



THE
JERE BEASLEY REPORT

JULY 2007

Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., Attorneys at Law

A NATIONAL LAW FIRM LOCATED IN MONTGOMERY, ALABAMA

Helping those who need it most since 1979.

BeasleyAllen.com

I. CAPITOL OBSERVATIONS

SEATBELT FAILURE CASE SETTLED

Our firm tried a product liability case last month involving a seat belt system in a passenger car that failed in a single vehicle rollover. The case, filed in an Alabama state court, was against the car manufacturer and the supplier of the seat belts. Our clients were a husband and wife whose lives were changed forever as a result of this incident, which occurred in 2004. The husband, who was 34 years old at the time of his injury, is now a permanent quadriplegic. He will require constant care and attention for the rest of his life. He suffered a severe spinal cord injury in a low speed rollover that should have resulted, at the very worst, in only bruises and soreness. But, a catastrophic failure of the seat belt system occurred. As a result the man's head struck the inside of the car between the A and B pillars at a point near the edge of the visor. Fortunately, there was an eyewitness to the accident who testified at trial. The evidence proved that our client lost control of his vehicle at an intersection when he got into loose gravel on the road. The car fishtailed, went out of control, and rolled over, winding up on its wheels. The damage to the car was very minimal.

Our experts in the case were: Bryant Buckner (accident reconstruction), Ken Brown (design), Dr. Joe Burton (biomechanics and occupant kinematics), Kathy Willard (life care planner), and Dr. Bob Hebert (economist). The medical testimony in the case was very strong, and Dr. Christina Oelson from Spain Rehab Hospital, who approved the life care plan in its entirety, did a great job in her testimony. A local nurse, Mrs. Melissa Huffman, who had supervised home health care for our client, did as good a job in describing how the injury and impairment affected our client in every aspect of his life as I have ever seen. Her testimony was powerful and

most effective. In fact, the defendants' lawyers couldn't even cross-examine Mrs. Huffman.

After 7 days of trial, the case was finally settled. Strict confidentiality was requested by the defendants, which we agreed to. Therefore, we cannot mention the amount of the settlement, the names of the defendants, or the make and model of the car involved. Although I don't like that sort of thing, we had no choice but to agree to those conditions in this case. Greg Allen was the lead lawyer for our firm and as usual did a tremendous job in pretrial discovery and preparation for trial. Kendall Dunson and I were also involved in the trial, along with Bill Gamble, a very good lawyer from Selma. This case is a good example of why the jury system is so important.

FEBRUARY 5TH WILL BE A BUSY DAY IN ALABAMA

It appears that February 5th will certainly be a busy day for Alabama citizens. As you know, that's the day our state will be conducting an important presidential primary. It's also the day that Gulf Coast cities are holding Fat Tuesday celebrations to wind up Mardi Gras. But that's not all—it will also be the first day of the Alabama Legislature. That is when the governor normally gives his State of the State address, which is televised live across the state. As you may know, state law requires that the Legislature begin its regular session on the first Tuesday in February. Fortunately, once the conflicting events were discovered, the Legislature made it easier for citizens of south Alabama who engage in the Mardi Gras activities to vote in the presidential primary. Citizens in Mobile and Baldwin counties can vote two weeks early, which is a good thing. I hope there will be a huge voter turnout. In any event, it's good to see the candidates paying attention to our state for a change. They are coming to Alabama in record numbers, and some are making multiple visits.

Source: *Associated Press*

CONTINENTAL CARBON PAYS THE COMPENSATORY DAMAGES

It has been almost three years since a federal court jury returned a verdict in favor of our clients against Continental Carbon Co. of Phenix City. Since then the company has used every delaying tactic available to them to keep from having to do the right thing. Now the company has suddenly decided to pay the compensatory damages of \$2 million plus accrued interest and a separate amount of lawyers' fees. After it sent the money to our firm, a Continental Carbon spokesperson told Jim Houston,

IN THIS ISSUE

I.	Capitol Observations	2
II.	Legislative Happenings	6
III.	Court Watch	8
IV.	The National Scene	13
V.	The Corporate World	15
VI.	Campaign Finance Reform	16
VII.	Congressional Update	17
VIII.	Product Liability Update	17
IX.	Mass Torts Update.	20
X.	Business Litigation	25
XI.	Insurance and Finance Update	26
XII.	Predatory Lending.	28
XIII.	Premises Liability Update	29
XIV.	Workplace Hazards.	30
XV.	Transportation	33
XVI.	Nursing Home Update.	34
XVII.	Healthcare Issues	35
XVIII.	Environmental Concerns.	36
XIX.	The Consumer Corner.	38
XX.	Recalls Update	41
XXI.	Special Recognitions	44
XXII.	Firm Activities	44
XXIII.	Some Closing Observations.	46
XXIV.	Some Parting Words	46

a veteran reporter with *The Columbus Ledger*, that the decision to go ahead with payment of the compensatory damage portion of the jury's verdict was made "despite the company's contention that it was not the source of the pollution court testimony showed was damaging the city's South Commons buildings, businessman John Tharpe's Action Marine business and a personal residence in Columbus." Frankly, I was shocked to read what Continental Carbon President Kim K.T. Pan had to say in his news release concerning his company's position:

We have said that we were prepared to accept responsibility for any adverse effects that were deemed to be the result of our operations, and we have kept our word.

This company is one of the worst polluters in the country, and its actions don't even remotely resemble the president's message to the media. If Continental Carbon really wanted to do the right thing, why didn't they do what the state and federal regulatory agencies requested and pay for all of the damage done? Also, why wait for almost three years after a jury found them guilty as charged to even pay anything? It should be noted that the company has appealed the \$17.5 million punitive damage award returned by the jury in the civil case to the U.S. Supreme Court. As we reported in the June issue, the U.S. Court of Appeals for the Eleventh Circuit upheld both the compensatory and punitive damage awards in the case, which was tried in 2004. The defendants asked the appellate court to rehear the appeal, but that request was rejected.

The Phenix City plant manufactures carbon black, very fine carbon particles used to make tires, plastics, inks, and other products. Pollution from the plant damaged a good number of homes and businesses in the Phenix City-Columbus area. The City of Columbus suffered damage to a major public building as a result of the pollution. The business that

we represented was forced to shut down at its location, downsize, and move to a new location. The single property owner in this suit suffered significant damage to a home. There were hundreds of other businesses and homes that also received damage, but they were not part of this case.

Based on the record of testimony that was developed at trial, this corporate defendant and its parent company, China Synthetic Rubber Corp., deserved to be punished severely for its conduct. Anybody who doubts that it should pay the full amount of the punitive damages award should read the opinion from the Eleventh Circuit. It's my opinion that the U.S. Supreme Court won't accept this case for review. But, if it does, I don't see any reason to be concerned over the prospects that the decision by the Eleventh Circuit will be altered in any respect. Without any doubt, the result in this case was a just verdict against a bad corporate citizen!

Source: *The Columbus Ledger*

SUPREME COURT RULES IN ALABAMA AWP CASE

In a recent ruling, the Alabama Supreme Court granted the drug companies' petition for mandamus in the State of Alabama's average wholesale price (AWP) lawsuit. The companies cheated the State, causing about \$600 million dollars in overcharges to the Alabama Medicaid Agency. But, all the justices really did in this decision was to tell the trial judge to sever all of the cases. The drug companies appealed to the Supreme Court, asking the justices to sever the claims against each company, claiming each case was a separate and distinct case. As we have reported, we filed the case on behalf of the State in January 2005, alleging that 73 companies intentionally committed fraud in misreporting the AWP for their drugs. As we have explained, AWP is the method the Medicaid Agency uses to determine its payments for prescriptions.

Unfortunately, the November 26th

date set for the trial of the first group of drug companies was affected by the Supreme Court's ruling. The case was continued and will be tried starting on February 11, 2008. The trial will not include the same number of companies as previously grouped by the trial judge. We have filed a motion to consolidate groups of cases. In a special concurring opinion, Justice Champ Lyons, joined by Chief Justice Sue Bell Cobb, correctly laid out the method the State should pursue to consolidate the companies together into small groups for trial rather than having 73 separate trials. This will be our approach as we get ready for the trial date. The defendants' sole motive in going to the Supreme Court was to get a continuance, and that is what happened. As a practical matter, nothing will really be significantly changed in so far as how the trials will proceed. Delay has been the defendant's game plan from the outset as evidenced by all of the appeals thus far. Eventually, they will have to face a jury.

The State will be entitled to receive approximately \$600 million in compensatory damages from the defendant companies. We will also seek \$1.8 billion in punitive damages for the state against the companies based on their conduct. I am confident we can prove that the defendants committed an intentional fraud against the State. In my opinion, any jury that hears this case will be outraged when they hear the testimony. In any event, the ruling by the Supreme Court wasn't on the merits, and the State will proceed with the cases against the 73 pharmaceutical companies. The ruling by the Alabama Supreme Court simply says that the State cannot try the cases against all defendants in one trial. As stated above, we will request that cases be consolidated in groups for a series of trials. We do not believe that the Supreme Court's ruling will have any appreciable effect on the final outcome in this matter.

A federal judge in Boston ruled last month that AstraZeneca, Bristol-Myers Squibb and Schering-Plough must pay damages for overcharging on certain drugs paid for by Medicare, pension funds, insurers and patients. The judge found the companies liable in a nationwide class action lawsuit over drugs administered by doctors. Claims were dismissed against Johnson & Johnson. The plaintiffs' lawyers were given until August 1st to provide calculations of damages for the other companies. This was a typical "average wholesale price" case. The plaintiffs are seeking hundreds of millions of dollars in damages. In a 183-page opinion, the judge wrote:

The Medicare statute itself created a perverse incentive by pegging the nationwide reimbursement for billions of drug transactions a year to a price reported by the pharmaceutical industry, thus putting the proverbial pharmaceutical fox in charge of the reimbursement chicken coop. The different pharmaceutical companies unfairly took advantage of the system by setting sky-high prices with no relation to the marketplace.

The judge found that AstraZeneca, which is based in London, acted "unfairly and deceptively" by causing the publication of false and inflated average wholesale prices for its prostate cancer drug Zoladex, which exceeded doctors' acquisition costs by as much as 169%. Bristol-Myers, of New York, caused the publication of false and inflated average wholesale prices for five drugs, including Taxol, which had spreads as high as 500%. Warrick, a subsidiary of Schering-Plough, which is based in Kenilworth, New Jersey, inflated average wholesale prices for its generic drug albuterol sulfate in a range of 100% to 800%. This is a most significant decision and one that will benefit our firm in the cases we are handling for several states.

Source: Bloomberg

The State of Utah has filed a significant lawsuit against Eli Lilly & Co., the pharmaceutical company that makes the antipsychotic drug Zyprexa, alleging that the state was misled about risks to patients who received the drug through Medicaid. Attorney General Mark Shurtleff, who filed the lawsuit, accused the company of pushing doctors to prescribe the drug to treat "off-label" conditions like Tourette's syndrome, Alzheimer's, and anorexia. As we have reported, the U.S. Food and Drug Administration (FDA) approved Zyprexa for treatment of schizophrenia and bipolar disorder. Doctors are free to prescribe drugs for uses that have not been approved by the FDA, but pharmaceutical companies are prohibited by law from marketing drugs for non FDA-approved uses. This is where Eli Lilly crossed the line and got in trouble. The prescriptions were subsidized by Medicaid, and the State of Utah filed suit.

As we have previously reported, side effects to Zyprexa can include high blood-sugar levels, acute weight gain, and pancreatitis. It was alleged in the complaint that "Utah has paid millions of dollars for inappropriate and medically unnecessary doses of Zyprexa. As a result, Lilly has been illegally enriched at the expense of the state." In the lawsuit, the state is seeking civil damages and penalties, including \$5,000 to \$10,000 for each prescription that was "not medically necessary." It's good to see another attorney general protecting the interests of citizens rather than wrongdoers in Corporate America.

Source: Associated Press

STATE ATTORNEYS GENERAL SETTLE WITH CHOICEPOINT

Attorneys general from 44 states have entered into a settlement with a Georgia-based company that distributes consumers' personal information. The agreement resolves allegations that the company failed to adequately maintain the privacy of that information. The

company, ChoicePoint, provides personal identification information and credential verification services to insurers and other businesses, government and non-profit organizations. In February 2005, ChoicePoint announced that criminals, posing as legitimate businesses, gained access to consumers' personally identifiable information. After that breach, the company used the California breach notification law as a guide and mailed more than 145,000 notices to consumers across the country whose information may have been viewed or acquired by the criminals.

As part of the settlement agreement, ChoicePoint will make changes in the way it grants credentials to new customers who have access to personally identifiable information. Certain sensitive information available to the public, including Social Security numbers, will now receive greater protection. Nationally, about 750 people were victimized by identity theft related to the breach, according to a statement from the attorneys general. Interestingly, ChoicePoint will pay only \$500,000 to the states under the settlement. The agreement marks the first time a data broker has agreed to safeguard publicly available information using the same credentialing methods that it uses to safeguard financial information protected by law.

Consumers who suffered expenses relating to identity theft that resulted from the ChoicePoint breach may obtain redress under a 2006 Federal Trade Commission Order that required the company to pay \$5 million into a fund for consumer reimbursement. The deadline to submit a redress claim form to the FTC was June 22, 2007. Consumers who met the eligibility requirements for redress had to submit their claims by that date. The states involved in the settlement are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York,

North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and the District of Columbia. More information is available at: .

Source: *Associated Press*

JEFF SESSIONS GETS A BREAK FOR NOW

For some reason Ron Sparks has elected not to take on Senator Jeff Sessions next year. That had to be good news for Jeff since several polls had shown Ron to be a formidable candidate with Jeff being vulnerable to a strong candidate. Most capital observers believe Ron is looking ahead to 2010 and for a new residence located on Perry Street. Of course, that will be a discussion for another day.

As far as the Senate race goes, however, it will be interesting to see whether a serious Democrat challenger steps up to the plate and makes the race. State Senator Vivian Figures, Birmingham lawyer David Marsh, and Alabama Securities Director Joe Borg have been mentioned as possible candidates. No doubt, Jeff Sessions will have a healthy campaign chest, but that may prove to be a liability when the sources of his funding are identified and become known. During his time in the Senate, Jeff has been no friend to Alabama consumers and is clearly in bed with the giants of Corporate America. It's being said by folks who keep up with what goes on in Washington that when it comes to effectiveness in the Senate, "Jeff's no Richard Shelby!" I would have to agree with that assessment for a number of reasons.

NEXT GOVERNOR'S RACE IS ALREADY GETTING CROWDED

It is being reported that House Speaker Seth Hammett will likely be a candidate for governor in 2010. Seth says he will make a decision in the summer of 2008. The Speaker, a native of Andalusia, has been in the House of

Representatives for 28 years and is serving his third term as speaker. Currently, Seth is Director of Economic Development for the Alabama Electric Cooperative. He has done an outstanding job as Speaker and has been widely praised for his fairness in dealing with issues that come before the House.

Even though the race is over two years away, already there are several potential Democratic candidates for governor in 2010 including U.S. Rep. Artur Davis, Agriculture Commissioner Ron Sparks, and Lt. Governor Jim Folsom Jr. Republicans who have been mentioned as possible candidates include Attorney General Troy King, Luther Strange, House Minority Leader Mike Hubbard, State Treasurer Kay Ivey, and Rob Riley. Stan Pate, a successful Tuscaloosa businessman, is also said to be looking at the race and probably would run as a Republican. But, some believe he would have a better chance to win as a Democrat. There is also talk around the Capital City that Dr. David Bronner might finally be interested in being governor, but only for one 4-year term. If David elected to run, that would make the year 2010 most interesting!

Finally, it will be most interesting to see who all in the current field of political candidates will still be viable candidates in late 2009. There may be a dark horse—not mentioned above—who might emerge and become a factor in the race. That person would have to be sorta like Fob James was back in 1978—loaded with personal money, no negatives, a solid family man, and with a successful business background. In any event, it will be interesting to watch things between now and then and see how things shake out!

NEW CHRISTIAN COALITION OF ALABAMA LEADER SUES OLD LEADER

Dr. Randy Brinson of Montgomery, who is the new president of the Christian Coalition of Alabama, has filed suit against John Giles. The suit contends that John took the assets of the Christ-

ian Coalition of Alabama without authority when he left to start a new group, which is called the Christian Action Alabama. Apparently, John won't return the assets as requested and he calls Dr. Brinson's suit "frivolous and baseless." But, it would appear that keeping assets, including records, that belong to the group that is now headed by Dr. Brinson is not a good thing and probably not legal. As you may recall, the state coalition split from the national Christian Coalition last year.

Dr. Brinson says that John used the national recognition of the Christian Coalition to build the state group and did not turn over the assets and mailing lists when he left. Apparently, John also kept the same Web site. It was quite obvious that when John was in charge of the Christian Coalition of Alabama, his main focus was on a political agenda that targeted judicial races primarily. He also got involved in other political races, including statewide and legislative races. I hope this legal battle can be resolved without a long and expensive fight. As I understand it, no money damages are being sought.

Source: *Associated Press*

2007 ALABAMA POLITICAL PARTY SURVEY

Findings from a recently completed Capital Survey Research Center survey of Alabama voter attitudes toward state and national political parties are quite interesting. Overall, compared to the last decade, while the data show continued Republican Party strength on issues, the data also show a significant resurgence of Democratic Party strength in terms of political party identification and party primary choice. The following findings are from this survey:

- For the first time in a decade Alabama registered voters are evenly split on party primary choice and party identification.
- While, overall, in the last decade more voters have switched to the Republican Party than to the Democratic

Party, in the last election more voters switched to the Democratic Party than to the Republican Party.

- The major factor that influences choice of party is the party position on national issues.
- The major factor that influences the vote on the national, state, and local levels is position on issues and candidates and not party.
- As many Alabama voters would seriously consider an Independent candidate as they would consider a Democrat or a Republican.

Frankly, I wasn't surprised at any of the poll's results. It is pretty obvious that the problems affecting the national Republican party are definitely affecting the party in Alabama. Over the years, Dr. Johnson's surveys have proved to be on target. I believe this one is quite accurate.

Source: Capitol Survey Research Center

JOHN EDWARDS RETURNS TO 2004 CAMPAIGN THEME

John Edwards is on target when he talks about the growing divide between rich and poor in this country and he is starting to make that an issue in the race for President next year. John is talking about "Two Americas" as he did in his first White House bid in 2004. I believe that this issue is an issue that should be debated. Since George Bush has been President, the gap between the super-rich and the rest of U.S. citizens has grown by leaps and bounds. John should focus on that economic gap that has widened greatly since 2004. In a recent campaign stop, he stated:

Our tax system has been rewritten by George Bush to favor the wealthy and shift the burden to working families. That is simply wrong. There are still Two Americas. I have learned something in the last four years, though, it's not enough to talk about the Two

Americas. We also need to talk about what we need to do to build One America.

I am convinced that John would have defeated George Bush had he received the Democratic nomination in 2004. That race was over, however, once John Kerry became the Democratic nominee. The economic theme was at the core of the Edwards campaign, but when he became number two on the ticket, his voice was silenced by the Kerry bosses. Universal health care and John's work to fight poverty should be a winning combination this time. John's plan includes a Borrower's Security Act, new rules for the credit card industry to help give consumers debt relief. He also would limit payday loans that are frequently used by low-income earners. It's great to hear a candidate for President discussing issues that affect consumers and especially those in the low-income category. Concerning a need to curb predatory lenders, John observed:

We should start with the Wild West of the credit industry, where some abusive and predatory lenders are robbing families blind. It's time for a new sheriff in town.

John Edwards—if elected—will create a Family Savings and Credit Commission to help protect consumers from abusive financial practices. The Office of Thrift Supervision, a financial regulatory division under the Treasury Department that he called an excess regulatory bureaucracy, would be cut out. Finally, on the need to give real tax relief to those who really need it, John said:

We need to reform our tax code. Our current system favors the unearned income of people already doing incredibly well instead of rewarding the work of families trying to get ahead. It has all kinds of loopholes and shelters that lawyers can twist for their wealthy clients. It forces millions of families to hire help to figure out how much they owe.

I am supporting John Edwards, who is not only my friend, but who just happens to be the best candidate in the race. John will run well in all sections of the country, including the South, and that is absolutely critical if a Democrat is to be elected next year. The recent Princeton Survey done for *Newsweek* pitted John against the top four Republicans and the polling showed him doing very well. The following poll results are most significant. In each of the matchups, John won rather handily.

- Romney—57% to 36%
- Giuliani—48% to 46%
- McCain—50% to 44%
- Thompson—54% to 38%

John not only wins each match-up, but he does better than the two other Democrat candidates who have a chance for the nomination. Some political observers say a ticket of Edwards and Obama would win by a landslide. The polling was done through June 19th. This is great news and I have to wonder why the poll results haven't been big time news!

II. LEGISLATIVE HAPPENINGS

THE LEGISLATURE ENDS WITH A BANG

When I started writing this part of the Report several days before the last day of the session, I selected the title and was waiting for the session to end so the body of the article could be finished. I had no idea that the session—at least in the Senate—would end with a fist fight involving two Senators. So it really did end with a "bang," but one quite different than the "bang" I had anticipated. What happened on the Senate floor on the last night—a fist fight—was a public disgrace for a legislative body and one that shouldn't be tolerated.

After a session that was largely unproductive for most of the 30 legislative days because of a lengthy filibuster in the Senate, the senators finally got down to business and finally got some good things done in the last days. Without a doubt, this session will go down in history as one of the weirdest ever. For about 27 legislative days, the Senate was effectively shut down by days of filibusters. The “extended debate” was carried out by a few senators, made up primarily of Republicans, supposedly over the Senate rules.

As a result, a great deal of worthwhile legislation was killed by the delaying tactics. During the time that the Senate was listening to the filibustering senators, the House of Representatives sent lots of good bills over to the Senate that never got a chance to even be debated. But, in the final analysis the essential bills that had to be passed did in fact pass. Lt. Governor Jim Folsom has to receive a great deal of credit for breaking up the filibuster and forcing the Senate to get down to work. I am told that a number of Senators, including Hinton Mitchem, Wendell Mitchell, Myron Penn, and Dale Marsh, played key roles in bringing about a “truce” of sorts. One interesting observation during the session was that around the state all of the senators were being lumped together as the “bad guys” with no distinction between Republicans and Democrats. I am not sure that leadership of either party fully understood that fact.

SOME OF THE BILLS THAT PASSED

Much has been written about how unproductive the regular session was. Although that was mostly an accurate assessment, there were a number of important bills that did pass during the session. A few of the most significant bills that passed are set out below:

- The general fund budget was approved, as was the record education budget. The passage of those bills was the best news from the session.

- Final approval was given to a \$1.07 billion bond issue for school construction. Anybody that doubts that this measure was needed should visit their local schools.
- Final approval for the sale of \$10 million in bonds to make repairs to the state judicial building passed and was signed into law by the Governor, and that was more good news.
- As mentioned in another section, a bill was passed allowing residents of Mobile and Baldwin counties to vote early in Alabama’s presidential primary, and that makes sense.
- Final approval was given to a bill to exempt some farm trucks used only within Alabama from some federal transportation safety regulations. The bill was signed into law by Governor Riley. I hope that won’t prove to be a mistake.
- There were some changes in state banking laws that became law. I frankly don’t know whether that will be good for Alabama consumers, but I hope it will be.
- The expert witness bill relating to engineers passed and became law.
- A bill to let the state agriculture commissioner spend state money entertaining industrial prospects was enacted.
- A bill to allow children under 16 testify in sex abuse trials by way of closed circuit became law. This measure was pushed hard by Attorney General Troy King.
- A bill was passed that would have cut \$20 off the tax placed on each ton of hazardous waste and polychlorinated biphenyls sent to the Waste Management landfill near Emelle.

SOME OF THE BILLS THAT FAILED TO PASS

There were a great number of good bills that bit the dust in the session pri-

marily because of the Republican filibuster in the Senate. A few of the bills that failed are set out below:

- Efforts at campaign finance reform failed again. Perhaps the biggest failure in the session was the refusal by the Senate to pass campaign finance reform. This was a classic example of how the delaying tactics in the Senate not only hurt the Senate, but ultimately the people of Alabama. The only groups who felt good about this were the special interests who like the status quo.
- A bill to reform the judicial elections system also failed to pass, and that is bad news for Alabama citizens.
- Even though the legislature passed a bill that would have increased the limits of liability insurance required for Alabama motorists, Governor Riley, in a surprise move, vetoed the measure. I frankly don’t understand that, but maybe I will one of these days. My thoughts were that the limits in the bill were much too low.
- Governor Riley vetoed the only ethics bill that passed both houses. I am not sure why he did that. I hope it was because the bill was weak and far short of what is needed in our state.

ALABAMA LEGISLATURE FAILED TO ACT ON REAL TAX REFORM

Tax breaks for Alabama’s low-income workers, retirees, and small business owners in our state didn’t fare well in the session. Several bills related to tax cuts never even came to a vote in the House and Senate. The failed legislation included Rep. John Knight’s bill to remove the state sales tax on groceries. Governor Riley’s bills to raise the level at which low-income families start paying an income tax, exempt some retirement income from taxation, and give a tax break for small businesses that supply health insurance to their workers also bit the dust. I hope in the next session, the Legislature will adopt

some real tax reform legislation that will give needed relief to low and middle income Alabamians.

EXPERT WITNESS BILL PASSED

As mentioned above, one of the key bills that passed related to expert witnesses in lawsuits. Governor Riley signed the bill into law that will allow engineers without state licenses to testify as expert witnesses in court cases. This bill was supported by lawyers who represent victims in product liability cases, as well as by lawyers who routinely represent defendants in those cases. In a case before the Alabama Supreme Court last summer, the justices interpreted the old law to mean that any engineer offering expert testimony in a civil case had to be licensed in the state of Alabama. This would have meant, for example, that a design engineer who actually designed a motor vehicle for Ford Motor Company couldn't testify in an Alabama court in a case against Ford. Most expert engineers who are used in civil litigation involving vehicle design come from outside the state. Many of the design engineers aren't licensed in any state, but they are certainly qualified to testify about the cars they designed. Barring outside engineers from testifying in Alabama was never the intent of the old law, but that's how it was interpreted. The problem has now been fixed.

THE LIABILITY INSURANCE LIMITS SHOULD BE INCREASED

The Alabama Legislature agreed overwhelmingly to raise the minimum amount of liability insurance that motorists must buy. But, as pointed out above, Governor Riley vetoed the bill. The Alabama House voted 96-0 for the legislation, which would have raised the minimum amount of insurance to put Alabama in line with about half the country. Actually, the bill, which had passed the Senate 31-0, was really little more than a band-aid to be applied to a

gaping wound. Alabama's current minimum requirements for automobile liability insurance are much too low.

The Legislature passed a law eight years ago requiring motorists to carry liability insurance. The minimum amount has remained \$20,000 for a single injury or death, \$40,000 for multiple injuries or deaths, and \$10,000 for property damage. The legislation vetoed by the Governor would have raised the requirements to \$25,000 in coverage for a single injury or death, \$50,000 for multiple injuries or deaths, and \$25,000 for property damage. With medical costs being much higher today, those vetoed limits are still much too low. I hope realistic limits will be in the next effort to bring Alabama into the 21st century. In the meanwhile, I would encourage folks to simply increase the limits of their uninsured motorist coverage to at least \$300,000. The premiums for that coverage are fairly reasonable. Have you ever wondered why the insurance companies never mention the uninsured motorist coverage to you when they are selling a policy?

FIRST MAJOR BANKING UPDATES IN ALABAMA SINCE 1908 ARE NOW LAW

Governor Bob Riley has signed legislation into law that banking officials claim will benefit consumers by letting Alabama-chartered banks expand to other states and give residents faster access to their money during disasters. The new law, which is said to effect the first major changes to the state's banking code since 1908, restricts banks from establishing a branch or office on the premises of a commercial affiliate and regulates which businesses can use terms like "bank," "banker," and "trust." According to Superintendent of Banks John Harrison, Alabama-chartered banks can open branches in 23 other states. Apparently, banks from other states will be allowed to open branches here in Alabama. Previously there was no law saying Alabama-chartered banks could operate in other states. Although I

have not read this legislation, I hope that there is nothing in the bill that will hurt consumers. I do wish, however, that the same folks who pushed the bill will now fight just as hard for consumer protection legislation.

GOVERNOR RILEY SIGNS FARM TRUCK EXEMPTIONS

Governor Riley has signed legislation to exempt farm trucks used only within Alabama from some federal transportation regulations. The Legislature passed the exemption legislation May 31st at the request of agricultural groups. It exempts mostly farm vehicles of 26,000 pounds or less from some federal motor carrier safety regulations, provided the vehicles are only used for intrastate commerce. Alabama has not yet enforced the federal transportation regulations, which require detailed record-keeping, limit driving hours, and mandate that vehicles display Department of Transportation numbers. The federal Motor Carrier Safety Administration has warned that the legislation could result in Alabama losing more than \$4 million annually that it gets to enforce truck safety laws. Governor Riley says that if that happens, he will seek corrective legislation in the future. I hope this new law won't result in an increase in motor vehicle accidents on our highways.

III. COURT WATCH

CASE AGAINST SHELBY CONCRETE SETTLED

Our firm settled a case that was being tried in Judge Gene Reese' court in Montgomery County, Alabama. The settlement was reached on June 26th after jury selection and opening statements were completed for \$750,000. The case arose from a motor vehicle collision that occurred on September 1st 2005, at the intersection of Highway 31 and Fisher road in south Montgomery

County. At the time, a road construction project was underway and the intersection was controlled by a traffic sign light. Our client, a single mother, had dropped her two children off at Hooper Academy and was turning on to U.S. Highway 31 with a green light. The driver of a loaded cement truck ran a red light and collided with our client's vehicle. Three eye witnesses to the incident would have testified that the driver of the 62,000 pound truck never braked and hit our client at a speed of between 40 and 45 miles per hour. It was a miracle that she wasn't killed.

As a result of this collision, our client suffered injuries to her elbow, shoulder and neck. She had two herniated disks in her neck and a torn rotator cuff which resulted in three surgeries, all of which were successful. Fortunately, our client has made a very good recovery. She had incurred about \$140,000 in medical bills and had lost earnings of approximately \$9,000. Future medicals were estimated to be no more than \$5,000. Julia Beasley handled the case for the firm and did a very good job. We felt that this was an excellent settlement and our client was well pleased.

JUDGE FINES FIRMS FOR WITHHOLDING POLICY INFORMATION

A federal judge has fined two law firms for withholding information about an insurance policy that covered the at the time of the terrorist attacks on September 11, 2001. The sanction of \$1.25 million is against the firms Wiley Rein LLP and Coughlin Duffy LLP, as well as their client, the Zurich American Insurance Company. The fine was imposed last month by Judge Alvin Hellerstein of U.S. District Court in Manhattan. It comes at the end of more than five years of litigation over how much money Zurich American and other insurers must pay for the destruction of the World Trade Center. In all, insurers have finally settled the claims for about \$4.55 billion.

A major battle during the litigation

was the extent of coverage that the Port Authority of New York and New Jersey were entitled to under an insurance policy purchased by the developer Larry Silverstein. Silverstein Properties had leased the World Trade Center from the Port Authority in July, 2001. During the litigation, Zurich American and its lawyers initially kept hidden a copy of a policy that an employee at the company had printed out on the day of the attacks. Under this hidden policy the insurer was responsible for coverage of both the Port Authority and another leaseholder, Westfield Corporation. Judge Hellerstein wrote in his opinion that Zurich's courtroom contentions about the insurance coverage it owed "were either dishonest, or objectively unreasonable, or the product of a failure to make reasonable inquiries." That sort of thing should never happen, and when it does, the guilty party should be punished severely. The Port Authority will receive more than \$600,000 of the total fine of \$1.25 million, which is to be paid jointly by the two firms and Zurich American. Document destruction by Zurich employees and misleading statements by their lawyers added years and millions of dollars to the cost of litigation, according to Judge Hellerstein. As you know, those claims were for both deaths and property losses.

Source: The New York Sun

MANUFACTURER SANCTIONED FOR DISCOVERY ABUSE

In another incident involving abuse of the judicial system, an Illinois trial court has sanctioned a national siren manufacturer in litigation brought by Chicago firefighters against the company for noise-induced hearing loss. The judge barred the use of a key defense expert and prohibited the use of his study at trial. The court found that the company withheld documents that revealed the defendant's actual participation in the study. The Cook County Circuit Court, overseeing discovery in 33 consolidated lawsuits, found that Federal Signal Cor-

poration committed discovery abuse when representatives of the company falsely denied they had any documents related to a study co-authored by a key defense expert.

The study, published in the June 2005 issue of *Ear & Hearing Journal*, analyzed data from hearing tests given to firefighters from the Fort Worth and Phoenix fire departments and concluded that firefighters are not at increased risk for occupational noise-induced hearing loss. Although representatives of Federal Signal denied any participation in the study, hundreds of pages relating to it were later found on a computer under the control of the company's lawyers. The plaintiffs alleged that Federal Signal paid the lawyers to select the results and conclusion before turning the data over to the expert, in violation of standard scientific methodology.

On two occasions—in March 2006 and again in May of that year—the defendant denied having possession of the data. About a month after plaintiffs filed their motion for sanctions in June 2006, the defendant admitted that it had more than a thousand pages of data relating to the study, but claimed that the failure to produce the documents was the result of an "oversight." In granting the plaintiffs' motion, the court ruled that "[d]iscovery depositions of [defendant's] own employees, attorneys, and agents illustrated that they withheld hundreds of pages of documents used in this study and may have been an integral part of its creation." In addition to barring the defendant from using the expert and his study in defense of the suits, the court ordered it to pay a \$50,000 fine and referred plaintiffs' punitive damages request to the trial judge.

Ordan Margolis, the lawyer who represents plaintiffs in the litigation, believes that there was widespread industry involvement in the expert's study. It appears that a December 2000 meeting was attended by various members of the siren industry. It is

believed that the purpose of the meeting was to discuss preemption strategies. The meeting appears to have been for all industry members so that they could plot to use the expert's study in their own litigation. We have seen this sort of thing before—an industry creates pseudoscientific studies to defend against litigation and then hides its conflict of interest from scholarly journals. Rather than make a product safer, a company provides disinformation to the public. In this case, the Chicago firefighters filed suit in 1999 for alleged hearing loss from exposure to the defendant's sirens. Since that time nearly 2,500 firefighters from 17 states and 192 separate fire departments have filed similar lawsuits. I hope trial judges that have these cases will keep a sharp eye out for discovery abuses. This sort of thing should never happen, but unfortunately, it does. The only way to combat it is for courts to levy heavy sanctions against the offenders.

Source: American Association for Justice

JUDICIAL RACE FINANCING REFORM IN ALABAMA IS BADLY NEEDED

Although nobody can dispute the fact that Alabama has a very good court system, there is a most serious problem that really does need fixing. If anybody doubts that Alabama needs to reform the system under which we select appellate judges, they should read carefully a recent report by a national judicial watchdog group. As we all know now, state and national records for spending were set in the last judicial elections in Alabama. Our state is the trendsetter nationally for increasingly expensive and nasty court races that threaten public confidence in the judiciary, according to the report. This report, *The New Politics of Judicial Elections 2006*, which is a joint effort by Justice at Stake, the Brennan Center for Justice at New York University, and the Montana-based National Institute on Money in State Politics, was the fourth report to track fundraising and spending in judi-

cial races nationally. Bert Brandenburg, executive director of Washington-based Justice at Stake, said in a statement released to the media:

Alabama has become a national case study. Around the country, other states are pursuing reforms to keep campaign cash out of the courtroom. If Alabama were to pass meaningful reforms, the rest of the country would take notice.

Unfortunately, during the recently concluded regular session, the Legislature failed to even consider the bills introduced that would have changed how Alabama's appellate judges are chosen. This failure was another result of the lengthy filibuster carried out by a group of senators. Clearly, these bills, pushed by Chief Justice Sue Bell Cobb and the Alabama State Bar, were a step in the right direction. As widely reported, Alabama's \$8.4 million chief justice campaign last year was the most expensive nationally in 2006 and the second-most expensive in United States history. Actually, it appears that three of the four most expensive judicial races in U.S. history took place in Alabama. Among the findings in the report on the 2006 elections:

- The \$13.4 million combined raised by all Alabama Supreme Court candidates was nearly four times the amount raised in Texas, the state that came in second.
- More than half of the television ads in Supreme Court races nationally aired in Alabama. Spending on airtime in Alabama doubled the cost in Georgia, which was the number two state.
- The average fundraising per Supreme Court candidate in Alabama was 3.5 times the national average of \$251,300.
- Since 1999, Alabama Supreme Court candidates have raised nearly 25% of the national total for the 42 states with judicial races.

- Alabama is the only state where aggregate Supreme Court fundraising has topped the \$10 million mark. It's happened twice here, in 2000 and 2006.

Thanks to Karl Rove, Alabama was the first state where judicial candidates adopted the no-holds-barred style of campaigning normally seen in legislative, gubernatorial, and presidential races. I was not surprised to learn that Alabama was one of the first states where judicial candidates used television to push their messages. Neither was it a surprise that smear campaigns were used for the first time in races for the Alabama Supreme Court.

Nobody should be proud to say that Alabama has become the most expensive state in the nation for candidates who run for Supreme Court. Since 1993, state high court candidates have raised a combined \$54 million, almost twice the amount raised by candidates in Texas, the next most-expensive state. Something has to be done to fix this problem. This matter is important enough to justify the calling of a special session to deal exclusively with this issue. In my opinion, that's the only way to bring about a reform to the system. I would encourage Governor Riley to call a session before the end of this year. Doing so would assure ordinary citizens in Alabama that justice is not for sale in our state.

Source: *The Birmingham News*

U.S. SUPREME COURT REFUSES TO HEAR CLINE CASE

The U.S. Supreme Court has refused to hear the appeal of the Jack Cline case that has received so much media attention over the past several months. All Jack Cline wanted to do was sue the oil companies over his exposure to a toxic chemical that ultimately took his life. Bob Palmer, his lawyer, who has fought the good fight for Jack Cline and his family, calls this case a legal "Catch 22" in Alabama. After her husband died, Martha Jane Cline tried to hold the com-

panies accountable for her husband's health problems. As you know, Jack Cline died in January of cancer.

The Alabama Supreme Court, while Drayton Nabors was Chief Justice, in a series of opinions, ruled that Jack Cline waited too long to file suit, even though he had not been diagnosed as being sick until after the deadline to sue had passed. The first ruling against Mr. Cline came out in 2005 without any opinion from the court. An application for rehearing was finally ruled on in 2007 and a written opinion issued. It should be noted that Alabama is the only state in this country to follow this totally illogical and harsh rule in toxic tort cases. All other states have a time limit that begins when a person learns of an illness. By Alabama state statute, there is a two-year time limit during which a lawsuit has to be filed. Everybody thought the time started to run from the last exposure to toxic chemicals whether or not the person is sick or knows he is sick. But in the Cline case the court held there must be an actual injury before a lawsuit can be filed. (Incidentally, the court asserted it was up to the legislature to change the rule regarding when the time to file suit starts to run—even though the court created the rule in the first place.) Under that bizarre standard, there was never a time when Jack Cline, a long-time chemist who blamed exposure to benzene for his illness, could have filed suit because the two-year deadline passed in 1989 and he wasn't diagnosed with his disease until 1999. This will go down in judicial history as one of the worst examples ever of protecting special interests and punishing their victims. If you doubt this, I suggest you read the opinion written by Justice Harold See. I also suggest that you read the excellent dissenting opinion written by then Justice Bernie Harwood, who was joined by Justice Champ Lyons, Tom Woodall, and Tom Parker.

For those who aren't familiar with the Cline case, Ashland Inc., Chevron Phillips Chemical, and ExxonMobil

were sued over Mr. Cline's exposure to benzene. The court's decision means people injured by exposure to hazardous chemicals in Alabama are virtually barred from filing suit because many illnesses take years to develop. Nothing about the Alabama Supreme Court's majority opinion makes any sense. Suppose a victim is exposed to a deadly chemical, more that two years goes by, and then that person is later diagnosed with a disease that a doctor links to the chemical. Under those facts, no lawsuit can be filed against the companies that caused the disease. I would like for some legal scholar to explain this Catch-22 situation for me. A number of editorials have been written around the country about the Cline case and none of them believe the Alabama rule is a good one. In fact, most say it smells!

U.S. SUPREME COURT MAKES IT HARDER FOR ANTITRUST LAWSUITS

The U.S. Supreme Court has made it much harder for plaintiffs to get into court in antitrust litigation. An allegation that two or more companies are acting in parallel isn't enough for an antitrust lawsuit to proceed, according to the Court. Even if the result benefited the companies and diminished competition, the plaintiffs must go further and include some allegation indicating that the companies were actively working together. When independent self-interest also could explain the conduct, Justice David Souter wrote for the Court, plaintiffs must allege "some factual context suggesting agreement" to restrain trade. But in throwing out the suit alleging that major telecommunication companies conspired to restrain trade, the Court noted that the plaintiffs failed only because they "have not nudged their claims across the line from conceivable to plausible." That appears to be a fancy way to say that this court doesn't like anti-trust cases very much.

Although the ruling doesn't radically upend the rules for antitrust actions, it

does mark the latest in a sequence of cases where the court has tightened the scope of the Sherman Antitrust Act. That statute, passed in 1890, took aim at monopoly by outlawing any "contract, combination...or conspiracy in restraint of trade or commerce." In dissent, Justice John Paul Stevens, largely joined by Justice Ruth Bader Ginsburg, contended that the majority was driven not by settled law but a "transparent policy concern" to protect antitrust defendants from litigation costs. It's not real clear what the High Court will require as the minimum allegation for a suit to proceed.

Source: *Wall Street Journal*

BIG TIME TORT REFORMER FILES SLIP-AND-FALL LAWSUIT

I was shocked to hear that Robert Bork, the one-time U.S. Supreme Court nominee, had filed a civil lawsuit against the Yale Club. Judge Bork is seeking \$1 million in damages for injuries he sustained from a fall at Yale last year. He was at the Yale Club last June to speak at an event sponsored by The New Criterion, a monthly review of the arts and intellectual life. According to the suit, which was filed in federal court in Manhattan, the club failed to provide steps and a handrail to climb onto the dais. It is alleged that Judge Bork fell backward as he was attempting to climb the dais, striking his leg on the stage and his head on a heat register. The 80-year-old Bork suffered a large hematoma, or swelling of blood, in his lower left leg as a result of the fall, and the hematoma eventually burst, according to the lawsuit. The injury required surgery and months of physical therapy, according to his complaint. The suit claims the judge has suffered "excruciating pain" as a result of the injury. He even wants damages because of having to walk with a limp.

Interestingly, in addition to seeking a million dollars in compensatory damages, the tort reform advocate actually wants punitive damages. As it turns

out, Judge Bork, who once taught at Yale Law School, seems to like the judicial system when he is a victim. The former U.S. Attorney General and federal court of appeals judge is currently a fellow at the Hudson Institute, a conservative think tank, which has been a bell-cow in the tort reform movement. It appears sort of hypocritical for a person to criticize the judicial system and those who, as victims, file lawsuits with merit, and then to jump into the system himself as a plaintiff in a lawsuit. As the *New York Times* stated in an article:

Since we believe in the tort system, when properly used, all we would ask is whether Mr. Bork's unfortunate experience at the Yale Club has led him to re-evaluate any of the harsh things he has said in the past about injured people, much like himself, who simply wanted their day in court.

I fear that many of the tort reformers are actually just like Judge Bork—they don't want the judicial system to be available to ordinary folks who are victims of wrongdoing, but they will jump in and use it themselves when they need it for their own benefit. That just doesn't seem right to me!

SUPREME COURT ALLOWS RECOVERY OF CLEANUP COSTS

The U.S. Supreme Court strengthened a landmark anti-pollution program last month, enabling companies to recover costs when they voluntarily clean up hazardous material. In a unanimous ruling, the justices said the federal Superfund law allows lawsuits to recover costs incurred in voluntary cleanups. Predictably, the Bush Administration had argued for the polluters. The law is worded "so broadly as to sweep in virtually all persons likely to incur cleanup costs" and the government's interpretation "makes little textual sense," said the opinion by Justice Clarence Thomas.

The case involves a company that

contracted with the U.S. government to retrofit rocket motors. Atlantic Research Corp. voluntarily cleaned up pollution from rocket propellant that seeped into the soil and groundwater. The company then sued the government in an effort to recoup some of the cleanup costs. Interestingly, the government is one of the nation's largest polluters, with environmental liability of more than \$300 billion, according to federal data.

Many major corporations, state regulators, and environmental groups believe the Bush Administration is trying to insulate itself from anti-pollution lawsuits. The companies themselves must first be sued by regulators under the Superfund law or be targeted with government enforcement action before they can sue others, according to the Bush White House. Spokespersons for the Administration claimed the approach favored by Atlantic Research was contrary to congressional intent. There are 450,000 commercial and industrial cleanup sites across the country, and regulators have enough resources to move against only the worst of them. The U.S. Environmental Protection Agency brings only a few hundred enforcement cases a year. The High Court's ruling appears to be a sound one and it should prove to be good for business owners.

Source: *Forbes*

IT'S PAST TIME FOR EXXON TO PAY ALASKAN FISHERMEN

A federal appeals court has correctly denied ExxonMobil Corp.'s request for another hearing in its last appeal, letting stand its ruling that the energy giant owes \$2.5 billion in punitive damages for its 1989 oil spill in Alaska. The ruling by the U.S. Court of Appeals for the Ninth Circuit in San Francisco has been called a milestone, ending a lengthy series of decisions and appeals between the Ninth Circuit and the Alaska district court. Now only the U.S. Supreme Court can consider any further appeals. I hope that won't happen. It's high time for this

epic civil case to be over. Folks hurt by the spill should now receive the payments from Exxon. The appeals court has declined to have a larger panel of judges reconsider the court's decision in December to reduce the \$4.5 billion in punitive damages owed by ExxonMobil for the 1989 Exxon Valdez oil spill to \$2.5 billion. It's time for this lawsuit between a politically powerful oil giant and 32,000 fishermen, Alaska natives, and property owners who were damaged by Exxon's reprehensible conduct to come to an end. I hope the U.S. Supreme Court will refuse to hear an appeal to the highest court by ExxonMobil.

On three occasions, the Ninth Circuit Court of Appeals has heard appeals since an Anchorage jury on September 16, 1994, returned a \$5 billion punitive damages verdict against Exxon. About 20% of the victims who filed suit in the class action have died waiting for payment. The class now stands at about 33,000 commercial fishermen, cannery workers, landowners, Natives, local governments, and businesses. Exxon literally believes it is above the law and so far it appears they may be right.

Source: *Reuters*

EXXONMOBIL MUST PAY FOR RECREATION LOSS

ExxonMobil must pay New Jersey for lost recreational opportunities cause by contaminated waterfront refineries. A state appeals court ruled on June 7th, reversing an earlier decision by a trial judge. The decision is seen as a setback for ExxonMobil in the suit filed by the state of New Jersey. When the giant oil company balked at a state request to pay for the loss of recreational opportunities, such as fishing, New Jersey sued. The state Department of Environmental Protection had been pursuing the claims since 2004. Damages will be determined after a hearing before a trial judge. The ruling could be worth millions of dollars to the state, according to Jeff Tittel, executive director of the

Sierra Club's New Jersey chapter, which incidentally was not involved in the case. The appellate panel said the case was the first time New Jersey courts had considered damages for the lost opportunity to use a natural resource because of pollution. This certainly appears to be a good decision by the appeals court.

Source: *Associated Press*

JUDGE BOWDRE DISMISSED WRONGFUL DEATH CLAIMS IN THE DRUMMOND CASE

There was a significant development in the case we wrote about last month that is pending against Drummond Co. U.S. District Judge Karon Bowdre has dismissed wrongful death claims brought against Drummond by the families of three union leaders. The judge ruled that her court lacks jurisdiction over claims arising from Colombia's wrongful death laws. The ruling narrows the case against Alabama-based Drummond to a war crimes claim covered by the Alien Tort Statute, a seldom-used law that allows lawsuits in U.S. courts over actions that occur outside the country. The trial is scheduled to begin on the 9th of this month. At press time Judge Bowdre hadn't ruled on what standard of proof will be required on the war crimes claim. The suit alleges that paramilitaries shot the union leaders to death in 2001 at the direction of Drummond, which operates a 25,000-acre surface mine in northern Colombia. As reported, Drummond, a family-owned company that shifted most of its mining operations to Colombia as its Alabama mines closed, has denied any connection to the killings.

Source: *Associated Press*

A JUST RESULT IN A WEIRD CASE

A judge has ruled in favor of the dry cleaner that was sued for \$54 million over a missing pair of pants in a case filed by, of all people, a judge. This case, which garnered international attention, was one that should never have been

filed. The judge who heard the case ruled that the owners of Custom Cleaners did not violate the city's Consumer Protection Act by failing to live up to the plaintiff's expectations of the "Satisfaction Guaranteed" sign that was once placed in the store window. If there has ever been a frivolous lawsuit, this one fits the label. I have to wonder what motivated this judge to file such a lawsuit. In any event, the system worked and justice was done! It's proof that the system still works and that's the good news about this most ridiculous lawsuit.

IV. THE NATIONAL SCENE

PRESIDENT BUSH HAS WORKED HARD TO EARN HIS LOW APPROVAL RATINGS

Public approval of the job George W. Bush is currently doing as President is at an all-time low, according to all recent polls. All of the surveys reflect widespread discontent over how this President is handling the war in Iraq, efforts against terrorism, and domestic issues. Republican presidential and congressional candidates will face serious challenges next year when they face voters who are calling for change. It's clear that very few Americans are satisfied with how President Bush is handling his job overall. In my opinion, he is like a dog lost in high weeds with no real sense of direction. A Republican friend of mine observed recently that while men like the Vice-President, Karl Rove, and the Attorney General have hurt George Bush beyond description, he remains loyal to them. I agree, but I have to wonder why?

Source: *Associated Press*

SOME BAD NEWS RELATING TO THE BLACKWATER WRONGFUL DEATH CASES

Most Americans remember from media accounts the images of the

bodies of U.S. security contractors being burned, mutilated, and strung from a bridge in Iraq. The story made big news a few years ago. When a lawsuit was filed against security contractor Blackwater USA, those images were brought back to the public's attention. The lawsuit, filed against the company by families of the victims, has now taken a bad turn. After years of appeals and legal maneuvering, Blackwater has somehow been able to move the wrongful death lawsuit into arbitration. This move will keep the highly secretive North Carolina company out of the lights of a courtroom. Many Americans—including members of Congress—expected to learn details about Blackwater and what critics call the private army it fields in Iraq and elsewhere when the case came to trial. Now total secrecy will take over, and the public will never know how bad Blackwater's conduct was and how they actually operate. John Pike, a military analyst with think tank GlobalSecurity.org, had this to say:

We're spending an awful lot of money on these companies, and people still can't define their role. In court we may have found that we have private military companies performing roles that people thought our troops were performing.

As you may recall, the case stems from the deaths of Scott Helvenston, Jerry Zovko, Wesley Batalona and Michael Teague, who were attacked by a mob in March 2004 as they escorted a supply convoy through Fallujah, Iraq. In a lawsuit filed in 2005, family members accused Blackwater of failing to provide the security guards with the appropriate equipment—such as armored vehicles or even a map. The insurgents burned and mutilated the men's bodies, and strung two from a bridge over the Euphrates River. The gruesome scene was caught on camera and broadcast worldwide. Blackwater, whose lawyers included former Whitewater prosecutor Kenneth Starr and current White House Counsel Fred Fielding, argued the

company should not have to face scrutiny in civilian courts because the contracting industry is an extension of the military. A federal judge, citing a clause in the employees' contracts, ruled the case should go to arbitration. The families have appealed the court's order. The arbitration proceeding will be held in private. Jeremy Scahill, the author of a scathing analysis of the company in his book, *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, observed:

The losers in this development are ultimately the American people. This incident was a major turning point in the occupation of Iraq, and it's incredibly important that we understand the circumstances that led up to it.

Blackwater is based at a sprawling compound in the remote swamps of northeastern North Carolina. The company refuses to discuss the details of its business—not even Congress has been able to get answers about Blackwater and others in the private military contracting industry. Earlier this year, the Pentagon finally confirmed publicly that Blackwater was providing armed security in Iraq under a contract that began under Halliburton Co.'s KBR unit. I have to wonder how much money Halliburton has actually made since the Bush-Cheney war in Iraq was planned and carried out by the Bush Administration.

Source: Associated Press

ADULT ENTERTAINMENT INDUSTRY IS BIG BUSINESS

Companies that deal with adult entertainment are raking in the profits. Adult Video News estimates consumers spent \$12.6 billion on adult entertainment last year. Nearly \$4.3 billion of the total, or 34%, came from the purchase or rental of adult video DVDs and videocassettes. Another \$2.5 billion, or 20%, was generated through Internet sales. This is a sad state of affairs and it should be of concern to all Americans. It's a direct

result of the moral decline that we have experienced in our nation over the past 50 years. All of us need to wake up and deal with this growing problem. If we don't, we won't have to worry about foreign powers or terrorist groups destroying us—we will do the job ourselves!

Source: Parents Television Council

COURT RULING SAYS FOUL LANGUAGE IS FINE ON TV

A June ruling by a federal appeals court in New York has cleared the way for TV networks to use the worst sort of foul language in their programming at any time of day. That means children will be subject to hearing filthy language on television sets without restriction. I have to wonder why the church leaders all over the land haven't raised their voices in unison against this sort of thing. Maybe they don't know about the court's decision. If that's the case, we should let them know what's going on. There have to be restrictions on profane and indecent context in TV programming. Congress must get more involved and do it now.

HALLIBURTON'S NEW HOME WILL BE IN DUBAI

At first, I was sort of shocked to learn that Halliburton Co. is shifting 70% of its capital investment over the next five years to the Eastern Hemisphere, which includes oil and gas zones in the Middle East, Russia, Africa, the North Sea and East Asia. But, after considering the company's history, I soon realized it was bound to happen. As you may know, the company's headquarters is now in Dubai. Halliburton is expanding its Mideast operations and, according to reports, the company is targeting \$80 billion in new business over the next five years—75% of which lies in the Eastern Hemisphere, mainly the Middle East. The company is also looking for Arab investors. According to an *Associated Press* report, Halliburton has

already hired 4,800 of the 14,000 new workers it plans to bring aboard this year, many of them in the Arab world.

You may recall that in April, Halliburton completed the sell-off of its KBR construction and services unit, which was under investigation for overcharging the U.S. military in Iraq. The fact that one of the masterminds of the war in Iraq was Dick Cheney makes one wonder whether Halliburton received special treatment in obtaining U.S. war contracts. The truth is that nobody can answer that question because of all the secrecy involved in the contracts. The bosses at the company now say that with KBR gone, Halliburton has no current business in Iraq. But it was also reported Halliburton would look to partner with oil firms doing exploration in Iraq once an investment law is in place. Interestingly, in April, Halliburton also stopped work in Iran, where a Dubai-based Halliburton subsidiary operated for years. The company now says it won't take any more Iran business. When the company's ties to the Bush Administration end after George Bush leaves office, it will be interesting to see how Halliburton fares. The fact that Vice-President Dick Cheney was Halliburton's previous chief executive and the fact that the company has received a tremendous number of government contracts and special treatment, might just be another coincidence, but I will never believe it.

Most American citizens don't know that Dubai, a Persian Gulf boomtown, is home to dozens of international banks and corporations, including giant U.S. corporations like General Electric, Microsoft, Goldman Sachs, and Citibank. But, it appears most significant that Halliburton was the first major western corporation to actually move its chief executive there. While all of this is perfectly legal, somebody should have some explaining to do!

Source: Associated Press

V. THE CORPORATE WORLD

U.S. JUSTICE DEPARTMENT FAILS TO BACK SHAREHOLDERS

The Bush Administration rejected a SEC recommendation in a key Supreme Court case and chose not to support shareholders suing Wall Street banks for damages over Enron's collapse. The Justice Department's solicitor general, who represents the Administration in Supreme Court cases, did not file a friend-of-the-court brief by a court-imposed deadline. The SEC had asked Solicitor General Paul Clement to file in support of the Enron shareholders. This move puts the Bush Administration at odds with the federal agency that oversees securities markets, as well as with dozens of states and several consumer and investor advocates. That is a weird position for the Bush White House to take and one that can't be justified.

Dan Newman, a spokesman for the law firm representing the Enron plaintiffs, called the Administration's stance "an unprecedented example of politics trumping the rule of law." The Enron victims have been victimized again by the hyper-political Bush Justice Department." In my opinion, this president has been the worst enemy of consumers who has ever occupied the White House. It now appears that his Administration's close ties to Corporate American forces the President to turn on investors and employees of a company who were raped financially by top executives!

Source: *Associated Press*

INVESTORS ARE HURT BY ARBITRATION IN SECURITIES LITIGATION

Individual investors, who are compelled to rely on industry-run securities arbitration to resolve their claims against stockbrokers, are winning fewer cases and recovering less money in the process, according to a major study of

14,000 NASD and New York Stock Exchange (NYSE) securities arbitration cases from 1995-2004. The study shows that individual investors fare particularly poorly if they have major claims and are customers of large brokerage firms. It's obvious that arbitration is always bad for ordinary consumers, but it now appears that even plaintiffs in securities litigation fare poorly when they are in arbitration. I sincerely hope that Congress will address the arbitration issue this year and give consumers—including Wall Street investors—the relief they need to get a fair shake when disputes arise.

Source: *Associated Press*

THE GAP BETWEEN EXECUTIVE AND WORK FORCE PAY IS GROWING

Many believe that the middle class in America is slowly being destroyed, which is not good news for our nation. The attacks on the middle class, which have intensified over the past eight years, have resulted in tremendous harm to the American way of life. One of the contributing factors, in my opinion, is the growing gap between the earnings of top executives in Corporate America and the average wage of their workers. The vast gap in the pay scales for top executives and for the labor force of large corporations in the U.S. was the subject of a recent *New York Times* article. It's certainly worth reading. As executive pay has surged in most American companies, the pay gap is getting larger. It's difficult to understand how shareholders in many large corporations can allow the gap to continue to grow. I hope Congress will get more involved and help bring some relief to an area of major concern.

Source: *The New York Times*

HIGH COURT RULING COULD LEAD TO FEWER RECOVERIES FOR WHISTLEBLOWERS

The Supreme Court, led by Justice Antonin Scalia, has agreed with Rockwell that a former engineer at Rockwell's Rocky Flats nuclear weapons plant was

not an "original source" of information that served as the basis of a jury's finding that Rockwell, starting in 1987, violated the False Claims Act by hiding from the government environmental, safety, and health problems related to its processing of nuclear waste. Justice Scalia wrote that the law's phrase "information on which the allegations are based" refers to knowledge of the actual facts underlying the allegations on which a whistleblower may ultimately prevail and not the information underlying publicly disclosed allegations. Justices John Paul Stevens and Ruth Bader Ginsburg dissented; saying a plain reading of the statute makes clear "it is the information underlying the publicly disclosed allegations, not the information underlying the allegations in the relater's complaint (original or amended) of which the relater must be an original source." This opinion has to be good news for those in corporate America who lie, cheat, and steal!

Source: *The National Law Journal*

U.S. SUPREME COURT RULING GIVES BROKERS TOTAL IMMUNITY FROM ANTI-TRUST LAWS

The U.S. Supreme Court gave Wall Street a wide exception to antitrust laws last month, throwing out an investor lawsuit against broker syndicates that allegedly colluded to drive up initial public offering prices during the so-called Internet bubble of the 1990s. The ruling marks another milestone in the Court's recent movement to give the markets virtual immunity from antitrust lawsuits. The justices have aggressively interpreted congressional acts that limit shareholder lawsuits and, in recent years, have upended longstanding antitrust rules and narrowed the application of the landmark Sherman Antitrust Act.

In its 7-1 decision, the Court said the securities markets were a different animal than ordinary commerce and that practices that might seem to violate antitrust laws in other sectors were essential to Wall Street. The Court said

the job of policing combinations among brokers rests with the Securities and Exchange Commission, whose regulators possess the expertise to distinguish permissible arrangements from illegal conspiracies. The decision effectively shields the biggest names on Wall Street—including **Credit Suisse Group's** Credit Suisse Securities, **Goldman Sachs Group Inc.'s** Goldman, Sachs & Co. and **Morgan Stanley**—from responsibility for their actions. The lower court had called their actions “an epic Wall Street conspiracy” during the dot-com frenzy of the late 1990s. Although it doesn't protect those firms from shareholder suits brought under the securities laws, it does inoculate them from the 1914 Clayton Act's potent remedy: treble damages.

Source: *Wall Street Journal*

DOLLAR GENERAL SHAREHOLDERS APPROVE BUYOUT

Dollar General Corp. shareholders have approved a buyout by a private equity firm in a \$6.9 billion deal. As a result, this will take the discount retailer private. Kohlberg Kravis Roberts & Co. will pay \$22 per share for Dollar General, which operates over 8,000 stores that serve mostly moderate to lower income shoppers. Dollar General, which is in the middle of a restructuring to boost sales and reduce turnover, announced the proposed buyout in March and said it is expected to close by the third quarter 2007. Our firm is still in major litigation with Dollar General, with a class action lawsuit pending in a Birmingham federal court.

Source: *Associated Press*

SUPREME COURT HANDS BUSINESS GROUPS A MAJOR VICTORY

In a recent decision, the Supreme Court overturned a nearly 100-year-old precedent that some price-setting agreements between manufacturers and retailers are automatically illegal under federal antitrust law. By a 5-4 vote, the justices overturned a 1911 Supreme

Court ruling that minimum prices set by manufacturers on what dealers can charge customers for their products are unquestionably illegal. The decision was a major victory for business groups that had argued the agreements are often pro-competitive. The groups had urged the high court to adopt a less exacting standard that examines each agreement on a case-by-case basis. Antitrust authorities at the Justice Department and the Federal Trade Commission also had urged the top court to overturn the precedent, while 37 states and a leading consumer group had urged that the precedent be preserved. The ruling stemmed from an appeal to the Supreme Court by a company called Leegin Creative Leather Products Inc., the manufacturer of the Brighton brand of women's accessories. In 1997, it adopted a policy stating it would do business only with retailers that followed its suggested retail prices and would not sell to retailers that discounted its products. PSKS Inc., operators of a retail store known as “Kay's Klostet” in Lewisville, Texas, placed the entire line of Brighton products on sale below the suggested price in 2002. Leegin then stopped all shipments of its products to the store. This ruling may mean that well-established precedents of long standing may be ignored by a majority of the Supreme Court.

Source: *Reuters*

VI. CAMPAIGN FINANCE REFORM

A VERY BAD DECISION BY THE U.S. SUPREME COURT

The U.S. Supreme Court has handed down a decision that will give special interest groups a louder and more influential voice in the 2008 presidential election. The court has loosened political advertising restrictions which is not a good thing. The 5-4 decision upheld an

appeals court ruling that an anti-abortion group should have been allowed to air ads during the final two months before the 2004 elections. The court held that the law unreasonably limits speech and violates the group's First Amendment rights, according to the Court. Chief Justice John Roberts, writing for the majority, stated:

Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election. Where the First Amendment is implicated, the tie goes to the speaker, not the censor.

The provision in question before the Court was aimed at preventing the airing of issue ads that cast candidates in positive or negative lights while stopping short of explicitly calling for their election or defeat. Sponsors of such ads have contended they are exempt from certain limits on contributions in federal elections. Three justices, Anthony Kennedy, Antonin Scalia and Clarence Thomas, would have overruled the Court's 2003 decision upholding the constitutionality of the provision. Chief Justice Roberts and Justice Samuel Alito said only that the Wisconsin group's ads are not the equivalent of explicit campaign ads and are not covered by the court's 2003 decision. The FEC should move quickly and write specific rules about such advertising that reflect the court's opinion. We should be taking steps necessary to clean up our political elections and reduce the power of special interests—regardless of who they are—and return power to the people in elections.

Source: *Associated Press*

A BRIEF LOOK AT THE NATIONAL PICTURE

Congress had better get busy on campaign finance reform or the voters are going to be pretty angry when they go to the polls next year in Congressional races. Lots of promises were made in 2006 relating directly to reform of the broken system that controls the financ-

ing of political campaigns. Thus far, little, if anything, has been done by either the House or Senate relating to this critically important area of concern. If anything significant has been done I must have missed it. The American people deserve better than they are getting thus far from the Congress.

ALABAMA STRIKES OUT ON REFORM

Alabama gets the lowest grade possible when it comes to the passage of campaign finance reform legislation. The last session of the Legislature was a complete bust in this area of concern. I hope there will be a renewed effort in the 2008 session to deal with this most serious problem. Our laws are among the weakest in the country and the powerful special interests love it that way!

VII. CONGRESSIONAL UPDATE

CONGRESS STILL HAS WORK TO DO ON REFORM OF LOBBYING ACTIVITIES

Even though the lobbying bill the House passed in late May was a major achievement toward ethics reform, there are still significant holes left to be filled. On the plus side, the House voted to require disclosure of bundling activity by lobbyists, which is very important. The strong support of the House leadership was the reason a reasonably good bill passed, which I hope is a first step toward real ethics reform. Unfortunately, crucial revolving door restrictions were stripped from the bill in committee in exchange for a vote on the bundling provisions. The revolving door requirements were good and badly needed in my opinion. These critical revolving door measures are contained in S. 1, which is the Senate companion bill, and should be included in the conference version of the bill. Members of Congress must set aside their narrow

self-interest for the good of the American people and get the reform job done.

Neither the House bill nor the Senate bill would change a fundraising system in which lobbyists play a major role. But the common elements of the two bills would shed new light on how lobbyists raise and spend money to influence Congress. As we all know, a series of lobbying scandals helped the Democrats win control of Congress last year. Now it's time for their leadership to keep their word on reform. Since the long-awaited reform bill is now heading to conference, the leadership of both the House and Senate must continue to push for the strongest measure possible. I encourage our readers to contact your senators and House members and ask them to support reform. Unless they hear from folks back home, it's probable that the lobbyists will control the bill that comes out of conference.

Source: Public Citizen

VIII. PRODUCT LIABILITY UPDATE

GOODYEAR TIRE INVESTIGATION

Documents related to a \$30 million judgment against the Goodyear tire company will remain secret despite a challenge from lawyers who contend public safety demands their disclosure. The lawsuit centers around Goodyear's Load Range E tires typically used on passenger vans, ambulances, and light trucks. Tread separation of those tires has been the cause of deadly accidents nationwide. One of the cases involved three Las Vegas Valley, Nevada families. Although Goodyear lost that case, it was successful on a motion to keep some important documents sealed, claiming they contained trade secrets.

In a shared rental van, on their way to watch their children compete in a sporting event, three families lost loved ones. The tread on the right rear tire on

their vehicle separated, causing the driver to lose control. Earlier this year, a Clark County, Nevada jury awarded those families more than \$30 million in a verdict against Goodyear. But unfortunately information about what Goodyear knew and when about its defective Load Range E tires remains sealed from public view. Matt Callister, the lawyer who represented the families, believes the records should be open and stated:

I think there is an injustice here. The public health and safety, in a scenario in which they elected not to call a recall, and we know there's still light truck tires on the road out there, the public has the right to know.

Goodyear argues the documents contain trade secrets, which I understand now was not correct. But, the trial judge denied the motion to unseal the records because the documents were covered by a confidentiality agreement entered into by both sides during the discovery process.

RV TIRE LITIGATION UPDATE

We continue to learn of failures with the Goodyear G159 275/70 RV tire. In the past few months, I have written about design and manufacturing defects that make this tire unsafe for use on larger Class A recreational vehicles. Although Goodyear obviously bears the responsibility for the G159 tire failures and resulting injuries and deaths, the RV manufacturers are also responsible for failing to take adequate steps through proper engineering and testing to assure that the 275/70 is in fact appropriate for their RVs.

Most, if not all, of the RV manufacturers employ virtually no engineering in the selection of the tires for their RV's. This includes the G159 275/70. In our case, not one licensed engineer played a role in selecting the 275/70 and assuring that the 275/70 was appropriate for use on their Class A motor

home. In fact, when our client's RV was made, the manufacturer did not employ a single automotive engineer. Most of the individuals involved with the selection of the 275/70 tire for RVs have sales backgrounds.

It's also most significant that the RV manufacturers perform little to no testing to assure the tires are safe on the RV's they sell. Most of the automobile industry performs numerous tests to assure that the products they sell meet at least minimum standards. In the cases we have handled, none of the RV manufacturers performed any real world testing, nor did they do failure testing or durability testing to assure that the RV tires are safe and are appropriate for the large Class A motor homes. In almost all cases, including ours, the RV manufacturers failed to perform any testing to assure that the G159 275/70 was safe for use at highway speeds on their RVs.

YOUR LIFE MAY BE AT RISK IF YOU RECLINE YOUR SEAT IN A CAR

Take a minute and think how many times you have been a passenger in a car, wearing your seatbelt, and decided to lay your seat back to take a nap. This is a very common practice. You may not know this, but by simply reclining your seat, you are putting your life at risk. If a seatback is reclined, the standard seatbelt becomes much less effective, if not completely useless, because the shoulder harness of the belt moves away from the body. People do not realize or understand that the more space between the seatbelt and a person's body, the greater risk of death or serious injury in an accident. The seatbelt is designed to be worn snugly against the body in order to couple the body to the seat to ride down the forces of an accident safely.

Automobile manufacturers have been well aware of the dangers of reclining seats for nearly four decades. At a 1964 Stapp Car Crash Conference, two safety-equipment engineers presented a report analyzing the effect lap belts

have on reclined-seat occupants. The report discussed sled testing in which the seatback was reclined almost fully. When the sled stopped suddenly, the test dummy submarined under the lap belt almost 10 inches, which drove the belt into the dummy's abdominal cavity.

And, in 1988, the National Transportation Safety Board (NTSB) conducted a safety study where one of the issues was the effect of reclining seatbacks. The NTSB examined 167 collisions involving passengers who had worn three-point restraints. The result showed that three-point restraints offered good protection only if worn properly. An occupant who wears a seatbelt while his seat is reclined is not "centered" in the belt, rendering the belt ineffective for spreading crash forces over the body. The NTSB stated that the protection offered by any type of seatbelt is compromised when the seat is reclined, presenting a "potentially dangerous combination in a moving vehicle." The NTSB noted that "since vehicles had been marketed with reclining seats, most adults and children were tempted to combine belt use with a reclined seat." The study concluded that, "at best, lap/shoulder belts, indeed, any type of seatbelt, offered reduced effectiveness when used with a reclined seat. At worst, a lap/shoulder belt in a reclined seat may be a potentially dangerous combination in a moving vehicle—proper fit is impossible."

Although some vehicle owner's manuals warn of the dangers of reclined seatbacks in moving vehicles, the warnings do not state specifically what degree of recline is dangerous. Further, the NTSB pointed out that, because the manufacturers advertised their cars by showing a passenger in a reclined seat wearing a seatbelt, these advertisements undermine the already limited effectiveness of owner's manuals' warnings (especially if the warnings are unclear, as in advertising not to recline the seat "any more than as needed for comfort.")

The NTSB submitted safety recommendations to the National Highway

Traffic Safety Administration (NHTSA) based on the findings in the study. The report recommended that manufacturers limit the angle of inclination allowable in a reclining seat to no greater than the maximum angle that can safely be used in combination with a seatbelt. The report further requested that NHTSA determine to what degree a seatback could be reclined and still allow an occupant to be properly and safely restrained by a lap/shoulder belt combination. In March 1989, the NTSB stated that:

- Warnings in owner's manuals are not effective in preventing passengers from misusing lap/shoulder belts and reclining seats;
- It is not known at what point the lap/shoulder belt becomes dangerous with reclined seats; and
- Testing is required to determine the safe limits of reclined seats.

NHTSA also noted that "it is likely that most people who ride with the seatback reclined are not aware of the associated risks; they are simply using the added comfort the reclining seatback affords." In response to NHTSA's initial position and NTSB's findings, the auto manufacturers claim that the owner's manuals effectively "discourage" the use of reclined seats while a vehicle is in motion, and that "common sense" indicates that an upright seat is safer than a reclined one. Clearly, the industry's response was to blame the motoring public and ignore the problem.

It is shameful that the automobile industry has taken this position. There are ways for the industry to address this dangerous problem. A simple warning that points out the danger of reclining seats can be inexpensively incorporated into a vehicle design, and yet, it would convey the needed information to alert the passengers of the danger. A warning label can be the first step towards educating the public. But a warning would be unnecessary if the industry would start designing its restraint system in

such a manner to alleviate the problem. For example, GM has incorporated into some of its current vehicles, such as the Trailblazer, a seat design that mounts the seatbelt system within the seat itself.

Known as “all belts to seat,” this design allows the shoulder harness to stay in position even when the occupant reclines the seat. Another design incorporates an interlock within a vehicle’s gearshift, preventing the driver from putting the car in gear if a seatback is reclined. Interlocks are not yet used in any vehicles. Automakers could also add a device that would warn the vehicle passengers of the hazards of reclined seats. In fact, years ago, a major manufacturer of seatbelts patented a device that would give a visual or audible warning if a passenger were to recline his seat to a dangerous degree. Emison, Kent J., “Reclining Seats Trade Safety for Comfort,” *TRIAL*, Vol. 39 No. 2 (Feb. 2003).

A Jacksonville, Florida jury recognized this hidden danger and held Ford accountable by awarding \$16.9 million to a young college student who was rendered a paraplegic in an accident. The student was a belted passenger who had reclined her seatback in a Ford Windstar. During the trip, the Windstar was involved in a low impact collision. Because the seat was reclined, her seatbelt did not hold her in place. As a result, this young college student was rendered a paraplegic in what was a very minor accident.

Another jury in Maryland awarded \$59 million to a belted passenger in a Toyota vehicle who was also riding with his seat reclined. The car was involved in a frontal collision. During the collision, the belted passenger flew forward at the time of the impact. It resulted in the amputation of both of the passenger’s legs. Both of these cases spotlight this dangerous practice that automobile manufacturers have known about for decades. People are being needlessly injured and killed as a result of the automobile industry’s inaction on this subject. The industry knows that the

motoring public does not understand or recognize the danger of reclining the seat while the vehicle is in motion. The industry knows that millions of families drive many millions of miles on the road every year. The industry knows that some occupants in its vehicles will recline their seats to take naps, and by doing so, those occupants are all at great risk of serious injury or death in an accident. Yet, the automobile manufacturers turn a blind eye to this danger even though there are simple approaches they could take to educate the public and prevent such needless injuries and deaths each year.

SIGNIFICANT LAWSUIT AGAINST FORD MOTOR COMPANY IS BEING HEARD

The trial in a major lawsuit got started last month in Sacramento, California. The suit claims Ford Motor Co. deceived consumers about the safety of its Explorer sport-utility vehicles. As has been reported, Ford earned more than \$2 billion in profits from Explorers built in the 1990s and sold in California. The class action lawsuit, brought on behalf of more than 414,000 Explorer buyers, is very large in scope. The potential for damages is tremendous. A Sacramento Superior Court Judge is hearing the case and will determine the outcome without a jury. Plaintiffs’ lawyers contend that Ford should be punished for falsely marketing the safety and reliability of the Explorer, which it knew to be prone to roll over because of its high center of gravity and other factors. Tab Turner, a Little Rock, Arkansas, lawyer, is the plaintiffs’ lead lawyer in the case.

The Sacramento trial is expected to last two months. The class of plaintiffs includes California residents who bought, owned or leased a 1991-2001 model-year Ford Explorer, new or used, between 1990 and August 9, 2000. Such residents automatically are part of the lawsuit unless they opted out by May 29, 2007. To qualify, Explorer drivers must still possess their vehicles, or they must have sold them or ended their

leases after August 9, 2000. That’s when the first recall of Firestone tires used on the Explorer was announced. As previously reported, these tires, which were plagued with tread-separation problems, contributed to Explorer rollovers. As you may recall, Ford has claimed it was the tires, not the Explorers, that were the problem. We will follow this case closely.

Source: *Associated Press*

U-HAUL RENTAL TRAILERS

As you most likely know, U-Haul International is the nation’s largest provider of rental trailers. We have known from litigation experience that U-Haul doesn’t place safety very high on its list of priorities. A *Los Angeles Times* investigation has found the company’s practices raise the risk of accidents on the road. A yearlong *Times* investigation, which included more than 200 interviews and a review of thousands of pages of court records, police reports, consumer complaints, and other documents, found that U-Haul’s practices have increased the risk of towing accidents. The *Los Angeles Times* wrote an excellent article based on the findings from their investigation. Apparently, U-Haul has put their profits over the safety of their customers and that’s a shame. If you want to learn more about U-Haul, contact Rick Morrison in our office or go to our website at www.beasleyallen.com.

BLIND SPOTS ARE A DEADLY FLAW FOR MOST SUVs

According to the consumer group Kids and Cars, as many as 62 children could be in the blind zone of an SUV and the SUV driver would never know it. Obviously, that’s a big problem. Janette Fennell, president of Kids and Cars, says at least 100 children are killed each year in back-over accidents. Another 2,400 children are seriously injured this way each year. Clearly, this is a most serious safety issue. Two children

every week are dying because they can't be seen behind these larger vehicles. Most of the victims are toddlers 12 to 23 months old. They have just learned to walk and often try to follow an adult, usually a parent or some other relative, to the vehicle. The children have no concept of the danger involved. The fact that it's usually a family member behind the wheel makes this a tragedy within a tragedy. According to Mike Quincy, an automotive expert with Consumer Reports:

The problem has gotten worse with the increased popularity of SUVs, pickup trucks and minivans as family vehicles. Some of the blind spots are incredible.

During the last few years, Consumer Reports measured the blind zones behind hundreds of vehicles using both short and tall drivers. Here's the range they found for each category:

- Sedans: 12 feet to 24 feet;
- Minivans: 15 feet to 26 feet;
- Sport Utility Vehicles: 13 feet to 29 feet; and
- Pickup trucks: 23 feet to 35 feet.

With some of these large pickups, the blind zone can be longer than the driveway. The 2006 Jeep Commander Limited had the biggest blind spot of any vehicle *Consumer Reports* tested—a stunning 69 feet with a short driver. With an optional backup camera, that huge blind spot is nearly eliminated. You may be shocked to learn that there is no federal standard for rear visibility. The “Kids Transportation Safety Act of 2007” (S.694) is ready for passage. This bill, which covers a number of automotive safety issues, would require the U.S. Department of Transportation to create rules that would expand the required field of vision behind a vehicle. Although the bill does not say how this would be accomplished, that would be worked out in the rulemaking process. But it does list some possible options,

including additional mirrors, sensors, and cameras. The bill would also require the Department of Transportation to establish a database of injuries and deaths caused by non-traffic, not-crash accidents. Currently, no federal agency tracks them. I hope this bill will pass and become law. This is a problem that can no longer be ignored!

Source: *MSNBC*

BAD CHINESE TIRES ON THE MARKET

NHTSA is forcing a Chinese tire manufacturer to recall all 450,000 defective tires it sold to distributors. New Jersey-based Foreign Tire Sales, which is the U.S. distributor, says that “consumers are on their own”. At issue are tires manufactured by Hangzhou Zhongce Rubber, China's second-largest tire company, that are missing “gum strips,” which hold the tire together. Without the gum strips, the treads can separate and cause drivers to lose control and possibly cause the vehicle to roll over. The tires are already blamed in the deaths of two Pennsylvania men. A lawyer for FTS told *USA Today* that the company had an outside firm perform tests on the tires when they were first purchased from Hangzhou. Tires were driven 40,000 miles, and the rubber was cut and analyzed. Initially, tires met the importer's specifications according to the distributor.

At some point—exactly when is unclear at this stage—the Chinese company removed the gum strip for subsequent shipments. According to NHTSA, this case is “unprecedented”. Apparently, NHTSA has never dealt with a company like FTS that says it doesn't have enough money to conduct a recall. Obviously, there are a number of defective tires on the road, possibly as many as 450,000. The tire recall should be a warning to other companies importing products from China to be more careful in what is being brought into the country. If a company is too small to conduct continual testing and is considering importing Chinese goods, but can't

afford a recall, they best stay out of the China market. In any event, this may well develop into a very bad situation. I hope folks who have bought these tires will get the message and get the tires off of their vehicles.

Source: *USA Today*

IX. MASS TORTS UPDATE

LILLY SETTLES HUNDREDS OF ZYPREXA LAWSUITS

Eli Lilly and Co. has settled an additional 900 product liability lawsuits involving its top-selling drug, the anti-psychotic Zyprexa. The Indianapolis-based drug maker declined to release the settlement amount. But Lilly spokeswoman Marni Lemons said Tuesday it would have no material impact on the company's financial statements. Lilly has settled roughly 28,500 product liability claims involving Zyprexa over the past two years. In June 2005, the company settled 8,000 claims for \$690 million. This past January, it settled more than 18,000 for roughly \$500 million.

Most of the claims center on allegations that Zyprexa causes diabetes or high blood sugar and that labels on the drug failed to adequately warn users of the risks. The company was scheduled to go to trial July 9 in federal court for four Zyprexa claims, but those cases are part of the latest settlement, Lemons said. Lilly still faces product liability lawsuits from roughly 750 patients. Zyprexa, which is used to treat schizophrenia and bipolar disorder, generated \$4.4 billion in sales last year and \$1.1 billion during the first quarter of 2007. Obviously, it has been a big seller for Lilly.

Source: *Yahoo.com*

PLAINTIFF WINS DRUG PATCH LAWSUIT

A federal jury in Florida recently awarded \$5.5 million to the father of a

man who died while wearing a drug patch made by two Johnson & Johnson subsidiaries. The jury in Federal District Court in West Palm Beach found that Janssen Pharmaceutica Products and the Alza Corporation, both based in New Jersey, were legally responsible for the death of Adam Hendelson, 28, who died in 2003 while wearing the companies' Duragesic patch. The patch delivers controlled doses of the powerful painkiller fentanyl. Mr. Hendelson suffered chronic hip pain after a car accident and wore the patch on his arm. Subsequently, after a time, he was found dead at his computer. Tests showed the victim had at least three times the lethal dose of fentanyl in his system at the time of his death. This verdict was the first in a federal case against the makers of the patch. Last year, a Houston jury awarded \$772,500 to the daughter of a woman who died after wearing the patch. The Food and Drug Administration announced in 2005 that it was investigating 120 deaths among users of patches that emit fentanyl.

Source: *Associated Press*

VIOXX DAMAGE AWARD IN BARNETT REDUCED

In a recent order U.S. District Judge Eldon E. Fallon reduced the original jury award in the case brought by Gerald Barnett, a former FBI agent whose heart attack was caused by his taking Vioxx, to \$1.6 million. Judge Fallon, who oversees all Vioxx litigation in the federal courts, stated that the retired agent could accept a \$1.6 million award or have a new trial on his claims that Vioxx caused his 2002 heart attack. The award includes \$600,000 in compensatory and \$1 million in punitive damages. At the close of the trial, the jury had awarded Mr. Barnett \$50 million in compensatory damages and \$1 million in punitive damages. Merck had sought to have the Barnett verdict thrown out entirely, but the judge correctly denied that request. After the trial, Judge Fallon had ruled in August 2006 that Merck was entitled

only to a new trial on the compensatory damages issue. Mr. Barnett elected to accept this amount, which was our recommendation as well as that of Mark Robinson, our co-counsel in the case.

Currently, Merck faces more than 27,000 lawsuits over Vioxx, which researchers have linked to increased risks of heart attack and strokes. This latest ruling by Judge Fallon is a result that has great importance. The fact that the jury's award of punitive damages was again upheld by the judge who heard the evidence in the case is very important. Merck's conduct was such that justified a punitive damages award without any doubt, and the fact that Judge Fallon has now ruled to that effect on two separate occasions is most significant for future trials.

JUDGE FALLON GRANTS NEW TRIAL IN VIOXX CASE

Judge Eldon C. Fallon has granted a new trial in the Plunkett case that our firm tried in New Orleans back in 2004. The case was tried initially in Houston, Texas, with that trial resulting in a mistrial. On the retrial, which was held in New Orleans after Katrina had hit that city, the jury found for Merck. The primary defense in this case—lack of specific causation, i.e. an alleged failure to show Mr. Plunkett's use of Vioxx caused his heart attacks—was based largely on the testimony of an expert witness. This key witness, a cardiologist, testified that he was Board-certified in both cardiology and internal medicine. It was learned after the case was over that the witness had lied under oath and that he was not Board-certified in either discipline.

That sort of conduct is shocking to say the least and should never be tolerated. Fortunately it wasn't, because the judge in the Plunkett case, which was the first Vioxx case tried in federal court in the Multi-District Litigation or MDL proceedings, granted a new trial based on this misconduct. Mrs. Evelyn Plunkett and her family deserved to win their case

and it is distressing to learn that their loss in New Orleans was based on testimony given by a paid expert witness, who didn't tell the truth about his qualifications. If he lied on that important subject, his credibility on other areas of testimony has to be questioned.

MERCK SUED IN CANADA OVER FOSAMAX DRUG

The first Fosamax case has been filed against Merck & Co. in Canada. The drug maker, which is defending about 27,000 lawsuits filed by users of the painkiller Vioxx, was accused in the Canadian lawsuit of failing to warn consumers that its drug Fosamax may damage jaw bones. The lawsuit, filed in Ontario Superior Court, seeks class action status on behalf of the drug's users. Merck will be required to explain to Canadian consumers what it knew about the risks associated with Fosamax. If the situation is like it is in the United States, Canadians weren't adequately warned of the risks.

As we have previously reported, a number of lawsuits have been filed against Merck in courts in the United States over the risks associated with Fosamax. Complaints were filed in federal courts in states including New York, Florida, and Tennessee. At least 19 lawsuits were transferred for consolidation last year to a judge in New York. Fosamax was approved for sale in Canada in 1995 to help treat osteoporosis. As reported, use of the drug has been linked to an increased risk of developing osteonecrosis, also known as "jaw death."

Fiona Peters, the lead plaintiff in Canada, took the drug between October 2001 and August 2004 and was diagnosed with osteonecrosis of the jaw last year, according to the complaint. It's alleged that Ms. Peters "had no prior issues with bone loss, or bone degradation" and that she "suffered from extreme physical pain resulting from the breakdown of her lower jaw bone and will require further treatment and surgeries." The plaintiffs in the class are

seeking damages, including medical costs, for each person who was prescribed Fosamax. They will also seek punitive damages. It's too early to determine how many Canadians may be involved in the suit.

Source: Bloomberg

FDA WARNED GLAXO ABOUT AVANDIA MARKETING

We wrote about the safety issues relating to Avandia in the June issue. It now appears that GlaxoSmithKline Plc was actually warned by regulators in 2001 against playing down the risk of cardiac disease associated with the diabetes drug. A year earlier, in March 2000, Dr. John Buse, a diabetes expert from the University of North Carolina, Chapel Hill, wrote a letter to the federal Food and Drug Administration (FDA) complaining about the company's "rampant abuse of clinical trial data" related to the drug's cardiovascular safety. The two letters, along with the concerns voiced by the company's own advisers, are good evidence of early concerns about Avandia's impact on the heart. Dr. Buse recently testified in Congress that Glaxo threatened to sue him because he spoke out about Avandia.

In February 2001, the company agreed to change Avandia's warning label to show that studies found an increased risk of heart problems for patients taking the drug in combination with insulin. In July 2001, the FDA warned Glaxo in a letter that its marketers should stop denying or minimizing that patients taking the drug with insulin had an increased risk of "heart failure or other cardiovascular adverse events." Regulators criticized Glaxo for continuing to "engage in false or misleading promotion of Avandia." The FDA sent five warning letters to Glaxo in a two-year period starting in 1999 over the company's advertising and marketing of the diabetes drug. Glaxo never admitted any connection between Avandia and increased risk of heart attacks.

The recent Cleveland Clinic meta-analysis found Avandia users were 43% more likely to have a heart attack. The cardiologists at the Cleveland Clinic were concerned for diabetic patients who are already at a higher risk of heart attack. The Cleveland Clinic study was done by Dr. Steven Nissen, a heart researcher who also was among the first to blow the whistle on Merck & Co.'s Vioxx. Our firm is currently looking over a number of potential claims, but we have established a strict set of standards for taking Avandia cases. Only claims that meet the criteria will be investigated.

INVESTOR LAWSUIT ACCUSES GLAXO OF MISLEADING ON AVANDIA RISKS

An investor lawsuit has been filed against GlaxoSmithKline PLC claiming Europe's biggest drug maker misled shareholders about the safety of Avandia. The class action suit was filed in U.S. District Court for the Southern District of New York against Glaxo and certain of its officers, alleging the company made false statements. The suit claims Glaxo failed adequately to disclose that it had performed a pooled, or meta-, analysis that showed Avandia increased the risk of heart attacks. As reported, Glaxo publicly disclosed its meta-analysis only after Dr. Steven Nissen published his own meta-analysis on heart attack risk, which sent shares in the British-based drug maker into a free fall.

Source: Reuters

DIABETES DRUGS TO GET 'BLACK BOX' WARNING

The Food and Drug Administration (FDA) will require tougher warnings about heart failure on the diabetes drugs Avandia and Actos. The FDA is ordering GlaxoSmithKline to add a "black box" warning to Avandia. It also has ordered Takeda Pharmaceuticals to do the same for its competing diabetes drug Actos. This action, I hope, will

strengthen existing warnings about a condition in which the heart does not adequately pump blood. It is said that the issue is separate from an analysis in the *New England Journal of Medicine* that said Avandia increased the risk of heart attack. Democratic lawmakers in Congress have jumped the FDA and called for increased regulation of the pharmaceutical industry.

Source: MSNBC

HORMONE THERAPY CAN PROMOTE OVARIAN CANCER

Adding to the list of life-threatening conditions caused by hormone therapy (HT) is more research proving that estrogen can promote ovarian cancer. Ovarian cancer affects one in 48 women. It is one of the most difficult cancers to treat, as it offers no symptoms and cannot be found by scans or blood tests until it is in an advanced stage. In fact, in 80% of cases the disease has usually spread and requires advanced surgery and chemotherapy. While HT artificially boosts estrogen in menopausal women, a new study suggests that antiestrogen drugs—the opposite of HT—can prolong life in some ovarian cancer sufferers. Researchers from the University of Edinburgh have found that a new drug, Letrozole, can block the growth of estrogen-sensitive ovarian cancer.

Menopausal women who have undiagnosed ovarian cancer and are using HT could be promoting the disease. Three major studies have highlighted increased risks, including a report in *The Lancet* in May from the British Million Women Study. This revealed that HT has resulted in 1,300 additional ovarian cancers and 1,000 additional deaths from the malignancy. The Edinburgh research, published in *Clinical Cancer Research*, raises the possibility that Letrozole might one day be used for ovarian cancer treatment the way Herceptin is for certain breast cancer.

Antiestrogen drugs have been used for 20 years in the treatment of breast

cancer. But, John Smyth, Professor of Medical Oncology at the University of Edinburgh, and his colleague Simon Langdon, senior lecturer in cancer research, have evidence that such therapy works for some ovarian cancers as well. Professor Smyth says that estrogen can act as a growth promoter of some ovarian cancers; therefore, HT should only be used to treat severe menopausal symptoms and then only for less than five years. Nevertheless, his research suggests that, in those women with estrogen-sensitive tumors, one quarter of the women showed no tumor growth after six months of anti-estrogen therapy, and 33% showed a positive response that delayed the use of chemotherapy. This is good news for those with estrogen-sensitive ovarian cancer, but also further proof that HT can promote hormone-sensitive cancers in some women. Indeed, we have learned, and written of, the proven promoter effect HT has on hormone-dependent breast cancers.

Earlier this year, I wrote of a Prempro case in Philadelphia. That trial ended in late January with a \$1.5 million compensatory damage verdict for the plaintiffs, a husband and wife who are natives of Hot Springs, Arkansas. The trial was split into compensatory and punitive damage phases. But, the trial judge, who died in April, disagreed with the jury's conclusion that punitive damages were warranted in the case. The judge then sealed the jury's punitive damages award. The judge held that that award can be unsealed if an appellate court reversed on the punitive damages issue which has been appealed. A new judge is now overseeing post-trial litigation in the case.

Earlier this year, I also wrote of a \$3 million verdict in another Philadelphia Prempro case. The trial judge in this year's second hormone therapy case has granted a defense motion to set aside that verdict. The jury in the Nelson case returned a unanimous verdict in February in favor of Jennie and Lawrence Nelson of Dayton, Ohio, awarding Mrs.

Nelson \$2.4 million, with the remaining \$600,000 going to her husband. According to lawyers involved in the case, the judge decided, after the plaintiffs had rested their case, that the jurors wouldn't be permitted to consider punitive damages. Now the original verdict for compensatory damages has been reversed and the Plaintiffs plan to appeal.

Our Mass Torts HT team continues to prepare for an HT breast cancer trial scheduled for November 2007 in Minnesota. Ted Meadows, Russ Abney and Melissa Prickett are the primary lawyers handling the HT cases for our firm and will try that case, along with lawyers from the firms of Pearson, Randall & Schumacher, P.A., located in Minneapolis, Minnesota, and Littlepage Booth in Houston, Texas. Our Mass Torts lawyers are also in the process of preparing other HT cases for trial.

Sources: *Times Online, The Legal Intelligencer*

DEPUTY U.S. MARSHAL SUES ZICAM MAKER OVER LOSS OF SMELL

A deputy U.S. marshal residing in West Virginia has filed suit against the maker of a popular cold remedy, saying it caused him to lose his sense of smell, which is critical to his line of work. The deputy marshal, 42, who works in and around Charleston, West Virginia, says he relies on his sense of smell to detect working methamphetamine labs, which have a distinctive odor sometimes described as similar to the smell of ammonia or rotten eggs. Since he took the over-the-counter nasal spray Zicam for a cold in October, he says in his lawsuit filed in state court, his sense of smell and taste are not as keen.

Named as defendants in the April 27th lawsuit are Matrixx Initiatives and its subsidiary Zicam LLC. There have been more than 400 similar lawsuits filed against Matrixx since October 2003. The companies are blamed for not warning the marshal of the potential risks caused by the presence of zinc in the nasal spray, which hit the market in 1999. Matrixx

settled 340 lawsuits last year relating to Zicam for \$12 million. The Phoenix-based manufacturer stands by the product and says that when used properly, Zicam does not cause users to lose their sense of smell, also known as anosmia.

A scientific advisory board convened by Matrixx in 2004 to study the claims found that they largely lacked scientific merit. The board determined that the major causes of anosmia are upper respiratory infection and nasal and sinus disease, which they said are "ever-present in the population of Zicam users." They said further that "none of the Zicam gel approaches the smell tissue when Zicam is used as directed, and there is only scant and questionable evidence that even trace amounts can reach the upper nasal cavity when the product is egregiously misused." In his suit, the marshal is seeking potential lost earnings, medical costs, and damages for pain and suffering.

Source: *Insurance Journal*

JURY RETURNS VERDICT AGAINST ROCHE IN ACCUTANE TRIAL

The jury in the New Jersey trial involving Accutane recently returned a verdict of \$2.62 million against Roche Holding AG. The plaintiff, an Alabama man who blamed his inflammatory bowel disease on the acne medicine, was involved in the first trial of about 400 lawsuits involving Accutane. The jury found the drug was a cause of the disease in Andrew McCarrell, a 36-year-old computer manager, who testified he had severe diarrhea, needed surgeries, and developed depression after taking Accutane in 1995 and becoming very sick a year later. One of the persons on the jury that found Roche failed to warn of the risks stated after the trial:

We'd like to send a message to Roche to clearly do further testing and evaluations. We also want to make it clear that they need to address their warning label suffi-

ciently because too many people are at risk of permanent injury.

Accutane is made by Roche unit Hoffmann-LaRoche Inc. of Nutley, New Jersey. The panel of six women and four men awarded \$2.5 million in damages and \$119,000 for past medical expenses. However, jurors found Roche didn't violate New Jersey consumer fraud law in its marketing of Accutane. Superior Court Judge Carol Higbee had previously dismissed a punitive damages claim, ruling there was insufficient evidence for a punitive damages claim to go to a jury.

A plaintiff's expert on gastroenterology, Dr. David Sachar, testified that Roche hasn't done any clinical studies to determine whether Accutane causes inflammatory bowel disease. About 13 million people have taken Accutane since it was introduced in 1982. Roche lost patent protection on the drug in 2002 and continues to sell it, but with generic competition. As reported, Accutane also has been associated with birth defects and depression. The FDA warned in March that buying Accutane over the Internet raises the risk that patients will have babies with birth defects. The FDA imposed tougher restrictions on Accutane in March 2006 based on reports of deformities and low intelligence in children whose mothers took the drug during pregnancy. Internet pharmacies may bypass these rules and distribute products with counterfeit and potentially dangerous ingredients, according to the FDA.

Source: *Bloomberg*

BAYER SUED OVER ALLEGED MAGNEVIST DEATH

A lawsuit was filed recently against a unit of Germany's Bayer AG, claiming a contrast agent for magnetic resonance imaging (MRI) killed a 24-year-old Ohio resident. Trevor A. Drake had received his second injection of Magnevist, which contains the heavy metal gadolinium, before undergoing an MRI for end-

stage kidney disease at the Cleveland Clinic. His mother is seeking compensatory and punitive damages. The lawsuit against Bayer Healthcare Pharmaceuticals claims that Magnevist caused a skin and joint disease known as nephrogenic systemic fibrosis, which was fatal to the victim. In 2006, the Food and Drug Administration acknowledged in a public health advisory that there were 200 reports of the skin and joint disease following exposure to gadolinium-based contrast agents. The Drake lawsuit was filed in U.S. District Court in Cleveland, Ohio. The law firm of Spangenberg, Shibley & Liber is representing the plaintiff in this case, which will be followed with interest.

MRI CONTRAST AGENTS GIVEN FDA WARNING

The U.S. Food and Drug Administration (FDA) recently asked manufacturers of all gadolinium-based contrast agents to include a new boxed warning on the product label. These contrast agents are used to enhance the quality of magnetic resonance imaging (MRI). Gadolinium can place patients at risk for developing a potentially fatal disease known as nephrogenic systemic fibrosis (NSF) or nephrogenic fibrosing dermopathy (NFD). People who develop NSF or NFD may experience a thickening of the skin and other organs, which can limit their ability to move or extend joints and can lead to significant pain and even death. Other problems may include dark patches on the skin that appear rough and hard with raised plaques or papules, which are elevations of the skin. Joint and bone pain, as well as swelling of the feet and hands, have also been reported. The FDA first warned about NSF and NFD associated with gadolinium in June of 2006 and again in December of 2006. As of April of 2007, the FDA had received a considerable number of additional cases involving these conditions. There are five gadolinium-based contrast agents that are FDA-approved. One is the Omniscan Contrast Dye, manufactured

by GE Healthcare. It is designed for intravenous use in MRI for the brain and the spine. In a recent study, five of the nine patients diagnosed with NSF received an MRI involving Omniscan Contrast Dye. Other studies have shown similar results. The other gadolinium-based agents include OptiMARK, Magnevist, MultiHance, and Prohance. Manufacturers of these products include Bayer Schering Pharma, GE Healthcare, Tyco Healthcare, and Bracco Diagnostic, Inc. We are currently evaluating these gadolinium-based contrast agents involving patients who have developed nephrogenic systemic fibrosis or nephrogenic fibrosing dermopathy. At this point, Leigh O'Dell is the lead lawyer handling these cases for the firm.

COURT ALLOWS WHISTLE-BLOWER SUIT AGAINST SCHERING

A court in New Jersey ruled recently that four former employees of drug maker Schering-Plough Corp.'s Argentinian subsidiary can sue over allegedly being fired for complaining about illegal marketing practices, including bribing doctors to boost drug sales. The ruling by a three-judge panel of the Appellate Division means the employees, terminated in 2003, can proceed with most of their lawsuit, which had been thrown out by a lower court. The suit names the New Jersey-based company and five executives as defendants. The four longtime employees at Laboratorios Essex SA allege they were abruptly terminated after disclosing "widespread unethical and illegal marketing and sales practices." They claim Schering-Plough engaged in "the pervasive and routine bribing of doctors and public officials" to boost sales of the company's cancer and infection-fighting drugs in Argentina.

The plaintiffs say they were black-listed in the industry for having "blown the whistle" on "corrupt acts committed by or with the complicity and approval of the defendants from their Kenilworth, New Jersey, headquarters." The three men and one woman who filed

suit say they had worked for Schering-Plough for between 10 and 25 years and were in fairly senior positions when they brought to the company's attention what they thought were violations of law. The appellate court agreed with the original lower court ruling on one issue. The ex-employees' claims they were defamed by Schering-Plough and prevented from getting other jobs in the pharmaceutical industry in Argentina will not be heard in New Jersey. But, the appellate panel overruled the trial court and ruled the plaintiff's whistleblower claims should be heard in New Jersey.

Source: *Associated Press*

Pfizer Faces Criminal Charges in Nigeria

Officials in Nigeria have brought criminal charges against pharmaceutical giant Pfizer for the company's alleged role in the deaths of children who received an unapproved drug during a meningitis epidemic. Authorities in Kano, the country's largest state, filed eight criminal charges related to the 1996 clinical trial, including counts of criminal conspiracy and voluntarily causing grievous harm. They also filed a civil lawsuit seeking more than \$2 billion in damages and restitution from Pfizer, the world's largest drug company.

The government alleges that Pfizer researchers selected 200 children and infants from crowds at a makeshift epidemic camp in Kano and gave about half of the group an untested antibiotic called Trovan. Researchers gave the other children what the lawsuit describes as "a dangerously low dose" of a comparison drug made by Hoffmann-La Roche. Nigerian officials say Pfizer's actions resulted in the deaths of an unspecified number of children and left others deaf, paralyzed, blind or brain-damaged. The lawsuit contends that the researchers did not obtain consent from the children's families and that the researchers knew Trovan to be an experimental drug with life-threatening side effects that was "unfit for human use."

The U.S. Food and Drug Administration (FDA) never approved Trovan for use in treating American children. After being cleared for adult use in 1997, the drug quickly became one of the most prescribed antibiotics in the United States. But Trovan was later associated with reports of liver damage and deaths, leading the FDA to restrict its use in 1999. It remains available in the United States, but European regulators have banned it.

Source: *Washington Post*

SOME BOSTON SCIENTIFIC CLAIMS CAN PROCEED

A federal judge in Minnesota has ruled that some product liability claims against Boston Scientific Corp. over heart defibrillators can proceed, rejecting the medical device company's motions to dismiss them. Guidant Corp., which Boston Scientific bought last year, continued to sell heart rhythm management devices after learning of possible defects, Judge Donovan Frank of the U.S. District Court in Minnesota said. In a ruling issued on June 12th, the judge said that this case "concerns the issues of whether, how, and to whom information was shared...about a device with an alleged defect." Boston Scientific, which bought Guidant Corp. last year to acquire Guidant's portfolio of heart devices, recalled more than 100,000 of the products between 2005 and 2006.

Source: *Reuters*

Ortho Evra Update

Recently several physicians in Tennessee have taken a stand against the birth-control patch Ortho Evra. The risks associated with this drug were serious enough to compel these doctors to no longer prescribe Ortho Evra. Hundreds of patients from one Tennessee women's health group received letters citing an American College of Gynecology study that showed a greater risk of deep vein thrombosis in women using

Ortho Evra. Deep vein thrombosis is a blood clot that, in some cases, can break loose and travel through the blood stream to the lungs, causing a pulmonary embolism.

Ortho Evra is a once-a-week transdermal birth control patch that releases hormones that are absorbed directly into the bloodstream, as opposed to ingesting them into the body as with the traditional birth control pill. This causes an increased exposure to estrogen of up to 60%, putting users at a greater risk of developing dangerous adverse effects, including blood clots, pulmonary embolism, heart attack, stroke, deep vein thrombosis, and death. Thus far, we have filed several Ortho Evra lawsuits involving injuries like or similar to those described above. We are currently investigating and evaluating a number of other potential claims. Chad Cook is the lead lawyer handling these cases for our firm.

X. BUSINESS LITIGATION

AN UPDATE ON OUR AMERIQUEST LITIGATION

Our firm has filed two significant lawsuits in Alabama against Ameriquest for selling unsuitable mortgage products. The first one, filed in Barbour County, accuses Ameriquest of engaging in predatory lending by making a mortgage loan that was unsuitable for plaintiffs. The second, filed in Montgomery County, accuses Ameriquest of making an unsuitable mortgage and then justifying it through their internal system by falsifying the Plaintiff's income.

Both of these cases involve adjustable rate mortgages that contained prepayment penalties. When the short initial fixed-rate period ended, the Plaintiffs were shocked to find their interest rates rise to an unaffordable level. These cases are part of a much broader problem of predatory lending where lenders such as Ameriquest breach their own internal

standards, as well as industry standards, just to create loan volume. The result is that vulnerable borrowers end up with a product they don't understand and a payment they will not be able to make, ending in the loss of their home.

NAVISTAR SUES FORD FOR BREACH OF CONTRACT

Navistar International Corp. has filed a lawsuit against Ford Motor Co. for breaching a diesel engine contract covering F-150 pickup trucks. This is the latest development in the legal battle between the two companies. The suit filed by the Illinois-based truck and engine maker seeks "hundreds of millions of dollars" in damages. Navistar, the exclusive supplier of diesel engines to Ford's Super Duty pickups since 1979, said Ford plans to develop a new diesel engine designed by International Truck and Engine Corp., Navistar's principal operating company.

According to the lawsuit, Ford is planning to make a 4.4-liter diesel engine for the F-150 by late 2009 or 2010, and that would violate the automaker's contract with Navistar. The lawsuit alleges that International spent millions of dollars to develop a next-generation diesel engine for vehicles, including the F-150 pickups, for which Ford previously had not offered diesel engines. Navistar claims Ford had agreed International would make the new engines for Ford in North America.

The lawsuit is the latest development in a contract dispute that began in January, when Ford sued Navistar over warranty costs and engine prices related to the contract for the F-Series, the most popular vehicles in their class. That prompted Navistar briefly to cut off diesel engine shipments to Ford, although a judge later ordered the company to resume shipments while the case proceeds. According to Navistar, the lawsuit, filed on June 4th, is separate from previous litigation. In March the two companies agreed to try to resolve the contract dispute and also

agreed to a court order that required Navistar to continue to ship the engines and Ford to keep paying for the engines without deductions. Navistar's brief halt of diesel engine shipments threatened to disrupt production of the Super Duty, one of Ford's most profitable vehicles and a key launch this year.

Source: Reuters

BUSINESSMAN WINS LAWSUIT OVER LUMBER DEAL

In a recent business lawsuit, a Hawaii state court jury awarded more than \$36 million in damages to a Houston businessman. The claim was that the businessman was secretly cut out of the sale of one of the state's largest lumber suppliers to a Cleveland, Ohio-based investment firm. Key Principal Partners LLC, an affiliate of financial services firm KeyCorp, was ordered to pay Richard R. Foreman \$12.1 million in compensatory damages and \$13.6 million in punitive damages for leaving him out of the sale of Honsador Lumber Corp. in 2004. Under Hawaii's unfair competition law, however, the violation allows the plaintiff to collect triple the \$12.1 million, or \$36.3 million, instead of taking the punitive damages. It was alleged that a group of investors led by Foreman had reached an agreement to buy Honsador for \$28 million. Key Principal had agreed to join his venture, but then secretly negotiated a deal with the Honsador owner for the higher amount. The businessman filed suit, and it's pretty obvious that the jury felt that the plaintiff had been cheated.

Source: National Law Journal

SETTLEMENT REACHED IN FLORIDA CHECK CASHING CASE

A 2000 lawsuit alleges that The Check Cashing Store, in Broward, Miami-Dade and Palm Beach counties, violated Florida laws by charging more than the legally permitted maximum interest rate on the loans. The suit alleged that a customer would make out a check to the

store and receive cash equal to the face amount of the check minus the fees charged by the store. The customer would also sign a form agreeing that the store would hold the check for a set period, usually two weeks. At the end of that time, the customer could either "buy back" the check or allow the check to be deposited by the store for its face value.

The store contends in court documents that it engaged in legally authorized check-cashing transactions, and denies that it ever violated any laws. Nevertheless, the parties have reached a settlement, under the terms of which the store will pay \$7 million into a fund. Lawyers' fees, costs and expenses associated with the litigation, which will be capped at \$2.1 million, will be paid from that fund. The remaining \$4.9 million will be divided among the estimated 70,000 people who are eligible to file claims. The amount each person receives will depend on the number of people who file claims and the amount of fees each paid to the store.

The case is limited to those who engaged in payday loan transactions before September 2001, when there was no law allowing such transactions. In October 2001, the Florida Legislature amended the Money Transmitters Act, licensing check-cashing operations to charge a fee and engage in payday loans. The settlement has received preliminary approval from the judge in the case. A final hearing is set for the 25th of this month. The judge is expected to approve the settlement.

XI. INSURANCE AND FINANCE UPDATE

GOVERNOR SPITZER NEGOTIATES SETTLEMENT IN WORLD TRADE CENTER CASE

New York Governor Eliot Spitzer and Insurance Superintendent Eric R. Dinallo have negotiated a \$2 billion set-

tlement between Silverstein Properties and seven insurance companies covering all outstanding insurance claims arising from the September 11th terrorist attack on the World Trade Center. The agreement, the largest in regulatory history, ends almost six years of litigation. The insurance companies involved in the settlement are Travelers Companies, Inc., Zurich American Insurance Co., Swiss Reinsurance Co., Employers Insurance Company of Wausau, Allianz Global Risks US Insurance Co., Industrial Risk Insurers (now owned by Swiss Reinsurance Co.), and Royal Indemnity Co. With these insurance claims resolved, Silverstein Properties and the Port Authority can now proceed to obtain the financing needed to rebuild.

Source: *Insurance Journal*

FLORIDA POLICYHOLDERS SETTLE WITH STATE FARM

A court in Florida has approved a class action settlement on behalf of more than 12,000 State Farm Insurance policyholders in that state. Under the settlement the members of the class will receive 100% of the damages they requested in a \$6.8 million settlement of claims filed last year. It was alleged the insurer refused to pay replacement costs of screen enclosures damaged by Hurricanes Katrina and Wilma. State Farm depreciated the cost of screen enclosures damaged by the hurricanes, allowing it to pay significant discounts to replace the screens. The plaintiffs had argued that State Farm's policy directly contravened the language of the policyholders' agreements. More than 12,000 State Farm policyholders in Florida will be made completely whole.

The lawsuit was brought by one plaintiff on February 6, 2006, who brought claims on behalf of himself and all Florida homeowners who submitted claims to State Farm for damages to screening enclosures during hurricanes Katrina and Wilma in 2005. After more than a year, the parties agreed to a settlement that stipulates State Farm will:

- Pay more than 12,000 policyholders 100% of the damages claimed in this class action.
- Establish a fund of nearly \$6.79 million to make payments to class members.
- Agree to pay the costs of administering the settlement and all attorneys' fees and other expenses in addition to the payments to class members.
- Pay class members checks within 60 days after the final judgment has been entered

This settlement is significant because the plaintiffs will receive 100% of their losses. Eric Lee of Lee & Amtzis and Kopelman & Blankman located in Boca Raton, Florida, were the lead lawyers for the class plaintiffs.

Source: *Insurance Journal*

ATTORNEY GENERAL SUES STATE FARM OVER FAILED SETTLEMENT

Mississippi Attorney General Jim Hood has filed suit against State Farm Fire and Casualty Co. over a failed settlement of Hurricane Katrina claims. As we all know this storm ravaged Mississippi's Gulf Coast in late August 2005. The Attorney General's suit accuses State Farm of failing to honor the terms of an agreement with the state for a mass settlement of policyholder claims over storm damage. In January, the Attorney General agreed to drop State Farm from a civil suit his office had filed against several insurance companies for refusing to cover damage to homes from Katrina's storm surge. State Farm's agreement with the Attorney General and lawyers for South Mississippi homeowners called for the company to pay at least \$50 million to roughly 35,000 policyholders who hadn't sued the company, but could have their claims reopened. I talked with the Attorney General on another matter recently and during that conversation he told me State Farm had actually backed out on a firm agreement. The Attorney General is

seeking compensatory and punitive damages in the lawsuit.

Source: *WAPT.com*

STATE FARM SETTLES A KATRINA LAWSUIT

Just as a jury was to be selected, State Farm Fire & Casualty Co. settled one policyholder's lawsuit relating to Hurricane Katrina damage. Terms of the settlement between State Farm and the policyholder, Michael McCoy, who lives in Pass Christian, were not disclosed. Mr. McCoy was seeking full payment of his claim, \$189,402, plus \$5 million in punitive damages.

Source: *Associated Press*

ALLSTATE SETTLES KATRINA CASES

Allstate Insurance Company has settled all of its Katrina cases in Mississippi. I understand that Allstate has paid out a total of \$3.6 billion in insured losses as a result of the storm damage to policyholders. Terms of this last settlement are confidential.

AIG SETTLES CASE INVOLVING MORTGAGE FEES

American International Group Inc. (AIG) has settled a claim with a federal banking regulator and under the agreement will pay a total of \$178 million. It was alleged that AIG charged homeowners excessive mortgage fees and didn't properly consider their credit ratings. AIG, an insurance giant that also runs a home mortgage business, settled the claim with the federal Office of Thrift Supervision. Some of the money will apparently be used to help borrowers with weak credit who face foreclosure after taking out mortgages from AIG Federal Savings Bank between July 2003 and May 2006. AIG Federal Savings is a Delaware-based unit of AIG, which is based in New York. Some of these borrowers may qualify for a refund of mortgage fees instead of a new mortgage.

Under the terms of the settlement,

AIG is required to identify the affected borrowers and provide aid to them. The company also must hire an independent consultant to monitor its process and report back to the government. AIG also agreed to pay \$15 million over three years to nonprofit groups that promote financial literacy and credit counseling. Interestingly, the settlement will have a small financial impact on AIG, which reported first-quarter profit of \$4.13 billion. But it could signal the direction federal regulators aim to take to clean up abusive mortgage-lending practices that critics say were common during this decade's housing boom. John Reich, director of the OTS, says that his agency:

...is taking the action necessary to address problems in the mortgage markets and protect the interests of homeowners in jeopardy of losing their homes.

The agreement with AIG, according to reports, could provide a model for institutions "to address important consumer protection issues arising from their past lending practices that were harmful to certain borrowers." During a regular yearly examination of AIG Federal, loans outsourced to another AIG subsidiary, Plymouth Meeting, Pa.-based Wilmington Finance Inc., contained excessive fees and did not adequately consider borrowers' credit status. The foreclosure rate nationwide is rising at an annual rate double that of two years ago. Nearly 2 million adjustable-rate mortgages are forecast to reset at higher rates over the next two years, suggesting the foreclosure rate has not peaked.

According to the National Association of Realtors, sales of existing homes are expected to drop 4.6% this year to 6.2 million while the median home price is expected to fall 1.3% to \$219,000. That would be the first annual drop since the trade group began keeping records in the 1960s. In an earlier action by regulators against the company, AIG agreed in February 2006 to pay \$1.64 billion to settle an investigation into its accounting practices by the Justice Department,

the Securities and Exchange Commission, and then-New York Attorney General Eliot Spitzer.

Source: *Insurance Journal*

XII. PREDATORY LENDING

PREDATORY LENDING LAW PASSED IN MAINE

Legislators in Maine have sent a strong bipartisan message to the loan sharks—no more predatory lending will be allowed in their state. Recently, the Maine Senate followed the House in unanimously passing a bill that cracks down on mortgage lenders that charge high fees and engage in practices that lead homeowners into financial trouble. Governor John Baldocci signed into law the bill, which seeks to tighten state regulations to prevent predatory lending practices. The new law will help consumers by putting limits on fees and banning practices of flipping, in which a lender convinces a borrower to refinance without any benefit to the consumer. It also requires lenders that are offering a sub-prime loan to consider a person's income and debt to make sure they can afford the loan. Governor Baldocci, who believes that the law provides a model for national legislation, stated:

There has been much national attention shedding light on the unfortunate trend of people losing their homes due to predatory lending. I applaud Speaker Cummings and the entire Legislator for recognizing this problem in Maine and for coming up with this important package of protections for homeowners.

The new law will also create new compliance and enforcement provisions to help respond to consumer complaints and weed out predatory lenders, and toughen penalties for predatory

lenders. The legislation was crafted with the help of Costal Enterprises, Inc. (CEI), which offered the first comprehensive study of the impact of predatory impact on Maine homeowners in 2005. CEI provides financial counseling and helps to develop affordable housing. According to their study, CEI found that as a result of predatory lending the rate of foreclosures in Maine was higher than all of New England. Homeowners were losing an estimated \$23 million each year to predatory home lender. A broad coalition of key groups supporting the law included the state's banks, credit unions, AARP, the Maine Council of Churches, NAACP of Portland/Bangor, Four Directions Development Corporation, Maine's Community Action Programs, Coastal Enterprises (a community development corporation dedicated to expanding economic opportunities for low-wealth families and communities), and over thirty additional grassroots, business, and advocacy organizations.

The federal law designed to address predatory lending has not been substantially updated since it was passed in 1994, although both the Federal Reserve Board and Congress have recently held hearings related to the foreclosure crisis in the subprime market, and both bodies are contemplating stronger protections. Maine has given the nation a blueprint for how to work together and how to put in place a comprehensive law to protect consumers from predatory lenders, according to Speaker of the House Glenn Cummings. I applaud the public officials in Maine who are responsible for taking on the predatory lenders and protecting Maine citizens.

Source: Center for Responsible Lending

PREDATORY LENDING SHOULD BE A HUGE ISSUE IN POLITICAL RACES NEXT YEAR

The evils of predatory lending and the terrible effects the practices have on consumers should be widely discussed in political races next year. Hopefully, candidates for president, congress,

and state legislative seats will have to give their positions on such things as payday loans and other lending practices. Those candidates who take campaign money from loan sharks should be identified so that voters can decide whether to support them or not.

XIII. PREMISES LIABILITY UPDATE

\$122 MILLION AWARDED CASE INVOLVING BLAST AT FACTORY

Borden Chemicals, the maker of the resin that exploded at CTA Acoustics (CTA), a Corbin factory in 2003, resulting in seven deaths, will have to pay the owner of the plant \$122 million in damages. A Kentucky jury found that Borden Chemicals was responsible for the explosion and returned a verdict in favor of CTA. The jury ordered \$121 million in damages to compensate for lost profits and damage to the factory and equipment. In addition, the jury awarded \$1 million in punitive damages. The compensatory damage award was the largest in state history. Earlier the families of people killed by the blast, and injured workers, had reached private settlements. CTA makes acoustical and thermal insulation products for the automotive and construction industries, such as the padding on the underside of a car hood. The process includes binding fiberglass with a phenolic resin in ovens.

The powerful February 20, 2003, blast at CTA's Corbin plant occurred when a fire in a malfunctioning natural gas oven ignited a cloud of explosive resin dust, according to federal investigators. Seven men died from burns, and state officials listed another 38 workers as injured, some badly. Investigators said a number of problems led to the blast, including poor cleaning measures at CTA that allowed combustible dust to build up and the failure of Borden Chemical to

explicitly warn customers about the explosive potential of its product.

Borden knew that there was a hazard relating to the potential for fires and explosions relating to resin. After a fatal 1999 explosion involving its resin at a Massachusetts foundry, Borden drafted a letter to customers that included specific information about the potential for dust explosions, but the company never sent the letter. Neither did it change the safety sheets the company includes with bags of resin before the Corbin blast, according to the U.S. Chemical Safety Board. The letter Borden wrote in 2000, but decided not to send, was a smoking gun in the trial and without question was extremely damaging to the defendant. The jury had to decide whether Borden's warnings to customers about its resin were adequate, and whether CTA had acted as a reasonable, prudent company would have acted under the circumstances. The jury found that Borden failed in its duty to adequately warn customers, and that CTA did not violate its duty. CTA lost business after the blast, but built new facilities at another location. The factory now employs almost 500 people in Corbin, nearly as many as at the time of the blast. Borden says it will appeal the verdict. Perry Bentley, who is with the Lexington, Kentucky firm of Stoll Keenon Ogden, represented the corporate plaintiff in the case against Borden.

Source: Lexington Herald Leader

WAL-MART TO PAY \$750,000 TO FAMILY

As a result of a settlement, Wal-Mart, the nation's largest retailer, will have to pay nearly \$750,000 to the family of a suspected shoplifter. The man suffocated as employees held him down in a parking lot outside a store in northeast Harris County, Texas. It was alleged that Stacy Clay Driver died in August of 2005 in a Wal-Mart parking lot, as a person sat on him while he was face-down and handcuffed. One or more people were said to have been on his body and as a result, the man couldn't breathe. The

case went to mediation before it was settled. An autopsy showed that Driver, who was 29 years old, had methamphetamine in his system when he was chased into the parking lot by a "loss prevention" employee at the store.

The man, who was wrestled to the ground on a hot pavement, was suspected of exchanging stolen items to get \$94 worth of store credit on a gift certificate. His death was ruled a homicide caused by asphyxia from neck and chest compression. The autopsy report listed a contributing factor, however, as overheating with methamphetamine toxicity. It appears that the methamphetamine definitely contributed to the man's death, but didn't cause it. Interestingly, a Harris County grand jury in July 2006 refused to indict anyone in the case. Under the settlement \$550,000 will be paid to the family. There was also a structure for the decedent's son, under which he will receive \$25,000 on his 25th birthday, almost \$70,000 when he reaches 30 and \$100,000 on his 35th birthday. At the time of his death, Driver was on probation for a theft case related to a similar gift card scam the previous year at a Wal-Mart in Polk County. In fact, he had signed an agreement to never enter another Wal-Mart store.

This is a case that should teach a valuable lesson to all retail business owners. The lesson is that only reasonable restraint must be utilized when security personnel deal with security matters. What happened in this case—even to a criminal—simply can't be tolerated. Admittedly, it's a difficult problem for retail store operators when it comes to shoplifting. But limits have to be imposed on how to deal with those persons who are suspected of theft or even those who are actually caught in the act. Adequate rules and standards for security personnel, who must be properly trained, are necessary and must be followed. Although it's necessary and proper to apprehend a person who is suspected of committing theft, it's wrong to use grossly unreasonable force—when there is no threat or safety

risk to the security personnel involved—in dealing with the suspected criminal.

Source: *Houston Chronicle*

AMUSEMENT PARKS SHUT DOWN THRILL RIDES

On June 22nd, Six Flags and Cedar Fair shut down eight more thrill rides around the country. This came about after a teenage girl's feet were sliced off during a ride in Kentucky. State inspectors are looking into the Superman Tower of Power at the Six Flags Kentucky Kingdom, where the accident happened on June 21st. The ride lifts passengers 177 feet straight up, and then drops them nearly the same distance at speeds reaching 54 mph. A cable broke loose on the ride, striking the 13-year-old girl in her legs. The Kentucky Department of Agriculture inspects amusement park rides in that state. Apparently, inspectors from the state agency don't know what caused the cable to break. Six Flags shut down similar rides at parks in St. Louis; Gurnee, Illinois; and near Washington as a safety precaution. Six Flags Over Texas, near Dallas, also has a Superman Tower of Power, but apparently, it's not the same ride. Amusement parks must be regulated in all states, and that regulation must be effective. Many of the thrill rides are extremely dangerous, and unfortunately regulation in most states is either ineffective or non-existent. That must change!

Source: *Insurance Journal*

XIV. WORKPLACE HAZARDS

COURTS SPLIT OVER WAL-MART CLASS ACTION SUITS

There was a split decision last month on worker lawsuits against Wal-Mart. The retail giant won one and lost two as state courts in Missouri, New

York and New Mexico split on whether worker lawsuits by workers over alleged unpaid wages should be granted class action status. Appeals courts in Missouri and New Mexico rejected Wal-Mart's bid to derail class action lawsuits. Workers in those states claim in lawsuits they were forced by company policy to work after clocking out and during meal and rest breaks. In New York, however, the state Supreme Court ruled for Wal-Mart, denying class certification for a similar lawsuit. It sided with Wal-Mart's argument that each worker's claim should be handled individually. As reported, Wal-Mart has faced class action lawsuits alleging unpaid work in several states. Workers in Pennsylvania won a \$78 million judgment last year for working off the clock and through breaks. Wal-Mart employees also won a \$172 million verdict in a California case. Both of those cases are on appeal. Wal-Mart settled a Colorado suit over unpaid wages for \$50 million.

Source: *Associated Press*

WAL-MART WORKERS' WAGE AND HOUR SUIT VALID AS CLASS ACTION

In another case involving Wal-Mart, the giant retailer, the New Jersey Supreme Court has ruled that hourly employees, who claim they were forced to work off the clock and to miss rest and meal breaks, may pursue a class action suit in New Jersey. The justices found that the workers had raised common questions of law or fact, that a class action was the superior method of adjudication, and that case-management problems predicted by trial and appeals courts could be overcome. Chief Justice James Zazzali, writing for the court in the case, said:

Here, the class action is just a procedural device. By equalizing adversaries, we provide access to the courts for small claimants. By denying shelter to an alleged wrongdoing defendant, we deter similar transgressions against an otherwise vulnerable class.

The class consists of all current and former hourly employees of 45 Wal-Mart Stores and nine Sam's Clubs in New Jersey during the period May 30, 1996, to the present, a group estimated at 72,000 in number. They allege Wal-Mart, to reduce labor costs and increase profits, systematically declined to honor its contractual promises concerning rest and meal breaks by forcing employees to work through meal breaks, locking them in retail stores after they had clocked out, and coercing them to work off the clock. The lead lawyer for the plaintiffs, Judith Spanier, who is with the firm of Abbey Spanier Rodd & Abrams in New York, said the Supreme Court was merely following decades of precedent. She did not see the ruling as making any change in the law when the court allowed this case to proceed as a class action.

Source: *New Jersey Law Journal*

JURY AWARDS \$40 MILLION TO MAN AFTER UTILITY POLE COLLAPSES

A jury in Denver, Colorado, ruled against Qwest and awarded nearly \$40 million to a man who was paralyzed after a telephone pole he was working on in 2004 collapsed. Andy Blood, who is now 27 years old, had sued Qwest, alleging that the Denver company failed to repair the pole. The company had actually failed to even inspect their poles for safety. The verdict sends a clear message to Qwest that they need to inspect their poles and do what they promised relating to safety. At the time of his injury, Blood was an apprentice lineman employed by Xcel Energy, but the pole was owned and maintained by Qwest. When the pole broke, the man fell 25 feet to the ground, suffering permanent spinal cord injuries.

Blood had climbed the utility pole which had been manufactured in 1957. It was placed into service in 1958 and supported telephone wires and high voltage power lines. While the lineman was working approximately 25 feet off the ground, the pole collapsed, causing both

the pole and the lineman to fall to the ground. As a result, he suffered severe injuries rendering him a paraplegic.

The utility pole broke because of severe deterioration, decay, and rotting of the interior wood of the pole. The pole's structural integrity was weakened to the point that it was not capable of safely supporting the lineman. The rotted, decayed, deteriorated, and weakened area of the utility pole was concealed beneath the surface of the ground and was neither visible nor reasonably detectable by the lineman in the ordinary course of his work. Qwest never had any written practices or procedures for conducting periodic, routine inspection, maintenance, repair or remediation of its wood poles.

Lost wages by the plaintiff in this case amounted to approximately \$4,000,000. His past medical bills were approximately \$897,000, with future medical expenses expected to total approximately \$4,000,000. The plaintiff's lawyers were William L. Keating and Michael O'B Keating, who are with the firm of Fogel, Keating, Wagner, Polidori & Shafner, P.C., who are located in Denver, Colorado. They did an outstanding job in the preparation and trial of this case. Qwest says it will appeal the verdict.

SPRINT WILL PAY \$57 MILLION TO SETTLE AGE-DISCRIMINATION SUIT

Almost 1,700 former Sprint Corp. employees have settled their federal class action age-discrimination lawsuit, which had been pending in the U.S. District Court for Kansas, against the communications company for \$57 million. The employees, who sued after several mass layoffs between October 2001 and March 2003, alleged that a computerized performance management system used in the job cuts improperly targeted employees older than 40. Under the settlement the communications company, Sprint Nextel Corp., will pay a total of \$57 million, including lawyers' fees and costs. The settlement is subject to final

approval by the court, which is expected to occur around the middle of August.

Source: Washington Business Journal

JURY AWARDS \$2 MILLION TO FORMER WAL-MART WORKER

A state court jury in Massachusetts awarded almost \$2 million to a former employee of Wal-Mart after finding the retailer underpaid her and then fired her as a result of gender discrimination. The woman who brought the suit, Cynthia Haddad, worked at Wal-Mart as a pharmacist from 1993 through 2004, before she was fired by the company, according to court papers. The world's largest retailer, which has a history of underpaying its workers, is also facing the biggest sexual discrimination case in U.S. history. In that separate litigation, which has been granted class action status, plaintiffs are charging the Bentonville, Arkansas-based company underpaid and under-promoted women.

In her suit, Haddad charged she was fired for demanding that the company pay her the wage differential and bonuses she was owed for filling a managerial position on an interim basis. She also claimed she was reprimanded for reporting missing drugs to the U.S. Drug Enforcement Administration. Also according to her suit, Wal-Mart officials told her she had been fired for failing to keep the pharmacy secure. Wal-Mart says it may appeal. Ms. Haddad lives in the western Massachusetts town of Pittsfield, about 130 miles west of Boston, and is currently working as a pharmacist at an independently owned pharmacy.

Source: Reuters

OSHA CITES FIRMS IN EXPLOSION WITH 23 VIOLATIONS

Federal officials have cited two companies for 23 health and safety violations and have proposed fines totaling more than \$32,000 in connection with an explosion that destroyed a paint and ink factory in Danvers, Massachusetts in

November of last year. OSHA said ink manufacturer CAI Inc. and custom paint maker Arnel Co. did not have flammable liquid storage tanks vented to outside the building and had inadequate ventilation in areas where flammable liquids were mixed. The companies were also cited for storing and transferring flammable liquids in a production area. OSHA issued 13 serious citations to CAI, and is proposing that the company pay \$18,000 in fines. Arnel was issued 10 serious citations, with \$14,100 in proposed fines. The pre-dawn explosion registered 0.5 on the Richter scale and damaged 270 homes and businesses in the Danversport neighborhood. No one was killed or seriously injured. Investigators found that the blast was caused when flammable vapors collected and then ignited in a seismic explosion.

The U.S. Chemical Safety Board said employees had routinely shut off a ventilation system in part because neighbors had complained it was too noisy. A Board investigator said that on the day of the explosion, steam used to heat chemicals in an unsealed mixing tank was likely left on overnight. Because the ventilation system was off, vapors from the heated chemicals filled the building. It's unknown what ignited the explosion because the building was destroyed.

Source: Insurance Journal

U.S. SUPREME COURT UPHOLDS 180-DAY PERIOD FOR PAY BIAS CLAIMS

The U.S. Supreme Court has handed employers a major victory against pay discrimination suits by limiting severely restricting when employees must file suit over their bias claims. In a case brought by Lilly Ledbetter against Goodyear Tire & Rubber Co., the High Court ruled that an employee must file a complaint with the Equal Employment Opportunity Commission (EEOC) based on an alleged discriminatory event that occurred within the 180 deadline contained in the Title VII of the Civil Rights Act of 1964, whether the employee had reason to know the act

was discriminatory or not. The Court held that employees can't bring a case based on allegedly discriminatory salary or pay schemes that were in effect before the 180-day statutory limitations period preceding the filing of the charge, even if they had no idea before that 180-day period that their pay was lower than that of the opposite gender and they were paid at the discriminatory rate during the statutory limitations period. The 5-4 decision was written by Justice Samuel Alito.

The case arose in 1998 when Ms. Ledbetter sued her employer, Goodyear Tire and Rubber Co., for wage discrimination based on gender. The employee complained that after 19 years at the company's Gadsden, Alabama, plant, she was making \$6,000 a year less than the lowest-paid man doing the same work. It was alleged in the suit that:

several supervisors had in the past given her poor evaluations because of her gender;

- as a result, her pay had not increased as much as it would have if she had been evaluated fairly;
- those past pay decisions affected the amount of her pay throughout her employment; and
- by the end of her employment, she was earning significantly less than her male colleagues.

In its defense, Goodyear denied discriminating against Ms. Ledbetter and argued that she received periodic raises despite being ranked near the bottom of her group of workers. A jury ruled in Ms. Ledbetter's favor and awarded back pay and damages worth \$360,000. The Court of Appeals for the Eleventh Circuit reversed the verdict, holding Ms. Ledbetter had filed her case too late because the company's original decision on her pay had been made years earlier. The Supreme Court upheld the Eleventh Circuit's decision. Rebuilding on a well-established earlier Supreme Court decision, Ms. Ledbetter had contended that each paycheck she received

triggered a new 180-day EEOC deadline. Justice Alito, writing for the majority, agreed with Goodyear and held that Ms. Ledbetter had waited too long to file suit, even though she had not had good reason to believe she was being paid less than similarly-suited men until the 180 days before she filed her required administrative charge of discrimination with EEOC—at which point she complained of the discrimination against her promptly.

Justice Alito stated that Ms. Ledbetter should have filed an EEOC charge within 180 days after each allegedly discriminatory employment decision was made. Justice Ruth Bader Ginsburg and three other justices dissented. Justice Ginsburg stated: "In our view, this court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination." The court's decision has been criticized widely by a number of groups. Obviously, Big Business has to like it. The National Chamber Litigation Center, a legal institute allied with the U.S. Chamber of Commerce, applauded the ruling. But, civil rights and a number of consumer advocacy groups are outraged over the ruling, and proposed legislation being prepared in Congress to try to amend the statute and overturn the Court's decision. Marcia Greenberger, of the National Women's law Center, stated: "The Court's decision is a setback for women and a setback for civil rights. The ruling essentially says tough luck to employees who don't immediately challenge their employer's discriminatory acts, even if the discrimination continues to the present time."

Source: *Insurance Journal*

LAWSUIT ARISING OUT OF COAL MINES DEATHS FILED IN KENTUCKY

A lawsuit was filed recently arising out of the underground explosion that killed five miners last year. The lawsuit cited numerous safety violations issued by regulators against Kentucky Darby LLC, coal boss Ralph Napier, and Jericol

Mining, which provided management, planning, engineering and safety training to Darby Mine No. 1. The plaintiffs also sued the Pennsylvania company that makes the emergency air packs used by the victims. The lawsuit was filed in Harlan County, Kentucky, a year and a day after the blast, which was ignited by miners Jimmy Lee and shift foreman Amon "Cotton" Brock as they used an open torch near a methane leak. The suit alleges that a mine supervisor and a coal company put production over safety before the explosion.

Four of the widows and Paul Ledford, the sole survivor, allege Napier hired Brock as a foreman despite warnings that Brock was an unsafe foreman who regularly violated safety laws and placed coal production ahead of safety. Brock also was one of two foremen who supervised construction of the underground seals that were supposed to isolate methane, a naturally occurring gas in coal mines, according to the complaint. The protective seal at the explosion site was poorly constructed and failed to meet federal guidelines, according to investigators.

Brock and Lee died at the scene of the blast. Roy Middleton, Paris Thomas Jr., and Bill Petra died from carbon monoxide poisoning and smoke inhalation while trying to escape. Ledford suffered permanent damage to his lungs from smoke inhalation. The named defendants include the manufacturer and distributors of metal straps used as roof supports; CSE Corp., which manufactured the emergency air packs Middleton, Thomas, Petra and Ledford used; and the distributor of the air packs. Monroeville, Pennsylvania-based CSE has about 65% of the national market for the packs, which typically provide miners with one hour of clean air. The plaintiffs claim the packs were defective, although investigators with the U.S. Mine Safety and Health Administration concluded the devices worked properly in the Darby disaster.

Source: *Insurance Journal*

UNINSURED ROOFING FIRM FINED FOR EMPLOYEE'S DEATH

A Burlington, Vermont roofing company is facing \$18,000 in fines for a series of alleged safety violations after an employee fell to his death last December. A-One Roofing has been cited by the Vermont Occupational Safety and Health Administration with three alleged violations stemming from the investigation into the death of a 24-year-old worker. A-One Roofing is appealing. The state argues A-One didn't ensure that a fall protection system was in place, that materials were stored more than six feet from the edge of the roof, and that the employees had not been adequately trained. Also, the company did not have workers' compensation insurance in place, which led to a separate \$5,000 fine. Because the proposed fines have been appealed, the quasi-judicial VOSHA Review Board will hold a hearing at which VOSHA will have to prove the violations occurred. The worker's widow is suing A-One Roofing and the Burlington Housing Authority, which owned the property Bell was working on.

Source: *Insurance Journal*

XV. TRANSPORTATION

JURY AWARDS \$21 MILLION IN DEATHS FROM 14-CAR ACCIDENT

A jury in Louisiana has ordered three Texas-based trucking companies to pay \$21.4 million to the families of two persons who were killed in a 14-car pileup in 2003. The victims' families had filed a wrongful death lawsuit against AFTCo Enterprises, Ergonomic Transportation Solutions Inc., and VC Enterprises LLC in 2004. State police found narcotics, alcohol, pornography, and other illegal items inside the truck that caused the collisions. Two individuals were engaged in sex in the back of the 18-wheeler at the time of the crash. The driver of the 18-wheeler whose conduct

caused the collision was found to be under the influence of narcotics at the time of the crash. He pleaded guilty to two counts of negligent homicide and was sentenced to five years in prison, with all but one year of the sentence suspended. Obviously all of this bizarre behavior leading up to the crash got the attention of the jurors, as it should have.

Source: *The Daily Advertiser*

BUSH ADMINISTRATION IS ENDANGERING SAFETY ON OUR NATION'S HIGHWAYS

Organizations representing highway and truck safety groups, labor, and independent truck drivers have joined members of Congress to criticize the Bush Administration for ignoring federal safety laws concerning the implementation of the pilot program allowing trucks from Mexico to travel throughout the United States. The groups—including Advocates for Highway and Auto Safety, the International Brotherhood of Teamsters, the Owner-Operator Independent Drivers Association, Public Citizen, and the Truck Safety Coalition—released an analysis of the U.S. Department of Transportation's (DOT) program last month that showed the agency failed to comply with federal law. The groups also released a recent opinion poll revealing the public's opposition to the plan.

We have written about the ill-advised pilot program in previous issues. In February, the Administration announced plans to conduct a "pilot program" allowing up to 1,000 Mexico-domiciled trucks to travel beyond the current border zones. In 2001, Congress had passed legislation that put a premium on upgrading inspection facilities, computer databases, and other safety-related requirements before opening the southern border for long-haul trucks. Even though the Bush Administration has still not finished implementing the safety requirements in that law, the President decided this year to rush ahead with the pilot program in an attempt to open the border. Although serious safety problems with the program have been identified,

they have been ignored by this Administration. Congress has ordered the Federal Motor Carrier Safety Administration (FMCSA), which is responsible for implementing the Administration's cross-border pilot program, to obey a number of requirements that the agency is still ignoring. These provisions, signed into law by the president, require:

- the U.S. Department of Transportation (DOT) to follow all applicable rules and regulations concerning the formulation of pilot programs and cross-border trucking;
- Mexico-based trucking companies and trucks to comply with all applicable U.S. laws; and
- the Administration to ensure that the operation of these trucks within the United States would not have a negative impact on safety.

The Bush Administration, ignoring highway safety, has pushed forward without meeting the safety provisions mandated by Congress. Less than three weeks after the legislation was signed into law, FMCSA published a notice in the Federal Register on June 8th that, in effect, declared that the agency had met all of the congressionally mandated safety requirements to open the southern border. That was not true given that the FMCSA has:

- failed to provide sufficient opportunity for public notice and comments;
- failed to provide the public with information about the pilot project;
- failed to comply with the requirements of §§350 of the FY2002 DOT Appropriations Act on the safety of cross-border trucking;
- failed to comply with requirements of the pilot program law to test innovative approaches and alternative regulations under 49 USC §§31315(c);
- failed to keep its promise to check every truck every time for compliance; and

- failed to establish criteria that are subject to monitoring during the pilot program.

That sort of thing is inexcusable and must not be tolerated. Putting potentially dangerous long-haul trucks on our nation's highways with no regard for safety is impossible to comprehend or defend and is very dangerous. It puts innocent people on our highways at great risk. In persisting with its current program, FMCSA is disregarding the will of Congress and the safety of the American people. The Bush Administration should be called on the carpet for its callous disregard for safety on our nation's highways. Unfortunately, their action relating to this issue is typical of what they are doing to the public in other areas of concern.

Source: *Public Citizen*

CASE INVOLVING SEVERE BURNS SETTLED

A lawsuit arising out of a highway crash involving severe burns was settled for \$31.25 million last month. The plaintiff who brought the suit was severely burned when his car burst into flames after a tow truck crashed into it on a highway nearly six years ago. The 27-year-old victim agreed to the settlement with three defendants during an eight-week trial that ended on June 8th. Under the terms of the settlement, AAA Mid-Atlantic, a Philadelphia, Pennsylvania auto club that provides roadside assistance, agreed to pay \$27.25 million, while two other co-defendants each will pay \$2 million to the plaintiff. The highway crash occurred in 2001.

The plaintiff suffered third degree burns to 58% of his body and has had 40 surgical procedures since he was injured in the crash. He had to undergo many reconstructive surgeries and has had a great deal of pain as a result of the burns. At the time of the crash, the plaintiff was a 21-year-old student driving to Cook College at Rutgers University in New Brunswick, New Jersey when his 1984 Mustang became disabled in the center lane of Route 1 in Woodbridge,

New Jersey at 9:15 a.m. Although the reason the car stalled was never determined, the plaintiff had been stopped for a short time when a flatbed tow truck traveling more than 50 mph crashed into the rear of his car, causing the Mustang to burst into flames. The tow truck was in route to answer another unrelated roadside call when it hit the Mustang.

The plaintiff, who was disfigured in the fire, spent 50 weeks at the hospital and returned for various surgeries and rehabilitative programs. He continues to suffer from the loss of use of his left arm and has limited use of his right hand. In addition to AAA and the tow truck company, Campana Systems, a Canadian company that sold an on-board computer to AAA to dispatch road services, also took part in the settlement. The jury found AAA Mid-Atlantic largely liable for the damages. Even though the case was settled, the jury was sent out to deliberate because the parent company of AAA, headquartered in Florida, and Mentor Engineering, which designed the on-board computer, also were named defendants. They didn't take part in the settlement and the jury found no fault with those companies. To his credit, the plaintiff has become a volunteer counselor at a local hospital, offering advice and support to other burn victims. The plaintiff was represented by Alfred Dimiero of Mella and Dimiero, a law firm located in Summit, New Jersey. Obviously, he did an outstanding job for his client in this case.

ALABAMA IS THE THIRD WORST STATE IN RAIL CROSSING ACCIDENTS

According to records maintained by the Federal Railroad Administration (FRA), in 2006 Alabama had 125 accidents involving motor vehicles and trains in what was a fairly typical year for the state. According to the FRA's most recent annual report, Alabama has 3.35 accidents for every 100 railroad crossings, ranking the state third worst, behind Arizona and Louisiana. Alabama has an even worse record for highest rate of

deaths, ranking second, behind only Louisiana, with an average of 0.42 deaths per 100 crossings. The state had four deaths in highway-rail accidents in 2006.

Alabama has 3,400 public railroad crossings, 2,200 of which have no flashing lights or gates. With \$4.9 million in federal money earmarked for railroad crossing improvements in the state annually, ALDOT adds lights or gates to about 30 crossings a year. The state maintains a prioritized list of crossings and makes improvements based in large part on the rankings. The FRA uses a computer model to rank railroad crossings by the likelihood of accidents. The five Alabama crossings where accidents are most likely are in the following counties: Jefferson, Escambia, Conecuh, Talladega, and Mobile. Since 1975, the FRA shows that there have been 6,664 rail crossing accidents in our state, resulting in 532 deaths and 2,348 persons injured. You can get more railroad accident data by going to <http://safetydata.fra.dot.gov/OfficeofSafety/default.asp>.

Source: *The Birmingham News*

XVI. NURSING HOME UPDATE

ALL ALABAMA NURSING HOMES NOW HAVE SPRINKLER SYSTEMS

Alabama is among the first states in the nation to have automatic fire sprinkler systems throughout every nursing home. The State Board of Health, by an amendment in 2004 to the nursing facilities licensure rule, required all nursing homes to have complete sprinkler systems. As of 2004, 74 of Alabama's nursing homes had no sprinkler systems or partial sprinkler systems. Three years later it appears that all nursing homes in the state have complied. All but eight of Alabama's 313 assisted living facilities and specialty care assisted living facilities also have fire sprinkler systems. The eight that do not all have fewer than

four beds. This is a positive development and those responsible should be commended. For information on the report, you can go to .

NURSING HOME FACES \$250,000 IN FINES

The Mount Royal Towers nursing home, located in Jefferson County Alabama, will be hit with about \$250,000 in fines for serious violations over almost six months. Mount Royal Towers avoided losing federal funding by reaching substantial compliance with federal requirements by June 15th beating a deadline of June 16th. Over a period of about six months, Mount Royal's nursing home operation couldn't get federal or state funding to take new patients because of continual problems. California-based Health Care Group, which owns the nursing home, says the company is appealing the fines which were recommended by the federal Centers of Medicare and Medicaid Services.

In December 2006, the facility was cited by state Department of Health authorities for putting patients' health and safety in immediate jeopardy, as in two cases where patients wandered unnoticed. In one case, a vision-impaired woman left the nursing home twice within a week. In the other case, according to state health records, a patient pushed his wheelchair to the outside steps before being stopped. The same man fell, injured his head, and died the following month. Other findings by the department include not bathing a patient for a month, not investigating two injuries of unknown origin and failing to properly use an alarm system to protect patients. Apparently, the nursing home fixed the conditions, and a report based on a January 5th revisit stated that patients were no longer in immediate jeopardy. But in March, another investigation stemming from a complaint determined that the facility's patients were again in immediate jeopardy. An April revisit survey said the immediate jeopardy problems had been fixed, but the facility still was not in sub-

stantial compliance with federal regulations. Regulators gave the facility until June 16th to reach substantial compliance.

Source: *Birmingham News*

XVII. HEALTHCARE ISSUES

BRISTOL-MYERS FINED IN PLAVIX CASE

Bristol-Myers Squibb has pleaded guilty to making false statements to the Federal Trade Commission. This puts to an end the criminal case involving Plavix, the drug company's blockbuster blood-thinning drug. The case involved accusations that the company entered a secret deal to head off generic competition to Plavix, its biggest-selling product. The investigation began last summer and led to the dismissal of the company's chief executive, Peter Dolan. Interestingly, the investigation ended with relatively minor charges against the company. A federal judge fined Bristol-Myers \$1 million after an agreement had been reached between the company and the Justice Department's antitrust division. A ruling is pending in the patent case, which was tried in January and not settled.

RIMONABANT CAN CAUSE SERIOUS HARM

Public Citizen says that the U.S. Food and Drug Administration (FDA) should not approve the new diet drug rimonabant, which is marketed as Acomplia in Europe and known as Zimulti in the United States. The consumer advocacy group's opposition is because the drug produces only modest weight loss and has been shown to produce serious physical and psychological adverse effects according to a Public Citizen testimony before an FDA advisory committee meeting in May. Public Citizen believes that more extensive studies of the drug's effectiveness and safety are needed to fully evaluate its benefit-to-

risk ratio. The testimony about rimonabant was prepared by Dr. Sidney Wolfe, Ben Wolpaw and Elizabeth Barbehenn, Ph.D., all of whom are with the Health Research Group at Public Citizen. Dr. Wolfe delivered the testimony to the FDA's endocrine metabolic drugs advisory committee.

Rimonabant inhibits brain receptors involved in eating. But the drug also inhibits other areas of the brain and other organs, raising serious concerns about the drug's toxicity. Sanofi-Aventis, the maker of rimonabant, has claimed that in pre-clinical animal studies, the drug "was shown to have very limited potential to induce toxicity," and that there was no specific organ pathology identified. Yet a report from the European drug regulatory authority acknowledges the occurrence of such adverse effects in animals as increased birth defects, impaired fetal survival, convulsions, liver toxicity, chromosomal aberrations, and carcinomas. In his testimony, Dr. Wolfe stated:

The elusive idea of a magic bullet drug that has a benefit mediated through its action on one receptor site, yet is devoid of risks at a myriad of other sites in the body, is once again exemplified by rimonabant. Other such drugs—including Vioxx, Rezulin and Redux—were eventually removed from the market because of their toxicity. The evidence for increased suicidal tendencies and depression is of particular concern for a drug targeted toward the obese, a population that has been shown to have a significantly higher incidence of depression and eating disorders compared to non-obese individuals.

Because the receptors are widespread in the brain, rimonabant has been shown to cause extraordinarily broad kinds of psychiatric dysfunction, in addition to increased suicidal tendencies and other depressive symptoms. In clinical studies, patients given 20 milligrams

of rimonabant showed significant increases in anxiety, insomnia, and panic attacks, as well as increases in aggression and agitation, compared to patients given a placebo. In addition, significantly more patients receiving rimonabant required a sedative, tranquilizer, or an anti-depressant for adverse events caused by the drug.

Dr. Wolfe told the committee that another major issue with the drug is the lack of reliable information regarding the long-term effects of its use. Because patients regain weight lost while using rimonabant after they discontinue its use, the drug will have to be prescribed on a long-term basis to be effective. But of the studies performed to date, two lasted two years, while the other three were one year in length. Dr. Wolfe added:

Because rimonabant is the first drug of its class, there is no data on its use in humans over an extended period of time. The complete lack of information about the long-term effects of this drug is a serious cause of concern.

Public Citizen has been highly accurate over the past several years when it warned about the dangers and risks relating to specific drugs that were approved by the FDA. I have much more confidence in Public Citizen's drug evaluations than those of the FDA. Public Citizen is not controlled in any manner by the drug industry and is totally independent. It will be most interesting to see whether Dr. Wolfe is correct about rimonabant.

Source: Public Citizen

XVIII. ENVIRONMENTAL CONCERNS

AN UPDATE ON THE DUPONT PFC POLLUTION CASE

Lawyers in our firm are currently working with several other firms on a

class action lawsuit that we have filed against DuPont in the United States District Court for New Jersey. In this case, the plaintiffs contend that DuPont contaminated public and private drinking water supplies with PFCs (perfluorinated chemicals) released from its Chambers Works plant in Deepwater, New Jersey. Scientific testing performed on the plaintiffs' drinking water has revealed the presence of perfluorooctanoic acid (PFOA) at levels exceeding the New Jersey Department of Environmental Protection's preliminary health-based guidance level of 0.04 parts per billion. Numerous scientific and medical studies have indicated a link between PFOA exposure and adverse health effects in animals and humans. For this reason, our primary goals in this case are to obtain long-term medical monitoring for affected residents and an immediate clean-up of their drinking water supplies. Discovery is ongoing in this case. We hope to receive an order from the Court certifying this class action early next year.

OUR OCCIDENTAL CHEMICAL LAWSUIT IS ON TRACK

Our lawsuit against Occidental Chemical Company continues to move forward. As you will recall, we filed a class action suit against Occidental Chemical in January of this year. The lawsuit is pending in the United States District Court for the Northern District of Alabama in front of Judge Inge Johnson. Our claims center on Occidental's emission and discharge of mercury that has contaminated the surrounding air, land and water in Muscle Shoals, Alabama. In April, Judge Johnson denied Occidental's motion to dismiss our lawsuit. This case is set for trial in November 2008, and class issues will be heard next spring. We are proceeding with discovery and are looking forward to the opportunity to have a class certified.

RENEWABLE ENVIRONMENTAL SOLUTIONS CLASS ACTION

Our firm is currently pursuing a class action lawsuit in the Circuit Court of Jasper County, which is located in Carthage, Missouri, against Renewable Environmental Solutions (RES). RES operates a rendering plant on the outskirts of northern Carthage. The plant uses new technology coined "Thermal Conversion" to turn animal waste products into fuel. The civil suit alleges that the rendering process causes the release of noxious odors that envelop the surrounding community. Frequently, the RES odors are so foul that Carthage residents must remain indoors to obtain even limited relief. As a result, the offensive odors have prompted hundreds of complaints from surrounding homeowners as well as findings of violations issued by the Missouri Department of Natural Resources. Nevertheless, RES has failed to take adequate protective measures to prevent the emission and release of offensive odors from its facility. As a result, the odor has injured area residents by destroying their right to enjoy their property and by decreasing the value of their property values. Our objectives in this litigation are to put an end to the continuing nuisances and to obtain compensation to recover the diminished value of the surrounding residents' property.

EXXON MOBIL REFUSES TO ACT ON GLOBAL WARMING

Apparently, ExxonMobil Corp. still doesn't believe that global warming is a serious problem, or at least the oil giant doesn't act like it is. Recently, the company reiterated its position that creating far-reaching policies to reduce harmful greenhouse gas emissions is important, but premature. This statement came as a number of shareholders jumped on the company for what they said was "an irresponsible and even dangerous environmental stance." The world's largest publicly-traded oil

company was criticized by a number of the persons attending its annual shareholder meeting. A number of environmentally-minded investors and shareholder activists asked the company to set quantitative goals for reducing greenhouse gas emissions and to commit to greater investment in renewable sources of energy. Instead, Chairman and Chief Executive Rex Tillerson continued to insist the prudent strategy was to focus on finding and producing new supplies of crude oil and natural gas. To put it mildly, Tillerson, leading his second shareholder meeting, pretty well ignored the climate-change debate.

MOMENTOUS SETTLEMENT SEEKS TO CURB RAW SEWAGE CONTAMINATION

Until recently, untreated sewage resulting in dangerous bacteria was allowed to be released into public waterways used for recreation in the Pittsburgh, Pennsylvania, area. But, in one of the nation's largest settlements involving sewage discharge and the Clean Water Act, the Allegheny County Sanitary Authority (ALCONSAN) agreed to significantly reduce untreated sewage releases. The settlement will prevent an incredible more-than-22 billion gallons of sewage from being discharged into local waterways each year. The terms of the agreement require that ALCONSAN complete \$3 million worth of environmental projects as well as pay a \$1.2 million penalty, which will be split between the EPA, state, and county authorities.

Although the EPA, as well as state environmental agencies, have been successful in decreasing industrial discharges into public waterways, illicit sewage discharges have remained a persistent problem. The Clean Water Act forbids the release of sewage into surface waters unless they are specifically allowed by a permit which maintains EPA water quality standards. But, each year at least 22 billion gallons of sewage are discharged into the Pitts-

burgh surface waters from mostly unpermitted sewage systems. These illegal releases result from an overflow in the combined sewer and storm water systems. In other words, when there is a significant rain event or snow melt, the infrastructure that is meant to service both storm and sewer water overflows. Untreated sewage is dumped into heavily used public water as a result.

Fortunately, this unsatisfactory situation for Pittsburgh residents should come to an end over the next several years. ALCOSAN is required to submit a plan to the EPA that will terminate the unpermitted overflow sewer releases by 2026. ALCOSAN will also use the 3 million dollar project fund to perform stream restoration on nearby waterways. The government agencies hope that these environmental improvements will not only ensure the safety of citizens, but will also help to increase recreational and developmental prospects along Pittsburgh's waterways.

Source: *WebWire.com*

CLASS ACTION SETTLEMENT APPROVED AGAINST KENTUCKY CHEMICAL FIRM

A federal judge has approved a class action settlement between a chemical company and the residents of a neighborhood in Louisville, Kentucky. Under the settlement, Hexion Specialty Chemicals will spend about \$4 million to upgrade its operations near the Rubber-town neighborhood and pay out about \$2,500 to local residents. Last year, about 80 residents sued Hexion, along with E.On, the parent company of Louisville Gas and Electric, alleging that pollution from the plants affected their health and lowered their property values. The plant makes adhesives, resins, and formaldehyde. Hexion, formerly known as Borden Chemical, will update its wastewater treatment system and build a berm along its property line as part of the agreement. The goal of the lawsuit wasn't to get money, but to improve the living environment around the plant. Four other lawsuits against

companies in the area are still pending in the courts.

SETTLEMENT IN MINNEAPOLIS JET-NOISE LAWSUIT

For many years residents surrounding the Minneapolis, Minnesota airport have been subjected to deafening jet noise. Fortunately, relief may be available now that the Metropolitan Airports Commission (MAC) recently offered to settle a class action lawsuit regarding the nuisance. Should the settlement be approved by Hennepin County District Judge Stephen Aldrich, it would provide \$65 million to over 4000 residents in order to employ noise mitigation products.

After the decision was made to expand the existing airport, MAC promised to soundproof the homes experiencing noise in the 60- to 64-decibel range. But, in late 2004 MAC decided to downsize its noise mitigation efforts. The residents' lawsuit followed. A ruling by Judge Aldrich in late January denied MAC's request to dismiss the residents' class action lawsuit. To support his ruling, Aldrich said that he could not "allow the MAC to receive the benefits of a long-fought-over public bargain and then abandon its repeated commitments upon which so many people have relied."

Although many involved consider the settlement offer a success, concerns do exist. Specifically, Minneapolis' mayor, R.T. Rybak, noted that none of the homes would qualify for the complete noise mitigation package. Additionally, the mayor warned that only 54% of the homes in the class action suit would be entitled to limited noise mitigation products. Despite government official's concerns, both MAC and the residents' lawyer are pleased with the settlement details. Under the proposed agreement, not only will homes without air conditioning receive it for free, but residents will also receive \$1,750.00 to install noise mitigation products. Regarding the proposal, Carolyn G. Anderson, who

is the residents' lawyer, stated that "the homeowners preferred to control their own fate through a meaningful settlement that provides immediate relief versus the uncertainties of the litigation process."

Source: *StarTribune.com*

SETTLEMENT IN HAZARDOUS WASTE CASE

MidAmerican Energy Company, the City of Le Mars, Iowa, and the EPA recently announced the details of a proposed consent decree. The proposed settlement was filed concurrently with a complaint in which the EPA alleges MidAmerican and the City are liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the federal "Superfund" law. The complaint asserts that both the City as well as MidAmerican are responsible for clean-up costs for releases or threatened releases of hazardous substances. The lawsuit and settlement focus on the Le Mars Coal Gas Superfund Site in Le Mars, Iowa, which was previously owned by MidAmerican. Currently, the land is owned by the City of Le Mars and used by the City's Street Department.

The terms of the consent decree require that both MidAmerican and the City pay a total of \$4.6 million to help with remediation costs. Of the total amount, the City will pay \$1.5 million, as well as donate time and human resources to engage in the clean-up efforts. Future clean-up endeavors will address the release of toxic substances such as benzene, toluene, ethylbenzene, xylenes, and polycyclic aromatic hydrocarbons. Thus far, the EPA has engaged in limited remediation of the site, to ensure protection of surrounding property. Those limited clean-up efforts commenced in 2004 and included excavation of 14 feet of soil, thermal treatment and removal of underground storage tanks. Part of the settlement payout will help to reimburse the EPA for these actions.

Although the City is now responsible

for future clean-up, the EPA will continue to oversee the project to ensure that the actions are acceptable and adequately protective of the environment. Officials from both the Justice Department as well as the U.S. Attorney's Office for the Northern District of Iowa believe the settlement was a major success. Specifically, Ronald J. Tenpas, Acting Assistant Attorney General, stated that "CERCLA's goals will be vindicated through the proposed settlement because the responsible parties agreed to cooperate, reimburse the United States' costs, and perform response actions at the Site."

Source: *WebWire.com*

XIX. THE CONSUMER CORNER

CONSUMER COMMISSION NOMINEE WITHDRAWS

After our June issue had gone to the printer, we learned that President Bush's choice to head the Consumer Product Safety Commission (CPSC) had withdrawn his nomination. That was great news. The White House had defended the nomination of Michael Baroody. Had the nomination gone to the Senate for confirmation, Baroody—a lobbyist for the National Association of Manufacturers and very much anti-consumer—would have been soundly rejected. I hope the President will now pick a person to head up the CPSC who will be a protector of consumers.

ALABAMA SECURITIES COMMISSION IDENTIFIES TOP 10 TRAPS FACING INVESTORS

The Alabama Securities Commission (ASC) has released its annual forecast of the Top 10 Traps likely to ensnare investors. ASC Director Joe Borg again has urged investors, before making any investment, to make sure that both the salesperson and the investment are licensed and registered in their state or

province, and that they have been given adequate written information that fully explains the investment. Concerning the problem, Director Borg observed:

The path to safe investing is littered with traps that are likely to catch unwary investors. It always pays to remember that any investment that sounds too good to be true, usually is. Investor traps are usually baited with slick sales pitches promising high returns for little or no risk.

There are lots of scam artists with all sorts of schemes and scams designed to cheat folks out of their hard-earned money. The following listing, in alphabetical order, are the ASC's Top 10 Traps for investors:

- **Affinity Fraud:** Con artists are increasingly targeting religious, ethnic, cultural and professional groups. Some may be members of the group or pretend to be members in order to gain trust. Con artists often recruit a respected member of a community or religious congregation to promote their schemes by convincing them that a fraudulent investment is legitimate. In many cases, even these leaders become victims of what turns out to be a Ponzi scheme. *Remember: Investigate before you invest—no matter who is selling.*
- **Foreign Exchange Trading:** Foreign exchange (forex) trading can be legitimate for governments and businesses concerned about fluctuations in international currencies, and it can even be appropriate for some individual investors. But the average investor should be wary when it comes to these complex markets. Forex scams attract customers with sophisticated-sounding offers placed in newspaper advertisements, radio promotions, or on Internet sites. *Remember: If you don't understand an investment, don't invest.*
- **Internet Fraud:** Scammers continue to take advantage of technology to lure

investors into “pump-and-dump” stock schemes. Be wary of investments being pitched through unsolicited e-mails, instant messages, and phony Web sites. *Remember: The internet can be a con artist’s dream—easy access to you and your money, with no “return address” if the deal goes sour.*

- **Investment Seminars:** Promoters of unsuitable investments are increasingly seeking potential investors, particularly seniors, by offering seminars, many of them promising a free meal along with “higher returns and little or no risk.” Unfortunately, in many of the cases that securities regulators see, it’s just the opposite: high risk and no returns, just disastrous losses. *Remember: There’s no such thing as a free lunch.*
- **Oil and Gas Scams:** Rising oil and natural gas prices have made a variety of traditional and alternative energy projects attractive to investors. Most of these investments are highly risky and not appropriate for smaller investors. *Remember: Con artists tend to follow the headlines.*
- **Prime Bank Schemes:** Often promising high-yield, tax-free returns, promoters of these schemes offer to let the “little guy” in on what they claim are financial instruments from elite overseas banks usually offered only to the world’s wealthiest investors. Prime banks do not exist and the scam artists have no intention of creating a profit for anyone but themselves. *Remember: Often the most sophisticated sounding investments are just false promises in fancy garb.*
- **Private Securities Offerings:** Con artists are turning increasingly to private securities offerings under Rule 506 Regulation D of the Securities Act of 1933 to attract investors without having to go through the full registration process. Although sometimes legitimate, these offerings are often associated with fraud. *Remember: Especially with lightly regulated*

investment offerings, it pays to consult a trusted financial adviser.

- **Real Estate Investment Contracts:** Despite the recent decline in property values, investments in real estate long have been viewed as a “sure thing,” one with little downside risk and the potential for substantial returns. Some real estate investments are securities subject to full regulation under the state and federal securities laws, including registration requirements and antifraud rules. *Remember: Just because an investment involves real estate—or pay phones or worm farms—it still may be a security, so check with your state securities regulator.*
- **Unlicensed Individuals & Unregistered Products:** Anyone selling securities or providing investment advice about buying or selling securities must be appropriately licensed. Anyone engaging in these activities without a valid license to do so should be a red alert for investors. Con artists also bypass stringent state registration requirements to pitch viatical settlements, pay telephone and ATM leasing contracts, and other investment contracts with the promise of “limited or no risk” and high returns. *Remember: Carefully check out anyone offering to help you buy or sell securities or providing investment advice.*
- **Unsuitable Sales:** What might be a suitable investment for one investor might not be right for another. Securities professionals must know their customers’ financial situation and refrain from recommending investments that they have reason to believe are unsuitable. For example, variable and equity indexed annuities are often unsuitable for senior citizens because those products are generally long-term investments that limit access to invested funds. But sales agents stand to earn high commissions on these investment products so they don’t always adhere to the

suitability standards—with dire consequences for seniors. *Remember: Make sure your investments match up with your age, your need for access to money, and your risk tolerance.*

Director Borg strongly advises investors to contact their state or provincial securities regulator with any questions about an investment product, broker or adviser, before making an investment. If any person has a question, they should call before making an investment. A bad and uninformed decision generally leads to big problems. On its Web site, the ASC provides tips on how to avoid becoming caught in an investment trap. Director Borg and the ASC once again have provided sound advice and a valuable public service to investors and Alabama citizens in general.

Source: Alabama Securities Commission

TODDLER DROWNINGS CAN HAPPEN QUICKLY AND SILENTLY

The U.S. Consumer Product Safety Commission (CPSC) reports there are about 260 drowning deaths each year of children younger than 5 years old in swimming pools. Additionally an estimated 2,725 children are treated annually in hospital emergency rooms for pool submersion injuries—mostly in residential pools. CPSC strongly advises that parents use layers of protection around the pool to prevent their children from becoming a drowning victim. In conjunction with this year’s drowning prevention campaign, CPSC has produced a public service announcement to illustrate what happens when a toddler falls into a pool. It vividly demonstrates what you expect to hear and what the reality often sounds like. CPSC Acting Chairman Nancy Nord stated:

Parents may think that if their child falls in the water, they will bear lots of splashing and screaming, and that they will be able to come to the rescue. Many times, however, children slip under the

water silently. Even people near the pool often report hearing nothing out of the ordinary.

To reduce the risk of drowning, CPSC recommends adopting layers of protection, including physical barriers, such as a fence with self-closing, self-latching gates completely surrounding pools to prevent unsupervised access by young children. If the house forms a side of the barrier, use alarms on doors leading to the pool area or a power safety cover over the pool. It is important to always be prepared for an emergency by having rescue equipment and a phone near the pool. Also, all parents who own pools should learn cardiopulmonary resuscitation (CPR). It should be noted that no one layer of protection is foolproof to prevent drowning in pools. As many layers of protection as possible should be used. Multiple barriers and constant supervision are essential to protecting children, according to the CPSC.

Last year, CPSC highlighted the growing dangers of the popular inflatable or portable pools, which range in size from small kiddie pools to pools up to 4-feet deep and 18-feet wide. Between 2004 and 2006, CPSC received 47 reports of deaths of children related to inflatable pools. Large inflatable pools are relatively inexpensive—large pools with water filters can cost under \$200. They often have slanted or flexible sides, which make it easier for children to climb into the pool even without a ladder present. These pools may fall outside of local building codes that require barriers, and are often purchased by consumers without considering the barriers, such as fencing, necessary to protect young children. In addition to barriers and constant supervision, CPSC offers these tips to help prevent drowning deaths:

- Since every second counts, always look for a missing child in the pool first. Precious time is often wasted looking for missing children anywhere but in the pool.

- Don't leave toys and floats in the pool that can attract young children and cause them to fall in the water when they reach for the items.
- For above-ground and inflatable pools with ladders, remove or secure the ladder when the pool is not in use.
- Even if children can swim, it doesn't make them drown-proof. Always supervise children using the pool.

For more information about drowning prevention, read CPSC's *Swimming Pool Safety Alert* (pdf), *Safety Barrier Guidelines for Pools* (pdf) and *How to Plan for the Unexpected* (pdf). Also, CPSC recently updated its *Guidelines for Entrapment Hazards: Making Pools and Spas Safer* (pdf), which gives information on reducing drain entrapment dangers. CPSC recommends having a professional inspect pools and spas for entrapment hazards, and making sure appropriate drain covers are in place. The publication also identifies other important strategies for addressing entrapment hazards in new and existing pools. Copies of all these free publications can also be obtained by calling CPSC's Hotline at (800) 638-2772.

Source: CPSC News Release

CONSUMER GROUPS OPPOSE CARFAX SETTLEMENT

Any person who bought a CarFAX used-car report between 1998 and October 2006 is a party to a nationwide class action lawsuit. But, most members of the class have never heard of the suit, or its proposed settlement, which has proved to be most controversial. There are roughly 10 million members. The lawsuit, which is pending in Trumbull County, Ohio, contends that CarFAX glossed over sizable gaps in the used-car histories it sold to consumers online. It's claimed in the suit that CarFAX led consumers to believe it had accident data from across the country but, at various times, didn't collect data from 22 states and the District of Columbia.

The proposed settlement agreement was deemed to be so bad for everyone except CarFAX that consumer groups that didn't have anything to do with the original lawsuit got involved. In that regard, Public Citizen and the Center for Auto Safety intervened on behalf of consumers. If approved, the settlement will give consumers coupons to use to get more CarFAX reports. As Public Citizen pointed out, that is really not very much. Those who didn't want coupons could have chosen vouchers for \$20 off a vehicle inspection, but Public Citizen didn't like that because the inspections were for car bodies, not mechanical systems. This appears to be a settlement that should be carefully scrutinized by the court before the court decides whether to approve it.

Source: *The Plain Dealer*

BEST BUY ACCUSED OF OVERCHARGING

Connecticut Attorney General Richard Blumenthal has filed a lawsuit against Best Buy Co. Inc., accusing the nation's largest consumer electronics retailer of deceiving customers with in-store computer kiosks and overcharging them. The lawsuit accuses Best Buy of denying deals found at the company's Web site. It is alleged that "Best Buy gave consumers the worst deal—a bait-and-switch-plus scheme luring consumers into stores with promised online discounts, only to charge higher in-store prices." The lawsuit seeks refunds for consumers, civil penalties, court costs, a ban on the practice, and other remedies.

Attorney General Blumenthal opened an investigation into the Richfield, Minnesota-based retailer in March. About 20 customers complained to his office after a columnist for The Hartford Courant reported the experience of one Connecticut man who found a laptop computer advertised for \$729.99 on BestBuy.com, then went to a Best Buy store where an employee who seemed to check the same Web site told him the price was actually \$879.99. It appears there may be people who are entirely

unaware they may have been over-charged. Previously, the company confirmed that store employees have access to an internal Web site that looks nearly identical to the public BestBuy.com site.

Source: *Associated Press*

STANDARDS ADOPTED FOR NEW MATTRESSES

Hundreds of people die every year from mattress fires in homes according to federal safety regulators. Beginning July 1st, new mattresses will be required to meet a new standard meant to reduce their ability to catch fire. The standard is intended to reduce fires caused by open flames, such as those involving candles and lighters. The Consumer Product Safety Commission says about 360 people die each year from residential mattress fires. Retailers can continue to sell their existing supplies of mattresses that don't meet the standard until that supply is sold out. The new standard does not address cigarette ignition, which has been covered by a separate standard for more than 30 years.

Source: *Associated Press*

CLASS ACTION LAWSUIT FILED AGAINST VITAMIN MARKETER USANA

Independent distributors have filed a lawsuit accusing USANA Health Sciences Inc. of fraud and deception. The lawsuit, which seeks class action status against the marketer of vitamins and nutritional supplements, was filed in a California state court on behalf of hundreds of low-level distributors in California. It should be noted that California has tough multilevel marketing laws. The lawsuit seeks damages for "down-line" distributors left with thousands of dollars of losses each after paying for "business kits" and products the Plaintiff's say they couldn't sell at inflated prices. The lawsuit alleges USANA failed to disclose "material adverse facts" to recruits, notably that 87% of active distributors are losing money and that the company's business model amounts to a

pyramid scheme requiring a constant churn in the sales force.

Source: *Insurance Journal*

XX. RECALLS UPDATE

U.S. IMPORTER FORCED TO RECALL CHINESE-MADE TIRES

U.S. safety officials have ordered a New Jersey tire importer to recall as many as 450,000 tires that it bought from a Chinese manufacturer and sold to U.S. distributors. According to Foreign Tires Sales of Union, New Jersey, the tires were sold to six distributors. More was written on this safety issue in the Products Liability section of this issue. The tires at issue were sold under at least four brand names: Westlake, Compass, Telluride and YKS, in these sizes: LT235/75R-15; LT225/75R-16; LT235/85R-16; LT245/75R-16; LT265/75R-16; and LT3X10.5-15. This recall is the result of an obvious safety problem with the involved tires. Hopefully, these tires will be taken off the highways immediately.

GENERAL ELECTRIC RECALLS GAS RANGES DUE TO FIRE HAZARD

General Electric has recalled gas ranges that have a design flaw. The recall affects about 2,600 GE Monogram® Professional Gas Ranges manufactured by GE Consumer & Industrial, of Louisville, Kentucky. These ranges have a design flaw that can cause an electrical arc between the wiring and griddle gas supply tube, posing a fire hazard. GE has received reports of six incidents of gas leaking from the griddle gas supply tube, resulting in five fires under the range top. One consumer has reported burns to her hands, and two consumers have reported smoke damage. Consumers should stop using the product immediately unless otherwise instructed.

This recall includes 36-inch and 48-inch stainless steel Monogram Pro

ranges with griddles. They are fueled either by LP or natural gas and manufactured from October 2005 through May 16, 2006. The recall includes the following ranges: Models ZDP48N6DHSS, ZDP48L6DHSS, ZDP36N4DHSS and ZDP36L4DHSS. The recalled range models have a serial letter plus serial number combination as shown below:

- TH + 212588 through 213353
- VH + 123456 through 712240
- ZH + 210545 through 800064
- AL + 200002 through 207337
- DL + 200215 through 980416
- FL + 202073 through 500677
- GL + 000468 through 900468
- HL + 202850 through 203252

To find the manufacture date, and model and serial numbers, look underneath the top ledge, referred to as the "bull nose", above the range controls. These ranges were sold at home builders and appliance stores nationwide from October 2005 through February 2007 for between \$4,000 and \$6,000, and were manufactured in the U.S. Customers with a recalled range should stop using it immediately and contact GE for further instructions and to schedule a free, in-home repair. For more information, call GE Consumer & Industrial toll-free at (877) 546-0116 between 8 a.m. and 8 p.m. ET Monday through Friday and between 8 a.m. and 2 p.m. ET on Saturday, or visit the firm's Web site at <http://geappliances.com>.

POLARIS RECALLS SELECT HAWKEYE MODEL ATVs

Polaris Industries Inc. has recalled Polaris Model Year 2006 Hawkeye 2x4 and Hawkeye 4x4 ATVs. The steering posts on the ATVs can break in the area where the handlebar attaches to the steering post. This can cause a loss of steering control, resulting in a crash and/or serious injury to the operator.

Although Polaris has received three reports of steering post failure, thus far no injuries have been reported. Only certain model year 2006 Polaris Hawkeye ATVs produced prior to January 23, 2006 are included in this recall.

All serial number ranges of the Hawkeye 2x4 model number A06LB27AA and the Hawkeye 4x4 model number A06LD27AA/AB/AC are included. The serial number (VIN) identification decal is located under the right-hand front fender and stamped on the lower portion of the frame behind the left front wheel. The ATVs were sold by Polaris dealers nationwide from August 2005 through April 2007 for between \$3,900 and \$4,700. Consumers should contact Polaris to identify whether their model is part of the recall. Consumers can verify whether their ATV is included in the recall by contacting a Polaris dealer or Polaris directly. For more information, contact Polaris at (800) 765-2747 between 8 a.m. and midnight ET everyday, or visit the firm's Web site at www.polarisindustries.com.

KTM OFF-ROAD MOTORCYCLES RECALLED

KTM North America is recalling about 20,000 off-road motorcycles. The seal around the fuel tank can loosen, allowing fuel to leak and thereby posing a fire hazard to consumers. KTM has received 5,114 reports of leaking fuel tanks. CPSC has received one report of a minor chemical burn caused by fuel coming into contact with a consumer's skin. This recall involves KTM off-road motorcycles. KTM is printed on the side of the orange and black motorcycles along with the model. Model numbers included in the recall are:

- **Model Year 2005**—250SX-F
- **Model Year 2006**—200XC, 200XC-W, 250XC-W, 250SX-F, 250XCF-W, 300XC, 300XC-W, 400EXC-G, 450XC-G, 450EXC-G, and 525EXC-G
- **Model Year 2007**—125SX, 144SX,

250SX, 250SX-F, 450SX-F, 505SX-F, 200XC, 250XC, 300XC, 450XC, 200XCW, 250XCW, 300XCW, 400XCW, 450XCW, 525XCW, 250XC-F, and 250XCF-W

The motorcycles were sold by KTM dealers nationwide from November 2004 through April 2007 for between \$5,400 and \$7,800. Consumers should stop using these vehicles immediately and contact their local KTM dealer to schedule an appointment for a free repair. Consumers with the recalled vehicles are being sent direct notices from KTM. For more information, contact KTM at (888) 985-6090 between 8 a.m. and 5 p.m. ET Monday through Friday, or visit the firm's Web site at www.ktmnorthamerica.com.

FISHER-PRICE RAINFOREST INFANT SWINGS RECALLED

Fisher-Price has recalled about 112,000 Rainforest Open Top Take-Along™ Swings. Infants can shift to one side of the swing and become caught between the frame and seat, posing an entrapment hazard. Fisher-Price has received 60 reports of the infants becoming entrapped, resulting in cuts, bumps, bruises, and red marks. This recall involves Portable Rainforest Take Along Swings with a palm tree mobile and two hanging plush toys. The swings are approximately 23-inches-high and have two carry handles on the left and right sides. Model numbers K7203, K7192 and K7195 are included in the recall. Model numbers are located under the right handle on the swing. No other collection of Rainforest swings or products are included in this recall. Consumers should contact Fisher-Price for instructions on how to return it to receive a voucher for a replacement product. For additional information, call Fisher-Price toll-free at (888) 303-5631 anytime, or visit the firm's Web site at www.service.mattel.com.

PERSONALIZED INFANT LONG JOHNS RECALLED

Personal Creations, of Lemont, Illinois has recalled about 5,500 Red Baby Long Johns. The metal snaps on the long johns can loosen and detach, posing a choking hazard to young children. Personal Creations has received 10 reports of snaps loosening or detaching, but, no injuries have been reported. The recalled Red Baby Long Johns are red with snap fasteners down the front and along the legs. A personalized embroidery is stitched across the button-up back flap on the long johns. The long johns were sold in sizes 6, 12, 18 and 24 months. Consumers should contact Personal Creations for more information on receiving a refund or replacement at (888) 627-3283 between 7 a.m. and 11 p.m. CT Monday through Friday, or between 8 a.m. and 9 p.m. CT Saturday and Sunday. Consumers can also visit the firm's Web site at www.personalcreations.com.

TYSON RECALLING 40,000 POUNDS OF GROUND BEEF SOLD IN 12 STATES

Tyson Fresh Meats Inc. recalled more than 40,000 pounds of ground beef last month after samples tested at a Sherman, Texas, plant showed signs of E. coli contamination in meat shipped to Wal-Mart stores in 12 states. No illnesses had been reported. Springdale-based Tyson Foods Inc. said the recall is not related to contaminated ground beef distributed by California-based United Food Group LLC. The recalled products were sent to Wal-Mart stores in Alabama, Arkansas, Colorado, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee, and Texas, Tyson said. Wal-Mart has removed the products from its meat cases and is destroying the recalled ground beef still in its possession, officials said. Tyson recalled 40,440 pounds of ground beef, all of which had sell-by dates of June 13. The ground beef was sold in prepackaged trays that were placed directly into the meat case. The recalled products include:

- 1½ -pound trays of Angus steak burger all natural, 85/15, six quarter-pound patties;
- 1.33-pound trays of Angus steak burger all natural, 85/15, extra thick, four ⅓ -pound patties;
- 2¼ -pound trays of 73/27 all-natural ground beef; and
- 5½ -pound trays of 73/27 all-natural ground beef.

IMPORTED TOOTHPASTE RECALLED IN FOUR STATES

The Colgate-Palmolive Co. has recalled 5-ounce tubes of counterfeit toothpaste that were sold in discount stores in four states under a Colgate label. The reason for the recall is because the toothpaste may contain a poisonous chemical. According to the Food and Drug Administration (FDA), testing found the chemical in a product with the Colgate label. It should be pointed out, however, that the FDA is unsure whether it really was Colgate or a counterfeit. MS USA Trading, Inc. of North Bergen, New Jersey, the importer involved in the initial recall announcement, says the toothpaste may contain diethylene glycol, a chemical found in antifreeze. The toothpaste, imported from South Africa, was sold in discount stores in New Jersey, New York, Pennsylvania, and Maryland. "Made in South Africa" is printed on the box and includes Regular, Gel, Triple, and Herbal versions. The trading company said the problem was discovered in routine testing by the FDA. Apparently, no illnesses have been reported to date. The same chemical has led to the recall of several brands of toothpaste imported from China in recent weeks.

Consumers who have purchased 5-ounce toothpaste under the Colgate label can return them to the place of purchase for a refund. Colgate-Palmolive confirmed that the tubes are counterfeit. But, the company said it does not use, nor has it ever used, diethylene glycol as an ingredient in Colgate tooth-

paste anywhere in the world. Colgate says it is working closely with the FDA "to help to identify those responsible for the counterfeit product." Consumers who suspect they may have purchased counterfeit product can call Colgate's toll-free number at 1-800-468-6502.

RECALLED TOOTHPASTE POSES POISON THREAT

A Florida company has issued a nationwide recall of toothpaste it imported from China and distributed to wholesalers. The company, Gold City Enterprise LLC, based in Hallandale, Florida, says the product may contain a poisonous chemical. The roughly 170,000 recalled toothpaste products may contain diethylene glycol, a thickening agent used in antifreeze and as a cheaper substitute for the sweetener glycerin. Thus far, no injuries or illnesses have been reported. Consumers should stop using the products immediately. The toothpaste brands are Shir Fresh Mint Fluoride, Shir Fresh Ice Shir Mint Fluoride, and Shir Fresh Cool Shir Mint Fluoride. Retailers were asked to examine inventories and notify customers about the recall. The chemical can cause kidney and liver problems.

THOMAS THE TANK ENGINE TOYS RECALLED BECAUSE OF LEAD PAINT

The toy maker RC2 Corporation recalled a number of its Thomas & Friends trains and accessory parts after learning that the red and yellow paint used to decorate more than 1.5 million of the toys contained lead. Lead, if ingested by children, can cause long-term neurological problems that affect learning and behavior. The Consumer Product Safety Commission says: "Parents should not delay in getting these toys away from their kids." An alert posted at a Web site devoted to the toy line, www.totallythomas.com, included a list of more than two dozen items affected by the recall. Toys that bear a code containing a "WJ" or "AZ" on the bottom of the toy or

the inside of the battery door are not included in the recall. The company at first urged consumers to mail in their Thomas toys, at their expense, in exchange for a replacement and a free train, an offer that angered some consumers. The company, which is based in Oak Brook, Illinois, agreed to handle the shipping cost for all consumers who request it. The affected Thomas toys were manufactured in China, which has come under fire recently for exporting a variety of goods that may pose safety or health hazards.

SIMPLICITY RECALLS CRIBS

The U.S. Consumer Product Safety Commission (CPSC) is recalling Nursery-in-a-Box Cribs. Consumers should stop using recalled products immediately unless otherwise instructed. The recall affects approximately 40,000 cribs manufactured by Simplicity Inc., of Reading, Pennsylvania. The assembly instructions, provided with the cribs, incorrectly instruct consumers how to attach the crib's drop side. If improperly installed, the drop side can disengage from the crib, posing fall and entrapment hazards for the child. Additionally, the metal locking pins on the drop side can pop off, presenting a choking hazard. The CPSC is aware of an incident in which the crib's drop side, after being installed upside down, fell from its upright position and the metal locking pins became dislodged. Simplicity received a report of wrong instructions being packaged with the crib.

The recalled cribs are part of the Nursery-in-a-Box furniture set that also includes a changing table and clothing organizer. The cribs are cherry, white, or natural in color. Only model numbers 8910 and 8050 with serial numbers 3005 HY through 0806 HY are included in this recall. The model and serial numbers are printed on an envelope permanently attached to the mattress support. "Simplicity," model and serial numbers are also printed on a label on the bottom rail of the headboard. The

product was sold at department stores and children's product stores from August 2005 through May 2007 for about \$200 and manufactured in China.

Consumers should immediately check the crib to make sure the drop side is securely fastened and correctly installed. Contact Simplicity to receive correct assembly instructions, or consumers can download the assembly instructions at the firm's Web site, . Consumers can view a video on the firm's Web site showing the proper assembly of the drop side. If the drop side is not properly installed, consumers should stop using the crib until it is assembled correctly. For additional information, contact Simplicity at (800) 784-1982 anytime, or visit the firm's Web site at .

GLOBE FIRE SPRINKLER CORP. RECALLS DRY FIRE SPRINKLERS

The U.S. Consumer Product Safety Commission, in cooperation with Globe Fire Sprinkler Corp. of Standish, Michigan, has announced a voluntary recall of fire sprinklers. The recall affects about 300,000 Globe Model J Series Dry Fire Sprinklers manufactured by Globe. The sprinkler heads can deteriorate over time and fail to operate in a fire. Globe has received five reports of sprinklers that failed to operate as intended during a fire, but the company says it has received no reports of injuries caused by sprinklers failing to operate.

Model J Series dry fire sprinklers come in pendent, upright, and sidewall configurations. The name "Globe," the letter "J", and the year of manufacture (1990 though 1999) are embossed on the frame of each sprinkler. These dry sprinklers were designed to be installed in areas of buildings where the sprinklers or water supply pipes may be subject to freezing, such as unheated attics, freezers and coolers, parking garages, porches, and warehouses. The sprinklers were sold by Fire protection contractors nationwide from January 1990 through December 1999 for between \$27 and \$36 per sprinkler head and were manufactured in the United States

Consumers should stop using the recalled cribs and should contact Globe immediately to arrange to receive replacement sprinkler heads at a reduced cost of \$9 per sprinkler head. For additional information, contact Globe at (800) 248-0278 between 8 a.m. and 5 p.m. ET Monday through Friday, or visit the firm's Web site at and click on the "Recall" link.

XXI. SPECIAL RECOGNITIONS

THE FIRST SUCCESSFUL HEART SURGERY

My good friend General Will Hill Tankersley sent me a most interesting booklet that tells a fascinating story, one which I had never heard before. It's entitled "I held the Light" and was written by Dr. George A. O'Connell, a young doctor at the time, who was in Montgomery in the year 1902. Dr. O'Connell participated in the first successful heart surgery in our state and perhaps in the nation that year. The surgeons involved were two brothers—Dr. L.L. Hill and Dr. R.S. Hill, both of whom were prominent members of the Montgomery medical community. The emergency surgery was performed by the Hill brothers in the patient's home by the light of a lamp. The patient survived the surgery, and medical history was made. These two brothers, who were truly outstanding surgeons, from all accounts, owned and operated the Laura Hill Hospital in Montgomery. If you would like to obtain a copy of this booklet, you may call Timothy Griffin at 800-898-2034 or email him at timothy.griffin@beasleyallen.com. It's most interesting to say the least and historically most significant.

JOHN GIBBONS DOES THE LORDS WORK

John Gibbons, the State Director of the FCA in Alabama, is having a tremendous influence on young people throughout the state. Under John's lead-

ership, the FCA is bringing thousands of young high school and college students into a relationship with Jesus Christ. Sometimes we fail to recognize good works of persons like John. He is doing the Lord's work and doing it the right way. I can think of no higher calling for a person!

XXII. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

CLAY BARNETT

Clay Barnett, who is our newest lawyer in the Consumer Fraud Section, will focus his practice on the Average Wholesale Pricing litigation being handled by our firm in several states. The Firm represents the State of Alabama, which, along with other similarly injured states, grossly overpaid for prescription drugs after relying upon false and inflated prices reported by the pharmaceutical companies. The named pharmaceutical companies knowingly caused the State to drastically overpay for the drugs, thereby wasting hundreds of millions of taxpayer dollars and benefiting the defendants greatly.

Prior to joining the Firm, Clay served as an Assistant Attorney General, practicing under both Bill Pryor and Troy King. During his time at the Attorney General's Office, Clay worked in three different capacities. He practiced briefly as an appellate lawyer before transferring into the Attorney General's Criminal Trials Division, where he prosecuted a wide variety of cases across the State. Clay built an extensive trial resume, prosecuting both jury and non-jury cases with offenses ranging from theft to Capital Murder.

Clay transferred to the Attorney General's White Collar / Public Corruption Division in June of 2005, which provided him an excellent training ground for his current duties as a Fraud lawyer in our firm. Specifically, Clay fought on behalf of victims to bring to

justice those individuals who had defrauded their fellow citizens. Clay also prosecuted numerous public officials who inappropriately used their offices for personal gain, thereby depriving Alabama's citizens of their right to honest government. In 2006, the Department of Justice appointed Clay as a Special Assistant United States Attorney. Following his appointment, Clay and the members of his fellow prosecution team indicted, tried, and convicted three high profile defendants in a widely followed public corruption trial in the Federal District Court in Mobile, Alabama.

Clay is a 2001 graduate of the University of Alabama School of Law. In the year following his graduation, Clay clerked for Mobile County Circuit Judge James C. Wood. In addition to attending Law School at the University of Alabama, Clay also received his B.S in Marketing in 1997 at the University. For each of the past four years, Clay has served his community by coaching local high school mock trial teams to compete in the statewide YMCA Mock Trial Competition. In 2006, Clay coached Alabama's state team and traveled with them to the National High School Mock Trial Competition in Oklahoma City, Oklahoma. Clay is a member of Saint John's Episcopal Church located in downtown Montgomery. We are pleased to have Clay with the firm.

LABARRON BOONE

LaBarron Boone, who joined the firm in 1994, has been very busy since that time representing clients in product liability and personal injury lawsuits. LaBarron, an Auburn University engineering graduate, has wide-ranging experience. He has handled a variety of product liability cases, including cases involving such things as crashworthiness, seatbelt restraint systems, inadvertent airbag deployments, trucking accidents, and tire tread separations. LaBarron attended law school at the University of Alabama where he was schooled by one of the best, Dean Charles Gamble. LaBarron was part of

the Beasley Allen trial team for the Whirlpool and Aultman cases that resulted in jury verdicts of \$581 million and \$116 million respectively. LaBarron says the reason he is so passionate about the work he does is because our firm handles cases that affect safety nationwide. One example of this recently occurred during our representation of a client, who happened to be one of LaBarron's personal friends, who is paralyzed because of a defective Continental tire that was on her Ford Expedition. This case was reported in the June issue of the Report.

LaBarron received the University of Alabama's BLSA Chapter Alumni Honoree Award for 2003. He was the recipient of the "Chairman's Award of Excellence" presented by MCDC Young Democrats. LaBarron presently serves as the Assistant General Counsel for the National Bar Association. LaBarron, who has served as President of the Alabama Lawyers Association, the Capital City Bar Association, and Kappa Alpha Psi fraternity, is currently serving on the Executive Committee of the Alabama State Bar. He is involved in many community and social activities, such as serving on the Board of Directors for Child Protect. In 2005, LaBarron was the first ever recipient of the "Hands for Children" Award. He currently serves on the board of trustees of the Central Alabama Community Foundation, one of the largest charitable foundations in the State of Alabama. LaBarron serves on the Board of Trustees for Resurrection Catholic Mission. LaBarron is married to the former Lori David and they have two fine children, Micah and Logan. Lori, who is also a lawyer, has plans to attend medical school in the near future. LaBarron is a very good lawyer and an equally good person. He is a definite asset to our firm. We are very proud of LaBarron's accomplishments on behalf of his clients. LaBarron cares deeply about his clients, and that is a very good and necessary trait for a successful trial lawyer.

MARK ENGLEHART

Mark Englehart, who joined the firm in January of 1999, is a shareholder in the firm's Toxic Torts Section. Mark handles environmental and toxic tort matters, as well as complex business cases, and does an excellent job. In 2003, he was involved in what we believe is the largest toxic tort settlement in U.S. history. This settlement doubled the previous mark set in the case popularized by the film "Erin Brockovich." Mark, a graduate of Harvard University Law School, is admitted to practice in Alabama and Texas. He also serves as a contributing editor for this Report and does an outstanding job. Mark and his wife, Debbie, are the proud parents of Stephanie, who earned a master's degree in landscape architecture at Auburn University and now is working as a landscape designer in a large architecture firm in Orlando, Florida. They are members of Eastmont Baptist Church in Montgomery. Mark is a very good lawyer who does excellent work for our clients.

MIKE BAILEY

Mike Bailey, who works in our maintenance department, has a variety of important duties. He does most of the repair work for the firm. Because the firm occupies three buildings and a part of a fourth, Mike stays extremely busy. Mike is married to Cindy Bailey, who also works for the firm, serving as our housekeeper. Mike and Cindy have three children: Laura, 23; Johnny, 19; and Kellie, 16. They have two grandchildren, 3-year-old Alyssa and Michael, who is four months old. Mike is one of the hardest workers and a most valuable employee. Mike, who always has a great attitude, stays in high gear. We are most fortunate to have Mike and Cindy with the firm.

LAURA REEVES

Laura Reeves, who has worked at the firm for five years, currently serves as J.P. Sawyer's legal assistant in the Personal Injury Section. Laura had previously worked in the Consumer Fraud and Nursing Home Sections. She is

responsible for helping with case discovery, scheduling depositions, helping to draft pleadings, dealing with expert witnesses, and assisting with trial and mediation preparation. Laura has been married to Jamie for five years and they have a one year old son, Hunter. Laura, who graduated from Huntingdon College in 2000 with a BA in International Business, also received a degree in Legal Studies from Faulkner University in 2003. She has been certified as a Legal Assistant by the National Association of Legal Assistants. Laura is a very good employee who does outstanding work.

KATHY ECKERMANN

Kathy Eckermann, who has been with the firm for over six years, works as a Relief Receptionist. That position requires Kathy to float from building to building. Her duties include not only relieving the regular receptionists for their breaks and lunches, but she also makes the break schedule for the receptionists, routes all fax messages, and helps to keep the receptionists' case lists and employee charts updated. If this job seems difficult, I can assure you that it is. Kathy has a most important role in the firm and performs her duties extremely well.

Kathy and her husband, Eddie, have been married for 26 years and have two children, Aaron, a graduate of Middle Tennessee State University with a degree in Recording Industry, and Leah, a student at Troy University. Kathy graduated cum laude from Huntingdon College, with a Bachelor of Arts degree in Music Education. The Eckermann family are members of Eastmont Baptist Church. Kathy also serves as the pianist for First Presbyterian Church. We are blessed to have Kathy, a good person and a great employee, with the firm.

MARTHA TAYLOR

Martha Taylor has been with the firm for five years as a receptionist. She handles all the receptionist duties for our main building, which is located at

218 Commerce Street. Martha is the first person to greet our visitors and always makes them feel at home. She also has the responsibility of keeping our building manager, Jim Craft, operational by making sure he gets work orders, fax messages, and e-mails from the employees. By all accounts Martha keeps Jim going without a hitch.

Martha is married to Butch Taylor and they have two children. Her daughter Angela is married to Jason Hughes, and they have an eight-year-old son, Cole, and a four-year-old daughter, Meagan. Martha's son Jeremy attends Troy University. When not at work, Martha enjoys spoiling her two grandchildren, reading, browsing through flea markets and antique shops, and sitting on the front porch watching the horses graze. Without a doubt, Martha has one of the most challenging jobs at the firm. The contacts she handles are tremendous in number and quite varied in scope. Martha is an outstanding person and a very good employee. She is a definite asset to the firm.

XXIII. SOME CLOSING OBSERVATIONS

THE FIGHT FOR JUSTICE MUST CONTINUE

I have written several accounts of the injustice that came about as the result of the Alabama Supreme Court's decision in the Jack Cline case. Fortunately, there will be other cases that in my opinion will successfully challenge the statute of limitations in toxic tort cases in Alabama. Lawyers who believe in justice must never give up this fight and must stay the course. It has been a very tough fight thus far. In fact, the following verses were sent to me by a friend who, after reading the June issue of the Report, was afraid I had become discouraged over how the never-ending fight for justice was going.

Then Jesus told his disciples a

parable to show them that they should always pray and not give up. He said: 'In a certain town there was a judge who neither feared God nor cared about men. And there was a widow in that town who kept coming to him with the plea, 'Grant me justice against my adversary.' For some time he refused. But finally he said to himself, 'Even though I don't fear God or care about men, yet because this widow keeps bothering me, I will see that she gets justice, so that she won't eventually wear me out with her coming!'" And the Lord said, "Listen to what the unjust judge says. And will not God bring about justice for his chosen ones, who cry out to him day and night? Will he keep putting them off? I tell you, he will see that they get justice ..."

Luke 18:1-5 (NIV)

I told my friend that I haven't given up on our fight for justice and that I never will. The result in the Cline case tells us how truly tragic it is when justice is denied to a deserving person who has suffered a wrong that cut short his life. Actually, what happened in the Cline case should serve as an inspiration to all of us who should be involved in the fight for individual rights and justice. When we ignore an injustice, such as occurred in Jack Cline's case, we are aiding and abetting the wrongdoers by our inaction and silence. This is a battle that must be won for the good of our Republic!

XXIV. SOME PARTING WORDS

I received a hand written note last month from my long time friend, Dr. John Ed Mathison, the senior pastor at Frazer Memorial United Methodist Church in

Montgomery. John Ed, who had read the June issue of the report, encouraged me to continue reminding our readers that Jesus is truly the only answer for each of us. It took me a number of years to finally realize this universal truth and to understand that there is no substitute. My hope and prayer is that the salvation message, as laid out in the New Testament, will be made available to all people in all parts of our world. We can start by witnessing to people with whom we have contact. In fact, Jesus, in his final message to his Disciples after his resurrection, was very clear as to what they should do after his ascension:

Go into all the world and preach the good news to all creation. Whoever believes and is baptized will be saved, but whoever does not believe will be condemned.

Mark 16: 15-16

And Jesus came and spake unto them, saying, All power is given unto me in heaven and in earth. Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost: Teaching them to observe all things

whatsoever I have commanded you: and, lo, I am with you always, even unto the end of the world. Amen.

Matthew 28: 18-20

All of us have numerous opportunities to tell folks the good news about Jesus Christ. John Ed was right on target when he reminded me that Jesus is “the only answer.” If our readers get nothing more from this issue, if that message is understood, it will be great news indeed!

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

218 COMMERCE STREET (36104)

POST OFFICE BOX 4160

MONTGOMERY, ALABAMA 36103-4160

(334) 269-2343

TOLL FREE

(800) 898-2034

TELECOPIER

(334) 954-7555

WEB PAGE

www.BeasleyAllen.com

RETURN SERVICE REQUESTED

PRESORTED
STANDARD
U.S. POSTAGE
PAID
MONTGOMERY, AL
PERMIT NO. 275



BeasleyAllen.com

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.