



THE  
**JERE BEASLEY REPORT**

MARCH 2007

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**A NATIONAL LAW FIRM LOCATED IN MONTGOMERY, ALABAMA**

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# I. CAPITOL OBSERVATIONS

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## *THE EXXON CASE WILL SOON BE DECIDED*

Oral argument in the appeal of the State of Alabama's verdict against ExxonMobil was held as scheduled on February 6<sup>th</sup>. During the arguments by counsel, the Supreme Court justices asked a number of very good questions that indicated they had a very good grasp of the significant issues in the case. Most observers felt that things went well for the state's position and that the amount of punitive damages should be the only real issue to be decided by the court. The fraud proved at trial was so strong and well-documented in the record that the issues relating to ExxonMobil's conduct really shouldn't be much of a problem for the justices. This politically-powerful company has to realize that it can't commit an intentional fraud and get away with it by simply paying the compensatory damages as one would for a simple breach of contract and thereby escape being punished.

After oral arguments in our case the U.S. Supreme Court issued an opinion in another case that will help the state greatly on the punitive damages issue. The High Court in the Philip Morris case reaffirmed the TXO case that dealt with the "potential harm" issue that was directly involved in our case. Exxon had taken the position in its argument before the Alabama Supreme Court that TXO was no longer good law. Obviously, that argument has now been rejected by the U.S. Supreme Court. The justices on the Alabama Supreme Court will now follow TXO in my opinion. The U.S. Supreme Court in its opinion repeatedly reaffirmed that in cases of unrealized harm "the potential harm the defendant's conduct could have caused" is the proper criteria to be followed. In our case the potential harm to the state from Exxon's intentional fraud was over \$900 million.

It's possible that the Alabama Supreme Court will announce its decision in the state's case by the time this issue is received. Governor Bob Riley, Attorney General Troy King, and the Governor's Legal Advisor, Ken Wallis, attended oral arguments and came away with the belief that the state would prevail in the case. I find it rather interesting that AVALA's spokesperson is the only person to find fault with the jury verdict on the fraud issue. Some editorial writers have questioned whether the court should allow the full \$3.5 billion in punitive damages to stand, but none have indicated Exxon wasn't guilty of fraud. Perhaps the AVALA spokesperson should have attended the trial, or at the very least taken the time to sit in on oral arguments, and then his opinions would at least be based on something. It's quite obvious that nobody at AVALA has taken the time to read the transcript of evidence from the trial. Had that happened, even the most radical person would have to admit that an intentional fraud of a massive sort was proved at trial beyond a reasonable doubt and to a moral certainty.

## ***ALABAMA MOVING UP PRESIDENTIAL PRIMARY TO FEBRUARY 2<sup>nd</sup>***

Alabama's presidential primary may be moved up to February 2<sup>nd</sup>, a Saturday in advance of the increasingly crowded lineup of states holding primaries on February 5<sup>th</sup>. Democratic and Republican leaders are working together on a bill to move the primary away from February 5, 2008—which happens to fall on Fat Tuesday, a major Mardi Gras holiday on the Alabama coast. That change would put it right on the heels of South Carolina as an early test of candidate strength in the South. It is significant that moving the primary to February 2<sup>nd</sup> will distinguish Alabama from the growing number of states choosing February 5<sup>th</sup>. I hope the turnout sets a record. Alabamians should like voting on a Saturday rather than the state's traditional Tuesday voting day. It

makes sense to have all elections on a Saturday rather than a weekday in the future.

The current presidential lineup starts with the Iowa and Nevada caucuses, followed by the New Hampshire primary. Then candidates head to South Carolina, which has a split primary with Democrats voting on January 29<sup>th</sup> and Republicans on February 2<sup>nd</sup>. Candidates from both sides will visit Alabama before the primary vote. In my opinion, no serious candidate can afford to ignore Alabama. John Edwards, Mitch Romney, John McCain, Mike Huckabee,

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Tom Vilsack, and retired General Wesley Clark have all visited Alabama. Also, Barack Obama is scheduled for a visit which should attract lots of attention. The activity of the candidates in Alabama has already been much different than in recent presidential elections. Previously, Alabama was ignored because its June presidential primary came at the end of the primary season— long after candidates had their parties' nominations locked up. There is some question as to whether the rules of the national parties will block the move to February 2nd. Hopefully, that won't happen and the date will be changed to the earlier date.

#### **ALABAMA'S GOVERNOR IS A GREAT RECRUITER**

Each year the football recruiting season in Alabama receives a tremendous amount of attention from fans of all college teams. This year was certainly no different, with the interest at an all-time high. It's very significant that football isn't the only kind of recruiting that affects our state. In the scheme of things, the recruitment of industry by state officials in our state is much more important. It's very obvious that Governor Bob Riley has proved to be a master of the recruiting game. Recently, the Governor and other top state officials made a most important industry recruitment trip to Europe. The Governor's party visited a number of companies, including German steelmaker ThyssenKrupp AG, a company that narrowed its search for a plant site to Alabama and Louisiana. Making the trip were Governor Riley, Lt. Governor Jim Folsom Jr., House Speaker Seth Hammett, Alabama Development Office Director Neal Wade, DOT Director Joe McInnes, and Alabama Power President Charles McCrary. It is most encouraging to see this joint effort by the state's top two constitutional officers on an industry-seeking trip. I believe this just might have been a first for Alabama.

While in Europe, the Alabama delega-

tion met with executives of several companies that are looking to locate operations in the United States. ThyssenKrupp AG, based in Duesseldorf, had announced that Alabama was one of the two finalists for a \$2.9 billion steel and stainless steel manufacturing site. Alabama is trying hard to attract the company to Mobile, with the plant expected to employ 2,700 workers when completed in 2010. I am hopeful Governor Riley will land this company, which would be ranked a 5-star recruit by football recruiting standards, for our state. Alabama is on the verge of becoming the unquestioned industrial leader in the south and perhaps even the nation. Frankly, it's about time that our state reached its full potential. I believe that time has arrived.

#### **ALABAMA TRADE DEVELOPMENT CENTER OPENS IN INDIA**

In a related matter, the State of Alabama will have a presence in India that should be a boost for our state's economy. Recently, Commissioner Ron Sparks announced the opening of the Alabama India Trade Development Center in New Delhi, India. The Center will seek new opportunities for sales of Alabama products to India. For the past two years, the Agriculture Department has been working with other Southern states in promoting value-added food products, poultry, pulp and paper, and newsprint, to consumers in India. Alabama companies have the potential to sell much more than food and traditional agricultural commodities in that country. Because India's economy continues to spur infrastructure improvements, Alabama is well-positioned to provide industrial components to Indian companies, from forest products to aircraft parts, from agricultural machinery to construction equipment. By opening this Center, Alabama companies will have a unique opportunity to have staff on the ground in India seeking a fit for Alabama products with the Indian market. When making this

important announcement, Commissioner Sparks had this to say:

*India has a population of over one billion. Of that one billion, 300 million are considered to be part of the consuming middle class of the country. That is more than the entire population of the United States. At the Department of Agriculture and Industries, we evaluated our companies in Alabama and determined that the Indian market would be a good match for our products. Some people may ask: Why are these figures for India important to us here in Alabama? Because Alabama companies are poised, ready and able to sell many products to Indian buyers. For example, poultry meat is one of the fastest growing sectors on global meat demand and as you know, Alabama is one of the largest producers of poultry in the U.S. We have been actively seeking additional outlets for our poultry to help our farmers grow and sell more birds. Alabama is the second state in the U.S. to open an office in India and I believe this Center will have a tremendous impact on sales of Alabama products to India.*

It's significant that India is expected to import over \$8 billion in U.S. goods this year. Within the next 5 to 10 years, it's projected that India will become the second largest economy in the world, behind China and interestingly, above that of the United States. The population of India currently is 1,028,610,328, with its largest city having a population of over 16 million. I was surprised to learn that the country has three very large cities with populations that top New York City many times over.

The Alabama Center will be funded in part through the Department of Agriculture & Industries as part of the Southern United States Trade Association's New Delhi operations. The staff will

consist of foreign nationals from India who have experience with U.S. markets. The staff will promote Alabama products by participating in trade shows and in-store promotions, meeting with prospective importers, working on behalf of Alabama companies to ease import barriers, organizing visits of Alabama companies, and arranging networking opportunities for those companies. You can get more information by going to [www.agi.alabama.gov](http://www.agi.alabama.gov).

## II. LEGISLATIVE HAPPENINGS

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### *THE SPECIAL SESSION*

As this issue was headed to the printer, the Alabama Legislature was meeting in special session to consider the Governor's industrial development legislation. Hopefully, both the House and Senate will pass this needed legislation in the session. If passed, the measure will still have to be voted on by the people of Alabama. As we all know, industrial development is a highly competitive business and Alabama must be able to compete on at least an equal footing with other states. Failure to approve the Riley package would be a big mistake. In my opinion, the cost of the session is a very good and needed investment in our state's economic and social future.

### *THE JACK CLINE BILL*

Alabama Legislators should make passage of the "Jack Cline Bill" a top priority in the regular session. This bill is named in honor of Jack Cline, who lost both his lawsuit and his life a few weeks back. Hopefully, there will only be nominal opposition to this important legislation. If lawmakers take the time to investigate issues involved and to correct an injustice, the bill will pass and become law. If the bill does pass, it

would cure one of the worst injustices to come out of the Alabama Supreme Court in recent years. Passage would allow Alabama to join all other states in the U.S. in dealing with toxic tort litigation. However, it's quite possible that the Alabama Supreme Court will correct the situation by simply revising the mistake made by the Nabors' court when it ruled against Mr. Cline just before he died. As I understand it, the newly-constituted court will get that opportunity from Bob Palmer, who represented Mr. Cline, and who is dedicated to seeing that justice is finally done. That would be a fitting memorial to Jack Cline, an American hero, who fought the good fight!

### *ALABAMA CITIZENS SUPPORT TOUGHER ETHICS LAWS*

It was no surprise that a recent poll led by Randolph Horn, a Samford University political science professor, of Alabama citizens revealed that legislation designed to upgrade our election laws and the laws now on the books that deal with lobbyists. Alabamians are overwhelmingly in favor of ethics training for their elected officials, reporting all the money lobbyists spend on them, and ending a practice that makes it difficult to identify campaign contributors, according to this new survey. The preliminary results of a new survey were presented recently in Montgomery. The findings pretty well reflect the views of Alabama citizens:

- 88.8% of those surveyed believe elected officials should receive ethics training.
- 91.8% of those surveyed believe lobbyists should report all spending on legislators. Alabama currently allows lobbyists to spend up to \$250 a day on legislators without reporting it.
- 89.3% do not believe the law should allow political action committees, or PACs, to transfer money between one another, a practice that makes it difficult to trace the source of campaign contributions.

- 88.7% believe special spending projects should be listed in an agency's budgets. Sometimes lawmakers include spending for such projects without identifying them, a practice known as "pass-through pork."
- 91.62% believe lobbying rules should apply not only to the Legislature but the governor and other state agency officials. The remaining 8.38% believe it should apply only to the Legislature.
- 90.2% believe rules should be developed for awarding "no-bid" service contracts.
- The poll also found strong support for an alternative to the current system of electing judges. Almost 75% believe that partisan election of judges makes judicial elections too political.

Governor Bob Riley is correct when he says the people of Alabama want ethical and open government. He believes that changes are needed that make the operation of state government and the Legislature more transparent in order to restore the public's confidence. The Governor has an ethics reform package that will be presented in the Regular session. Among the Republican governor's reforms are bans on "pass-through pork" and PAC-to-PAC money transfers, as well as requiring disclosure of all money spent by lobbyists on lawmakers.

*Source: Montgomery Advertiser*

### *ALABAMA SENATOR PROPOSES TIGHTER ELECTION LAWS*

The Alabama Legislature badly needs to reform our weak and largely ineffective election laws. Senator Wendell Mitchell, who won a tough re-election race last fall, wants a rewrite of Alabama's election laws. The veteran and highly respected lawmaker believes there is a need to limit campaign contributions, shed more light on the sources of contributions, and to punish candidates who deliberately lie about their opponents. In recent years, we have

seen more and more negative campaigning and false advertising in Alabama elections. Steps must be taken to curb this disturbing trend. For example, the campaign waged against Senator Mitchell, who has had an outstanding career in public service, was one of the worst that I have witnessed.

The Mitchell bill was to be introduced in the regular session, which started on the 6<sup>th</sup> of this month. If passed, the legislation would:

- Make it illegal for a candidate to knowingly make false statements about another candidate, put a spy in a candidate's campaign, or superimpose a candidate's photograph into another photograph to create a false impression. A candidate who was targeted could go to court to stop the actions.
- Prohibit the transfer of money between political action committees. Currently, transfers are allowed and often hide the original source of a campaign contribution.
- Limit a political action committee's donations in each election to \$25,000 for a candidate for statewide office, \$10,000 for a district candidate like a legislator, and \$5,000 to a candidate for city or county office. Currently, there is no limit.
- Limit an individual to making a \$1,000 contribution to a candidate in each election. Currently, contributions by individuals are not limited.
- Start prohibiting individuals who give money to PACs from directing which candidate will get the money.
- Require, for the first time, write-in candidates to register with the secretary of state or local probate judge 90 days before an election. Write-in candidates also would have to comply with campaign finance reporting laws.
- Punish violators with a fine of up to \$1,000 and imprisonment of up to six months. That would include a candi-

date who refused to stop making false statements after being ordered to do so by a court.

I hope there will be bipartisan support for the Mitchell bill. The bill should not be weakened. In fact, the bill could be made even stronger. I am convinced that the key to having clean elections is to limit the amount of money that can be given and spent in all elections. If you agree that we need to clean up elections in Alabama and give ordinary people a voice in government, encourage your local senator and House member to support the Mitchell bill.

Source: *Associated Press*

### **INSURANCE PLAN SHOULD BE PASSED BY THE ALABAMA LEGISLATURE**

In the wake of the hurricanes that brought destruction to much of the Gulf Coast, the Alabama Legislature should deal with skyrocketing homeowner insurance premiums and the non-renewal of thousands of policies in our state's coastal communities. One potential change, according to legislators, would be stopping or restricting insurance companies from deciding not to offer coverage in a certain geographic area.

Because of major storms that hit our state in two out of the last three seasons, some insurance providers along the Alabama Gulf Coast have increased premiums or dropped policies altogether. For example, State Farm announced that the company will not renew 2,600 homeowners' insurance policies in Mobile and Baldwin counties. Allstate has also informed some people that their homeowners insurance will not be renewed. Although Alfa Insurance Co. has not dropped policies, it has informed customers that the company will not provide wind coverage in its standard homeowners insurance.

The State of Florida already has taken action on this insurance problem, which is certainly commendable. Recent action during a special session to deal with

insurance concerns in Florida should be studied carefully by Alabama lawmakers. Florida expanded its state-run insurance entity, which is now the largest property insurer in the state. Other coastal states are also considering similar legislation. But, some are not doing much to address the problem. Robert Hunter, director of insurance for the Consumer Federation of America, believes Louisiana is bowing to insurance companies. He also believes the legislation passed in Florida is good for consumers. Dr. Hunter, a former insurance commissioner in Texas, said states need to get into the business of assuming some of the risks—taking some of that gamble away from the insurance companies. It will be interesting to see how Alabama deals with a most serious problem.

### **ALABAMA NEEDS TOUGHER TEEN DRIVING LAWS**

The State Highway Safety Coordinating Committee is working on a package of bills for the regular session of the Legislature that, if approved, would help to save lives on Alabama highways. Although the package deals with safety issues relating to teenage drivers, it won't just address teens. It also will include bills affecting drunk drivers, seat belt use, and drivers with no insurance. The committee, which is headed by Rep. Jim McClendon (R-Springville) will recommend proposals that would:

- Toughen the state's graduated driver license law, which limits 16-year-old drivers to carrying no more than four passengers, excluding parents or legal guardians. The committee will recommend reducing that to one passenger, and Rep. McClendon cites a fatal wreck in Shelby County as a reason.
- Rescind a law that bars police forces in towns with populations of less than 19,000 from patrolling interstate highways.
- Prohibit those 18 and younger from using cell phones while driving.

- Create a “super drunk” law providing higher penalties for people arrested for driving with a blood-alcohol content of 0.15% or higher. Alabama’s drunken driving law currently applies at a 0.08% blood alcohol level, but does not provide higher penalties for those caught driving with higher blood alcohol levels.
- Clarify a gray area in state law to make sure drunken driving convictions more than five years old are admissible in court.
- Toughen penalties for people caught driving without a license or insurance.
- Increase the penalty for not wearing a seat belt from \$25 to \$50 and require adults in the back seat of vehicles to buckle up. Adults in back seats are not currently covered by the law.

Most of these proposals involve measures that, based on plain old common sense, would make our highways safer. I’m sure there will be opposition to some of the proposals, but I believe each is needed. I am hopeful the Legislature will study each proposal carefully and then pass the entire package.

Source: *The Birmingham News*

### III. COURT WATCH

#### **U.S. SUPREME COURT REVERSES THE PHILIP MORRIS VERDICT**

Last month, in a closely watched case, the U.S. Supreme Court reversed the \$79.5 million punitive damages verdict that had been awarded to a smoker’s widow. The 5-4 ruling was in favor of Altria Group Inc.’s Philip Morris USA. The appeal was from an Oregon Supreme Court decision upholding the jury verdict. In the majority opinion, the justices said the verdict could not stand because the jury in the case was not instructed that it could punish Philip

Morris only for the harm done to the plaintiff, not to other smokers whose cases were not before it.

It’s most significant that the decision did not address whether the amount of the award was constitutionally excessive, as Philip Morris had argued. Chief Justice John Roberts and Justices Samuel Alito, Anthony Kennedy, and David Souter joined with Justice Stephen Breyer, who wrote the majority opinion. Dissenting were Justices Ruth Bader Ginsburg, Antonin Scalia, John Paul Stevens, and Clarence Thomas.

Mrs. Mayola Williams had sued Philip Morris for fraud on behalf of her husband, Jesse Williams, a two-pack-a-day smoker of Marlboros for 45 years. Mr. Williams died of lung cancer more than nine years ago. His widow argued the jury award was appropriate because it punishes Philip Morris’ misconduct for a decades-long “massive market-directed fraud” that misled people into thinking cigarettes were not dangerous or addictive. Mr. Williams, according to his widow, never gave any credence to the surgeon general’s health warnings about smoking cigarettes because tobacco companies insisted they were safe.

It’s highly significant that the court didn’t address any universal ratio to be applied to cap the imposition of punitive damages in all cases. I am convinced that the justices will continue to consider punitive damages cases on a case-by-case basis. As pointed out in the Capitol Comments Section, the decision in the Philip Morris case really helps the State of Alabama’s position in the Exxon case. The decision came at a very good time for the people of Alabama.

Source: *Associated Press*

#### **HIGH COURT RULES FOR WEYERHAEUSER**

The U.S. Supreme Court threw out a \$79 million award against Weyerhaeuser Co. in a business lawsuit alleging the forest products company tried to monopolize the hardwood lumber market in the Pacific Northwest. The

unanimous decision comes in the case of a defunct lumber mill that said it was driven out of business when Weyerhaeuser paid too much for logs that Weyerhaeuser allegedly didn’t need. The U.S. Court of Appeals for the Ninth Circuit had affirmed the award to Ross-Simmons Hardwood Lumber Co. after a jury found that the larger company violated federal antitrust law.

The jury returned a \$29 million jury verdict, which was tripled to \$79 million. Writing for the court, Justice Clarence Thomas said that Ross-Simmons should have been required to prove that its competitor had a probability of recouping the losses it incurred in bidding up prices. The failure to satisfy that standard “cannot support the jury’s verdict,” Justice Thomas wrote. Ross-Simmons accused Weyerhaeuser of paying too much for alder logs and not using what it bought. Alder, the predominant species of hardwood logs in the Northwest, is used in furniture and specialty products such as picture frames and musical instruments.

Source: *Associated Press*

#### **A LOOK AT JURY VERDICTS IN ALABAMA IS MOST REVEALING**

The Alabama Jury Verdict Reporter recently published its 2006 Year in Review edition, which had some most interesting findings concerning jury verdicts in Alabama. The report analyzed 310 jury verdicts handed down in our state during all of last year. Interestingly, the number is up from 284 verdicts rendered in 2005, and the 280 verdicts rendered in 2004, but down from the 334 verdicts in 2003. The Reporter analyzes each case that resulted in a verdict and compiles statistics by county, region, case type, verdict amount, and type of injury, among other categories. The following are some of the Reporter’s findings regarding jury verdicts rendered in Alabama in 2006:

- **Motor vehicle negligence.** There were 126 negligence verdicts involving

motor vehicles rendered in Alabama in 2006. This was down from the 213 cases tried in 2002, but was up from the 116 cases tried to a verdict in 2005. Fifty-nine verdicts were rendered in favor of the plaintiff and 67 were rendered in favor of the defendant, yielding a winning percentage of 46.8% for the plaintiffs. The average plaintiff's verdict was \$95,095, and the average verdict was \$44,528.

- **Products liability.** There were six verdicts rendered in products liability cases. Of these, the plaintiff prevailed in three cases while verdicts were rendered for the defendant in the other three. The average plaintiff's verdict in these cases was \$1,843,333, and the average verdict considering all of the trials was \$921,667.
- **Medical negligence.** There were 32 verdicts rendered in medical negligence cases. Again, this number was down from the 54 tried in 2002 and the 52 cases in which a verdict was rendered in 2003, but was up from the 15 cases in this category in 2005. Of these 32 cases, the plaintiff prevailed in four cases while verdicts were rendered for the defendant in 28. The plaintiffs therefore won only 12.5% of the medical negligence cases tried in 2006. The average plaintiff's verdict in these cases was \$2,718,750, and the average verdict considering all of the trials was \$339,844.
- **Slip and fall or premises liability.** In 2006 there were 16 cases in this category tried before a jury. The verdicts were evenly split between the plaintiffs and defendants. The average plaintiff's verdict in this type of case was \$141,829, while the average verdict rendered considering all 16 cases was \$70,914.
- **Uninsured/Underinsured motorist.** There were 17 cases in this category tried to a verdict in 2006 in Alabama. The plaintiff prevailed in 13 of these cases while a defense verdict was rendered in four, resulting in a 76.5%

winning ratio for the plaintiffs. The average plaintiff's verdict was \$101,039, and the overall average verdict was \$77,266.

- **Cases involving UM only.** There were six cases tried that included UM coverage. In this separately analyzed category, the plaintiff was awarded a verdict in four of them. The defense prevailed in the other two cases, resulting in a 66.7% winning ratio for the plaintiffs in these cases. The average plaintiff's verdict awarded was \$74,617, while the overall average verdict handed down was \$49,745.
- **Retaliation acts in employment.** In this category, there were 12 verdicts reached by juries in 2006. The plaintiff prevailed in seven of the cases tried, and the defendant prevailed in five, resulting in a winning percentage for the plaintiffs of 58.3%. The average plaintiff's verdict in this arena was \$482,323, while the average figure overall was \$281,355.
- **Civil rights or employment.** In this category, 15 jury verdicts were reported for 2006. Of these, the plaintiff was successful in seven of the cases and there were eight defense verdicts rendered, giving the plaintiffs a 46.7% success rate in this type of case for 2006. The average verdict rendered in favor of the plaintiff was \$211,784 and the overall average verdict was \$98,833.
- **Assault.** There were five assault verdicts rendered in Alabama in 2006. Three verdicts were rendered in favor of the plaintiff and two were rendered in favor of the defendant, yielding a winning percentage of 60% for the plaintiffs. The average plaintiff's verdict was \$2,334 and the average verdict was \$1,400.
- **Defamation.** There were three defamation cases tried to a verdict in Alabama last year, and the plaintiff was successful in each of the cases.

The average verdict rendered in these three cases was \$1,054,001.

- **Malicious prosecution.** There were three malicious prosecution cases tried to a verdict in the state last year. The defense prevailed in two of the cases, while the plaintiff was successful in the other, leaving the plaintiffs with a success rate of only 33.3%. The plaintiff's verdict that was rendered was in the amount of \$310,000, while the average verdict rendered in this category was \$103,000.
- **Dram shop.** There was only one dram shop case tried to a verdict in Alabama in 2006. That case resulted in a verdict in favor of the plaintiff in the amount of \$2,788,902.
- **Dog bite/Dog attack.** There were no cases tried to a verdict in this category during 2006. There were from one to five cases tried in this category per year in the preceding four years.

These findings are not only interesting, but also are clear and convincing evidence that there is no lawsuit explosion in Alabama. Neither are verdicts excessive as some have said with no basis for their assertions. I have always found it helpful to check out the true facts before taking a position on any controversial issue. I hope editorial writers will follow that principle in the future when discussing Alabama's court system.

Source: *Alabama Law Weekly*

#### **JUDGE APPROVES HURRICANE KATRINA OIL SPILL SETTLEMENT**

A federal judge in New Orleans has approved a \$330 million class action settlement between Murphy Oil Corp. and residents of a New Orleans suburb that was flooded by crude oil during Hurricane Katrina. U.S. District Court Judge Eldon Fallon signed off on the agreement between the El Dorado, Arkansas-based company and some 3,800 residents of a neighborhood whose homes and businesses were flooded by oil from Murphy's refinery

located in Meraux, Louisiana, after Katrina struck on August 29, 2005. A giant crude oil storage tank at the refinery ruptured after being lifted off its base by floodwaters that inundated the area, pouring about 25,000 barrels of oil into 6,500 homes and businesses in a one square-mile area of the adjoining neighborhood.

Source: Reuters

#### **NEW ORLEANS FLOODING LAWSUIT AGAINST THE GOVERNMENT WILL PROCEED**

A federal judge has ruled that residents of several of the hardest-hit neighborhoods in the New Orleans area after Hurricane Katrina can sue the Army Corps of Engineers. The case involves claims that a government-built navigation channel was largely to blame for the flooding and resulting damage. Successful lawsuits against the Corps could result in billions of dollars in damage payments. Since the flood, those who lived in the devastated neighborhoods near the east side of New Orleans— including the Lower Ninth Ward, New Orleans East, and St. Bernard Parish— have contended that the Mississippi River Gulf Outlet caused much of their damage by intensifying the surge from the storm. The plaintiffs in the lawsuit contend that the damage was foreseeable.

In an effort to escape liability, the government argued that it was protected from lawsuits by the Flood Control Act of 1928. This act grants immunity from liability for flood damage caused by flood-control projects. But, Judge Stanwood R. Duval Jr. of the Federal District Court for the Eastern District of Louisiana, depending on previous cases saying that the channel was not a flood-control project, disagreed. Instead, Judge Duval said that the channel was built as an aid to navigation and consequently the protection from liability might not apply. The immunity questions will be presented at the trial.

As I understand it, the 76-mile canal was completed in 1965 as a shortcut for ships heading from the Mississippi River

to the Gulf of Mexico. Environmentalists and local officials have contended for years that the canal has done great damage to the coastal environment by piping salt water inland and killing off the cypress swamps and grassy marshes that serve as natural barriers to storms. Several scientists have said that during Hurricane Katrina the canal was a crucial part of a funnel that amplified the storm's surge and brought its waters into the heart of the city. The Corps has previously argued that the channel did not contribute greatly to the disaster. Interestingly, it did announce a plan last year to close the outlet to navigation. Critics, who believe that the plan doesn't go far enough to solve the problems, are demanding that the canal be filled in and the wetland buffer restored. It will be most interesting to watch this case as it travels through the court system.

Source: New York Times

#### **APPEALS COURT UPHOLDS JURY VERDICT AGAINST DRILLING COMPANY**

The Colorado Court of Appeals has upheld a \$4 million jury verdict in favor of a western Colorado sheep rancher. The claim was that a natural-gas drilling company had not paid the rancher all the royalties he was due over several years. Tulsa, Oklahoma-based Williams Production Co. had appealed the August 2004 verdict, arguing that evidence was improperly excluded and that the jury instructions and damage calculations were flawed. A three-judge panel of the appeals court rejected each argument.

The rancher, who owned 12,000 acres, was earning about \$3 million a year in royalties from natural gas drilling on his land. At trial, it was contended that Williams and Barrett Resources, which merged with Williams in 2001, had not paid him agreed-upon royalties from February 1996 to February 2004. The jury agreed, finding Williams guilty of breaching its contract, violating the state Consumer Protection Act, and acting in bad faith in its dealings with

the rancher. Williams may now appeal to the Colorado Supreme Court. The rancher died after the verdict while his case was on appeal. However, the case will proceed on behalf of his estate.

Source: Associated Press

## **IV. THE NATIONAL SCENE**

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### **BILLIONS OF TAX DOLLARS WASTED IN IRAQ**

As the civil war in Iraq continues to grow worse on a daily basis, with the U.S. Troops caught directly in the middle, some disturbing news was reported concerning U.S. tax dollars being doled out to contractors in the war-torn county. It was reported that the U.S. government has wasted over \$10 billion in Iraq. That was the conclusion of federal investigators who had been investigating the matter. Shockingly, it appears nobody really knows exactly how much more money has been either wasted or stolen. Unfortunately, it appears our government will likely squander significantly more money in Iraq and reconstruction effort before the war is over. The fact that our government has allowed companies doing business in Iraq to either waste or overcharge some \$10 billion in taxpayer money is not only shocking, it's inexcusable.

The three top auditors overseeing contract work in Iraq told a House committee recently that Defense and State department officials condoned or otherwise allowed poor accounting, repeated work delays, bloated expenses and payments for work done shoddily or not at all by U.S. contractors. This should shock the public into even more outrage over how the Bush White House has run the Iraq war. The cost to the taxpayers would still be tremendous even if all of the funds could be accounted for. But when there has been so much fraud and unchecked gouging of the government,

by companies profiting over the war, something must be done immediately to remedy the situation.

That problem could worsen, according to the Government Accountability Office (GAO), because there has been limited improvement so far by the Department of Defense. David M. Walker, comptroller general of the GAO, which as you know is the auditing arm for Congress, told federal lawmakers that his agency has been pointing out problems for years, only to be largely ignored or given lip service with little result. The auditors' joint appearance was before the House Oversight and Government Reform Committee. Mr. Walker made this shocking assessment concerning the situation:

*There is no accountability. Organizations charged with overseeing contracts are not held accountable. Contractors are not held accountable. The individuals responsible are not held accountable. People should be rewarded when they do a good job. But when things don't go right, there have to be consequences.*

Senate Democrats, calling recently-cited cases of waste "outrageous rip-offs of the American taxpayer," have introduced legislation to stiffen punishment for war profiteers and cut down on cronyism in contracting. The bill, sponsored by Senator Byron Dorgan (D-ND) and 22 other senators, would impose penalties of up to 20 years in prison and fines of up to \$1 million for war profiteering. It also would restore a rule that prohibits awarding federal contracts to companies that exhibited a pattern of breaking the law in their performance of government contracts. That rule, put in place by President Clinton, was dropped by the Bush Administration upon taking office. Also testifying before the committee were Stuart Bowen, the special inspector general for Iraq reconstruction, and William Reed, director of the Defense Contract Audit Agency. According to their testimony, the investigators:

- Found overpricing and waste in Iraq contracts amounting to \$4.9 billion since the Defense Contract Audit Agency began its work in 2003, although some of that money has since been recovered. Another \$5.1 billion in expenses were charged without proper documentation.
- Urged the Pentagon to reconsider its growing reliance on outside contractors to run the nation's wars and reconstruction efforts. Layers of subcontractors, poor documentation, and lack of strong contract management are rampant and promote waste even after the GAO first warned of such problems 15 years ago.
- Pointed to growing Iraqi sectarian violence as a significant factor behind wasted U.S. dollars. Iraqi officials must begin to take primary responsibility for reconstruction efforts, an uncertain goal given widespread corruption in Iraq and the local government's inability to fund projects.

The overpricing identified by the DCAA has tripled since last fall. Of the \$10 billion in overpriced contracts or undocumented costs, more than \$2.7 billion were charged by Halliburton Co., the oil-field services firm once headed by Vice President Dick Cheney. Of course that may be just another coincidence. According to the Pentagon auditors, more than one in six dollars they have audited in Iraq are suspect. That is shocking when you consider the total cost of this war so far. President Bush's budget request of nearly \$100 billion to pay for more U.S. troops in Iraq adds even more to the cost of trying to keep order in a country engaged in a bloody civil war. In my opinion, the American taxpayers won't tolerate this sort of thing much longer.

Source: Associated Press

#### **EXXONMOBIL SETS A NEW RECORD FOR PROFITS**

It was announced in February that oil giant ExxonMobil Corp. posted the

largest annual profit ever by a U.S. company—\$39.5 billion—topping the politically powerful oil giant's previous record of \$36.13 billion set in 2005. Revenue at the world's largest publicly traded oil company rose to \$377.64 billion for the year, again surpassing the record \$370.68 billion Exxon posted in 2005. ExxonMobil's record annual earnings come at a time when citizens and businesses are paying extremely high gasoline prices in the United States.

Source: Associated Press

#### **EXXON VALDEZ OIL IS STILL DAMAGING ALASKA'S SHORELINE**

A recent study reveals that Alaska is still being damaged by Exxon. Almost 18 years have passed since the tanker Exxon Valdez ran aground and fouled hundreds of miles of Alaska shoreline. Today, lingering crude from the nation's largest oil spill has weathered only slightly in some places, according to a new federal study that was released recently. The estimated 85 tons—more than 26,600 gallons—of oil remaining at Prince William Sound are declining at a rate of only about 4% a year. The rate of decline is likely even slower in the Gulf of Alaska. At that rate of decline, oil could persist for decades below the surface of some beaches, according to the report. The study, by the National Oceanic and Atmospheric Administration, was published in *Environmental Science & Technology*, the journal of the American Chemical Society. Researchers wrote in their conclusion:

*Such persistence can pose a contact hazard to intertidally foraging sea otters, sea ducks, and shorebirds, create a chronic source of low-level contamination, discourage subsistence in a region where use is heavy, and degrade the wilderness character of protected lands.*

Many of us have forgotten what actually happened back in 1989 when the Exxon Valdez ran aground, emptying 11

million gallons of crude oil into Prince William Sound. The spill contaminated more than 1,200 miles of shoreline and killed hundreds of thousands of seabirds and marine animals. Earlier research from other spills had revealed that oil could hold toxins for years if embedded in oxygen-depleted sediments where minimal weather-caused disintegration occurs. In the Valdez spill study, researchers found that thick, emulsified oil—called “oil mousse”—resists weathering and thus can be preserved in oxygen-containing sediments.

As we have reported, Exxon still has not paid the punitive damage judgment, originally set for \$5 billion by a federal jury in 1994. The case has been in the federal court system for over 12 years now. In December, the U.S. Court of Appeals for the Ninth Circuit ruled that the powerful oil giant must pay \$2.5 billion to compensate thousands of fishermen and others affected by the spill. Predictably, Exxon has asked the court to reconsider its decision.

John Devens, executive director of the Prince William Sound Regional Citizens’ Advisory Council, said Exxon’s prolonged stalling was “unconscionable” considering the social, economic and environmental damages. His observation about this politically powerful corporation pretty well sums things up:

*It’s very difficult to understand why Exxon isn’t a better industrial citizen.*

More and more folks around the country are beginning to share the same opinion about ExxonMobil as that of Mr. Devens and others who have dealt with this company. I can say, based on my personal experience with this company, that it has an arrogant corporate mentality with no respect for our country’s judicial system.

Sources: *Houston Chronicle* and *Associated Press*

### **NEW YORK IS FILING SUIT AGAINST EXXONMOBIL OVER OIL SPILL**

New York’s Attorney General has announced that he intends to file suit against ExxonMobil and two other oil companies. The suit is necessary because for decades the company has failed to clean up a giant, underground pond of petroleum left by the refineries that once lined Brooklyn’s waterfront. Hidden beneath more than 50 acres worth of homes and businesses, the subterranean slick is believed to have been floating on top of the water table in the borough’s Greenpoint section for at least half a century.

Attorney General Andrew Cuomo’s office has served formal notice on ExxonMobil and others of the state’s intent to sue under the federal Resource Conservation and Recovery Act. In announcing the suit, the Attorney General stated:

*This is one of the worst environmental disasters in the nation, larger than the Exxon Valdez and slower in the cleanup. ExxonMobil must and will be held accountable.*

The company is accused of leaving a “toxic footprint,” then doing “as little as possible to address the dangers that it created.” Other defendants will be Chevron and BP, the oil companies that owned facilities believed to have contributed to the pollution; the energy company Keyspan, which is responsible for a defunct manufactured gas plant in the neighborhood; and Phelps Dodge, which operated a now-demolished copper smelting plant.

It has been estimated by some experts that there were 17 million gallons of oil in the ground—about 6 million more than the tanker Exxon Valdez is believed to have spilled off the coast of Alaska. That is shocking and can’t be tolerated. State environmental officials believed that, at its current pace, the cleanup could take another 20 years. One interested party who supports the Attorney General’s lawsuit,

observed that: “ExxonMobil’s days of treating Greenpoint like a dumping ground are numbered.” Frankly, I am not surprised that this giant oil company would shirk its responsibilities and try to avoid following the law.

Source: *Associated Press* and *USA Today*

### **OIL DRILLING FIRMS TO PAY \$26 MILLION SETTLEMENT**

Three oil drilling companies that were accused of bribing Nigerian officials for fast customs clearance will pay the U.S. government \$26 million in the largest criminal settlement of foreign corruption charges to date. The companies are subsidiaries of British-based Vetco International Limited. At least one of them settled similar bribery charges in 2004. According to a Justice Department official, the companies—Vetco Gray UK Limited, Vetco Gray Controls Inc., and Vetco Gray Controls Limited—paid Nigerian customs officers \$2.1 million to speed equipment and employees into the country. Some 378 payments were largely processed through Vetco Gray Controls, Inc., which is based in Houston, Texas. In July 2004, Vetco Gray UK Limited agreed to pay a \$5.25 million fine for bribing Nigerian government officials more than \$1 million for insider bid information on oil and gas construction contracts worth \$12 million.

Source: *Associated Press*

### **ORGANIZED CRIME CHARGES HIT DRUG FIRMS**

Istanbul’s chief prosecutor has filed charges against 30 firms including Roche, Abdi Ibrahim, Bayer, Glaxo-SmithKline and Pfizer for overcharging government institutions for pharmaceuticals. Following the lawsuit filed last month against pharmaceutical giant Roche for overcharging the Social Security Authority and the Ministry of Health, 29 other drug firms are now being sued for “organized crime.” The lawsuit against the 30 firms accuses the

firms of overcharging public institutions when selling their drugs. The firms are charged with “participating in an unlawful organization formed with the aim of committing crime, abusing authority, forging official documents and lying in official documents.”

The main accusation in the case is “damaging public interest” by using a reference pricing system for imported medicine. According to this system, those medicines to be imported to Turkey should be priced compared to the lowest price of their equivalents in France, Italy, Spain, Greece, and Portugal. It is contended that the 30 firms in question did not select the lowest price in this process, thus overcharging the public. While investigating Roche—the starting point of the lawsuit—for overcharging the SSK and the Health Ministry, it was learned that 29 other firms had also overcharged government institutions. The investigation revealed that 30 firms had sold 209 different medications to government institutions at prices for higher than what the Health Ministry had decided upon earlier. Subsequently, the ministry filed a criminal complaint with the Istanbul Chief Prosecutor’s Office.

#### **MERCK AND IRS SETTLE TAX DISPUTE**

Merck & Co., the giant pharmaceuticals maker, has settled a dispute with the Internal Revenue Service regarding its taxes for the years 1993 to 2001. Under the settlement, Merck will have to pay about \$2.3 billion. The company had reserved that amount and says the payment to the IRS is not expected to have a material impact on Merck’s 2007 earnings. The settlement amount covers federal tax, net interest after federal tax deductions, and penalties.

Source: *Associated Press*

#### **THE BUSH ADMINISTRATION CAN NO LONGER IGNORE GLOBAL WARMING**

It’s become most obvious that the legacy of the Bush Administration will

not be one that history will record in a positive light by any standard. There have been so many failures that the public is becoming more than just a little restless. One of the worst failures of the Bush White House may just be the failure to even acknowledge—much less address—global warming. According to a landmark report from the world’s leading climate scientists and government officials, global warming is so severe that it will “continue for centuries.” The report concluded that unless the problem is curtailed, future generations will suffer greatly as a result of the inaction by governments.

The report by the authoritative Intergovernmental Panel on Climate Change was issued in early February and paints a most dismal picture. It seems fairly elementary to say that all countries, and that certainly includes the United States, must act quickly to curb greenhouse gas emissions. This report, the first of four to be released this year by the panel, which was created by the United Nations in 1988, found:

- Global warming is “very likely”—meaning more than 90% certain—caused by man. That’s the strongest expression of certainty to date from the panel.
- If nothing is done to change current emissions patterns of greenhouse gases, global temperature could increase as much as 11 degrees Fahrenheit by 2100.
- But if the world does get greenhouse gas emissions under control—something scientists say they hope can be done—the best estimate is an increase of about 3 degrees Fahrenheit.
- Sea levels are projected to rise 7 to 23 inches by the end of the century. Add another 4 to 8 inches if recent, surprising melting of polar ice sheets continues.

While the Bush Administration officials praised the report, tragically they

said the Administration still oppose mandatory cuts in greenhouse gas emissions. It’s very clear that the giant oil companies have dictated policy for the Bush White House in all areas in which their industry has an economic interest. One of those areas involves global warming. I hope that influence will wane in the coming months so that the U.S. government can join with other countries in the fight to save our planet.

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

#### **THE FEDERAL GOVERNMENT MUST GET TOUGHER ON COMPANIES THAT PROFIT BY SELLING CHILD PORNOGRAPHY**

It’s time to get tough on any person or company that is involved in peddling child pornography. More children and teens are being exposed to online pornography, mostly by accidentally viewing sexually explicit Web sites while surfing the Internet, researchers say. Forty-two percent of Internet users, who are between the ages of 10 and 17, who were surveyed reported they had seen online pornography in the past year. Of those, 66% said they did not want to view the images and hadn’t really sought them out. The conclusions of researchers at the University of New Hampshire appear in February’s *Pediatrics*.

Online pornography was defined in the study as images of naked people or people having sex. In the survey, most children who reported unwanted exposure were aged 13 to 17. Still, sizable numbers of 10- and 11-year-olds also had unwanted exposure—17% of boys and 16% of girls that age. More than one-third of 16- and 17-year-old boys surveyed said they had intentionally visited X-rated sites in the past year. The results come from a telephone survey of 1,500 Internet users aged 10 to 17 conducted in 2005, with their parents’ consent. Overall, 34% had unwanted exposure to online pornography, up from 25% in a similar survey conducted in 1999 and 2000.

The online use that put children at the highest risk for unwanted exposure

to pornography was using file-sharing programs to download images. But, they also stumbled onto X-rated images through other “normal” Internet use, the researchers said, including talking online with friends, visiting chat rooms, and playing games. Filtering and blocking software helped prevent exposure, but was not 100% effective, the researchers said. Better methods are needed “to restrict the use of aggressive and deceptive tactics to market pornography online” without also hampering access to legitimate sites, the researchers said.

According to University of Chicago psychiatrist Sharon Hirsch, exposure to online pornography could lead children to become sexually active, or could put them at risk for being victimized by sexual predators if they visit sites that prey on children. The federal government must get more involved in the fight to stop those who are profiting from the sale of child pornography. Churches, social clubs, and consumer groups must also take a strong stand in this area of concern.

Source: *Associated Press*

### **INVESTIGATION OF CHILD PORN SITE HITS 77 NATIONS**

The Austrian government has provided the FBI with more than 200 U.S. Internet addresses identified in a far-reaching international child pornography investigation in which suspects allegedly paid to watch graphic videos of young children being sexually abused. The investigation, which began last summer, has identified 2,361 Internet addresses in at least 77 countries, including the USA, where customers paid about \$90 to view the abuse of infants and other children.

The investigation is ongoing. The FBI is working closely with the Austrian authorities in to combat the proliferation of online child exploitation. At press time, no arrests have been made thus far. As reported by *USA Today*, according to persons involved in the

investigation, the videos represented the “worst kind of child sex abuse.” Law enforcement officials in Germany, Russia, and France were also provided information about dozens of suspicious Internet addresses in those countries. During one 24-hour period, more than 8,000 hits were recorded on the site from 2,361 addresses across the globe. Explicit videos showing abuse of both girls and boys were seized by the Austria Federal Criminal Investigations Bureau. Authorities are searching for an estimated 23 suspects in Austria. This sort of thing can’t be tolerated, and authorizes must take all steps necessary to apprehend and punish all offenders. The people responsible should be put in prison for as long as the law allows. In fact, if allowed under the law, execution would be my choice of punishment.

Source: *USA Today*

### **JUDGE THROWS OUT THE LAWSUIT AGAINST MYSPACE**

A federal judge has dismissed a lawsuit against the social networking Web site MySpace, which had been filed by the family of a 13-year-old girl who says she was sexually assaulted by a 19-year-old man she met online. We reported on this lawsuit last month, which accused the site of having no measures to protect children who use it, and had hoped that it would be successful. The lawsuit also named MySpace’s parent company, News Corp., and the 19-year-old, whose criminal case has not yet gone to trial. In its ruling issued on February 12<sup>th</sup>, the court held that MySpace was protected under the Communications Decency Act. The court said the Web site couldn’t be expected to verify the age of every user because that “would...stop MySpace’s business in its tracks.”

The Decency Act cited by the judge generally grants immunity to interactive computer services such as MySpace so that they are not liable for content posted by users. Sites like MySpace

shouldn’t be allowed to avoid the duty to make the Internet safe for children. MySpace knows its Web site is a playground for sexual predators. Because of that, MySpace should be doing some very basic safety precautions. An appeal by the girl and her family is expected. Hopefully, the lower court’s ruling will be reversed on appeal. If that doesn’t happen, Congress should get involved and take away any immunity under federal law that presently exists.

Source: *Associated Press*

### **RESIDENTS SUE FOR GAS WELL ROYALTIES**

A class action lawsuit was filed in federal court recently against Chesapeake Appalachia, LLC. The suit is seeking more than \$5 million in compensation and punitive damages. More than 100 owners in Kentucky weren’t paid the gas royalties that they deserved, according to allegations in the complaint. The members of the class say they are entitled to royalty payments that should have been paid by Chesapeake.

It is contended that Chesapeake used a different payment method for royalties than originally agreed upon in the lease agreements entered into with the landowner. It is also alleged that Chesapeake is guilty of common law fraud because the company concealed, suppressed, or omitted information reported to area residents who entered into natural gas leases. Chesapeake also may have charged additional expenses to the residents, which reduced the gas volume amount for which they received compensation. Documents sent to area residents were said to be “incorrect,” “deceptive,” and didn’t reflect the amount of money that should have been paid for the natural gas.

Source: *Appalachian News Express*

## V. THE CORPORATE WORLD

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### ***THE GOVERNMENT'S EFFORTS DESIGNED TO CURB CORPORATE WRONGDOING SHOULD NOT BE WEAKENED***

President Bush, Treasury Secretary Henry Paulson, and some Wall Street companies are hard at work trying to undo much of the progress that has been made relating to corporate crime. Former U.S. Securities & Exchange Commission Chairman Arthur Levitt believes that this movement to roll back corporate governance standards enacted over the past few years are bad for our country. Presently, well-funded lobbyists are doing everything they can to bring all reform efforts to a halt. As you probably know, Mr. Levitt was the SEC's longest-serving chairman, having been appointed by President Clinton in 1993. He held the post until 2001.

As this was being written, battle lines were being drawn between forces seeking to tighten corporate governance standards and a strong business lobby that is seeking rollbacks. Recent actions by the SEC, as well as statements by high ranking officials, indicate that the lobbying activities are paying off. Shareholder rights advocates are pushing to keep the Sarbanes-Oxley Act of 2002 intact and to gain greater authority to hire and fire corporate directors and set executive compensation. In contrast, groups, including the Committee on Capital Markets Regulation, otherwise known as the Paulson Commission (named after the Treasury Secretary), are claiming that excess regulation is harmful to American competitiveness. That effort, which apparently has President Bush's full support, has the goals of weakening Sarbanes-Oxley regulation and discouraging shareholder lawsuits.

Mr. Levitt, who believes that corporate governance reform is badly needed, includes in the needed reform the right

of investors to nominate their own director candidates, greater access by investors to executive compensation data, and a greater say by investors in how the compensation of corporate bosses is set. I don't believe it's in the best interest of the public to allow the advances of the last few years to be put on the shelf. It's very clear that stronger regulation of Corporate America is badly needed and hopefully the new Congress will make that a reality. Certainly, backing up on regulation and enforcement—considering all of the corruption that has been discovered in Corporate America—is the wrong path to take.

Source: *Forbes News*

## VI. CAMPAIGN FINANCE REFORM

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### ***GOVERNOR ROMNEY'S ALABAMA PAC ACTIVITIES ILLUSTRATE HOW TRULY BAD ALABAMA'S ELECTION LAWS ARE***

It's pretty clear that outside political consultants know all about Alabama's weak election laws. An example is how former Massachusetts Governor Mitt Romney has used Alabama's campaign finance laws, which place no limits on individual contributions, to raise \$514,535 in the state before announcing his candidacy for president. All the contributions collected by Romney's Commonwealth Political Action Committee came from outside Alabama, according to campaign finance reports the PAC filed with the Alabama Secretary of State. Although federal law limits individual contributions to \$2,300 per election, Romney didn't come under that restriction until he became a candidate. Before then, the Romney political team set up PACs in three states that have no limits on individual contributions: Alabama, Michigan, and Iowa. The activities of the PACs were first reported by the *Wall Street Journal* in its January 30th edition.

The Alabama PAC was funded entirely

by out-of-state contributions, and most of them were much larger than the \$2,300 limit that would later come into play. The contributions included \$100,000 each from two business executives who reside in Chicago and California. The Romney contributions and expenditures are perfectly legal. State Rep. Jeff McLaughlin (D-Guntersville) who is a proponent of strengthening campaign finance laws in Alabama, believes that the PACs violate the spirit of the federal law. This episode is further evidence why the Alabama Legislature must completely reform our state's election laws. Any reform of those laws must include real campaign finance reform.

Source: *Associated Press*

## VII. CONGRESSIONAL UPDATE

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### ***THE PUBLIC'S VIEW OF CONGRESS IMPROVES A LITTLE***

A majority of Americans still disapprove of Congress—a sign of public impatience with the new Democratic majority even among party loyalists—and that really doesn't come as a surprise. An *Associated Press-Ipsos* poll conducted in February reveals that Congress' public image has improved some, but not as much as some may have suspected because of the November elections. Clearly, both Congress and President Bush were in real bad shape with the public before November 7<sup>th</sup>. Although the President is still in deep trouble, the public's current view of Congress isn't much better.

According to the poll, 65% of those surveyed disapprove of the way the president is handling his job, slightly up from his disapproval ratings in January. As for Congress, 58% disapproved of the work of lawmakers, a slight decrease from January and a 14 percentage-point decrease from congressional disapproval ratings last October. Even a

majority of Democrats—52%—disapprove of the work of Congress, indicating a desire for quicker action from the new Democratic bosses. Although just 39% of Democrats approved of Congress, that rating is a significant improvement from the 9% who approved in October.

President Bush's approval rating matched his lowest yet at 32%, with most of the disapproval aimed at his handling of the war in Iraq, according to the poll. While 55% disapproved of his handling of the economy, and 61% disapproved of his work on foreign policy and the war on terrorism, even more citizens—67%—opposed his handling of the war. The poll shows that the President got little or no benefit from his State of the Union speech when he outlined a domestic agenda on health care and energy and defended his call for more troops in Iraq. The current situation in Iraq is at its all-time worst. It's pretty evident that neither President Bush nor his Vice-President has a clue as to how to make things better. Firing Donald Rumsfeld, who was just part of a much larger problem, wasn't the answer. However, the Cheney gang may use him as a scapegoat if things in Iraq continue to worsen. In any event, it's now time for the President to become a real leader and come up with a solution to the Iraq nightmare. It's also the duty of Congress to help him out to the extent possible.

Source: Associated Press

### **SENATOR SESSIONS HAS A BAD PLAN**

While some business groups don't want the federal minimum wage to be increased, Senator Jeff Sessions' plan to get tough on companies that hire undocumented workers surely hadn't made them very happy either. The Sessions' plan was part of a minimum wage bill that passed the U.S. Senate recently on a 94-3 vote. The Sessions amendment would bar companies that hire undocumented workers from eligibility for government contracts for seven to 10 years.

The junior Senator from Alabama had this to say:

*We need to stop the hiring of illegal labor, not only to be lawful and good but because it also results in a decrease in American salaries.*

The Senate bill would increase the lowest wage paid American workers from \$5.15 to \$7.25 an hour over two years. It also would extend existing tax credits for business. The House has passed similar legislation, but their bill does not contain the tax provision or the Sessions amendment. The Associated General Contractors of America and the AFL-CIO agree and are opposing the ill-conceived plan by Senator Sessions.

Because a conference committee will try to reconcile the Senate and House bills, the immigration provision may not survive. Negotiations by the conferees will likely result in its demise. Lots of politicians have played "politics" with the immigration issues, and that certainly includes the various stands taken by President Bush. It's quite obvious that a tremendous number of Mexicans are working at jobs in the United States and that somebody has to be hiring them. It's also apparent that a problem of great magnitude exists. The more serious issue is simply how to unravel all of the ramifications of a most serious problem and come up with reasonable solutions. The Sessions plan is clearly not the answer.

Source: Montgomery Advertiser

## **VII. PRODUCT LIABILITY UPDATE**

### ***THE GOODYEAR G159 IS A DANGEROUS RV TIRE***

Several months ago I wrote about cases our firm is handling against Goodyear and recreational vehicle manufacturers concerning the Goodyear

275/70 G159 tire. We represent two families in two separate cases who lost loved ones when the recreational vehicle (RV) they were traveling in became impossible to handle when a G159 tire failed and its tread separated. Through discovery, we have learned more about the G159 tire, Goodyear's knowledge, of it is hazards and why the tire is not appropriate or safe for RVs.

The G159 is not safe or appropriate for RVs. Goodyear began selling the G159 as an RV tire in 1995 or 1996. We have learned that the G159 tire was originally designed by Goodyear to be used as a regional delivery truck tire. The G159 was not specifically designed or tested by Goodyear for use on RVs and the anticipated load and weight variables they present.

Further, the RV manufacturers have performed no engineering or testing themselves to assure that the G159 is safe or appropriate for its RVs. Neither Goodyear nor the RV manufacturers have produced any information that the G159 was tested at speeds close to what we see on our nation's highways.

Both Goodyear and the various RV manufacturers maintain that the G159 is safe for RVs because it is appropriate for loads that you expect to see on RVs. The G159 is rated to carry a maximum load of 6,610 pounds at 125 pounds per square inch (psi) of tire pressure. When you examine the front axle of most RVs, this appears to be sufficient. A large number of the RVs' front axle weight ratings are 12,000 lbs. However, this selection process ignores the design issues of RVs and how they are being used. Unlike passenger vehicles and trucks, the weight—and therefore the load—of most RVs are not evenly distributed from side to side and front to back. This is because RVs are designed with different options, seating configurations, and several floor plans. This variance is affected even more when the RV is loaded with people and items they take on vacation.

The weight of the vehicle or front axle on some of the RVs will vary from

the left to right corner. In fact, some of the RVs' left corners weigh 500 to 1000 pounds more than the right. Therefore, while it would appear that two G159 tires are appropriate to carry the weight or load for an RV with a front axle rating of 12,000, they may not be. Because of the weight difference between the left corner and the right corner, the left tire may have to support a load which it cannot, leaving it susceptible to failure. This potential for overloading the tire increases when the RV is loaded with people, luggage, and anticipated fluids such as gas and water.

In addition, some of the RV manufacturers, for a variety of design issues and reasons, recommended that the G159 be operated at 120 psi and even less. When you decrease the G159 tire's pressure, the load carrying capability of the tire is decreased. At 115 psi, the G159 can support a load slightly over 6,000 pounds. As the tire's psi is decreased, the potential for failure is increased.

Goodyear and the RV manufacturers began learning of G159 tire failures in 1997 and 1998. One RV manufacturer, Fleetwood, has recalled several of their RVs and replaced the G159 with a tire that is more robust and can account for the load variables RVs present. In 2002, Goodyear initiated a tire changeover program on Monaco Coach's Windsor, in which Goodyear replaced G159 tires with the same tire that was substituted in the Fleetwood recall. There are several RVs on the road today equipped with G159's. We have learned that there are over ten lawsuits pending in which G159 tire failures have collectively led to several deaths and other severe injuries.

#### **VERDICT AGAINST GOODYEAR IN TIRE CASE**

A jury has returned a \$37 million verdict against Goodyear Tire Co. in favor of the family of an accident victim. Eleven people, including three Hispanic families and including several children, were traveling along Interstate 70 in Grand County, Utah, heading toward

Kansas City, Missouri, for a boxing competition when the driver lost control of the rented 15-passenger van. The van crossed into the median and rolled several times. Investigators said the blowout of one of the van's tires, a Goodyear Load Range E series tire, triggered the 2004 accident.

The driver, who was traveling to the tournament with his two sons, died at the scene along with two passengers. One child, who suffered severe brain injuries, received \$14.5 million of the actual damages award. Figures compiled by the National Highway Traffic Safety Administration show the "sudden catastrophic tire failure" by the Goodyear Load Range E series, manufactured from 1991 to 1999, resulted in at least 18 deaths and 158 injuries. Many of these occurred after the company had been informed of possible problems with its product. Goodyear's response is that it volunteered to notify original tire owners and offered to replace tires on large passenger vans. The rental company that rented the van to the Hispanic families in this case said it never received any notice from Goodyear. The jury ruled, however, that Goodyear won't have to pay punitive damages in the case.

Source: Las Vegas Review-Journal

#### **MOTOR VEHICLES SHOULD BE CRASHWORTHY**

The American people have a right to believe that the vehicles they purchase are as safe as they reasonably can be. They also have the right to believe that the government is on their side when it comes to safety. A major design concept requires vehicles to be crashworthy to the extent possible in most highway crashes. Adequate testing of design concepts is an important feature when it comes to auto safety. The National Highway Traffic Safety Administration has been grappling with the problem of testing for the past several years. The following is an editorial appearing in the *New York Times* on the subject that I believe is on target:

*The federal government is exploring ways to strengthen its tests and its ratings system for the crashworthiness of motor vehicles. The effort is long overdue but still likely to fall short of what's needed. In far too many cases, the tests are weaker than they should be and fail to address current kinds of accidents, like what happens when one of today's larger vehicles collides with a smaller one. The National Highway Traffic Safety Administration tackles vehicle crash protection in two major ways. It sets minimum crashworthiness standards and requires the manufacturers to test their vehicles and certify that they comply. And it conducts its own more rigorous tests on a number of new-model cars and then converts the results into a five-star rating system to indicate which vehicles are more crashworthy and which are less likely to roll over. The theory is that consumers will be more interested in buying the safer vehicles, thereby giving manufacturers a strong incentive to surpass the minimum requirements.*

*There is little doubt that these efforts have helped to prod manufacturers to design safer cars. But the ratings are a victim, in some sense, of their success. Nowadays, a vast majority of vehicles get four or five stars, providing little way for consumers to detect differences and giving manufacturers little incentive to keep improving. Worse yet, the tests have not kept pace with the times as more sport utility vehicles, minivans and pickups have taken to the roads. Fortunately, the agency is belatedly exploring ways to upgrade its crash tests and strengthen the five-star rating system. The secretary of transportation, Mary Peters, announced last month that vehicles could be subjected to more stringent rollover,*

*front- and side-crash tests. New ratings may also be developed for technologies that help drivers avoid crashes, like electronic stability control and lane departure warning systems. The agency signaled that it was not yet ready to address such important issues as collisions between large and small vehicles, collisions with narrow objects like telephone poles, and the protection of occupants in rollover crashes, on the grounds that more research is needed. For everyone's safety, consumer advocates and vehicle insurers should press hard for the strongest possible tests and standards.*

*New York Times  
February 3, 2007*

It has become most obvious that the federal government has to do a better job of regulating the automobile industry. Real standards that mandate safety are a must and that's the responsibility of NHTSA. The requirement of adequate testing has to be a part of any effective regulatory system. Unfortunately, that has been something that NHTSA has failed miserably to bring about. Congress must step in and make sure that safety is NHTSA's top priority.

Source: *New York Times*

### **A REFRESHER COURSE ON CHILD SAFETY SEATS**

On February 8, 2007, the National Highway Traffic Safety Administration head Nicole R. Nason, who is the nation's top highway safety officer, called on manufacturers, retailers, researchers, and consumer groups to help improve the use and safety of child car seats and the special anchors used to attach them to vehicles. These special anchors are called LATCH, which stands for Lower Anchors and Tethers for Children. LATCH is a relatively new system that was supposed to make child seat installation easier because the seat could be installed without using the

vehicle's seatbelts. The LATCH-equipped vehicles have at least two sets of small bars called anchors, located in the back seat where the cushions meet. LATCH-equipped safety seats have a lower set of attachments that fasten to the vehicle's anchors. Most forward-facing child safety seats also have a top strap (top tether) that attaches to a top anchor in the vehicle. Together, these make up the LATCH system. LATCH is required on most child safety seats and vehicles manufactured after September 1, 2002.

As mentioned earlier, LATCH was supposed to simplify child safety seat installation for parents. But, a recent study by NHTSA discovered that too many parents were still not using the LATCH technology because they had not been educated about the system and how to use it properly. A survey found that 40% of parents still rely on the vehicle's seatbelts when installing their seats. The survey also indicated many parents were unaware of the existence or the importance of the tethers in securing the seats to the vehicle, and only 55% of parents were using the top tether.

As a result of the study, NHTSA Administrator Nason issued a challenge to industry leaders, manufacturers, and consumer advocates aimed at improving child car safety and educating parents. She said one of the key goals of the meeting with the manufacturers and consumer groups was to make sure parents and caregivers have clear guidance on proper car seats and latch use, whether from the car seat manufacturer, vehicle owner's manual, or the retailer. The Administrator stated:

*We want to make children as safe as possible, give the best information, and make the technology available to protect children in vehicles. Properly installing a car seat should not be a daunting process for parents. Our children are precious and parents and caregivers must have the information they need to properly install their car seats.*

"Every day five children are killed and another 640 are injured on the roads. Car seats, booster seats, and other restraints are a proven way to keep our children safe," according to U.S. Deputy Secretary of Transportation Maria Cino.

So, how do you install a LATCH-equipped child seat? NHTSA's Web site at [www.nhtsa.gov](http://www.nhtsa.gov) contains detailed information on how to properly install a child car seat. This Web site describes the LATCH installation process as follows:

1. **Always** read and follow the vehicle owner's manual and child safety seat manufacturer's instructions for correct installation and proper use.
2. Fasten the child safety seat's lower attachments to the vehicle's lower anchors. Tighten and adjust according to the instructions and check for a secure fit.
3. Attach the child safety seat's top tether to the vehicle's top anchor and pull to tighten. The child safety seat should not move more than an inch forward or sideways. NOTE: Tethers are not used on most rear-facing child safety seats.

It should be noted that most vehicles will have lower anchors in the left and right rear seat positions. If there aren't anchors in the center seat position, you can still safely install a child safety seat using a seat belt. There is a Web site, [www.seatcheck.org](http://www.seatcheck.org), identifying inspection stations where you can have your vehicle and safety seat inspected by a certified technician to insure that the car seat is installed properly. There are approximately 13 inspection stations in Alabama.

We strongly encourage every parent or parent-to-be to call one of these inspection stations to make an appointment. The inspections do not take long and, if the car seat is installed improperly, they will reinstall it. I believe most of these services are free. Finally, you might consider this to be a refresher course for general child seat use infor-

mation. Alabama law requires that children are to be in rear-facing car seats until they are one year old or weigh 20 pounds. Then they must be in forward-facing car seats until they are 5 years old or weigh 40 pounds, and in booster seats until they turn 6 years old. But, NHTSA recommends that children even over the age of 6 years old stay in a booster seat until they reach a height of 4'9" tall. When it comes to the safety of children, all of us need to get involved.

Source: NHTSA

### **\$24 MILLION AWARDED IN SEAT BELT SUIT**

A federal court jury in Marshall County, Texas, returned a verdict last month against Honeywell International, Inc. The \$24 million verdict was awarded to the estate of a young woman who was killed just one day short of beginning her freshman year at Baylor University. On November 18, 2004 the female passenger was ejected from a Chevrolet Tahoe after her seat belt failed to hold. The driver of the other vehicle was a high school student, who pleaded guilty to intoxication manslaughter charges and was sentenced to nine years in prison.

The passenger, who was ejected and killed, was sitting behind the driver in the Tahoe, wearing her JDC seat belt buckle when the other vehicle struck the Tahoe in the left front. The two vehicles "side slapped" and the Tahoe rolled over once. The defective buckle unlatched and the young woman was ejected when the Tahoe rolled over. The jury found that a seat belt made by Honeywell International, Inc. was defective. They attributed 5% of the fault to General Motors and 95% to Honeywell. The jury awarded the parents \$2 million each for past mental anguish, \$4 million each for future mental anguish, \$2 million each for loss of past companionship, and \$4 million each for loss of future companionship.

## **IX. MASS TORTS UPDATE**

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### **MESOTHELIOMA LITIGATION UPDATE**

Mesothelioma, which is also known as "asbestos cancer," is a highly aggressive and rare form of cancer. Although usually attacking the lining of the lung (pleural), Mesothelioma can also occur in the lining of the heart (pericardial) and abdominal cavity (peritoneal). Because the only known cause of mesothelioma is exposure to asbestos, it is almost certain in any given diagnosis that asbestos caused the cancer. About 2,000 new cases of mesothelioma cancer are diagnosed in the United States each year. Mesothelioma can appear in either men or women, at any age but it does occur more often in men than women and the risk increases with age.

The onset of mesothelioma after exposure to asbestos can take anywhere from 15 to 45 years. The first symptom is usually a constant pain in the chest and is accompanied by shortness of breath, or pain or swelling in the abdomen. Other symptoms include persistent coughing, coughing blood, fatigue and significant weight loss. The doctor may order an x-ray of the chest or abdomen or may look inside the chest cavity with a special instrument called a thoracoscope. A cut is made through the chest wall and the thoracoscope is inserted into the chest between two ribs. This test is called thoracoscopy and is usually done in the hospital. The doctor may also look inside an opening made in the abdomen with a peritoneoscope, in a procedure called a peritoneoscopy.

This test is also done in the hospital. If tissue is not found to be normal, the doctor will perform a biopsy. The biopsy will be done during the thoracoscopy or peritoneoscopy during which the doctor cuts out a small piece of tissue to have it examined under a microscope for the presence of to see if there are

any cancer cells. A person's life span is typically only 12 to 24 months after diagnosis of mesothelioma, but it depends on the size of the cancer, where it is, how far it has spread, how it responds to treatment and the health of the patient. Over 2000 deaths occur per year from this disease in the United States. The following are some recent mesothelioma verdicts from across the United States:

- A San Francisco jury awarded \$10.3 million in damages to a 60-year-old man suffering from mesothelioma as a result of asbestos exposure. George Barnes, a former navy shipfitter was awarded \$9 million in non-economic damages, including pain and suffering, mental anguish, and more.
- A jury returned a verdict in favor of a retired machinist and his wife in their products liability and negligence trial against John Crane, Inc., a former manufacturer of asbestos-containing valve and pump packing, and Thorpe Insulation Company, a former supplier and distributor of asbestos thermal insulation. The jury assessed over \$550,000 in economic damages, \$1.1 million in non-economic damages and \$250,000 for loss of consortium.
- Stephanie Foster learned in 1999 that she had mesothelioma, the most serious of all asbestos-related diseases caused by fibers lodged in the lungs. The Missouri woman died from the condition at the age of 42. Stephanie was exposed to asbestos as a toddler. Her father, Robert Foster Jr., had worked for an Aerojet contractor 40 years before, machining asbestos on a lathe. "He would come home from work and grab his little girl and give her a hug—with no idea that he carried asbestos on his clothes," said Ted Gianaris, a lawyer for Stephanie's family. The defendant, Aerojet-General Corporation, a Rancho Cordova, California, maker of rocket and missile motors for the military, had denied ever using asbestos. "We repeatedly

asked Aerojet about the use of asbestos and they said no, no, no," said attorney Randall Bono. "But we found evidence otherwise." The defendant was sanctioned and defense lawyers were barred from presenting evidence that the company had never used asbestos in its products. The judge also directed the jury to find that the plaintiff was exposed as a child and that the company knew the material was hazardous at the time. Stephanie's family was awarded \$5.1 million by the St. Louis jury.

We are continuing to review cases of mesothelioma contracted as a result of exposure to asbestos. Mike Andrews is the lead lawyer on those cases for the firm.

#### ***AN UPDATE ON THE VIOXX LITIGATION***

As has been widely reported, the Vioxx litigation is one of the largest mass tort proceedings in United States history. Our firm continues to be a leader in that litigation. To date approximately 27,200 Vioxx lawsuits have been filed. This number includes about 45,900 plaintiff groups, which means that many of the plaintiffs are named in joint complaints, wherein numerous plaintiffs allege injuries from taking Vioxx. A "plaintiff group" includes the users of the Vioxx and the derivative claims emanating from that user, such as an executor, spouse, or survivor. It is unclear just how accurate this number is because Merck, the manufacturer of Vioxx, has informed the federal multi-district litigation (MDL) court "that there are more Plaintiffs identified than lawsuits because many lawsuits include multiple Plaintiffs in the caption."

There are approximately 265 class action lawsuits alleging personal injury or economic loss. So far, only one class action has been certified—a third-party payor class—in New Jersey. The pending class actions involve claims for personal injury, wrongful death, third-party payors, medical monitoring, foreign claimants, and others. There are about

8,250 Vioxx lawsuits filed in the MDL, representing 23,600 plaintiff groups. Approximately 18,950 Vioxx lawsuits representing about 22,300 plaintiff groups are pending in state courts. There have been approximately 14,100 cases filed under the MDL tolling agreement. The tolling agreement was an agreement reached between counsel in the MDL that provided us with the opportunity to submit the cases without having to file suit, and without the limitations period, or time for filing suit, while we obtained additional information.

There have been a total of 14 trials thus far. Five plaintiffs have tried their cases in the federal MDL in six separate trials (one of them was a retrial). Our firm has tried 3 of the 5 federal MDL trials. In one of the cases that we helped try, the jury returned a verdict for \$51 million. The trial judge set that verdict aside, and the case will be retried in October 2007 on the damages portion only. The trial judge found that the amount of the verdict was excessive but agreed with the jury that the plaintiff had met his burden of establishing that he was injured from the drug and establishing that Merck's conduct warranted a finding of punitive damages.

There have been two trials on behalf of three plaintiffs in the California consolidated proceedings. Of the two trials, one resulted in a verdict for the defendant; the other trial resulted in a hung jury after the jury could not reach a verdict. The latter cases will be reset for a second trial in the near future. There have been three trials in the New Jersey consolidated proceedings, on behalf of 4 plaintiffs. Two of the plaintiffs' cases resulted in verdicts for the defendant, but one of those plaintiffs was granted a new trial. That plaintiff's case, along with a fifth plaintiff in New Jersey, is being retried in New Jersey at the time of this publication. A jury returned a verdict in favor of the plaintiff in one of the New Jersey cases, awarding a total of \$6 million dollars for a plaintiff and his wife. A second plaintiff received nominal damages.

There have been three other state court cases tried to date—two in Texas and one in Alabama. Two separate juries in Texas returned verdicts for the plaintiffs for substantial sums. The trial in Alabama state court resulted in a verdict for the defendant. In addition to two trials currently underway in New Jersey, and Illinois, additional cases are set to be tried in state courts in Alabama, and Florida later this year. A retrial is also scheduled in the federal MDL. Andy Birchfield and Leigh O'Dell from our firm are involved in the Illinois case. The trial started last month and at press time the plaintiff's part of the case was being put on.

Our firm currently has 678 filed cases, most of them filed in the federal MDL or in the New Jersey consolidated proceedings. We also have additional cases filed in Alabama, Texas, California, Illinois, and Florida. Cases have been filed in other state courts as well, but those cases with few exceptions have been removed to federal court by the defendants and then transferred to the federal MDL. We also have 4,977 cases filed under the federal MDL tolling agreement, and those cases continue to be evaluated. We will likely file a few more cases in the near future. After that we will take very few new cases except in exceptional situations.

#### ***AN UPDATE ON THE CELEBREX/BEXTRA MDL LITIGATION***

The Celebrex/Bextra litigation is in full swing. As we have reported, Celebrex and Bextra are two pain-killer drugs that have been linked to a significant increase in cardiovascular adverse events, primarily heart attacks and strokes. These drugs are similar to Vioxx in that they were designed to inhibit the enzyme in the blood known as "Cox 2" and thereby reduce inflammation and pain. Both drugs were developed by Pfizer and predecessor companies, Pharmacia and Searle. Celebrex was the first drug of its kind on the market and was approved for sale in the United States in

1998. Bextra was approved for sale in 2001. Bextra was removed from the market in April of 2005, and the FDA required that a “black box” warning be placed on Celebrex at the same time. This was implemented in July 2005.

The Celebrex/Bextra multi-district litigation proceedings (MDL) was located in San Francisco, California, with U.S. District Judge Charles Breyer in charge. Interestingly, Judge Breyer, the brother of U.S. Supreme Court Justice Stephen Breyer, was appointed to the federal bench by former President Clinton. The parties are in the midst of extensive discovery, with various Pfizer employees and ex-employees being deposed by the Plaintiff’s Steering Committee several times each month. Jerry Taylor of our firm, who is taking depositions and working with experts on behalf of the Plaintiffs’ Steering Committee (PSC), will soon be named as our firm’s representative on the PSC. Jerry is also a member of the Discovery, Science, and Administrative Committees. Navan Ward, also of our firm, is a member of the Discovery Committee and has played an integral part in managing the voluminous document production in the case.

At present, Pfizer has produced approximately 33 million pages of documents relating to the development, manufacture, and marketing of Celebrex and Bextra. Judge Breyer has scheduled a Daubert hearing on general causation in the Celebrex case. This will take place on August 6-8, 2007 in San Francisco. The parties have been ordered to produce expert reports for the hearing by the end of this month and those experts will be deposed shortly thereafter. The pool of cases from which cases will be picked for trial is now being developed. This pool will consist of 45 cases: 25 random picks and 10 apiece submitted from the PSC and the defendants. Discovery, which is being scheduled on these individual cases, will begin very soon. Judge Breyer has indicated he would like to begin trying cases by the end of 2007.

#### **FORMER FDA EMPLOYEES CRITICIZE DRUG APPROVAL**

Former federal Food and Drug Administration employees told members of Congress recently that the federal drug approval process ignores safety concerns for approved drugs. Scrutiny over the FDA’s drug approval process heightened after the agency’s decision to modify its approval of the antibiotic drug Ketek, sold by Sanofi-Aventis. Ketek is FDA-approved for only pneumonia after the drug was found unsafe to treat bacterial infections associated with sinusitis and chronic bronchitis. David Ross, a medical doctor who worked for the FDA for 10 years, said the agency has developed a “culture of approval” for drugs. Dr. Ross says that:

*Overall, there is a culture of approval to get a drug product on the market as soon as possible. If there is a way to get it out, then you find some way of doing it.*

At a hearing of the House Energy and Commerce Oversight and Investigations Subcommittee, Dr. Ross said that the FDA was aware Sanofi submitted fabricated data before Ketek’s approval and also knew the drug could cause liver failure. Dr. Ross told the lawmakers that:

*An unsafe drug got past the system despite warning after warning about fraud, liver damage and death because FDA managers at the highest levels refused to listen. Without significant changes in our drug safety system and FDA, we are certain to see more Keteks.*

Bill Vaughn, a policy analyst with Consumers Union, believes more problems exist with the FDA’s handling of drugs once they are on the market rather than during the approval process. A drug approval usually takes between three and four years. Mr. Vaughn put things in perspective when he observed:

*We don’t want the drug approval process to slow down. Everybody wants life-saving drugs on the*

*market. It is the post-approval process that needs to be much stronger.*

Vioxx, which was linked to heart attacks and strokes, put on spotlight FDA’s lack of oversight of drug safety in 2004. In addition, antidepressants such as GlaxoSmithKline’s Paxil have been tied to suicide risk in children. It appears that Congress is not too happy with the FDA’s approval of Ketek and the agency’s apparent refusals to cooperate with lawmakers on the agency’s methods for sending new drugs to market. I hope this will lead Congress to take actions needed to require the FDA to do its job.

Source: *The Washington Times*

#### **A LOOK AT THE HORMONE REPLACEMENT THERAPY**

A state court jury in Philadelphia, Pennsylvania, recently awarded \$1.5 million in compensatory damages to an Arkansas woman and her husband. The plaintiff began taking Prempro in late 1999 and was diagnosed with breast cancer in 2001. In her lawsuit, the plaintiff alleged that Prempro, a menopausal drug developed and marketed by Wyeth, caused her breast cancer. She underwent two surgeries, chemotherapy, and radiotherapy for the cancer. The jury found that Wyeth was negligent in failing to provide adequate warnings about the breast cancer risk associated with Prempro. In the second phase of the trial, the jury considered punitive damages. Jurors had concluded in their verdict that Wyeth’s conduct was “malicious, wanton, willful, or oppressive, or showed reckless indifference.” Under Pennsylvania law, when that standard is met, another round of deliberations proceeds to determine punitive damages. The jury was allowed to continue deliberating to determine a dollar amount, though the final figure would remain sealed by the court. The amount that the jurors agreed on could be disclosed, however, if an appellate court reverses

the trial court's decision. In the meanwhile, a gag order is in effect that prohibits lawyers from commenting on the verdict, which apparently is under seal.

As we prepare to take this issue to press, a Philadelphia jury has just returned with an award of \$3 million to an Ohio woman, Jennie Nelson, and her husband in a similar case against Wyeth. Ms. Nelson began using Prempro in 1995 and was diagnosed with breast cancer in 2001 after taking more than 2000 pills. Ms. Nelson alleges in her lawsuit that Wyeth gave a defective warning about links between breast cancer and Prempro and had the warning been clearer she would never have taken the drug. A jury in October of 2006 awarded Ms. Nelson and her husband \$1.5 million after finding that Prempro was a cause of her breast cancer. A judge threw out that award, citing juror misconduct.

In last month's issue, we reported on a lawsuit filed by an Arkansas woman, Helene Rush, who was suing Wyeth pharmaceuticals. That case, held in Little Rock, Arkansas, concluded recently when the jury returned a verdict in favor of Wyeth. Ms. Rush initiated the lawsuit against the company in 2005 after taking Prempro for nine years and developing breast cancer in 1999.

More than 5000 similar suits have been filed across the country. The lawsuits against Wyeth accuse the company of minimizing the risks associated with the drug and systematically ignoring studies that showed a breast cancer link, instead trying to "dismiss and distract" doctors and patients. The drug Prempro is a combination of estrogen and progestin used to ease menopausal symptoms in women. Many women stopped taking the drug after a federal Women's Health Initiative study in July 2002 in which researchers said more breast cancer and heart problems occurred among women taking estrogen-progestin pills. Our firm represents numerous clients in hormone replacement therapy related litigation. We look forward to our first trial beginning in

November in Minneapolis, Minnesota.

Sources: *Bloomberg News, Reuters, Insurance Journal and Associated Press*

#### **GLAXO DISTORTED SEROXAT DRUG TEST DATA**

GlaxoSmithKline Plc was accused recently of distorting clinical trial results of its antidepressant Seroxat, or Paxil, and covering up a link with suicide in teenagers. According to the BBC, the drug company attempted to show that Seroxat worked for depressed children despite failed clinical trials and that Glaxo-employed ghostwriters influenced "independent" academics. Regulators in 2003 recommended against using Seroxat in people under 18 years of age because of an increase in the rate of self-harm and potentially suicidal behaviors in this age group when the drug was prescribed. But Glaxo said the increase in suicidal thinking was only revealed when results of separate clinical studies were pooled at the end of its research program, at which point the company brought the findings to the attention of regulatory authorities. It will be interesting to see what comes of this report. A summary of BBC program was published on the BBC Web site (<http://news.bbc.co.uk/2/hi/programmes/panorama/6291773.stm>).

#### **TEXAS WOMAN WINS HER CASE ARISING OUT OF DRUG-INDUCED LUPUS**

A Texas jury awarded more than \$19.4 million to a woman whose treatment for Crohn's disease caused drug-induced lupus. The jury found that Centocor Inc. fraudulently marketed the drug Remicade. The case was actually tried as a fraud case for the company's marketing of the drug directly to the patient. The drug, which is administered by intravenous drip for auto-immune conditions, caused Patricia Hamilton to develop rheumatoid arthritis and drug-induced lupus, an auto-immune disease that affects the joints and internal organs. Ms. Hamilton, who was 47 years

old, decided to continue treatment with Remicade after watching a video provided by the company that included personal testimonials from patients, which she was shown during her first Remicade infusion. The video barely skimmed the surface of the potential risks. In fact, the video led her to believe there was no downside to the drug. Neither the risk of rheumatoid arthritis nor drug-induced lupus was mentioned in the video. The company also failed to warn Ms. Hamilton and her doctors about the risk of liver damage in people, like the plaintiff, who suffered from Hepatitis C.

The doctors who treated Ms. Hamilton were not fully warned about the potential harmful effects of the drug. The company forfeited its right to invoke the "learned intermediary" doctrine. By marketing directly to consumers, Centocor made a video and provided it to doctors for presentation to the patient directly. The video mentioned only a few of the risks. Because the manufacturer under took voluntarily to warn the patient of some risks, the manufacturer had a duty to warn of all of them. An internal company document which that that Centocor had a deliberate strategy to market directly to consumers so that they would pressure their doctors into prescribing the drug was put into evidence during the trial. The document described a three-part strategy to create patient pressure on doctors to prescribe the medication.

During discovery it was learned that some of their sales strategy was to get patients to believe they had a condition the drug would help. The second step was to get patients to ask the doctor whether the drug was right for them, and the third step was to get patients to demand the drug. The company's marketing strategy also included financial incentives for doctors to prescribe Remicade. The company misled both Ms. Hamilton and her doctors by downplaying the potential side effects of the drug and by failing to warn any of them of the potential liver damage the drug

could cause in patients who suffered from Hepatitis C.

The jury found Centocor 85% liable and assigned the remaining 15% of the liability to Ms. Hamilton's two doctors—10% to a specialist and 5% to her family doctor. They concluded that a reasonable person would have been likely to decline Remicade treatment if that person had known all of the risks. The verdict included \$16 million in punitive damages and \$3.4 million in compensatory damages. The compensatory award included \$65,000 in economic damages for medical expenses. The balance was for pain, suffering, physical impairment, and lost quality of life. But because Texas law caps punitive damages at twice the economic expenses plus \$750,000, the total award will be limited to about \$5 million. William Edwards, Angie Beltran, Jo Emma Arechiga, and John Gsanger of The Edwards Law Firm in Corpus Christi, Texas, represented Ms. Hamilton and did an outstanding job in a most complex case.

Source: *Lawyers USA*

#### **STUDY FINDS DANGERS IN HEART-SURGERY DRUG**

A study released last month has raised new concerns about Trasylol, a widely used heart-surgery medicine. It was reported that the drug increased patients' long-term risk of dying by nearly 50%. An estimated 10,000 deaths worldwide could be avoided over the next five years if Trasylol were not used, according to the report in the *Journal of the American Medical Association*. The study, funded by the San Bruno, California-based Ischemia Research and Education Foundation, concluded that Trasylol was unnecessary for most patients because safer and cheaper alternatives were available. The drug, also known by its generic name, aprotinin, is used to control bleeding during open-heart surgery.

The study was the latest to question the safety of Trasylol, which was approved by the federal Food and Drug Administration in 1993. Last year,

researchers linked Trasylol to a higher risk of kidney failure, heart attack, heart failure, and stroke. Following that report, which was published in the *New England Journal of Medicine*, the FDA added a warning about kidney failure to Trasylol's product label. Responding to the latest study, the FDA said it would include the new findings in an ongoing safety review of Trasylol, which could lead to labeling changes or other actions. Trasylol was used in 200,000 cardiac bypass surgeries worldwide last year, according to the report, a substantial decline from 2005, when the drug was used in 600,000 surgeries. About 1 million bypass surgeries are performed worldwide each year.

Bayer, the German drug company that markets Trasylol, says that the statistical methodology used in the study to account for health differences among patients was "not reliable." In addition, the study did not account for differences in clinical practices across countries, according to Bayer. You may recall that the company's handling of safety issues about Trasylol caused concern in September, when Bayer failed to provide to the FDA a study detailing serious health risks. Recently, Bayer stopped three clinical trials of Trasylol in non-cardiac patients, a decision the company said was unrelated to safety concerns.

Source: *Los Angeles Times*

#### **ORTHO EVRA LITIGATION UPDATE**

In our January edition, we wrote about Dr. Joel Lippman, a former vice president for two Johnson & Johnson subsidiaries who filed a lawsuit against his former employer. Lippman alleged that he was wrongfully and unlawfully fired as an executive with the company because of his efforts to address product safety, including serious safety issues with the birth control patch Ortho Evra. According to the lawsuit, the Ortho Evra patch "released dangerously high levels of estrogen into patients," but, the company disregarded

Lippman's concerns and introduced the product to the market in 2002. We continue to watch the developments in this case closely.

There have been hundreds of reports of serious adverse events including blood clots, pulmonary embolism, heart attack, stroke, and death associated with Ortho Evra since its introduction onto the market. To date, Johnson & Johnson faces over one thousand lawsuits related to injuries in patients using the Ortho Evra patch. U.S. District Judge David A. Katz conducted a status conference last month involving all cases currently filed in federal court. The court discussed general discovery issues with the parties in order to move the cases along in the litigation process. Our firm has filed several Ortho Evra cases and continues to evaluate new claims. Chad Cook from our Mass Torts Section is the lead lawyer from our firm on these cases.

#### **HERNIA PATCH REMOVED FROM THE MARKET**

On December 22, 2005, a recall of Bard Composix Kugel Mesh Patches was issued for specific lots manufactured by Davol, a subsidiary of C. R. Bard, Inc. These patches were used to repair ventral (incisional) hernias. This recall was further expanded in March of 2006, to include additional lot numbers. Finally, in January of this year, the federal Food and Drug Administration (FDA) further expanded this recall, prompting the manufacturer to withdraw from the market all remaining products that have the same component design.

The reason for the recall of the product is that the memory recoil ring could break under stress during placement. This could lead in turn to serious complications such as tenderness at the implant site, abdominal pain, bowel perforation, or chronic enteric fistulas. As of the recall date, 24 reports of broken rings have been received by the company. The FDA has requested surgeons and hospitals to immediately stop using the recalled products and returned the unused patches to the

company. We are currently evaluating cases involving serious injury from this product. Chad Cook, who is in our Mass Torts Section, is the lead lawyer on these cases.

### **ASTRAZENECA FACES OVER 10,000 LAWSUITS OVER SEROQUEL DRUG**

AstraZeneca Plc, the United Kingdom's second-largest drug maker, has been sued by almost 10,000 people in the U.S. over injuries resulting from alleged defects in Seroquel, the company's antipsychotic drug. Patients claim in their complaints that AstraZeneca didn't adequately warn of possible side effects, including severe weight gain and risk of diabetes. Many of the suits contend the London-based company and its affiliates promoted the drug for unapproved uses, contrary to U.S. Food and Drug Administration (FDA) regulations. Those lawsuits are similar to claims filed over injuries from the antipsychotic drug Zyprexa against Eli Lilly & Co. That company has settled more than 28,000 cases. Seroquel's worldwide sales increased 24% in 2006 to \$3.4 billion, up from \$2.75 billion in 2005. Seroquel, AstraZeneca's second-largest selling product behind the ulcer treatment Nexium, had become the 16th best-selling drug in the world by the third quarter of 2006.

Seroquel, approved for use for schizophrenia and bipolar disorder, is part of a class of newer antipsychotic drugs including Zyprexa and Johnson & Johnson's Risperdal. Seroquel passed Zyprexa last year as the top-selling atypical antipsychotic. Most suits against AstraZeneca, which has been sued by almost 10,000 individuals in U.S. courts over Seroquel, are in federal court in Orlando, Florida, where the lawsuits have been consolidated in a multidistrict litigation for evidence-gathering and pre-trial hearings. The suits generally allege that AstraZeneca knew the risks of Seroquel and didn't warn patients in the U.S. "until they were finally forced to do so by the FDA." The

growth in sales of the drug, from \$66 million in 1998 to \$2.75 billion in 2005, was spurred by "AstraZeneca's aggressive marketing of Seroquel." The marketing "consisted chiefly of overstating the drug's uses and benefits, which included massive off-label promotion, while understating and consciously concealing its life-threatening side effects." The claims filed will be limited to people who allege they developed serious health problems after taking Seroquel. Paul Pennock of Weitz & Luxenberg in New York is lead plaintiffs' counsel in the multi-district litigation.

Source: Bloomberg

### **FOSAMAX LITIGATION UPDATE**

On January 31, 2007, U.S. District Judge John F. Keenan of the Southern District of New York entered Case Management Order number 9, which set out the early trial selection process for all Fosamax cases pending in federal court. Starting in May of this year, the parties will pick twenty-five cases, that were filed in the MDL before October 17, 2006, to begin the discovery process, including expert discovery. Three of these cases will then be selected for trial, one by Plaintiffs' counsel, one by defense counsel, and the third to be picked by the Court.

Two of our lawyers, Jerry Taylor and Chad Cook, hold positions on the Plaintiffs' Steering Committee and the Discovery Committee, respectively. They are assisting in the process of setting up document depository sites in Houston, Texas and in Washington, D.C. for the review of documents produced by the defendants. We will continue to keep you up to date on the latest developments in the Fosamax litigation.

## **X. BUSINESS LITIGATION**

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### **ANOTHER SUIT FILED AGAINST BAYER BY ARKANSAS FARMERS**

We reported on Bayer's rice problems in the last issue. Now, the company that developed a genetically altered strain of rice intended to resist a herbicide has been sued again by Arkansas rice farmers claiming negligence and seeking compensation. As previously stated, the genetically altered rice was never approved for human consumption, but it was detected in trace amounts in the nation's crop last year and resulted in a ban on imports of U.S.-grown rice in several countries. The suit, filed February 2nd in federal court and seeking class action status, is similar to suits filed previously in Arkansas and several other states.

In December, a federal panel consolidated more than a dozen lawsuits involving genetically contaminated rice, creating a single legal action that is one of the largest of its kind. The suit names Bayer CropScience AG, a subsidiary of Bayer AG, and Aventis CropScience USA Inc., also a Bayer subsidiary, as defendants. Bayer developed the strain of rice known as LLRICE 601, engineered to resist Bayer's "Liberty" herbicide. The suit claims the companies were negligent during field-testing of LLRICE 601 in not taking precautions to "prevent cross-pollination with non-genetically engineered rice."

Source: Insurance Journal

### **QWEST AND CALIFORNIA TEACHERS REACH SETTLEMENT**

California's giant teacher pension fund has reached a settlement of almost \$47 million with Qwest Communications to resolve a lawsuit claiming that the Denver, Colorado-based telephone company defrauded the fund of \$150 million. The settlement requires Qwest,

its accountants, and its banks to pay the pension fund \$45 million. In addition, former Chief Executive Officer Joseph Nacchio must pay \$1.5 million. The settlement was reached in December, but had been under seal in San Francisco County Superior Court. It was released after The Associated Press filed a California Public Records Act request with the pension fund.

The California State Teachers' Retirement System took the losses when Qwest Communications International Inc.'s stock collapsed in 2002 amid allegations of accounting fraud. The pension fund's lawsuit named in addition to the company Qwest's former top executives and several financial services companies. Nacchio, who has pleaded not guilty to 42 charges of insider trading, is scheduled to go on trial later this month in Denver on charges that he sold \$101 million worth of Qwest stock based on inside knowledge that the company would not meet revenue targets. He also is one of several former Qwest executives accused by the federal Securities and Exchange Commission (SEC) in a civil case alleging they orchestrated a financial fraud that forced the company to restate billions of dollars in revenue. That case is still pending.

In 2002 the SEC accused Qwest's former managers of a massive accounting fraud. Qwest later paid \$250 million to investors to settle the claims. The latest settlement gives the teacher pension fund, commonly referred to as CalSTRS, about 30 times more than it would have recovered if it had taken part in the class action lawsuit, according to chief executive Jack Ehnes. With \$157.8 billion in assets, the teacher pension fund is the second-largest in the nation, surpassed only by the California Public Employees' Retirement System. It provides benefits to about 800,000 retired and current teachers.

CalSTRS claimed it invested in Qwest securities based on statements by the banking and financial firms that were false, incomplete and "materially mis-

leading." The lawsuit also alleged that Nacchio and Qwest founder Philip F. Anschutz falsely represented the company's financial situation. Qwest's bankers, Salomon Smith Barney Inc., Citigroup Inc., Lehman Brothers Inc., Bank of America Corp., JP Morgan Chase & Co., and Merrill Lynch & Co., also participated in the settlement. CalSTRS's lawsuit charged that the financial firms sold Qwest securities, while at the same time "creating and financing many of the transactions" that gave the impression Qwest was a successful company. Qwest provides local and long-distance telephone service in 14 states.

Source: Associated Press

### **STATE BANCORP SETTLES LAWSUIT FOR \$65 MILLION**

State Bancorp, Inc., the parent company of State Bank of Long Island, has settled a lawsuit stemming from its relationship with Island Mortgage Network, a mortgage company that sought Chapter 11 bankruptcy protection. The company agreed to pay \$65 million to settle the litigation, which was brought six years ago by a Texas company that accused State Bancorp of abetting fraud at the mortgage company. Island Mortgage declared bankruptcy in July 2000 amid allegations it had defrauded homeowners and other companies of tens of millions of dollars. In late January 2006, a federal court jury in Brooklyn, New York, found State Bancorp liable for about \$74.2 million in compensatory damages and interest.

Source: Newsday

### **SEARS PLANS APPEAL OF VERDICT IN BOND CASE**

Sears Holdings Corp. will appeal a jury verdict that ordered the retailer to pay bondholders about \$73.5 million. The case, which was in state court, arose from Sears' redemption of bonds after it sold a credit-card business. The amount of the judgment could grow if

Sears is ordered to pay interest or other amounts to the bondholders. It was alleged in the lawsuit that Sears violated contracts with the institutional bondholders—including J.P. Morgan Securities and subsidiaries of American International Group Inc.—by redeeming the bonds. During the trial, the judge rejected bondholders' claims on three other counts, including that the retailer misled investors about the bonds in regulatory filings. Sears redeemed the bonds in 2004 after selling its credit-card division.

Source: Forbes News

### **SAMSUNG TO PAY \$90 MILLION TO SETTLE STATE CLAIMS**

Samsung Electronics Co., the world's biggest memory chipmaker, has agreed to pay \$90 million to settle claims by 41 states and consumers that it conspired to fix prices on some chips. The settlement resolves claims that the unit of Seoul, South Korea-based Samsung Group and other chipmakers drove up prices, inflating the cost of computers and other electronics for consumers and state governments. As a part of the settlement, Samsung agreed to help state officials pursue claims against other chipmakers.

Samsung, Infineon AG, and six other companies were sued by 41 states in July on claims that the companies added billions of dollars to chip costs by fixing prices of dynamic random access memory, the most commonly used semiconductor memory product. So-called DRAM is used by Dell Inc. and Hewlett-Packard Co. in making personal computers, laptops, printers, mobile phones, digital cameras, and digital music players. New York Attorney General Andrew Cuomo, in reporting the settlement, commented:

*Consumers, states and localities were the victims of an international conspiracy that artificially raised the price of memory chips. This settlement is a major step in*

*recovering the overcharges that Samsung and its co-conspirators illegally foisted on consumers and taxpayers.*

About \$80 million of the settlement will go to reimbursing consumers and \$10 million will go to states and localities. The lawsuit grew out of a global price-fixing investigation by the U.S. Justice Department that led to claims against four companies and 16 individuals and fines of \$731 million. Samsung paid \$300 million in the U.S. probe, which at the time was the second-largest U.S. criminal antitrust fine. The U.S. criminal case gave rise to civil lawsuits by direct and indirect purchasers of DRAM chips, including litigation by manufacturers, computer repair companies, and individual states. The price-fixing conspiracy lasted from 1998 to 2002, according to the lawsuit. Two Samsung Electronics Inc. executives were accused by the U.S. in October of participating in the global price-fixing scheme.

Source: *Bloomberg News*

#### **CABLE OPERATOR MUST PAY SATELLITE OPERATOR \$51 MILLION**

A jury in a New York state court returned a verdict recently in favor of Loral Space & Communications Inc., an operator of a fleet of telecommunications satellites, in a case involving a business dispute. The verdict was against Rainbow DBS Holdings, a satellite unit of New York-area cable operator Cablevision Systems Corp. The case arose out of a business transaction between the parties. In March 2001, Loral agreed to sell its stake in Rainbow DBS Co. LLC to Rainbow DBS Holdings. Rainbow Holdings was to pay \$33 million plus interest when the company's assets were sold, according to a 2006 regulatory filing. In March 2005, Rainbow DBS sold a satellite to EchoStar Communications Corp., but Rainbow Holdings said Loral was not entitled to any payment.

Loral sued Cablevision in September

2005 over the money it claimed was owed when it agreed to sell back the stake in Rainbow DBS Holdings. Loral said its agreement called for it to get \$33 million plus interest after Cablevision sold substantially all of the assets in Rainbow DBS. Cablevision agreed to sell the Rainbow DBS assets—including the satellite used to deliver its Voom HD Networks programming—for \$200 million to EchoStar Communications in 2005. But Cablevision took the position that it didn't have to make an immediate payment. Loral disagreed and filed suit. The jury returned a verdict for \$51 million in the case.

Source: *National Law Journal and Broadcast News Room*

#### **TELECOM SERVICE PROVIDER SETTLES CALLING-CARD SUIT**

IDT Corp., a Telecom service provider, has reached a settlement in a nationwide calling-card class action lawsuit. Under the settlement, Telecom has agreed to provide \$20 million in refunds to eligible customers. The settlement affects customers who bought an IDT rechargeable calling card in the U.S. after January 1, 1997.

Source: *National Law Journal*

#### **SHARPER IMAGE SETTLES A CLASS ACTION LAWSUIT**

Sharper Image Corp. has settled a class action lawsuit that contended that the specialty retailer misled customers about the effectiveness of its air purifiers. Sharper Image agreed to discount the high-tech gadgets by more than \$60 million. In addition, the company will have to make several other concessions to members of the class. Under the proposed settlement, Sharper Image will offer \$19 merchandise credits to each of the roughly 3.2 million consumers who bought one of its "Ionic Breeze" purifiers since May 6, 1999. The credits can be applied toward the purchase of other Sharper Image-branded products for a year after they are issued. The same

group of consumers also will be able to buy a grill attachment designed for the Ionic Breeze for \$7.

Source: *National Law Journal*

#### **JURY ORDERS PwC TO PAY \$10 MILLION FOR FAILED MERGER**

A jury in Cobb County, Georgia, returned a \$10 million judgment last month against PricewaterhouseCoopers, finding that the firm was guilty of negligent misrepresentation during the 1996 merger of nursing home companies Convalescent Services and Mariner Health Group. According to the *Atlanta Journal-Constitution*, the lawsuit was filed in 2002 by Stiles A. Kellett Jr. and his brother Samuel B. Kellett, who ran Marietta, Georgia-based Convalescent. When the brothers sold their facilities to Boston, Massachusetts-based Mariner in the mid-1990s, they were compensated primarily in Mariner stock.

The Kelleys have said that they would never have entered into the deal if Mariner's troubled finances hadn't been buried in the company's books. Mariner filed for Chapter 11 protection in 2000, and the Kellelys claimed that they lost more than \$120 million on the deal. The \$10 million jury award will be placed in family trusts for the Kellett children. Interestingly, the jury awarded the brothers only \$1 each, as well as \$1 each to two individual partnerships. A request for payment of attorneys' fees and expenses was rejected by the jury. PwC was cleared on civil fraud and racketeering charges. The jury also absolved PwC partner Glenn Williams and three former Mariner executives—including former PwC partner Douglas Hansen, who became Mariner's chief financial officer—on racketeering, fraud, breach of fiduciary duty, and negligent misrepresentation charges. PwC says it will appeal.

Source: *Atlanta Journal Constitution*

### **KEYCORP REACHES SETTLEMENT WORTH \$279 MILLION IN ITS LAWSUIT**

KeyCorp has reached a \$279 million settlement with one of the world's largest insurance companies. The settlement, made public last month, resolved a lawsuit KeyCorp filed against Swiss reinsurer Swiss Re six years ago in U.S. District Court in Cleveland. The case was scheduled to go to trial in April. At issue was whether Swiss Re was obligated to cover the losses KeyCorp claimed in its car leasing business.

The Cleveland-based bank leased out about 160,000 cars between 1997 and 2000 through its Key Auto Finance division. When leased cars are returned and the company is unable to sell them for what it believes is the fair-market value, the difference is considered a loss and is insured. KeyCorp insured the residual value of its cars through Reliance Insurance. Swiss Re served as a backup if Reliance was unable to cover KeyCorp's losses. KeyCorp claimed losses on about 80,000 cars.

Source: *Plain Dealer Reporter*

### **JURY ORDERS MICROSOFT TO PAY \$1.52 BILLION**

A jury has ruled that Microsoft Corp. must pay \$1.52 billion in damages to Alcatel-Lucent SA, a telecommunications equipment maker, for violating two patents related to digital music. The Redmond, Washington-based software company contended that the patents in question govern the conversion of audio into the digital MP3 file format on personal computers. In 2003, Lucent Technologies Inc., which last year was acquired by Alcatel, filed 15 patent claims against Gateway Inc. and Dell Inc. for technology developed by Bell Labs, its research arm. In an interesting twist, Microsoft added itself to the list of defendants in April 2003, saying the patents were closely tied to its Windows operating system. The PC makers are still defendants in pending cases. There will be six separate trials to consider the remaining disputes. The case that

was just decided, which may have far-reaching ramifications, went to trial in U.S. District Court in San Diego, California on January 29th.

Alcatel-Lucent sought \$4.5 billion in the case. However, the court dismissed out Alcatel-Lucent's claims that Microsoft willfully violated the patents, which would have tripled the damages. Microsoft plans to appeal the jury's decision. The appeal will go to the Federal Circuit in Washington. The trial judge will now consider the next of the patent suits, which relates to speech coding, starting either this month or in April. Other areas in dispute include video coding on Microsoft's Xbox game console and Windows user interface.

Source: *Associated Press*

## **XI. INSURANCE AND FINANCE UPDATE**

### **TEXAS MUTUAL AWARDED MORE THAN \$7.5 MILLION IN CIVIL FRAUD CASE**

A Texas jury found that Gary C. Quintinsky of Houston committed civil fraud against Texas Mutual Insurance Company in a conspiracy case. The jury awarded the company more than \$5 million in actual damages and \$2.5 million in punitive damages. The award is expected to exceed \$8 million after prejudgment interest is calculated. This marks the largest premium fraud verdict in Texas Mutual Insurance Company history.

The lawsuit alleged that Quintinsky was involved in a conspiracy with other individuals and companies to defraud Texas Mutual Insurance Company of approximately \$5 million through workers' compensation policies issued to United Crane Inc., International Holdings Inc., United Crane Sales & Leasing Inc., Austin United Inc., Conroe United Inc., United Payroll Services Inc., Management Payroll Services Inc., United Fleet Maintenance Inc. and United Crane Rental Inc. Texas Mutual pre-

sented evidence of fraud involving false payroll records and other information given to Texas Mutual. The scam resulted in an undercharging of premium in the millions of dollars. The jury obviously agreed with the company's position. I believe fraudulent conduct should be punished regardless of who the wrongdoer happens to be.

Source: *Insurance Journal*

### **MBIA TO PAY \$75 MILLION IN SETTLEMENT**

MBIA, the large insurer of municipal bonds, has agreed to pay \$75 million to settle civil securities fraud charges by federal and New York State authorities over what the authorities said was a sham \$170 million transaction in 1998. The settlements, announced by MBIA and regulators, were the latest action to come out of wide-ranging inquiries in the United States and abroad into so-called finite risk reinsurance—which regulators say is sometimes used improperly to help companies artificially inflate earnings without a real transfer of risk.

MBIA signed one accord with the federal Securities and Exchange Commission (SEC) and another with the office of New York Attorney General Andrew M. Cuomo and the New York State Insurance Department. The company agreed to pay a total of \$65 million in civil fines, restate its earnings from 1998 through 2004, and make improvements in its accounting and business procedures. The regulators accused MBIA of using secret side agreements with two reinsurance companies to eliminate the risk to the companies in the transaction. It was contended that MBIA used the deal to avoid having to book a \$170 million loss in 1998, the first major loss in its history. The \$50 million civil fine against MBIA with the SEC will go to a special fund for defrauded American investors set up after the corporate scandals of 2002. In the agreement with Attorney General Cuomo's office and the insurance regulators, MBIA is paying a \$15 million fine

and \$10 million in restitution to MBIA shareholders.

MBIA, which is based in Armonk, New York, also agreed to hire an independent consultant, who began work last summer, to review its accounting and financial reporting. The company neither admitted nor denied the regulators' accusations under the settlements. The \$170 million loss stemmed from a July 1998 default on municipal bonds that MBIA had guaranteed for a Pennsylvania hospital chain, the Allegheny Health, Education and Research Foundation. To conceal the anticipated third-quarter loss, the regulators contend that MBIA's senior management devised the scheme to obtain reinsurance to cover the value of it and thereby convert a loss into a reported gain.

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

#### **PUNITIVE DAMAGES AWARD IN MISSISSIPPI KATRINA CASE IS REDUCED**

U.S. District Judge L.T. Senter, the federal judge overseeing the Katrina claims cases in Mississippi, has reduced the \$2.5 million jury award of punitive damages against State Farm. Judge Senter ruled that a punitive damage award that is four to five times the compensatory damages of \$211,212 in the case was more appropriate than the figure 12 times that amount decided by the jury, and reduced the award to \$1 million.

The case involved State Farm's handling of wind and water claims at the home of the Broussard family. State Farm denied the family's claim. But Judge Senter ruled that State Farm failed to meet its burden of proving that all damage to the Broussard's house was caused by water and therefore excluded from coverage. The judge ordered the insurer to pay the \$212,000 policy limits. He then handed the case to the jury, which returned with the \$2.5 million in punitive damages. Judge Senter, who decided that the amount of the punitive damage verdict was too high, wrote in his order:

*The devastation caused by Hurricane Katrina created substantial financial vulnerability to Mississippi policyholders insured by the defendant, especially those whose homes were totally destroyed, of which there are a large number. The philosophy or attitude or position adopted by the defendant that lasted throughout the consideration of plaintiffs' claim is reprehensible enough to warrant deterrence. What effect it may have remains to be seen, but substantial harm resulted from defendant's conduct, which was neither isolated nor mere accident. The amount of punitive damages assessed by the jury in the instant case is almost 12 times the amount of compensatory damages. Fortunately, plaintiffs only suffered an economic injury. It is my determination that a more appropriate punitive assessment against defendant is the sum of \$1,000,000.00, which is between 4 and 5 times the contractual/compensatory damages of \$211,222.00. A remittitur to this amount will be incorporated ultimately in a final judgment.*

As reported last month, a few days after the \$2.5 million was awarded, State Farm settled another Katrina case in Mississippi. The giant insurer agreed to pay a minimum of \$50 million to settle a class action involving more than 35,000 policyholders who did not sue the company and also agreed to pay \$80 million to settle 640 lawsuits. The class action settlement, which is also before Judge Senter, has been delayed until the judge can be satisfied that it is a good resolution for policyholders. The judge has demanded more information before signing off on it, and that's good.

Source: *Insurance Journal*

#### **SETTLEMENT APPEARS TO HAVE BEEN REACHED IN LOUISIANA STORM SUITS**

It appears that Louisiana's state-run

insurer has reached a broad settlement with homeowners in that state. The Citizens Property Insurance Corporation, Louisiana's insurer of last resort, has agreed "in principle" to settle out-of-court with 165 policyholders in Cameron Parish who sued over the company's refusal to cover damage from Hurricane Rita in September 2005.

Homes of many of the 165 policyholders in Cameron, about 200 miles west of New Orleans, were reduced to slabs, mostly by the storm surge. Citizens, a quasi-state agency, writes policies for home and business owners who are unable to buy coverage from private insurers. About 2,000 policyholders have sued the insurer over damage caused by the two hurricanes, and Citizens still has about 5,000 open claims from the two storms.

Source: *Associated Press*

#### **STATE FARM SAYS NO NEW MISSISSIPPI POLICIES**

State Farm announced on Valentine's Day that it will not write new homeowners and commercial policies in Mississippi. That state, which is still struggling to recover from Hurricane Katrina, is the latest state along the Gulf Coast to at least temporarily lose an insurer. In Florida, several insurers have dropped tens of thousands of policies since the back-to-back storm seasons of 2004 and 2005, when eight hurricanes hit the state. In Louisiana, many insurers have stopped writing new policies along that state's coastline altogether.

State Farm said it would not renew about 2,500 policies of condominiums and homes that are located in Alabama within 1,000 feet of the Gulf and Mobile bay. But it was later announced that it would retain about 135 policies on the Eastern Shore of Mobile Bay, because of its elevation above sea level, which is the elevation on the coastline between Texas and Maine. State Farm is not only Mississippi's largest home insurer, but the company also Alabama's largest home insurer, with more than 295,000

existing policies—about 30% of the state’s total—at the end of 2005, according to Insurance Department records.

#### **MANAGED CARE COMPANY SETTLES FALSE CLAIMS LAWSUIT**

RightCHOICE Managed Care, Inc., has agreed to pay the United States \$975,000 to settle a lawsuit that alleges that it violated the False Claims Act in connection with providing health care benefits to federal employees and their dependents in Missouri. The settlement resolves claims brought under the qui tam provisions of the False Claims Act by Ronald Ekstrand against Wellpoint Health Networks, Inc., the entity into which RightCHOICE merged in January 2002. As the relator, or the person who brought the claim on behalf of the government, Mr. Ekstrand will receive \$165,750 of the total recovery as his statutory award for his suit filed in the U.S. District Court for the Eastern District of Missouri. Under the qui tam provisions of the False Claims Act, private individuals can bring whistleblower actions for fraud on behalf of the United States and collect a share of any proceeds recovered by the suit as well as attorney fees.

The settlement resolves allegations that RightCHOICE overcharged the Federal Employees Health Benefits (FEHB) Program, which is administered by the U.S. Office of Personnel Management. In its suit the government alleged that RightCHOICE, which participates in the FEHB Program as part of the Blue Cross and Blue Shield Service Benefit Plan (BCBS Plan), passed on excessive costs to the FEHB Program in connection with compensating a preferred provider network of physicians known as “Alliance.” The government contended that RightCHOICE operated a preferential payment scheme and paid higher fees to Alliance physicians for serving patients insured through the BCBS Plan than these same physicians were reimbursed for providing the same types of services to patients insured through

other health plans. The government also alleged the physicians passed on these higher rates to the Office of Personnel Management as purportedly “reasonable” costs to the FEHB.

I hope this case is an indication that the federal government is serious about prosecuting false claims cases. The case was investigated by the St. Louis offices of the Federal Bureau of Investigation and the Office of Personnel Management-Office of the Inspector General. It was prosecuted by the Civil Division of the Department of Justice and the U.S. Attorney’s Office for the Eastern District of Missouri.

Source: U.S. Newswire

## **XII. PREDATORY LENDING**

### **ALABAMA SENATOR TARGETS PAYDAY LENDERS**

State Senator Bradley Byrne appears to be ready to take on the payday loan sharks in the regular session. It’s been reported that he will attempt to curb payday loans in Alabama. Ironically, the Fairhope Republican made his announcement on the same day that the industry kicked off a \$10 million public relations campaign. As you will recall, the Alabama Legislature passed an industry-supported bill that exempts the payday lenders from Alabama’s usury laws. Senator Byrne plans to introduce a bill to bring payday lenders under the state’s 36% rate ceiling before the Legislature convenes in regular session next month.

Currently, Alabama allows payday lenders to charge borrowers up to 456% in annualized interest for obligations of \$500 or less, repayable within two weeks. The 2003 law exempts the industry from a 36% interest cap that applies to traditional consumer loans. Senator Byrne made this assessment of the current situation in Alabama:

*The people this is hurting are some of the most vulnerable in our society. It’s a matter of conscience to a lot of people. I have heard from constituents who think these practices are not only improper—they’ve used the term, ‘immoral.’*

The Alabama law does little to discourage borrowers from taking out and renewing multiple loans for months at a time. Borrowers get in debt and find it difficult to ever get out. An industry group is waging a national counteroffensive after Congress capped the annualized payday loan rate at 36% for military personnel and their families. The Community Financial Services Association of America is buying advertisements to announce that its member lenders will start offering interest-free extensions of up to eight weeks to cash advance customers who cannot retire their loans within the initial two weeks. I don’t believe this public relations ploy will change the public’s negative opinions relating to the payday loan industry. Hopefully, it won’t have any effect on Alabama’s lawmakers.

Kimble Forrister, executive director of Alabama Arise, said the interest charged by payday lenders is excessive, regardless of the term of the payday loans. Mr. Forrister, an advocate for low-income residents in our state, told the Montgomery Advertiser:

*Now that Congress has said you can’t charge these exorbitant rates to military families, I think that sends a signal that they shouldn’t be charged to any family.*

It’s my hope that the Legislature will correct the current situation relating to the payday loan industry in Alabama. The massive advertising campaign being conducted by the industry is a pretty good sign that the public doesn’t like what the payday lenders are doing to low income citizens. In my opinion, their conduct is shameful.

Source: Montgomery Advertiser

## **PAYDAY LOAN INDUSTRY WANTS BACK IN GEORGIA**

A groundbreaking law banning payday lenders from the state of Georgia was passed in 2004. Now a new bill has been filed in the Georgia General Assembly that proposes the industry be let back into the state. The legislation has met strong opposition from those who worked hard to get the 2004 bill passed. Just across the state line either in Tallahassee, Florida, or in Phenix City, Alabama, finding a payday loan company offering quick cash with your paycheck as collateral is very easy. This was once the case in many Georgia towns. In some Georgia counties there were actually more payday loan companies at one time than banks.

Opponents to payday lenders say the bill, which is touted as being “consumer-friendly,” is just allowing payday lenders a foothold back into Georgia. The bill, filed by Representative Steve Tumlin, is being opposed by Attorney General Thurman Baker and the state’s insurance commissioner. Both have spoken out against the bill. I hope Georgia lawmakers will resist the temptation to let the payday loan sharks back into their state. I just wish the Alabama Legislature would ban them in my state. In fact, payday lenders have no place in any state in my opinion unless they are strongly regulated and the interest rates charged are restricted to a reasonable number.

## **XIII. PREMISES LIABILITY UPDATE**

### **FAMILY SETTLES WITH DISNEY OVER CHILD’S DEATH**

Walt Disney World and the family of a little boy who died on the thrill ride “Mission: Space” have settled the wrongful death lawsuit the family had filed. The settlement, which has been approved by the court in Orange

County, Florida, involved the June 2005 death of a 4-year old child. As reported, there have been other reports of deaths and injuries at Disney World. In another case, a man who died three days after losing consciousness on “Space Mountain” in December, died as a result of “natural causes,” according to the Medical Examiner’s Office. The death of the child referred to above was among six serious incidents outlined by Disney World in quarterly reports filed with the state Bureau of Fair Rides Inspection for the fourth quarter of 2006. The report stated that a 73-year-old man was “unresponsive” after riding “Space Mountain” on the afternoon of December 12th, and died three days later “due to a heart condition.” There must be better regulation of amusement park rides such as the one involved in the Disneyworld case.

### **JURY AWARD IN SUIT OVER FOSTER CARE BABY’S DEATH**

An Oklahoma state court jury has awarded \$20 million in damages to the estate of a 7-month-old girl who died while in foster care. The jury awarded \$20 million in actual damages in a lawsuit against an individual, who was a foster parent for the baby. The suit alleged that the baby asphyxiated while unattended in a filthy crib at the roach-infested Tulsa home. Testimony revealed that the baby’s 4-year-old sister listened to her cry and die a tragic death. This tragic story should get the attention of all government agencies which have regulatory responsibilities in this area of concern.

*Source: National Law Journal*

### **DUPONT TO APPEAL \$14 MILLION AWARD TO MISSISSIPPI MAN**

The DuPont Co. has asked the Mississippi Supreme Court to reverse a \$14 million jury verdict awarded to an oyster fisherman who claimed chemicals from a Gulf Coast plant caused his rare blood cancer. The award to Glen Strong of Bay St. Louis in August 2005

came in the first of nearly 2,000 cases against the second largest titanium dioxide maker in the nation. The jury also awarded Mr. Strong’s wife \$1.5 million for loss of “love and companionship.” As previously reported, the jury failed to reach agreement on punitive damages. DuPont DeLisle is located about five miles from the Strong home. The DeLisle plant makes titanium dioxide, a white pigment used in paint, plastics, toothpaste, and other products. Mr. Strong contended at trial that dioxins—chemicals that can be hazardous even in small amounts—entered his body through the air he inhaled and oysters he ate that had been harvested from St. Louis Bay. Interestingly, DuPont called no witnesses in its defense, relying on testimony of Mr. Strong’s doctor who said there was no way to determine the root of multiple myeloma. Before the trial began, the Mississippi Supreme Court upheld sanctions issued by Circuit Judge Billy Joe Landrum excluding nine DuPont witnesses from testifying in the case. Landrum said DuPont lawyers “deliberately avoided” depositions of its witnesses by not giving Strong’s attorneys an opportunity to interview them before the trial.

*Source: Associated Press*

### **PHARMACY ERROR RESULTS IN JURY VERDICT**

A South Carolina jury ordered a pharmacy to pay \$7.7 million after the pharmacy gave a customer a 62-pill dose of prednisone to treat slight rejection of her kidney transplant. The verdict included \$5 million in punitive damages. The woman suffered kidney failure as a result of the massive overdose. Tiffany Phillips, now 28, was prescribed a 250 mg dose of the steroid prednisone every other day. When she tried to fill the prescription at Eckerd’s, the pharmacy realized it didn’t have enough pills and transferred the prescription to CVS. But somewhere in that communication the 250 mg dose became 1250 mg—five times the

proper dose. Ms. Phillips sued both Eckerd and CVS for their negligence. It was contended that the CVS computer immediately recognized the dosage as unusually high and the pharmacist had to override clear warnings from the computer in order to fill the prescription. The defense pretrial version of how the mix-up occurred simply did not make sense. The defendants' key witness—an Eckerd pharmacist who claimed in his deposition that he confirmed the proper dose with the plaintiff's doctor before calling it over to CVS—admitted at the trial that he hadn't told the truth in his deposition testimony.

The jury awarded \$3 million in compensatory damages, which was reduced to \$2.7 million because the plaintiff was found 10% liable for taking such an extreme dose without calling to confirm with her doctor or checking the proper dose in her hospital discharge papers. The jury ordered each pharmacy to pay \$5 million in punitive damages, but CVS had entered into a confidential settlement with the plaintiff while the jury was deliberating.

Clearly, strong sanctions should be imposed against both Eckerd and CVS. Eckerd knew before the trial that the pharmacist had lied in his deposition. What they didn't know was that he would tell the truth when he got on the stand to testify. A number of pharmacists testified at trial they wouldn't have filled the prescription that was filled in the case. Ronnie Crosby and Paul Detrick of Peters, Murdaugh, Parker, Eltzroth & Detrick, in Hampton, South Carolina, represented the plaintiffs and did an outstanding job.

Source: *Lawyers USA*

## XIV. WORKPLACE HAZARDS

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### *TYSON LAWSUIT SET FOR TRIAL*

A federal court lawsuit in Tennessee that contends Tyson Foods depressed wages by hiring illegal immigrants has been set for trial. The lawsuit contends Tyson hired illegal immigrants at eight plants since April of 1998. The plaintiffs say that Tyson should pay damages to legal workers. A trial date of March 3, 2008 has been set by the court. Lawyers for Tyson, the world's largest meat company, were given time to file a motion challenging the makeup of the class of plaintiffs. In addition, the court will appoint a mediator in an attempt to achieve a settlement of the case.

The total number of legal workers in the class is believed to be between 50,000 and 100,000. The court has been requested to require Tyson Foods to provide the plaintiffs a listing of all Tyson employees and their Social Security numbers, to be compared with Social Security records. Tyson takes the position that "unlawful hiring is a very, very individual situation," and that a class shouldn't be certified. The lawsuit filed by the plaintiffs contends the company violated the Racketeer Influenced and Corrupt Organizations Act by knowingly hiring illegal immigrants who were willing to work for wages below those acceptable to Americans. Tyson contends that, because its workers are covered by a collective bargaining agreement, the union—not individual workers—is the proper party to pursue claims of damage. Initially, a federal judge dismissed the lawsuit, but an appeals court disagreed and correctly allowed the case to proceed. The eight Tyson plants named in the lawsuit are at Gadsden, Alabama; Blountsville, Alabama; Ashland, Alabama; Shelbyville, Tennessee; Corydon, Indiana; Sedalia, Mo.; Center, Texas; and Glen Allen, Virginia. Because Alabama is the site for

three of the plants involved in this lawsuit, the case will be watched closely by Alabama media outlets.

### *CLASS ACTION LAWSUIT AGAINST WAL-MART WILL GO TO TRIAL*

A federal appeals court has ruled that Wal-Mart Stores, Inc., the world's largest private employer, must face a class action lawsuit that alleges that female employees were discriminated against in pay and promotions. In April 2004, lawyers for women suing Wal-Mart for gender discrimination filed a motion for class certification in a U.S. District Court in California. The motion sought a ruling that the lawsuit could proceed to trial on behalf of a class of all women who worked for Wal-Mart in the United States at any time since December 26, 1998. The proposed class is believed to exceed 1.5 million women. In the complaint, the women charged that Wal-Mart, including its Sam's Club division, systematically discriminated against its female hourly and salaried employees across the nation by denying them promotions and equal pay.

The plaintiffs' motion for class certification was supported by 110 detailed, sworn affidavits from women who worked in 184 different Wal-Mart stores in 30 different states. The motion also included testimony and exhibits from more than 100 Wal-Mart managers and executives whose depositions had been taken. The trial judge ruled in 2004 that the nation's largest class action employment discrimination lawsuit could go to trial. The ruling by the U.S. Court of Appeals for the Ninth Circuit supported that lower court ruling. Now that the appeals court has agreed, the case will proceed.

The lawsuit will expose the Bentonville, Arkansas-based retailing giant to damages that could reach billions of dollars. Wal-Mart is the nation's largest company, and the world's largest retailer. It currently has over one million employees working in more than 3400 stores throughout the United States. Although

more than 66% of its hourly employees are female, they hold only one-third of the store's management jobs and less than 15% of store managers' positions. In its order, the U.S. Court of Appeals for the Ninth Circuit stated:

*Plaintiffs' expert opinions, factual evidence, statistical evidence and anecdotal evidence presents significant proof of a corporate policy of discrimination and support Plaintiffs' contention that female employees, nationwide, were subjected to a common pattern in practice of discrimination.*

Wal-Mart will likely ask the appeals court to re-hear the case with a panel of 15 judges. In the meanwhile, I suspect Wal-Mart will start up its public relations campaign, which is the way it usually deals with major problems. Brad Seligman, a lawyer for The Impact Fund, a nonprofit group in Berkeley, California, is representing the plaintiffs in this most important case.

Source: Associated Press

#### **WAL-MART TO PAY \$33 MILLION FOR OVERTIME VIOLATIONS**

Wal-Mart Stores Inc. will pay more than \$33 million in back wages to thousands of employees after turning itself in to the U.S. Labor Department for paying too little in overtime. Wal-Mart said the department's review of its overtime calculations also found it had overpaid about 215,000 hourly workers during the last five years. The company said it will not seek to recover any overpayments.

Source: National Law Journal

#### **FAMILIES SUE BLACKWATER FOR IRAQ DEATHS**

The families of four private guards, whose bodies were burned and dragged through the streets by a mob in Iraq, testified before a congressional panel last month. They told the panel that the security company that hired the guards

failed to provide armored vehicles and other promised protections. The families have filed suit against the company, Blackwater USA, in an effort to learn all the circumstances of the deaths. As you may recall, by way of television, the deaths of the four guards, all former members of the military, were put on public display. Some of the most gruesome images of the Iraq war were seen on television sets all across the U.S. A mob of insurgents ambushed a supply convoy the guards were escorting through Fallujah on March 31, 2004. The men were attacked, their bodies mutilated. Two of their corpses were strung from a bridge.

At the hearing before the House Oversight and Government Reform Committee, the mother of one of victim Stephen Helvenston read a statement on behalf of the families. She said the security guards were denied armored vehicles, heavy weapons and maps for their convoy routes, and that the rear gunners were removed from vehicles to perform other duties. The woman, who lost her son, made this observation concerning her son's death:

*Blackwater gets paid for the number of warm bodies it can put on the ground in certain locations throughout the world. If some are killed it replaces them at a moment's notice.*

This poor woman's son was alive when Iraqis tied him to his vehicle and dragged him through the streets. He eventually was decapitated. If Blackwater was at fault in not adequately providing for security, and protection for its employees, the company should be punished severely. The three men killed in addition to Helvenston—a former Navy SEAL—were Wesley Batalona, a former Army Ranger who was represented at the hearing by his daughter; Michael Teague, formerly in an Army helicopter unit, who was represented by his widow; and Jerry Zovko, a former Army Ranger, who was represented by his mother. The committee also is looking into Blackwater's contract to provide

security services in Iraq.

After numerous denials, the Pentagon has finally confirmed that Blackwater provided armed security guards in Iraq under a subcontract that was buried so deeply the government at first couldn't find it. The Blackwater USA contract was part of a huge military support operation run by none other than Halliburton Co. subsidiary KBR. Several times last year, Pentagon officials told lawmakers who were looking into this matter they could find no evidence of the Blackwater contract. It's really difficult to get to the bottom of things in Iraq. The discovery shows the dense world of Iraq contracting, where the main contractor hires subcontractors who in turn then hire additional subcontractors. Each company tacks on a charge for overhead, a cost that works its way up to U.S. taxpayers. Rep. Chris Van Hollen (D-MD), one of the lawmakers who had asked about the Blackwater contract and who had received denials, observed:

*This ongoing episode demonstrates the Pentagon's complete failure to safeguard taxpayer dollars. They continue to look the other way in the face of overwhelming evidence that Halliburton was charging taxpayers for unauthorized security services.*

When the silence was finally broken, Army Secretary Francis Harvey wrote Reps. Van Hollen and Waxman that as late as January 30<sup>th</sup> the Army had learned that ESS Support Services Worldwide, a dining facilities subcontractor under the KBR contract, hired Blackwater through a hotel company, which is rather weird to say the least. As a matter of fact, Blackwater employees have suffered heavy casualties in Iraq. In addition to the four killed in Fallujah in 2004, three of its employees were killed in Mosul in 2005, and in January of this year, five of its employees died when a helicopter went down in Baghdad under heavy fire. The more the public learns about how some American corporations with strong political ties are profiting in Iraq, the

more it becomes apparent that our President has created a situation in Iraq that can never be justified.

Source: Associated Press

#### **FAMILIES FILE WRONGFUL DEATH SUIT IN MILWAUKEE WAREHOUSE EXPLOSION**

The families of three factory employees who were killed in a warehouse explosion have filed a wrongful death lawsuit. The families allege that a contractor improperly installed a propane pipeline and should have ordered an evacuation sooner. The propane blast at Falk Corp. on December 6th killed the three men and injured 46 people. The lawsuit, filed last month, names as defendants J.M. Brennan, the mechanical engineering firm helping Falk employees test a backup propane fuel system; Brennan's insurance company; and Falk's workers' compensation carrier. The lawsuit, which says the deaths caused the families pain, suffering and loss of companionship, seeks unspecified damages. It is contended in the lawsuit that Brennan improperly replaced the pipeline in 1988. The complaint includes the following specific allegations of wrongdoing:

- Brennan should have tested the pipeline before running propane through it,
- should have checked the pressure while doing so, and
- Brennan discouraged a quicker evacuation.

Brennan claims it followed installation guidelines and acted reasonably in encouraging people to evacuate. Brennan admits their workers didn't test the pipe, but said that would have been Falk's responsibility. The suit claims that once the leak was detected, Falk employees asked whether they should evacuate but Brennan indicated an evacuation was not necessary. It's contended that rocks punctured the wrap around the underground pipeline and that the way Brennan installed it did

not protect it from damage.

#### **BP SETTLES ANOTHER ROUND OF CASES**

Oil giant BP Plc has settled two more civil lawsuits linked to the 2005 blast at its Texas City, Texas, refinery that killed 15 people. Terms of the settlement between the company and the two contractors who were among the 170 people injured in the explosion are confidential. The settlements will be paid from the \$1.6 billion BP has set aside to cover its liability from the explosion. The cases settled last month had been scheduled for trial in a Texas state court. As previously reported, BP had previously settled several lawsuits related to the explosion, which was one of several incidents that called into question the company's safety practices. There are still about 500 claims pending in a Texas court. An advisory panel, headed by former U.S. Secretary of State James Baker, found dangerous conditions at all five of BP's U.S. refineries. The panel recommended the company overhaul its safety procedures.

Source: Reuters

#### **A MAJOR FIRE AT A TEXAS REFINERY**

Another explosion at a Texas refinery sent 19 people to the hospital and produced a cloud of smoke that could be seen 60 miles away. At press time, no deaths had been reported. The fire started at the Valero Energy Corp. McKee Refinery's "propane de-asphalting unit," where fuel is processed at high temperatures. More than 400 workers were evacuated from the refinery located in West Texas after the explosion. The refinery was shut down after the blast, as were pipelines in and out of the facility. Representatives of the federal Occupational Safety and Health Administration and the Environmental Protection Agency are investigating the incident along with the U.S. Chemical Safety Board. Valero, the largest refiner in North America, operates 17 refineries,

16 in North America and one in Aruba. The McKee Refinery in Sunray, Texas, is one of six in that state with a capacity of 170,000 barrels per day.

Source: Associated Press

#### **GE LOSES ITS BATTLE WITH INSURERS OVER ASBESTOS CASES**

General Electric Co. has lost a decade-long battle with its insurers over payments for thousands of asbestos claims. In a decision released last month, the New York State Court of Appeals, the state's highest appellate court, upheld lower court rulings preventing GE from tapping secondary insurance to cover claims brought mostly by individuals exposed to asbestos-insulated turbines. To date, GE has paid more than \$500 million to settle asbestos cases. According to GE, 509,000 asbestos claims are pending against the company through 2006. As previously reported, GE did not make the asbestos, but used it to insulate turbines.

The lawsuit centered on whether GE's asbestos claims should be treated as one incident under its insurance policies issued between 1965 and 1985, or whether each claim should be treated individually. GE was responsible for the first \$5 million in coverage on each occurrence. After the first \$5 million, GE could access more than \$2 billion in secondary insurance. GE argued that the claims were one occurrence, allowing it to tap the excess insurance. The court ruled that each claim was a single occurrence, which limited GE's access to the insurance, since few individual claims exceed \$5 million. GE's primary insurer, Electric Mutual Liability Insurance Co., a GE affiliate, became insolvent in 1995. GE took a \$115 million after-tax expense as a result of its lawsuit loss.

Source: Associated Press

## XV. TRANSPORTATION

### **SCHOOL BUS GROUP WANTS DRIVERS TO HANG UP THEIR CELL PHONES**

Cell phone use by drivers of motor vehicles has become a real safety hazard on our highways. The American School Bus Council has issued guidelines calling for a ban on drivers using cell phones when the bus is moving or when students are getting on or off. The group's co-director says research is clear that cell phones cause drivers to lose focus. The group doesn't want those distractions to be part of the school bus driver's environment. At least a dozen states have laws or regulations prohibiting school bus drivers from talking on the phone. The council is following a recommendation from the National Transportation Safety Board that all bus drivers should be banned from using cell phones while driving. Our firm is seeing more and more cases where cell phone use played significant role in causing accidents.

Source: *Associated Press*

### **JURY ORDERS U-HAUL TO PAY \$2.6 MILLION**

A federal court jury in Cincinnati, Ohio, has ordered two U-Haul companies to pay \$2.6 million in damages in a case arising out of a highway crash. A woman was badly hurt when her trailer-pulling sport utility vehicle swerved and rolled over. According to the lawsuit, a couple rented a U-Haul trailer from a dealer in to pull a motorcycle to Florida in May 2002. On the return trip from their vacation, while driving through Tennessee, the Ford Explorer swerved in the road and rolled over. The couple and a friend who also was on the trip were injured. The driver, who was hurt badly, suffered a broken back, a lacerated liver and brain trauma that left her with cognitive and memory deficiencies.

It was contended at trial that U-Haul failed to instruct the plaintiffs on how

to use the trailer and to stay within a 45-mph speed limit. The trailer was said to be defective, but the jury threw out the defective product and negligent design claims. The jurors ruled in favor of the plaintiffs on the warning claim and awarded \$1.98 million. Each of the two defendants, U-Haul International and U-Haul Co. of Massachusetts and Ohio Inc., was ordered to pay \$220,800 in punitive damages. Under Ohio law, the plaintiff's must prove that the defendants consciously disregarded the rights and safety of the plaintiffs. The plaintiffs met that burden and prevailed at trial.

Source: *The Enquirer*

### **A CAR CAN BE A DANGER ZONE FOR TEENAGERS**

We mentioned some planned legislation in the Capitol Comments Section that will be considered in the regular session of our legislation. A recent report concerning motor vehicle accidents should cause parents to take a closer look at teenage drivers in their respective households. The report should also get the attention of our lawmakers. Motor vehicle crashes are the leading cause of death for 16- to 20-year-olds, with about 5,500 teenage drivers or passengers dying each year. In addition, about 450,000 teenagers are injured, 27,000 of them requiring hospitalization, the American Academy of Pediatrics reported in the December issue of its journal, *Pediatrics*.

Of those who are killed, 63% are drivers and 37% are passengers, with boys accounting for two-thirds of the fatalities. Although teenagers represent only 6% of drivers, they are involved in 14% of fatal crashes. The crash rate among the youngest drivers—35 crashes per million miles driven by 16-year-olds—is nearly nine times the rate of the general population. To reduce the risks, the Academy recommends that parents have teenagers sign a "driving contract" that covers when the teenager can use the car and who can be in it. It should have a provision, the Academy

says, that driving privileges will be revoked if the contract is violated. That would appear to be a reasonable approach to reducing a most serious problem.

The single biggest reason for both fatal and nonfatal crashes involving teenage drivers is inexperience. In one study, the highest crash rate occurred during the first month after teenagers got their license. That rate, 120 crashes per 10,000 drivers, dropped to 70 crashes within five months. Traditional driver education programs, which offer 30 hours of classroom instruction, but only 6 hours of on-the-road training, "are not effective in creating safe drivers and decreasing crash risk," according to the Academy's review of research.

*In fact, some studies show that high school driver education programs encourage early licensure of the youngest, most dangerous drivers, with resulting increased crashes, injuries and deaths.*

Of course, it shouldn't be overlooked that alcohol, marijuana and other drugs, including prescribed and over-the-counter medications, are prominent factors in crashes involving teenagers. A combination of this sort of activity with inexperience can only lead to tragic results. Although teenagers drink and drive less often than adults, they are more likely to crash when they do drink, especially at low and moderate blood-alcohol levels. Studies have shown that marijuana impairs driving performance, especially when it is combined with alcohol. Legal drugs like antihistamines and sedatives also interfere with driving skills—again, especially when combined with alcohol. A 50-milligram dose of the antihistamine Benadryl has a greater effect on driving performance than a blood-alcohol level of 0.01%, one study has shown.

Distractions inside the vehicle contribute to accidents for both teenage and adult drivers. But distractions are a more serious problem for young drivers because they tend to look away from

the road for longer periods and may then drift out of their lane or fail to respond in time to a hazard. The Academy noted that “eating, drinking and adjusting the radio or the climate controls each cause more crashes than cellular phone use.” Hands-free cell phones have not reduced the risk significantly, the Academy said.

Nearly all states have so-called graduated licensing laws, some of which significantly increase the number of supervised hours of driving by teenagers while they are learning. These laws force a new driver to pass three stages: a learner’s permit, an intermediate or provisional stage, and finally a regular driver’s license. For each stage, there are restrictions and minimum time requirements, and proficiency in driving skills must be demonstrated before the teenager can graduate to the next stage. For example, during the intermediate stage, a driver may not be allowed to have more than one teenage passenger or to drive at night without adult supervision.

The Insurance Institute for Highway Safety says that in the 23 states (as well as the District of Columbia) with the best licensing laws, fatal crashes involving drivers ages 15 to 17 declined by 19% since those laws started taking effect in the mid-1990s. States with weaker laws experienced no benefit, the Institute says. Even in states that have not adopted all the elements of graduated licensing, restrictions involving night driving and the number of teenage passengers have been found to improve driving safety.

A consideration that parents ignore in many cases is the vehicle itself. Rather than giving teenagers a small, old car that is less crashworthy and lacks modern safety features, or an SUV that can overturn easily, or a sports car that encourages fast driving, parents should think of safety first in selecting their teenager’s vehicle. Spending a few more dollars for a safer passenger car—when a young person’s life could depend on it— is worth any required sacrifice. In

the driver contract, the Academy suggests that teenagers must:

- promise to obey all traffic laws and speed limits;
- drive only when free of alcohol and drugs and never allow these substances in the car;
- always wear a seat belt and insist that their passengers do too;
- never eat, drink, or use a cell phone while driving;
- drive only when alert and emotionally controlled; and
- drive with both hands on the wheel.

Parents can add restrictions on night driving, the number of teenage passengers, driving in bad weather, and adjusting the stereo while driving. Teenagers should also promise to call a parent for a ride if they are impaired in any way that can impede safe driving. The contract should also include specific penalties for violations, such as: “No driving for a specified number of weeks or months” if the teenager violated the restrictions on night driving or number of passengers, failed to use safety belts, or got a ticket for speeding or some other moving violation.

The Academy recommends strict restrictions for the first six months, including a ban on teenage passengers and no driving after 9 p.m., for example, then gradual relaxation of restrictions if the teenager continues to demonstrate the ability to drive without committing a moving violation or getting into an accident. I recommend that all parents with teenagers obtain a copy of the report and study the recommendations carefully. For a copy of the report, including the sample teen driver contract, go to <http://pediatrics.aappublications.org/cgi/content/full/118/6/2570>.

Source: *New York Times*

### **BUS FIRE REVEALS LAX SAFETY OVERSIGHT**

Federal regulators have concluded

that the 2005 bus explosion in Texas that killed 23 nursing home patients fleeing Hurricane Rita was partly caused by flawed government oversight of bus companies. A rear wheel of the bus caught fire in the early morning of September 23<sup>rd</sup> on a freeway near Dallas. Within minutes the vehicle was engulfed in flames and smoke. While the National Transportation Safety Board (NTSB) ruled that lack of oil in a wheel assembly probably caused the fire, the Board concluded that the Federal Motor Carrier Safety Administration was responsible as well because it has done a poor job making sure bus companies are safe. The NTSB also blamed the bus company, Global Limo Inc., because it didn’t conduct required preventive maintenance, require drivers to inspect the vehicles, or keep inspection records.

The NTSB called for stronger safety regulations for buses and large trucks. The board held a public meeting on February 21<sup>st</sup> to discuss the findings. Several measures were recommended by the safety board to prevent similar accidents, including better detection systems for maintenance problems and stronger oversight over inspections at bus carriers. It was noted that of more than 60 safety recommendations the NTSB proposed in the past eight years, only 26 have been adopted by the FMCSA. That is most difficult to understand.

A government investigation after the accident found 168 alleged violations involving four other buses in Global Limo’s fleet. The bus involved in the Dallas accident had an illegal license plate, and its driver did not have a valid U.S. driver’s license. Interestingly, among its findings, the NTSB didn’t find any fault with Sunrise, which is based in McLean, Texas. The board said Sunrise took “reasonable action at the time” when it contracted Global Limo through a bus broker in Chicago. Several lawsuits by victims’ families were filed against Sunrise, Global Limo and BusBank, the contracting service Sunrise used to charter the bus from Global Limo. It’s pretty hard to under-

stand how the board could fail to find any wrongdoing on Sunrise's part.

Sources: *Associated Press* and *Washington Post*

### **SETTLEMENT APPROVED IN ARMY HELICOPTER CRASH**

Last month, a federal judge approved a \$13.55 million settlement of a lawsuit filed against Boeing Co. and three other companies by two soldiers who were hurt in a 2003 Army helicopter crash in Iraq. It was contended in the product liability lawsuit that a gear box on an AH-64 Apache Longbow failed during a maintenance flight in Tikrit, causing the chopper to plunge 800 feet. The two crew members were seriously injured. As has been widely reported, the Longbow is the Army's primary attack helicopter in Iraq and Afghanistan.

The lawsuit claimed that the gearbox and gearbox bearings were inadequately lubricated and that a device called an accelerometer that should have warned pilots of a problem was badly designed and had failed. Boeing, which built the Longbow, along with three companies that made the gearbox, bearings and the accelerometer were all defendants. Honeywell and Chadwick Helmuth made the accelerometer, MPB Corp. made the bearings and Aircraft Gear Corp. made the gearbox. Interestingly, the accelerometer is still being used in helicopters in Iraq.

Source: *Associated Press*

## **XVI. HEALTHCARE ISSUES**

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### **CONAGRA'S PEANUT BUTTER RECALL TO COST \$50 TO \$60 MILLION**

Packaged-foods company ConAgra Foods, Inc. says that the nationwide recall of peanut butter it launched will cost between \$50 and \$60 million. A salmonella outbreak that has grown to

nearly 300 cases in 39 states since August 2006 has been linked to tainted peanut butter. According to officials with the federal Centers for Disease Control and Prevention (CDC), about 20% of the 288 people infected have been hospitalized. About 85% of the affected people said they ate peanut butter, according to CDC officials. It is not clear how salmonella got into peanut butter. The FDA warned consumers not to eat certain jars of Peter Pan or Great Value peanut butter because of the risk of contamination. The affected jars had a product code on the lid that begins with the number "2111," and were made by ConAgra in a single facility in Sylvester, Georgia. Omaha, Nebraska-based ConAgra recalled all Peter Pan and Great Value peanut butter beginning with product code 2111.

At least one death has been reported by a family who has filed a lawsuit claiming a relative died from eating salmonella-tainted peanut butter. The family alleges the peanut butter killed the mother and sickened her husband and daughter. The mother had been hospitalized with gastrointestinal problems, then developed a bacterial infection before she died January 30, 2007. One issue was raised in this case and many others. The mother was not tested for salmonella. We would expect many claims to be for persons who were sickened by the peanut butter, but physicians did not think to take a blood test or stool sample to make a definitive diagnosis of salmonella. It has yet to be determined how many claimants will be able to confirm this diagnosis.

While Alabama was among the affected states, the largest number of salmonella cases was reported in New York, Pennsylvania, Virginia, Tennessee and Missouri. Salmonella infection is known each year to sicken about 40,000 people in the United States according to the CDC. Salmonellosis, as the infection is known, kills about 600 people annually. Symptoms of salmonella can include diarrhea, fever, dehy-

dration, abdominal pain and vomiting. With such common symptoms, many people who were probably sickened by the peanut butter have probably gone undiagnosed.

Could the FDA have caught this sooner? The Government Accountability Office (GAO) has added food safety to its list of "critically flawed" federal programs. Fifteen separate federal agencies presently deal with food safety issues. This has left the United States vulnerable to outbreaks of food-borne illness, or worse, a terrorist attack, according to the GAO. The GAO, the non-partisan investigative arm of Congress said it added food safety to its so called "high risk" of federal programs because the system is out of date, is often unscientific and lacks accountability. Each year about 76 million people contract a food-borne illness; about 325,000 are hospitalized; and 5,000 die. However, the FDA's budget has not kept pace with rising costs of federal salaries and benefits, so the agency has had to eliminate hundreds of field inspector jobs along with scientific and technical positions. Hopefully, ConAgra can determine how the contamination occurred and put steps in place to keep it from happening again in the future.

### **WARNING ON DIARRHEA VACCINE FOR INFANTS**

The government issued a warning last month of potentially life-threatening twisting of the intestines in infants vaccinated against a virus that is the leading cause of early childhood diarrhea. The condition, called intussusception, is the same that led to the withdrawal of the first rotavirus vaccine eight years ago. The Food and Drug Administration said it was unknown whether the recently approved vaccine, called RotaTeq, caused the 28 new cases. The condition also can occur spontaneously. Concerns about the previous vaccine, made by Wyeth, may have prompted the FDA to act. The agency wants to encourage reporting of any

additional cases of intestinal twisting or blockage to help it assess any risks associated with the three-shot vaccine series. It also said the vaccine's label would mention the cases of intussusception. FDA spokeswoman Karen Riley told the Associated Press:

*It's a known serious, life-threatening adverse event that is being seen at an expected level postmarketing. But because it is so serious, we asked the company to change the label.*

Dr. Paul Offit, the vaccine's co-inventor, said the 28 reports were well below the hundreds of cases one would expect naturally. He suggested the FDA wanted to "shake the tree" for more reports about the vaccine. The 28 cases included 16 infants who required intestinal surgery. There have been no reports of deaths. RotaTeq, which is a Merck & Co. product, received FDA approval in February 2006. At the time, the FDA and Merck said trials of the vaccine involving nearly 70,000 infants indicated it did not increase the risk of intussusception. But Merck and the Centers for Disease Control and Prevention are conducting follow-up studies of tens of thousands more infants to track any long-term effects of the vaccine. The FDA also is monitoring reports.

About 3.5 million doses of the Merck vaccine have been distributed in the U.S., although not all have been used. The earlier rotavirus vaccine, Wyeth's RotaShield, which had been on the market a year, was pulled from the U.S. market in 1999 after it was linked to a small increase in intussusception. In the United States, rotavirus sickens about 2.7 million children younger than 5, sends up to 70,000 to the hospital, and causes 20 to 70 deaths each year, according to the FDA.

Source: Associated Press

## XVII. ENVIRONMENTAL CONCERNS

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### **BUSH ADMINISTRATION DOES A GOOD THING**

The Bush White House, under intense legal pressure from environmental groups, has finally done a good thing on an environmental issue. Toxic fumes from cars and gasoline would be cut significantly under new limits on cancer-causing benzene adopted by the Bush Administration. The requirements, to take effect between 2009 and 2011, would reduce toxic emissions of benzene and other pollutants from passenger vehicles by up to 80% in the next two decades.

According to the Environmental Protection Agency (EPA), the rules will toughen benzene standards for gasoline, require cleaner-starting engines in cold temperatures, and tighten fuel container standards to reduce the evaporation of harmful fumes. Although the Bush Administration is to be commended for its actions, it's rather sad that it took the action only because it was forced to do so.

The new rule meets a court order that EPA require refineries to meet an average 0.62% benzene fuel limit by 2011, down from the current average of 0.97%. The rule also would create a trading program that would let refineries buy emissions credits to meet new regional limits, rather than impose strict emissions controls. Benzene is a highly toxic pollutant known to cause cancer, and is one of the largest sources of cancer risk in many parts of the country.

While hailing the stricter standards for benzene emissions, some critics attacked the credit-trading program, which they said would let refineries in some parts of the country avoid significant reductions in benzene levels in their gasoline. "Having benzene levels go down in Newark, New Jersey won't do much for the health of people in Portland, Oregon," according to Emily Figdor of U.S. Public Interest Research

Group. She and other critics called it disappointing that EPA would "undermine" its own program by adopting the trading plan.

Frank O'Donnell, president of the Clean Air Watch advocacy group, called the new rule "a positive step" that "suggests that the November elections may be having a positive impact on EPA actions." The new plan would set new evaporative standards for fuel containers, beginning in 2009. It would require, starting in 2010, that passenger vehicles started up at cold temperatures emit fewer pollutants. And, by 2011, the agency would require that all gasoline, which is now allowed to contain little more than 1% benzene, have only 0.62% or less benzene. Congress required EPA to issue mobile source air toxic regulations by 1995. Two environmental groups, represented by environmental law firm Earthjustice, won a court order in 2005 forcing EPA to issue a preliminary proposal last year and a final rule this month.

Source: Associated Press

### **\$2 MILLION VERDICT UPHELD IN POLLUTION CASE**

The Tennessee Court of Appeals has upheld a jury's decision to award \$2 million dollars in damages to landowners along the Pigeon River in Tennessee. Roughly 300 landowners joined a class action lawsuit against Blue Ridge Paper Company, claiming that continuing pollution from its paper mill in Canton, North Carolina, was flowing into Tennessee. Lawyers for the property owners said the appeals court's decision supports the landowners claim that the Pigeon River remains an environmental hazard despite improvements to its color and smell. An attorney for these property owners, Gordon Ball, has said, "The toxic metals are still there. I plan to keep suing them until they quit dumping that stuff in the river."

I think it is essential that courthouses remain open so that property owners can bring claims like this in a court of law. Many companies will not stop pol-

luting until someone holds them accountable. The paper mill originally opened in 1908, but major improvements to the Pigeon River did not occur until 1997 when environmentalists, among them then Vice-President Al Gore, pressured the Environmental Protection Agency to issue a stiffer waste water discharge permit for the paper mill. Now owned by Blue Ridge, the mill continues to operate under a variance from the Federal Clean Water Act. That permit expired in November 2006, and the company is expected to apply for a new license this year.

### **GE RESISTS NEW EPA SMOG STANDARDS**

Striving to promote itself as an environmentally friendly company, General Electric controls a \$2 billion-a-year locomotive operation that is fighting to weaken the EPA's new anti-smog proposals. The proposals are designed to replace the 1997 standards and are proclaimed to dramatically eliminate smog. Because the EPA estimates that during a locomotive's lifetime it can produce as much pollution as 500 heavy-duty diesel trucks, the current emission standards are too modest. While other diesel engine makers claim that they are fully prepared to accommodate to new standards, GE argued it can unlikely meet the requirements and proposed new standards instead. EPA claims the new environmental standards are a top priority because breathing diesel exhaust can cause cancer.

Source: *The Wall Street Journal*

### **TENANT RECEIVES \$100,000 FOR CONTAMINATED DRINKING WATER**

An Ohio Court of Appeals has affirmed a \$100,000 judgment for a plaintiff who claimed her landlord provided unsafe drinking water. The appellate court upheld the denial of a defense summary judgment motion. Under the ruling the court held that the statute of limitations began to run when the plaintiff discovered her cause of illness. The

court correctly found that the plaintiff had filed her complaint within the two-year time period. The defendant argued that the statute of limitations began to run when the plaintiff became ill or when she stopped renting from the landlord, but the court held that the statute of limitations did not begin until the plaintiff **discovered** her illness.

The court also found that the plaintiffs presented enough evidence to prove an injury was caused by the contaminated well water. The court also granted the award of punitive damages. In Ohio, tenants can recover punitive damages if they can prove fraud, insult, or malice. Most plaintiffs who are exposed to toxic substances that cause them to be ill, do not become ill or discover the cause of their illness for quite some time. The state of Ohio properly accepts that fact and suspends the statute of limitations from running until the plaintiff has discovered an injury. Unlike Ohio, Alabama is a state with a statute that allows polluters and big businesses to continue to harm victims physically and in the courtroom. Alabama has a two-year statute of limitations on toxic exposure cases that starts to run the very minute a person is exposed to the toxin. This statute provides no help to victims who don't realize they are sick until years too late. This is legally and morally indefensible.

Source: Mealey's Emerging Toxic Torts

### **CLASS ACTION TOXIC WASTE CASE TO BE TRIED IN GREAT BRITAIN**

A British court has ruled that it will hear a class action involving the dumping of toxic waste in the Ivory Coast by an international oil company, Trafigura. Trafigura is accused of shipping toxic waste to the Ivory Coast of Africa and dumping it in open air sites in Abidjan last August. World news agencies reported that tanker trucks were dispatched in the cover of night to dispose of the toxic waste—including cleaning chemicals, gasoline, and crude oil slop—in 14 sites around Abidjan. The

dumping sites included areas near vegetable fields, fisheries, and water reservoirs. As a result, ten people died and thousands became ill, suffering from vomiting, diarrhea, nosebleeds, and breathing difficulties. The number of plaintiffs is estimated to be between 4,000 and 5,000. The court's decision which will allow them to proceed in Britain, is seen as a major victory. Trafigura is headquartered in Holland, but its operational base is London. The case is expected to begin in early 2008.

How this waste ended up in the Ivory Coast is quite interesting. A ship known as the *Probo Koala* was transporting this toxic waste. It originally stopped in Amsterdam in July to begin unloading its toxic cargo in the city's petroleum port. Local residents soon notified the police of the worst stench they had ever encountered. A sample of the waste product on board revealed that it contained highly toxic substances. Amsterdam officials halted the unloading of the waste and instructed that the waste could properly be disposed of at special facilities in Rotterdam. On the ground that this would be too expensive for Trafigura—a company with annual earnings of \$28 billion—Trafigura disregarded the suggestion and the *Probo Koala* set sail for Estonia.

The ship had no better luck finding a home for its toxic cargo in Estonia. Finally, the *Probo Koala* traveled to the Ivory Coast of Africa, where it successfully unloaded and dumped its cargo. There are allegations that family members of Ivorian President Laurent Gbagbo may be involved in this waste scandal. Many environmentalists believe that this toxic dumping debacle is the beginning of a trend. With increased production of hazardous waste in a global economy, the smuggling of such wastes will become more common. The case is being handled by the law firm of Leigh Day & Co., located in London.

Sources: *CNN* and *Der Spiegel*

## **EPA REACHES AN AGREEMENT TO CLEAN SUPERFUND SITE**

The U.S. Environmental Protection Agency (EPA) has reached a \$21.8 million settlement with 95 parties to help clean up an Elkton, Maryland Superfund site where a solvent recycling company was once located. The defendants have agreed to pay for the removal of chemicals from the Spectron site at an estimated cost of more than \$19 million. According to the EPA, the agreement includes reimbursement for past cleanup costs and money to restore an aquatic habitat. Two companies controlled the site at different times, reprocessing wastes from the pharmaceutical, paint, and chemical industries. The second owner, Spectron, went bankrupt in 1988 and closed the site. The EPA said that Spectron abandoned many hazardous substances when the site was abandoned. Soil and groundwater were contaminated, causing damage to the aquatic habitat. Hopefully, this settlement will correct the problems left at the site.

Source: *National Law Journal*

## **XVIII. TOBACCO LITIGATION UPDATE**

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### **APPELLATE COURT REDUCES TOBACCO VERDICT**

A Louisiana appeals court reduced a \$591 million verdict against tobacco companies by more than half and limited the kinds of smoking-cessation programs the money can be used for. A tobacco company said it would appeal to have the entire verdict thrown out. The state court ruling by the Court of Appeal for the Fourth Circuit in New Orleans was the first major development since jurors found in 2004 that tobacco firms had conspired for more than 50 years to distort public knowledge about the effects of smoking. The

fact that the appeals court allowed the case to proceed as a class action, even though the court reduced the award, is significant. The court also held that the trial jury and trial judge were correct in finding the tobacco companies were guilty of intentional fault and fraud.

The ruling cut the amount of money for stop-smoking programs to \$279 million. It also restricted the kinds of programs it can pay for to traditional stop-smoking aids, and limited the class to people who smoked before Louisiana's products liability law was passed in 1988. The class originally was defined as anyone who started smoking before the lawsuit was filed in 1996.

The decision allows for the case to go back to civil court, where a judge will administer the money in a trust fund to underwrite a wide array of assistance to help people quit smoking and set up centers to research and provide training in new ways to stop smoking. My good friend Russ Herman, who is an outstanding lawyer from Louisiana, represents the class plaintiffs in this case.

## **XIX. THE CONSUMER CORNER**

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### **FBI OFFERS REWARD FOR VA HARD DRIVE**

The Federal Bureau of Investigation (FBI) has offered a \$25,000 reward for the return of a computer hard drive that was reported missing from a Veterans Affairs (VA) office in Birmingham, Alabama in late January. Information on as many as 1.8 million patients and physicians nationwide has been "lost." The desktop device—manufactured by Iomega and about the size of a large paperback book—contained unprotected information including Social Security numbers, names, and billing codes. The VA has acknowledged that the data were not encrypted, in violation of department rules.

An FBI statement said the reward was

offered for information about the external hard drive and its return. The hard drive was being used as a backup for a computer that contained information on a nationwide research project. VA Secretary Jim Nicholson suspended research last month at seven centers to make sure they comply with computer security standards. An employee at the VA medical center in Birmingham reported the hard drive missing on January 22<sup>nd</sup> and has since been placed on leave. Apparently, no charges have been filed. It's hard to understand why it took so long for the public to be notified, especially the folks whose identity could be a great risk.

Source: *Associated Press*

### **670,000 IDENTITY THEFT AND FRAUD CASES IN 2006**

While identity theft is a most serious problem and is a crime, few people in the U.S. really understand it. But it's a crime that threatens most citizens and businesses. According to the Federal Trade Commission, consumers reported more than 670,000 cases of fraud and identity theft in 2006 that cost them \$1.2 billion. For the seventh straight year, identity theft was the most common complaint, accounting for 36%, or 246,035, of the cases.

Source: *Associated Press*

### **STUDY SAYS A COMPUTER HACKER STRIKES EVERY 39 SECONDS**

A study by the A. James Clark School of Engineering at the University of Maryland is one of the first to quantify the near-constant rate of hacker attacks of computers with Internet access—every 39 seconds on average—and the non-secure usernames and passwords people use that give attackers more chance of success. The study, conducted by Michel Cukier, Clark School assistant professor of mechanical engineering and affiliate of the Clark School's Center for Risk and Reliability and Institute for Systems Research, profiled the behavior

of “brute force” hackers, who use simple software-aided techniques to randomly attack large numbers of computers. The researchers discovered which usernames and passwords are tried most often, and what hackers do when they gain access to a computer. As to the frequency of the attacks, Professor Cukier noted:

*Our data provide quantifiable evidence that attacks are happening all the time to computers with Internet connections. The computers in our study were attacked, on average, 2,244 times a day.*

In the study weak security was set up on four Linux computers with Internet access. What happened as the individual machines were attacked was then recorded. The researchers discovered the vast majority of attacks came from relatively unsophisticated hackers using “dictionary scripts,” a type of software that runs through lists of common usernames and passwords attempting to break into a computer. “Root” was the top username guess by dictionary scripts—attempted 12 times as often as the second-place “admin.” Successful “root” access would open the entire computer to the hacker, while “admin” would grant access to somewhat lesser administrative privileges. Other top usernames in the hackers’ scripts were “test,” “guest,” “info,” “adm,” “mysql,” “user,” “administrator” and “oracle.” Obviously, each of these should be avoided as usernames.

The researchers found the most common password-guessing ploy was to reenter or try variations of the username. Some 43% of all password-guessing attempts simply reentered the username. The username followed by “123” was the second most-tried choice. Other common passwords attempted included “123456,” “password,” “1234,” “12345,” “passwd,” “123,” “test,” and “1.”

These findings support the warnings of security experts that a password should never be identical or even related to its associated username. Once hackers gain access to a computer, they

then act quickly to determine whether it could be of use to them. During the study, the hackers’ most common sequence of actions was to check the accessed computer’s software configuration, change the password, check the hardware and/or software configuration again, download a file, install the downloaded program, and then run it. Here is what the hackers are trying to accomplish, according to Professor Cukier:

*The scripts return a list of “most likely prospect” computers to the hacker, who then attempts to access and compromise as many as possible. Often they set up “back doors”-undetected entrances into the computer that they control-so they can create “botnets,” for profit or disreputable purposes.*

A “botnet” is a collection of compromised computers that are controlled by autonomous software robots answering to a hacker who manipulates the computers remotely. Botnets can act to perpetrate fraud or identity theft, disrupt other networks, and damage computer files, among other things. This study provides statistical evidence that supports widely held beliefs about username/password vulnerability and post-compromise attacking behavior. Computer users should avoid all of the usernames and passwords identified in the research and choose longer, more difficult, and less obvious passwords with combinations of upper and lowercase letters and numbers that are not open to brute-force dictionary attacks. The more we learn about our computers, the more we should protect access to our personal information.

Source: *Insurance Journal*

#### **TRIMSIPA SUED IN CLASS ACTION SUIT**

Before her widely publicized death, a class action lawsuit was filed against Anna Nicole Smith and a company, TrimSpa Inc., alleging their marketing of a weight-loss pill was false or misleading. The lawsuit, filed in Los Angeles Superior

Court, alleges deceptive business practices and a violation of California’s unfair competition law. The relief sought was unspecified damages, restitution, and an injunction preventing Ms. Smith and New Jersey-based TrimSpa, maker of TrimSpa X32, from making claims that users of the pills can lose substantial amounts of weight. Ms. Smith, who died on February 8th, had endorsed TrimSpa and was a spokesperson for the product. Last month, the Federal Trade Commission announced TrimSpa would pay \$1.5 million to settle allegations that the company’s weight-loss claims were unsubstantiated.

TrimSpa claims the company supports actions to clean up the weight-loss industry, but the company disputed the federal agency’s allegation that TrimSpa advertisements that ran in 2003 and 2004 had insufficient support. TrimSpa also disagreed with any inference that its X32 product has no scientific support. I hope that companies like this that prey on folks who need to lose weight will be regulated by the federal government in areas including advertising.

#### **POSSIBLE CHINESE CHICKEN IMPORTS INTO U.S. CAUSE CONCERN**

Alabama Agriculture Commissioner Ron Sparks is concerned with the decision by the U.S. Department of Agriculture (USDA) to potentially allow cooked poultry from China to be imported into the United States. His concern arises from China’s 14 reported human deaths from avian influenza (AI) since 2003. Although properly cooking chicken kills the H5N1 AI virus, the presence of the AI virus in birds and humans in China is seen by the Commissioner as a sign of other health issues. Commissioner Sparks made this statement:

*We are very concerned in Alabama about the possibility of China sending poultry to the United States. The Chinese government has expressed its apprehension about importing beef from the U.S. because of bovine*

*spongiform encephalopathy, so I am sure they can understand why we would hesitate to import even one piece of chicken from a country that has the H5N1 strain of avian influenza. The USDA must negotiate trade with other countries, but we don't need to make any mistakes when it comes to protecting human health. This is definitely on our radar because Alabama is a poultry state. Alabama poultry growers can meet the demands of any market that opens up. I hope that if the USDA chooses to allow these imports from China that they will ensure that the Chinese product holds up to meet our safety and health standards here in the U.S.*

Currently, highly pathogenic avian influenza does not exist in the United States. The Alabama Department of Agriculture & Industries has dramatically increased surveillance in both backyard and commercial flocks over the last twenty years. A response plan has been developed by the Department for the poultry industry should there be a case of avian influenza, and the staff works closely with the Alabama Department of Public Health should the virus involve humans. It's good to know that Ron Sparks and his folks are looking out for the safety of products being imported into the U.S.

#### **WRONG PILLS SHIPPED TO ONLINE DRUG BUYERS**

Many consumers who thought they were purchasing sleep aids, antidepressants, and other drugs over the Internet, were actually shipped a powerful antipsychotic. The Food and Drug Administration (FDA) reported that a number of consumers took the schizophrenia drug haloperidol after ordering other pills, including Ambien, a sleep aid, and the anxiety medications Xanax and Ativan. Others thought they were getting the antidepressant Lexapro.

Preliminary analysis of the pills, pack-

aged in plain plastic bags and mailed in envelopes bearing Greek postmarks, suggested they contain haloperidol. The FDA said it had reports of several consumers who took the pills seeking emergency medical treatment for symptoms such as difficulty breathing, muscle spasms, and muscle stiffness. The FDA warned consumers about the possible dangers of buying prescription drugs online. The FDA posted images of the suspect pills and their packages on its Web site—<http://www.fda.gov/bbs/topics/news/photos/haloperidol.html>—to help consumers identify any suspect product they may have received. Consumers who were sent haloperidol apparently had ordered drugs through a variety of commercial Web sites. I have never believed that purchasing drugs online was very safe. This incident makes me realize that doing business at home with a pharmacist you know is a good thing.

Source: Associated Press

## **XX. RECALLS UPDATE**

Each month there are always more recalls than we can include in the Report. We always try to include some of the recalls that we believe to be of high importance. I believe that the following recalls fall into that category.

#### **VOLKSWAGEN RECALLS 790,000 U.S. VEHICLES**

Volkswagen of America Inc. is recalling 790,000 vehicles because of problems with the brake light switch. The recall involves several vehicles: 1999-2006 model years of the Golf and GTI, 2001-2005 Jettas, 2001-2007 New Beetles and the 2004 R32. It expands upon a recall announced last year of some Jettas and New Beetles because of the same defect.

Volkswagen told the National Highway Traffic Safety Administration that the brake light switches in the vehicles could malfunction if they were improperly installed. The automaker reported that the light could either remain on or not function, which would fail to provide other motorists with the proper braking signal and potentially lead to a crash. In some vehicles with automatic transmissions, a faulty brake light could work in tandem with the shift interlock to immobilize the vehicle and require towing, according to a VW spokesman.

Last year, VW recalled 362,000 Jetta and New Beetle sedans because of similar problems with the brake lights. That recall affected Jettas from the 1999-2002 model years and New Beetles from the 1998-2002 model years. The latest recall is an extension of the previous one because the company "found that there was a broader pool of vehicles that had the defective part." Owners of 2001-2002 Jettas and New Beetles, who already had the repairs completed following last year's recall, won't need to return the vehicles for a second time. VW dealers will install the newly designed brake light switch free of charge. The recall is expected to begin in late April.

#### **AMERICAN HONDA MOTOR CORP. RECALLS ALL-TERRAIN VEHICLES FOR CRASH HAZARD**

American Honda Motor Corp. Inc., of Torrance, California has recalled about 11,000 Honda Model Year 2006 TRX450ER/R All-Terrain Vehicles (ATVs). The front suspension arm ball joints could have been contaminated during production, resulting in rapid wear of one or more of the ball joints and possible ball joint separation. If the ball joint separation occurs while riding, the operator could lose control of the ATV. American Honda Motor Corp.

has received seven warranty claims about this problem. Thus far, no injuries have been reported. The recall involves 2006 model year TRX450ER and TRX450R ATVs. They are adult-sized ATVs designed for use by riders age 16 and older. The ATVs are available in red or black. The TRX450ER and TRX450R model names are located on the front cowling just below the handlebars, and the name Honda is printed on the seat. The ATVs were sold at Honda dealers nationwide from September 2005 through December 2006 for between \$6,600 and \$7,000. Consumers should call any Honda ATV dealer to make an appointment to have the ATV repaired. The dealer will inspect and repair your ATV, if necessary. Registered owners of the recalled ATVs have been sent direct notice. For more information, consumers can call Honda toll-free at (866) 784-1870 between 8:30 a.m. and 5 p.m. PT Monday through Friday, or visit the firm's Web site at [www.powersports.honda.com](http://www.powersports.honda.com)

#### **ARCTIC CAT RECALLS MODEL YEAR 2007 90CC YOUTH MODEL ATVs**

Arctic Cat Inc., of Thief River Falls, Minnesota, has recalled the Arctic Cat 90cc DVX and Utility model All-Terrain Vehicles. On the recalled ATVs, the handlebar base mounting bolts, tie-rod ends, and tie-rod adjustment locking nuts may not have been tightened to the proper torque during the production process. Operating an affected ATV could cause components to loosen, resulting in loss of steering control. This condition could result in loss of vehicle control, which could result in injury or death. Thus far, no injuries have been reported by the company. The recall includes 2007 model 90cc DVX youth model ATVs within the VIN range of

RFB07ATV07K6F0243 through RFB07ATVX7K6F0752, and 90cc Utility youth model ATVs within the VIN range of RFB07ATV07K6D1367 through RFB07ATVX7K6D2400. The range refers to the last six characters of the VIN.

These models are designed for used by operators 12 years old and older. The 90cc DVX model is available in Lime Green or Red, and has the model name DVX 90 on each side of the fuel tank, and Arctic Cat on each side of the seat. The 90cc Utility model is available in Marsh Green or Red, and has the name Arctic Cat on each side of the fuel tank and 90 on each side panel near operator's leg position. Registered owners should have been notified about this recall by mail. In any event, consumers with a recalled ATV should contact their local Arctic Cat ATV dealer to schedule a free repair. For additional information, contact Arctic Cat at (800) 279-6851 between 8 a.m. and 5 p.m. CT Monday through Friday or go to the firm's Web site at [www.arctic-cat.com](http://www.arctic-cat.com)

#### **MAYTAG ANNOUNCES RECALL OF MILLIONS OF ITS DISHWASHERS**

Maytag is recalling 2.3 million dishwashers sold under the brand names of Maytag and Jenn-Air because of a fire hazard. The U.S. Consumer Product Safety Commission (CPSC) says liquid rinse-aid can leak from its dispenser and come in contact with the dishwasher's internal wiring, causing a short-circuit and fire. Maytag says it's had 135 reports of dishwasher fires. The machines were sold at stores nationwide between July 1997 and June 2001. Maytag is offering either a free in-home repair or a 75-dollar cash-back reimbursement with the purchase of a new Maytag-brand dishwasher. You can get information

on the recall on the Net: CPSC at <http://www.cpsc.gov> or Maytag <http://www.repair.maytag.com>.

Consumers were told to call Maytag at 800-675-0535 to determine whether their dishwasher is included in the recall or visit the company's Web site at <http://www.repair.maytag.com>. The CPSC has a Web site with photographs and lists of model and serial numbers for models included in the recall at <http://www.cpsc.gov>.

#### **MASON JAR CANDLE RECALL**

The Old Williamsburg Candle Corporation is recalling all of the scents of its Mason Jar Candles. The recall comes because there is a danger of users being cut or burned. The sizes of the candles affected are 3.5, 4.0, 4.5, and 5.0 ounces. The size of the candle is specified on the label at the bottom of the jar, on the last line of the label. Replacement Mason Jar Candles, which are not included in the recall, have a "Q" on either side of the label. The candles were sold at dollar stores, discount stores, and grocery stores nationwide from May 2006 through December 2006 for between \$1 and \$1.50. The candle can be returned to the store where they were purchased, or consumers can call (866) 564-1500 for more information.

#### **NEXT STEP PLASTIC SIPPY/TUMBLER CUPS RECALLED FOR LACERATION HAZARD**

About 43,500 Sippy/Tumbler cups manufactured by Artcraft and Foremost Inc., of Moorestown, New Jersey, have been recalled. The impact of being dropped or banged can cause the cup to break into pieces, resulting in sharp or jagged edges that pose a laceration hazard

to children. Artcraft and Foremost Inc. has received 90 reports of the cups breaking into pieces and/or the handles breaking off, resulting in six reports of minor injuries such as cuts to the fingers and thumbs. This recall involves plastic sippy/tumbler cups bearing the "Next Step" logo. The 7-ounce cup has an aqua blue cap and a yellow, rubber-like material covering the handles and bottom of the cup.

The cups were distributed by Mead Johnson Nutritionals as a promotional giveaway to doctors and consumers nationwide by direct mail from September 2006 to October 2006. Consumers should contact Mead Johnson Nutritionals at (800) 222-9123 between 7 a.m. and 7 p.m. CT Monday through Friday, and between 8 a.m. and 4:30 p.m. CT Saturday; or via e-mail at [Enfamil-ResourceCenter@Enfamil.com](mailto:Enfamil-ResourceCenter@Enfamil.com), for information on how to receive a \$10 coupon toward the purchase of Next Step LIPIL baby formula.

#### **HASBRO RECALLS 1 MILLION EASY-BAKE OVENS**

About 985,000 Easy-Bake Ovens sold since last May have been recalled because children can get their hands or fingers caught in the oven's opening, which poses an entrapment or burn hazard. The ovens are manufactured by Easy-Bake, a division of Hasbro Inc. The company has received 29 reports of children getting their fingers or hands caught in the product, including five reports of burns. The recalled plastic ovens are purple and pink. They resemble a kitchen stove with four burners on top and a front-loading oven. "Easy Bake" is printed on the front of the electric toy, while "Hasbro" and model number 65805 are stamped into the plastic on the back. The recall does not include Easy-Bake Ovens sold

before May 2006. Toys "R" Us, Wal-Mart, Target, KB Toys and other retailers nationwide sold the toy from May 2006 through February 2007. For a free retrofit kit, call the company at 800-601-8418. For more information, visit [www.easybake.com](http://www.easybake.com).

#### **TODDLER PRODUCT RECALLED**

About 1,800 toddler pants sets manufactured by G & W Industries Inc. have been recalled because the zipper pull can detach, which poses a choking hazard to young children. The company received one report of a zipper pull detaching. The recall involves "Little Lass" toddler pants sets, which are sold in sizes 2T, 3T and 4T. The sets come with a white T-shirt and either red or black velour jacket and pants. The words "Snow Angel" are printed on the front of the jacket. Meijer Inc. stores nationwide sold the product from October 2006 through December 2006. Consumers should return the sets to a Meijer store for a full refund. For more information, call G & W Industries at 212-736-4848 or visit [www.cpsc.gov](http://www.cpsc.gov).

#### **HOMEDICS RECALLS OF HEATING PADS**

HoMedics, Inc has recalled approximately 292,108 of its heating pads that were produced in 2001 and later shipped to retailers in 2001 and 2002. These heating pads were sold nationwide to Walgreens as well as to drug stores, discount stores and department stores. It has been determined that some of the heating pads contained an inadequate connector crimp, which lead to a high resistance connection that generated excessive heat, thereby posing a risk of burn injuries, fire or damage to the heating pad itself or to materials (like bedding and furniture) that could come into contact with the pad. HoMedics has

received eight reports of minor or first-degree burns associated with the use of the heating pads and five additional reports of minor or first-degree burns possibly related to the use of the heating pads, as well as reports of property damage. Models involved in this recall include:

- Model 802857 (Walgreens by HoMedics) Standard Size Moist/Dry Heating pad; sold exclusively through Walgreens
- HoMedics Thera-P Model HP-100 Standard Size Dry Heating Pad
- HoMedics Thera-P Model HP-150 Standard Size Moist/Dry Heating Pad
- HoMedics Thera-P Model HP-200 Standard Size Moist/Dry Heating Pad with Auto Shut-off
- HoMedics Thera-P Model HP-300 King Size Moist/Dry Heating Pad
- HoMedics Thera-P Model HP-500 King Size Moist/Dry Heating Pad with Auto Shut-off

Each HoMedics heating pad is marked with a unique 4-digit date code located both on the back of the hand control as well as on the bottom panel of the color box. ONLY 4-DIGIT DATE CODES ENDING IN "01" ARE SUBJECT TO THIS VOLUNTARY RECALL. In order to accurately identify the date code, consumers should refer to the diagram included in this release.

Consumers who have any of these particular heating pads should discontinue the use of the product immediately and return it to the retailer of purchase for a full refund. HoMedics is currently contacting the retailers of these heating pads to communicate return instructions. Further information can be obtained by going to [www.homedics.com](http://www.homedics.com). Consumers with questions may contact the company at 1-800-466-3342.

Any adverse reactions experienced with the use of this product and/or quality problems should be reported to the FDA's MedWatch Program by telephone at 1-800-FDA-1088, by fax at 1-800-FDA-0178, by mail at MedWatch, HF-2, FDA, 5600 Fishers Lane, Rockville, MD 20852-9787; or on the MedWatch Web site at [www.fda.gov/medwatch](http://www.fda.gov/medwatch).

#### **JAKKS PACIFIC RECALLS BATTERY PACKS FOR TOY VEHICLES**

JAKKS Pacific Inc., of Malibu, California has recalled Battery Packs for Toy Vehicles. The lithium-ion polymer batteries used to charge the toy vehicles can ignite while charging, posing a fire hazard. JAKKS Pacific has received 33 reports of the batteries melting or catching fire while charging, including three reports of minor burns to fingers and 23 reports of property damage to flooring, seats or walls.

This recall involves battery packs used with FLY WHEELS XPV toy vehicles. The battery packs were sold with a charger (item number 73904) and with the radio-controlled XPV toy (item number 73906). Item numbers are printed on the product's packaging above the barcode label. The batteries are marked "Fly Wheelz," "XPV" and "JAKKS Pacific," "Lithium-ion Polymer battery (LiPo)" followed by a list of warnings and precautions. The XPV Xtreme Performance Vehicle is not the subject of this exchange program.

Toy stores, discount department stores, and Internet retailers nationwide sold the battery packs from August 2006 through January 2007 for about \$30. Battery packs and toy vehicles packaged together sold for between \$80 and \$90. They were manufactured in China. Consumers should stop using the battery packs

immediately and contact JAKKS Pacific for information on receiving a free replacement battery pack. For additional information, contact JAKKS Pacific toll-free at (877) 875-2557 between 7:30 a.m. and 4:30 p.m. PT Monday through Friday, or email the firm at [battery@jakks.net](mailto:battery@jakks.net).

#### **CONAIR RECALLS CURLING IRONS FOR SHOCK AND ELECTROCUTION HAZARDS**

Conair Corp., of Stamford, Connecticut, has recalled about 322,000 curling irons. The handle of the curling iron can come apart, exposing its line cord. This poses a shock or electrocution hazard to consumers. No injuries have been reported. This recall involves ceramic, gold-matte finish curling irons. The irons have a 1, 1¼, or 1½-inch barrel, metal counter rest, vertically placed ON-OFF buttons, and a heat set dial that ranges from 0 to 30. A four-digit date code can be found on the plug prong. Date codes included in this recall range from November 2005 through July 2006 (ex. 0706). The name "Conair" is printed on the handle of the iron. They were sold at discount retailers and drug stores nationwide during January 2006 for about \$25. For additional information, contact Conair at (800) 687-6916 between 8:30 a.m. and 4:30 p.m. ET Monday through Friday, or visit the firm's Web site at [www.conair.com/iron-recall.html](http://www.conair.com/iron-recall.html).

#### **FDA WARNS OF BABY FOOD BOTULISM RISK**

The Food and Drug Administration has warned consumers not to use certain jars of Earth's Best Organic 2 Apple Peach Barley Wholesome Breakfast baby food because of the risk of contamination with Clostridium botulinum, a bacterium that can cause botulism, a life-threatening

illness, or death. Consumers were warned not to use the product even if it does not look or smell spoiled.

The affected product was sold in single individual jars and in variety packs which contain four jars of the apple peach barley along with other varieties. The food is part of the firm's "2<sup>nd</sup> Vegetables, Fruits and Blends" line intended for babies 6 months and older. The food was distributed through retail stores and sold through the Earth's Best Web site, [www.earthsbest.com](http://www.earthsbest.com). If consumers have any of the specified jars in their home, they should not use it and destroy it immediately. No illnesses have been reported to the FDA or the manufacturer to date in connection with this problem. The affected baby food is as follows:

- Earth's Best Organic 2 Apple Peach Barley Wholesome Breakfast (4.5 ounce jars); UPC Code: 23923-20223; Lid: PFGJ14NP; Expiration Date: EXP 14 SEP 08 A
- Earth's Best Organic 2 Wholesome Breakfast Variety Pack (12 pack); UPC Code: 23923-20295; Expiration Date: 13 SEP 08
- Earth's Best Organic 2 Apple Peach Barley (4.5 ounce jars within 12 pack); UPC Code: 23923-20223; Lid: PF6J14 NP; Expiration Date: EXP 14 SEP 08 A

Botulism, a potentially fatal form of food poisoning, usually causes illness within 18-36 hours of exposure. Initial indication of illness in infants is decreased frequency or absence of stools. Other signs and symptoms noted are poor feeding, weak suck, lethargy, listlessness, weak cry, decreased body tone, and diminished overall movement. Difficulty with swallowing may be evident as well as secretions drooling from the mouth.

This may be followed by decreased respiratory effort, which may lead to respiratory arrest from airway occlusion from unswallowed secretions. Older populations who may be consuming the product as part of a pureed diet might experience symptoms such as blurred vision, dizziness, dry mouth, and progressive weakness from head to legs. Constipation and urinary retention are also common. Caregivers or people observing these problems should seek immediate medical attention for those affected.

At press time, the recall initiated by Hain Celestial Group is still ongoing. Production and distribution of the product was suspended as the FDA and the company sought to determine the source of the problem. Hain Celestial Group distributed 4,072 cases of the specified individual jars consisting of 24 jars per case and 38,298 variety packs with the specified jars. Consumers who have questions should contact Hain Celestial Group at 1-800-434-4246.

## XXI. SPECIAL RECOGNITIONS

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### **VETERAN LAWMAKER DIES**

When I first met former state Senator Charles Langford way back in the early 1970s, it didn't take me long to recognize that he was a very special person. It is universally recognized that Senator Langford, in addition to being a very good lawmaker, also was an outstanding lawyer. He represented Rosa Parks and the Montgomery Improvement Association during the Montgomery Bus Boycott and was a leader in the civil rights movement. After a full and most productive life, Senator Langford died last month at the age of 84.

A member of the Gray, Langford, Sapp,

McGowan, Gray & Nathanson law firm, Senator Langford represented Montgomery's 26<sup>th</sup> Senate District for five terms and did so in an outstanding manner. He had previously served two terms in the Alabama House of Representatives. Senator Langford was highly respected by all persons who served with him or dealt with him while he was in the Legislature. He was a legislator who was known as a "man who kept his word" regardless of the consequences.

Senator Langford was involved in many of the important legal battles that shaped the Capital City. He represented Arlam Carr, Jr. in a 1964 desegregation lawsuit filed against the Montgomery County Board of Education. He also was involved in the removal of the Confederate battle flag from the state Capitol dome. My longtime friend, Mrs. Johnnie Carr, a veteran of the civil rights movement, gave Senator Langford high praise:

*He was a brilliant young gentleman. He was a good man...a star in the civil rights movement.*

Senator Langford will be missed by his many friends. He was a giant among men and leaves a legacy that will be difficult to equal. I am fortunate that our paths crossed over 30 years ago.

### **THE FCA DOES GOOD WORK**

The Fellowship of Christian Athletes continues to do outstanding work in Alabama. Under the leadership of my good friend John Gibbons, young people are being reached for Jesus Christ in large numbers. I can think of no group that works any harder to save souls than does the FCA. Their work is even more important when you consider that young people are their target.

## XXII. FIRM ACTIVITIES

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### **FIRM RENEWS SPONSORSHIP OF 82 RACING**

Our firm has renewed its primary sponsorship of the 82Racing/Fight Cystic Fibrosis race team for the 2007 season, which will start up very soon. Grant Enfinger, who drives the race car, car chief/consultant Dave Mader, and crew member Jonathon Langham have been working hard and are continuing to work on the Super Late Model race car, which has been completely rebuilt during the past 2 months. It's said that if a racing component never breaks, it's probably too heavy, too large, or too slow. In pursuit of more speed, virtually every part of the race car, except the chassis, has been disassembled and upgraded, including the race car body. Grant made this observation concerning the new season:

*We aren't changing the decals or the frame, but virtually everything else is lighter, better, and of higher quality. Except for Christmas and New Year's days, we have worked every night and day since mid-December to prepare a race car that will be competitive on the track while featuring Beasley Allen's support for the Cystic Fibrosis Foundation.*

Greg Allen and Bobby Mozingo have been very active on the racing circuit and some say want to replace Grant as our driver. Rest assured that neither will be given an opportunity. We have a very good young driver who has the ability and determination to become one of the best. I predict that 2007 will be a good year for Grant and his team. The race team will compete in an ambitious schedule of 20 races this year. The season schedule will be posted on the race team Web site, [www.BeasleyAllen-Racing.com](http://www.BeasleyAllen-Racing.com).

## EMPLOYEE SPOTLIGHTS

### Jay Aughtman

Jay Aughtman has been with our firm since 1997. The focus of his practice has been in the areas of consumer fraud and complex commercial litigation. Jay, a Shareholder in the firm, primarily handles cases involving complex insurance and financial transactions, cable telecommunications, and hospital pricing practices. Jay's practice also centers on national and state class actions, as well as federal multi-district litigation (MDL) proceedings.

Currently, Jay is representing plaintiffs in seven separate national class actions, all in different district courts around the country, involving the sale of deferred fixed annuities to seniors. Jay's other class action work includes a case against the second largest digital cable provider in the United States, a class against the second largest cell phone provider in the United States, and a class against the fifth largest hospital chain in the United States. In addition, Jay heads up the firm's representation of the Tennessee Commerce and Insurance Commissioner in an MDL proceeding in Tennessee involving a fraudulent reinsurance scheme that caused the collapse of three major malpractice insurance companies. The damages in the Tennessee MDL case alone exceed \$700 million dollars.

Jay has tried numerous cases while working at the firm. Four of the trials have resulted in jury verdicts in excess of \$1 million, one resulting in a jury verdict of \$13 million. Jay has represented in excess of 35,000 clients in his legal career. He speaks frequently to lawyers and students on the issues of consumer fraud and class actions.

Jay is involved with numerous charities in the Montgomery area. Specifically, he is involved with and helps raise money for the Montgomery Young Life Christian Organization. Jay also is a member of the William O. Nowell Scholarship Fund. He is a long time active member of Saint James United Methodist Church, having served on the

Board of Trustees, Administrative Counsel and Chairman of the Staff-Parish Relations Committee three times. He is married to the former Jennifer Woodman of Montgomery and they have two children, Josey who is eight, and Graves who is four. Jay is a very good lawyer who does outstanding work for his clients. We are most fortunate to have him with the firm.

### Roger Smith

Roger Smith is a Shareholder in our Mass Torts Section. He has been with our Mass Torts Section since 2001, when he joined the firm after working for an employment/labor relations firm in Knoxville, Tennessee. Roger is one of several lawyers responsible for litigating our Vioxx cases. His primary focus is investigating all of our Vioxx files, including managing the large staff necessary to gather and process client information.

Roger has litigated and successfully resolved thousands of cases involving defective prescription and over-the-counter drugs and ephedra-containing food supplements. He played large roles in the firm's Rezulin, Serzone, PPA, and ephedra cases. Most recently, he reached a multi-million dollar settlement on behalf of the family of an individual killed by taking an ephedra-containing energy supplement. Roger has been a regular speaker at CLEs across the country on topics related to federal MDL practice. He recently authored a paper titled "How to Implement Electronic Medical Record Retrieval In Your Firm."

Roger is an active member of the Alabama State Bar. He has served on the Alabama State Bar Task Force on multi-jurisdictional practice, which studied and made recommendations regarding the rules governing the unauthorized practice of law, admission by motion, and bar admission reciprocity in Alabama. He is licensed to practice law in Alabama, Arizona, Mississippi, Tennessee, West Virginia, and Minnesota.

Roger is married to the former Claudia C. Kennedy, of Vestavia Hills,

Alabama. They have three children, Sarah Kennedy, Caroline Cecilia, and Sophia Clare. Roger and his family are active members of St. Peter's Catholic Church in Montgomery, Alabama. We believe that Roger does very good work in a most difficult area of practice. He is a hard worker who is well-respected in legal circles.

### Ted Meadows

Ted Meadows is a Shareholder with the firm who represents victims throughout the country in their claims against pharmaceutical companies, and medical device manufacturers. He is licensed in the states of Alabama, Mississippi, Texas, Minnesota, and West Virginia, as well as in Washington D.C. Ted has handled cases involving Lotronex and Meridia. He also has claims relating to the Guidant Ancure Stent & Sulzer litigations. He is currently handling hormone therapy litigation (Prempro), Smith & Nephew knee replacement lawsuits, Medtronic heart devices, & Guidant heart devices. He is also investigating other potential mass tort cases. Ted currently serves on the Plaintiffs' Governing Committee in the Prempro Multi District Litigation.

Ted is married to the former Carla Musgrove of Eufaula, Alabama. They have two children, Nathan and Amanda. Ted and his family are members of Saint James United Methodist Church, where he is actively involved in the Music Ministry. He also serves on the Board of Trustees. Ted, a native of Prattville, Alabama, is a very good lawyer. He too is working in a most complex field.

### Dora Johnson

Dora Johnson, who has been with the firm for seven years, currently serves as a Legal Assistant working with LaBarron Boone in our Personal Injury / Products Liability Section. LaBarron's staff handles a diverse caseload involving claims against manufacturers for defective products and some personal injury cases involving death and serious, life-changing injuries. Dora works on discovery issues and is involved in all aspects of trial preparation.

Dora has been employed in the legal field since 1988. In 2000, she made the transition from a defense firm to working for firms like ours. She is much happier, which is certainly understandable. Dora feels she is doing her part to help people instead of insurance companies and big corporations.

Dora has one daughter, Deanna, who is a claims representative for Meadowbrook Insurance Group. Deanna recently was married, and in the process Dora immediately became the grandmother of an 8-year-old. Dora says learning to be a non-meddling mother-in-law is a challenge. She also has a 4 year old "son" named Chico, who is a miniature Chihuahua and weighs just 4 1/2 pounds. Dora, who enjoys reading legal thrillers and cooking when she has time, is a dedicated employee. A hard worker, who does good work, Dora is an asset to the firm.

#### **Cindy Weber**

Cindy Weber, who serves as a Staff Assistant in our Mass Torts Section, has been with the firm for over 5 years. She currently works on hormone replacement therapy cases. Cindy helps investigate all of the new cases and works hard to see that all medical records are obtained in a timely fashion. She also has the job of following up on all current non-filed cases and filed cases. Cindy has also previously worked with Melissa Prickett on Baycol and Statin Cases.

Cindy has one daughter, who is a speech/language pathologist with the Dothan City Schools, and two grandchildren, Anna Caroline and Grey. Cindy spends most of her time assisting her two elderly parents. When time permits, Cindy enjoys crossword puzzles, reading, and spending quality time with her grandchildren. She is a very good employee who is an asset to the firm.

#### **Jodi Turner**

Jodi Turner, who currently works as a Legal Secretary to John Tomlinson in our Consumer Fraud Section, has been with the firm since April of 2003. As Jodi can tell you, the work of a Legal Secre-

tary at our firm is never dull. In fact, it is a most challenging position. Jodi is married to Joey Turner, and they have one daughter, Morgan, who is 10 months old. Jodi's hobbies include spending time with her family, traveling, and shopping. I'm not too sure Joey knows too much about the latter, but few husbands do. Jodi does very good work and we are fortunate to have her with the firm.

#### **ACJF SUPPORTS OVER 100 ALABAMA CHARITIES**

Thanks to lawyers from across the state, over 100 Alabama charities received grants from the Alabama Civil Justice Foundation (ACJF) this past December. All of the grants are being presented to the organizations by participating members of the ACJF. We had several lawyers who participated in presenting the checks. Lawyers seek justice for their clients each day. Our philanthropic efforts through the ACJF provide us with a tremendous opportunity to expand this responsibility beyond our daily work. The Alabama Civil Justice Foundation was created in 1993 by members of the Alabama Trial Lawyers Association. Since then the Foundation has awarded almost \$6 million in grants. The total grants awarded by the ACJF during the past year total over \$550,000, which included \$360,000 distributed through the annual competitive grant process. Other grants were awarded to non-profits from Donor Advised Funds and special projects. There are 1,650 lawyers in Alabama who participate with the ACJF. These lawyers participate with the ACJF by making contributions, establishing donor advised funds, and designating their trust account interest to the ACJF.

#### **SHAREHOLDER SERVES AS PRESIDENT OF THE MONTGOMERY CUMBERLAND CLUB**

Tom Methvin, our Managing Shareholder, is currently serving as the Montgomery Cumberland Club President. Tom graduated from Cumberland

School of Law in 1988. Cumberland Clubs in cities throughout the Southeast serve as a liaison between local alumni and the Alumni Relations Office, and help Cumberland lawyers stay in touch personally and professionally. They meet periodically for breakfast or lunch to maintain their ties and meet prospective students. Classes return to Birmingham every five years for reunions during Law Week. Cumberland's Office of Alumni Relations hosts social functions for Cumberland graduates at many annual state bar meetings throughout the region, including those of Florida, Georgia, Tennessee, and Alabama. It is an honor to be chosen to head up this club. Our firm is proud to support the Cumberland School of Law.

#### **JONES SCHOOL OF LAW WINS REGIONAL CHAMPIONSHIP**

In its first appearance in the ABA's prestigious National Appellate Advocacy Tournament (NAAC), Faulkner University's **Jones School of Law** won the St. Louis regional competition with an undefeated record of 5-0. The regional champions are third-year student John Craft and second-year students Matt Bell and Christy Olinger. Professor John Garman is the team's faculty sponsor and coach. This is a tremendous accomplishment. I am told that most law schools work for years developing nationally competitive moot court teams. Jones has accomplished that goal in the first year of its moot court program.

Participation in the ABA's NAAC is limited to ABA-approved law schools. This year, 178 teams from more than 100 ABA approved law schools are competing in the tournament. In the St. Louis region, Jones defeated teams from Baylor, Georgia, Florida, Arizona and Ave Maria. The regional victory qualifies the team to compete in the national final rounds in Chicago, Illinois, March 29-31. In the Chicago rounds, the top 20 teams in the country will compete for the national championship. Congratulations go out to Jones School of Law's

2007 National Appellate Advocacy Team members. All of us at Beasley Allen are extremely proud of them.

## XXIII. SOME CLOSING OBSERVATIONS

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### *THE FIGHT FOR CIVIL JUSTICE MUST CONTINUE*

Powerful special interests like the oil, tobacco, drug, chemical industries, and many others, including the U.S. Chamber of Commerce, spend millions of dollars each year in their efforts to shut down the civil justice system and close the courthouse doors across the country to victims of corporate abuse and wrongdoing. In my opinion, the right of individuals to hold wrongdoers accountable is one that must be protected. Corporations seeking to escape responsibility for their wrongful actions and omissions take advantage of the lobbying efforts of their well-paid and politically connected lobbyists. Through a well-funded misinformation campaign riddled with bogus studies, the self-styled “tort reformers” have over the past 15 years limited access to justice for American citizens and even businesses.

Our firm remains in the forefront of efforts to protect the civil justice system from those who would do it harm. We will continue the fight to assure that any person injured by the misconduct and wrongdoing of Corporate America can continue to receive justice in the courtroom. Our fight is against the most powerful of interests, and I must confess that it hasn't been an easy one. We even find the U.S. Chamber of Commerce using all sorts of deceptions which is very hard to understand. Our opponents are not only ultra-rich and politically powerful and well-connected, they are sometimes ruthless and on occasion even mean-spirited. Local Chambers of Commerce don't seem to know what the U.S. Chamber is doing or why they do it. However, they could find out if the

money flowing into groups set up by the U.S. Chamber to do their “dirty work” could be traced.

When corporations act irresponsibly, the civil justice system is the last resort for victims seeking to hold wrongdoers accountable. Without a viable system, wrongdoers will continue to place profits above the public's safety. It's critically important to keep the civil justice system alive and well in this country. It's the one place where all men are truly treated equal and have equal rights and privileges. At least, that's the way the system was designed to work by our forefathers. Hopefully, the public is beginning to finally realize that the so-called tort reform movement was not devised to protect their best interest and that it actually benefits big corporations like Enron, Exxon, Philip Morris, Tyson Foods, and many others.

## XXIV. SOME PARTING WORDS

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### *A SPECIAL MEMORIAL TO TWO OUTSTANDING YOUNG PEOPLE WHO DIED MUCH TOO YOUNG*

One thing is certain in life and that is we will all have troubles and heart aches. We never know when our lives will be suddenly changed by an illness, an accident, or by various other storms and tribulations that we experience. When bad things happen to good people—especially the young—questions of why are always asked. Jesus said, “In this world you will have trouble, but take heart! I have overcome the world.” (John 16:33) These words are a great comfort as we all mourn the loss of Matt and Lauren Harris, brother and sister, who were killed in an automobile accident on February 16<sup>th</sup>. The car in which they were riding was hit by a dump truck as the two University of Alabama students drove onto Highway 231 at Merle's Truck Stop located just outside Montgomery.

Matt and Lauren were raised in a

Christian home in Dothan, Alabama by loving parents who did everything possible to ensure the success of their children in life. Matt was 23, a finance major, with a great future ahead of him. Lauren was 19, a college freshman, with so much life about her. Our heartfelt sympathy goes out to their parents Terry and Vicky Harris, to their grandmother Evelyn Harris and to other family members and friends who mourn their loss. We will never know what these two young people might have become, but we will remember who they were. We also will be aware of our own need for a Savior who overcomes the trials and tribulations of this world and who promises eternal life for all who believe and will follow Him. Greg Allen's wife Jane was related to Matt and Lauren. She is a first cousin of their father.

It has to be a terrible ordeal for parents to learn that their children's lives have been lost in any type accident. Unless a parent has had that terrible experience, it's really difficult to fully understand what all Terry and Vicky are going through. I do know, however, that what Jesus said in John applies in their tragic circumstance. Even so, that doesn't take away the grief and heartache, but it does promise eternal life for two young believers. Our prayers will continue to be with all of the family.

### *A SPECIAL TRIP TO CAMPTON, GEORGIA*

I had to be in North Georgia on business recently and took my wife along for the trip. While in the area, after completing a round of depositions, Sara and I had the opportunity to visit Campton, which is a very small town located between Winder and Monroe on Highway 11 in Walton County, Georgia. In fact, the community is so small that you have to look quickly as you pass through or you will miss everything in a flash. However, this little town is a very special place.

The reason the visit was especially

meaningful for us was the fact that my mother, Florence Camp Beasley, was born and raised in Campton. Many years ago, my great-grandfather, Ray Camp, who became a merchant and farmer, settled in the location that later became Campton. He became the owner of a railroad company that had tracks between Winder and Monroe. Trains were major carriers of folks and freight at that time because roads were often less than good and transportation was largely by horse and buggy and by train. Cars were just beginning to be owned by people in that area of Georgia.

My mother, one of six children, could have run any large company in America had she been given that opportunity during her lifetime. She was one of the smartest folks around, a person who had the unique ability to relate to all sorts of folks. My maternal grandmother was a Perry from Winder who married William F. Camp of Campton. The Scot-Irish mix resulted in some very special children and grand children.

My mother died when I was fifteen years old and I must confess that I still miss her. I can say without reservation that Florence Camp Beasley, a very special person, never said an unkind word about any person. She loved

sports and fishing and ran a small grocery store in my hometown of Clayton right up to the time of her death. I can remember going with my mother almost every Thursday afternoon to Robertson's Mill where she would fish until dark. Seeing her old home place, which is still in good shape and occupied by the Thompson family who bought the house and farm back in the late 1930s, was very special. The visit to Campton brought back some great memories!

#### **A CLOSING PRAYER**

I wondered how to close this issue and I decided that a short and simple prayer, which is a model of brevity and simplicity, might be the best way. Before reading the prayer which is set out below, I recommend that you read chapters 5-7 of the Gospel of Matthew. Jesus, in teaching his disciples, gave them a tremendously powerful message in these chapters. Like I said last month, it really puts the message about being a Christian "down where the goats can get it." When the disciples needed to know how to pray to His Father, Jesus gave them this pattern to follow:

*In this manner, therefore, pray: Our Father in heaven, Hallowed be Your name. Your kingdom come. Your will be done On earth as it is in heaven. Give us this day our daily bread. And forgive us our debts, As we forgive our debtors. And do not lead us into temptation, But deliver us from the evil one. For Yours is the kingdom and the power and the glory forever. Amen.*

*Matthew 6:9-13*

On days when I have a difficult time deciding what to say to God the Lord's Prayer always seems to come to me. It pretty well explains things in simple, but powerful terms. God already knows what our needs are, but as Christians we trust in a Father who knows our every need, but still expects us to talk with Him about our concerns. It's reassuring to know that God who loves us, is all powerful with no limits. He is available in times when things just don't seem to be going right. He loves us unconditionally on our good and bad days and that's a promise that we can depend on to always be kept.

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