauls to make them less generous. In terms of the sheer amount of money involved, no fiscal challenge is more daunting than unfunded pension liabilities. Even many small states have long-term liabilities in excess of a billion dollars, and in many larger states the totals come to tens of billions.

- **Emergency Planning** – Driven by Hurricane Katrina and fears of avian flu, not to mention ongoing homeland security concerns, legislatures will consider a variety of measures related to emergency planning. Improving communication among local governments and between state and local governments will be a top area of concern. People on the Gulf Coast are still hurting and very much upset with the government's responses.

- **Telecommunications Regulation** – A variety of telecom issues are on the legislative agenda for a number of states.

SENATE STALLS ON HIGHER FINES FOR INDECENT BROADCASTS

As you may recall, the U.S. House of Representatives passed the Broadcast Decency Enforcement Act in 2004. That bill finally would have allowed the Federal Communications Commission (FCC) to impose meaningful fines for indecent television and radio broadcasts. But the House and Senate couldn't agree on the same bill. As a result, no legislation was passed. In February 2005, the House reintroduced and again approved (by a vote of 389-38) the Broadcast Decency Enforcement Act (H.R. 310). The bill stayed in the Senate for the entire year of 2005 with no action being taken. We cannot let another year go by without the passage of this important legislation. Two years ago - when it seemed that the FCC and Congress were serious about cracking-down on indecency—some of the offenders took steps to reduce the amount of raw sex and language in their broadcasts. Emboldened by two years of inaction, broadcasters are once again trying to push the envelope. I urge you to contact your senators and tell them that people throughout America are demanding action. Ask them to pass H.R. 310!

Federal law prohibits the broadcast of indecent material during certain hours of the day when children are most likely to be in the viewing audience. In its Pacifica ruling, the U.S. Supreme Court upheld the indecency law as constitutional. H.R. 310 would increase the fines that the FCC could impose on a broadcaster who violates the indecency law, and repeat violators would be subject to losing their broadcast license. The Senate was to have held yet another hearing on indecency. The FCC must be given the enforcement tools it needs to protect American families. Members of the Senate should look out for the interest of America's families and not the interests of a handful of powerful media corporations. The industry that is making billions selling filth, is counting on people who support decency in broadcasting to sit back and do nothing. They don't believe that people will get involved, speak up, and demand action by the Senate. The special interests are hoping that H.R. 310 will be stalled again so they can continue to pour graphically sexual and profane material into our homes every day. Please don't let that happen. A public hearing was held in the Senate during the week of January 16th. At press time, to my knowledge, no action had been taken by the Senate committee on the bill. Please take the time today to write your senator and ask for help. It's not too late for the Senate to act. Tell them you need their support and need it now.

Source: Parents Television Council

ADVERTISING LINKED TO TEEN DRINKING

Over the past few years, the alcohol industry has stepped up its advertising campaign directed at young people. Young people who view more alcohol advertisements tend to drink more alcohol, according to a new study in the January issue of *Archives of Pediatrics & Adolescent Medicine*. Several studies

have found an association between exposure to alcohol ads and youth drinking, but have not been able to establish a cause-and-effect relationship. The alcohol industry has no federal restrictions on its advertising but is subject to voluntary codes dictating that 70% of the audience for their advertisements be adults older than age 21. The authors report that these ads still appear frequently in media aimed at young people. It didn't take a study or any intense research to convince me that alcohol advertising aimed at young people would pay off for the industry in more sales and more drinking by persons exposed to the ads. In any event, the authors reported:

It is important to control for total alcohol consumption levels because markets with greater sales may attract more alcohol advertising from brands competing to sell in markets with more heavy drinkers. Even with this control, young people drank 3% more per month for each additional dollar spent per capita in their market. Youth in markets with high advertising expenditures (\$10 or more per person per month) also increased their drinking more over time, reaching a peak of 50 drinks per month by age 25. Given that there was an impact on drinking using an objective measure of advertising expenditures, the results are inconsistent with the hypothesis that a correlation between advertising exposure and drinking could be caused entirely by selective attention on the part of drinkers. The results also contradict claims that advertising is unrelated to youth drinking amounts: that advertising at best causes brand switching, only affects those older than the legal drinking age or is effectively countered by current educational

efforts. Alcohol advertising was a contributing factor to youth drinking quantities over time.

David H. Jernigan, Ph.D., of the Center on Alcohol Marketing and Youth at Georgetown University, wrote in an editorial that the research "calls into question the industry's argument that it's roughly \$1.8 billion in measured media expenditures per year have no impact on underage drinking." Dr. Jernigan says the fact that young people were more likely to drink more over time in environments with more alcohol advertising, even when controlling for alcohol sales in those environments, strongly suggests that it is exposure to alcohol advertising that contributes to the drinking. These and other recent findings, Dr. Jernigan writes, "point to alcohol advertising as an important arena for interventions seeking to reduce underage drinking and its tragic consequences." I would hope our political leaders would find a way that meets constitutional muster to control alcohol advertising clearly aimed at young people.

Source: www.consumeraffairs.com

LAWSUIT ON TOWN'S SEX OFFENDER BAN

The town of Plainfield, Indiana, is defending an Indiana Civil Liberties Union suit challenging the town's ordinance banning sex offenders from parks and recreational areas. The ICLU filed the suit on behalf of a Marion County man alleging that Plainfield's ban on sex offenders using town parks is unconstitutional. The suit seeks an injunction against that portion of the town's ordinance. Thus far, no injunction has been issued, and the ordinance remains in effect. The lawsuit concerns a 2002 ordinance setting regulations for town parks. Among the provisions was a ban on anyone listed on the Indiana Sex Offender Registry "from all parks and other recreational areas of the town of

Plainfield." Personally, I hope the town wins this battle. We should do everything in our power to keep sexual predators under control and as isolated as possible.

V. THE CORPORATE WORLD

CONSULTING FIRM REVERSED THE FINDINGS OF A MAJOR CANCER STUDY

A consulting firm hired by Pacific Gas & Electric Co. (PG&E) to fight the "Erin Brockovich" lawsuit distorted data from a Chinese study to plant an article in a scientific journal reversing the study's original conclusion that linked an industrial chemical to cancer, according to documents obtained by Environmental Working Group (EWG). *The Wall Street Journal* reported that the San Francisco-based consultants, ChemRisk, "conceived, drafted, edited and submitted to medical journals" a "clarification" of the Chinese study, according to documents filed in another chromium lawsuit against PG&E. They did so despite a letter of objection from the Chinese scientist who led the original study, calling their reversal of his findings an "inappropriate inference."

Through the state Public Records Act, EWG obtained many of the documents cited by the *Journal*. They are available at www.ewg.org. In the Brockovich case, residents of Hinkley, California, sued PG&E for dumping hexavalent chromium in their drinking water. In 1997, PG&E paid \$333 million to settle the case, but another lawsuit against the company over chromium pollution is set for trial next month. The fraudulent article has influenced chromium regulations by state and federal agencies, including the Environmental Protection Agency. ChemRisk, perpetrator of the deception, continues to work for corpo-

rate and government clients including the Department of Energy and the Centers for Disease Control.

The article was published in the peer-reviewed *Journal of Occupational and Environmental Medicine*. EWG has written the journal's editors urging them to set the record straight and bar the scientists who were involved from its pages. EWG Senior Vice-President Richard Wiles wrote to the journal:

The scientific community must be notified that a paper circulating in the published literature is fraudulent, the paper must be retracted, and those responsible for the incident must be appropriately disciplined.

EWG has also written the Centers for Disease Control, which recently renewed ChemRisk's multi-million dollar contract for a key project at the Los Alamos National Laboratory, urging the agency to take prompt action against the company. EWG, in its letter, stated:

ChemRisk's current contract must be cancelled and the firm barred from seeking future contracts from the CDC or other government agencies.

The documents obtained by EWG show that ChemRisk employees — with the knowledge of PG&E's attorneys—hired one of the original study's authors as a "consultant," and conducted a new analysis of his data that deliberately ignored evidence of an association between stomach cancer and hexavalent chromium in drinking water. They then wrote and submitted the article for publication without disclosing that they worked for ChemRisk or that PG&E had paid for the new "study." Nowhere in the published article are the names of the ChemRisk employees who worked on it, or any indication that it was part of PG&E's legal defense strategy. The founder and president of ChemRisk is Dennis Paustenbach, who has made a

career of consulting for big polluters including PG&E, ExxonMobil, and Dow Chemical. In 2002, his appointment to a federal committee on the health effects of chemicals was blasted by independent scientists as part of a Bush Administration pattern of packing environmental panels with industry-friendly experts.

Source: EWG

RESTATEMENTS OF CORPORATE EARNINGS

The number of earnings restatements by corporations in 2005 set an all-time record. It appears that 971 public companies restated their earnings in the first 10 months of the year. In contrast, there were only 619 for the entire year of 2004. Although final figures for the last two months of 2005 aren't in, the total number of restatements for the year has been estimated to reach 1,200.

Earnings restatements are generally bad news for companies and their investors. They raise the question of whether management has been manipulating the numbers. Stock prices often drop when companies acknowledge a restatement is required. As a result, companies try to avoid restatements at all cost. To put things in perspective, there were 514 restatements in 2003, 330 in 2002, and 270 in 2001.

Source: USA Today

CONSULTING FIRMS SETTLE FEDERAL CASES WITH THE GOVERNMENT

Four consulting firms will pay \$25.5 million to settle cases alleging they over-billed the U.S. government for travel. BearingPoint, Inc., Booz Allen Hamilton, Inc., Ernst & Young, and KPMG LLP have settled lawsuits concerning false claims submitted to various agencies of the U.S. government in connection with travel reimbursement. The payments from the four firms will exceed \$26 million. All four firms received rebates on travel expenses from credit card

companies, airlines, hotels, rental car agencies, and travel service providers. The companies did not disclose the existence of these travel rebates to the government and did not reduce travel reimbursement claims by the amounts of rebates. The settlement resolved separate complaints that were filed in 2001 under the False Claims Act.

Source: Associated Press

THE PUBLIC DESERVES A LOOK AT CEO SALARIES

It has become quite apparent that the annual compensation packages for the big bosses in Corporate America have gotten totally out of hand. As a result, federal regulators have now launched an effort to force corporations to more clearly disclose just how much they're paying top executives and directors. In a bid to enable investors to compare one company against another, and to determine fairness, the Federal Securities and Exchange Commission (SEC) has proposed a slate of new rules that would require corporations to lay out—in plain understandable English—the total compensation packages for their top executives and directors. At present, most investors have no idea how much their companies are actually paying the bosses. There can be little doubt that a real need for full disclosure of CEO compensation packages exists. SEC Chairman Christopher Cox had this to say:

Simply put, our rules are out of date. Our disclosure rules haven't kept pace with changes in the marketplace, and in some cases disclosure obfuscates rather than illuminates the true picture of compensation.

Under the proposed rule, which was approved unanimously by the five-member commission, companies would be required to calculate a single figure that quantifies all aspects of direct com-

compensation—salary, bonuses, stock options, and perks. Companies also would have to reveal how much they would have to pay out in retirement benefits. In addition, the payouts for severance packages where an executive is actually kicked out would be covered. When corporation is taken over, the golden parachute payments would also have to be disclosed. Shareholders will be shocked once they get this information. Perks, such as use of corporate jets, will have to be disclosed if the value of those benefits exceeds \$10,000. Current rules require disclosure only if the value of a benefit tops \$50,000. This is the first attempt in 14 years by the SEC to overhaul executive compensation disclosure. The public will now have a chance to comment on the proposed rules. SEC officials are hoping to have a final rule in place by the end of the year. This would be in time to ensure better information about executive pay in next year's proxy statements to shareholders.

It has been acknowledged that in recent years, executive compensation packages for many large corporations have gotten out-of-hand. At present, chief executive officers make about 400 times the salary of the average worker. This is up from 40 times just a few decades ago, according to numerous studies. I believe that the investor outrage—once these totals are released—will put a halt to excessive paying of executives and directors. Men and women who work for a living deserve to be adequately compensated, and there should be a good bonus for an outstanding performance for those who do really outstanding work. A good argument can be made that large companies benefit from the work and direction of their executives. That type performance should be rewarded, but there should be reasonable limits placed on the amounts paid. We can't expect workers at a company to barely get by on their salaries when big bosses at their companies are receiving unreasonably large

compensation packages. There must be an element of fairness involved, and I believe the disclosure rules could help bring that about.

Source: Houston Chronicle

THE NUMBERS OF STOCK FRAUD LAWSUITS ARE DOWN

With all of the corporate fraud and other wrongdoing being reported on an all too frequent basis, there is some good news to report in one area of concern. Shareholder class action lawsuits alleging securities fraud declined in 2005, according to a report released last month. The number of securities fraud class actions filed in 2005 fell to 176, a 17% decline compared with 2004, according to the report by the Stanford Law School Securities Class Action Clearinghouse and Cornerstone Research. The 2005 filing rate was about 10% below the historic average of 195 lawsuits a year from 1996 (when the annual study began) through 2004.

The reduction of lawsuits likely resulted from two major factors: first, the sharp stock price declines of 2000 and 2001 are now far enough in the past that we're no longer experiencing the echoes of those declines; and next, there's the possibility that improved corporate governance in the wake of the massive corporate frauds, and especially those involving Enron and WorldCom, is causing a reduction in the number of fraud lawsuits filed. But, it's much too soon to draw any real conclusions about the effect of any improved corporate governance, much of it mandated by the Sarbanes-Oxley Act. There simply hasn't been enough time to get a good read on the effect of this Act. The fact that the overall stock market was less volatile in 2005 also played a role and helped moderate shareholder suits.

According to the report, the 2005 lawsuits tended to focus more on allegations of false forward-looking statements and misrepresentations in

finance reporting than had been the case in the past. Previously, litigation against technology and communications companies were the major source of class action securities fraud. The report indicates that traditional older-line firms such as consumer noncyclicals and pharmaceuticals are now accounting for a larger percentage of the action than before. You can read the full report at securities.stanford.edu.

Source: San Francisco Chronicle

EX-STOCKBROKER TO PAY \$153 MILLION

Former Las Vegas stockbroker Daniel Calugar has agreed to pay \$153 million to settle charges he illegally traded mutual funds. This is the largest penalty imposed on an individual by US regulators in the three-year probe of the fund industry. Calugar, former head of Security Brokerage Inc., will surrender \$103 million in gains and be fined \$50 million. He previously paid \$72 million to end a civil class action suit. Calugar earned \$175 million from fraudulent trading, more than any other investor charged by regulators, according to civil charges filed by the SEC in 2003. He cheated other fund shareholders by buying and selling fund shares after the 4 p.m. market close in New York, which is illegal, and making rapid trades, a practice most companies said they prohibited. Calugar bought and sold funds managed by Alliance Capital Management Holding LP, MFS Investment Management, Franklin Resources Inc., and Bank of America Corp.'s Columbia Management Group. Each company has settled trading cases with regulators. It should be noted that the government has received more than \$3.9 billion in penalties as a result of the probe.

The proposed deal with Calugar must be approved by a U.S. District Judge to become effective. Calugar will be permanently barred from any association with a securities brokerage. Late trading

and market timing practices seek to profit from the fact that mutual funds are valued once a day, while the securities they own trade more often. Orders submitted after 4 p.m., New York time, are executed at the next day's price to prevent fund buyers from profiting from potentially market-moving events after the close. Market timing involves buying a fund's shares and then quickly selling them, which can raise a fund's transaction costs and reduce gains for long-term holders.

According to the SEC, Calugar was the biggest market timer at New York-based Alliance. His relationship with the company began in April 2001, when the firm started to allow him to make frequent trades in its mutual funds in exchange for keeping "sticky assets" in its hedge funds. About \$64 million of his profit came from rapid trades in the company's technology funds. Calugar made a "sticky asset" offer to MFS of Boston and was rebuffed, according to the SEC. Still, Calugar was able to market time the company's funds.

Calugar started trading with Franklin in 2001, in an arrangement contingent on Calugar's investing in a new hedge fund. The SEC and New York Attorney General Spitzer accused Boston-based Columbia of permitting nine investors, including Calugar, to make \$2.5 billion in rapid trades between 1998 and 2003. Alliance settled for \$600 million in fines and foregone management fees in December 2003. MFS agreed to \$351 million in fines and lost fees in February 2004. Bank of America paid a total of \$675 million over claims including the trades by Calugar.

Source: Bloomberg News

VI. CAMPAIGN FINANCE REFORM

THE TIME FOR CONGRESS TO ACT IS NOW

If the unraveling scandal involving Jack Abramoff and his political buddies—outlining the massive corruption being unraveled in Washington—doesn't bring about some real campaign finance reform, nothing ever will. I really believe that the public is finally ready to demand real action and not just news releases from members of Congress on this issue. In my opinion, anybody who refuses to back campaign finance reform now should not be returned to Congress. The time to act is now, before the politicians involved find a way to shift the public's attention from the scandal to some other manufactured crisis. We must clean up the fraud and corruption that have become a way of life in our nation's capitol. It was interesting to see the members of Congress—both Republicans and Democrats—lining up to say how they were going to reform the way lobbyists operate. It will be even more interesting if some strong legislation is passed that will clean up the mess. President Bush should make this reform his top priority and force Congress to act. This is his last chance to regain some of his lost popularity.

PHARMACEUTICAL COMPANIES SPEND BIG BUCKS

Over the past several years the pharmaceutical industry has maintained a virtual stranglehold over the federal government and specifically over the FDA, the agency that has the duty to regulate the drug companies. The industry has done this by donating tremendously large sums of money to politicians and lobbyists who represent their interests. On the lobbying expenditures alone, it was reported that from 1998—2004 the

pharmaceutical industry spent \$673,701,988 for lobbying activity. During 2004, the amount totaled \$123,298,552. If you question these numbers, they can be verified by going to the Senate Office of Public Records and checking filings there. The last updated figures will be in June 2005. When I check to see what the industry had spend, I must confess I was shocked. It is unbelievable that corporations could spend this kind of money with very little oversight or control by the federal government. The following companies and organizations, ranked according to the amounts spent, are the five highest spenders and they don't out-spend the rest on the list by very much:

Pharmaceutical Research & Manufactures of America	\$72,720,000
Pfizer Inc.	\$43,522,720
Merck & Co.	\$40,710,294
Eli Lilly and Co.	\$36,510,000
GlaxoSmithKline	\$32,427,000

You can get a great deal of very interesting information from the Center for Public Integrity. For example you will learn that corporate lobbyists spend nearly \$13 billion since 1998 to influence members of Congress and federal officials on legislation and regulation. The group's website is www.publicintegrity.org

SUPREME COURT DODGES CAMPAIGN FINANCE ISSUE

The U.S. Supreme Court had a chance to give the county some direction on campaign finance reform, but unfortunately the justices failed to do so. Instead, the High Court wants a lower court to take a new look at a challenge to federal restrictions on political advertisements. That was the effect of the

court's January 23rd ruling. The High Court, by its action, will delay a major ruling on the constitutionality of ad limits until after this year's elections. Justices could have used the case, brought by an anti-abortion group, to spell out when so-called grass-roots ads are allowed at election time. Without dealing with that issue, the court overturned a decision that barred Wisconsin Right to Life from broadcasting ads that specifically mentioned Senator Russ Feingold, (D-WI), by name during his 2004 re-election campaign. Interestingly, Senator Feingold co-authored the campaign finance law with Senator John McCain, (R-AZ).

The justices said that the Supreme Court's 2003 ruling upholding a federal campaign finance law left the door open for future challenges on the issue of free-speech. However, the Court may well have taken the first step toward undermining the 2003 ruling without overruling it. At least that's the opinion of Richard Hasen, an election law expert at Loyola Law School as told to the Associated Press. The case now returns to a three-judge federal panel in Washington. I had hoped that the Court would have dealt with the free speech issue. Wisconsin Right to Life had challenged the part of the 2002 campaign finance law that bans the use of corporate or union money for ads that identify federal candidates two months before a general election. The commercials urged people to call the two Wisconsin senators and ask them to oppose Senate filibustering of President Bush's judicial selections. New Chief Justice John Roberts announced the unanimous decision, which was not signed.

Source: Associated Press

NEED TO ACT ON THE STATE LEVEL

States, including my home state of Alabama, should do their part in cleaning up the political process in this country. Both campaign finance reform

and lobby reform legislation should be passed in every state legislative body this year. Reform in each area is badly needed and the reform effort must be a serious one. If the states would take action, I believe we could reduce the cost of government drastically and at the same time improve the delivery of needed services to the public. Alabama should take the lead and be an example for other states to follow. We have very weak laws relating to political campaigns and to lobbyists in Alabama. We actually have a **Fourth Branch** of government in Alabama—the group of powerful corporate lobbyists. When you consider that we have over 500 registered lobbyists in Alabama—with very few representing consumer interests—it tells the story of how government operates. We need **reform** of the system and we need it now. In my opinion, **reform** should be a major political issue in Alabama this year. If you agree, contact the Governor, Lt. Governor, Speaker of the House and your local Senators and House members and urge them to get involved in this fight.

VII. CONGRESSIONAL UPDATE

CONGRESS COULD HAVE PREVENTED THE ABRAMOFF SCANDAL

The influence-peddling scandal of Jack Abramoff, who is now not only a disgraced lobbyist but an admitted felon, has cast a pall over Capitol Hill and brought the integrity of the federal government into question. Unfortunately, corruption by lobbyists and lawmakers doesn't begin or end with Abramoff. It's a systemic problem and one that is most serious. Some say that lobbying today is essentially legalized bribery. Abramoff was an aberration only to the degree to which he engaged

in outright bribery and the number of means he employed. Several lobbying reform bills have been introduced in Congress. Senator Russ Feingold (D-WI) and Representative Marty Meehan (D-MA) have written separate measures that would enhance much-needed lobbying disclosure and regulate the conduct of lobbyists. Senator John McCain (R-AZ) and Representative Christopher Shays (R-CT) have introduced similar measures that focus on enhancing disclosure more than regulating the behavior of lobbyists.

Congress needs to take the necessary action to change the system in Washington, not only to prevent an Abramoff-type scandal but to change the fundamental nature of how our federal government operates. Public Citizen has prepared a detailed analysis of the bills referred to above showing that taken together, they could have had a significant impact on preventing many of Abramoff's most egregious abuses. But they also clearly don't go far enough in fundamentally changing the system. There are five key requirements to accomplish that goal, which these bills meet to varying degrees. Those are:

- Enact public financing of elections to remove special interest money from the system. Barring that, ban lobbyists from contributing to those whom they lobby, bundling campaign contributions from friends and colleagues, and organizing fundraising events.
- Make it harder for public officials and staff to pass through the revolving door—either from government service to the private sector or vice versa.
- Ban all privately funded travel for lawmakers, staff and federal officials, whether lobbyists attend the events or not.
- Enact an iron-clad ban on all gifts from lobbyists to lawmakers.

- Establish an independent ethics watchdog in Congress with significant powers that will not be stymied by partisanship and that has the resources to enforce the laws.

The American people deserve a federal government that is responsible to their needs and one that is free—to the extent possible—of the corrupting influence of the Jack Abramoff's of this world. To accomplish that needed reform, Congress must act promptly and with unwavering conviction. It's time to clean up the fraud and corruption that the Abramoff scandal has put into national focus. It's not asking too much of our elected officials to get the job done now!

Fortunately, Congress appears to have finally awakened to the corruption that festers under the influence-peddling system in Washington. The legislative proposals offered so far are good first steps, but much more needs to be done. There is a need to work toward strengthening the pending reform bills as they go through the legislative process continues. A coalition of seven national reform groups, at a press conference on January 23rd, released six benchmarks for lobbying reform that they will use to judge the merits of the current proposals being considered by Congress in the next few months. The groups are Public Citizen, Common Cause, Democracy 21, Public Campaign, Campaign Legal Center, U.S. PIRG and League of Women Voters.

The roots of the disease that affects Washington lie in the way election campaigns are financed, largely with special-interest money rather than through modest citizen contributions and public funds; the way lobbyists and lawmakers can discuss legislation and government contracts while on exclusive golf courses and in luxury resorts, beyond the watchful eye of the public and with the trips paid for the lobbying interests; and the way ensuring compliance with

ethics and lobbying laws has been entrusted to the very people least interested in their enforcement—the lawmakers themselves. It is like the fox guarding the hen house and we all know that's not good for the chickens as a general rule.

The proposals referred to earlier offer some significant changes in ethics and lobbying laws, but also have shortcomings. However, they can be made stronger and that's what needs to happen. The six benchmarks for lobbying reform that the national watchdog organizations urge Congress to use when developing bipartisan legislation are:

- **Break the nexus between lobbyists, money and lawmakers:** By capping contributions to candidates from lobbyists and lobbying firm PACs at \$200 per election; prohibiting lobbyists and lobbying firms from soliciting, arranging or delivering contributions, and from serving as officials on candidate campaign committees and leadership PACs; and prohibiting lobbyists and their organizations from paying or arranging payments for events “honoring” members of Congress and political parties, and from contributing or arranging contributions to entities established or controlled by members of Congress, such as foundations.
- **Prohibit private interests from financing trips or subsidizing air travel for members of Congress and staff, executive branch officials, and federal judges.** Corporations and others should be prohibited from making privately-owned planes available for members to travel at the cost of a first class air ticket rather than the cost of a chartered plane.
- **Ban gifts to members of Congress and staff.** The gift ban should close the existing loophole in the gift rules that allow lobbyists and others to pay

for parties held to “honor” or “recognize” specific members, such as the lavish parties held at the national party conventions.

- **Oversee and enforce ethics rules and lobbying laws through an independent congressional Office of Public Integrity and increased penalties for violations.** The office would monitor and oversee financial disclosure and lobbying reports, advise members, staff and lobbyists on compliance with the rules; conduct investigations of non-frivolous allegations of ethics violations, present cases involving potential ethics violations; to congressional ethics committees for consideration and action; and refer potential lobbying law violations to the Justice Department for civil enforcement.
- **Slow the revolving door:** By prohibiting members of Congress and senior executive branch officials from making lobbying contacts or conducting lobbying activities for compensation for two years after leaving their positions.
- **Place sunshine on lobbying activities and strengthen financial disclosure reports:** By requiring establishment of a robust disclosure system on the Internet; ensuring that lobbying firms disclose grass-roots lobbying activities and the financial backers of stealth lobbying coalitions are also disclosed; and requiring lobbyists to file a list of the members' offices and the congressional committees they lobbied during the quarter.

The organizations also called for fixing the presidential public financing system in time for the 2008 elections, extending public financing to congressional races, replacing the Federal Election Commission with a real campaign finance enforcement agency, closing the loophole for 527 groups, and abolishing leadership PACs. A recent Washington

Post/ABC News poll reported that 90% of the American people believe it should be illegal for lobbyists to give members of Congress gifts, trips or other things of value. Two-thirds of the American people believe further that it should be illegal for lobbyists to make contributions to members and other federal candidates. A more detailed explanation of the six benchmarks for lobbying reform is available at each of the group's websites and at www.CleanUpWashington.org. I encourage all of our readers to get actively involved in this most important battle sitting on the sidelines simply won't get it. I am convinced that our government in Washington is worth saving and I sincerely believe most American citizens feel the same way!

Source: Public Citizen

THE UPCOMING ELECTIONS

In my opinion, members of Congress who are connected in any way to the current scandals will have a hard time getting reelected in November. I believe that anybody tied closely to the Abramoff scandal will be looking for other work. People in this country are sick and tired of sending men and women to Congress and then finding out that they are really controlled by the corporate lobbyists. In my opinion, votes and support for the new drug law will be an issue for several Congressmen to overcome. I predict a significant number of new faces in Congress and that won't be bad for America.

VIII. PRODUCT LIABILITY UPDATE

IIHS PRESIDENT TO RETIRE

Brian O'Neill, president of the Insurance Institute for Highway Safety (IIHS), will retire at the end of the year. O'Neill,

who has served as IIHS president for the past 20 years, has been an extremely hard-working and most effective spokesman for auto safety. Under his leadership, there have been significant improvements. The effective work of IIHS has forced both the National Highway Transportation Safety Administration (NHTSA) and the automobile industry to place safety at a higher level. In my opinion, the pressure applied to the industry by IIHS has been responsible for a number of significant changes in the way the industry deals with safety concerns. The new president will be Adrian Lund, who now serves as COO of the Institute. I hope there won't be any slow-down or change in direction by the IIHS. We certainly wish Mr. O'Neill the very best and sincerely thank him for his dedication and hard work.

LAWSUIT STEMMING FROM LIMOUSINE FIRE SETTLED

A lawsuit, filed after a Lincoln Town Car limousine, made by Ford Motor Co., burst into flames in a rear-end collision, killing the wife of a former NASCAR crew chief and her two sisters, has been settled. The safety of the fuel-tank system in Lincoln Town Car limousines, manufactured by Ford, was at issue in this case. The three young women, who were riding in the rear compartment of the limousine, were stopped in traffic on a North Carolina highway back in 2003, after attending a concert, when this incident occurred. A pickup truck struck their vehicle in the rear. The three victims were burned to death from the flames that quickly engulfed the entire vehicle after the fuel tank was punctured. The driver was able to escape just before the flames reached him. He was unable to help the passengers.

This is not the first Lincoln Town Car to be involved in a fuel fed fire. A man and his wife were involved in a prior incident in Illinois, which resulted in the husband's death and left his wife,

who was badly burned, in a horribly disfigured condition. That case was tried and a jury turned a verdict against Ford in the amount of \$43.9 million. The Lincoln in that case, which had the same design, was struck in the rear by another vehicle and the Lincoln burst into flames. The case is now on appeal.

The fuel tank design and location in the present case involving a Lincoln Town Car limousine is the very same as that found in the Ford Crown Victoria and the Mercury Marquis. As you will recall, the Ford Crown Victoria was used by law enforcement agencies in the U.S. The police vehicles were involved in a tremendous number of fuel fed fires, where the vehicles were struck in the rear, and burst into flames, resulting in at least 12 known deaths. Ford fixed this problem—as previously reported—by adding a safety shield made of rubber and plastic, costing approximately \$100, to the police vehicles. Since that time, there has been no deaths to my knowledge involving these vehicles. All of the vehicles were designed with the fuel tank being placed behind the rear axle extending into the trunk where it was exposed to all sorts of sharp objects. It doesn't take a safety engineer to see that this is a terrible design and one that is extremely dangerous. If Ford could solve the problem with the police cars—why didn't they provide the same fix for privately owned vehicles which have the very same problem?

In addition to fixing the police car problem, Ford has now provided the safety shield for all Lincoln Town Cars at no cost to the owners. In fact, the safety shield is now standard equipment on these cars. However, Ford has refused to provide the same safety fix to the privately owned vehicles with the identical fuel tank design. You may be shocked to learn that with some 3 million cars manufactured by Ford on the road with this bad design, Ford has never even notified the owners that they could buy the

safety shields for about \$100 and have them installed. Since these Ford vehicles are on the road with the identical safety problems, you would expect Ford to be concerned enough to at least warn people who have these cars. No other American made vehicle has this fuel tank design. Interestingly, NHTSA, which is supposed to be making sure that automobiles are safe for use, refuses to act and says that this is a consumer issue. Why am I not surprised to hear NHTSA take this position?

Source: *Miami Herald*

FORD AND VOLVO NEVER DID SEEM LIKE A VERY GOOD MIX

When Ford Motor Co. and Volvo joined forces in 1999, I wondered whether Ford would upgrade its safety profile or whether Ford would actually drag Volvo down. It appears now that Ford is trying to more closely align itself in advertising with Volvo. A Ford advertising campaign launched in October touts the safety innovation achieved in part by “Ford and our Volvo division working together.” Unfortunately, that’s not what we see in the real world. For example, in product-liability trials, Ford tries to distance itself from safety-conscious Volvo. The best example comes from a Florida products liability case. A Florida court order barring the release of Volvo crash-test documents used in a case against Ford has become a hot topic. Ford asked to have the trial exhibits sealed last spring after it lost a case involving a Ford Explorer rollover accident.

It would be good from a safety perspective for Ford to adopt Volvo’s safety philosophy and use its programs. If tests and designs are good enough for Volvos, they should also be good enough for Ford to use on all Ford vehicles. Trial Lawyers for Public Justice, the law firm representing consumer group Public Citizen on the Florida documents issue, says Volvo crash-test videos and internal

documents made public during the Florida trial showed Ford knew firsthand that stronger roofs can prevent injuries and deaths in rollovers. It is well known in safety circles that Ford and most other carmakers don’t do crash tests of moving vehicles to design cars and trucks — despite an advertisement shown in court suggesting Volvo did that to design the XC90. If Volvo, a wholly owned subsidiary of Ford, can perform these kinds of tests, why doesn’t Ford?

Source: Associated Press

CHILDREN AND POWER WINDOWS

Kids and Cars, the child-safety advocacy group, is pointing to the recent death of a Colorado child as another example of why automakers should change the way they design and build power windows. I have touched on this safety issue previously, as far back as 2004, but unfortunately the problem is still with us. The 3-year-old Colorado Springs girl was choked to death when her head was caught in a car’s power window. She died a tragic and totally preventable death.

Kids and Cars lobbied Congress and had legislation passed that will force the automobile industry to install a new kind of switch in car doors. The switch is designed to make it more difficult for children to accidentally activate power windows. The group also wants sensors in power windows that would stop the windows from rising when they hit an obstruction, like a child’s head or neck. Congress recently passed legislation requiring the safer switches, but the bill did not include a hard deadline for automakers to comply. The child’s death in Colorado comes five months after Congress passed the new requirements for automakers regarding electric windows. Provisions in the 2005 transportation bill mandate lever switches. Janette Fennell of Kids and Cars, who launched a national campaign against

rocker and toggle switches in 2003, says there is still no date-certain when this will go into effect. That is inexcusable.

Ms. Fennell said lever switches and auto-reverse mechanisms—in which closing windows stop and retract on contact with hard objects—are standard in Europe and Japan. While the top U.S. automakers include these safety features in cars bound for Europe, they typically are not options in domestic models. That shouldn’t be tolerated. Kids and Cars estimates that power-accessory strangulation accounted for 3% of the 700 nontraffic automobile fatalities involving children 15 and younger in the U.S. from 2000 to 2004. Congress should not have to make NHTSA implement the provisions of the Act, but it appears that they may be forced to do so. We can’t afford to let things drag out any longer.

REPLACEMENT PARTS FOR RECALL OF TRUCKS AND SUVs SHOULD BE READY

Ford Motor Co. has promised that replacement parts used in its recall of 3.8 million pickup trucks and sport utility vehicles will be available this month. Apparently, a lengthy delay was caused because of production problems. In September, the automaker recalled 1994-2002 model-year vehicles amid complaints of engine fires linked to the cruise control switch system. The recall, the fifth-largest in U.S. history, covered the F-150 pickup, Ford Expedition, Lincoln Navigator, and Ford Bronco. Ford’s investigation found that brake fluid could leak through the cruise control’s deactivation switch into the system’s electrical components, which could cause corrosion. The corrosion could cause a buildup of electrical current which could cause overheating and a fire.

Ford dealers were told to install a fused wiring harness to act as a circuit breaker in the system. The harness would cut off electrical current to the

switch if the current increases. Ford told the National Highway Traffic Safety Administration (NHTSA) in early September that the replacement parts were expected to be available in mid-October. The supplier and Ford apparently ran into delays producing the wiring harnesses. Ford now says it will notify customers the first week of this month that they'll be able to have the new part put in their vehicles. As an interim step, Ford said "owners could have their speed control system disconnected until the part becomes available."

As we all know, the Ford F-series truck has been the best-selling full-size pickup for nearly three decades. NHTSA has received hundreds of complaints of engine fires linked to the cruise control system. As previously reported there have been allegations of at least three deaths cited in news reports, and there have been a number of lawsuits filed. A delay of over four months seems a long time to wait for a solution to what appears to be a most serious safety problem. I hope the problem is close to a solution.

Source: Associated Press

AIA BACKS SAFETY DESIGN IMPROVEMENTS OF SEAT AND HEAD RESTRAINTS IN SUV'S

The American Insurance Association (AIA) is backing recommendations from the Insurance Institute for Highway Safety (IIHS) to improve the safety and design of seat and head restraints in SUVs. Neck sprains and strains are the most frequently reported injuries in insurance claims in the U.S. These injuries are said to account for more than one-half of all auto crash injury claims. The IIHS's study shows that effective head restraints reduce the rearward motion of an occupant's head in a rear-end crash and decrease the likelihood of sustaining a whiplash injury.

Whiplash and whiplash-associated disorders describe a range of neck injuries

related to sudden distortions of the neck that commonly occur in rear-end crashes. The most common symptom reported by whiplash victims is pain resulting from mild muscle strain or minor tearing of soft tissue. Other injuries include nerve damage, disc damage, and in the most severe cases ruptures of ligaments in the neck and fractures of the cervical vertebrae. Whiplash injuries can be sustained in any type of crash but occur most often in rear-end collisions. In our practice we find that juries are not overly sympathetic to clients who suffer these injuries. In fact, the jurors are highly suspect of claims of this sort. It requires a great deal of medical proof to convince a jury that the injuries are real. In any event, the injuries need to be avoided.

IIHS's study clearly shows that head restraints are an essential safety feature and that many of these soft tissue injuries are easily and inexpensively preventable. Just as airbags and seat belts have helped to prevent life-threatening injuries and fatalities, good headrests can prevent these other soft tissue injuries. The automobile manufacturers should get on with the important work of improving the design of seat and head restraints in SUVs, and all other motor vehicles, to help prevent whiplash injuries. It's certainly not asking too much of them.

Source: Insurance Journal

MANY SUVs AND PICKUPS FAIL TO PROTECT NECK

Head restraints in several sport utility vehicles and pickup trucks did a poor job of protecting test dummies from neck injuries in a simulated rear crash at 20 mph. Only six of the 44 SUVs and none of the 15 pickups tested earned top scores of "good" for their seat and head restraints in tests conducted by the Insurance Institute for Highway Safety (IIHS). Automakers say their vehi-

cles are safe and meet federal standards. Some of the companies take issue with the test, contending that variations in the crash could produce different ratings for the same vehicle. The six 2006 SUVs receiving the top score were the Ford Freestyle, Honda Pilot, Jeep Grand Cherokee, Land Rover LR3, Subaru Forester, and the Volvo XC90.

The IIHS gave "poor" ratings to the Chevrolet TrailBlazer, Ford Explorer, and Toyota 4Runner (all SUVs), as well as the Chevrolet Silverado pickup truck. Some seats in Ford F-150 and Dodge Dakota pickups also rated "poor." All the others earned "acceptable" or "marginal" ratings. Despite their rugged images, Adrian Lund, a top official with the IIHS, said:

The tests show seats and head restraints in many models wouldn't do a good job of protecting most people in a typical rear impact in everyday commuter traffic. The tests were designed to see if seats help the torso and head move together in a crash, which helps prevent whiplash injuries.

This is the first time the IIHS has carried out a dynamic test with SUVs and pickup trucks. The test was carried out in two stages. First, the seats were measured to determine the head restraints' geometry and to determine the preconditions for protecting the head of a person of normal height. Only seats with good or acceptable head restraint geometry went on to the second stage, the dynamic crash test. Here, a moving platform was used to simulate a situation where a car standing still was hit from behind by a vehicle of the same weight driving at 20 mph. The test method and the evaluation criteria have been developed within the framework of broad international cooperation between experts in preventive whiplash injuries (IIWPG — International Insurance Whiplash Prevention Group).

Given that only 6 of the 44 vehicles tested proved to offer effective protection against whiplash injuries, it's quite obvious that there is needed improvement. The overall assessment includes both the seats' measured geometry and the results of the dynamic test. The IIHS emphasizes that effective protection against whiplash injuries is an important factor for reducing both human suffering and the cost of rehabilitation. Collisions from behind are very common, and neck injuries are the most common type of serious injury arising from car accidents. The movement of the head and upper body must be synchronized. According to the IIHS, the key to effective protection is that the seat occupants' head and upper body should move in harmony during the collision sequence. The reason for whiplash injuries is usually that the head cannot keep up with the body as it jerks forward under the force of the impact. For this reason, the seat and head restraint must interact to support the head so that it accelerates together with the upper body. It is also important that the head restraint is sufficiently high and positioned close to the head. It also reduces the subsequent forward motion. More information about the test can be obtained from the IIHS website: www.iihs.org

STUDY SHOWS CHILDREN NO SAFER IN SUVs

Children are no safer riding in sport utility vehicles than in passenger cars, largely because the doubled risk of rollovers in SUVs cancels out the safety advantages of their greater size and weight, according to a recent study. Researchers said the findings from the study, published last month in the journal *Pediatrics*, dispel the bigger-equals-safer myth that has helped fuel the growing popularity of SUVs among families. SUV registrations climbed 250% in the United States between 1995 and 2002. Dr. Dennis Durbin, a pediatric

emergency physician who took part in the study, told the Associated Press: "We're not saying they're worse or that they're terrible vehicles. We're challenging the conventional wisdom that everyone assumed they were better."

The study was sponsored by Partners for Child Passenger Safety, a research project of Children's Hospital of Philadelphia and State Farm Insurance Co. The researchers looked at accidents involving nearly 4,000 children under age 16 between 2000 and 2003, and found child injury rates of about 1.7% in both cars and SUVs. The study, which was the first on SUVs and child safety, examined only 1998 or newer cars and SUVs with second-generation airbags.

On average, the SUVs weighed 1,300 pounds more than the cars studied. The study found that the extra weight of SUVs enhanced safety, reducing the risk of injury by more than a third. But that was offset by findings that SUVs were more than twice as likely as cars to roll over in crashes. Children in rollovers were three times more likely to be seriously injured than those in non-rollover accidents, according to the study. It had been assumed by a number of safety experts that heavier SUVs were safer than cars. This was the belief of the researchers when they launched the study a year ago. I hope SUV safety will improve because of legislation approved by Congress last year that requires the National Highway Transportation Safety Administration to develop standards for automakers to address SUV rollovers. It is critically important, that SUV makers solve the rollover problem. If that happens, SUVs could become much safer for children.

Source: Associated Press

SEAT FAILURES REPORTED IN HYUNDAIS

A state judge called off a trial that had been scheduled to begin recently and instead awarded a Washington State man \$8.1 million for injuries he suffered

in a 1997 crash. The judge found that Hyundai Motor Co. **deliberately** withheld documentation concerning other crashes in which front seats collapsed backward. Jesse Magana was riding in the front passenger seat of a rented 1996 Hyundai Accent when the driver swerved to avoid an oncoming truck and struck two trees. The force from the airbag apparently broke the passenger seat's reclining mechanism. As the car spun, Magana, who had been wearing a seat belt, was ejected out the back of the hatchback. As a result, he was badly injured and left paralyzed. A woman sitting in the back seat suffered a broken leg when the seat came crashing back on her.

Magana sued Hyundai for damages and made a request for Hyundai to turn over documentation of allegations of seat-back failings in Accents and other Hyundai models. The automaker responded by saying no such evidence existed - a position it consistently maintained until last fall. At that time, under court order, Hyundai finally began turning over documentation of nearly 50 complaints of seat-back failure. At that time, the trial judge made this statement:

A fair trial on the merits is not possible at this time, given the posture of this case. The failure to disclose in a timely manner was highly prejudicial to the entire process.

The case had been tried back in 2002, resulting in the jury awarding Magana \$8.1 million. Hyundai won on an appeal with the reversal based on improper testimony being allowed at trial. The case was sent back for a second trial. Before the second trial, the plaintiff's lawyers again asked for information on similar seat-back failings. Hyundai then provided evidence of two cases. One of the incidents predated the first trial in the Magana case. In November of last year, the trial judge granted the plaintiff's motion to compel discovery and

forced Hyundai to turn over all police reports, consumer complaints, legal complaints, expert testimony and other evidence relating to allegations of seat-back failure on all Hyundai vehicles. Since that order, the company has provided 40,000 pages of documentation - covering nearly 50 alleged cases of seat failure in '90s and 2000 model Hyundais, many of them Elantras and Accents. Contending that more cases existed that has not been included in Hyundai's response and that company officials had not been truthful in depositions, the plaintiff's lawyers moved for sanctions. In an oral ruling from the bench, the judge called Hyundai's behavior "egregious" and entered a default judgment against the company. Hyundai plans to appeal.

Source: Associated Press

MISSOURI COURT OVERTURNS \$80 MILLION GENERAL MOTORS VERDICT

A Missouri appeals court has overturned an \$80 million verdict against General Motors Corp. This is in a case arising out of a September 2000 drive-way accident that left the driver of an Oldsmobile in a **vegetative** state. On January 17th, the Missouri Court of Appeals for the Western District ordered a new trial, saying the circuit judge at the trial level allowed improper evidence that unduly prejudiced the jury. The appeals court also said the woman's husband didn't provide enough evidence to show he should receive punitive damages. The family of Constance Peters contended that her injury back in 2000, occurred when her 1993 Oldsmobile Cutlass Supreme suddenly sped backward out of her drive-way, striking a tree and landscaping timbers. It was contented—and I thought sufficiently proved—during a nine-day trial in 2002 that the car's cruise control was defective and malfunctioned when the vehicle raced backward with the then-60-year-old lady

behind the wheel. The crash fractured the lady's skull in seven places, and she lost one of her arms to amputation.

GM had contended that Ms. Peters mistakenly hit the accelerator instead of the brake pedal, which is always the defense in cases of this sort, and claimed that the Cutlass was not defective. Jurors awarded Peters \$20 million in compensatory damages, an additional \$10 million for her husband, and \$50 million in punitive damages against GM. In its decision, the appeals court said the trial judge unfairly prejudiced the jury by allowing seven people to testify about their own accidents involving sudden acceleration in GM vehicles and by admitting into evidence 139 complaints of sudden acceleration against GM. The appeals court said the plaintiff's lawyers didn't provide enough evidence to show that the incidents were **similar** to what happened in this accident. Normally, a trial judge is in the best position to determine whether a prior incident is similar to the incident giving arise to a suit.

Finally, the appellate court said the husband wasn't entitled to punitive damages from GM because there wasn't enough evidence showing GM **knew** the cruise control systems had a defect and failed to warn consumers about it. There was a dissenting opinion that said that jurors were not unfairly prejudiced. The dissenting judge favored sending the case back to the lower court for a new award phase.

Source: Associated Press

IX. MASS TORTS UPDATE

THE NEW ORLEANS TRIAL

By the time this issue is received we should be into the retrial of the Irvin case in a New Orleans federal court. We were required to select a jury from a

very small number of potential jurors. As you can imagine, it is virtually impossible to find jurors in New Orleans. We were greatly concerned that because of the very bad conditions still existing in New Orleans, finding enough people to make up the needed jury venire was going to be extremely difficult and that has proved to be true. But, we were ready to go to trial because we knew Judge Fallon wanted to move the case along. Our client and her family have been through a tough ordeal since the death of Dicky Irvin. They went through a very difficult trial in Houston and saw first hand how Merck operates. The family feels strongly about their case and they want a jury to hear first-hand how bad Merck truly was when it comes to the marketing of Vioxx. We learned a great deal in the first trial and believe that a favorable verdict for the Irvin family will be obtained this time. Hopefully, justice will prevail during this trial.

FOURTH VIOXX CASE IS UNDERWAY

The fourth Vioxx lawsuit against Merck & Co. is being tried in Texas. The family of Leonel Garza has sued Merck, blaming Vioxx for Garza's fatal heart attack in 2001. The trial started on January 24th, in a state court in Starr County. Mr. Garza had been given a one-week supply of Vioxx 25 mg samples for arm pain about one month before his death. In this case, Merck will attempt to continue to sell the myth it has created, which is that only Vioxx use for at least 18 months causes heart attacks. That is not true and Merck knows it. Nevertheless, Merck spokespersons continue to tell the media on almost a daily basis that only long-term use is a safety problem. If you haven't known about the upcoming trial, you would have wondered I suppose why Merck started bombarding the television channels in the area with ads telling folks how the company really cares about people.

The lawyers representing the Garza family say that Merck has tried to stall the case, originally set for trial on February 14, 2005, hiring state legislators, who are lawyers, to get continuances. In this case there have been two removals to federal court, both of which resulted in remands. It appears that the hiring of multiple Texas state representatives has been for the sole purpose of "stalling this trial." At least that's what Joe Escobedo Jr., who represents the Garza family, believes and has stated publicly. Texas has a rather weird law that says a lawyer who is a member of the Legislature can get an automatic continuance of a lawsuit if he or she becomes counsel of record for a party. This law is used by corporate defendants on a regular basis to avoid trials by hiring a legislator at a later date to join the defense team. It is usually done at the last minute and guarantees a continuance. I hope this case will result in a verdict against Merck which certainly appears to be justified.

VIOXX STATE COURT JUDGE SEES NEVER-ENDING DOCKET

To say that Superior Court Judge Carol Higbee, the judge who is overseeing the state court Vioxx lawsuits in New Jersey, has a tremendous case load is a gross understatement. As has been reported, Judge Higbee is the New Jersey judge assigned to thousands of cases brought in New Jersey state courts against Merck & Co. The New Jersey lawsuits, which numbered 4,333 at press time, blame the pharmaceutical company for heart attacks and strokes suffered by Vioxx users. Merck still says it plans to fight these lawsuits one-by-one, and that it has no plans for a global settlement. The next case to be tried in New Jersey will start on the 27th of this month.

DEATHS WITHHELD FROM FEDERAL REGULATORS DURING STUDY OF HEART DRUG

It now appears that the Scios unit of Johnson & Johnson failed to tell federal regulators about the deaths of two patients in a clinical trial of its heart failure medication Natrecor. The two deaths were also omitted from a report of the trial published in the October issue of *The Journal of Emergency Medicine*. That article reported 6 deaths within 30 days among 237 patients given Natrecor or other treatment in hospital emergency rooms in 2001 and early 2002. Five of those deaths were of people who had taken Natrecor. The two additional deaths raised the total to seven among Natrecor patients. This failure seems to follow a pattern of such conduct by drug manufacturers.

Dr. Franklin Peacock of the Cleveland Clinic was the principal investigator in the study. Neither Dr. Peacock or the company have disclosed how the deaths had been omitted from the results. A final analysis of the results is said to be underway and will be submitted to the Food and Drug Administration (FDA), according to a Scios spokesman. Natrecor was approved by the FDA in August 2001 for use in acutely-ill heart-failure patients. It quickly became a big seller for Scios. Sales were helped by use of the product in less severely ill patients, known as off-label use, sometimes in outpatient clinics in cardiologists' offices. Sales reached \$400 million in 2004. Questions arose about the drug's safety that year.

The Justice Department is also investigating whether Scios promoted the drug for unapproved uses. According to the New York Times, Medicare and Medicaid will no longer cover the drug's outpatient use. This was a major blow. Scios has consistently defended Natrecor's safety. The failure of researchers to accurately collect and report the death data in the Natrecor trial comes amid ques-

tions elsewhere in the medical industry about the accuracy of studies of drugs and medical devices. Dr. Arthur Caplan, a medical ethicist at the University of Pennsylvania, observed:

When you're talking deaths in clinical trials, mistakes are not an option. It's just an area where we have to have absolute, foolproof reporting in place.

The average person doesn't realize how significant the marketing of drugs to the medical community is. Doctors rely on the medical journals to keep them informed on drugs that are coming on the market. They expect and are entitled to good and reliable information. Last month, Merck was accused of misrepresenting the results of a clinical trial of the painkiller Vioxx to minimize its heart risks. That study was published in November 2000, almost four years before Merck stopped selling the drug because of serious safety concerns. As we reported previously, the Vioxx accusation came from Dr. Gregory D. Curfman, the editor of *The New England Journal of Medicine*, who said the authors of a Vioxx study had deleted data about strokes, heart attacks, and other vascular problems suffered by some patients. As expected, Merck has denied mishandling the data submitted for publication. We expect to explore that matter further in our next Vioxx trial, which is a retrial of the Irvin case in New Orleans.

While the findings of the Natrecor study were presented earlier at medical conferences, it was not until October that the complete results were published in *The Journal of Emergency Medicine*. At that time, Dr. Peacock and colleagues (one of whom was a Scios executive) reported that five Natrecor patients had died within 30 days. The deaths included those from causes clearly not related to Natrecor use, including an accident, the study reported. In the meantime, Scios had

undertaken a retrospective review of the study to look at mortality in patients up to 180 days after treatment. It appears that was when the two additional deaths were discovered. In any event, the FDA needs to take strong action to prevent more problems such as this one from occurring in the future. Drug companies must be required to be totally honest in all of their dealings relating to drugs they put on the market.

Source: *New York Times*

GUIDANT SAFETY PROBLEMS CONTINUE

Unfortunately, the Guidant Corp. saga continues and that's bad news from a safety perspective. The Food and Drug Administration warned the medical device maker in late December that the company has failed to resolve all of the problems the agency found earlier this year during an inspection at the company's cardiac unit in St. Paul, Minnesota. The company received the FDA's warning letter on December 23rd—some three months after Guidant replied to a report by the agency on manufacturing and record-keeping problems it found during an August inspection of its St. Paul operations. The FDA's letter states that it will not approve for sale certain Guidant devices made at its St. Paul operations until the problems are corrected. It also said it will not approve new requests for certificates that are needed before Guidant can market overseas devices made at the plant.

The FDA's four-page letter states that the "significant violations" of the federal government's good manufacturing practice requirements found at the St. Paul facility "may be symptomatic of serious underlying problems in your firm's manufacturing and quality assurance systems." The company said it has completed 90% of the commitments it made to the FDA in its initial response to the agency's concerns. It also said it was on schedule to complete its remaining

commitments and is giving the FDA monthly progress updates. Guidant had 15 days from the date of the warning letter, sent December 22nd, to update the agency on the corrective actions it has taken to "address the deviations" noted in the warning letter.

Since June, Guidant has recalled or issued warnings about 88,000 heart defibrillators and almost 200,000 pacemakers because of reported malfunctions. The company is under investigation by federal and state officials and faces lawsuits over its recalls. The company now says that projected failure rates have nearly doubled in light of new evidence relating to its pacemakers. Doctors reported that at least 145 of 16,000 patients have experienced failure from a faulty hermetic seal. They projected there may be another 54,000 units that have defective parts. Guidant is among three U.S. companies that dominate the global market for implantable heart defibrillators and pacemakers: industry leader Medtronic Inc. of Fridley, Minnesota; Guidant; and St. Jude Medical Inc. of Little Canada, Minnesota.

If the above problems weren't enough, The New York Times and two Texas plaintiffs have now received access to documents that apparently show Guidant Corp. continued selling some models of its heart defibrillators after knowing the devices could malfunction. The petition to urge the release of documents was filed as part of a lawsuit by two Corpus Christi residents against Guidant. The lawsuit accuses the maker of heart defibrillators of knowingly selling a defective product. A State District Court Judge granted the motion to release the documents. The handwritten notes from Fred McCoy, president of Guidant's Cardiac Rhythm Management division, are said to show a **decision** was made to sell off **defective inventory**. The notes show McCoy "evaluating and considering what should we do" after learning of the

problems. It seems obvious that safety was totally disregarded and that's bad news. The case, which was scheduled to go to trial this month, is the first arising from Guidant's recalled defibrillators.

Even with all of its safety problems, Guidant is going to be purchased by Boston Scientific Corp. for \$27.2 billion in cash and stock. This tells us how good the cardiac rhythm management business—a \$10.3 billion market—really is. The transaction must be approved by the federal regulators and the shareholders of both companies before it's a done deal.

Sources: *New York Times* and *Associated Press*

WIDOW OF STATE TROOPER SUES DRUG COMPANIES

The widow of a Oklahoma state trooper, killed by a methamphetamine addict, has sued companies that make and/or sell pseudoephedrine. As you may know, pseudoephedrine, a main ingredient in a number of decongestant medications, is used in illegal methamphetamine labs. The wrongful-death suit claims that drug companies and suppliers—including Pfizer, Wal-Mart, Walgreen, Dollar General and United Supermarkets—knew methamphetamine addicts were buying the drug to get high and not to treat a cold. It is also alleged that makers of the drugs knew how to make the pseudoephedrine tablets without allowing drug addicts to extract the ingredients needed to make methamphetamine. Ricky Ray Malone, who was convicted of killing the state trooper, was high on methamphetamine during the December 2003 shooting. A mobile methamphetamine lab was found in Malone's car.

UTAH FAMILIES SUE PAIN-PATCH MAKERS

Surviving family members of three Utah citizens who died after using a pain medication skin patch have filed a lawsuit against the manufacturers of the

patch. The families contend that the patches leaked and caused drug poisoning. Their lawsuits bring to five the number of actions filed in U.S. District Court in Utah over the use of the patch. Autopsy reports said the deaths resulted from drug poisoning after the pain patches made by Janssen Pharmaceutica were used. The company, located in New Jersey, manufactures, markets, and distributes the patch. Alza Corp., a patch distributor, is also a defendant. The families filed independent lawsuits in state courts, but they were removed to Utah's U.S. District Court at the request of the companies.

The latest lawsuits claim the three persons were prescribed the patch for different medical conditions, and all were found dead in their homes within one or two days of receiving them. The Duragesic patch is designed to deliver the pain-killer fentanyl in controlled doses. The lawsuits claim wrongful death, including product liability and negligence, for failing to research and design the patch. The lawsuits also allege the companies misrepresented the safety of the patch for human use. The families are seeking punitive damages and damages to cover medical and funeral costs. In July, the U.S. Food and Drug Administration issued a public health advisory warning that use of the patch could cause death from overdose.

Source: Salt Lake Tribune

X. BUSINESS LITIGATION

TENET SETTLES HOLDER CLASS ACTIONS FOR \$215 MILLION

Tenet Healthcare Corp., the large hospital chain, has settled class action lawsuits filed by shareholders for \$215 million. The agreement must receive court approval to become final. If

approved, it would settle lawsuits pending in the U.S. District Court in Los Angeles and California Superior Court in Santa Barbara. Insurance will cover \$75 million of the \$215 million payout. Two former executives will pay \$1.5 million out of their pockets. The lawsuits arose amid chaos at the company beginning in 2002, including probes into overbilling to Medicare. The settlement covers a consolidated series of lawsuits filed against the company on behalf of shareholders who bought Tenet securities between January 11, 2000, and November 7, 2002. The suits alleged that Tenet made false and misleading statements about Medicare payments and other issues. Tenet also is under investigation by the U.S. Securities and Exchange Commission, which says the company misled investors about the Medicare probe and other problems.

Many knowledgeable observers believe that the Medicare probe is still the main problem for the company. In fact, the securities litigation may turn out to be a relatively small item in the scheme of things. As reported, Tenet also has problems relating to Hurricane Katrina. Six of Tenet's hospitals were destroyed in that storm and the flooding. Even excluding the hurricanes losses, lower patient volume and very high bad debt led to a third-quarter operating loss of \$385 million. Tenet still faces criminal charges involving its physician recruiting practices in San Diego. On another front, the company has settled the bulk of lawsuits over doctors whom authorities said conducted unnecessary heart surgeries at one of its Northern California hospitals. The settlement followed a three-year criminal probe, but the SEC investigation is ongoing.

As you may recall from a previous issue, Tenet is also the object of a probe regarding physician recruitment. The U.S. Justice Department, the Securities and Exchange Commission, and the Department of Health and Human Ser-

VICES have been investigating charges of misconduct in billing and recruitment of doctors. Last year Tenet settled lawsuits brought by uninsured patients who claimed they were overcharged at the company's hospitals, setting aside \$30 million to resolve the suits.

Sources: Reuters News Service and Bloomberg News

CLASS ACTION LAWSUIT FILED AGAINST HOME DEPOT

A class action lawsuit filed in state court in Florida alleges that Home Depot automatically adds a 10% charge to all rental equipment to cover possible damage to tools without telling customers that the charge is optional. The suit seeks class action status for the estimated thousands of customers in Florida who rented equipment from Home Depot during the last five years. It claims that Home Depot is violating Florida's Deceptive and Unfair Trade Practices Act as well as Florida's Uniform Commercial Code, and that a class should be certified. The suit seeks both damages and an injunction forcing the Atlanta-based home improvement giant to stop the practice. Interestingly, the suit claims that Home Depot furthers its deception by listing the waiver as a tax. According to this suit, Home Depot had 1,061 tool rental centers throughout the United States as of 2004.

According to the complaint, the damage waiver covers liability for accidental damage to the rented equipment, but not losses or damages due to theft, burglary, misuse or abuse, theft by conversion, intentional damage, disappearance or any loss due to the customer's failure to care properly for the equipment. The latter category includes failure to use proper fuel, oil and lubricants and not exceeding the equipment's rated capacity. Another problem with Home Depot's waiver policy, the suit states, is that the company charges the fee on equipment that "is almost impossible to damage," such as

wrenches. It also describes the 10% fee as being “exorbitant.”

The suit states that Home Depot fails to give customers the written terms and conditions of the contract, which describes the damage waiver, until after they sign the contract. Consequently, the suit says, customers are not informed of the scope of the damage waiver prior to agreeing to rent the tool. It appears that Home Depot is not the only large retailer that charges a damage waiver fee on rental equipment. Lowe’s, one of its competitors, rents equipment through NationsRent, which charges a 14% damage waiver fee.

AMERICAN EXPRESS SETTLES CARDHOLDER SUIT

A settlement in the amount of \$75 million has been approved between American Express Co. and thousands of cardholders who contended in a class action lawsuit that they paid hidden transaction fees for charges made in foreign currencies. The settlement, approved by a U.S. District Judge, affects more than 833,000 cardholders who paid some form of transaction fee from March 28, 1997, through October 15, 2004. Settlement amounts could range from \$15 to millions of dollars. The lawsuit, initially filed in state court in August 2003 and then removed to federal court, claimed that American Express failed to adequately inform cardholders that they would be charged an adjustment of up to 2% for the conversion of charges made in foreign currencies to U.S. dollars. Instead, the fee was embedded in the transaction amount that showed up on cardholders’ bills, making it “invisible to consumers.”

Since the suit was filed, American Express has changed its notification practices to spell out the conversion fees more clearly. About 8.8 million notices were mailed out to American Express cardholders potentially affected by the settlement, with 833,751 filing

claims as of October 30th. For foreign charges made before February 1, 1999, the total payment will be \$15 per claim. Charges made after that date will be reimbursed based on the total conversion fees charged, according to the agreement.

BLOCKBUSTER TO PAY \$140,000 MORE OVER LATE FEES

Blockbuster has agreed to pay \$140,000 to settle a lawsuit brought by the state of New Jersey that said its “no late fees” program was misleading and incomplete. More than \$90,000 of the money will be refunded to about 75,000 customers who paid “video restocking fees,” while the remainder will pay for state investigative costs. Attorney General Peter Harvey made the announcement. Settlement terms require Blockbuster, the nation’s largest movie-rental chain, to ensure that customers are clearly notified of all terms and charges under the “no late fees” program.

The State of New Jersey filed the lawsuit in February. This came shortly after Blockbuster instituted the policy with signs touting “the end of late fees.” The fine print, however, said the company would charge consumers if they kept the movies too long, then charge a \$1.25 restocking fee if the movies were returned. In March, Blockbuster agreed to pay \$630,000 to 47 states that threatened to sue, and to make refunds to customers who were charged the purchase price of DVDs or videos that they returned more than seven days late. Recently, Blockbuster stores in several Southern states have resumed charging late fees because they can’t keep popular movies on their shelves.

Source: USA Today

XI. INSURANCE AND FINANCE UPDATE

THE INSURANCE INDUSTRY’S FAILED RESPONSE TO HURRICANE KATRINA

Americans for Insurance Reform (AIR) released a comprehensive report last month, documenting the insurance industry’s poor response to Hurricane Katrina. The report, entitled *The Insurance Industry’s Troubling Response To Hurricane Katrina*, details actual case studies of numerous Gulf Coast residents, revealing a significant pattern of callousness, unfairness, and generally inept performance by many companies. In some cases, insurers’ conduct worsened the suffering of policyholders, many of whom were left hungry and homeless by the hurricane.

One of the contributors to the report, Joanne Doroshov, AIR co-founder and Executive Director of the Center for Justice & Democracy, said:

This report shows that many policyholders who were exhausted, traumatized, and without food, water or a roof over their heads, looked to their insurance carriers to come to their aid as they struggled to survive. But what many found was not help at all, but rather resistance by insurance companies to pay them anything, leaving victims frustrated and angry, not to mention destitute.

The report also warns that the property/casualty insurance industry, which made huge profits in 2005 despite the hurricanes, appears to be using the disaster as an excuse to unfairly raise rates and flee certain areas, leaving policyholders in the lurch. AIR makes certain recommendations for insurance industry reform and improvements to the National Flood Insurance Program. The report also contains tips to help policyholders deal with insurance companies.

Report contributor and AIR co-founder J. Robert Hunter, who is Director of Insurance for the Consumer Federation of America, and former Federal Insurance Administrator and Texas Insurance Commissioner, observed:

It is vital that the states of Mississippi, Louisiana, Alabama and Texas take firm steps now to assure homeowners that insurance will be available and affordable as the next hurricane season approaches.

Among the measures called for are: a moratorium on cancellations and non-renewals of homeowners insurance policies to give states time to develop plans for insuring homes that could not get or keep private insurance; a freeze on home insurance prices; mitigation measures that prohibit or control construction in high risk zones; and market conduct examinations by states to determine if insurers have been engaging in unfair claims practices in violation of state law. The case studies contained in *The Insurance Industry's Troubling Response To Hurricane Katrina*, were gleaned from hundreds of calls that came into AIR's Katrina Insurance toll-free hotline, established on September 12, 2005. This unprecedented hotline allowed AIR to monitor complaints, refer them to government officials where appropriate, and keep records of hurricane-related insurance problems. Among the most common problems were:

- Companies attempting to avoid any liability under homeowners policies declaring all damage to be flood-related, which insurers said was not covered, even though this position was not supported factually or legally. As one hotline caller who was told this said, "I'm basically going to be hung out to dry by my insurance company."

- Incredibly slow response to policyholders, with two callers typifying the problem: "Our money is running out and our insurance companies can't tell us when or if any help is on the way," and, "I haven't paid premiums to two companies all these years to be starving, struggling, and homeless."
- Insurance carriers unreachable or simply refusing to respond at all. "I'm a 70-year-old woman, I need to pay rent at the place I'm living and I just don't have any money," said one caller who could not get any response from her carrier.
- Homes further damaged by Hurricane Rita when companies failed to send adjusters after Katrina, which would have allowed people to make repairs. "There wouldn't be half as much water damage if they had been able to get an adjuster out here in a reasonable amount of time," said one hotline caller.

AIR calls on Congress in the report to require the Federal Emergency Management Agency (FEMA) to obtain updated flood maps by January 2007, noting that use of outdated flood maps was directly responsible for much of the carnage and destruction. Other measures that AIR recommends include:

- Requiring that actuarial rates be charged for each property, without subsidies, and disclosed at the time of sale so that people buying unsafe structures have fair warning, and establishing a program for low-income residents to help cover insurance payments.
- Government spending on loss prevention measures.
- Requiring insurance companies writing property coverage to take all homeowners and small business property risks that meet national mitigation standards for disaster risk. All

risk coverage on new construction should be initially provided for five years on a policy purchased by the builder and sold along with the structure.

- Reasonable deductibles and limits should be standardized under policy terms set nationally.

Insurance should be a policyholder's road to recovery at times of personal crisis. After Katrina, many insurance companies have too often been more like stone walls, blocking the way for policyholders to recover. Many things went terribly wrong in the insurance industry's response to Katrina. If major changes aren't implemented, the same tragic stories could unnecessarily repeat themselves. AIR is a coalition of over 100 public interest organizations from around the country that seek stronger oversight over insurance industry practices. It is a project of the Center for Justice & Democracy. For more information and a copy of the report, see <http://insurance-reform.org>. (Full Report here: <http://www.insurance-reform.org/pr/KATRINAREPORT.pdf>)

AMERIQUEST SETTLEMENT AFFECTS ALABAMA CONSUMERS

Ameriquest Mortgage Co., the nation's largest home lender to people with bad credit, has settled the case brought by state Attorneys General and federal lending regulators for a total of \$325 million. The Orange, California-based firm, which has specialized in making high-cost home loans to people who do not qualify for less expensive mortgages, agreed to the settlement to resolve charges brought by a multi-state task force that has been investigating allegations that the company overcharged and defrauded consumers. Thousands of homeowners nationwide had alleged in lawsuits that they were financially damaged—in some cases losing their homes, being forced into

bankruptcy or seeing their credit destroyed—after they obtained Ameriquest loans they were unable to repay. As part of the agreement, the company will also change business practices at ACC Capital Holdings, the holding company for three retail subsidiaries, Ameriquest Mortgage Co., Town and Country Credit Corp., and AMC Mortgage Services Inc. Outside monitors will observe the company's operations to ensure that it operates in accordance with the agreement. In some cases, specific practices will be barred.

The Bush White House was watching this matter closely because billionaire Roland E. Arnall, Ameriquest's founder and principal shareholder, is President Bush's nominee to be ambassador to the Netherlands. Interestingly, Arnall has been the president's single largest campaign contributor since 2002. Of course, he has also been a prominent campaign contributor to many Democrats as well as other Republicans. Attorney General Troy King says the State of Alabama will receive about \$4.15 million from the settlement, which covers 49 states and the District of Columbia. Alabama consumers will receive Alabama's share of the settlement funds based on several factors which will determine specific amounts for individuals.

STATE FARM FACES CLASS ACTION LAWSUIT IN GULF COAST AREA

Homeowners in the Gulf Coast area have filed a class action lawsuit against State Farm Insurance Company. Plaintiffs in the suit allege that State Farm has denied payment of damages to their homes, even though the homeowners purchased the "all perils" homeowner insurance policies. The class action lawsuit was filed last month in U.S. District Court in Gulfport, Mississippi on behalf of homeowners in the area. A judge will decide whether class action

status should be granted.

The lawsuit contends that State Farm is obligated to fully cover the losses of everyone named in the suit who purchased the all perils policy. State Farm denied coverage under one of the plaintiff's homeowner's policy, citing an exclusion for water damage that includes tidal surge. But, it is contended that the policy is worded so that all damage is covered unless it would have occurred "only" as a result of the tidal surge. Wind damage is a covered peril, and because it contributed to the damage of the home it should be covered, the suit alleges. As reported last month, U.S. Senator Trent Lott (R-MS), is also among homeowners suing the company. His case is filed separately and is not in the class.

COURT GIVES APPROVAL TO PAY RECIPROCAL POLICYHOLDERS

The State Corporation Commission of Virginia (SCC) essentially acts like the Alabama Department of Insurance. The SCC last week approved payments totaling \$77,500,000.00 to policyholders of insurer Reciprocal of America. ROA is a Virginia-based insurer and reinsurer that is closely related to The Reciprocal Alliance, Doctors Insurance Reciprocal, and American National Lawyers' Insurance Reciprocal, the three companies our firm represents that are in receivership in the state of Tennessee.

The order by the SCC allowing distribution to ROA policyholders also leaves open the possibility that policyholders of the three companies we represent may be able to recover some of their losses. As you will recall, our firm represents the three Tennessee insurance companies in a lawsuit filed against General Reinsurance Company, Price-WaterhouseCoopers, and members of the Boards of Directors for fraudulently scheming to cause the collapse of our clients' through a reinsurance scam. The scam resulted in over \$700 million in

damages to policyholders of the Tennessee and Virginia Companies. Out of the \$700 million plus in total losses, ROA only has \$128 million in available assets.

The U.S. Attorney in Virginia has already indicted the former President and Executive Vice-President of ROA, Ken Patterson and Carolyn Hudgins. They entered guilty pleas and have been sentenced to 12 ? and 5 years in federal prison, respectively. At this time, they remain free pending their cooperation of the ongoing criminal investigation. The evidence seems to point towards an investigation of John William Crews, the former General Counsel to The Reciprocal Group and a founder of ROA. Crews' former law firm, Crews & Hancock, which is a Defendant in our case, netted more than \$63 million in legal fees for the work they supposedly did for ROA and affiliates. After the Virginia and Tennessee insurance companies were placed into receivership, the Crews & Hancock law firm disbanded.

CALIFORNIA FIRM SETTLES INSURANCE PROBE

An insurance industry consulting firm has agreed to pay \$2 million in restitution after taking payments from MetLife Inc., Prudential Financial Inc., and UnumProvident Corp. to steer customers to those companies. San Diego-based Universal Life Resources Inc. and its chief executive, Douglas Cox, were also accused of charging secret fees for "communications services," including printing informational materials, far above the going rate. The agreement resolves a complaint filed by New York Attorney General Eliot Spitzer's office and a citation filed by the state Insurance Department in November 2004. Spitzer's original lawsuit said Universal Life collected more than \$11.5 million last year in hidden payments. Under the agreement, Universal Life, which has brokered employee benefit plans and

insurance coverage on behalf of companies such as Safeway Inc., Intel Corp., Northrop Grumman Corp., and others, will adopt new fees and business practices to avoid conflicts of interest, Spitzer said.

General Spitzer has alleged that bid-rigging by insurance companies, along with special commissions aimed at steering customers to insurers in exchange for bonuses, is widespread. That can keep customers from receiving the best deal. He stated:

The agreement with ULR represents another milestone toward curtailing undisclosed contingent commissions in the insurance industry. Consumers of insurance products benefit when these conflicts are exposed and eliminated.

Universal Life also agreed to allow a monitor of its insurance business practices for five years. You will recall that the biggest settlement of Spitzer's insurance probes involved Marsh & McLennan Companies Inc. There, the world's largest insurance brokerage, in January of 2005, agreed to pay \$850 million in restitution to end an investigation into bid rigging and price fixing. That settlement became a model for other insurance company settlements.

Source: *Insurance Journal*

XII. PREDATORY LENDING

PAYDAY LOANS ARE STILL A BIG PROBLEM

As mentioned previously, the payday loan operations, which are spreading like kudzu around the country, are extremely bad for consumers. In fact, there are few businesses preying like blood-suckers on low-income citizens that in my opinion are any worse. On a scale of 1 to 10 (with 10 being the worst), I would rank the payday lenders

as a strong 10. I sincerely hope that the Alabama Legislature will take action during the current session to undo what it did concerning payday loans in the regular session last year. The Act that became law is very weak, allowing the industry to charge exorbitant interest rates, and to continue taking advantage of folks who need help and not harmful conduct. The payday loan industry is a multi-billion dollar industry and has become very powerful politically.

CAR TITLE LOANS ARE BAD NEWS

There is another form of predatory lending that is extremely bad for consumers, referred to as a "title loan." Cash-strapped consumers are being pushed into expensive, high-risk loans, using their automobiles as collateral. The Consumer Federation of America (CFA) says car title lenders charge consumers 300% annual interest in some states for small cash loans secured by the title to cars. These are cars owned free and clear of any type mortgage or lien. The loans are for a fraction of the car's value, but failure to pay in full at the end of the month can lead to late-night repossession by lenders holding a duplicate set of keys. Jean Ann Fox, director of consumer protection for Consumer Federation of America, says:

Title loans trap borrowers in perpetual debt through unaffordable balloon payments, high interest costs, and the threat of repossession. Title loans for up to half the value of the consumer's car cost ten times more than it would to get an auto loan to finance the purchase of the same car.

CFA said a survey of title lenders in eleven states and online found almost half of the states permit predatory title lending, either through weak authorizing laws or failure to close consumer loan loopholes. According to the survey, in California and South Carolina, lenders

only make loans that are large enough not to trigger rate caps. In Virginia, Iowa and Kansas, lenders claim their loans are open-ended to get around state limits for small loans. The industry is reportedly pushing for state laws to legalize title loans without rate caps or adequate protections. CFA's study, "Driven into Debt: CFA Car Title Loan Store and Online Survey," documents that lax state laws result in the most abusive loans. For example, according to CDA, Tennessee and Mississippi permit loans up to \$2,500 to be due in thirty days. Georgia permits title lenders to keep all the proceeds earned from selling a repossessed car. Online lenders are now entering the title loan market, claiming to use the lax regulatory environment in New Mexico or Delaware to market loans nationwide.

It is apparent that title loans are extremely expensive for borrowers. For some states, title loan stores charge a median 25% per month finance charge which translates to 300% annual interest, plus additional fees average \$25 per loan. CFA urges states to close loopholes being exploited by title lenders and to reject industry-backed model legislation to legitimize predatory title loans. States that fail to protect their consumers from one-sided title loans should repeal or reform their laws. Kentucky and Florida did this, and that's the good news. The bad news is that most states have failed to act.

Source: *CFA News*

XIII. PREMISES LIABILITY UPDATE

OVERHEAD POWER LINES & HEAVY EQUIPMENT CREATE SAFETY HAZARDS

Construction and farm workers using heavy equipment like cranes, augers, and liquid fertilizer sprayers are subject to serious injuries or even death from

accidental contact with overhead power lines. Typically operators use the heavy machinery to move loads on the job site. Unfortunately, the reach of the booms or extensions from the machines is long enough to bring overhead power lines into play. When a machine contacts an overhead power line, the body of the machine becomes energized. Anyone in contact with both the machine and the ground is subject to serious bodily injury and/or death. General safety rules with respect to operating machinery around power lines and power line clearance can prevent many of these unfortunate incidents. But, given the severity of the potential injuries, it is not wise to rely solely on human perception.

Typically, utility lines are not insulated. Given this fact, the National Electrical Safety Code (NESC) requires a minimum distance of 10 feet from power lines and 25 feet from transmission tower lines. In addition to NESC minimum clearance distance requirements, general safety rules suggest operators of heavy machinery be wary of the presence of overhead power lines so they can maintain the minimum clearance distance and avoid a contact. General safety rules also suggest using someone whose sole purpose is to ensure a contact does not occur. This person is known as a spotter. Adherence to these safety rules and regulations can reduce the number of injuries and deaths caused by contact with overhead power lines. Even the most effective training can be flawed when it relies solely on human conduct. The best evidence of this proposition is the consistent number of injuries caused by power line contacts on a yearly basis. While training is always important, mechanical means of preventing these incidents are also readily available and effective and should be employed.

Currently, there are at least two safety devices that could decrease or eliminate contacts with overhead power lines.

Sensors attached to the booms or machine extensions are effective in preventing contacts. Anytime a part of a machine gets close to a power line, the sensor will alert the operator of the hazard. This safety device is useful when the operator's line of sight is obstructed by the machine or weather conditions. Sensors used for this purpose are similar to proximity warning devices. Proximity warning devices can warn of an impending contact and even prevent the contact in certain applications.

Another safety device is an insulating link. Insulated links provide electrical insulation between the load and the machine. The insulated link is different from the sensor in that the sensor assists in preventing a contact, while the insulated link works in the event of a contact. Insulated links have proven to be effective in reducing injuries. However, insulated links cannot insulate the entire machine. A worker in contact with parts of the machine other than the isolated load is not protected and is subject to injury.

Sensors and insulated links, while effective in preventing injuries, are not used enough by manufacturers. Manufacturers, with full knowledge of the effectiveness of these safety devices, rely on training to protect farm and construction workers. Manufacturers prefer to rely on training instead of technology simply because training is cheaper. Their machines can be sold for a cheaper price and they can reap larger profits. But, safety should be a top priority and the reducing of deaths and serious injuries must be their goal.

Source: National Institute for Occupational Safety & Health

SUIT FILED IN LINEMAN'S DEATH

We are representing a Georgia family in a lawsuit arising out of the electrocution of Ronnie Allan Adams Jr., a resident of Wintersville, Georgia, who died on July 13th. Mr. Adams was electrocuted

while working in Alabama. He was splicing lines together that became energized from a generator being used in a building after Hurricane Dennis. The power lines had been damaged by the storm. The Pike Electric company crew was working in the Flomaton area at the time in the aftermath of Hurricane Dennis. We filed the lawsuit in Escambia County, Alabama, on behalf of the wife, naming Alabama Power, which contracted with Pike Electric, for the North Carolina company to do certain work, and the homeowner as defendants. The victim was working in an elevated basket splicing two lines together when the lines became energized. Among other things, Alabama Power Company failed to provide the lineman a safe workplace and failed to inspect the area for potential hazards. This appears to be a case of clear liability and hopefully the defendants will accept their responsibility so we can provide for the family which has suffered a terrible loss.

2004 DISNEYLAND ACCIDENT INJURED FAMILY

A Colorado family has sued the Walt Disney World Co. for injuries suffered in a 2004 accident on Disneyland's Big Thunder Mountain Railroad. Gerald and Norika Cope of Telluride, Colorado, filed the lawsuit in Orange County Superior Court on behalf of themselves and their two minor children. The accident occurred July 8, 2004, when, in what park officials described as a "bump," two trains "made contact" as one returned to the loading station. State investigators attributed the incident, just months after the ride had reopened following an accident that killed a passenger, to a software glitch and mistakes by an inexperienced operator. This is just another of a growing number of accidents at amusement parks involving rides.

WIDOW FILES A LAWSUIT BASED ON A LACK OF SECURITY

The widow of a man who was murdered at a Kansas City carwash has sued the company that operated the facility. A robber fatally wounded the man while he was on the premises. The widow contends in the lawsuit that the company that owns Russell's Car Wash is legally responsible for her husband's death. Her husband, who was 71 years old, was shot with a shotgun at the car wash on December 28, 2003. He died several days later. The lawsuit contends that the owner and operator of the car wash were at fault for having a nonfunctioning video surveillance system in an area known for violent crime. The decedent was the director of the Jackson County Sports Complex Authority at the time he was killed.

JURY AWARD IN THE BOSTON GAS-BLAST DEATHS

The parents of two little girls tragically killed in a 2002 gas explosion at their apartment home have received a \$17.2 million settlement from the gas company and other defendants. Heath and Tara Carey and their daughters, 4-year-old Iris and 5-year-old Violet, were asleep in their second-floor apartment in Hopkinton, Massachusetts, when the early-morning blast buried them in the rubble. The parents suffered only minor injuries, but the girls were killed. A corroded gas company pipe in the damp basement of the building was blamed as a source of the leak. A state investigation in 2003 found that NStar Gas Co. may have violated state and federal pipeline safety regulations and the company was fined \$200,000. Workers had noticed the problem months before the explosion, but failed to schedule repairs. Under the agreement NStar is paying \$12.5 million in settlement of the case. Inner-Tite Corp., the manufacturer of the equipment that rusted, will pay \$4.5

million and the Careys' landlords will pay \$175,000. To NStar's credit, the company did the right thing and agreed to settle. As a result, the Carey family can now move on with their lives as best they can.

Source: *Associated Press*

XIV. WORKPLACE HAZARDS

PLAN TO REQUIRE MORE DATA ON SAFETY ISSUES

The Food and Drug Administration (FDA) will soon propose guidelines intended to make annual safety reports filed by medical device makers more complete and more accessible to the public. Dr. Daniel G. Schultz, the director of the FDA's Center for Devices and Radiological Health, told the *New York Times* that the new reporting guidelines were part of a broader effort to improve the agency's monitoring of medical devices after they are approved for sale. Over the last year, the FDA has come under scrutiny by some lawmakers concerned that it has failed to aggressively monitor medical device safety. The agency's handling of the Guidant Corporation heart defibrillators put the issue in focus.

The FDA regulates hundreds of medical products including heart defibrillators, surgical tools, artificial hips and diagnostic equipment. One major challenge faced by the FDA is the fact that the agency receives safety data about products in ways that are incomplete or lacking in uniformity. In addition, what information it does receive is often not shared by offices within the FDA device center. Apparently, this effort by the FDA will try to fix those problems. One goal, for example, is to try to make all filings with the agency electronic rather than on paper, as is now the case. A separate

FDA task force, formed in September to review and improve the agency oversight of defibrillator and pacemaker safety, is expected to release its recommendations this spring. I have to wonder once again why the FDA hasn't done a better job of carrying out its responsibilities on safety, something that the American public is certainly entitled to expect.

Source: *New York Times*

DEATHS IN THE WORKPLACE ON THE RISE NATIONWIDE

On the national level, in 2004, a total of 5,703 fatal work injuries were recorded in the United States. This was an increase of 2% from the 5,575 fatal work injuries that were reported in 2003. According to the Bureau of Labor Statistics, the total number of fatalities in 2004 was the third-lowest annual total recorded by the fatality census, which has been conducted each year since 1992. The tragic accident that caused the deaths of 12 men at **International Coal Group's** Sago Mine in West Virginia is a sad reminder of how dangerous the mining occupation is for its workers and especially when the mines are not properly maintained. The West Virginia tragedy also graphically points out how critically important the need is for improving mine safety. In fact, according to newly released data from the U.S. Department of Labor's Bureau of Labor Statistics, the mining industry has the second-highest fatality rate per 100,000 employees. Only the agriculture industry (which includes forestry, fishing, and hunting) has a higher rate of death on the job.

Overall, the rate at which fatal work injuries occurred in 2004 was 4.1 per 100,000 workers, down from a rate of 5.3 fatalities per 100,000 workers ten years earlier. Workplace homicides were down sharply to the lowest level ever recorded by the fatality census, which is good news. Unfortunately, however, fatal

injuries resulting from being struck by an object rose 12%, overtaking workplace homicide as the third-most-frequent type of fatal event.

By far, the majority of work-related fatalities were caused by highway incidents. In 2004, there were 1,374 fatal highway incidents, representing about one of every four fatal work injuries in 2004. The second-leading cause of death on the job involved falls, predominately from roofs or ladders. There were 815 fatal falls reported in 2004, a 17% increase over 2003. While the construction industry ranks fourth for the rate of fatal injuries per 100,000 workers, it recorded 1,224 fatal work injuries in 2004—the most of any industry sector and an increase of 8% from a year earlier. In comparison, the mining industry recorded 152 fatal work injuries in 2004, while agriculture recorded 659 fatalities.

OCCUPATIONAL HAZARDS GROW IN ALABAMA

The number of Alabama workplace fatalities has increased for the second year in a row. A report from the U.S. Department of Labor shows fatalities in Alabama totaled 133 in 2004, an increase of 7% from 2003 and a 30% increase from 2002. The greatest number of workplace fatalities in Alabama occur in the transportation industry. This is not too surprising based on our experience dealing with the trucking industry.

SERIOUS SAFETY VIOLATIONS EXISTED AT THE WEST VIRGINIA COAL MINE

The tragic occurrence at West Virginia's Sago Mine has brought the issue of coal mine safety back to the public's attention. Over the past four years, federal mining inspectors documented a litany of problems at the Sago mine. These problems included: mine roofs that tended to collapse without

warning; faulty or inadequate tunnel supports; and a dangerous buildup of flammable coal dust. The mine's safety record came into sharp focus as officials searched for explanations for the underground explosion last month that killed the 12 miners and seriously injured another. That record, as reflected in dozens of federal inspection reports, shows a succession of operators struggling to overcome serious, long-standing safety problems.

Over the past two years, the mine was cited 273 times for safety violations, of which about a third were classified as "significant and substantial," according to documents compiled by the Labor Department's Mine Safety and Health Administration (MSHA). Many were for problems that could contribute to accidental explosions or the collapse of mine tunnels, records show. In addition, 16 violations logged in the past eight months were listed as "unwarrantable failures," a designation reserved for serious safety infractions for which the operator had either already been warned, or which showed "indifference or extreme lack of care." Sixteen violations in less than a year is a very high number. It certainly appears that this mine had a very poor safety record.

Sago, a relatively small mine that listed 145 employees last year, was operated by Anker West Virginia Mining Co. until about three months ago, when it was purchased by International Coal Group Inc. In MSHA's reports, 18 of the 46 most recent violations were listed as "significant and substantial." Among the problems cited: inadequate safeguards against the collapse of the mine roof, and inadequate ventilation to guard against the buildup of deadly gases. Other inspection reports over the past two years fault the mine for "combustibles," including a buildup of flammable coal dust and a failure to adequately insulate electric wires. Sparks from electrical equipment can ignite coal dust and methane gas, trig-

gering fires and explosions.

Government documents reveal a high rate of injuries and accidents at Sago. Although no miners were reported killed at the mine since at least 1995, 42 workers and contractors were injured in accidents since 2000, according to available records. The average number of working days lost because of accidents in the past five years was nearly double the national average for underground coal mines, according to MSHA. Some serious accidents fortuitously caused no injuries. For example, in the past year, large sections of the mine's rocky roof collapsed on at least 20 occasions—but not when workers were in the affected tunnels. Some of the collapsed sections were rocky slabs as long as 100 feet. The most recent roof collapse occurred on December 5th, less than a month before the recent explosion.

Our hearts go out to the families of the miners who were killed and to the survivor and his family. Government at both the federal and state levels must work to improve safety in coal mines in this country. Since the Sago mine incident, there have been other incidents in Kentucky and West Virginia resulting in three more deaths of coal miners. There will always be danger for folks working in mines, but everything possible must be done to minimize those dangers. We should look at the current state of the law as it relates to safety for miners and take the necessary corrective action. The Bush Administration is now reviewing safety equipment used in the nation's mines after previously scrapping similar initiatives started by the Clinton Administration.

Source: Washington Post

WHITE HOUSE TO REVISIT MINE EQUIPMENT SAFETY

The Mine Safety and Health Administration (MSHA), the federal agency that oversees coal mine safety, is currently seeking public input on how to better

supply miners and rescuers with equipment such as breathing apparatuses and communications devices, according to The Associated Press. In recent years, however, MSA pulled Clinton-era initiatives examining safety equipment and mine rescue operations off its regulatory agenda. Key among the items withdrawn were those dealing with oxygen packs that miners carry and the ability of mine rescue teams to do their jobs. These issues will be re-examined, according to documents obtained by The Associated Press, which noted that the Sago Mine accident “underscored the vital role that mine rescue operations play in response to catastrophic mine incidents.” In withdrawing the items during its first term, the Bush Administration cited **changing priorities** and **resource concerns**. Miners’ safety advocates felt at that time that the action stopped potentially important safety rules from being put in place. In the opinion of many safety advocates, MSHA should impose new emergency rules immediately that could go into effect without further studies. While studies are good, action is needed now to make the mines safer.

One of the items withdrawn called for a review of oxygen units miners are required to wear or keep within 25 feet of their work area. The goal was to eliminate defects and improve inspections of the air packs and ensure that the machines were actually providing the one hour’s worth of air that is required. Common sense says that extra units should be stored in the mines and readily accessible. Another item the Clinton Administration had been reviewing, but which was withdrawn during President Bush’s first term, involved the deployment of mine rescue teams. The Administration was looking at ways to boost the number of teams available and in proximity to the mines. Mine operators rely on teams that are up to two hours away, which union officials say is too far. West Vir-

ginia has already passed legislation—after the recent disasters—that will help on safety. But the real action has to come from Congress and for anything of substance to happen the Bush Administration must give its full support.

Source: Associated Press

JURY VERDICT IN LAWSUIT INVOLVING A SEWAGE TANK COLLAPSE

A Florida jury awarded \$30 million last month to construction workers injured when a roof collapsed over a sewage tank they were building, plunging some down six stories and impaling two on metal reinforcement bars. Twelve plaintiffs, including construction workers and their families, will receive the money. The Superior Court jury spent several days deliberating damages after finding four companies liable for the October 2001 collapse at a water pollution control plant. Two workers were impaled in the web of metal rods and wet concrete, while others were left clinging to bars 50 feet above the ground, when scaffolding supporting a partially finished roof gave way.

The suit, filed in 2002, alleged claims based on negligence, defective products and named several defendants. Jurors found Harsco Corp., a Camp Hill, Pennsylvania, industrial services company, 75% liable for the collapse. Harsco provided shoring materials used on the tank. The jury concluded that the shoring materials were damaged and inadequate, and that many of the shoring frames had cracked welds. DYK, Inc. erected the shoring and scaffolding and was held 15% responsible for the accident. David Gowers Engineering, LLC, based in Selma, Oregon, was found 3% liable and Quality Shoring and Scaffold Inc., (since purchased by DYK) was found 7% liable.

Source: Associated Press

JUDGE AWARDS DAMAGES IN WINDOW WASHER’S FALL AND DEATH

It is extremely important that workers be properly trained and equipped with safety equipment before being put in dangerous jobs. A case that occurred in Kansas City is a good example of what can happen when this isn’t done. Leslie James was untrained and inexperienced as a window washer when he fell more than 80 feet to his death. The judge who heard the case awarded the workers family \$7.25 million in a wrongful-death case. The case was tried without a jury. The judge found Quality Window Cleaning Inc. of Kansas City, at fault for providing no training, inadequate equipment, and unsafe working conditions. The judge also noted in his ruling that the owner had agreed with the Occupational Safety and Health Administration to provide training after another of his window washers fell and died in 1996. James, who was 25 years old, fell eight stories July 20, 2000, from a Research Medical Center roof, where he was operating a roller system that held up scaffolding for two other workers who were working below.

According to witnesses, the roller system started to fall off the roof, and James tried to grab it to save the two other workers. Instead, the falling apparatus flipped James off the roof and into the air. The two other workers fell a lesser distance and lived, although one was disabled permanently. While safety rules called for James to wear a lifeline attached to a harness, he didn’t have one on and wasn’t provided one to use. A third window washer for the company also fell and died two years after James. OSHA previously fined Mannschreck \$2,700 for James’ death, but found no violations for the other death that happened two years later. James, a construction worker, was between jobs at the time. He took the window-washing job to make a timely child support payment. The newly hired employee was given no training

before being put on a dangerous job. The result was his tragic death.

Source: *Kansas City Star*

TOO MANY AMERICAN WORKERS DRINK ON THE JOB

A recent study by the University at Buffalo's Research Institute on Addictions has revealed some disturbing findings. Just over 7% of American workers drink during their workday, mostly at lunch, and even more, 9%, have nursed a hangover in the workplace, according to the study. Young, single men are related most often to workplace-related drinking, especially managers, salespeople, restaurant workers, and those in the media. The results appear in the January issue of the *Journal of Studies on Alcohol*. Principal investigator Michael Frone says the national study was meant to help managers develop workplace policy on alcohol use and to open the door to exploring the causes and effects of workplace alcohol use. Frone, who is a research associate professor in the university's Psychology Department, stated:

Of all psychoactive substances with the potential to impair cognitive and behavioral performance, alcohol is the most widely used and misused substance in the general population and in the work force.

Elena Carr, who coordinates a U.S. Labor Department program to combat workplace alcohol and drug use, made this observation:

It slows down your reaction time, it impairs your decision-making. In close to 19% of on-the-job fatalities, the person who dies tests positive for either alcohol or drugs or both.

In the study, employees around the country were asked about workplace alcohol use during the previous 12 months. The sample was designed to

reflect the demographics of the U.S. work force from ages 18 to 65, the researchers said. Seven percent said they had consumed alcoholic beverages at least once during a workday. Lunch was the preferred time to drink, according to the study, which was funded by the National Institute on Alcohol Abuse and Alcoholism. Overall, 15% of respondents, who were promised confidentiality, reported being directly affected by alcohol at work, either by drinking on the job or shortly before heading to work or working with a hangover. Nearly one in five workers, 19%, made it a monthly habit and 11% reported weekly use or impairment. The NIAAA estimates nearly 14 million people in the United States abuse alcohol or are alcoholics. We have handled a number of lawsuits where drivers of company vehicles had been drinking on the job. Apparently, use of alcohol on the job is a major problem nationwide. It should be noted that toxicology tests are not required for every incident, which could mean that alcohol could actually be involved in more cases than those reported.

Source: *Insurance Journal*

JURY VERDICT IN FAVOR OF A WORKER

A federal jury awarded \$26.3 million to an Ohio man who was left a paraplegic when a heavy piece of equipment fell on him in Waterbury, Connecticut. The U.S. District jury found in favor of the 34-year-old plaintiff after nearly 16 hours of deliberation. The panel found Arpin Logistics Inc. and Paul Arpin Van Lines at fault. The plaintiff, an independent trucker contended that a faulty lift gate on the truck caused the 2001 accident. At the time, the plaintiff was delivering a workstation for engineering students at a college in Waterbury. While it was being lowered from the truck on the lift gate the 800-pound workstation tipped and fell on top of the plaintiff, crushing his back.

Source: *Associated Press*

FAMILY OF SLAIN NURSE SUES STATE OF WYOMING

The family of a nurse who was killed at the Wyoming Honor Farm is suing that state. The lawsuit claims that the state prematurely moved a prisoner to the Honor Farm from the Wyoming State Penitentiary, where he had been imprisoned on a 1995 rape conviction. The lawsuit also claims that Honor Farm corrections officers were improperly trained and supervised. The 30-year-old inmate is awaiting a second trial for allegedly killing the nurse. The first trial in November ended with a hung jury. A second trial is scheduled for April 10th. The lawsuit names as defendants the Wyoming Department of Corrections, the State Penitentiary, and the Honor Farm.

Source: *Associated Press*

PENNSYLVANIA COURT ALLOWS WAL-MART WORKERS TO SUE FOR OVERTIME

Recently, a judge in Pennsylvania approved a class action lawsuit on behalf of employees who work for Wal-Mart Stores, Inc. It is alleged that the retail giant pressured the employees to work off the clock. According to the suit, the lead plaintiff had to work off the clock to meet sales quotas. The lawsuit alleges further that the lead plaintiff not only worked through lunch breaks, but was also required to work eight to twelve unpaid hours per month after her shifts ended. Wal-Mart officials have denied any wrongdoing in the case. The company asserts that the certification alone does not prove any violation of state or federal overtime laws. In fact, Wal-Mart has indicated that it will appeal the class action certification.

Now that the court has certified the case as a class action, approximately 150,000 current or former employees who worked at Wal-Mart or Sam's Club in Pennsylvania since March 1998 may be entitled to receive compensation for

unpaid overtime. Nearly identical claims have been made by Wal-Mart employees in other lawsuits filed around the country. Last month, a jury awarded Wal-Mart employees \$172 million for illegally denying lunch breaks. Before that, Wal-Mart settled a similar case for \$50 million. Our firm is currently handling a number of lawsuits involving unpaid overtime for employees. For more information on these claims, you can contact us at 1-800-898-2034 or visit our website at www.beasleyallen.com.

Source: Associated Press

OSHA FINES TEXAS CONSTRUCTION COMPANY FOR SAFETY HAZARDS

Site Concrete Inc., a Grand Prairie, Texas-based, construction company has been cited for a failure to protect employees from cave-in and other safety hazards at a Wylie, Texas, construction site. The Occupational Safety and Health Administration (OSHA) has proposed penalties totaling \$117,500. The company, an underground utility contractor that employs about 1,200 workers, was cited by OSHA for one alleged willful and two alleged repeat violations following an OSHA inspection. At the time of the inspection, completed under OSHA's National Trenching and Excavation Program, four workers were installing a new valve on the water main inside a seven-foot deep trench. Kathryn Delaney, OSHA area director in Dallas, says:

Since 1998, this employer has been inspected by OSHA 16 times, resulting in \$231,510 in fines and penalties. Exposing employees to unsafe working conditions is unacceptable. Employers must follow safety and health standards to prevent injuries and fatalities, and are responsible for providing a safe and healthful workplace for their employees.

The willful citation was issued for failure to provide employees with cave-in protection, such as sloping or shoring, when working inside a trench more than five feet deep. As previously reported, a willful violation is defined as an intentional disregard of or plain indifference to the requirements of the Occupational Safety and Health Act and its regulations. The repeat violations include placing excavated materials and equipment less than two feet from the edge of the trench and not providing adequate means to exit the trench. A repeat violation is one in which an employer has previously been cited for the same or a substantially similar violation that has become a final order.

BIRMINGHAM INDUSTRY FINED BY OSHA

Federal labor officials have proposed \$91,500 in fines for Sloss Industries, located in Birmingham, Alabama, for exposing workers to safety and health hazards at its coke oven operations. The Occupational Safety and Health Administration (OSHA) proposed the penalties after an inspection conducted under the agency's site specific targeting program. Robert Sanchez, Birmingham area director for OSHA, said:

Site specific targeting identifies industries with high injury and illness rates. From that listing establishments are randomly selected for inspection.

Sloss was cited for 12 serious citations, with proposed penalties of \$74,000, for violations that included the lack of safety guards on equipment and exposing workers to fire hazards. OSHA proposed one repeat citation, with a proposed penalty of \$17,500, for tripping and fall hazards.

XV. TRANSPORTATION

RECENT COURT CASES RAISE QUESTIONS ABOUT TRUCKING SAFETY

Over the past several years a "disturbing pattern of dangerous activity" by the nation's trucking industry has developed. We find that a good number of the fatalities resulting from trucking accidents involve driver fatigue. During 2004, 5,190 people were killed in truck crashes, an increase of 154 fatalities over 2003. Additionally, in 2004, the number of truckers killed in crashes increased by 5%. A number of cases we have handled indicate that truck driver fatigue is a major safety problem. Some studies, including two by the National Transportation Safety Board, indicated that truck driver fatigue is a factor in 30% to 40% of severe crashes. No motor carrier driver is allowed to drive more than 11 cumulative hours after 10 hours off duty, according to new regulations passed by the Federal Motor Carrier Safety Administration. The federal and state governments need to take all steps necessary to change the trends that are developing. Stronger enforcement is obviously needed. In Alabama, that means more state troopers being hired and trained so that highway patrolling can be brought up to needed levels.

TRUCK DRIVER CHARGED IN DEADLY CRASH

A truck driver has been charged with homicide in a crash that killed five people and injured 29 others on a bus carrying high school band students home from a weekend competition. The man's tractor-trailer had swerved off an Interstate highway and jackknifed across the bus' path before dawn on October 16th. The charter bus slammed into the rig, killing the band's director, his wife, their 11-year-old granddaughter, the driver, and a student teacher. The bus had been carrying 44 students,

teachers, and chaperones from Chippewa Falls High School. The 23-year-old truck driver faces five counts of homicide by negligent operation of a vehicle, as well as 11 counts of reckless driving causing great bodily injury and nine counts of reckless driving causing injury.

Source: Associated Press

JURY AWARDS \$14.1 MILLION TO FAMILY OF CRASH VICTIM

A jury has ordered three companies owned by Terrible Herbst, a company that operates 80 convenience stores and gas stations in Nevada, to pay a total of \$14.1 million to the family of a woman killed by a drunken driver operating a Terrible Herbst industrial truck in 2001. Ms. Rosa Delegado was getting into her car on a city street when Darwin Ray Ellison drove the large truck into the 58-year-old grandmother from behind. Ms. Delegado was pinned against her vehicle, run over, and killed. Her family filed a civil lawsuit in 2001 against Las Vegas-based Terrible Herbst and two other defendants. A Clark County jury awarded the family \$4.1 million in compensatory damages and \$10 million in punitive damages to be paid by Terrible Herbst Inc., Herbst Supply Inc. and ETT Inc.

Plaintiffs proved at trial that Terrible Herbst and the other defendants were negligent by hiring Ellison, who had a history of drinking. Terrible Herbst claimed Ellison was a temporary worker who took the company's truck without permission. The driver pleaded guilty in 2001 to driving under the influence of alcohol causing death, which is a felony. He was sentenced to 5 1/2 to 20 years in prison. The facilities manager for Terrible Herbst testified at trial that Ellison had once come to work smelling of beer. The manager also said that on another occasion, Ellison and another temporary worker asked him for permission to drink beer at lunch. Ellison

was not disciplined by the employer. The manager said he did not have any reservations about Ellison driving a truck for Terrible Herbst despite these incidents.

Source: Associated Press

SUIT OVER FATAL TRUCK CRASH SETTLED

A lawsuit stemming from a 2004 fatal highway crash was settled recently in Monterey, California, for \$4.5 million. An 18-wheeler, loaded with 79,000 pounds, of produce fell onto a Chevrolet Malibu after braking to a stop. Three men were trapped inside the crushed sedan, which was under the truck, for more than two hours while rescue workers sawed through the truck's bed to free them. Eventually, the flattened Chevrolet was hoisted out by rescue squads. A medical doctor, who was a successful businessman from Mexico, suffocated inside the crushed car and was dead on the scene. His two colleagues were finally removed from the car and airlifted from the crash scene to area hospitals.

Suit was filed against the Smart Transportation, the driver and the owner of the produce trailer. A California Highway Patrol investigation of the accident revealed that on the day of the accident, the 18-wheeler had three axle brakes that needed repair and the lining of one brake was actually cracked. Even if the brakes had been in good condition, the driver ran a stop sign going 55 to 60 mph. Truck records indicate that the contract driver for Smart Transportation had been working long hours, had been working hard and was really not fit to drive. He had picked up produce and was on his way to New York City and was on a very tight schedule.

FAMILIES OF PILOTS KILLED FILE LAWSUIT

The families of two pilots killed when their regional jet crashed into a neighborhood have filed wrongful death law-

suits against the plane's maker, an airline, three part makers, and a maintenance company. The pilots were ferrying a Pinnacle Airlines CJR-200 regional jet from Little Rock, Arkansas, to Minneapolis in October 2004 when they reported engine failure. The plane crashed in a residential area in Jefferson City, but no one on the ground was injured. The lawsuits, filed in Broward County, Florida, allege that heat damage in the engine, caused by a faulty oil pump, was among the problems making it impossible for the pilots to restart the engines.

The Federal Aviation Authority and National Transportation Safety Board will try to determine what caused the crash. The pilots were the only people aboard the 50-seat regional jet, which they were taking to Minneapolis. Pinnacle Airlines Inc., based in Memphis, Tennessee, is a regional carrier for Northwest Airlines Corp. According to a transcript from the cockpit voice recorder released during public hearings in June, 10 minutes after the plane reached its maximum altitude of 41,000 feet, the pilots reported to air traffic controllers in Kansas City that they had lost engine power.

The families contend General Electrical hid problems with the type of oil pump in the plane from the builder, Montreal-based Bombardier Aerospace Corp., which is also named in the lawsuit, along with its parent company, Bombardier Inc. The resulting heat damage from the low oil pressure prevented the blades of the jet engine from turning, according to allegations in the lawsuit. Maintenance company Parker Hannifin Corp., part makers Honeywell International and KGS Electronics, and Northwest Airlines are also named as defendants.

Source: Associated Press

SUITS FILED AGAINST AIRLINE IN FATAL CRASH OF SEAPLANE

Family members of the 19 passengers who died in a seaplane crash off Miami Beach have filed a class action lawsuit against the airline. The father of the pilot killed in the crash has also filed suit against the airline. The seaplane that crashed, killing all of the people aboard, had fatigue cracks in both wings, according to a preliminary federal report. The right wing of the Chalk's Ocean Airways plane separated from the fuselage shortly before the December 19th crash, and investigators had earlier found cracks on the right wing's support beam. But the new report by the National Transportation Safety Board revealed that the left wing had fatigue cracks as well. The 58-year-old G-73 Turbine Mallard plummeted into the ocean minutes after taking off for the Bahamas. The safety board's final report will be completed later this year.

The class action lawsuit alleges that Chalk's Ocean Airways failed to properly maintain the seaplane. There is a \$50 million insurance policy available to cover all claims. It appears that Chalk's Ocean Airways did not institute detailed inspections of its fleet after finding corrosion in the wing of one of its planes in the early 1990s. Chalk's, which flies between Florida and the Bahamas, has lost hundreds of thousands of dollars in recent years, according to data from the federal Bureau of Transportation Statistics. The current owner, Jim Confalone, bought Chalk's after it was forced into involuntary bankruptcy in 1999 under previous management when creditors sued the airline. The Federal Aviation Administration has grounded all seaplanes similar to the Chalk's plane until they are inspected. About 25 other Grumman G-73 seaplanes are in operation, according to FAA officials. Chalk's was the only one to operate the 1940s-era aircraft commercially

and it has voluntarily grounded its other four planes.

Source: Associated Press

DRIVER CELL PHONE USE INCREASES

A recent research note by the National Highway Transportation Safety Administration (NHTSA) indicates that driver cell phone usage was up during 2005. The National Occupant Protection Use Survey found that there were 6% of drivers nationwide using hand held phones during vehicle operation. This was up from 5% in 2004. The 2005 rate is based on the finding that there were 974,000 vehicles on the road at any given daylight moment that were being driven by someone on a hand-held phone. This figure did not include drivers who were using hands-free phones. This survey also included the first nationwide probability based estimate of the incidents of "hand-held device" use while operating a vehicle. The survey found that 0.2% of drivers were dialing phones, checking PDAs (Palm Pilot, Blackberry), or otherwise manipulating some type of hand-held device while driving. Although not included in the survey, it would be interesting to see the percentage of vehicles with a DVD player in use while a vehicle was in operation. I have even heard of some after-market companies mounting DVD screens directly in the steering wheel after removal of the airbag. A report by the Insurance Institute for Highway Safety found that all drivers are four times more likely to be involved in a highway crash with injuries when they are using a cell phone. This study revealed that the risk of crashes was the same for hand-held and hands-free phones.

Currently, no states have an outright ban on cell phone usage. A few states have restrictions on the manner of use, such as requiring at least one hand on the steering wheel at all times. Some

larger cities are implementing bans on hand-held cell phones to address obvious safety issues. NHTSA's official policy on cell phone usage while driving is as follows:

The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from the task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving.

I tend to agree with this statement. While our firm has seen numerous cases where cell phone use was clearly a factor in causing a highway crash, I believe that it will take more than studies to convince the public on this issue. But, common sense tells me that using a cell phone while driving a motor vehicle is a serious distraction. I have to believe that talking on a cell phone while driving a motor vehicle is very dangerous. The Alabama Legislature will be facing an effort in the current session to ban cell phone use by drivers under 18 years of age. It will be interesting to see how that effort fares. The Legislature has rejected similar efforts in the recent past that would have applied to all drivers. Frankly, I don't believe a limitation of this sort is any more needed for teenagers than it is for drivers of all ages.

STATES SLOW TO MOVE TOWARD SAFETY FOR YOUNGER DRIVERS

Advocates for Highway and Auto Safety recently released its 3rd annual highway safety report entitled, "2006 Roadmap to State Highway Safety Law-Players, Politics and Progress." That report rates each state and the District of Columbia on their progress in adopting 14 essential laws to reduce the number one killer of Americans

between the ages of four and 34—highway crashes. The new study found little to no progress in enactment of these 14 laws, despite 6.2 million motor vehicle crashes in 2004 resulting in 42,636 deaths, 3 million injuries, and an economic loss of \$230 billion nationwide. Georges Benjamin, M.D., executive director of the American Public Health Association, stated:

This is a public health epidemic by any measure and a political crisis in our state capitals.

Advocates has identified 14 basic laws that each state should enact to significantly reduce highway deaths and injuries, such as:

- a primary enforcement seat belt law,
- an all-rider motorcycle helmet law,
- a booster seat law covering children up to age 8,
- a four-point Graduated Drivers License program for new teen drivers, and
- seven drunk driving countermeasures.

The report found that no state had all 14 traffic safety laws, and only 16 states and District of Columbia earned a good passing safety rating, which is green. The green states were Alabama, California, Georgia, Illinois, Indiana, Louisiana, Maryland, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, and Washington, plus the District of Columbia. Four states, Alaska, Arkansas, South Dakota and Wyoming, earned a danger rating of red, which means a state is falling behind. Thirty (30) states received a caution rating of yellow, which means a state needs improvement. Judith Lee Stone, president of Advocates, observed:

This year's scores show that 34 states lack fundamental traffic

safety laws at a time when deaths and injuries continue unabated. Most laws are languishing in a sea of political complacency in state capitals as bills fail to be introduced, die or are bottled up in legislative committees or are weakened by opponents.

There is still a great deal that legislative bodies need to address. The Roadmap Report found that:

- 28 states still need a primary enforcement seat belt law. South Carolina was the only state to enact such a law in 2005. More than half of those killed in motor vehicle crashes are unbelted.
- 30 states still need an all-rider motorcycle helmet law. Since 1997, motorcycle fatalities have jumped a staggering 89%, yet no state adopted an all-rider helmet law in 2005. Fifteen state legislatures considered helmet repeal measures. States that have repealed their all-rider laws have seen a significant increase in deaths. According to Advocates' 2004 Lou Harris poll, 82% of Americans support all-rider helmet laws.
- 17 states need a booster seat law; 39 states still need to upgrade their booster seat law to protect children up to age 8 or 80 pounds. Last year only two states (WA and WV) enacted Advocates' recommended booster seat law.
- 49 states do not protect teen drivers with an optimal Graduated Drivers Licensing (GDL) program. This past year only one state - Nevada - has enacted all four elements of a comprehensive Graduated Drivers Licensing (GDL) program: in the learner's permit stage, a six-month holding period and 30-50 hours of adult-supervised driving; in the intermediate stage, a 10:00 p.m. to 5:00 a.m. nighttime driving restriction and a passenger restriction.

States were rated on seven basic impaired driving laws. In 2005, only seven of the impaired driving laws recommended by Advocates were passed by any of the 50 states: two Child Endangerment (Massachusetts and Montana); two High Blood Alcohol Concentration (BAC) (Massachusetts, Texas); three Open Container (Colorado, Indiana, Montana); and one Repeat Offender law (Massachusetts). In 2004, 40% of deaths on our highways involved drunk driving. Jackie Gillan, vice-president of Advocates, stated:

Enacting highway safety laws in state legislatures is beginning to look like a board game. A few states move forward, many states are stuck in the same place while other states jump around and sometimes go backwards. The winners and losers are American families but governors and state legislators are playing with their lives. Last year's state legislative activity can best be characterized by distraction, inaction and retraction.

Protecting the health and safety of families on our streets and highways in states across the country should be a high priority. With the majority of state legislatures, including Alabama, having opened their 2006 sessions last month, it is hoped that this report will be received favorably. Advocates sent the report to the nation's governors and urged them to accelerate adoption of these basic highway safety laws to ensure that all 14 laws are uniformly in effect across the nation. Advocates' report divided the 14 model laws into four issue categories.

- Occupant Protection (2 laws): Primary Enforcement Seat Belt Law and All-Rider Motorcycle Helmet Law.
- Child Passenger Safety (1 law): Child Booster Seat Law for ages 4 to 8.

- Optimal Graduated Driver Licensing (GDL) Program (4 laws): 6-Month Holding Period, 30-50 Hours Supervised Driving, Nighttime Driving Restriction and Passenger Restriction.
- Impaired Driving (7 laws): Repeat Offender, Open Container, High BAC, Mandatory BAC Testing for Drivers Killed in Fatal Crashes, Mandatory BAC Testing for Drivers who Survive Fatal Crashes, Sobriety Checkpoints, and Child Endangerment Laws.

In each category, states are given one of three ratings based on how many optimal laws they have. Placement in one of the three sections was based solely on whether or not a state has adopted a law as defined in the report. The ratings weren't based on any evaluation of a state's highway safety education enforcement program or on fatality rates. Partial credit was given for states with booster seat and teen driving laws that did not meet Advocates' optimal definition. It appears that Advocates has done a very good job. The report and a summary can be found on the website for Advocates for Highway and Auto Safety (www.saferoads.org).

Source: *The Insurance Journal*

LAWSUIT FILED AGAINST LIQUOR STORE

The parents of two teenagers killed in a drunken-driving accident have sued the liquor-store chain where the 17-year-old driver of the vehicle involved bought alcohol. It is alleged that clerks never checked the teenager's ID. In the lawsuit, parents of the two teenagers who were killed contend that operators of a 21st Amendment store share responsibility with the driver for the deaths. The families say that the 17-year-old driver bought the beer and vodka at the liquor store that he and three friends drank before deciding to drive to Chicago in November 2004. The driver, now 18, is facing prosecution as an adult on two counts of drunken

driving causing death. If convicted, he could be sentenced to 16 years in prison for the accident that occurred just before 3 a.m. on November 14, 2004, when he lost control of his car, veered off an interstate highway and crashed into a roadside asphalt roller. Neither the driver nor a 16-year-old passenger in the front seat were seriously hurt. But the impact ejected their back-seat passengers—fellow high students—and they were killed.

The driver's blood-alcohol content after the crash measured 0.14. The level at which drivers in Indiana are considered intoxicated is 0.08. The suits claim that 21st Amendment was negligent because clerks at the store allowed the teenager to buy alcohol without showing any proof of his age. The families filing this lawsuit want their actions to influence the behavior of teenage drinkers and those who supply them. Laws are enacted to protect minors essentially from themselves. While some might question it, high school students don't usually have the maturity of judgment that most adults have. Unfortunately, they don't always fully appreciate the dangers and hazards associated with alcohol and the consequences of their behavior. The sale of alcoholic beverages to minors by retail establishments is a nationwide problem. Lawsuits like the one mentioned above are necessary to help put a stop to such sales.

Source: *Indy Star*

BLACK BOX AIDS POLICE IN DEATH INVESTIGATION

A Maryland man was sentenced to 100 months in prison in connection with a fatal high speed car crash in Washington, D.C. in 2004. A fatal high speed crash took the life of John C. Johnson, Jr. on November 30, 2004. A plea of guilty to one count of involuntary manslaughter was entered by the driver. At the time of the collision, Johnson, a financial planner, was on his

way to help his sister who had locked her keys in her car at her place of employment. The defendant's vehicle was equipped with a "black box," which reportedly indicated that the defendant's car was going 90 miles per hour seconds before colliding with Johnson's car.

Based on observations by investigators from the Major Crash Investigation Unit, the defendant exhibited the odor of alcoholic beverages and appeared to be under the influence of alcoholic beverages a short time after the actual crash. Blood was taken and the defendant reportedly had a blood alcohol content of .065. Accident reconstruction and subsequent testing on the "black box" inside the Buick showed that the defendant was traveling at approximately 90 miles per hour at the time of impact. It was later learned that he had fled a traffic stop by Metropolitan Police about 10 minutes before the fatal crash. The defendant reportedly had two previous impaired driving convictions. This is a person who had no business under the wheel of a car.

Source: *Insurance Journal*

FERRY PILOT GETS 18 MONTHS FOR FERRY BOAT CRASH

Richard Smith, the pilot at the helm of the Staten Island ferry during a 2003 crash that killed 11 people, has been sentenced to 18 months in prison. As second man, the city's former ferry director, Patrick Ryan, was also sentenced to one year in prison. Smith pleaded guilty in 2004 to negligent manslaughter and concealing his high blood pressure and a prescription for a powerful painkiller on a Coast Guard pilot's license renewal form. Prosecutors have said either disclosure should have disqualified him from service. Ryan pleaded guilty to related charges last year, admitting he failed to enforce a rule requiring ferries be operated by two pilots whenever docking.

The ferry crash was one of the worst

mass-transit disasters in New York history. On a cold winter day, the ferry Andrew J. Barberi set out on a routine run across New York Harbor from lower Manhattan with about 1,500 passengers. At the time, Smith was alone in the wheelhouse. As the vessel approached Staten Island, Smith—suffering from extreme fatigue and admittedly on painkillers—blacked out. The ship hit a concrete maintenance pier at full speed, injuring dozens of passengers. When folks ride on a ferry, a bus, a train, or any other form of public transportation, they expect the operator to be properly trained, properly monitored, and properly supervised. It is also necessary for employers to do a thorough background check on persons who apply for such jobs. This case is one where none of those requirements were met and the results were very bad.

Source: *Associated Press*

OSHA OFFERING NEW GUIDELINES TO HELP REDUCE MOTOR VEHICLE ACCIDENTS

The Occupational Safety and Health Administration, the National Highway Traffic Safety Administration and Network of Employers for Traffic Safety have developed a new set of guidelines for employers and employees who use motor vehicles for work purposes. The new guidelines are designed to show companies how safe-driving practices and safety-conscious behavior can help employees avoid tragedy. That's certainly a worthy goal.

The 32-page Guidelines for Employers to Reduce Motor Vehicle Crashes offers information to help employers design an effective driver safety program in their workplace. It features a 10-step program outlining what an employer can do to improve traffic safety performance and minimize the risk of motor vehicle crashes. The guidelines include a detailed section on the causes of aggressive, distracted, drowsy and impaired driving, and tips for avoiding

such behavior on the road. There is also a sample worksheet for calculating the costs of motor vehicle crashes to employers. To develop the guidance, OSHA joined forces with NHTSA, and NETS, a nonprofit organization dedicated exclusively to traffic safety in the workplace. The motor vehicle guidance is available from OSHA's publications page on the web, (www.osha.gov) or can be ordered by calling the publications office at (202) 693-1888.

Source: *The Insurance Journal*

XVI. HEALTHCARE ISSUES

A SERIOUS HEALTHCARE SHORTAGE

We are facing a chronic national nursing shortage in the United States, and this should be a major concern to all of us. In my opinion, this is a healthcare crisis in the making. There are currently approximately 2.7 million registered nurses in the U.S. It is projected that there will be an overall shortage of 808,416 Registered Nurses (RNs) in the U.S. by the year 2020. Presently, nurses are in great demand all over the country. There are 45,550 RNs in Alabama, with a vacancy rate for bedside RNs in our state of 18,220. The projected overall RN shortage in Alabama by 2020 is 8,353.

My wife, Sara, who graduated from Emory University with a degree in nursing, taught nursing for a while at Troy University School of Nursing. She tells me that it takes a very special person to work as a nurse today. Based on my limited knowledge, I know that nurses are an essential part of the healthcare system. It is quite clear that a concentrated effort must be made to address this growing problem. If this health care crisis is not addressed, the quality of care will suffer greatly. It has been projected

that because the number of young RNs has decreased so dramatically over the past two decades, enrollment of young people in nursing programs would have to increase by at least 40% annually to replace those expected to leave the workforce through retirement. Efforts must be made to recruit more young people to fill the need for nurses. It will take a concerted effort by government, the healthcare industry, and educational institutions to correct the shortage of nurses.

ALABAMA DOESN'T FARE WELL IN TRAUMA CARE REPORT

There is another area of healthcare where problems are evident. In a recent report, Alabama received very low marks concerning emergency medical care. In fact, Alabama's emergency care was said to be some of the worst in the nation. This is in spite of having doctors and nursery workers in this type care who are well trained and who provide excellent care. According to the report, the problem arises because our state has too few trauma centers, emergency rooms, and board-certified physicians. The report also claims that an environment that encourages medical malpractice lawsuits is a factor. I take issue with that assessment because it is totally false. In any event, the American College of Emergency Physicians ranks Alabama 41st out of the 50 states and the District of Columbia, giving it a "D+" overall in what the college says is the nation's first-ever report card on emergency care. Dr. Angela Gardner, chairwoman of the task force that wrote the report, made this observation:

If Alabama's emergency medical system gets a D+ on an average day, how can it ever be expected to provide expert, efficient care during a natural disaster or terrorist attack?

The report based its rankings on 50 sets of criteria within four sections: residents' access to emergency care, quality of care and patient safety, public health and injury prevention, and the state's medical liability environment. Alabama ranks 45th for access to emergency care, and 49th for its lack of trauma centers and its shortage of board-certified emergency physicians. The report also said the state ranks 44th for its high number of alcohol-related traffic fatalities, and 43rd in the nation for its per-capita expenditure for Medicaid.

How the report could cite medical malpractice lawsuits as one of the causes of the emergency room problems is beyond me. The courts are clearly not guilty. Alabama is one of the hardest places in the country for a person to win a medical malpractice lawsuit. Anybody who will simply take the time to check the court records will find that there are very few medical malpractice lawsuits even filed in Alabama. They will also find that a very small percentage of those filed are actually won by the person suing. Very few of the cases filed are settled without a trial. All of this makes that part of the report highly suspect. I would challenge those responsible to check with all available sources and find out the truth. Incidentally, our firm doesn't handle medical malpractice cases.

Source: *Montgomery Advertiser*

CHOLESTEROL DRUGS DON'T FIGHT CANCER

Statins, which are used to lower cholesterol, are the most commonly prescribed medications in the United States. Over the past few years non-randomized studies have suggested that these drugs also reduce the risk of cancer because of their powerful anti-inflammatory activity. But, two recently published studies, one published in the *Journal of the American Medical Association (JAMA)* and the other in the

Journal of the National Cancer Institute (JNCI), have found that statins do not reduce the risk of cancer.

The most recent studies that disprove statins' anti-cancer benefit were randomized studies, studies in which participants are selected by chance. These studies are believed to provide the strongest evidence. In the *JAMA* study, researchers compiled data from 26 randomized studies involving more than 73,000 patients. The researchers in the *JAMA* study found that statins have a neutral effect on cancer and cancer death risk in randomized controlled trials. Furthermore, the *JAMA* study found that "no type of cancer was affected by statin use and no subtype of statin affected the risk of cancer." In the *JNCI* study, researchers looked at data from more than 132,000 patients enrolled in the cancer prevention study. The *JNCI* study was a little more specific in that it analyzed the effectiveness of statins in treating and preventing colorectal cancer. Like the *JAMA* study, the *JNCI* study found no evidence that statin use is effective in treating or preventing cancer.

I had hoped that the study would have shown that it had a beneficial effect concerning cancer, but that turned out not to be the case. C. Michael White, a professor of pharmacy at the University of Connecticut at Storrs and an author of one the studies, observed:

We were very hopeful that we would verify that there was an anti-cancer effect. We ended up showing no change in cancer or cancer death.

Sources: *Newsday* and *Associated Press*

DRUG MIXUP RESULTS IN YOUNG BOY'S DEATH

A recent incident involving a 5-year-old autistic boy, who was undergoing chelation therapy and received the wrong drug, points out how important

it is to give the correct drug to a patient. The little boy died from a drug mixup an autopsy revealed, and not the lead-poisoning treatment that was attempted to ease his disorder, according to a federal health official who reviewed the boy's autopsy results. Instead of a synthetic amino acid that treats lead poisoning, the child was given a medication that removes calcium, according to Dr. Mary Jean Brown, chief of the Centers for Disease Control and Prevention's lead poisoning prevention branch. It was described as "a case of look-alike/sound-alike medications." The drug "acted as a claw" that pulled too much calcium from the child's blood, causing an emergency event.

The child was given Disodium EDTA, instead of Calcium Disodium EDTA. The treatment the child was receiving, called chelation therapy, is FDA-approved for lead poisoning. The therapy has not been proven to help autistic patients, although some parents and doctors advocate it because they believe autism is caused by heavy metals. The child died on August 23rd in his doctor's office after his third chelation treatment. The autopsy report was reviewed by a doctor for the CDC. It's extremely important to make sure that the "right" medication prescribed is given to any patient. Quite often drugs come in packages that **look alike** and with **names** that actually sound **alike**. Extra precaution must be taken in every instance for obvious safety reasons—a mistake can cost a life—and that's exactly what happened in this case.

Source: *Associated Press*

STUDY OF HEART ATTACKS FINDS RISK IN USE OF BLOOD THINNERS

Patients being treated for heart attacks involving narrowed arteries and clots that reduce blood flow to the heart are often given overdoses of powerful blood-thinning drugs in the emer-

gency room, increasing their risk of serious bleeding, a study has found. Excessive bleeding occurred at catheter sites, from existing stomach ulcers, and in the brain, where it was particularly dangerous, according to Dr. Karen Alexander, a researcher at Duke University and the lead author of the study. This study was published in November of last year in *The Journal of the American Medical Association*. Of 30,136 heart patients treated last year at 387 hospitals in the United States, 42% were given excessive doses of blood thinners. Those given extra amounts of two blood thinners—low molecular weight heparin and glycoprotein IIb/IIIa blockers, which are sometimes called super-aspirin—had about a 30% greater chance of major bleeding than those given the recommended dose.

The study suggests that 15% of the bleeding episodes were from overdoses and might have been avoidable. Heparin, low molecular weight heparin, and the glycoprotein blockers, which are injected or given intravenously, are effective at helping to prevent clots and further heart damage. Dosages are computed according to age, sex, weight, and kidney function, and sometimes require a calculator. The emergency room setting makes quick decisions necessary by the doctors and nurses in many cases. Emergency room personnel often find themselves facing emergency situations where time is of the essence. Study participants who got overdoses had slightly longer hospital stays and higher death rates than those who received the recommended doses. The researchers concluded that more research on the issue was needed. Dr. Robert Bonow, a former president of the American Heart Association, made this observation:

Even giving the right drug at the right dose increases the risk of bleeding, and giving too low a dose could increase patients' risk for clot-related damage.

A separate study found that having a sibling with heart disease might be a bigger predictor of a person's own risks than a parent's health history. Family history, genes, and lifestyle factors are known contributors to heart disease, and it may be that siblings are more similar to each other than to their parents when it comes to lifestyle.

Source: *New York Times*

XVII. ENVIRONMENTAL CONCERNS

GENERAL ELECTRIC WORKERS SUE MONSANTO OVER PCBs

More than 500 General Electric Co. employees have sued Monsanto Co., along with two related companies, claiming they were exposed to toxic chemicals manufactured for decades by Monsanto. The product liability suit names Monsanto, Pharmacia, which is now owned by Pfizer Inc., and bankrupt Solutia Inc. It was filed in mid-December by 590 current employees of a General Electric plant in Schenectady, New York. The suit claims personal injury and fear of future disease related to contamination by polychlorinated biphenyls (PCBs), which were found to be harmful to human health and banned by Congress in 1978.

The suit claims that Monsanto knew of the hazards of PCBs, but continued to make the chemicals because of their profitability. Monsanto stopped making the chemicals nearly 30 years ago. The lawsuit claims the hazardous chemicals have been leaking from creek beds and landfills. Interestingly, Monsanto says that any liability most likely rested with General Electric, which was responsible for disposal of the chemicals. Monsanto spun off its chemicals business as Solutia in 1997. Solutia filed for bankruptcy protection in 2003. The facility

in question was one of the largest and oldest GE plants in the country. It was used to make electric motors, gas turbines, wire and cable, and other products. Last year, the State of New York gave final approval to General Electric remediation plan, which reportedly has already cost GE about \$16 million. Pharmacia acquired Monsanto in 2000. Monsanto then was spun off as an independent agricultural products and technology company in 2002.

Source: *Reuters News Service*

TWELVE STATES OPPOSE BUSH PLAN ON POLLUTION

The Bush Administration is trying hard to make it easier for industry to get away with polluting our environment. Attorneys General in 12 states say that the Administration's plan to ease rules on reporting legal toxin releases would compromise the public's right to know about possible health risks in their neighborhoods. In a letter to the U.S. Environmental Protection Agency (EPA), the state officials say the proposals, which include raising some reporting thresholds and moving from annual to biennial reports, would have the greatest harm in low-income neighborhoods where polluting facilities are often located. The Bush Administration proposed the changes in September as a way to reduce the regulatory burden on companies by allowing some to use a short form when they report their pollution to the EPA's Toxics Release Inventory Program. New York Attorney General Eliot Spitzer said:

This EPA move appears to be yet another poorly considered notion to appease a few polluting constituents at the expense of a valuable program.

Also signing the letter were the attorneys general of California, Connecticut, Illinois, Iowa, Maryland, Massachusetts, New Hampshire, New Jersey, New

Mexico, Vermont, and Wisconsin. Wisconsin Attorney General Peggy Lautenschlager observed:

The public has a fundamental right to know what hazardous materials their children and families are being exposed to.

The proposed changes, which require congressional approval, would exempt companies from disclosing their toxic pollution if they claim to release fewer than 5,000 pounds of a specific chemical—the current limit is 500 pounds—or if they store it onsite but claim to release “zero” amounts of the worst pollutants. The chemicals involved include mercury, DDT, PCBs, and other chemicals that persist in the environment and work up the food chain. Companies must report any storage of dioxin or dioxin-like compounds, even if none are released. The inventory program began under a 1986 community right-to-know law. If Congress agrees, the first year the changes could be possible would be 2008. EPA officials say communities will still know about the types of toxic releases, but not some details about how each chemical was managed or released. A three-part series by The Associated Press in December that analyzed EPA air pollution data for neighborhoods nationwide underscored the need for full and frequent disclosure.

Source: Associated Press

THE BUSH ADMINISTRATION IS A FRIEND OF POLLUTERS

As mentioned above, there has been a strong push by the Bush White House to further weaken our nation’s pollution control laws and regulations. That is the wrong thing to do and it shouldn’t go unchallenged. Without a doubt, the Bush Administration has been the best friend of industries that pollute our environment of any administration in my lifetime. The USA Today had an excellent editorial in its January 11th issue that is

very much on point. Even though parts of the editorial are a little bit dated, it is set out in full below for your edification and consideration.

DON’T DILUTE POLLUTION LAW

Smell something funny? It might be poisonous emissions wafting from a nearby manufacturing plant. Or it might be the odor surrounding a plan being pushed in Washington that would make it harder for neighbors and local officials in hundreds of communities to know what potentially deadly pollution risks they’re being exposed to. Twenty years ago, in response to demands from public safety officials and ordinary citizens across the country, Congress passed the Emergency Planning and Community Right-to-Know Act. It came in the wake of the worst industrial accident in history, a chemical spill at a U.S.-owned insecticide plant in India that killed more than 15,000 people, and a serious chemical accident at the same company’s plant in West Virginia. The law mandated a publicly accessible annual report, known as the Toxics Release Inventory, on poisonous substances being pumped into the air; water and ground by refineries, chemical plants and others ranging from food processors to makers of kitchen countertops. By spotlighting where dangerous pollutants come from, it has helped reduce toxic chemical releases by almost 65% over the past two decades.

But now, under pressure from business, the Environmental Protection Agency (EPA) is proposing to:

- *Allow polluters to release 10 times as much toxic material —*

5,000 pounds instead of 500 pounds — before triggering requirements to report full details of how much was released and where it went.

- *Permit the withholding of information on low-level production of persistent and potentially deadly poisons such as lead and mercury that build up in people’s bodies.*
- *Require reports only every other year instead of every year.*

The rationale is to ease the paperwork burden on business, particularly what EPA officials like to call “mom-and-pop shops” and others that together account for less than 1% of the nation’s toxic emissions. But a review of the latest inventory, including information that would no longer be available under the new rules, shows that many of these facilities are in or near residential areas—many with large low-income or minority populations. And many are in fact arms of major corporations such as Pepsi, Clorox, Raytheon and U.S. Gypsum. Even the business community is divided as to whether this “relief” is necessary or desirable. Claims of the supposed costs to business of complying with the reporting requirements have been hotly disputed. Emergency response officials have joined environmental activists in warning against reducing the reporting requirements. Many say that more, not less, information is needed on toxic releases. They point to incidents such as the chemical soup that washed through New Orleans in the wake of Hurricane Katrina.

Friday is the deadline for public comment on key elements in the proposed changes, after which EPA will consider whether to go ahead

with this version of what it calls "burden reduction." After two decades, any bureaucratic requirement is ripe for review. But the sniff test for overhauling the Toxics Release Inventory should be the benefits or risks to public health, not the financial gains for polluters.

USA Today — January 11, 2006

It is very clear that the polluters have tremendous influence over those in the White House who control President Bush. In my opinion, the American people don't want the EPA to take major steps backward on environmental issues. If you agree, get involved and let the politicians you send to Washington know how you feel. I recommend that you contact your Senators and members of Congress and ask for their help in this most important fight.

PACIFIC STEEL SETTLES OVER EMISSIONS PROBLEMS

Pacific Steel Casting in California has reached a settlement with the Bay Area Air Quality Management District over odor emissions that have been a constant source of complaint among nearby residents. The settlement requires that Pacific Steel install a \$2 million dollar carbon filtration system on one of its three plants. The company will pay \$17,500.00 in fines and develop an odor management plan approved by the Air District for the entire facility. Nearby residents have called the \$17,500.00 "a drop in the bucket" for Pacific Steel. Residents have also expressed disappointment over the requirement of five odor complaints required for penalties. Residents claim that it will be difficult as it requires confirmation from an inspector at the plant who may not be readily available. Also, because of weather, the smell may be gone by the time the inspector arrives.

Most people don't realize it, but those types of situations make it very difficult

to get a confirmed complaint, especially on an odor emission. While some of our readers may not think this is a problem, I can assure you that it's a big problem if your house is near the plant and you have to deal with the odor on a regular basis. A spokesperson for a local environmental group lobbying for cleaner emissions made this assessment:

I am hopeful that we will see that this does make a change, but I think we will have to continue to monitor the industry to make sure the equipment they have is installed properly...and I do encourage them to use less toxic chemicals.

Source: Contra Costa Times

RAMAPOUGH INDIAN TRIBE SUES FORD

The Ramapough Mountain Indian Tribe and other residents of Ringwood, New Jersey, have sued Ford Motor Company over the dumping of thousands of tons of paint sludge and other toxic material from the company's former assembly plant in nearby Mahwah, New Jersey. The lawsuit, filed in state Superior Court in Passaic County, New Jersey, claims that Ford caused widespread contamination of the soil and groundwater in a mountainous 900-acre part of Ringwood, near the New York state line, during the 25 years that the Mahwah plant was open. The site includes two abandoned iron mines. Ford closed the Mahwah plant in 1980. While Ford admits that a contractor it hired dumped wastes in Ringwood, the company claims that the dumping went on for only four years. Ford also claims that parts of Ringwood had been used as an illegal landfill for decades.

The 717 current and former residents in the suit contend Ford's failure to adequately remove all the toxic material caused serious illnesses and diseases among residents of the area such as cancers and skin diseases, and an

increase in the cases of leukemia. The affected area was added to the federal Superfund list in 1983. However, the federal Environmental Protection Agency gave the site a clean bill of health in 1994 and removed it from the list. But as additional contamination has been found, the company has had to return to the site on several occasions. In September, Ford signed a settlement agreement with the federal agency to test the site again and devise a comprehensive cleanup plan.

Source: New York Times

XVIII. THE CONSUMER CORNER

BEWARE OF TAX RELATED INVESTMENT OPPORTUNITIES

With the tax season fast approaching, Joseph Borg, Director of the Alabama Securities Commission, has warned Alabama investors to be cautious when attending investment seminars offering tax-saving and tax sheltered investment strategies. This warning focuses on seminars that may offer investors an opportunity to "move their money," "maximize tax flow," or "pay less taxes." This type of marketing tactic could be used to attract investors to a seminar where they will learn about a specific investment product or strategy that's connected to a promised tax break. In some cases, investors are audited years later only to find that they could be assessed for additional taxes, interest, or penalties by the Internal Revenue Service. Commissioner Borg offers seven tips to help you protect your money:

- Watch out for ads that make extravagant claims about seminar results or promise easy ways to 'maximize your tax flow' or 'pay less taxes'. Remember, if it sounds too good to be true, it probably is.

- Don't rely on a presenter's reputation as a 'financial guru'. Because these seminars tend to push specific investment products or services as the 'means' to the promised tax break, it's critical to investigate the presenter's background, qualifications, and professional record. Is he/she registered to buy and sell investments? Any person or company selling securities or offering investment advice for a fee in Alabama must be registered with the Alabama Securities Commission. Your first line of defense is to call (1-800-222-1253) to check out the person offering a product or advice for a fee and the product for registration. If a person or product is not properly registered—Don't Invest!
- Find out how the presenter and the organization holding the seminar are compensated. Many of these seminars are free to attend. In some cases, speakers may be paid a fee to push a certain product, and you may find that the investment strategy they're promoting is closely linked to a specific product the sponsor of the seminar wants you to buy.
- Don't invest your money at the time of the seminar. A legitimate offer will be just as good tomorrow as it is today. You need to invest your personal time and effort to understand the offer and determine whether this opportunity is for you.
- As with any type of investment opportunity, question anything that guarantees high returns with a low risk. If an investment promises a high return, usually the risk of losing your money is higher.
- Don't get involved in any investment opportunity unless you fully understand it. Fraud artists are known to develop new product names that are really slight variations of mainstream investments just to convince investors the opportunities are legiti-

mate. Make sure any products you choose match up with your risk tolerance or your investment goals. Seek an independent opinion from a third party such as a professional financial planner or attorney with expertise in tax law and estate planning.

- Remember to base your final investment decision on the research you have gathered from credible and diverse sources. You don't need to invest your hard earned money until you are absolutely sure an investment opportunity is real, you understand the risk, and the opportunity has an objective that best matches your financial goals.

Commissioner Borg, in issuing the warning, had this to say:

Investing your hard earned dollars should take as much or more time and effort than buying a home or a new car. The Commission is proud to offer anyone free materials or access to information about how to make informed investment decisions. In 2006 the Commission will offer and display on its website additional professionally produced materials that explain stocks, mutual funds, and wise investment strategies.

Potential investors should thoroughly check out any investment opportunity. You can contact ASC at www.asc.state.al.us for inquiries regarding securities broker-dealers, agents, investment advisors, investment advisor representatives, financial planners, or the registration status of securities; to report suspected fraud; or obtain consumer information.

Source: Alabama Securities Commission News Release

CHEERLEADING INJURIES MORE THAN DOUBLE

Most parents probably don't consider cheerleading to be real dangerous activity for their children. But, cheerleaders catapult in the air, climb human pyramids, and catch their tumbling teammates as they fall to the ground. Unfortunately, they also make lots of emergency room visits. Recent research indicates cheerleading injuries more than doubled from 1990 through 2002, while participation grew just 18% over the same period. A study published in the journal *Pediatrics* last month estimates 208,800 young people ages 5 to 18 were treated at U.S. hospitals for cheerleading-related injuries during the 13-year period.

Most of the injuries were suffered by 12- to 17-year-olds. Nearly 40% were leg, ankle, and foot injuries. Almost all the patients in the study were treated at emergency rooms and released. But because researchers used only emergency room numbers, gathered by the Consumer Product Safety Commission, the true number of those injured is even greater. This is because many children are treated at doctors' offices or by team trainers. The researchers concluded that the rise in injuries is probably because the stunts are increasingly difficult. Cheerleading has "evolved from a school-spirit activity into an activity demanding high levels of gymnastics skill and athleticism," according to the study. Cheerleading now uses gymnastics, with some stunts being certainly more dangerous than others. The study's lead author, Brenda Shields, an injury researcher at Columbus Children's Research Institute in Ohio, observed:

Cheerleading is not considered a sanctioned sport by some state high school athletic associations. As a result, coaches are not always trained, and some schools lack the proper facilities and equipment.

The study recommends that coaches get professional safety training, and high schools and cheerleading associations adopt uniform safety procedures and also develop a national database for injuries. That is something the Memphis, Tennessee-based American Association of Cheerleading Coaches and Advisors has been advocating for several years. The association publishes a safety manual for cheerleaders and offers safety courses for coaches around the country. The group's executive director, Jim Lord, says that several factors, including the popularity of televised cheerleading competitions, have encouraged more cheerleaders and coaches to mimic difficult tumbling moves before they have the right training. Mr. Lord says:

It's not that the sport is dangerous, but it's people trying skills they shouldn't. Basket tosses are the most difficult skill you can do, but that doesn't mean you should do them.

Parents should insist that schools provide the necessary training for cheerleading coaches and spouses. They should also make sure that the facilities used for practice sessions are as safe as possible. Schools that do not take steps that are available to make cheerleading safer are taking a very big risk.

MAGGOTS FOUND IN BABY OATMEAL

In the United States, all of us expect our food supply to be safe and fit for consumption. There are certain things we don't expect to find in our food supply. The following account of a family's experience is just about as gross as it gets. It has been reported that a south Florida family recently found **maggots** in their baby's oatmeal. In mid-January, Gerber brand oatmeal was purchased at a local store, taken home, and mixed with formula in a baby bottle. The mixture was then fed to a

very young child. When it was realized by the family that there was something wrong, the bottle was opened. Found inside were maggots crawling around in the bottle that the child was drinking out of. The child became sick, developed a severe fever, couldn't stop vomiting, and had to be hospitalized for food poisoning. The family called Gerber, with disappointing results. According to media reports, the company told the family that it wasn't a big deal—that maggots couldn't hurt the baby.

Upon learning about the family's problem, a local television reporter went to the same store, where store employees let her open up another box of Gerber Oatmeal. It was reported by the local CBS affiliate that this box was filled with maggots. I hope this was an isolated incident. As you may know, it takes a considerable length of time for maggots to form and develop. As most folks from this country—like me—know, eventually maggots become blow-flies. The last place you would expect to find these creatures is in a box of baby food on a store shelf.

Source: Associated Press

XIX. RECALLS UPDATE

SAAB RECALLS 9-3 MODELS TO FIX POSSIBLE FUEL LEAK

General Motors Corp. has recalled the 2001 and 2002 Saab 9-3 because the fuel pump may leak where the gasoline line attaches. Approximately 17,400 Saab 9-3 passenger vehicles, both hard top and convertible, built in Uusikaupunki, Finland, are included in the recall. The Saab 9-3s were built between May 2000 and July 2002. According to National Highway Traffic Safety Administration documents accompanying the recall, the plastic fuel pump retaining tabs holding the fuel lines were damaged during the manufacturing process for some of the

Saabs built in Finland. NHTSA indicates that over time the fuel lines can loosen from the pump, causing the fuel leak and fire potential.

COMPANY RECALLS PET FOOD

Diamond Pet Foods is voluntarily recalling many of its products produced at its Gaston, South Carolina facility. Tests have shown high levels of a toxic chemical known as aflatoxin, which comes from a fungus that affects corn and other crops. Diamond, Country Value, and Professional dog food brands have been linked to at least 100 dog deaths. The aflatoxin affects the liver and causes a number of symptoms. Warning signs include: loss of appetite, yellowing of the eyes, gums, or on the belly; and fever. Early signs would be not eating and vomiting. You will see a yellowing of the eyes and the mucus membranes of their mouth. Recalled products include Diamond, Country Value, and Professional Dog and Cat Foods. Recalled products can be identified by the Date Code and the "Best By" date. A Capital "G" will be in the 11th or 12th position of the date code on 18 to 55 pound bags and in the 9th position on smaller bags. The "Best Buy" dates are between March 1, 2007, and June 10, 2007. If your dogs have eaten any of these products, take them to a vet immediately. It can be fatal, depending on how much or how long the animal has been eating the food. For more information on the recall, go to **www.diamondpet.com** or call the Customer Information Center at 1-866-214-6945.

XX. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

Julia Anne Beasley

Julia Anne Beasley, a graduate of Cumberland School of Law, joined the firm in 1992. Julia handles motor vehicle accident litigation and other types of personal injury and wrongful death cases. Some of her other cases have included fallen merchandise in large retail stores and misfilled prescriptions against major drug chains. Julia has obtained numerous multi-million dollar recoveries from logging companies and truck companies for her injured clients and for families who had loved ones killed in highway collisions.

In her spare time, Julia competes in cutting horse shows on the local and national level with her 14-year-old gelding, Peppy Snicker Bar; her 6-year-old mare, Docs Dual Jae; and her 5-year old gelding, Peponitas Top Gun. Her 8-year-old mare, Our Little Dually, will be competing in the World Finals Cutting Show to be held in Texas this month. Julia also is an active partner in Double B Ranch, where she currently keeps six other horses.

Julia is also very active in her church, Fresh Anointing International Church, located in Montgomery. She wants to help spread the love of Jesus to others through Christian music, mission trips, and other ministries that she helps promote. One of these days, Julia plans to use her new barn and her horses to minister to children, allowing them to experience God's love through real ranch life.

Julia enjoys her work and gets satisfaction from knowing that the cases she has handled have helped her clients put their lives back together in a meaningful way to the extent possible. She is an outstanding lawyer who is well liked by

her clients and respected by opposing lawyers and judges. We are very glad to have Julia on our side.

Julie Grimes

Julie Grimes, who started with the firm in March of 1994, serves as our Accounting Manager. Basically, Julie oversees all the receipts and expenditures of the firm and manages the distribution of all the client settlements. She oversees a staff of five employees. Julie is married to Keith Grimes. They have two sons, Chris and Casey; and Keith has two daughters, Celeste and Katie. They are the proud grandparents of five grandchildren, who all just happen to be boys. Julie's son Chris, and grandson Chael, are both currently serving in the United States Marine Corps. Julie, who graduated from Troy State University with a degree in Education, was a high school teacher for 5 years. She taught music and mathematics before changing studies and careers and focusing on business and accounting. Besides working at the firm, Julie and her husband have a farm and raise Black Angus Cattle. She and Keith love to travel and try to go somewhere new every year. Julie does a tremendous job for our firm, and we are most fortunate to have her with us.

Sherry McHenry

Sherry McHenry, who came to the firm in March of 2001, currently works as a Clerical Assistant. In this position, she assists lawyers and legal assistants with personal injury cases. Sherry does valuable work in assisting to get cases ready for trial. She has two children, Jennifer, 22, who attends South University, and Phillip, 19, who works for the Alabama Department of Public Safety. Phillip will attend AUM this spring and is anxiously awaiting his 21st birthday so he can enter the Trooper Academy. His grandfather Ned McHenry (Sherry's father) served as Director of the Department of

Public Safety during his tenure with the state and was one of the best to ever serve in that job. Sherry has two brothers, Marc and Jason, who are currently state troopers and who are carrying on in their father's tradition. She helped implement the Commercial Drivers License Program for the State of Alabama. Sherry is a very good employee, who is dedicated to her work. We are pleased to have her with us.

Josh Bartgis

Josh Bartgis, who has been with the firm for almost two years, serves as a staff assistant. He currently works for Lance Gould in the Fraud Section and stays very busy. Josh grew up in Montgomery. His dad is a District Vice-President for Regions Bank, and his mother owns Allin & Associates, a small business that builds custom homes. Josh will earn an undergraduate degree from AUM this spring. We are pleased to have Josh with us. He is a very good employee and is a credit to the firm.

Patrick Cagle

Patrick Cagle, who serves as a runner, has been with the firm since August of 2005. Patrick is one of the employees responsible for making hand-deliveries for the firm. Numerous courthouse runs are made in several Alabama counties on a daily basis. This requires going occasionally in surrounding states. Patrick also helps to serve subpoenas for trial witnesses on a regular basis. In addition to his other duties, he assists lawyers and legal assistants in getting everything ready for trials and makes sure that all equipment, trial boxes and supplies are in place when a trial starts. Patrick, who is pursuing a finance degree at AUM, plans to attend law school upon graduation. He enjoys hunting and the outdoors generally. Patrick does a very good job for the firm in a most important and demanding position. We are glad to have him with us.

XXI. SPECIAL RECOGNITION

A RECOMMENDED HISTORICAL CALENDAR

Once We Walked is a distinctive 50th Anniversary walk calendar covering the 14 months of the historic Montgomery Bus Boycott. Each calendar page features photographs and summaries of key events and trends that developed during the boycott. As we all know, the boycott began with the December 1, 1955, arrest of Mrs. Rosa Parks. It continued through the outbreak of segregation and violence in January of 1957. Events and facts from the 14 months are listed in the calendar under each date. There is a running count from December 5, 1955 to December 21, 1956 covering the 382 days of the boycott. Interestingly, the days on the calendar are 2005-2007 days, with the current holidays listed. Therefore, the calendar is not only a historical reference, but is also functional for current use.

Authorized by the Board of Directors of the Montgomery Improvement Association, the calendar serves as a tribute to the MIA's rich history and unique achievements. I have received one from my friend Mark Sabel and I have really enjoyed reading all of the information. It makes me realize how far we have come, but more importantly, it reminds me of why. I understand that copies of the calendar are limited, so if you are interested in ordering one, you may do so by calling NewSouth Books at (334) 834-3556 or the MIA 50th Anniversary office at (334) 265-6262. I understand that the calendars will also be available in selected local stores in Montgomery. Copies are available for only \$9.95. I believe these calendars will become collectors' items.

THE HEART OF DIXIE CUTTING HORSE ASSOCIATION

The Heart of Dixie Cutting Horse Association (HDCHA), based in Montgomery, Alabama, is one of the oldest—if not the oldest—affiliates of the National Cutting Horse Association, based in Ft. Worth, Texas. The HDCHA has been in operation for approximately 40 years. Our firm has supported the HDCHA over the past two years. Cutting, which is one of the world's fastest growing equine sports, offers tremendous excitement and drama for horse, rider, and spectators alike. For those of you who are not familiar with cutting, I will give you a brief account. The challenge for the rider is to select a single calf from the herd, gently guide it into the center of the arena, and then, with lightning-fast starts and turns, prevent the calf from ducking past the horse and escaping back to the herd. In the contest arena, the art of the cutting horse comes alive in a classic test of intelligence, training, breeding, and skill. Many factors play a part in the making of a cutting champion. If you have never attended a cutting competition, I believe you would be highly impressed with the performance if you will find time to take in a show.

In competition, the cutting horse and rider must work together as a team in demonstrating their cattle-handling skills. The contest begins as the horse and rider survey the herd. Quietly—deliberately—without hesitation, the horse approaches the herd. It is a tense time for all concerned. In competition, the horse and rider have two and one-half minutes to complete their work. That means there is no time for mistakes.

HDCHA affiliates produce weekend events all during the year, with the money earned and points accumulated tallied at the end of the year. The top riders compete in the World Finals. HDCHA has approximately 150 members from Alabama, Florida,

Georgia, Mississippi, Tennessee, and Louisiana. Locally, the HDCHA holds cuttings at the W.O. Crawford Arena on the Garrett Coliseum grounds on weekends, as scheduled. Lots of folks come to town for these events. The State of Alabama badly needs to upgrade the facility, which is not up to par with other facilities. When compared to what other states have done with their facilities, we have lots of catching up to do. I encourage you to go out and enjoy the cutting competition. Show dates for this year in Montgomery are: February 11th and 12th; April 1st and 2nd; May 6th and 7th; July 22nd and 23rd; August 12th and 13th; October 28th and 29th; and November 11th and 12th.

Not only does the HDCHA strive to make the events family-friendly atmosphere, they also have Cowboy Church services on Sunday morning. Presently, over 50 people attend these services. The members of HDCHA have a real love of horses and that's why they compete. These horses are magnificent, and they give 100% every time they compete. There is nothing more beautiful or impressive to watch than a good rider and a great cutting horse work. We believe supporting the HDCHA is very important. Their members are dedicated, and the organization needs donations from interested businesses. The members tell me that they have been blessed to continue to improve their cuttings and the association. Incidentally, one of the benefits of attending a HDCHA cutting show is the great food served. Their chief cook is a beautiful lady, Bodie Bohn, who not only is a great cook, but is an even greater person. You should come out and see what cutting is all about and be a part of the association. You might even decide that cutting is the sport for you. Believe me, if you try it one time, you might just get hooked—just ask Julia Beasley.

XXII. SOME PARTING WORDS

The relentless attacks by Corporate America on our judicial system haven't let up one bit. In fact, the attacks have probably intensified in recent weeks. The recent action by the FDA is just another example of how powerful and ruthless the giant pharmaceutical industry is. Unfortunately, that industry is not alone in its influence over government. The following industries—automobile manufacturers, insurance, tobacco, and chemical—have joined forces with the drug industry in a concerted effort to completely destroy the civil jury system. This coalition is well-financed, highly-organized, and totally dedicated to their task. I believe that the current scandal in Washington is directly related to the campaign to take the right to a jury trial away from ordinary citizens and to virtually restrict their rights to relief when they become victims of corporate abuse or wrongdoing. The lobbying efforts of the **Abramoff types** in Washington are for the benefit of Corporate America and certainly not for ordinary folks. Taking a valuable right from ordinary folks just gives a lobbyist like Abramoff just another notch in his belt and a pay raise. If this battle to save

the courts and preserve rights is lost, people who are badly hurt or have a family member killed due to the wrongdoing of a large corporate will have little hope left. That's why we all have a duty to stand up and fight.

Over the years I have been asked on many occasions what it takes to be a good leader. I have tried to give sound advice when asked and hope that my advice was the right thing and may have helped. I really believe leadership depends on a number of factors and I know that people can lead effectively in varying ways. As you know, there are all sorts of leaders in our society. Some are in government—some in military—some in business—some in education—some in sports—and some in our churches. Aspiring to be leaders, folks go to all sorts of seminars and motivational meetings in an effort to learn more about how to be a good leader. A friend of mine sent me a statement referring to Ben Franklin, one of our nation's founding fathers, and certainly a tremendous leader. Nobody would question that this gentleman, who was said not to be a great orator, was a real leader at a critical time in our nation's history. History tells us that he was a genius with a first class disposition, spending his adult life as a printer, postmaster, diplomat, statesman, and inventor. The following is how Ben Franklin is said to have described real leadership:

To be a leader of men, Franklin realized, it was best to be one of the guys: generous in praise, respectful of divergent opinions, quick to give credit to others, and slow to take it himself

*Credit: Tom Ferrick Jr.
Philadelphia Inquirer*

Having reflected on my life, and on the lives of others I have observed, I would take leadership a step further. I sincerely believe that when a person, who is in a position that requires leadership of others, allows God to take over his or her life, effective leadership becomes much easier. When God is in charge of a person's life, he or she will lead others in the right way. You will find that the Golden Rule becomes your guideline for leadership and that makes things better for all concerned. I know from experience that when you won't allow God to take over and direct your life's activities, you in turn won't be a very good leader. Most of us have to learn that lesson the hard way. I know that I did. Finally, I will leave you with these words of wisdom, which reflects the source of my strength and hopefully yours:

*I can do all things through Christ
who strengthens me.
Philippians 4:13*

*To view this publication on-line, add or change an address,
or contact us about this publication,
please visit our Website: www.BeasleyAllen.com*

