



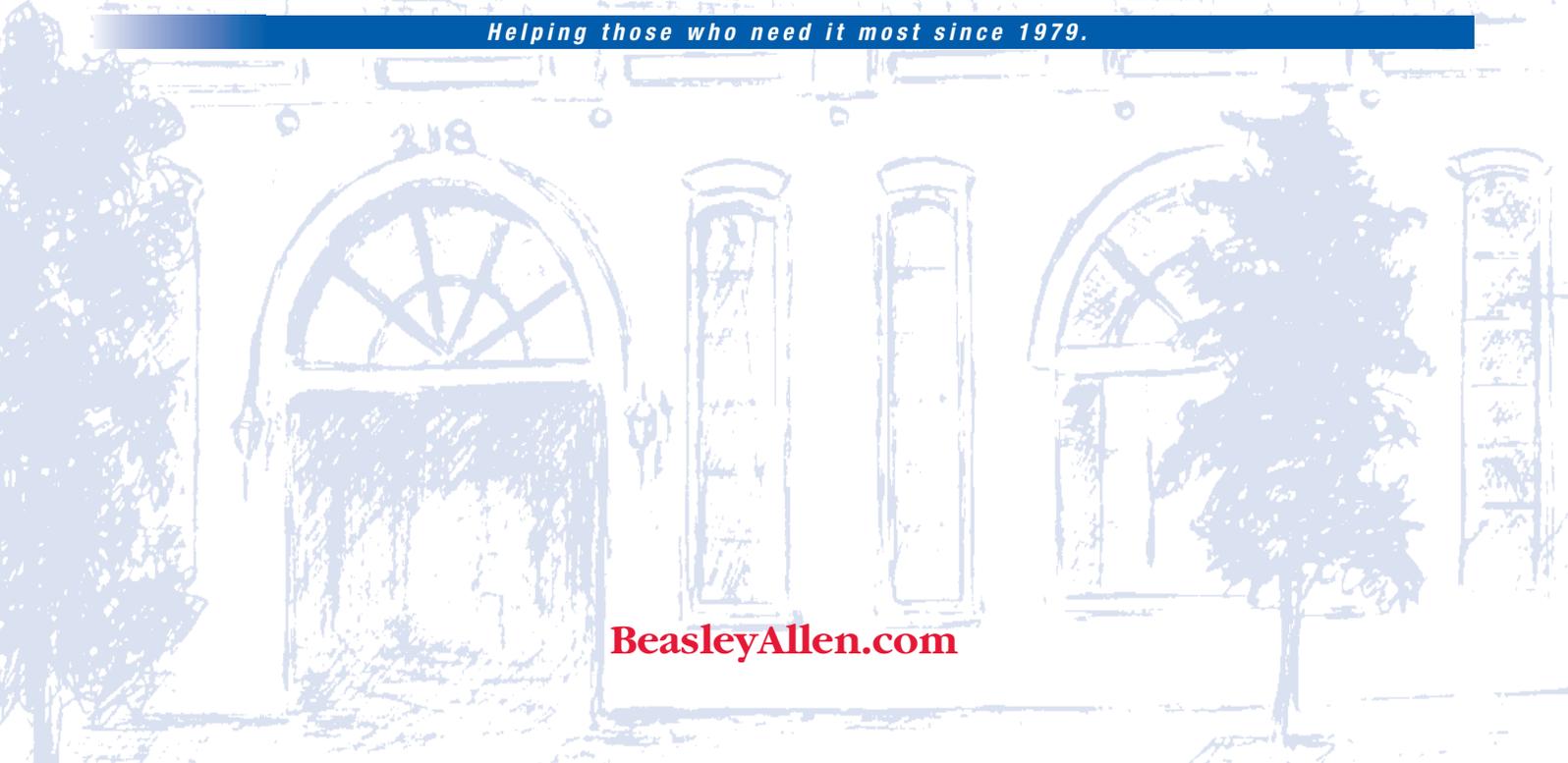
THE
JERE BEASLEY REPORT

OCTOBER 2007

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A NATIONAL LAW FIRM LOCATED IN MONTGOMERY, ALABAMA

Helping those who need it most since 1979.



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I. CAPITOL OBSERVATIONS

WRONGDOERS MUST BE HELD ACCOUNTABLE

The battle to keep our civil justice system alive and well has been going on for the past several years and it's one that the American people can't afford to lose. Those powerful corporate interests trying hard to shut down the system are well-financed, well-organized and are totally dedicated to their task. Unfortunately, many of our citizens who would be hurt the worst if this war is lost don't even know that the battle is being waged. That's because of the massive public relations campaign, designed to convince the public the court system is broken, which has been successfully used by these powerful interests. They are spending millions of dollars each year to get their message out because they want the courthouse doors closed to victims of corporate wrongdoing. If that were ever to happen, it would be a national disaster. As we all know, the court system in our country was designed to level the playing field between regular folks and large powerful interests. This latest threat to the civil justice system, and specifically to the right to a trial by jury, is federal preemption. That will be discussed in greater detail in a separate section of this issue.

As lawyers, our obligation is to make sure any person who is injured by the misconduct of others can get justice in the courtroom when taking on the powerful interests. This obligation is now more important than ever because the drug and oil industries, big insurance companies, and other large corporations dominate and control the political system in our country. Because of the power and influence of these interests, regular folks can't depend on the political system to hold corporations accountable. That's why the court system is so critically important. When large corporations and their bosses act

irresponsibly and commit wrongful acts, the only place Americans can go to hold them accountable is to our courts. We have seen multiple-incidents where Insurers delayed or refused outright to pay fair and just insurance claims - companies produced defective and unsafe products - corporations polluting our environment - powerful corporations cheating their own employees and shareholders. This sort of thing can never be tolerated in our country.

Our civil justice system must be viable and strong so that deserving individuals can get justice and wrongdoers can be held accountable. That is the commitment of the people who work at our firm and it should be for all citizens. We must oppose all efforts to weaken basic legal protections and further stack the deck against regular folks. Seeking justice for all is a most worthy cause and one that I certainly believe is worth fighting for. All citizens benefit when an individual who is hurt or damaged by another's wrongful conduct has a fair chance to get justice through our civil justice system. That has always been the American way, and it's my hope and prayer that it will always be!

THE WORST BUNCH EVER

I'm not sure the current crop of GOP presidential candidates is the worst ever, but if they aren't, they will be a very close second to the worst in recent memory. The only time that I can recall when the candidates were worse would have been in the Goldwater year of 1964. Of course, Goldwater lost to Lyndon B. Johnson by a landslide in the general election that year. Most observers believe the entry of former Senator Fred Thompson will make this group a little better than the field in 1964. It's my belief that Thompson, who was born in north Alabama, will wind up being the Republican nominee. But, if that happens, it will be a result of the others being so bad. To put it mildly, the rest are simply awful, and that makes the actor-politician from Tennessee look pretty good. The following is my assess-

ment of the other contenders for the GOP nomination.

Rudy Giuliani - lots of folks - including me - believe that Rudy Giuliani is simply not fit to be president of the United States. The fact that he just happened to be Mayor of New York City on September 11th doesn't qualify him to lead our country, nor will it overcome his many obvious shortcomings. The very thought of this man being President is downright scary. Nevertheless, it appears that he is in the race for the duration, and he will definitely be a factor. All of the polls show Giuliani as the leader at this point.

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John McCain - at one point Senator McCain appeared to be a very good candidate, but his campaign has literally fallen apart. I believe that demise resulted from McCain the candidate, trying to be all things, to all people and when that strategy failed, he became a clone of George W. Bush. That appeared to be a desperation move and it has just made matters worse. In my opinion, McCain is no longer a factor and that's sort of sad.

Mitt Romney - the former Massachusetts Governor was probably the best all-around candidate that the GOP had to offer before Fred Thompson entered the race. But I am not sure the hard-core Republicans will support Romney when it comes down to it. Still, because of the overall weakness of the field, he could wind up with the nomination, especially if Fred Thompson's past or track record for not being a very hard worker come back to haunt him. It's clear Romney's campaign is well-funded, and that's very important in a primary race. For that reason he will be a contender, in my opinion.

Newt Gingrich - There is another potential candidate lurking in the wings. Newt Gingrich, the former Speaker of the House of Representative, is a "wanna-be" who is actively testing the waters. It's interesting that the Georgia native has gone to great lengths to distance himself from the Bush Administration. Most observers say Newt is really courting the right-wing of the party, and that may just work. When he was Speaker, Newt was their "darling." In fact, he might be a real contender if his "draft me" strategy pays off and the rest of the field falters. Newt is best remembered in political circles for his "Contract with America" agenda. Although that was more fluff than substance, it was a masterfully carried out public relations ploy. I will reserve judgment on Newt for now and see what develops as the primary season approaches. When you really think about it, Newt would be a perfect candidate for Karl Rove, and that makes him even more dangerous!

Perhaps the most significant thing concerning the GOP hopefuls is that, with the exception of McCain, nobody wants to get very close to President Bush, Vice-President Cheney, or Karl Rove. That is most interesting and tells me that the GOP is in trouble. Although things don't bode well for the Republican hopefuls as we approach 2008, things have a way of changing quickly in politics. I really believe, however, that the only way for the Republican nominee - whoever winds up with the brass ring - to be respectable on Election Day is for the Democrats to self-destruct. As we all know, that happened in 2004 when John Kerry wound up as the Democratic Party's nominee. I hope a lesson was learned by the party bosses and a like mistake won't be made this time.

DEMOCRATS WILL CHALLENGE SESSIONS

It appears that U.S. Senator Jeff Sessions will definitely have a Democratic opponent next year. The question at this point is - who will that person be? Currently, there are several potential candidates taking a serious look at this race. There is one person who has already jumped into the Democratic primary race. Vivian Figures, a state senator from Mobile, announced her candidacy several weeks ago. It was no surprise to read that she will be a candidate, because the Mobile County native has been saying for months that she would seek the Democratic nomination. At this point, Vivian is officially the only announced candidate in the race. Although I really like Vivian, I may not be able to support her. That's because one of the persons who is seriously considering getting in the race is my brother, Billy Beasley.

Billy, a pharmacist, who is currently serving in the House of Representatives, owns two retail drug stores in Barbour County. Over the past several weeks, Billy has received a considerable amount of encouragement to run. But, at this point I would have to say he is still in the undecided category. In the

event he makes the decision to run, Billy's knowledge of healthcare issues would be invaluable. He has served as president of the Alabama Pharmaceutical Association and has served on the advisory board for the Pharmacy School at Auburn University. I have always felt that the pharmacist in any small town, and even to a lesser extent in the larger cities, would be the best political supporter in his or her area for a candidate. It's been my observation over the years that everybody likes and trusts their own pharmacist. That's certainly the case for Billy in Barbour County. Unfortunately, it's also been my observation that in the past, most pharmacists really haven't gotten involved in political races. That would most likely not be the case if Billy runs and gets the Democratic nomination. Even if he doesn't make the race, pharmacists should get actively involved in state politics. Had they been actively involved, it's my belief that none of our Alabama Congressional delegation would have voted for the prescription drug bill that President Bush and the big drug companies pushed through Congress.

Earlier polls had shown that Ron Sparks would have run a very strong race both in the Democratic primary and in the general election against Sessions. His decision not to run - while coming as a surprise - is most likely final. Frankly, I never have figured out why Ron decided not to make the race and so far he hasn't told me. Given that he definitely appeared to be a real strong candidate, it must have something to do with a race later on down the road.

Many political observers felt that Jim Folsom would likely run against Sessions. But Jim let it be known very early that he had no interest in going to Washington at this time. But, there has been speculation recently that the popular Lt. Governor still might be talked into getting in the Senate race. I don't believe he will change his mind because the governor's office is where Jim would rather be. The strong showing he made last year in his successful race

against a well-financed GOP candidate makes “the little man’s big friend” a leading contender in the 2010 governor’s race.

Finally, there will definitely be a strong opponent for Sessions in the general election next year. Although he has raised a pile of money, the polls don’t show the Mobile Republican as being in the “unbeatable” category. In fact, a strong candidate who can raise an adequate amount of campaign funds would be extremely competitive with Sessions. There is a world of difference in our senior Senator Richard Shelby and Sessions. On a scale of 1 to 10 Shelby would rank a 10 insofar as effectiveness in the Senate and being fair to all Alabama citizens. You can make your own conclusion as to how the junior Senator would rank. In any event, we will have a most interesting race next year!

SETH HAMMETT MAKES A GOOD IMPRESSION

Seth Hammett spoke to a breakfast meeting sponsored by the Montgomery Area Chamber of Commerce recently. The popular House Speaker received a tremendous response from the capacity crowd in attendance. Seth outlined the successes and shortcomings of the 2007 regular session and didn’t pull any punches. He also discussed some of the issues that the next regular session will have to deal with. Seth warned the group that the state general fund budget would be very tight next year. One challenge will be how to come up with \$160 million in state funds which will have to be found for the Medicaid budget. The Department of Transportation will also need a great deal of state money in order to meet the demands for new highway construction and maintenance of existing roads. I doubt that many of those in attendance realized how great the maintenance needs are in our state. The possibility of a special session to deal with campaign finance reform legislation was also discussed.

I left the meeting with the distinct impression that the Speaker will definitely be a candidate for Governor in

2010. Based on conversations with others after the meeting, that opinion is shared by a good number of persons who heard that speech. Seth will be a leading contender if he continues to shoot straight with Alabama citizens on issues of concern and offers solutions to the critical issues facing our state. He is extremely knowledgeable about the inner workings of state government and knows how to get things done. That’s most important for a governor.

THOUSANDS OF NEW JOBS CREATED IN ALABAMA THIS YEAR

According to Governor Riley, there have been nearly 100 new and expanding industry announcements in Alabama so far this year, creating more than 10,000 jobs. The announcements, which took place in 37 counties, represent a combined capital investment of nearly \$5.7 billion. As we in Alabama all know, among the announcements were German steelmaker ThyssenKrupp’s plans to build a 2,700-worker plant near Mobile, and Hyundai’s plans to expand its Montgomery operations with a new, 522-worker engine plant. The Governor had this to say concerning what’s happening in our state: “With a low unemployment rate, more jobs and the fastest growth in per capita income in the South, Alabama is booming.”

Although Alabama’s economy is doing extremely well, in my opinion the best is yet to come. Governor Riley understands there are still folks in Alabama who need to be brought into the overall picture. Bringing them in will not only allow them to share in our state’s good economic fortune, but it will make our state’s economy much stronger. That makes paying special attention to Alabama’s Black Belt a real priority. Until we upgrade the economic development of the Black Belt countries, we can’t say that all Alabamians are sharing in our state’s progress. Job training and vocational skills are areas where special attention must be placed in our system of public education. Vocational education, with an emphasis on job training, must receive a top priority in the educa-

tion budget in the next legislative session. We must continue to attract new industries and take care of those that we already have in the state. This critically important area of governmental responsibilities can’t be taken for granted and I don’t believe that it will be.

AIDT IS RANKED HIGH AMONG STATE PROGRAMS

Alabama Industrial Development Training (AIDT) continues its run as one of the nation’s highest-ranked workforce training programs, according to a recent survey of site selection experts by Expansion Management magazine. Alabama’s agency ranked second behind Georgia in the annual survey, which was published in August. Among all training programs in this country, AIDT ranked number one in 2004 and 2006 and number two in the 2005 and 2007 surveys. Actually, AIDT has never ranked lower than the top seven since the survey began in 1999. Ed Castile, who is the AIDT Director, is doing a tremendous job and he should be commended for his performance. Ed has pointed out that all states are faced with workforce issues, and that’s why Alabama’s program is so important. If we are going to continue bringing the good industries into Alabama – and continue supporting those we already have – AIDT must keep up its good work. Other states have recognized how important this program has been to our state’s industrial recruiting capacity and have put in programs of their own.

I have kept up with the progress of AIDT since it was started in Alabama back in 1971. On a personal note, I was involved in state government at that time and helped start the program. For that reason, AIDT will always have a very special place in my memory book. I remember very well how, at the time, many leaders in education and a good number of political leaders failed to comprehend how important the creation of AIDT would be for our state. As a result, there was tremendous opposition to the program at the time. Thanks

to the foresight of persons like Jimmy Faulkner, Dr. T.L. Faulkner, and Fred Denton, the program was started on schedule and all of the opposition was eventually overcome. George Howard, who came in to take over the program, was the man who really got AIDT off the ground. George had a vision of what it would take to take the program to the heights it now enjoys. He also had the ability and work ethic required to get the job done. Without George's leadership, AIDT wouldn't have made the progress that it has enjoyed. In fact, it might have died on the vine during the first few years of the program's existence.

Every major industry that has located in Alabama has successfully used the training program, and its availability was the key factor in each of the company's selecting Alabama as a site for a plant. As a result, thousands of Alabamians have been able to obtain and keep good paying jobs. Job-specific training is critically important to both new and existing industry, and that's what AIDT provides at no cost to the industry involved or to the trainees. AIDT is one of the greatest success stories in our state's history. If you want to learn more about the program, go to AIDT's website, www.AIDT.edu.

Source: *Mobile Press-Register*

THE WEST VIRGINIA PBM LITIGATION SETTLES

I have previously reported that our firm, in conjunction with two West Virginia law firms, Cook, Hall & Lampros and the Law Offices of William Druckman, was representing the State of West Virginia in a Pharmacy Benefits Manager (PBM) claim against Merck-Medco Managed Care, L.L.C. The Public Employees Insurance Agency (PEIA) alleged that Merck-Medco was guilty of fraud and breach of contract relating to the integrated prescription drug program administered by Merck-Medco for the State. The claims focused on drug pricing issues and rebates that were allegedly withheld by the

company instead of crediting them to the State Employee Benefit Plan. The case was pending in the Circuit Court of Kanawha County, West Virginia.

I am happy to report that we have agreed to a settlement of the case, the terms of which are available for review. Attorney General Darrell V. McGraw, Jr. and lawyers in his office were extremely well-pleased with the settlement of the case, which had been pending since 2003. It was an honor for our firm to be selected by the Attorney General to prosecute the case on behalf of the State of West Virginia. We are pleased that we could achieve a settlement that will benefit the taxpayers of that state.

The PBM cases are very similar to the Average Wholesale Price (AWP) cases that our firm is pursuing on behalf of Attorneys General for the States of Alabama, Mississippi, South Carolina, Alaska, Hawaii, and Utah. In those cases, the States claim that the drug companies reported false and inflated prices that the companies knew the State Medicaid programs were using to reimburse the pharmacists involved in the Medicaid programs. The Attorneys General of 23 states have now filed lawsuits against the pharmaceutical companies in an effort not only to recoup the overpayments, but also to impose statutory penalties and/or punitive damages for the companies' fraudulent conduct. This false reporting price scheme by the pharmaceutical companies resulted in billions of dollars in losses to the already-strapped Medicaid programs throughout the country. At the same time, the pharmaceutical companies captured huge market share for their drugs through this fraudulent scheme.

In effect, this elaborate scheme - designed by the pharmaceutical companies - of falsely inflating reported prices resulted in the federal and state government Medicaid programs funding the companies' marketing plan to gain market share for particular drugs. More specifically, as the prices were continually inflated and reported by the drug companies, the usage for those drug

companies rose because the pharmacists would choose the higher priced drug over a lower priced drug. At first blush it appears that the pharmacists were the beneficiaries of the false reporting scheme, but the pharmacists' surveys show that 76% of all gross prescription drug income is reaped by the pharmaceutical companies.

This very sophisticated fraudulent scheme by the drug companies has only recently been revealed as a result of our judicial system at work. Without our court system, the taxpayers of this nation would simply have no recourse to unveil this type of fraudulent activity and the pharmaceutical companies would continue to not only take funds from taxpayers, but deny the less fortunate citizens of this country the right to medical care through the Medicaid programs.

THE AWP LAWSUIT IN ALABAMA WILL BE TRIED NEXT YEAR

The State of Alabama will soon have its day in court in the AWP litigation against some of the pharmaceutical companies that engaged in fraudulent conduct in their dealings with the State's Medicaid program. Our case is set for February 11, 2008, and will be tried in Montgomery County Circuit Court. This will be the first trial against the initial set of the seventy-three defendants sued in Alabama to take place. Dee Miles, Clint Carter, Scarlett Tuley, Clay Barnett and I will be involved in this trial, along with Roger Bates, Caine O'Rear, Clay Rankin, Windy Bitzer and Tracy Davis from the Mobile firm of Hand, Arendall. We all look forward to the challenge and hope to get a good result for Alabama taxpayers.

AN ELECTROCUTION CASE IS FILED IN STATE COURT

Our firm filed a case recently that involved the death of a young wife and mother, who was electrocuted while working in a chicken house located on

her property in Barbour County, Alabama. Her death was caused by a defective electrical system, which had been installed for the chicken feeder system. The system was badly designed and, we believe, improperly installed. Had the system utilized alternative designs that were readily available to the defendants, who designed and installed the system, the death would not have occurred. The decedent is survived by her husband and two children. We will be able to prove that the design and installation of the electrical system was bad and that it created an extremely dangerous condition. Any person working in the chicken house was put at risk for serious injury or death. There are a number of defendants in the case and it's likely others will be added as discovery goes forward. Greg Allen and I will handle this case, along with Shane Seaborn, Myron Penn, and Will Partin of the firm of Penn and Seaborn from Clayton.

A REAL FRIVOLOUS LAWSUIT

I read about the lawsuit filed recently against God by a state senator from Nebraska and at the time I wasn't sure whether he was making a bad joke or was trying to make some sort of a point. This politician may believe filing a lawsuit against God is acceptable, even if it was a rather "sick" joke. If he was serious, however, it is more despicable. What the senator did was not only wrong, it's just plain stupid. With all of the serious problems our country is facing, we don't have time for this sort of thing by an elected official. I believe the judge who has this case should not take the suit lightly and should determine if it is as frivolous as it appears to be. If it's found to be frivolous, which it obviously is, then the most severe sanctions possible should be on the senator. The courts have to deal with political stupidity on occasion, but this lawsuit takes the cake. What the senator did is offensive and wrong by any standard!

II. LEGISLATIVE HAPPENINGS

TRIP PITTMAN WINS SENATE RACE

A political newcomer, Lee "Trip" Pittman, pulled off what is being viewed as a major upset in the Republican runoff in state Senate District 32. Pittman defeated a better-financed opponent who was backed heavily by nearly all of the influential business groups. Pittman received 56% of the vote in the primary run-off to 44% for state Board of Education member Randy McKinney. The impressive victory will put Pittman against Democrat A.J. Cooper in the special election to be held on October 16th. It appears that Pittman, a 47-year-old tractor dealer from Daphne, has a pretty good read on why he did so well in his race. He says, as a first-time candidate, the voters' "displeasure with politics" benefited him. In addition, he also believes those feelings were enhanced by the "endorsements" from outside the district. His most astute observation was: "People are frustrated with government and the perception of who it works for. They think it doesn't work for them."

As far as the endorsements go, I have never felt that voters pay much attention to that sort of thing. In fact, in our state, a number of popular governors have tried to affect races by endorsing a local candidate and it simply didn't work. Most folks don't like to be told who to vote for and instead tend to make up their own mind in local elections. The race is a classic example of local folks knowing best about local candidates. I have heard it said many times that "home folks know best!"

The District 32 seat opened up in May when Bradley Byrne left the Senate to become the state's Chancellor for two-year colleges. Few folks gave Pittman any chance to win when he entered the Republican primary. In fact, he was up against a number of better-known candidates, including former state Senator

Albert Lipscomb, Baldwin County Republican Party Chairman Don McGriff, and Baldwin County Commissioner David Ed Bishop. His run-off opponent even had a very popular and widely-respected governor in his corner. Randy McKinney, who was already well-known in Montgomery political circles, picked up strong support from the Business Council of Alabama and many trade associations, including realtors, retailers, and trucking. Their candidate led the primary, but not by enough to avoid a runoff. Most observers felt when Governor Riley endorsed McKinney in the run-off and appeared in a TV commercial for him that a win was certain. But, as it turned out, the governor's endorsement had no real effect.

Democratic nominee A.J. Cooper, who is a Fairhope lawyer and former mayor of Prichard, is running in a county that is considered to be firmly in the Republican category. Most observers - and pollsters - believe that Pittman will win rather easily. But, I imagine the GOP candidate learned a valuable lesson in his primary race and won't take anything for granted. In any event, I believe Trip Pittman is headed to the Senate.

Source: Associated Press

DECISION ON SPECIAL SESSION WILL LIKELY BE MADE THIS MONTH

Governor Riley has said he would likely decide early this month whether he will call a special session of the Legislature to consider ethics reform and other specific issues. The governor has been talking with legislative leaders to determine if a special session would be productive. While, I'm not sure what sort of response he has received, it's encouraging that the governor has established a dialogue that has been established with legislators concerning the potential for success if he calls a session.

Governor Riley wants lawmakers to consider ethics legislation, including a bill to ban campaign donations from being transferred from one political

action committee to another — a practice called PAC-to-PAC transfers. The governor also wants lawmakers to consider a bill to require counties to reassess property values every four years instead of every year. Both of those bills were endorsed by Republican and Democratic leaders before the start of the last session, but neither passed. The bills passed the house, but got caught up in the Republican-led filibuster in the Senate.

Another proposal the governor has mentioned would require lawmakers to deal with property insurance problems on the Alabama coast. Some residents are still waiting for claims to be paid from Hurricane Katrina, which hit more than two years ago. This is extremely important to residents of south Mobile and south Baldwin counties, but if a session is called, I doubt that it will be included.

If Governor Riley does call a session that includes campaign finance reform, I would hope that the call includes more than just PAC-to-PAC transfers. Although a ban on transfers between political action committees is needed, that's not the only problem that needs to be addressed. Limitations on amounts that can be given to candidates are badly needed. Also reasonable limits should be imposed on how much candidates can spend in state campaigns. The spending by political parties, as well as by the shadow groups that are heavily involved in Alabama political races, should definitely be limited, if not banned altogether. A voter should be able to tell where a group is getting the money it spends in a political race. At present, groups like the American Taxpayer's Alliance can spend unlimited funds for a candidate and not have to disclose anything. Their money comes from powerful interests that don't want to be identified. Perhaps, the pre-session planning involving the governor and legislative leaders will pay off in the event of a special session is called.

By the time this issue is received, most likely the governor will have decided whether to call a special

session. It's my opinion that calling a special session that would in all probability fail would be a mistake. It's also my belief that the Governor wouldn't waste taxpayer dollars by bringing the lawmakers to Montgomery if he believed the session would result in failure. It will be interesting to see what happens.

Source: *Associated Press*

PLANNING FOR 2008 SHOULD BE TAKING PLACE NOW

There are a number of critical issues that must be addressed in the 2008 regular session of the Alabama Legislature. The following are just a few of the more important issues that should be a priority for the session:

- Campaign Finance Reform;
- Adequate funding for highways construction and maintenance projects;
- Controls over lobbying activities;
- Finding the needed funds for the Medicaid program;
- Constitutional Reform;
- Upgrading consumer protection laws;
- Adequate funding for vocational education and job-training programs; and
- Tax reform that will give relief to middle and low income citizens.

I am convinced that Governor Riley and the legislative leaders - both Democrats and Republicans - understand the need for a productive session next year. That's why planning and cooperation are so vitally important.

III. COURT WATCH

THE CLINE STORY WON'T GO AWAY AND THAT'S GOOD NEWS

Bob Palmer, the dedicated lawyer who represented Jack Cline has written an

opt-ed piece that was carried by almost every daily newspaper in Alabama. It dealt with a story of injustice that has put Alabama on the map, but in a very bad light. Bob has allowed me to include his writings in this issue. Because this is a battle that must be won, I felt that it should be included as written by Bob in its entirety. Jack Cline was a man whose courage and resolve were unparalleled. He fought a long fight and deserved to win his right to have a court and jury hear his case. Unfortunately, he wasn't able to get that opportunity because of a rather strange Supreme Court ruling. The Cline story is one that must be told and understood by the people of Alabama, so here it is:

Jack Cline and his widow were denied justice. Last January, the Alabama Supreme Court denied Jack and his widow their day in court, relying on a rule that the court itself created. As an editorial in The New York Times described the 5-4 decision made by then-Chief Justice Drayton Nabers and Associate Justices Harold See, Lyn Stuart, Patty Smith, and Mike Bolin, "The Alabama Supreme Court, shamefully, refused to do anything about this bizarre situation: There is never a legally acceptable time for people who are exposed to slow-acting poisons to file suit against the company or person who poisoned them."

In pronouncing this judgment, the Times noted that Alabama's court-created rule makes Alabama the only state in which workers exposed to toxic substances are effectively precluded from suing the makers of those toxic substances for the diseases they cause years later. The statute of limitations enacted by the Alabama Legislature gives toxic exposure victims two years within which to file a lawsuit. But the Alabama Supreme Court effectively eliminated that entire two-year period for victims of exposure to hazardous

substances. The court accomplished this by ruling that the two-year limitations period begins running when the victim is last exposed to the hazardous substance, but that the victim cannot bring a lawsuit until the cancer or other dread disease has manifested itself, which usually occurs much more than two years after exposure. With such absolutism granted to polluters, is it any wonder that Alabama ranks fourth in the nation for the production of toxic wastes even though it ranks just 23rd in population among the states?

But Jack Cline was never concerned solely with his own case. Indeed, he routinely told his lawyers, reporters and anyone else who would listen to him that the reason he spent his dying days prosecuting a case against such overwhelming odds is the very slight possibility that his efforts might eventually result in change - change that would permit other Alabama workers exposed to toxic substances to obtain compensation for their resultant diseases. Workers like David Wayne Griffin, who was exposed to benzene, the very same toxin as Jack, and who developed acute myelogenous leukemia, the very same disease that killed Jack. The baton that Jack Cline carried has now passed to David's widow, Brenda Griffin, who is now asking the Alabama Supreme Court once again to reconsider its unjust - and unconstitutional - exposure rule. After all, in Jack's case the court simply refused to address the constitutional issue, choosing instead to render its decision without any opinion to explain it.

But anticipating that the Alabama Supreme Court might be inclined to take the same approach in her case, Brenda Griffin has filed two separate lawsuits, one in Alabama

and one in Georgia. Thus, her case is now on appeal in two different states. And if the highest courts of Alabama and Georgia cannot agree on the constitutionality of Alabama's court-created exposure rule, then the case will be ripe for review by the United States Supreme Court. But no matter what happens in Brenda Griffin's case, there will be other widows and other orphans, for the unjust and unconstitutional exposure rule that the Alabama Supreme Court spawned on its own authority - a rule that directly contradicts laws passed by the Alabama Legislature - yields no shortage of victims. Because of that rule, the chemical industry has dumped countless tons of toxic substances in our state, thereby poisoning Alabama citizens with impunity. Is it any wonder then that the very same industry is now fighting to preserve the court-created exposure rule, a rule in which it has a vested financial interest?

The citizens of Alabama deserve better, and for so long as the Jack Clines and Brenda Griffins of Alabama are willing to fight against this injustice, Alabama lawyers will devote their time and resources to that cause. During his earthly ministry, Jesus told a parable about a judge "who neither feared God nor cared about men." Luke 18:2-8 (NIV). And although a widow kept coming to him with a plea for justice, he refused that plea. But because she was persistent, he finally relented and gave her the justice she deserved "so that she won't eventually wear me out with her coming!" We pledge to seek justice for the state's widows and orphans, to take up their cause, Jack Cline's cause, David Griffin's cause, so their plea can be heard. We will never relent in prosecuting their claims and will

see to it that their survivors are granted their fair day in court. Justice can, and will, be served.

Regardless of how they feel about the court system, especially as their feelings may be affected by the political climate surrounding the highest court in our state, the Jack Cline story is one that all Alabama citizens must hear. Justice was clearly denied in the Cline case. However, I am convinced that the justices on our court will eventually do the right thing on the legal principle that Jack Cline fought so hard for. I have always believed that right would prevail over wrong, and good over evil, and that belief is now stronger than ever. While the rendering of justice sometimes takes a little longer than I would like, when it does come, the wait is well worth it. When it does finally happen in the fight started by Jack Cline, his fight will not have been in vain.

LOTS OF INTEREST IN THE SEAT TO BE VACATED BY HAROLD SEE

There is already a great deal of interest in the one seat on the Alabama Supreme Court that will come up for a vote next year. As you know, there won't be an incumbent running since Justice Harold See for some reason decided not to seek reelection. Although it's real early, and lots can happen between now and next year, folks are lining up behind potential candidates. At this point, Jim Main and Kelli Wise appear to be headed to a showdown in the Republican primary for the See seat. As you know, Jim is currently serving as Finance Director in the Riley Administration and is doing an excellent job. Kelli, who is in her second term on the Criminal Court of Appeals, has received very high marks for her performance on that court. Many believe that Kelli is one of the best vote-getters around today.

Other possible entrants into the Republican primary are Scott Donaldson, a well-respected Circuit Court judge from Tuscaloosa, and Doug

McElvy, a Montgomery lawyer. If Doug runs, it would definitely change things in both primaries. Doug recently served as President of the Alabama State Bar and did an outstanding job. If they both get in the race, a runoff would be a certainty. Each of these potential candidates would be a worthy opponent for the Democratic nominee in the General Election. There has also been talk around the Capital City in the last few days that former Chief Justice Roy Moore might have an interest in returning to the Supreme Court. While that might just be wishful thinking on the part of some of Judge Moore's supporters, it would be a major development if that does happen.

On the Democratic side, Deborah Bell Paseur, a District Court judge from Lauderdale County, will definitely be a candidate for the Democratic nomination. But, there have been several other potential candidates mentioned, such as Judge Sharon Yates of Montgomery, and Judge Pete Johnson of Jefferson County. If any of these potential candidates decides to run, it will make for a most interesting primary season. Although most political observers believe that Judge Paseur - being from vote-heavy north Alabama - would be difficult to beat in a primary election, that remains to be seen. However, the other persons who are being mentioned as possible entrants would be formidable candidates.

Finally, it's my observation that all of the early activity in political races that won't take place until next year is rather unusual. In the "old days" most races were run in the year when the actual election was to be held. In those days, nobody started running as early as candidates do today. Now, we see folks starting to actively campaign as early as two years before they qualify. In any event, the battle for the "See seat" will be a most interesting one.

THE PREEMPTION BATTLE WON'T GO AWAY

We will be hearing lots about "federal preemption" over the next several months since it's the latest strategy

designed by powerful interests to destroy the civil justice system. However, I find that most folks don't have a clue what the term federal preemption means or what it's all about. To be candid, in past years, there really wasn't any reason for them to know about it. Now it's certainly something that will affect the rights of all American citizens and for that reason all of us must become knowledgeable about federal preemption of state laws. Basically, federal preemption means that an act by a federal regulatory agency would override state law and keep valid claims from being pursued in state court.

Currently, the Bush Administration is conducting an unprecedented campaign to usurp state authority, weaken regulatory scrutiny and protect corporate wrongdoing through a coordinated strategy of what is referred to as "preemption." For the uninformed among us, which includes most lawyers, preemption means that Americans are denied the right to hold companies accountable under the laws of their own states for the harm those corporations cause. This harm to citizens in the states comes about because of the providing of dangerous drugs, cars, toys, and food by corporations both domestic and foreign.

Preemption is being pushed on people as a result of federal regulation and standards promulgated by federal regulatory agencies. Over the years, GOP office holders were generally advocates of states rights and local control, and that applied to our system of courts. Now we see a complete turn-about by the Bush Administration, and the Administration's goal is clearly not to protect people. Instead it is to pay back campaign debts to powerful interests by giving them a shield from liability in state lawsuits.

The Bush Administration's campaign to advance corporate irresponsibility threatens the health and safety of American citizens. Preemption must be stopped because it affects millions of Americans. A recent report by the

Center for Progressive Reform exposes the campaign by powerful corporate interests, aided and abetted by the President's advisors, which if successful will bar states from enforcing laws that punish corporate abuse and wrongdoing. It's actually a stealth plan utilizing federal regulatory agencies that should be protecting consumers and not hurting them. But, it doesn't come as a surprise because it's typical of the Bush Administration, and that's most unfortunate. Preempting state laws through the regulatory rulemaking process is wrong and can't be justified. It must be stopped in its tracks without delay. The report referred to above reveals some significant happenings:

- The Food and Drug Administration declared that a rule regarding drug labeling preempted state tort laws even though the agency had long held to the contrary - a drastic change in policy undertaken without benefit of public comment.
- The National Highway and Traffic Safety Administration adopted a rule on roof-crush resistance with similar language seeking to preempt state common law despite earlier determinations that adopted a diametrically opposed view.
- The Department of Homeland Security adopted preemption provisions even though the Senate Homeland Security and Governmental Affairs Committee had specifically rejected the approach. The DHS language places states that want to take more stringent actions regarding homeland security in a straight-tjacket and that's wrong.

The issue of preemption will be decided in the courts and if established legal principles are followed, the American people will be the winners. However, Congress should step in and let the Bush Administration know that the federal regulatory agencies must follow the law. I don't believe the powerful interests will be successful because the American people - once

they realize how badly preemption hurts them - will demand that the state courts are protected and their rights preserved. That's why its important for folks to contact their elected representatives and let them know that preemption is wrong and won't be tolerated.

THE FEDERAL PREEMPTION BATTLE IS BEFORE THE U.S. SUPREME COURT

The federal preemption fight is now before the United States Supreme Court in two separate cases. In each of these cases, manufacturers are trying to obtain a shield from any sort of liability for the often-horrific injuries caused by their defective and unsafe products. The issue in one of the cases, *Riegel v. Medtronic*, is whether manufacturers of medical devices that have received pre-market approval from the U.S. Food and Drug Administration can avoid all liability by invoking the defense of federal preemption.

The Supreme Court will also decide a case that centers on whether federal regulation of pharmaceuticals preempts state law. This case involves a product liability lawsuit against Pfizer's Warner-Lambert unit and its Rezulin diabetes drug. As you may know, Rezulin was ordered off the market in March 2000 by the FDA after it was linked to nearly 400 deaths and hundreds of cases of liver failure. It should be noted that the FDA had approved the drug.

In past litigation, the federal government and the FDA have always agreed that pre-market approval does not preempt state law actions seeking compensation for damages arising from defective medical devices or drugs. Now the Bush Administration is paying off campaign donors by taking an entirely new position on the preemption issue. Clearly, the high court should leave state law damage claims in place. Because of what Congress intended, this well-established legal principle should continue to be followed as the law of the land. To do otherwise would require a complete ignoring of established law.

Federal preemption analysis has to revolve around one all-important question: what did Congress intend? Clearly, Congress never intended to preempt state law tort claims involving hazardous medical devices. That's quite apparent both from the history and the language of the statute that regulates medical devices. The legislation was passed in the wake of the Dalkon Shield scandal and was enacted to protect consumers from dangerous devices. It was not to immunize manufacturers from liability. The respective roles played by the tort system and federal regulation, in making the world a safer place for consumers of medical devices and other potentially dangerous products, complement each other.

In the past, the United States government always agreed that Congress never intended to preempt state law claims involving medical devices that had received pre-market approval. But since the Bush Administration has now reversed the government's position the preemption issue presents a problem. If the Supreme Court agrees, then millions of Americans will be left without any legal remedy at all. Such a reversal would allow manufacturers to put defective products on the market with no fear of being held accountable for their actions.

We have seen classic examples in past years of how the FDA has protected corporate wrongdoers in the past. Drugs have been put on the market after FDA approval, which were subsequently proved to be very dangerous. Public Citizen was one of the groups that warned the FDA about a number of drugs, pointing out the risks and dangers, and later those drugs had to be withdrawn from the market. It has become quite evident the drug industry controls the FDA. For that reason, you can imagine what would happen from a safety perspective if the preemption battle is lost. Federal preemption must be defeated to preserve access to justice for all citizens.

Source: Public Justice News Release

A GOOD RULING THAT PROTECTS THE CIVIL JUSTICE SYSTEM

In a recent lower federal court ruling, the Center for Constitutional Litigation (CCL) won a major victory in the fight to assure that folks who are hurt or damaged by corporate wrongdoing can hold wrongdoers accountable and get justice in the civil justice system. In a ruling last month with wide implications for federal preemption and vicarious liability, the U.S. District Court for the Southern District of Florida declared legislation referred to as the Graves Amendment unconstitutional. That amendment had given immunity to automobile rental agencies for harm caused by their vehicles.

In 2005, the Graves Amendment was hidden in a 900-page transportation appropriations bill without any review from relevant congressional committees. The amendment intentionally preempted state laws that imposed vicarious liability on rental car companies. It was the prized lobbying success of the politically active rental car industry, which invested a substantial sum in campaign contributions in the effort, and then called in their chips.

The Florida ruling holding the Graves Amendment unconstitutional came in a declaratory judgment action brought by a group of rental car companies against a person who had been injured in a collision with a rental car. Interestingly, the United States government intervened to defend the statute's constitutionality. But, U.S. District Judge K. Michael Moore found the amendment to be "an unconstitutional overreaching of Congress' power under the Commerce Clause." In the ruling it was stated: "Under the rationale set forth (by the rental car companies and the United States) this Court is hard pressed to think of any type of state legislation which could not be pre-empted by Congress, including state taxes."

Simply put, the court's ruling gives rental car companies a powerful incentive to assure that their customers are adequately insured. Striking down the Graves Amendment also helps ensure

that victims of car accidents with rented or leased vehicles will be adequately compensated for their injuries. However, the ruling could ultimately have wide repercussions regarding the federal government's preemption powers. In recent years, Congress has shown little reluctance to legislate in areas of traditional state concern. Courts, led by the U.S. Supreme Court, have found such overreaching legislation to violate the Constitution. The CCL entered the case at the request of the lawyers for the victims, Patricia M. Kennedy and Thomas Scolaro of Leesfield Leighton and Partners in Miami, Florida, to address the constitutional issues and they were successful. John Vail, CCL Vice-President and Senior Litigation Counsel, and Andre Mura, CCL Litigation Counsel, handled the briefing on the constitutional issues, with Mura arguing the case.

EXXON VALDEZ CASE VERDICT FINALLY HEADS TO THE U.S. SUPREME COURT

A significant percentage of Americans weren't even born when the Exxon Valdez ran aground on a reef in the Prince William Sound nearly 20 years ago. But the complex legal fallout from the ensuing environmental disaster and a record punitive damages award has just reached the U.S. Supreme Court. Exxon Mobil Corp. recently filed a petition asking the High Court to review and overturn a \$2.5 billion punitive award. If the justices agree to hear Exxon's challenge to the punitive award, then they also should grant the petition by the class members who contend that the \$2.5 billion award is not excessive and that due process allows reinstatement of the jury's original award of \$5 billion.

There is one different twist to this case. In the past 17 years, the Supreme Court has decided eight cases on punitive damages, reviewing awards made under state law. Exxon, however, is asking the High Court to examine the \$2.5 billion award - reduced from \$5 billion by the U.S. Court of Appeals for

the Ninth Circuit - under general maritime law. Regardless of what body of law applies to this case, it's past time for the case to reach a final conclusion. It's my considered and I believe well-founded opinion that Exxon's bosses believe they are actually above the law and that the court system has no real authority over the politically powerful oil giant.

It's been so long since all of this litigation started that many Americans don't even know how it came about. For that reason, I will recap some of what has transpired thus far. At Exxon's urging, the U.S. District Court for the District of Alaska certified a multi-class action consisting of a compensatory damage class and a mandatory punitive damages class of 32,677 commercial fisherman, related individuals and businesses, private landowners and native Alaskans. After a three-phase trial that lasted 83 court days, involving the testimony of 155 witnesses and introduction of 1,109 exhibits, the jury's September 1994 verdict assessed \$5 billion in punitive damages against Exxon and \$5,000 against the captain of the Valdez, who was an individual defendant. In an earlier phase, the jury awarded \$287 million in compensatory damages. After 13 years of post-trial motions and appeals in which the punitive award was twice sent back to the district court to reconsider in light of intervening U.S. Supreme Court decisions on punitive damages, the 9th Circuit cut the jury award in half.

If the Supreme Court elects to take the case, I understand it will present some complicated maritime law. Lawyers representing the class were actually surprised by the maritime law focus of the appeal because it apparently received very little emphasis in the lower appellate court briefing. It may be that Exxon's lawyers realize their due process arguments simply won't work on this appeal. In any event, it will be most interesting to see what happens from this point forward.

Source: National Law Journal

IV. THE NATIONAL SCENE

ALAN GREENSPAN SPEAKS ON IMPORTANT ISSUES FACING OUR COUNTRY

When former Federal Reserve Chairman Alan Greenspan speaks, the American people really listen. Recently, Dr. Greenspan, who enjoys tremendous credibility, was extremely critical of President Bush for not responsibly handling the nation's spending and for building up large budget deficits. The president and Congress' former GOP leaders abandoned the GOP's conservative principles favoring small government, according to Greenspan. The well-founded criticism was set out in Dr. Greenspan's book, "The Age of Turbulence: Adventures in a New World," which was released last month. As you know, Dr. Greenspan ran the Fed for over 18½ years, serving under four presidents, until early 2006. It is widely acknowledged that he did an excellent job and remains well-respected by people across the country and especially by economists. When a man like Alan Greenspan criticizes the president on his fiscal policies and responsibilities, the American public will listen. What he had to say has to be disturbing and disconcerting to GOP political leaders and to their candidates looking toward 2008 elections.

TAKING A MONTH OFF MAKES NO SENSE

While our government was dumping over \$10 billion in August into the morass of Iraq, and American lives were still being lost, the Iraq Parliament took off the entire month for a paid vacation. To put it mildly, a vacation during a civil war doesn't make sense - and that sort of thing can't be justified. The Bush White House tried to make light of the vacating legislators saying that it was "real hot in August in Baghdad." An Administration spokesman tried to rationalize this need for "rest and recreation" by the lawmakers. But I seriously

doubt that our troops who are actively engaged in this civil war on a daily basis believe R & R is a great need for the members of parliament.

There can be little doubt but that Iraq is in a civil war and is in chaos. If it's not a sectarian civil war, I would like to know what it is. Regardless, we have a real mess in Iraq. Frankly, I don't see things getting better anytime soon. It's been apparent that the sectarian leaders in Iraq haven't been able to come to a political consensus on any important issue thus far. Why does anybody in Washington believe they can put together a security force, which can take care of the needs of the country? In any event, at least the Iraqi lawmakers got a break from the heat in Baghdad! It's now time for our own political leaders to face reality and make decisions that will get our troops out of Iraq as soon as possible. I will discuss this in more detail below.

CONGRESS NEEDS TO MAKE A DECISION ON OUR INVOLVEMENT IN IRAQ

As we all know, this has been the bloodiest summer ever for US troops in Iraq, and unfortunately things don't look good for improvement in the immediate future. It's being reported that Iraqi casualties are running at twice the pace of last year. It was reported recently that 15 of 18 of President Bush's benchmarks haven't been met, and the attempts to convince Congress that the troop surge is paying dividends simply isn't working. General David Petraeus, a well-respected military man, was very candid in his comments before a Congressional committee concerning the so-called surge. Some 4,000 US troops have died in Iraq, and we've spent half a trillion dollars in this out-of-control civil war. The Secretary of Defense is now asking for \$190 billion to fund the war. Congress will have to decide whether it is going to continue funding a civil war in Iraq. Let's see what the track record thus far has been and consider whether the cost in money spent and the loss of American lives has been worth it:

- **Violence has gone up in Iraq.** This summer is on track to be one of the bloodiest summers for U.S. troops, as well as for Iraqi civilians, with nearly twice as many U.S. troops killed during this July than the previous July.
- **The surge has not created political stability.** The central premise of the surge was that it would increase political stability. Two years after Sunnis were brought into the political transition, a Sunni bloc withdrew from the government. A recent Government Accountability Office (GAO) report showed that 15 out of 18 of Bush's own political benchmarks remain unmet.
- **We've poured weapons into Iraq's civil war.** Another GAO report earlier this summer showed that the Pentagon lost track of nearly 200,000 weapons given to Iraqis. Apparently, we distribute weapons and then they disappear and nobody knows what happens to them. What we do know is that violence increases—both among Iraqi sectarian groups and against American troops.
- **Ethnic cleansing is happening in Baghdad.** The once Sunni dominated city is now dominated by Shiites. The Shiite militias' cleansing of Baghdad has been effective - they've essentially won. Apparently, the Sunnis are either being killed or being run out of Baghdad.

We have been engaged in the war in Iraq for longer than we were involved in World War II. Is it time to start bringing our troops home? I frankly don't know enough to make that decision. But, based on what I do know, I can't understand why the President continues to keep putting more American troops in a civil war where they are having to serve both as an army of occupation and as a police force for a broken and totally ineffective government in Iraq. I just hope and pray that our military forces will not be needed either in some other foreign land or back at home any time soon. If either event occurs, we will be

in real trouble. We are so committed in Iraq that our military capacity for further deployments elsewhere has been seriously weakened.

Even if an immediate troop withdrawal isn't possible, at least something must be done now. A new study relating to Iraq's security forces concludes that U.S. forces in Iraq should be reduced significantly. The report, authored by a 20-member panel comprised mostly of retired senior military and police officers, concluded that the massive deployment of U.S. forces and sprawl of facilities run by American interests in and around Baghdad has given Iraqis the impression that Americans are an occupying, permanent force. It was significant that the panel said the Iraqis should assume more control of its security, and U.S. forces should step back. The panel was led by retired General James Jones, a former Marine Corps commandant, who is well-respected by members of Congress and by military experts.

Source: *Associated Press*

IRAQ EXPELS AMERICAN SECURITY FIRM

The Iraqi government has ordered Blackwater USA, the private security firm that protects U.S. diplomats, to leave the country. This order comes because of the fatal shooting of eight Iraqi civilians following a car bomb attack against a State Department convoy. The order by the Interior Ministry, if actually carried out, would deal a severe blow to U.S. government operations in Iraq by stripping diplomats, engineers, reconstruction officials, and others of their security protection. The shooting was the latest in a series of incidents in which Blackwater and other foreign contractors have been accused of fatally shooting Iraqi citizens.

Currently, there are about 160,000 private contractors working in a support role in Iraq. Of these, over 6,000 are armed private security guards. The Secretary of Defense, Robert Gates, has sent investigators to Iraq in an effort to find out what is going on with the private

contractors. At press time, the Bush Administration was trying hard to deflect this issue and keep Blackwater in Iraq. Blackwater, a secretive North Carolina-based company, is among the biggest and best known security firms, with an estimated 1,000 employees in Iraq and at least \$800 million in government contracts. I'm not sure who actually owns Blackwater or who its political friends might happen to be. Hopefully, it's not a group of political cronies.

A NEW AND IMPROVED ATTORNEY GENERAL

President Bush has selected Michael B. Mukasey, a retired federal judge from New York, to be the next Attorney General. Knowing little very about Judge Mukasey, I can only say that almost any person would be a vast improvement over the man he is replacing. In his defense, Alberto Gonzales, whose tenure was a total disaster, should never have been placed in that office, by all accounts. The new Attorney General is a person who reportedly will respect the law and especially respect the Constitution. Hopefully, he can undo all of the harm that Gonzales has done in a relatively short period of time.

PARENTS AND POLITICIANS HAD BETTER WAKE UP

A new Parents Television Council (PTC) study of Family Hour programming conclusively shows that children watching television during the first hour of prime time are assaulted by violence, profanity, or sexual content once every 3.5 minutes of non-commercial airtime. During the 2006-2007 study period, almost 90% of the 208 television shows reviewed contained objectionable content. The PTC found that Fox is the worst broadcast network overall, noting its 20.78 instances of violent, profane, and sexual content each hour - nearly double the amount of similar content shown on any of the five other major broadcast networks. Fox's

American Dad was the worst series overall, based on the alarming 52 instances of objectionable content that were packed into each hour of programming. Here is what PTC President Tim Winter had to say:

Our study clearly demonstrates that corporate interests have hijacked the Family Hour from families. This early prime time block was once reserved for programs the whole family could enjoy but it is now flooded with shows that contain adult programming. The Family Hour was once lauded by the entertainment industry and members of Congress as a solution for parents who do not want their children to be exposed to graphic content for at least one hour each night. Shockingly, this data shows that parents cannot trust what is on during the so-called Family Hour for even a minute.

During the Family Hour, viewers have been exposed to visual depictions and verbal references to sexual content including partial nudity and pixilated nudity, adultery, oral sex, masturbation, pornography, anal sex, incest, violence, and a plethora of curse words. All of us have an obligation to see that the Family Hour is restored. The broadcast industry must be made to return to the time-honored principle of airing mature-themed content only at later times of the evening. Broadcasters should provide parents with a consistent, objective, and meaningful content ratings system. The advertising industry should underwrite only time-appropriate content with their media dollars. Parents across the country - and the politicians - must get involved and speak out in defense of the Family Hour. If we don't wake up to what's happening to TV broadcasting, and the effect it is having on our children, it will soon be too late. It's time to stand up - without further delay - for good and against evil!

Source: Parents Television Council

A SHOCKING BIT OF INFORMATION

According to research conducted in 2005, slightly more than 4% of children who were surfing the Internet had been asked to transmit a sexually oriented picture of themselves within a year's time. The study, co-authored by Kimberly Mitchell, a psychology professor at the University of New Hampshire's Crimes Against Children Research Center, was based on a nationally-representative survey of 1,500 youngsters who were between 10 to 17 years of age. Of those, nearly 150 were asked by someone online to send pictures of themselves and 65 were asked for sexually explicit images. Of the cases in the latter category, only 12% were reported to authorities. I suspect that the numbers would be much higher today. We must do everything in our power to protect our children. Parents must become aware of what their children are being exposed to by way of the Internet. Unfortunately, most adults are far behind children when it comes to understanding the Internet and what it offers.

Source: Focus On The Family

DIOCESE SETTLES ABUSE CLAIMS FOR \$198 MILLION

The Roman Catholic Diocese of San Diego, California, has agreed to pay \$198.1 million to settle 144 claims of sexual abuse by clergy. This is the second-largest payment in these cases by a diocese. The agreement caps more than four years of negotiations in state and federal courts. Earlier this year, the diocese abruptly filed for bankruptcy protection just hours before trial was scheduled to begin on 42 lawsuits alleging sexual abuse. Bankruptcy could shield the diocese's assets, but a judge recently threatened to throw out the bankruptcy case if church officials didn't reach an agreement with the plaintiffs. The San Diego diocese initially offered about \$95 million to settle the claims. The victims were seeking about \$200 million.

Sex abuse by Roman Catholic priests has cost the U.S. church at least \$2.3 billion since 1950. I hope and pray that all of the remaining claims will be resolved and the U.S. church will get this ugly and shocking scandal behind them. Our prayers must be with both the victims and the church leaders. Clearly, no child should ever have to be subjected to any type of abuse - especially abuse of a sexual nature - and certainly never in any church-related setting. A few bad apples in a basket can cause the good apples to be ruined in any situation. That's why churches and other entities must take all necessary steps to keep the sexual predators out!

Source: *Associated Press*

U.N. CHIEF URGES IMMEDIATE CLIMATE ACTION

Global warming is one of the most profound threats of our time. From dangerous heat waves, extreme storms, and shrinking snowpacks to extreme drought and increased wildfires, the dangers of global warming are cause for immediate action. In an unprecedented summit on climate change, the United Nations Secretary-General says that "the time for doubt has passed" and a breakthrough is needed in global talks to sharply reduce emissions of global-warming gases. It's felt by many that the U.N. climate process is the appropriate forum for negotiating global action. Presidents and premiers from around the world met last month on this critically important issue. The U.N. chief also addressed a chief objection by the United States to negotiated limits on greenhouse-gas emissions. It's believed that failure to address this matter will result in tremendous damage to the U.S. economy over time.

California Governor Arnold Schwarzenegger appeared at the conference and told the international delegates states in the U.S. are taking action. While the Bush administration has resisted emissions caps, California's Republican governor and Democrat-led legislature have

approved a law requiring the state's industries to reduce greenhouse gases by an estimated 25% by 2020. Other U.S. states, in various ways, are moving to follow California's lead. While the federal government should be taking the lead, it's good for the states to recognize the problem and take action.

The summit was organized to build political momentum toward launching negotiations later this year for deep cutbacks in emissions of carbon dioxide and other manmade gases blamed for global warming. As you may already know, the 1997 Kyoto pact, which the U.S. rejects, requires 36 industrial nations to reduce heat-trapping gases emitted by power plants and other industrial, agricultural and transportation sources by an average 5% below 1990 levels by 2012. Advocates say a breakthrough at the annual climate treaty conference in Bali, Indonesia, is needed - almost certainly requiring a change in the U.S. position - to ensure an uninterrupted transition from Kyoto to a new, deeper-cutting regime. To try to spur global negotiations, the European Union has committed to reduce emissions by at least an additional 20% by 2020.

The U.N. summit follows a series of reports by a U.N. scientific network that warned of temperatures rising by several degrees Fahrenheit by 2100 and of a drastically changed planet from rising seas, drought and other factors, unless nations rein in greenhouse gases. The U.N.-sponsored scientists reported global average temperatures over the past 100 years rose 1.3 degrees, and the planet's sea levels rose 6.6 inches, as oceans expanded from warmth and from the runoff of melting land ice. U.S. scientists have reported recently that warmer temperatures this summer had shrunk the Arctic Ocean's ice cap to a record-low size.

I am convinced that global warming is a most serious problem affecting the world we live in and how President Bush can support the large corporations that are contributing to the problem is beyond me. Most governments at least

recognize the problem and fortunately many are taking steps to address it. However, it's being treated by the Bush Administration as just another environmental problem that is either just a minor annoyance or one that is serious but not so urgent as to require prompt governmental planning and action.

There are some concrete examples in the United States of how our world is changing. For example, it is being projected that sea-level rise due to global warming will create tremendous challenges for our coastal areas. We are facing an ecological crisis that could see wholesale loss of wildlife populations and profound changes in our outdoor way of life. Recent studies show that the global average sea level will rise as much as 2 to 56 inches by 2100. When you consider that even a relatively moderate scenario of sea level rise of just 2 feet by 2100 will have a significant impact on coastal habitats, this is a most serious issue.

The impact on the United States will be tremendous and the effects of global warming will cause us great problems in the not too distant future. How President Bush can allow the Exxons of the world to dictate policy on this crisis is beyond me. The effects of global warming reach much further than just how our coastal areas will be affected as the result of sea-level rise. In this country, we are already witnessing significant-changes in our weather patterns and that is cause for great concern. We owe it to future generations to force our political leaders to recognize the problem of global warming and do something about it.

Source: *Associated Press*

V. THE CORPORATE WORLD

EXXONMOBIL HAS BEEN BUSY LOBBYING

ExxonMobil is one of the most powerful and influential corporations in the

world when it comes to political clout. The oil giant spent \$6.4 million to lobby the federal government in the first half of 2007, according to a disclosure form. The powerful oil company lobbied Congress on legislation related to energy, climate change, labor laws, corporate taxation, pension reform, fuel efficiency standards, and international relations, according to the disclosure form posted online August 10th by the Senate's public records office.

The House in early August approved \$16 billion in taxes on oil companies and billions of dollars in tax breaks and incentives for renewable energy and conservation efforts. But, lawmakers have yet to merge the House's energy legislation with a sweeping energy bill passed by the Senate in June. The oil industry has been battling price gouging provisions that would make it illegal to charge an "unconscionably excessive" price for oil products, including gasoline. Opponents say the language is too vague and would be difficult to enforce. If anybody should recognize price-gouging, it would be a giant oil company like ExxonMobil.

In addition to lobbying federal lawmakers, ExxonMobil lobbied the White House, the Federal Energy Regulatory Commission, the National Security Council, and the National Oceanic and Atmospheric Administration. It also lobbied the departments of Commerce, Energy, Interior, State, and Transportation. It appears that the lobbying efforts by ExxonMobil have paid off. I suspect the campaign dollars given to political candidates also played a major role in their successes.

Source: *Associated Press*

INDUSTRIES NOW WANT REGULATION BY THE FEDERAL GOVERNMENT

I mentioned the federal preemption issue in the section on courts. It has become very obvious as to who is behind this movement. After years of favoring the hands-off doctrine of most Republican Administrations, including that of the current President up to now,

some of the nation's biggest industries are now pushing for new federal regulations, something they have long resisted. Industry groups and major manufacturers are now calling for federal health, safety, and environmental mandates in the form of standards or regulations. Some of those industries are abandoning years of efforts to block such measures, working recently with the Bush Administration to accomplish their goal. The consequences for consumers – if the industries' efforts are successful – will be disastrous. The tactical shift by industry groups is motivated by powerful interests trying to head off liability lawsuits and preempt state laws as mentioned above in this issue. Products like cars, farm equipment, toy cars, popcorn, produce, cigarettes, light bulbs, and the list goes on, will be affected by the effort.

Rick Melberth, director of regulatory policy at OMB Watch, a Washington group that tracks federal regulatory actions, observed: "I have never before seen so many industries joining a push for regulation." He added: "What we need to watch closely is if this will achieve a real increase in standards and public protections or simply serve corporate interests." There can be no doubt that the ultimate goal of this movement is to protect corporate wrongdoers with no regard on the adverse effect it will have on public health and safety. The American people should be outraged when they learn how preemption of state laws really works and how it will affect them.

Source: *New York Times*

CLASS ACTION SETTLEMENT WITH SPRINT IS APPROVED

Sprint Nextel Corp. will pay \$30 million to settle a class action lawsuit accusing it and AT&T Corp. of overcharging customers for assessments that help pay for subsidized phone services. A U.S. district judge has given preliminary approval to the settlement and has scheduled a March 3rd hearing on whether to give it final approval. Under

the settlement, qualified business and residential customers will receive prepaid telephone calling cards with a face value of \$25 million. The five-year-old antitrust case comprises dozens of class action lawsuits that were filed nationwide and eventually consolidated in federal court in Kansas City, Kansas. The suits alleged that Sprint and AT&T conspired with each other and their chief competitor at the time, MCI, to overcharge customers by passing on more than 100% of the Universal Service Fund (USF) fee to business and residential customers. The USF was set up by Congress through legislation to help cover the cost of getting service to high-cost rural areas, low-income customers, schools, libraries, and rural medical facilities. Carriers that provide interstate or international service are required to contribute to the fund. The "contribution factor" — a percentage of gross revenue from interstate or international calls — is set by the Federal Communications Commission.

Although carriers aren't required to pass the assessment along to customers, most do. Sprint described the surcharge on bills as a "Federal Universal Service Fee" or "Carrier Universal Service Charge." AT&T described it as a "Universal Connectivity Charge." The settlement ends the litigation against Sprint only. The litigation is continuing against AT&T, which, because of its larger market share, faces greater exposure than Sprint. Those eligible to receive benefits under the Sprint settlement include long-distance customers who paid Universal Service Fund charges from and after August 1, 2001. The settlement affects all Sprint long-distance residential and business customers, all MCI long-distance business customers, all AT&T long-distance business customers, and AT&T long-distance residential customers in California only.

AT&T and MCI customers are included because liability in antitrust actions is "joint and several," meaning that any one company can be held liable for the damages owed by all the companies in a case and vice versa. Sprint and

MCI customers will be eligible to participate in any settlement reached by AT&T with the plaintiffs. Eligible customers who paid the USF overcharges at any time between August 1, 2001, and March 31, 2003, will get prepaid phone cards with nominal face values of \$50. Eligible customers who paid the overcharges after March 31, 2003, will get cards with nominal face values of \$20. The cards are to be priced at per-minute rates no higher than Sprint's best commercial rates for those denominations.

The settlement was reached just days before the same federal judge approved a \$57 million settlement in another class action lawsuit against Sprint alleging the company engaged in age discrimination when, during a round of layoffs a few years ago, it targeted workers 40 years of age and older. The settlement also comes after Sprint disclosed in a regulatory filing a few weeks earlier that it had agreed to settle yet another class action lawsuit. That one was over the recombination of its tracking stocks in 2004.

Source: *Kansas City Star*

SEC SUES PARTIES INVOLVED IN FRAUD RING FOR CHEATING RETIREES

The U.S. Securities and Exchange Commission (SEC) recently filed a lawsuit against 26 people and companies for their roles in an alleged \$428 million fraud involving Mexican timeshare rentals. This comes in the wake of the SEC's recent attempts to crack down on scams that target retirees. In the lawsuit filed in a federal court in Chicago, the SEC has alleged that the ring duped thousands of people by promising stable incomes from timeshares in Cancun. The operators would instead use money from new clients to make purported rental payments to earlier investors, which would leave victims with more than \$310 million in losses when the system collapsed. Merri Jo Gillette, the SEC's regional director in Chicago, says the lawsuit "shows that the SEC will vigilantly pursue those who target older Americans, no matter what the obstacles."

According to Christopher Cox, the Chairman of the SEC, U.S. regulators are stepping up efforts to protect retirees because their share of the nation's wealth makes them prime targets for securities swindlers and scam artists. According to the chairman, the SEC's effort has generated more than 40 enforcement actions in the past two years. The current SEC lawsuit centers on Michael E. Kelly, a former Indiana resident, who was arrested in December and charged by federal prosecutors with engaging in a scheme to defraud. According to the SEC, Kelly allegedly orchestrated the scam from 1999 until 2005, assisted by a national sales network. The scam started when operators sold investors timeshares in several hotels, which were supposed to be leased out through an agent, generating fixed returns. And then when investors wanted out, the leasing agent would buy back their timeshares for the full amount. According to the SEC, the leasing agent, touted as a large independent company, was actually a small Panamanian travel agency controlled by Kelly. Brokers in charge of pushing the investments are believed to have received \$72 million in commissions. Kelly has pleaded not guilty in the criminal case.

Source: *Bloomberg News*

FRAUD LAWSUIT FILED AGAINST REGIONS

A lawsuit has been filed against Regions Financial Corp. arising out of an alleged fraud that cost people \$18 million of their retirement money. Birmingham-based Regions was accused of faulty oversight of bank accounts in the suit filed in Tennessee. Thousands of people allegedly lost money in the scheme. While Regions wasn't directly responsible for managing or investing the money, it is contended that Regions should have detected the fraud that was being committed by an outside company that controlled the accounts. That firm purported to collect payroll deductions from various employers, pool the money and send it off to be

invested on behalf of the participating workers. The company is now bankrupt and its owner in jail on dozens of fraud-related counts. The lawsuit was filed in U.S. bankruptcy court in Nashville by the court-appointed trustee overseeing the bankruptcy of the outside company that collected the retirement money.

Barry Stokes, a resident of Tennessee, whose 1Point Solutions billed itself to employers around the country as an administrator of 401(k) and other retirement plans, set up the scheme. Stokes' company agreed to keep records, open accounts into which employee money was deposited, and handle early withdrawals for hardships or termination. It's alleged in the lawsuit that Stokes had dozens of such accounts at a branch in Dickson, Tennessee and that as much as \$47 million passed through the accounts over the years. In 2006, Stokes was arrested by federal agents and charged with embezzling the retirement money, money laundering and a slate of related counts. It's alleged in the lawsuit that Stokes regularly transferred money collected from employees into his business and personal accounts. Regions is alleged to have collected \$500,000 in fees over the years for transferring money between the accounts.

Interestingly, it's alleged that Stokes moved the accounts to Cincinnati-based Fifth Third Bank in 2006 and that bank closed them out a few months later for "improper activity." Stokes then moved the accounts back to Regions, according to allegations in the complaint. If Regions was responsible for the stewardship of the funds then the bank may well have had a legal duty to protect the plaintiffs' funds. Investment accounts and trust funds usually carry fiduciary responsibility for the bank, but ordinary corporate accounts in most cases don't. The trustee suing Regions alleged in the lawsuit the bank should have known Stokes had no right to withdraw employee money. It's stated in the complaint: "Regions/AmSouth knew that the funds deposited in such accounts came from customers of 1Point, and that the funds did not belong to 1Point, but

were held in trust to be used solely for the participants and beneficiaries.” It’s noteworthy that AmSouth paid \$50 million in penalties for failing to detect fraud and money laundering in a Mississippi branch. AmSouth and Regions merged last year. This case will be an interesting one to watch as it develops through discovery and pre-trial motions.

Source: Birmingham News

GIANT DRUG COMPANIES SETTLES LAWSUIT

The French pharmaceutical company Sanofi-Aventis has agreed to pay \$190 million to settle allegations of fraud in the pricing and marketing of Anzement, a drug used for cancer treatment side effects. A suit against Sanofi-Aventis alleged that by inflating the price of Anzement, the giant drug company increased the cost of federal reimbursements and resulted in false claims to federal health programs. The case arose from a lawsuit filed under the false claims act by Ven-A-Care of the Florida Keys, Inc. The U.S. Attorney in Miami, R. Alexander Acosta, observed: “Corporations can not continue to mislead the government into paying vastly exaggerated prices by exhorting a health-care system based on trust and fair play.” We constantly see where corporations doing business with the federal government commit fraud and cheat the American taxpayers. I still believe that we need to get much tougher on the cheaters and especially those who are repeaters.

Source: Lawyers USA

VI. CONGRESSIONAL UPDATE

CONGRESS DELIVERS ON LOBBYING AND ETHICS REFORMS

The 110th Congress has taken a huge step toward delivering on their promise to help “clean up the swamp” on Capitol

Hill. The “Honest Leadership and Open Government Act of 2007,” which imposes the most far-reaching ethics reforms on lobbyists and lawmakers in decades and opens the books on lobbyist fundraising, finally became law on September 14th. The following are just a few of the reforms ushered in:

***Lobbyists and campaign money to be an open book.** The single most powerful tool for lobbyists to buy influence is fundraising for lawmakers, most of which has been undisclosed to the public. Under the new law, lobbyist fundraising for lawmakers, including the dollar amount of direct and bundled campaign contributions, and the names of lobbyists who host fundraising events and the amounts they raise, must be posted on the Internet.*

***Travel junkets grounded.** Travel junkets were another popular tactic lobbyists deployed to gain access. Now, lobbying organizations may sponsor only one-day trips, just long enough to fly a member to a conference to give a speech. Corporate jets for this travel are effectively prohibited, and lobbyists, skilled at high-altitude schmoozing, can no longer tag along.*

***“Bridges to Nowhere” no more.** The names of the sponsors and recipients of earmarks – special spending measures often secretly inserted into bills by members of Congress – now must be posted on the Internet 48 hours before final approval of appropriations and tax bills.*

While the 110th Congress should be commended for delivering substantial lobbying and ethics reforms, their job isn’t finished. Members of Congress must make sure these reforms continue to be monitored and enforced. They must also see that special-interest money is removed from elections to the extent possible. One possible solution would be to go to public financing of federal campaigns. But, being able to place limits

both on contributions and spending is more likely to occur and that would accomplish a desired goal to curb the power of special interests.

Source: Public Citizen

U.S. REP. TERRY EVERETT WILL RETIRE

In a surprise move, U.S. Rep. Terry Everett, the eight-term Republican from the wiregrass, will retire at the end of his current term. Rep. Everett, a former newspaper publisher and farmer, cited health reasons. While most observers felt that Everett needed to retire, his announcement came as a shock. He had been actively engaged in fund-raising in recent weeks. Everett represents Alabama’s 2nd Congressional District, which covers much of southeast and central Alabama from Dothan to Montgomery. His district includes the Wiregrass area of southeast Alabama, an important agricultural region. The district is also home to two major military installations — the Army’s flight training base at Fort Rucker near Ozark and Maxwell-Gunter Air Force Base in Montgomery. While lots of names have been mentioned as potential candidates to replace Everett, State Senator Harri Ann Smith, R-Slocumb, is believed by some “political experts” to be the early favorite. The Democrats will likely put up a strong candidate and several names are being tossed about as possibilities.

VII. PRODUCT LIABILITY UPDATE

SOMEBODY IS PUTTING OUT SOME BAD INFORMATION

It appears that the verdict one of our clients obtained against Wal-Mart has caused the lobbyists for tire dealers to start a campaign of “letters to the editor.” It’s obvious that the persons writing the letters either don’t know why Wal-Mart was found to be at fault in the case or they have been grossly

misled on the facts of the case by somebody. The letters contend that a dealer has no duty to notify a customer about a recall of a tire they didn't sell. Although I would generally agree with that view, that wasn't the situation involving our client and her defective tires. In our case, Wal-Mart had a duty to notify the customer and to inspect her tires. I will explain that in more detail below.

I will concede one thing - there are no "magic databases" where tire dealers can enter a tire's Department of Transportation (DOT) number to find out whether a subject tire is recalled. The system to identify and notify consumers about a tire recall is based on the Tire Identification Number (TIN) and consumer registration cards. This decades-old, ineffective, and outdated system was actually designed by the tire industry, which fought attempts to make it more consumer-friendly. Tire recalls really got little attention before to the Firestone/Ford Explorer tire recalls. Before that scandalous series of events, recalls of tires were relatively rare and most of the time, were small.

But nobody can dispute that the number of tire recalls has increased in recent years. The issuance of a recall doesn't guarantee everybody who has the recalled tires gets the word. After the initial media coverage dies down and the scant number of owners who have registered their tires are notified, the system currently in place breaks down. Many owners never even learn about a tire recall. In fact, lots of folks with new vehicles don't even know what kind of tires they have. Even with vastly improved tire registration, the tire recall messages don't get to the right person. Some safety experts believe the remedy lies not in the continued use of the TIN and tire registration, but in a technological fix such as radio frequency identification (RFID). They say that, among their many benefits, RFID tags would allow any professional service shop to quickly determine whether a tire is part of a recall simply by using an inexpensive scan tool. That would appear to be a very good thing

for the tire manufacturers, the tire dealers, and for the consumers who have the recalled tires.

But getting back to the outrage about the Wal-Mart jury verdict in our recent tire failure-related lawsuit, let me say that this outrage is totally unwarranted. First, Wal-Mart had been notified by the manufacturer about the recall of our client's tires. Also, Wal-Mart had a lifetime service contract with our client that required her tires to be inspected by the giant retailer on a regular basis. Our client took her vehicle in to Wal-Mart for inspections on more than one occasion. At no time did Wal-Mart detect the obvious defect nor did they tell our client her tires were under a recall. Later, after the last so-called inspection, a tread separation resulted in a roll-over. Had Wal-Mart inspected the tires - as it had a duty to do - any person doing the inspection would have seen the obvious evidence of a defect. Our client wound up paralyzed as a result of Wal-Mart's wrongdoing. Rather than putting out false information - if they are responsible for the letter writing campaign - the tire manufacturers and tire dealers should work for a better system of recalls. It is outrageous that the tire industry has failed to take responsibility to develop a recall system that really works. It's equally outrageous for somebody to put out false and misleading statements about a very strong case of liability in a case involving Wal-Mart.

NEW SIDE-IMPACT RULE ANNOUNCED BY NHTSA

The National Highway Traffic Safety Administration (NHTSA) has recently released a new side-impact standard for automobiles. The new standard will increase the side-impact safety requirements for all passenger vehicles. NHTSA predicts that the increase in the standard will save hundreds of lives each year. For your information, there are two important changes to the new side-impact crash standard. The new rule requires automobile manufacturers

to provide protection for side-impact collisions with stationary objects. The old standard simply required car-to-car crashes. The new standard requires a dynamic pole test to recreate crashes with stationary objects such as trees and telephone poles. Additionally, the new standard will require manufacturers to test vehicles with crash test dummies that reflect the overall general population. Previously, the standard only required testing with crash test dummies that approximate the size of an average male. The new standard will require testing with smaller, female-size crash test dummies. That is something which has been badly needed for years and the automobile industry knew it.

While the new standard does increase the safety requirements, safety groups, such as Public Citizen, believe the standard could have been further enhanced. The car-to-car crash testing uses a deformable barrier that is representative of a mid-size car. With the number of light trucks and SUVs on the highway, the testing could have been greatly improved by the use of higher barriers that represent these larger vehicles. Additionally, these standards should include testing with crash test dummies that represent small children. Certainly children will be riding in all kinds of motor vehicles as passengers.

In any event, the changes made are an important enhancement of this safety standard. Side-impact crashes account for 28% of all automobile fatalities in the United States and that is most significant. The NHTSA estimate indicates that the new standard will save over 300 lives and prevent almost 400 serious injuries per year. Hopefully, their projections will be accurate. The standard will be phased in, starting in 2009. It took NHTSA a long time to act, but at least the regulatory agency finally did.

FEDERAL TIRE SAFETY RULE IS NOT GOOD FOR SAFETY

Consumer advocates contend that the new rules relating to tires contain language that protects tire manufacturers

from lawsuits - language that wasn't included in the original proposal. The National Highway Traffic Safety Administration defends the rule as a way to encourage tire companies to increase safety features. The regulatory agency has been working on the tire safety rule for two years. However, consumer advocates and safety experts are now working hard to alert the public to the efforts by NHTSA to protect wrongdoers and put consumers at risk for injury or death.

I agree that the new federal rules governing tire safety will most likely cause serious safety risks for motorists and their passengers. These new rules could result in denying victims access to the courts when they are injured or when a family member is killed due to a defective tire failing. The Firestone tire recall, and the over 200 deaths nationwide associated with defective tires, made American citizens aware of a most serious problem a few years ago relating to defective tires. Had the courts been closed at that time, the manufacturers would have been able to avoid their legal responsibility. It's extremely important to keep our state courts open and available to handle product liability lawsuits including those involving defective tires. Over our nation's history, accountability in our state courts has been available to make Corporate America responsible when they put defective and unsafe products on the market. The new tire rules are just one example of the Bush Administration acting to protect big businesses at the expense of consumers. Their actions are the result of a campaign both that works both against both safety and consumers.

SWIMMING POOL SAFETY

Summer in Alabama seems incomplete without splashing water and the laughter of children around swimming pools. Unfortunately, laughter far too often turns to grief stricken tears when a drowning occurs. Currently, there are too many deaths and injuries because of

drowning related accidents. These tragedies would be prevented by the owners and operators of public pools if the pools were safe and free from hazards.

Recently, Cole Portis of our firm, along with attorney Michael Slocumb of Opelika, resolved a case on behalf of a mother who lost her son after he died from drowning in an apartment pool located in Phenix City, Alabama. The pool was not equipped with a lock on the entry gate, a personal floatation device (life preserver), or a rope that divided the shallow end from the deep end. The pool was not marked to note the various depths of the pool, was not properly lighted and was not properly maintained, which resulted in cloudy water that hindered the ability to locate and rescue the swimmer.

Safety violations by this apartment complex are troubling. Sadly, such violations are occurring every day in public pools across our state. In spite of the numerous drownings occurring in our state, there is not a comprehensive state statute that outlines the responsibilities of an apartment or hotel owner that provides a pool as an amenity for its guests and visitors.

In spite of the lack of a comprehensive state law, there are established safety principles and guidelines for pools. One of these guidelines is that non-residential pools should always provide lifeguards. A lifeguard's primary function is to prevent accidents. They do this by enforcing the pool rules, supervising those who are using the pool, and ensuring the pool is safe for swimming. However, instead of spending the nominal amount of money needed to employ lifeguards, management will post a sign which says:

- NO LIFEGUARD ON DUTY
- SWIM AT YOUR OWN RISK

It should be noted that putting up such a sign does not relieve the owner of the pool of any responsibility. I am convinced that no apartment, condominium or hotel pool should be operated

without a lifeguard. That is what should be required to assure that pools are safe for swimmers and especially for children.

Additionally, tenants, renters and owners must be fully informed about the proper use of the pool. Comprehensive rules should be provided when one initially rents an apartment and at the beginning of the pool season. One of the specific rules that is rarely enforced are the pool's operating hours. Apartments, condominiums and hotels must ensure that everyone is out of the pool area when it is time for the pool to close. While the pool is closed, there should be a means of providing surveillance of the pool. Either a television monitor or a security guard will help keep people out of the pool area when it is closed.

I hope and pray that the number of swimming pool cases that our firm handles will decrease. That will depend on whether swimming pool safety is given a higher priority. Unfortunately, pool owners continue to fail to protect the health and safety of the people who use their pools. Sadly, the trend we are seeing is a laissez faire attitude toward pool safety. In fact, since we resolved the case in Phenix City, two other drowning incidents have been investigated and lawsuits filed by our firm. We will continue to fight for safer pools by educating the public and by litigating against those entities that choose to have an unsafe pool that causes someone's death or brain injury.

JURY VERDICT IN DROWNING AT COUNTRY CLUB

A case involving the drowning death of a 5-year-old boy at a country club in Maryland is an example of what can happen when safety rules aren't followed. A jury awarded his parents more than \$4 million in damages in the lawsuit filed against Hunt Valley-based DRD Pool Service Inc., the club's pool management company. The jury found the company negligent for failing to adequately train its lifeguards and properly staff the pool. The company was

ordered to pay the parents \$2,000,076 each – the \$76 serving as a symbol of the child's birthday, which was July 6th.

A 16-year-old lifeguard, who had been on the job for three weeks, was on duty when the child was found floating in the country club's outdoor pool about 4:30 p.m. June 22, 2006. He had been swimming at the pool with an adult family friend and two other children. It's significant that the parents have set up a foundation to honor their son. They are also working with lawmakers to create uniformity in safety requirements at public pools. They would also like to see more stringent rules because, for example, in Anne Arundel County, where the club was located, only one lifeguard is required for every 50 swimmers. They are calling for legislation that would decrease that ratio to one lifeguard per 25 swimmers.

Source: *Baltimore Sun Reporter*

JURY VERDICT FOR FIREFIGHTER'S FAMILY

A Missouri jury has awarded a total of \$27 million to a St. Louis firefighter's family against the maker of breathing equipment. The suit contended that the equipment used by the fire department was defective, resulting in the death of the decedent while he was fighting a blaze in 2002. The panel held the company, Survivair, 100% at fault in the death of Derek Martin, finding a faulty product and negligence on the part of the manufacturer. Survivair was ordered to pay \$12 million in compensatory damages and another \$15 million as punitive damages because of aggravating circumstances — conscious disregard for the safety of others.

The trial turned on whether a faulty valve on an air mask was to blame for the death, or whether department procedures were at fault, as claimed by the manufacturer. Martin and fellow firefighter Robert Morrison died in a fire in 2002. What at first seemed to be a routine blaze, turned into a disaster. The Morrison family had filed suit against Survivair. It blamed the personal distress alarm, also made by Survivair, for

failing to bring help when Morrison became incapacitated. Tragically, Derek Martin died trying to save his friend and co-worker. Before a jury decided the Morrison case, Survivair reached a confidential settlement with his widow.

Derek Martin died after removing his mask and gloves while trying to clear the valve on his air mask. That valve was stuck when federal investigators examined it 10 days after the fire. He never would have needed to go after his co-worker if that firefighter's personal alarm had worked.

California-based Survivair, a subsidiary of a French company, knew about design flaws when it sold the masks to the Fire Department in the late 1990s. Survivair claimed that the deaths were based on procedural breakdowns: firefighters working inside individually, failing to vent heat and smoke from the building and missing a distress message over the radio. The manufacturer said Martin should have known to check the valve before trusting it and insisted a firefighter can still breathe with the valve stuck.

The manufacturer, Survivair, of Santa Ana, California, must pay \$14 million of the punitive damages, and its parent company in France, Bacou-Dalloz, will have to pay \$1 million. At least half of the punitive award will go to a state fund, with the rest going to Derek Martin's family. While the Fire Department still uses the Survivair gear, the city recently asked for a refund so it can buy replacements.

Source: *St. Louis Post Dispatch*

JURY AWARDS \$15 MILLION IN PERSONAL INJURY CASE

A federal jury in Illinois awarded a South Carolina woman \$15 million recently after finding that a tire on the motorcycle she was riding on had a defect and caused an accident that left her with severe brain damage. The jurors found that Goodyear Dunlop Tires North America Ltd. was responsible for the 2002 accident that occurred on an interstate highway in Livingston

County, Illinois. Trish McCloud was riding back to her home in Michigan from a bike rally in St. Louis when the tire deflated. The driver lost control of the motorcycle and crashed.

When the bike flipped, Ms. McCloud struck her head on the pavement. Although she was wearing a helmet, the impact was so great that it caused severe brain damage. As a result of her injuries, Ms. McCloud is partially paralyzed and requires around-the-clock care. The driver was hurt, but his injuries weren't as severe as those suffered by Ms. McCloud. The jury verdict was broken down as follows: \$1.5 million for disfigurement; \$4.89 million for pain and suffering; \$4.89 million for loss of enjoyment of life; and about \$3.8 million for past and future medical expenses.

Source: *Journal Star*

APPEALS COURT ORDERS NEW TRIAL IN FORD ROLLOVER CASE

A panel of the Court of Appeals for the Ninth Circuit has granted a new trial in a previously reported case against Ford Motor Co. The appeals court threw out a decision that would have awarded \$52 million to the parents of a small child who was killed by a rolling pickup truck. The court ordered a new jury to set punitive damages in the case. This will be the second retrial in this case, which arose from an incident resulting in the death of three-year-old Walter White in October of 1994. Walter's father had parked his Ford pickup on a sloped driveway and gone into his home. The child was playing in the front yard, and his mother was checking on him from time-to-time. A unanimous decision by a three-judge panel of the Ninth Circuit entered the order.

At some point, the child climbed into the truck's cab and shifted the gears into neutral. The parking brake didn't hold the pickup in place and it started rolling back. The child fell or climbed out and was crushed by the truck. The parents sued Ford Motor Co. and the

Orscheln Company, maker of the brakes, alleging the companies were aware the brakes would allow the truck to roll, but had not warned consumers. Two months after the child's death, Ford issued a recall in connection to the brakes. Orscheln settled with the parents before trial, and the first trial went forward against Ford. In the 1998 trial, Ford was found negligent for not warning customers about the brakes. The parents also were found partly responsible for the accident. The jury awarded the parents \$2.3 million in compensatory damages and \$150.8 million in punitive damages.

The trial judge found the punitive damages excessive and reduced the amount to \$69.2 million. Both parties appealed. The case was sent back for a new trial. In the 2004 retrial, which only considered the amount of punitive damages, another jury awarded the parents \$52 million. Ford again appealed, asking the Ninth Circuit to reverse the case, primarily because of mistakes made instructing jurors on damages. The appeals court held that because the lawyer for the plaintiffs told jurors that Ford knew that 54 people had been injured by "rollaways," the case had to be reversed. Another retrial was ordered, again limited to setting punitive damages, and that's the current status of the case. The new jury should be told that the parents already received \$2.3 million in compensatory damages, and that they were found to be partly responsible for the accident, according to the appellate court. It will be interesting to see how the third trial turns out.

Source: *Insurance Journal*

VIII. MASS TORTS UPDATE

ACT SIGNED INTO LAW

President Bush has signed into law The Prescription Drug User Fee Reauthorization Act (PDUFA), H.R. 3580. This act creates new federal safety requirements for drug companies. Congress was very clear that the bill does not change the

burden on the drug companies to warn of a drug's hazards. That duty remains squarely where it belongs—on the drug company, which is in the best position to warn about problems associated with the drug. The Rule of Construction, which is included in Section 901, makes clear that Congress is not altering the responsibility of the manufacturer to promptly update its drug label when the manufacturer becomes aware of safety information that should be added to the label. But it still gives the FDA the authority to require label changes and even if the FDA does not act, the burden still remains on the drug company to update its warning label.

Under FDA's current regulations, a drug company is required to revise its label to include warnings about risks that may be associated with the drug as soon as there is reasonable evidence of that risk. Although the company must notify FDA of the change, it is not required to wait for FDA's approval before making such a labeling change. The theory is that consumers should be made aware of a drug's risk at the earliest possible moment. The provision also makes clear that the burden of updating the warning label falls squarely on the drug companies. This is the first time that Congress has said anything about labeling. Previously, all labeling requirements were governed by FDA regulations only.

The drug companies fought and lobbied hard to include language that the Congress specifically left out of the final bill. That language, referred to as the Burr amendment and included in the Senate version of the bill (S.1082), would have shifted the burden of making labeling changes from the drug manufacturers to the FDA. Escaping the drug companies' intense lobbying efforts to put amendments on the bill, which would have allowed them to avoid accountability and limit their legal responsibilities, was very important. It is an example of what can happen when folks back home find out what is happening to them in Washington and let their elected representatives know how they feel on important issues. It's significant that Congress didn't cave in to the lobbying and political pressures from the drug industry and that's good news.

MERCK SPENT MILLIONS LOBBYING THE FEDERAL GOVERNMENT

Merck & Co. spent \$2.3 million to lobby the federal government in the first half of 2007, according to a recent disclosure form. The company's lobbying activities were on legislation that would increase funding for the Centers for Disease Control and Prevention and the Food and Drug Administration, and on patent reform issues. At least that's what the drug maker put in a disclosure that was required to be filed. A form posted online August 13th by the Senate's public records office contained this information. Interestingly, Merck also lobbied against legislation that would impose government price controls on prescription drugs in the Medicare program, and on trade issues with various countries, according to the form.

Besides Congress, the company lobbied the departments of Commerce and State, and the U.S. Trade Representative's office. Under a federal law enacted in 1995, lobbyists are required to disclose activities that could influence members of the executive and legislative branches. They must register with Congress within 45 days of being hired or engaging in lobbying. Merck is not the only drug company that spends big bucks trying to buy influence with members of Congress and with the FDA.

Source: *Associated Press*

THE STATE OF NEW YORK AND NEW YORK CITY FILE LAWSUIT AGAINST MERCK

The New York State Attorney General, Andrew Cuomo, along with Mayor Michael Bloomberg, have filed a lawsuit on behalf of the State of New York and New York City in a New York state court seeking damages, penalties, and restitution for "tens of millions of taxpayer dollars wrongfully spent on Vioxx prescriptions". The suit, filed last month, alleges that Merck concealed the risks of Vioxx and that many Vioxx prescriptions would have never been written if doctors had been properly informed of

the risks associated with the drug. Attorney General Cuomo, stated when filing the suit:

Merck's irresponsible and duplicitous conduct endangered the health of New Yorkers and wasted tax dollars even as evidence was piling up showing just how dangerous this drug was, Merck put profits above all else and put thousands at risk by continuing to push Vioxx inappropriately on doctors and patients.

The suit was brought under New York's recently-enacted False Claims Act, which allows the state to seek damages for the amount spent in Medicaid and the Elderly Pharmaceutical Insurance Coverage (EPIC) healthcare programs to pay for drugs prescribed under false pretenses. This is the first case brought under the new law. The State of New York spent over \$100 million on Vioxx prescriptions through Medicaid and EPIC between 1999 and 2004. This lawsuit, which will have huge ramifications, will be watched closely.

Source: Reuters

RECENT STUDY RESULTS AS TO THE CAUSE OF VIOXX HEART RISK

Researchers believe they have found what actually caused Vioxx to boost heart risks for persons taking the drug. As we all know, the pain reliever was taken off the market in 2004 because it was linked to a high risk of heart attack and stroke. In experiments with mice, researchers have found that when cox-2 inhibitors like Vioxx block the cox-2 enzyme, it does in fact reduce pain. But it also increases the production of a protein called tissue factor (TF), which can initiate unwanted clotting, and therein lies the problem. Because heart attacks and strokes are triggered by blood clots, it is possible that the over-production of TF is, in part, responsible for cox-2 inhibitors' dangerous side effects.

The University of Connecticut-led team reported on this connection in the

August 27th online edition of *The Journal of Experimental Medicine*. Lead researcher Mallika Ghosh, a post doctorate fellow at the university's Center for Vascular Biology in the department of cell biology at the University of Connecticut Health Center, observed: "We provide a mechanism to understand the side effects caused by cox-2 inhibitors." Previously, the increased cardiovascular risk associated with cox-2 inhibitors was linked to prostacyclin, another protein important for preventing clotting. It's been shown that cox-2 inhibitors do lower prostacyclin levels.

However, Dr. Ghosh's team now proposes an alternate explanation for the added risk. They found increased levels of TF in the blood, heart and lungs in mice treated with a cox-2 inhibitor. With this mechanism, the researchers can understand why cox-2 inhibitors "contribute to the development of cardiovascular events." The researchers found they could reduce the high levels of TF in cox-2-treated mice by using TF-reducing agents. Based on the research, it may be possible to make cox-2 inhibitors safer by giving TF-blocking drugs along with these pain killers. By measuring levels of TF, people who are at high risk for cardiovascular side effects from cox-2 inhibitors can be identified. Dr. Ghosh believes the TF-linked risk applies to all cox-2 inhibitors, not just Vioxx or Bextra, which was also taken off the market in 2005. Interestingly, a third cox-2, Celebrex, remains on pharmacy shelves.

Although this research holds promise, at least one expert believes that more study is needed. Dr. Steven E. Nissen, chairman of the department of cardiovascular medicine at the Cleveland Clinic and a noted expert on the cox-2 drugs, made this observation:

We have always assumed that the problem with cox-2 inhibitors was linked to prostacyclin. These [data] are suggesting that there may be more to the cardiovascular risk of cox-2 inhibitors, and it may relate to TF. However, blocking TF to

mediate that risk is still speculative. The problem is that there are no approved TF-blockers, so it's not even feasible to consider this. In addition, it still isn't definite that TF is an important mechanism in humans linking cox-2 inhibitors with cardiovascular risk. This study is very speculative, very preliminary. The finding needs to be confirmed in clinical trials.

I agree with Dr. Nissen. Before jumping to hasty conclusions, the medical community should demand further studies. On second thought, maybe the Federal Food and Drug Administration (FDA) should be the one doing the demanding. After all, the agency is supposed to be regulating the drug industry. It has the responsibility of protecting the public interest as it relates to safety and health issues. There is one thing for certain, however, coming from this study - Vioxx and the other cox-2 drugs should never have been put on the market without further studies.

Source: Forbes

NEW JERSEY SUPREME COURT RULES FOR MERCK IN CLASS ACTION CASE

New Jersey's Supreme Court has rejected the Vioxx class action lawsuit against Merck & Co., reversing two previous lower-court decisions. As we reported earlier, the suit was brought by a union health plan on behalf of all insurance plans that paid for Vioxx prescriptions. As all America now knows, Merck pulled Vioxx from the market three years ago after research showed it doubled risk of heart attacks and strokes. Had Merck disclosed those risks earlier, prescription plans would have favored other painkillers. A state judge and then an appeals court approved the class action, but Merck appealed to the state Supreme Court. The opinion rejects a national class and favors individual cases based on the alleged fraudulent conduct. In a nutshell the court ruled that the nationwide class was not appropriate for the

lawsuit.

Although some might see this ruling as being good for individuals who have their own personal lawsuits, it is regrettable in the sense that a class action would be the most efficient manner of holding Merck accountable for the massive economic havoc it has caused. The allegations of fraud against Merck certainly appear to be well founded. The drug maker sold billions of dollars of a very dangerous drug that it knew put persons taking it at great risk for heart attacks and strokes. The plaintiffs in the lawsuit were certainly damaged by Merck's conduct.

Source: *Associated Press and Forbes*

ANOTHER COX-2 MEDICATION HAS PROBLEMS

On September 16, 2003 the Medicines and Healthcare Products Regulatory Agency (MHRA), an agency of Great Britain's Department of Health, approved Novartis cox-2 drug Lumiracoxib (Prexige) for the symptomatic relief of osteoarthritis in Europe. It was later approved for sale in 16 other countries. However, the Australian Regulatory Agency for medicines required withdrawal of Lumiracoxib because of the serious liver side effects on August 13, 2007. This cox-2 has never been approved for sale in the United States by the FDA. In August, Novartis sent a "Dear Healthcare Professional letter" regarding its cox-2 medication Lumiracoxib (Prexige) to medical doctors in Europe. It should be noted that Prexige is indicated only for treatment of osteoarthritis of the hip and knee. The daily dose is 100 mg.

Following a European Union (EU) interim assessment led by MHRA of the latest safety evidence, new warnings had to be issued regarding reports of serious hepatotoxicity, including cases resulting in death or liver transplantation in the EU. Lumiracoxib is now contraindicated in patients with any hepatic disease; with prior drug induced elevations of liver enzymes; for persons taking any other medicines with significant hepatic toxicity risk;

and in for patients who already have elevated liver enzymes. New advice regarding liver function tests was also provided.

There appeared to have been eleven cases of severe hepatic toxicity worldwide, including nine cases of liver failure, with a suspected causal relationship with the medication, mostly involving doses higher than the 100 mg daily dose authorized in the EU. Lumiracoxib was considered to be the most potent of the cox-2 drugs in terms of Cox-I compared to cox-2 selectivity. The selectivity ratio is the highest for any of the Cox inhibiting drugs, at 400 mg. However, Lumiracoxib has a unique chemical makeup that hypothetically allows it to focus on inflammatory sites within the body, and not have the cardiovascular side effects similar to other cox-2 inhibiting drugs such as Vioxx and Celebrex. This hypothesis was never proven. Could this signal the end for this class of drugs?

WYETH PHARMACEUTICAL TRIAL IS UNDERWAY

A trial involving Prempro, the hormone replacement drug (HRT), is in progress against Wyeth in a Utah state court. Three northern Nevada women sued Wyeth and Pfizer claiming hormone replacement drugs caused their breast cancer. The women also contend that Wyeth failed to test the drugs or warn of their risks. Pfizer, did the responsible thing and settled all claims the women made against the company.

Early in the trial a former Wyeth salesman testified that the company coached him to downplay studies showing Prempro increased a woman's risk for breast cancer. He testified that was how the sales representatives were trained. Over the years, when reports came out suggesting there was an increased risk of breast cancer for women using the estrogen drug Premarin or the combination estrogen and progestin pill Prempro, the company would call emergency meetings to teach sales representatives

how to respond to doctors' concerns. According to the testimony, sales personnel were directed to tell doctors that "most studies did not show an increase of breast cancer." When Prempro came on the market in 1995, Wyeth encouraged its sales force to push the product as hard as they could and provided money and support for that effort. Company officials said the sales representatives were to promote the drugs to woman entering menopause and get them to use it "for the rest of their lives." The drug now is sold in small doses, and doctors are advised to limit the time women spend on the medication.

It certainly appears that the big drug companies have lost sight of what their primary purpose should be. What used to be an industry driven by science and research has become a marketing-driven industry and that's most unfortunate. The company bosses no longer seem to be concerned that doctors are first and foremost prescribing their products to help heal patients, but instead are only concerned that they prescribe their products. That's a far cry from the days when drug companies were run by medical doctors.

As I've reported in the past, our firm represents a number of women who have been diagnosed with hormone-positive breast cancer as a result of hormone replacement therapy, including Prempro. Our HRT team continues to prepare for a trial in Minnesota, which has now been rescheduled to take place in January 2008. Ted Meadows, Russ Abney, and Melissa Prickett are the primary lawyers handling the HRT cases for our firm. They will try the Minnesota case with lawyers from the firms of Pearson, Randall, Schumacher, P.A., located in Minneapolis, Minnesota and Littlepage, Booth in Houston, Texas. Our lawyers are also in the process of preparing other HRT cases for trial. We will keep you advised as to the progress of this litigation.

Source: *Reno Gazette-Journal*

WARNING FOR NURSING MOTHERS USING CERTAIN PAIN MEDICATIONS

The death of a nursing infant in 2006 has prompted the issuance of a significant warning from the FDA. The nursing infant's mother was given codeine for episiotomy pain. Genetic testing showed the mother's body converted the codeine to morphine more rapidly and completely than in other people and that led to higher than expected morphine levels in her breast milk. Although this is a rare side effect, it can result in unsafe levels of morphine in the blood and breast milk. Codeine, which is among the most common drugs taken by new mothers, is also included in several prescription pain drugs and in some over-the-counter cough syrups.

Given the risk, doctors are being warned to prescribe nursing mothers the smallest dose of codeine for the shortest period of time. Doctors were also told that they should closely monitor both mother and child. In children, signs of morphine overdose, beyond increased sleepiness, include difficulty breast feeding or breathing and limpness. Nursing mothers may experience sleepiness, confusion, shallow breathing, or severe constipation. The risk of having the genetic mutation ranges from about 1% in Hispanics, Chinese and Japanese, to 3% in African-Americans, 1 - 10% in Caucasians, and as high as 16 - 28% in north Africans, Ethiopians, and Saudis.

Source: Associated Press

ANOTHER BOSTON SCIENTIFIC/GUIDANT SETTLEMENT

You may recall the announcement of a tentative settlement in July 2007 involving Guidant Pacemakers and Defibrillators. Purportedly, Boston Scientific, which purchased Guidant in 2006, agreed to pay \$195 million to resolve several thousand claims involving recalled pacemakers and heart defibrillators that were manufactured by Guidant. At press time, it wasn't known whether there will be enough

plaintiffs who will agree to participate in this settlement to make it work.

Apparently, Boston Scientific has now agreed to another settlement involving these same devices. It was announced on September 4th that the company and thirty-five state Attorney Generals have agreed to a \$16.75 million settlement for claims that Guidant continued to market these devices even after the company learned that the products contained a defect. It appears that Boston Scientific desires to put all of the problems they inherited when they purchased Guidant behind them. However, it's yet to be seen whether these settlements will actually close the book on these recalled devices. We will continue to monitor this situation.

Source: Mealeys

CEPHALON DRUG IS TIED TO SEVERAL DEATHS

Drug maker Cephalon Inc. sent letters to doctors last month warning them that several deaths have been linked to Fentora, a powerful narcotic used to treat acute cancer pain. Fentora and its predecessor, Actiq, were approved by the Food and Drug Administration (FDA) only for use in cancer patients, but they are often prescribed "off-label" by doctors for such ailments as headaches and back pain. Although the company denies marketing Fentora and Actiq for other than their approved use, the company's practices are under scrutiny in three separate probes:

- Investigations by the U.S. Attorney in Philadelphia;
- An investigation by the Connecticut Attorney General; and
- a congressional probe into off-label treatments.

Fentora and Actiq contain fentanyl, a highly addictive substance 80 times as potent as morphine. Fentanyl is classified as a Schedule II substance by the Drug Enforcement Administration, which puts it in the same category as cocaine and methamphetamine. Schedule II drugs

have the highest potential for abuse and an associated risk of fatal overdose. As you may know, doctors are allowed to prescribe drugs as they see fit, including for off-label uses. But off-label marketing by drug companies is clearly illegal. The FDA is monitoring this matter.

According to Cephalon, 78,000 prescriptions were written for Fentora between its launch in October 2006 and September 2007. Fentora is a faster-acting and more discrete version of Actiq. It has been reported that Actiq has been associated with more than 120 deaths, including two involving children who confused the drug, which is a lozenge on a stick that looks like a lollipop, for candy. Doctors attributed some of the deaths to patients' cancer. More than two-thirds of the deaths occurred during clinical trials before Actiq hit the market in 1999.

Connecticut Attorney General Richard Blumenthal's investigation, which began in 2004 and is ongoing, is said to have found that Cephalon promoted Actiq off-label to neurologists to treat headaches, set unrealistically high sales quotas for its drug representatives, and pushed larger prescriptions at higher doses. The Wall Street Journal reported that settlement negotiations are presently underway. Apparently, based on the report, any settlement would involve a large fine and require that Cephalon take remedial measures to reform its aggressive marketing practices.

Source: Wall Street Journal

IX. BUSINESS LITIGATION

OHIO FILES SUIT FOR ANTI-TRUST VIOLATIONS

Following a three year long investigation by his office and the Ohio Department of Insurance, Ohio Attorney General Marc Dann has filed suit against the world's largest insurance broker, Marsh & McLennan, and four of the nation's largest insurance companies

and their subsidiaries for alleged violations of the state's anti-trust laws. The complaint, filed in state court, alleges that Marsh administered a well-orchestrated conspiracy among insurers American International Group, Inc. (AIG), ACE Ltd., The Chubb Corporation, and the Hartford Financial Services Group, Inc., to eliminate competition in the commercial insurance industry.

Specifically, the lawsuit alleges numerous instances in which the insurers allegedly agreed to offer customers fictitious quotes, often referred to as "B quotes," in order to create the false impression that competitive bidding had produced the best possible price when, in fact, no competitive process had taken place. As previously reported, a fifth company that had been under investigation, Zurich American Insurance Co., entered into a \$7 million settlement with the state in October of 2006. Attorney General Dann observed when suit was filed:

Our investigation has produced evidence of blatant violations of the antitrust laws that have cost Ohio businesses millions of dollars. That is why I am determined to use every resource at my disposal to both hold the conspirators accountable and to send a strong message that this type of illegal and unethical activity will not be tolerated in Ohio.

The Attorney General asks the court in the lawsuit to enjoin the parties from engaging in this type of activity in the future, to order them to disgorge all monies generated by the overcharges, and to assess monetary damages. It's good to see Attorneys General in a number of states standing up to those in Corporate America who violate the law.

Source: Insurance Journal

DELPHI SETTLES FRAUD LAWSUITS FILED BY INVESTORS

Delphi Corp. has settled the lawsuits filed by investors who accused the company's former managers of fraud.

The plaintiffs, including about 40,000 current and former employees and several large pension funds, contended the former Delphi managers fraudulently inflated the company's financial results to make the auto parts maker look more attractive to investors. Under the settlement agreements, participants in Delphi's employee retirement plans will receive \$24.5 million in allowed interest in Delphi's Chapter 11 bankruptcy case and \$22.5 million in cash from the company's insurance carriers.

Purchasers of Delphi's debt and equity securities will receive \$204 million in combined allowed interest and about \$90 million in cash from other defendants and insurance carriers. The lead plaintiffs in that class include the Teachers Retirement System of Oklahoma and the Public Employees Retirement System of Mississippi. The terms of the settlements will have to be approved by a federal district court judge in Detroit and a federal bankruptcy judge in New York.

Last year, Delphi settled with the Securities and Exchange Commission. Now that the company has reached settlement agreements in the cases, perhaps the new management will be able to move forward. The U.S. Securities and Exchange Commission settled charges of accounting fraud in October against Delphi and six people, not including Battenberg. Delphi will not face penalties because it cooperated with federal investigators. Delphi, which recently finalized an agreement for investors to pump up to \$2.55 billion into the company, plans to emerge from bankruptcy protection by the end of the year.

The lawsuits against Troy, Michigan-based Delphi and its former managers contended that Delphi, which filed for Chapter 11 protection in 2005, made fictitious asset sales to inflate its results. It was alleged that the company bought the assets back after money from the sales boosted results. Delphi was the parts-making arm of General Motors Corp. before being spun off as a separate company in 1999. The lawsuit named Delphi's former chief executive,

J.T. Battenberg, and other former executives as defendants.

Source: Insurance Journal

JUDGE APPROVES FINAL SETTLEMENT IN IOWA MICROSOFT LAWSUIT

A federal district court judge has approved the \$179.95 million settlement in the Iowa class action lawsuit against Microsoft Corp. The judge found that the settlement was fair and reasonable and would be approved. The suit was filed against Redmond, Washington-based Microsoft, claiming the company engaged in anticompetitive conduct that caused customers to pay more for software than they would have if there had been competition. The lawsuit initially sought more than \$330 million on behalf of Iowans who bought Microsoft computer software between 1994 and 2006.

Microsoft has faced 206 class action lawsuits across the United States. The company said 108 were consolidated in a federal antitrust case and 96 remained in state courts. Most were dismissed or settled before trial. The Iowa case was one of last cases against the company to make it to court. There is currently another pending case in Mississippi.

Source: Associated Press

ANTITRUST SUIT INVOLVING UNDERWRITER FEES IS BACK ON TRACK

A federal appeals court has ordered a lower court to reconsider whether a lawsuit against underwriters, including Citigroup and Morgan Stanley, can proceed as a class action. The antitrust lawsuit accused the investment banks of fixing fees at 7% on certain initial public offerings for a period in the 1990s. Last year, a district court judge ruled that the named plaintiffs in the case were not qualified to represent the class described in the suit. Apparently, one named plaintiff bought the right to bring the claim from a bankrupt company. Another plaintiff was a group of creditors of a bankrupt company.

The lawsuit, filed in 2000, accused 32 underwriters of fixing fees at 7% from

1994 to 1998 for offerings in the \$20 million to \$80 million range. The defendants also include Goldman Sachs and Bear Stearns. The plaintiffs estimated damages at \$1.2 billion, which could be tripled under antitrust law. Now that the case has been sent back to the trial court, that court will again determine whether the case will proceed as a class action.

Source: Bloomberg News

JUDGE APPROVES TRAVELERS' ASBESTOS SETTLEMENT

A U.S. bankruptcy judge has approved a \$449 million settlement agreement between Travelers Cos. Inc. and AcandS Inc. in connection with the insulation contractor's asbestos-related claims against the insurer. Under terms of the settlement, St. Paul, Minnesota-based Travelers will pay the \$449 million into an escrow account, which will be paid out along with any investment income at the conclusion of the bankruptcy. The settlement paves the way for the Lancaster, Pennsylvania-based company to emerge from bankruptcy reorganization. In July when the settlement was announced, Travelers said it believes it will get \$84 million from its reinsurers. According to Travelers, the remaining \$365 million of the settlement amount will be funded from existing reserves.

Source: *Insurance Journal*

JURY RULES FOR SPRINT IN PATENT INFRINGEMENT CASE

A federal jury has ordered Internet telephone company Vonage Holdings to pay \$69.5 million in damages for infringing on six telecommunications patents owned by competitor Sprint Nextel. In addition to the damages, jurors ordered Vonage to pay a 5% royalty on future revenues. Sprint, based in Reston, Virginia, with operational headquarters in Overland Park, Kansas, sued Vonage in a federal court in 2005, claiming the new company had infringed on seven patents for connecting Internet phone calls. Vonage denied the claims, arguing

that Sprint's patents were flawed and shouldn't have been approved. Six of the patents eventually went to trial. The jury found that the company violated the patents and did so intentionally. This means the judge could triple the damages if he agrees with the jury's decision.

Source: *USA Today*

ELI LILLY SETTLES LAWSUIT FOR \$18 MILLION

Eli Lilly and Co. has settled the lawsuit filed by a former research partner for \$18 million. Emisphere Technologies of Tarrytown, New York, agreed to the settlement after a four year battle. The first trial, a breach-of-contract case, went in Emisphere's favor last year. The two companies had worked together from 1997 to 2003 using Emisphere's technology to try to develop a pill form of Lilly's injectible osteoporosis medication Forteo.

Lilly sued Emisphere for breach of contract after the smaller company accused Lilly of breach of contract and threatened to take its technology to a Lilly rival, Novartis. A federal judge ruled in favor of Emisphere in January 2006, after evidence showed Lilly had set up a secret research team that did its own work using Emisphere technology. This wasn't known by Emisphere. Lilly also filed for an international patent that was based on Emisphere technology. The judge last year ordered Lilly to hand over that patent to Emisphere. A trial scheduled for 2008 was pending to hear a patent-infringement charge against Lilly and to set damages that Lilly would have to pay for the breach of contract.

Source: *The Indianapolis Star*

X. INSURANCE AND FINANCE UPDATE

LARGE CORPORATION WINS BATTLE OVER SURGE CLAIM

Although the litigation along the Gulf Coast and in New Orleans has had sort of a checkered existence thus far, there is a rather significant federal court decision in another jurisdiction that is noteworthy. A federal court in Los Angeles has ruled that wind-driven storm surge losses caused by Hurricane Katrina are covered under an excess property policy that Factory Mutual Insurance Co. sold to Northrop Grumman Corp. A ruling on summary judgment in Northrop Grumman's lawsuit against Factory Mutual Insurance Co. appears to be the first time that a court has ruled in a case involving a large, commercial policyholder over whether **wind-driven storm surge** is covered under a property policy that excludes **flood coverage**.

It appears that most Katrina-related lawsuits involving "large policyholders" are being settled out of court. The decision could be significant if it stands, because other policyholders that suffered Hurricane Katrina damage purchased policies with similar language. Policyholders who lost their homes shouldn't receive rulings on exclusion that would vary from rulings dealing with large corporations such as Northrop Grumman. The court in the Northrop Grumman case found that FM Global couldn't prove its interpretation of the language to be the only reasonable conclusion. According to the court, it was reasonable for Northrop to expect coverage, and FM's "excess policy failed to clearly exclude loss caused by 'storm surge' or 'wind-driven water'."

The case involves hurricane damage to Northrop Grumman Ship Systems' ship-building facility in Pascagoula, Mississippi. Damage at the facility totaled more than \$1 billion, including business interruption losses. The insurer sold Los

Angeles-based Northrop an all-risk excess policy for 2005-2006 coverage with \$19.8 billion in blanket limits above \$500 million. FM Global's policy form included boiler and machinery coverage but excluded losses from earthquake and flood damage.

FM Global was the only insurer on the excess layer. The company, with about 30 other insurers, also participated in Northrop's primary all-risk property insurance. The primary layer - including boiler and machinery, earthquake and flood coverage - was written on a form Aon drafted. Interestingly, FM Global paid Northrop \$15 million for its share of the first \$100 million of primary coverage for Katrina damage. Northrop's primary coverage had a \$400 million flood sublimit. Aon was broker for both the primary and excess coverage of the Northrop Grumman facility. Total premiums paid were about \$13.5 million. The dispute between Northrop and FM Global pertains only to the excess policy. But the U.S. District Court for the Central District of California weighed the interdependency of primary and excess policy language as well as statements by Aon brokers and Northrop risk managers.

FM Global argued that the ordinary meaning of flood or storm surge is an inundation of water on normally dry land. It also argued that terms such as "rising water" and "the rising, overflowing or breaking of boundaries of natural or manmade bodies of water," which were contained in its excess policy's definition of flood, describe storm surge. Additionally, the insurer argued its excess policy should be interpreted without considering language in its primary policy, which the court found "illogical." Northrop argued that primary policy definitions should control excess policy coverage. It also noted that the excess policy, unlike the primary policy, omitted the phrase, "whether driven by wind or not."

The court found that neither side was clear about the breadth of the flood exclusion contained in the excess policy. The court said that without clarifying wording such as "whether driven

by wind or not," the excess policy's flood exclusion is ambiguous. Therefore, the court said it was required to rule against the party that caused the ambiguity and entered a summary judgment in favor of Northrop. The court will still have to decide on monetary damages and Northrop allegations of bad faith. Of course, an appeal is likely before the case reaches that stage.

Source: *Insurance Journal*

STATE FARM SETTLES 103 KATRINA CASES IN MISSISSIPPI

State Farm Insurance Cos. has settled with 103 policyholders in Mississippi who challenged the company's refusal to cover damage to their homes caused by Hurricane Katrina. Terms of the settlement are confidential. State Farm still faces 1,949 lawsuits over Katrina damage in Louisiana, Mississippi, and Alabama. State Farm previously settled with homeowners, agreeing in January to pay about \$80 million to settle with up to 640 policyholders in Mississippi. In April, State Farm also agreed to pay at least \$50 million after re-evaluating claims for up to 35,000 policyholders in south Mississippi who hadn't sued the company. As of August 13th, it's reported that the company had paid \$29.8 million to hundreds of these policyholders.

Source: *Associated Press*

IT'S BEEN TWO YEARS AND INSURERS ARE STILL DENYING KATRINA CLAIMS

Even with the settlements that have been reached included those by State Farm, two years after Hurricane Katrina destroyed the homes of thousands of Gulf Coast residents, insurance companies are still systematically denying policyholders fair and just claims payments. Unfortunately, that appears to be the way some insurance companies operate after a natural disaster. A report, "Pattern of Greed 2007: How Insurance Companies Put Profits over Policyholders," concludes that insurers collected billions in premiums from policyholders and then refused to pay claims in their time of greatest need. The report maintains that

two years since Katrina, the nation's worst natural disaster, insurance companies have made more \$100 billion in profits. At the end of two years, however, many residents along the Gulf Coast are still waiting for their claims to be paid and are living in FEMA trailers. The insurance industry defends their claims-paying record and contends that the report isn't valid.

Source: *Insurance Journal*

SETTLEMENT WITH UNITED HEALTHCARE REPORTED

A settlement has been reached between United Healthcare Insurance and 36 states and the District of Columbia over alleged violations of state law involving claims-payment services. Arkansas, Connecticut, Florida, Iowa, and New York led the negotiations that resulted in the settlement. Claims handling and other state administrative practices of United Healthcare were reviewed through a series of state-led market conduct examinations. This is a good example of what can happen when the states work together in a collaborative effort to protect consumers and maintain a strong regulatory system.

United Healthcare has agreed to pay an assessment of up to \$20 million to the states that are included in the settlement. In addition, the company has agreed to implement a detailed three-year process-improvement plan concerning their claims-payment system, including quarterly reviews and yearly benchmarks. In the event United Healthcare fails to meet the yearly process-improvement benchmarks, an additional assessment of up to \$20 million could be levied against the company. Individual states will maintain the authority to investigate consumer and provider complaints, but will forego traditional market examinations.

Source: *Insurance Journal*

XI. PREDATORY LENDING

LOAN SHARKS PROSPER AND THEIR VICTIMS SUFFER

We have had unscrupulous lenders who have been taking advantage of ordinary folks for hundreds of years. In fact, one of the most dramatic stories from the New Testament concerns the time Jesus encountered money changers in the Temple. Enraged by their usury and sacrilege, Jesus physically drove the money changers out and chastised them for converting the Temple into a “den of robbers.” Over two thousand years later, we are now witnessing another example of predatory lending that is causing great difficulty. Homeowner financing involving what is known as the “subprime mortgage market” has turned out to be a real nightmare for the homeowners. Putting it in its simplest form, this is a classic example of banker greed and outright lender sleaze at its very worse.

The money changers involved in “subprime” lending have devised clever schemes to entice “subprime” borrowers into taking out high-interest, high-fee loans that will ultimately result in a disaster. In many cases, the amounts loaned exceed the market value of the collateral. In most cases, if not all, these were loans the families really could not afford. The level of debt being piled on their backs was literally obscene in most cases. Raking in profits from the poor and even middle class families by these lenders is about as bad as it gets. If it’s not fraud, it surely does smell like it!

The subprime schemes are run through an intricate, intertwined system of loan brokers, mortgage lenders, Wall Street trusts, hedge funds, offshore tax havens, and other predators. To entrap borrowers, the industry created an arsenal of arcane financial devices and maneuvers known by such exotic names as “exploding ARMs,” YSPs, teaser rates, low-doc mortgages, loan flipping,

and equity stripping. These terms mean little to most of us, but ultimately, the schemes are scams, extracting high monthly payments from borrowers with very high interest rates. Any equity the borrowers might have built up in their homes is taken up quickly, with the end result being the taking of their homes. The built-in traps of the subprime mortgage market have already taken the homes of more than a million people in just the past year. Unfortunately, the dangers are quickly rising for millions more.

This abuse of vulnerable families and the resulting economic mess would not have happened without the hands-off regulatory ideology that has infected our government. While there are no less than five financial agencies at the federal level that could have protected the victims of the lenders, the subprime surge was allowed to proceed on the fantasy that the financial institutions would police themselves. The Federal Reserve Board, for example, has direct authority under the Home Ownership and Equity Protection Act and could have protected the subprime borrowers. The Fed simply ignored this law, and I have to wonder – why? I doubt that we know presently how bad and widespread the subprime lending mess really is, but we will soon find out.

XII. PREMISES LIABILITY UPDATE

ESCALATORS CAN BE VERY DANGEROUS FOR CHILDREN

At rail stations and shopping malls around the world, there have been reports of people, particularly young children, getting their toes caught in escalators. The one common theme seems to be the clunky soft-soled clogs known by the name of the most popular brand, Crocs. Most adults, including parents of small children, are unaware of the risks that escalators pose for small children. One of the

nation’s largest subway systems – the Washington Metro – has posted ads warning riders about wearing Crocs on its moving stairways. The ads feature a photo of a crocodile, though they don’t mention Crocs by name.

In one case, a four-year-old wearing Crocs caught his foot in an escalator at a mall in northern Virginia. His mother managed to yank him free, but the nail on his big toe was almost completely ripped off, causing heavy bleeding. At first, the child’s mother had no idea what caused the boy’s foot to get caught. It was only later, when someone at the hospital remarked on his shoes, that she began to suspect the Crocs and did an Internet search. When she went to the Internet, she typed in ‘Croc’ and ‘escalator,’ and numerous stories came up about the risks.

According to reports appearing across the United States, and as far away as Singapore and Japan, entrapments occur because of two of the biggest selling points of shoes like Crocs: their flexibility and grip. Some report the shoes get caught in the “teeth” at the bottom or top of the escalator, or in the crack between the steps and the side of the escalator. The reports of serious injuries have all involved young children. I understand that Crocs are commonly worn by children as young as 2 years of age. Niwot, Colorado-based Crocs Inc. does not keep records of the reasons for customer-service calls, but the company says it’s aware of “very few” problems relating to accidents involving the shoes.

In Japan, the government warned consumers recently that it has received 39 reports of sandals – mostly Crocs or similar products – getting stuck in escalators from late August through early September. Most of the reports appear to have involved small children, some as young as two years old. In Singapore, a 2-year-old girl wearing rubber clogs – it’s unclear what brand – had her big toe completely ripped off in an escalator accident last year. And in this country, at the Atlanta airport, a 3-year-old boy wearing Crocs suffered a deep

gash across the top of his toes in June. That was one of seven shoe entrapments at that airport since May 1st, and all but two of them involved Crocs.

It was reported that one U.S. retailer that caters to children, American Girl, which is a Mattel subsidiary has posted signs in three locations directing customers wearing Crocs or flip-flop sandals to use elevators instead of escalators. During the past two years, “shoe entrapments” in the Washington subway have gone from being relatively rare to happening four or five times a week in the summer, although apparently none has caused serious injuries.

According to the U.S. Consumer Product Safety Commission, escalator accidents caused more than 10,000 injuries last year. But the agency has few records of specific shoe problems. Only two shoe entrapments have been reported to the Commission by consumers since the beginning of 2006. Agency spokesman Ed Kang urged people who have had problems to report them on the commission’s Web site. Although Crocs officials claimed they were working with the Elevator Escalator Safety Foundation on public education initiatives, the group’s executive director, Barbara Allen, says that’s not true. Ms. Allen said a Crocs official called her in September 2006 about possible cooperation, even suggesting the company might put a tag in its shoes with the foundation’s Web address. But since that first contact, apparently Crocs has not called, and, according to Ms. Allen, nobody from the company will return her calls. Escalator safety experts say the best way to prevent shoe entrapments is to face the direction the stairs are moving, keep feet away from the sides and step over the teeth at the end. My recommendation is for parents either not to buy Crocs and other soft-soled shoes for their children or not to allow them to use escalators while wearing such shoes. I suspect the latter is the best course of action.

Source: CNN

SHOPLIFTING IS A MAJOR PROBLEM

In the June issue I wrote about a settlement of a civil lawsuit arising out of a shoplifting incident that, because of security lapses, ended with a death. It was a classic example of how not to carry out the apprehension of a suspected wrongdoer. I understand that shoplifting is a major problem for retailers and that about \$225 million is spent each year on security measures. My longtime friend Brad Bishop, who is a professor at Cumberland School of Law, has written an excellent book on the subject. His book, a single volume of 405 pages, is entitled *The Law of Shoplifting*. Among other features, the book is a good source of information on potential liability for retail merchants.

Brad’s book has a detailed analysis of civil tort liability that may arise from the mishandling of suspected shoplifting incidents. Such topics as false imprisonment, assault and battery, libel and slander, and malicious prosecution are covered in the book. If you want more information on how to obtain a copy of this excellent work, feel free to contact Janice James at Cumberland School of Law, 800 Lakeshore Drive, Birmingham, Al. 35229. Incidentally, all proceeds from book sales go to the T. Brad Bishop Scholarships in Law, a project started by Cecil and Bettye Cheves.

BOSTON TESTS FOR ASBESTOS AFTER PIPE BLAST

It was reported recently that a pipe under a downtown Boston street apparently ruptured, releasing asbestos. Tests confirmed that asbestos had been released along with the steam, but city officials report that the contamination appeared to be limited. The steam was released from a 14-inch pipe owned by Trigen Boston Energy Corp. As is the situations in a number of cities, some of the older steam pipes in Boston are insulated with asbestos. Tests indicated that asbestos was in a brown material that was deposited on cars and buildings when the steam rushed out of the

manhole. The air in the area was also tested to make sure it wasn’t contaminated. It has been pointed out that there is a need for regulatory oversight of steam utilities. Apparently, there is little government oversight in a number of large cities of the networks of pipes that heat and cool buildings.

XIII. WORKPLACE HAZARDS

BP SETTLES FIRST CIVIL SUIT TO GO TO TRIAL

BP has settled the claims of four plaintiffs arising out of the March 2005 blast at BP’s Texas City, Texas, refinery in the first civil trial to go to trial. The terms of the settlements are confidential. While the company has settled hundreds of the more than 3,000 blast-related lawsuits — including all of the cases involving deaths — there are about 1,200 still pending in court. Mediation has now been ordered by the court for the remaining cases. BP says it wants to settle all blast-related litigation and they definitely should do so. Before the settlement was reached a great deal of testimony and related documents were put before the jury.

There is still an ongoing criminal investigation concerning this matter. The federal Occupational Safety and Health Administration (OSHA) issued citations alleging 300 violations of OSHA standards, imposed a \$21.3 million fine, and ordered safety improvements at the plant. The U.S. Attorney’s Office in Houston and the Justice Department’s environmental crimes section are handling the probe. As you will recall from previous reports, the explosion happened when a tower in a unit that boosts octane in gasoline overfilled with flammable hydrocarbons, causing a vapor cloud to be released from a blowdown stack. The cloud ignited, killing those in a trailer located 121 feet away. Many more employees were injured.

The U.S. Chemical Safety and Hazard Investigation Board concluded after a two-year investigation that cost-cutting, a lack of vigilance, and a lack of investment in training and mechanical integrity at the plant paved the way for disaster. Also, a panel led by former Secretary of State James A. Baker III concluded that even though BP increased funding for its U.S. refineries from 2002 on, after budgets had been slashed in prior years, it wasn't enough. Clearly, BP was guilty of putting its profits over the safety of its own employees.

Until this trial, BP had settled all cases before trial. For some reason, BP elected to try this case and it was tried for 10 days before BP decided on a settlement. Throughout the trial, the plaintiffs contended that BP valued profits over safety by cutting budgets for maintenance, repairs, upgrades and training in the years leading up to the explosion. During the trial, several BP executives testified, including former plant manager Don Parus; Pat Gower, regional vice president of BP North America; and, by videotaped deposition, Mike Hoffman, former group vice president of refining and marketing. Parus testified that he looked into the refinery's deadly history after three deaths occurred there in 2004, and found 22 deaths in the previous 30 years. A 23rd death came later. The then plant manager commissioned a survey of more than a thousand refinery workers that elicited harsh assessments about the safety culture, with many workers saying they thought each day at the facility might be their last. But in their testimony Gower and Hoffman claimed to be largely ignorant of that history until after the blast. I find that almost impossible to believe considering their respective positions at BP.

Interestingly, BP admitted during trial that the company could have replaced flimsy wood-frame trailers, like the one in which the 15 contractors died, with blast-proof trailers years before the March 2005 explosion. Jurors saw a letter a BP vice-president received from a company in September 1999 promoting blast-proof trailers. The cost to BP

for the trailers would have been only \$33 a day per trailer with a 10-year lease, or only \$72 per day on a month-to-month basis. But, to save money, BP didn't buy blast-proof trailers. Company policy, dating back to 1995, said trailers couldn't be closer than 300 feet to processing units, according to a company document. The necessary managers hadn't signed off on it before they were placed and used by workers. The 15 workers were in a trailer 121 feet from the processing unit that exploded.

Cuts at the Texas facility included reductions in training, maintenance supervisors, safety programs, and project engineers, according to other company documents put in evidence and presented to the jury. The plaintiffs contended that BP valued profits over safety by cutting budgets for maintenance, repairs, replacements, and training in the years leading up to the explosion. It's obvious that safety was compromised at the facility, which puts workers at great risk for death or serious injury. Hopefully, all of the pending cases will be settled during mediation, sparing the plaintiffs from having to go through trials. BP should have learned its lesson from this matter and hopefully they did!

Source: Houston Chronicle

HONEYWELL TO PAY \$12 MILLION IN WORKER'S DEATH

A federal judge in Louisiana has ordered Honeywell International Inc. to pay \$12 million for its negligence in handling hazardous materials that resulted in the death of an employee. The U.S. Justice Department said the diversified manufacturer will pay an \$8 million criminal fine after pleading guilty to violating the Federal Clean Air Act. The New Jersey-based company also agreed to pay the victim's children \$2 million and another \$2 million to state funds that handle hazardous materials. The company's guilty plea and fines handed down by U.S. District Court Judge resulted from the Justice Department's investigation into a July 2003 incident at Honeywell's Baton

Rouge plant that killed an employee.

According to the Justice Department, the employee opened a one-ton cylinder that had been incorrectly labeled as a harmless refrigerant. Instead, the employee was exposed to a highly toxic and corrosive material and died the next day. Honeywell was sentenced to two years probation and ordered to pay \$750,000 to the state's department of environmental quality, \$750,000 to the state's police hazardous materials unit and \$500,000 to the state's police emergency operations center besides the \$8 million fine and \$2 million to the employee's three children. Warren Amburn, the special agent in charge of the Environmental Protection Agency's criminal investigation office in Dallas, observed: "This case illustrates the terrible consequences that can result from environmental crimes. Honeywell needs to make sure this never happens again."

Source: Associated Press

XIV. EMPLOYMENT LITIGATION

COUNTRYWIDE SUED BY WORKERS OVER RETIREMENT LOSSES

We mentioned the fallout from the subprime mortgage loans scandal in the Predatory Lending section of this issue. The following is an indication of what is happening with Countrywide Financial Corp. The mortgage lender recently announced that it will cut its workforce by 20%, and it has now been sued by employees claiming the company withheld information about its financial health, causing the value of their retirement plan to drop. Countrywide, which is the largest U.S. mortgage lender, will eliminate as many as 12,000 jobs. The job loss is the result of investors getting out of the market (not buying loans) and bankers, alarmed by rising subprime defaults, refusing to provide capital to mortgage companies. It's significant that Countrywide's stock has declined more than 60% this year.

The workers' lawsuit, filed in a California federal court, is asking for class action status. The plaintiffs also sued the company's Chief Executive Officer and Chief Administrative Officer. It was alleged that the defendants "failed to conduct an appropriate investigation into whether Countrywide stock was a prudent investment for the plan" and "failed to provide the plan's participants with information regarding Countrywide's improper activities." About one-third of the retirement plan's holdings were company stock, according to the complaint. It's alleged that the employees suffered "hundreds of millions" in losses when Countrywide's stock took a nosedive. If it can be proved that the company's officers knew the financial condition of the company was not good, the company was engaging in risky behavior, and the investment in company stock was no longer a prudent investment, the plaintiffs will have a pretty good lawsuit. I understand that about 50,000 people are invested in Countrywide's retirement plan.

Source: Bloomberg News

XV. TRANSPORTATION

ACTIONS BY THE BUSH ADMINISTRATION MAKE OUR HIGHWAYS MORE UNSAFE

The trucking industry gave large sums of money in the form of campaign contributions in the last federal election cycle, and now they are reaping the benefits. The Bush Administration has taken steps to weaken the rules of the road as promulgated by the Federal Motor Carrier Safety Administration (FMCSA). As a result, trucking company profits will increase, and motorists on the nation's highways will be in greater danger. Truck drivers will be worn out because of long hours on the road. Driver fatigue is a major cause of highway crashes involving 18-Wheelers.

More than 100 people die and more than 2,000 are injured every week in crashes involving heavy trucks. Because

it is documented that a major cause of these crashes is driver fatigue, you would think that Congress would do something about it. Well, they did, by directing the FMCSA, the federal agency that regulates trucking, to make safety the number-one priority. Congress mandated a revision of the rules to decrease crashes caused by fatigue. In 2003, the agency - under direction from the Bush White House - issued the new rules. You may be shocked to learn that the rules actually increased the length of time a trucking company could make its drivers stay behind the wheel. The limit was raised from 60 hours per week to 77 hours per week - an increase of 11 hours.

A federal appeals court, in a lawsuit filed by Public Citizen, struck down the rule. But in 2005, as the result of lobbying efforts by the trucking industry, FMCSA did a complete turnaround. It said that seven consecutive 11-hour days on the road was the rule. The change was again challenged in court and the rule was overturned again. The federal government should protect motorists on the highways, across the country. When 5,000 lives are lost annually on our highways that's a heavy price to pay. The Bush Administration should have to account for why it has put corporate profits over highway safety. If you want more information on this subject, go to www.citizen.org.

ANOTHER EXAMPLE OF IGNORING HIGHWAY SAFETY

The following is another example of how the Bush Administration is ignoring safety. We have written on the North American Free Trade Agreement (NAFTA) trucks pilot program in previous issues. Now the Bush Administration has totally ignored the safety of the American public by abruptly starting up the program. The public learned of the Administration's decision in a hastily scheduled teleconference held at 9 p.m. on September 6th. Officials from FMCSA announced at that late hour that it would turn loose Mexico-domiciled car-

riers on the public in a "demonstration project." Under the ill-advised program, trucks will be permitted to start crossing the border immediately. Even those who try hard to justify some of the efforts by the Bush Administration to dupe the public should have great difficulty with the method used to announce something of this importance. It's quite obvious that a late night announcement wasn't intended to let folks know about what was coming.

Interestingly, the agency is barreling ahead with the pilot program before the public has had a chance to review the Department of Transportation inspector general's report. Opening U.S. borders, despite insufficient inspection facilities and carrier safety performance data, showcases the Bush Administration's persistent disregard for public safety and federal law requirements. Congress approved provisions in May, designed to ensure that the pilot program would not circumvent safety standards or congressional oversight. The obvious intent of the lawmakers was to require greater public disclosure of program details and give more opportunity for public comment. Congress required Mexico-based trucking companies to comply with all applicable U.S. laws and safety standards. Despite the congressional mandate, FMCSA has failed to meet these requirements.

For years the Bush Administration has been pushing to give Mexico-domiciled carriers access to all U.S. highways, despite safety and environmental concerns expressed by the safety community and members of Congress. The safety of American motorists is compromised under the pilot program. The FMCSA and the Bush Administration have once again put its love for the failed NAFTA trade model over the interests of the American people, and this time it harms public safety.

Source: Public Citizen

A JOINT PROGRAM TO PATROL ALABAMA'S DEADLIEST ROADS WILL HELP

Alabama State Troopers, the Alabama

Department of Transportation, and the University of Alabama are now working together on a new program to boost trooper patrols on the state's deadliest roads. The CARE Research and Development Laboratory at the University of Alabama will use statistical data to help troopers and the DOT determine what areas have had the greatest number of crashes involving excessive speed and impaired driving. The DOT will use \$5.6 million from the federal Highway Safety Improvement Program to pay for the program, which will provide overtime pay for state troopers to patrol the routes after their normal duty hours or on an off-day. Some money will also go toward radar equipment.

This program appears to be a good use of taxpayer dollars. I hope it will pay off in making for safer roadways in Alabama. But, it was pointed out in a recent *Birmingham News* editorial that, while this is a good program, it's just a temporary fix making our highways safer. The *News* editorial writer believes that state government should properly fund the DPS so that enough troopers can be hired to patrol state highways on a regular basis. I have to agree with that view. Putting more troopers on the highways should be a top priority for the next legislative session.

Source: *Huntsville Times* and *Birmingham News*

THREE ALABAMA BRIDGES ARE SIMILAR IN DESIGN TO THE MINNESOTA BRIDGE

Three Alabama bridges similar in design to the span that collapsed in Minnesota recently have gotten a second review by a different team of inspectors. No serious problems were found, and the inspectors reported that "there were no findings that differed from the last inspections." The three Alabama bridges, known as deck truss bridges, with steel plates that reinforce truss connections, are similar to the I-35 Bridge in Minneapolis that killed at least 13 people when it collapsed. The three bridges span the Tallapoosa River on Alabama 14 in Tallassee, the Coosa River

on Alabama 22 in Chilton County, and the Tennessee River on U.S. 43 in North Alabama in the Shoals area. It appears that the Alabama Department of Transportation has taken extra precautions to make sure that the bridges are safe. The State of Alabama should take all steps necessary to assure that the three deck truss bridges are completely safe.

Governor Riley ordered the inspection of the three bridges after the deadly collapse in Minneapolis prompted widespread reviews of bridge safety. After the first review, DOT Director Joe McInnes said the agency didn't plan further action until officials could determine what caused the Minneapolis collapse. That issue is still under investigation, but National Transportation Safety Board officials have said they are trying to determine if the beam-tying gusset plates were a factor. Alabama was among several states that decided to conduct a second set of inspections with different teams. That appears to be a sound approach to dealing with a potentially serious safety issue.

Source: *Associated Press*

GOVERNOR SIGNS BILL BARRING CELL PHONE USE BY TEEN DRIVERS

The Governor of California has signed legislation that will prohibit Californians under age 18 from using cell phones, text message devices, and laptop computers while driving a motor vehicle. The new law, which takes effect July 1, 2008, addresses a leading cause of traffic accidents resulting in deaths and injuries. Governor Arnold Schwarzenegger says that the legislation would "eliminate a major distraction for our young, inexperienced drivers and to make our roadways safer for everybody." The Governor volunteered that he has barred his two teenage daughters from using cell phones while driving.

Motor vehicle crashes are the leading cause of death among 16- to 20-year-olds, and it's documented that a person's first year of driving is the most dangerous of their life. The new law also

prohibits under-18 drivers in California from using hands-free cell phone devices. Violators will face a possible \$20 fine for a first offense, and \$50 for later offenses. Starting next July, adult drivers will be required to use hands-free equipment if talking on the phone while driving. While this type legislation is probably unpopular with some teenage drivers, it's a good thing. Saving lives is more important than worrying about "hurt feelings."

Source: *Los Angeles Times*

VERDICT IN CASE ARISING OUT OF VEHICLE CRASH IN FLORIDA

A jury in Jacksonville, Florida, has awarded \$3.4 million to a woman who suffered permanent neck injuries when a moving truck rear-ended her car in 2004. The 37-year-old will need treatment every six months for the rest of her life to deaden nerves in her neck and reduce the pain. It was reported that the woman, a dance teacher, has constant pain from her injuries that include a herniated disc, but can still teach. However, she can't dance or demonstrate poses to her ballet and gymnastic dance students, which has restricted her ability to teach. The plaintiff was stopped at a traffic light when she was hit in November of 2004, by a truck owned by Reads Moving Systems of Florida. This was an unusually good result for a person suffering from a neck injury. The medical testimony by treating doctors was helpful in getting a meritorious case settled. This is an indication that developing medical testimony is the key to obtaining adequate compensation for a deserving client who has suffered neck and back injuries.

Source: *The Florida Times Union*

LAWSUIT FILED OVER IMPROPER GRATE USE

The family of a man severely injured when a 250-pound storm grate slammed through his windshield on a Massachusetts state highway has filed a

lawsuit against five defendants. The design firm, the grate manufacturer, SPS New England, the firm that installed storm grates in Westwood as part of the SPS project, and Aggregate Industries of Saugus were among the defendants sued by the plaintiff. It was alleged that the grate was a type barred from use on expressways where high-speed traffic could dislodge them. The grate, and 23 others along a stretch of the highway in Westwood, Massachusetts, should never have been installed because state construction standards specified that they were not to be used on “expressways” and “freeways.” The grates, which have openings in the pattern of a waffle iron, are designed so that bicycle wheels won’t get stuck in them and should be used “only . . . where bicycle travel is legally allowed,” according to excerpts from the construction rules that apply to the case.

The man, a 39-year-old father of two, remains hospitalized with brain and spinal injuries from the crash, which occurred on July 27th. A tractor-trailer drove over a loose grate, causing it to become dislodged and fly through the air, striking the windshield of the plaintiff’s car. The crash was at least the third significant accident that week involving grates on the same stretch of highway where this incident occurred. The drivers in the other accidents were not hurt, but their vehicles were badly damaged. The accident, occurring on one of Massachusetts’ most-traveled roadways, has resulted in inspections of all 86,000 storm grates and manholes statewide by the state. Inspectors from the state found that the grate involved in the accident was different from the others in the Westwood stretch because it had been elevated on an extra piece of iron so that the grate surface would be even with the road. After the accident the piece of iron, called a riser, was removed and the grate was reconstructed.

Source: *Boston Globe*

FAA ORDERS INSPECTIONS OF NEWER 737 AIRLINERS

The Federal Aviation Administration (FAA) has ordered inspections of the wing slats on all newer Boeing 737 jetliners based on findings about the fire that destroyed a 737-800 in August on Okinawa. While the order applies to 783 jetliners operated by U.S. airlines, it most likely will be imposed by other countries on the entire worldwide fleet of 2,287 newer 737s, according to the FAA. Slats, which extend out from the front of the wings, and flaps, which extend out from the wings’ trailing edges, are deployed by pilots during takeoffs and landings to increase an aircraft’s lift and stability.

Investigators in Naha, Okinawa, found that a bolt from a slat on the right wing had pierced the fuel tank of a China Airlines 737 that caught fire after landing on the Japanese island. All 165 people aboard were able to evacuate the plane moments before it exploded. The FAA ordered a detailed inspection within 24 days to be sure that the downstop assembly, which limits how far the slats can emerge from the wing, is installed properly and repaired if needed. It also ordered that the nut and bolt that hold the assembly in place be tightened to specifications. The FAA’s emergency airworthiness directive, issued in late August, applies to all 737-600, -700, -800, -900 and -900ER series planes, the first of which entered service in January 1998.

Source: *Los Angeles Times*

XVI. HEALTHCARE ISSUES

AMERICAN CONSUMERS SHOULD KNOW WHERE THEIR FOOD COMES FROM

Most Americans, like me, probably thought most, if not all, of the food we buy in supermarkets comes from this country. But the problems arising from imports from China have awakened us up to a most serious problem. Chances are pretty good that lots of our food is

actually coming from China, Eastern Europe or some other country. U.S. processors and grocery chains can get food products from those countries at very cheap prices. While they are cheap, imports from foreign countries carry a health and safety risk, especially when it comes to food products. Most of the countries don’t have the capacity or the will to make sure their products are safe for consumption. We need a national law that requires meats and produce to be labeled as to origin. Shouldn’t a woman shopping in a supermarket know where the food she is buying comes from? The recent scare caused by the contaminated food being imported from China should cause members of Congress to wonder what happened to the Country-of-Origin Labeling Act passed by Congress 5 years ago. This act, known as “COOL,” should have helped consumers make decisions when buying food products.

But lobbying groups and the Bush White House have prevented implementation of COOL. It’s been reported that campaign money has been effectively used to stall COOL. For example, I am told that Rep. Henry Bonilla (R-TX) received more than \$368,000 from the meat industry alone, and that he was instrumental in sidetracking COOL. The American people have no way of knowing how powerful the lobbyists of Corporate America really are. In any event, COOL must be implemented immediately for the good of the consuming public. The federal government and especially the Department of Agriculture and Consumer Product Safety Commission must be given the tools necessary to deal with the foreign import problem. But, the country-of-origin labeling act referred to above, can be enforced now.

DRUG-COATED STENTS ARE QUESTIONED

New research has revealed that patients given drug-coated stents after an acute heart attack are nearly five times as likely to die six months to two years later as those with bare metal

forms of the arterial scaffolding. The finding, from a two-year analysis of 2,300 patients in 14 countries, fuels the debate over the safety of so-called drug-eluting stents, made by companies such as Boston Scientific and Johnson & Johnson. Doctors at a meeting of the European Society of Cardiology said the finding showed the need to be very selective to ensure drug-coated stents are given only to the right patients. Although this recent revelation will likely cause both doctors and patients to take notice of the findings, it won't be the final word on the safety of drug-coated stents for heart-attack patients. The debate will continue.

Source: *Wall Street Journal*

BOSTON FIRM TO PAY \$10.5 MILLION OVER

A company that distributed human growth hormone to "well known athletes and entertainers" has agreed to pay a \$10.5 million penalty and cooperate with law enforcement in ongoing investigations. Under the terms of the agreement, Specialty Distribution Services Inc., a subsidiary of Express Scripts Inc., will not face prosecution for three years if it fully complies with terms of the agreement. St. Louis-based Express Scripts has implemented procedures to prevent the illegal distribution of human growth hormone. The U.S. Attorney's office says Specialty Distribution Services "knowingly distributed human growth hormone to certain well-known athletes and entertainers, including a well-known athlete in Massachusetts, knowing that their intended use was athletic performance enhancement, cosmetic or anti-aging," in violation of federal law. The drug in question was approved by the Food and Drug Administration for specific purposes only, including treatment of children with growth failure resulting from inadequate levels of growth hormones.

Source: *Associated Press*

POPCORN CO. DROPS CHEMICAL TIED TO ILLNESS

Weaver Popcorn Co., one of the nation's top microwave popcorn makers, has switched to a new butter flavoring, replacing diacetyl, which is a chemical linked to a lung ailment in popcorn plant workers. The Indianapolis-based company began shipping new butter-flavored microwave popcorn in August that contains no diacetyl. As we have reported, diacetyl is a chemical undergoing national scrutiny because of cases of bronchiolitis obliterans, a rare life-threatening disease often called "popcorn lung." The family-owned business says it wanted to lead the popcorn industry and allay consumer fears by eliminating the chemical for its product line. There's a growing awareness and concern among consumers about diacetyl and its health-related risks.

The company, which sells about 600 million bags of microwave popcorn a year, giving it about a 20% share of the U.S. market, did the prudent thing. Concerns about diacetyl have been growing for years, as have the number of lawsuits filed by workers suffering from the progressive lung disease, which can force sufferers to undergo lung transplants. Several flavor manufacturers are either researching alternatives to diacetyl or are already marketing butter flavors free of the chemical, according to the Flavor and Extract Manufacturers Association, which is based in Washington, D.C. Thus far, the concern has focused on workers inhaling diacetyl in manufacturing settings - either in making the flavoring or adding it to food products ranging from popcorn to pound cakes. However, I will mention other concerns below that could expand the risk.

Source: *Associated Press*

DOCTOR WARNS CONSUMERS ABOUT POPCORN FUMES

It is now being reported that consumers, not just factory workers, may be in danger from fumes from the buttery flavoring in microwave popcorn. A warning letter to federal regulators was

sent from a doctor at a leading lung research hospital. A pulmonary specialist at Denver's National Jewish Medical and Research Center has written to federal agencies to say doctors at the Center believe they have the first case of a consumer who developed lung disease from the fumes of microwaving popcorn several times a day for years. Dr. Cecile Rose cautioned: "We cannot be sure that this patient's exposure to butter flavored microwave popcorn from daily heavy preparation has caused his lung disease. However, we have no other plausible explanation."

The July letter, made public last month by a public health policy blog, refers to "popcorn lung." In response to Dr. Rose's finding, the Flavor and Extract Manufacturers Association issued a statement recommending that its members reduce "to the extent possible" the amount of diacetyl in butter flavorings they make. It noted that diacetyl is approved for use in flavors by the federal Food and Drug Administration. The FDA says it's evaluating Dr. Rose's letter and is "carefully considering the safety and regulatory issues it raises." The occupational safety arm of the Centers for Disease Control and Prevention is also working on a response to the letter.

Source: *Associated Press*

BAYER HEALTHCARE LOBBIED ON MEDICARE

Bayer HealthCare, a subsidiary of German drug maker Bayer AG, lobbied the federal government in the first half of 2007, according to a recent disclosure form. The firm hired by Bayer lobbied Congress and the Centers for Medicare and Medicaid Services on Medicare reimbursement issues and other matters. Interestingly, Dean Clancy, a former program associate director at the White House's Office of Management and Budget, is among those registered to lobby on behalf of Bayer HealthCare.

Source: *Associated Press*

XVII. ENVIRONMENTAL CONCERNS

FEDERAL JUDGE RULES TVA VIOLATED AIR POLLUTION RULES

A federal judge has ruled that the Tennessee Valley Authority violated air pollution rules more than 3,000 times in less than two years at its power plant in northwest Alabama. U.S. District Judge Virginia Hopkins ruled against TVA's coal-fired Colbert Plant, which is located on the Tennessee River near Tusculumbia. TVA had been sued by two environmental groups, the Alabama Environmental Council and the Sierra Club. Concerning the court order, Michael Churchman, executive director of the Alabama Environmental Council, had this to say: "This is a great win for the citizens of Alabama who have been forced to breathe the waste from TVA's plants for far too many years."

According to a TVA spokesman, the utility will decide what to do within the 60 day time limitation allowed by Judge Hopkins for submitting a remediation plan. The utility can file a plan or it can appeal to the U.S. Court of Appeals for the Eleventh Circuit in Atlanta. If TVA elects to file a remediation plan, and not appeal, the environmental groups will have to respond to it. The court will then hold a hearing to determine its sufficiency. The suit involved opacity standards, which measure the density of smoke emitted by the plant. In 2003, after the suit was filed, the Alabama Department of Environmental Management adopted a rule stating utilities were allowed a certain number of mistakes each quarter. The U.S. Environmental Protection Agency has not accepted those rules, leaving the state out of compliance with the U.S. Clean Air Act. ADEM Air Director Ron Gore told *The Birmingham News* that ADEM is working with EPA to develop a new rule. Emissions at TVA's Colbert Plant include particles, sulfur dioxide, and nitrogen oxide, according to the ruling.

TVA and other coal-fired plants must

report to the state every six-minute period in which its emissions are more than 20% opaque. It doesn't have to explain why it might emit opaque pollution during emergencies, or during startup, shutdown, load changes, and other exemptions. At those times, it is allowed to put out smoke that is 100% opaque. In my opinion, ADEM needs to do a better job of protecting the environment in our state. Hopefully, they will get the message.

Source: *Associated Press*

EPA REPORT QUESTIONS ADEM'S ENFORCEMENT EFFORTS

In August, the federal EPA issued a report admonishing the Alabama Department of Environmental Management for failing to properly penalize polluters who do not meet federal guidelines. The report also criticized ADEM for issuing repeated letters of violation to polluters who exceeded discharge standards, but not setting firm dates for compliance or spelling out specific penalties for continued violations. While the EPA report noted that ADEM had "effective compliance and enforcement programs," it chided ADEM for not having a formal written system for issuing penalties and for not aggressively following through with repeated offenders.

In a *Mobile Press-Register* article that followed the EPA report, an ADEM spokesman contended that the agency was "working on those issues," and that they were "incorporating changes into our enforcement strategy." For many years, ADEM's enforcement strategy, in most instances, has been limited to the repeated issuance of informal letters of violation. However, only in rare occasions, to our knowledge, has ADEM escalated its enforcement activities by pursuing more formal consent orders, which place a legal burden on a company to actually comply with its permits.

Most telling is a finding in the EPA report that ADEM checked to see whether companies complied with

their hazardous waste permits only half as often as EPA recommends. And, according to the report, ADEM's "most significant" shortcoming is that it does not properly document whether polluters are ever actually fined or have a policy explaining how those fines are calculated. According to ADEM, it plans to begin including written explanations of the penalties it issues in all of its case files, as a way of addressing EPA's criticism.

My hope is that the EPA report will bring about long-term changes in the way ADEM enforces its permits and punishes companies that repeatedly violate those permits. While ADEM has done a good job of developing effective compliance and enforcement programs, those programs do little good if polluters in this state know they can repeatedly violate the law and get away with it.

Source: *Mobile Press-Register*

ADEM GETS EQUAL TIME TO TELL ITS SIDE OF THE STORY

My friend John Hagood, who currently works as a lawyer at ADEM, called me a few weeks back and asked that the agency be allowed to furnish a piece to be included in this issue of the Report. John said that ADEM's performance wasn't always treated fairly by the media and wanted to give the agency's performance story. As this seemed to be a legitimate request, I am printing ADEM's "side of the story," without change or modification. However, I must point out that I am not putting my stamp of approval on the content at this time. I have been critical of ADEM in the past and am convinced the criticism was justified. The following is from ADEM:

During the past 25 years, the number of environmental programs administered by the Alabama Department of Environmental Management (ADEM) has increased significantly and the regulated community has grown to include small business owners such as dentists, doctors, home

builders, and farmers. In an effort to insure its resources are utilized in an efficient/effective manner while maintaining a clear focus on the departmental objective of protecting human health and the environment, ADEM Director Trey Glenn recently unveiled a number of initiatives that will empower the Department and its staff to function as a focused, single-minded team.

Director Glenn highlighted an Environmental Justice Action Plan that includes an 11 step process that will build upon the existing achievements in the Environmental Justice Program. As part of the existing efforts of the Environmental Justice Program, the Department has already removed over 1,500 pounds of out-dated lab chemicals at 11 Title I high schools and has provided environmental justice training to over 150 ADEM employees. Director Glenn also noted that during fiscal year 2007 approximately 74% of the Department's air-related audits were performed in low income/minority areas.

An updated compliance and enforcement strategy was also identified as an initiative that will allow the Department to consistently administer enforcement actions for noncompliance issues. The goal of the new strategy is to provide clarity, transparency, consistency, and deterrence in the Department's enforcement system. Director Glenn noted that the new strategy is designed to reduce the repeat issuance of Warning Letters/Notices of Violation for noncompliance issues.

A review of ADEM's operations for fiscal year 2005 has been conducted by EPA. The final results of this review were provided to ADEM in early 2006 and the media has only recently reported

on the results EPA's review. During the two and a half years of Trey Glenn's directorship, numerous advances have been made to streamline the Department's enforcement process. The monetary amounts attached to penalty factors in administrative orders are now more clearly explained and notices of violation more explicitly outline ADEM's expectations of the violating facility and that facility's expected return to compliance. This new enforcement policy and its mindset toward a more streamlined compliance and enforcement strategy will be pervasive of ADEM, as the new policy and the supporting protocols give more definite ownership of and accountability for the process to the program managers within ADEM.

The Director also emphasized an enhanced external affairs effort to assist business owners in complying with various environmental rules/regulations. The need to enhance the Department's external affairs efforts was a key component in the 2004 Strategic Plan developed by the Alabama Environmental Management Commission. These enhanced efforts include an environmental roundtable for business associations and environmental groups along with the establishment of a partnership with the Small Business Development Consortium to assist small business owners in their compliance efforts.

Additionally, ADEM is overseeing the cleanup of numerous abandoned contaminated plants and factories through its Brownfields program. Within the past year and a half, a revolving loan authority was organized and incorporated that will execute low interest loans to cities and other governmental entities to enable them to assess and clean up these sites. Most

recently, the City of Montgomery agreed to borrow \$700,000 through this program in order to clean up the old Western Railway yard as part of Montgomery's downtown redevelopment. This loan will prove invaluable to Alabama as the state enjoys these dynamic economic times, and contaminated properties will be made useful once again.

Finally, a Quality Management System will be implemented within ADEM to insure the appropriate controls are in place to secure a quality output or product. The quality requirements of the Department's work are very complex and require scientific accuracy that is defensible under appeal situations.

Director Glenn noted that these initiatives are the result of the past two and a half years he has spent listening to ADEM staff, along with external stakeholders, and now is the time to act upon the implementation of these new initiatives. While the initiatives outlined above will allow the Department to operate in a more efficient/effective manner, they are also designed to enhance the Department's ability to achieve its goal of protecting human health and the environment. It is noteworthy that these are not things ADEM plans to do; these are things we are doing right now.

Admittedly, as stated previously, I have been critical of ADEM's performance in the past, especially when it comes to the enforcement responsibilities of the agency. Our experience with ADEM over the years has been that it protected polluters and was not a real protector of our environment or of the public's health and well-being. I recall several years ago when we put 50 companies on notice that they were violating certain ADEM standards. Notice to polluters was required before suits could

be filed. All that happened as a result of our notice was ADEM lowered the then-existing standards so that all the companies' emissions could meet the ADEM standards without making any needed changes. That not only kept us from filing suits, it also hurt the environment as a result of ADEM's actions. Protecting our environment and bringing polluters to task is critically important in my opinion and should be a top priority for any state. Hopefully, ADEM is now righting its ship and doing much better. If so, that's real good news. If not, we will continue to be critical of ADEM's performance.

RHODE ISLAND ORDERS PAINT MAKERS TO PAY \$2.4 BILLION TO CLEAN UP LEAD

Three former makers of lead paint that lost a landmark Rhode Island lawsuit, including Cleveland, Ohio-based Sherwin-Williams Co., will have to pay an estimated \$2.4 billion to clean up hundreds of thousands of homes contaminated with lead under a state proposal released last month. The cleanup plan provides the most detailed roadmap to date for the mammoth undertaking of ridding Rhode Island homes of lead paint contamination. It will involve 10,000 workers and is projected to take four years. The State's lawyers filed the plan, which is subject to approval by the court, in a Rhode Island state court. The companies, Sherwin-Williams Co., NL Industries, Inc. and Millennium Holdings, have appealed the February 2006 jury verdict. One of the lawyers for the state observed that this is "a big problem that's gone on for a long time that requires a permanent solution."

The proposal estimates it will cost an average of \$11,250 to clean a home, although a report issued this year said it could cost as much as \$18,500. The plan covers the roughly 240,000 homes in Rhode Island believed to contain lead paint, as well as thousands of additional seasonal homes, elementary schools, and child care centers. Rhode Island's lawsuit claimed the industry created a

public nuisance, with tens of thousands of children being poisoned by lead since the early 1990s. It was the first state to sue, and its victory last year was the first time anyone had successfully sued former lead paint manufacturers. The companies are trying to shift responsibility for cleanup to property owners and landlords, saying they should be responsible for cleaning up lead paint in their homes. The companies also contend the state has overstated the extent of the problem.

Superior Court Judge Michael Silverstein doesn't believe the companies have a good chance of getting the verdict overturned. As a result, he asked the state to come up with a plan for how the companies would clean up the problem. The three companies will have to respond to the state's proposal by November 15th. As we all know, lead paint was banned in the United States for use in homes in 1978. But most homes in Rhode Island were built before that time and still contain the toxic substance. Exposure to lead is particularly dangerous for young children and that's why this case is so important.

Source: Insurance Journal

ZEON CHEMICALS OFFERS SETTLEMENT TO RUBBERTOWN NEIGHBORS

Zeon Chemicals agreed to settle a class action lawsuit recently in Rubbertown, Kentucky for \$5.3 million dollars. The suit involved several thousand Rubbertown residents who complained that Zeon's hazardous air emissions denied them "full use and enjoyment of their properties." Although the settlement is for several million dollars, the majority of the payout will fund new pollution controls at the facility. Plaintiffs' attorney Matthew L. White deems the settlement a success, considering that the residents' main goal was to protect the neighborhood from dangerous air emissions.

The class action complaint included several thousand residents who live within two miles of the chemical plant. The settlement, however, will provide

monetary compensation only to those who live within a half-mile of the facility. Ultimately, one-thousand of Zeon Chemical's closest neighbors will be paid between \$1,200 and \$1,800 for the alleged nuisance and property damage. Although the Rubbertown residents living outside the half-mile radius will not receive payment, it is hoped that they will benefit from the additional pollution controls. Specifically, the settlement requires Zeon to install a thermal oxidizer to decrease its emissions of the carcinogenic (cancer-causing) chemical 1,3-butadiene. Additionally, Zeon promises to reduce its release of the potentially carcinogenic substances styrene and acrylonitrile.

Rubbertown is a neighborhood in Louisville, Kentucky, located along the Ohio River. During World War II the neighborhood became Louisville's industrial center, which led to the "Rubbertown" label. The lawyers who filed the Zeon Chemical suit also have also initiated suits against other Rubbertown industries such as American Synthetic Rubber, Co., OxyVinyls, Hexion, and Rohm and Haas.

Source: The Courier-Journal

XVIII. THE CONSUMER CORNER

SOME SMALL-TOWN PHARMACISTS ARE CLOSING THEIR DOORS

I know that independent drug stores have been adversely affected by the prescription drug bill that was passed by Congress. Many of them are facing great difficulties in dealing with the new law. A recent *Associated Press* article told about the owner of a drug store in a small town actually going out of business. The store - after 25 years of service to the community - closed down this summer, joining a growing trend among a number of small-town drug stores. While competition from mail-order pharmacies and larger retailers

played a role in his decision, another factor, the Medicare drug benefit was the primary reason for the store owner having to shut down. That's what the owners told the *Associated Press*.

Before the drug benefit started on January 1, 2006, many of the store's customers paid cash. Under the new system, however, private insurance plans pick up much of the tab and that's where the problem lies. The insurance companies use their considerable clout to demand bigger discounts from the drug stores, and they hold their payments to the stores for a considerable length of time. The pharmacist in this case says he would wait for months for insurance plans to reimburse him. Incidentally, the co-pays required to be paid by individuals covered under the insurance plans were also increased by the drug companies and pharmaceutical benefit managers (PBMs) working for the insurers.

This case highlights a serious decline in the ranks of independent pharmacists. About 5% of independent pharmacies, or 1,152, went out of business last year, according to the National Community Pharmacists Association. The association says the Medicare drug benefit, known as Medicare Part D, led to lower and slower payments to pharmacists. There really is no excuse for the drug plans to be used to hurt the drug stores and their customer's.

Congress should pass legislation that would require Medicare's drug plans to reimburse pharmacists within 14 days of an electronic submission of a claim and within 30 days of all other submissions. A bill has been introduced with 200 co-sponsors in the U.S. House of Representatives and about a dozen co-sponsors in the Senate. Most of these lawmakers come from rural districts and states. About half of the independent pharmacies are in communities with fewer than 20,000 residents. As expected, opposition to the legislation comes from the insurance industry and PBMs, the middlemen they hire to manage a plan's drug benefit.

A University of Texas study found that

the Medicare drug plans don't pay promptly. The university's researchers studied about 3 million prescription drug claims submitted last year by independent and chain pharmacies. They found that less than 1% of claims were paid within two weeks, while 44.1% were paid after more than 30 days. Insurers have an economic incentive to delay payment. They get millions of dollars from the federal government and from Medicare beneficiaries for administering the drug benefit. The longer they hold on to that money, the more interest that money can generate. The losers are the retail pharmacists and their customers. The more the American people learn about the prescription drug plan, the worse it appears to be. The problem described above is just part of the problem. We can't afford to have small town pharmacists run out of business by the drug and insurance companies and the PBMs.

Source: *Associated Press*

SAFETY AGENCY FACES SCRUTINY CHANGES

The Consumer Product Safety Commission (CPSC) must be given the authority it needs to protect American consumers, and it must be adequately funded. Although the Commission has enhanced protections for the American public in a number of instances, they have also blocked enforcement actions, weakened industry oversight rules, and promoted voluntary compliance over safety mandates. The *New York Times*, in an excellent story on September 2nd, gave a good account of problems at the CPSC. At a time when imports from China and other Asian countries put in focus a most serious problem, creating an ever greater oversight challenge, the Bush-appointed commissioners were silent when the commission's workforce - then just 420 workers - was cut almost to the bone. The commission currently has too few inspectors at our nation's ports. The handful of agency inspectors are hard-pressed to find dangerous cargo before it enters the country.

Unfortunately, there is also a most serious deficiency concerning the CPSC's capacity to test foreign imports. At the agency's cramped laboratory, a lone employee is charged with testing suspected defective toys from across the nation. At the nearby Commission headquarters, safety initiatives have been stalled or dropped after dozens of jobs were eliminated in budget cut-backs. The *Times* story reported that other workers quit in frustration. For example, the head of the poison prevention unit resigned when efforts to require inexpensive child-resistant caps on hair care products that had burned toddlers were delayed so industry costs could be weighed against the potential benefit to children. Like a number of longtime former and current officials at the agency, Suzanne Barone, the poison prevention expert, who left in 2005, says she believes that the CPSC is failing to fulfill its mission.

If all of the recent problems and recalls of Chinese imports haven't gotten the public's attention, I am not sure what it will take. The CPSC must be promptly funded and adequately staffed if the consuming public is to be protected. But the agency hasn't been a priority of the Bush Administration. The Commission's shrinking budget is just \$62 million this year, even though the agency regulates an industry that sells \$1.4 trillion annually. The CPSC has a duty to ensure the safety of products used every day by millions of Americans. Presently, the agency investigates only 10% to 15% of the reported injuries or deaths linked to consumer goods. This is true even though the number of such reports has grown in recent years. While the agency does a good job - considering its staffing and budgeting problems - it should be doing much better. Rachel Weintraub, the director of product safety at the Consumer Federation of America, observed: "Once there is a recall, it is too late. Consumers are already exposed to the potential harm."

Source: *New York Times*

MORE RETAILERS FOUND TO HAVE LEAD-TAINTED ITEMS

Major American retailers, including Target, Limited Too, and Dollar General, have found more lead-contaminated children's products in their inventories, but have failed to notify the public, according to Congressional investigators. The products have been taken off shelves, documents released last month by the investigators revealed. But no recalls have yet been issued for the products, while the Consumer Product Safety Commission investigates or negotiates recall terms. The disclosures came in response to questions asked by a congressional committee of 19 companies that had already recalled Chinese-made products because of lead contamination. It is highly unusual for products to be pulled from store shelves for obvious safety reasons and the public not be notified.

Source: *New York Times*

OFFICE DEPOT TO PAY \$2.3 MILLION FOR OVERCHARGING CUSTOMERS

Office Depot Inc. has agreed to pay \$2.3 million in civil penalties to settle a lawsuit claiming that customers statewide were overcharged because of faulty readings on scanners at the checkout line. The office supply company agreed, as part of the settlement, that it would participate in price-check programs to ensure customers are charged the right amount. Office Depot will also pay \$285,791 to prosecutors in nine California counties for the cost of their investigation. Additionally, Office Depot will offer \$5 coupons, which will be available in a Sunday ad circular sometime in the next few months to its customers. The coupons will be good for in-store purchases. Office Depot will also offer a \$5 refund if a customer is overcharged.

Source: *San Francisco Chronicle*

HACKERS STOLE 6.3 MILLION CLIENTS' DATA

Identity theft has become a most

serious problem in our country and one that is occurring with increased frequency. Hardly a day passes that we don't hear of an incident involving this growing crime. It has been reported that TD Ameritrade Holding Corp. was hit by computer hackers who accessed a database and stole contact information for the online brokerage's 6.3 million customers. The information included names, addresses, and e-mail addresses, as well as "miscellaneous account activity information" such as the number of trades conducted over the last six months. According to the company, there is no evidence that Social Security numbers, account numbers and birthdates in the database were stolen.

It appears that passwords and user identifications were not in the database, client assets "were never touched," and accounts opened after July 18th were not affected. At least, that's what the company now says and hopefully it is accurate. It's not clear when Omaha, Nebraska-based TD Ameritrade found out about the security breach. But according to a company spokesperson, the investigation has been going on "for some time." Customers reported receiving "spam" offering unsolicited stock tips and apparently that's how the theft was detected.

Hackers have tried to hijack accounts at several online brokerages, including Charles Schwab Corp and E*Trade Financial Corp, which have said they have a respective 6.9 million and 4.7 million brokerage accounts. Americans lost about \$49.3 billion last year to criminals who stole their identities, according to a February study by Javelin Strategy & Research. The U.S. Federal Bureau of Investigation, the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority are also investigating the TD Ameritrade incident.

TJX SETTLES SECURITY BREACH LAWSUITS

There has been a considerable amount of civil litigation arising out of

the identity thefts. The TJX Companies has agreed to a settlement of class action lawsuits filed after a massive security breach involving customer data. The proposed settlement, which still requires court approval, includes three years of credit monitoring along with identity theft insurance for those affected by the breach. In January, Framingham, Mass.-based TJX disclosed that computer hackers broke into its systems. At least 45 million TJX cards were hacked. Customers who were victims of identity theft as a result of their social security numbers being stolen in the breach will also be eligible for reimbursement. TJX operates off-price retailers TJ Maxx and Marshalls.

Source: *Insurance Journal*

STATE SECURITIES REGULATORS ISSUE SENIOR INVESTOR ALERT

The North American Securities Administrators Association (NASAA) issued a Senior Investor Alert last month, warning that retirees and those nearing retirement can face serious traps as they manage the savings they have accumulated throughout their working years. NASAA President Joseph P. Borg, who as you know is Alabama Securities Commission Director, observed:

Only the lowest of the low intentionally seek to deprive retirees of the savings they have worked so hard for so many years to accumulate. NASAA members will continue our ongoing and active pursuit of criminals who cheat seniors out of their hard-earned retirement savings.

The three most common traps facing senior investors were identified: free lunch or dinner seminars, misleading professional designations, and abusive sales practices involving variable and equity index annuities and high-risk investment products. These traps go hand in hand in aggressive marketing programs to create a perfect storm for senior investment fraud. Since NASAA

first identified the risk seniors face at free meal investment seminars in 2003, state securities regulators have been actively investigating and bringing cases to stop the spread of abusive sales practices that often emanate from these events. Promoters often use the promise of a free meal to lure potential clients to hear pitches of unsuitable or questionable investments. As Joe Borg correctly observed: "Remember, there's no such thing as a 'free' lunch."

Preliminary results from an ongoing NASAA survey of state securities agencies show that investment fraud against seniors continues to grow. Forty-four percent of all investor complaints received by state securities regulators come from seniors, up from 28% in 2005. In addition, variable and equity index annuities were involved in 48% of the cases of senior financial exploitation reported to state securities regulators, according to the NASAA survey's preliminary results. Recognizing that financial education is a powerful weapon in the continuing fight against senior investment fraud, NASAA offers a wealth of investor protection information in its Senior Investor Resource Center. NASAA is the oldest international organization devoted to investor protection. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the provinces and territories of Canada, and Mexico.

XIX. RECALLS UPDATE

CHRYSLER ANNOUNCES RECALLS

Chrysler LLC is recalling nearly 300,000 sport utility vehicles to address potential braking problems while driving uphill. The recall involves more than 156,000 Jeep Grand Cherokees and Commander SUVs from the 2006-2007 model years, more than 90,000 2007 Jeep Wrangler SUVs, and nearly 50,000 2007 Dodge Nitro SUVs. Accord-

ing to Chrysler, the automaker has received about 20 complaints of vehicles experiencing a delay in braking when drivers tried to come to a stop after coasting uphill. To fix the problem, the computer connected to the antilock brake system will be reprogrammed. There has been one crash tied to the issue and no injuries reported, according to Chrysler. Owners will be notified of the recall by mail beginning later this month.

Chrysler is also recalling 72,333 Dodge Avenger sedans and Chrysler Sebring convertibles from the 2008 model year to address problems with the front door latches and locks. The company discovered problems with opening the vehicle doors through its internal monitoring program. Thus far no accidents or injuries have been reported, and owners should be notified of the recall this month. For more information on the recalls, owners can contact Chrysler at (800) 853-1403.

HONDA RECALLS CIVICS

Honda Motor Co. said it was recalling more than 180,000 Civics from the 2006-2007 model year to fix a wheel-bearing seal that could leak and lead to a wheel falling off the car. In the recall, the automaker told the National Highway Traffic Safety Administration that the seal where the antilock brake sensor mounts to the rear wheel bearing could allow moisture and salt to leak into the wheel bearing and cause corrosion. The conditions could lead to a wheel falling off and a crash, according to Honda. The company says it has received two complaints related to the problem, including one in which a wheel came off the vehicle while it was being towed. Thus far, no injuries have been reported. Owners were being notified of the recall this month and can contact Honda at (800) 999-1009 for more information.

TOYOTA ISSUES SAFETY RECALLS

Toyota Motor Corp. is recalling optional "all-weather" floor mats in 55,000 Lexus ES 350 and Toyota Camry passenger cars because the mat could interfere with the gas pedal and lead to a crash. The National Highway Traffic Safety Administration issued a consumer advisory about the heavy-duty rubber floor mats, noting that if unsecured, the mat could move forward and trap the gas pedal, causing the vehicle to accelerate uncontrollably. NHTSA considers this to potentially be a very serious safety issue.

The Japanese-based automaker will notify owners this month and expects replacement mats to be available at dealerships by late November. In a statement, Toyota advised owners to regularly check that their floor mat is properly secured and said "under no circumstances should more than one floor mat ever be used in the driver's seating position." Owners can contact Toyota at (888) 270-9371 or (800) 331-4331 and Lexus owners can call (800) 255-3987 for more information.

NISSAN ISSUE SAFETY RECALLS

Nissan Motor Co. is recalling nearly 420,000 sport utility vehicles because of possible corrosion in the tube where motorists pump gas. The recall involves Nissan Pathfinder and Infiniti QX4 SUVs from the 1997-2001 model years. More than 370,000 of the vehicles under recall were originally sold or are currently registered in 22 "cold weather" states and the District of Columbia. Another 45,000 vehicles are in Canada.

According to Nissan, its recall was prompted by an inadequate amount of coating on a bracket by the fuel filler tube assembly. In states that use road salt during the winter, a mixture of snow, water and salt could cause corrosion on the bare metal part of the tube and allow fuel to leak. Nissan says there have been no reports of fires or injuries. The states covered by the recall include: Connecticut, Delaware, Iowa, Illinois,

Indiana, Kentucky, Massachusetts, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin. Nissan dealers will replace the fuel filler tube assembly with a new one with an improved coating process. Owners will be notified beginning in late November. For more information, owners can contact Nissan at (800) 647-7261.

SIMPLICITY AND GRACO CRIBS RECALLED

About one million Simplicity and Graco cribs have been recalled after three children became entrapped and suffocated. The recall, announced by the Consumer Product Safety Commission, came more than two years after a California lawyer says he alerted the federal agency about a 9-month-old who died in a faulty crib. There have been three deaths connected with the cribs. One of the deaths involved a one year old who died in a newer model of the cribs, which hadn't been recalled but are being investigated by the safety agency. In all three deaths, consumers had installed the drop-rail side of the crib upside down, the agency said. This creates a gap in the crib that children can slide into and suffocate. Seven other infants have been entrapped in the cribs, according to the commission. There have been 55 reports of the cribs' drop sides detaching or the hardware failing to hold the side to the crib. Simplicity Inc., of Reading, Pennsylvania, manufactured all the cribs, which were made in China.

The crib recall is the second-largest since the commission was created in 1972. In 1997, the commission recalled 1.2 million portable cribs made by Evenflo Company Inc. In a separate crib recall in June, the commission recalled about 40,000 Nursery-in-a-Box cribs, manufactured by Simplicity, because the assembly instructions incorrectly explained how to attach the drop side. The commission has cautioned consumers who have the newer versions

not covered by the recall to check to make sure the drop side is installed right side up and securely attached. The newer hardware has a flexible tab at the top of the lower track and a permanent stop at the bottom. The older hardware has a flexible tab at the bottom of the lower tracks.

In an earlier Simplicity crib recall, a 19-month-old child in Myrtle Creek, Oregon, died January 6, 2006, in a crib that carried the Graco logo. Mattress support slats came out of the crib, and the child suffocated after getting trapped between the mattress and the footboard, according to the Commission. That type of crib had been included in a December 2005 recall of about 104,000 Aspen 3 in 1 Cribs. The latest recalled cribs, priced between \$100 and \$300, were sold by U.S. retailers and chains including Target Corp., Big Lots Inc, Babies "R" Us and family-owned Meijer Inc. from January 1998 through May 2007. The recall involves multiple models and models numbers. The recalled Simplicity crib models include: Aspen 3 in 1; Aspen 4 in 1; Nursery-in-a-Box; Crib N Changer Combo; Chelsea; and Pooh 4 in 1. The recall also involves the following Simplicity-made cribs that were sold with the Graco logo: Aspen 3 in 1; Ultra 3 in 1; Ultra 4 in 1; Ultra 5 in 1; Whitney; and Trio.

The cribs have one of the following model numbers: 4600, 4605, 4705, 5000, 8000, 8324, 8800, 8740, 8910, 8994, 8050, 8750, 8760 and 8996. The numbers are on the envelope attached to the mattress support and on the label attached to the headboard. The company is offering free repairs for cribs with older hardware. For more information, consumers can contact Simplicity at 888-593-9274 or visit the company's Web site www.simplicity-forchildren.com. They can also go to the Web site of the CPSC, which is www.cpsc.gov.

NETTOCOLLECTION RECALLS CRIBS

NettoCollection LLC, of New York, New York, has recalled about 400 "Moderne" and "Loft" Cribs. The crib slats can separate from the side rails, posing an entrapment and strangulation hazard to young children. NettoCollection has received three reports of the side rail spindles separating from the top rail. Thus far, no injuries have been reported. The crib side rails are made of wood and sold with a brown finish. Only cribs with model numbers NC-137 and NC-140 and date codes 9/03 and 02/04 are included in the recall. The model numbers, date codes and "Made in Poland" are printed on a label on the crib end panels. For additional information, contact NettoCollection toll-free at (866) 996-3886 between 10 a.m. and 6 p.m. ET Monday through Friday or visit the firm's Web site at www.nettocollection.com

PLAY YARDS RECALLED AFTER 10-MONTH-OLD DIES

Kolcraft Enterprises Inc. is voluntarily recalling about 425,000 infant play yards following the death of a child. The Consumer Product Safety Commission received a report of a 10-month-old boy who strangled on the changing table's restraint strap that was hanging down into Kolcraft's "Sesame Beginnings" Travel Play Yard where the child was located. Twelve different Kolcraft play yards are included in this recall. All of the play yards have raised changing tables with a restraint strap that forms a loop beneath the changing table, posing a strangulation hazard to a child in the play yard. In addition to the strangulation hazard with the changing table restraint strap, one play yard also has a raised cradle that rocks back and forth. A child can roll and get trapped against the side of the cradle in the Contours 3-in-1 Play Yard. If that happens, a child can suffocate. Kolcraft has received 45 reports of children rolling to the side of the rocking cradle attachment. The recalled play yards were sold in a variety

of colors and patterns. The model number is printed on a white sticker located on one of the feet of the play yard. They were manufactured in China.

FISHER-PRICE RECALLS GEO TRAX LOCOMOTIVE TOYS

Fisher-Price Inc. has recalled about 90,000 Geo Trax Locomotive Toys because the surface paints on the toys contain excessive levels of lead. Thus far, there have been no injuries reported by the company. The recall involves the Geo Trax Freightway Transport and Geo Trax Special Track Pack locomotive toys. These toys are red with yellow paint on the ladder and horn details. The recalled models were manufactured between July 31, 2006 and August 20, 2007 and have a date code between 212-6CK through 325-6CK or 001-7CK through 232-7CK marked on the bottom of the product. The packaging on the Freightway Transport model is marked H5705 and the packaging on the Special Track Pack model is marked K3013. For additional information, contact Fisher-Price toll-free at (888) 496-8330 anytime or visit the firm's Web site at www.service.mattel.com.

SPINACH RECALLED AFTER POSITIVE TEST FOR SALMONELLA

Metz Fresh of King City, California, a produce company, has recalled bagged fresh spinach after a sample tested positive for salmonella. The recall comes nearly a year after an outbreak of another pathogen, E. coli, in fresh spinach killed 3 people and sickened 200. The recalled spinach was distributed throughout the 48 contiguous states and Canada and sold in both retail and food-service packages. Salmonella sickens about 40,000 people a year in the United States and kills about 600. It can cause diarrhea, fever, dehydration, abdominal pain and vomiting. Most cases of salmonella poisoning are caused by undercooked eggs and chicken.

Last year's E. coli outbreak prompted

the Food and Drug Administration to warn Americans not to eat fresh bagged spinach. The agency later lifted that warning after tracing the contamination to spinach processed and packed by Natural Selection Foods in San Juan Bautista, California. The outbreak led to stricter monitoring procedures by growers and processors and stepped-up inspections by California health officials. The recall covers 10- and 16-ounce bags, as well as 4-pound cartons and cartons that contain four 2.5-pound bags, with the following tracking codes: 12208114, 12208214 and 12208314. Consumers with questions can contact Metz Fresh at (831) 386-1018.

SUPPLEMENT PRODUCTS RECALLED

TWC Global of Mountain View, Calif., is recalling 200 boxes of its supplement products sold under the names Axcil and Desirin because the products contain potentially harmful, undeclared ingredients. Thus far, no illnesses have been reported, according to the company. The products, manufactured in the U.S. and sold on the Internet nationwide, are sold as a 15-capsule blister-pack, packaged in a box. The Food and Drug Administration found samples of the products contained an active ingredient for an FDA-approved drug for erectile dysfunction. The undeclared chemicals pose a threat to consumers because they may interact with nitrates found in some prescription drugs and might lower blood pressure to dangerous levels. Customers should stop using the products immediately and contact their doctor if they have experienced any problems that might be related to taking this product. Any reactions should be reported to the Food and Drug Administration's Med-Watch adverse event reporting program at www.fda.gov/medwatch/report.htm. For more information, consumers can call the company at 650-575-0828.

MORE PET FOOD RECALLED

Bravo! LCC is recalling tubes of frozen cat and dog food, because of a potential bacterial contamination. The recall includes various-sized tubes of Bravo Original Formula Chicken Blend frozen raw food and 2-pound tubes of Bravo Basic Formula Finely Ground Chicken frozen raw food, because they could be contaminated with both salmonella and *Listeria monocytogenes*. The original formula chicken was manufactured on August 24th and the finely ground chicken was manufactured on August 14th. The company also is recalling various-sized tubes of Bravo Original Formula Turkey Blend frozen raw food because they could be contaminated with listeria. This product was manufactured on August 24th. Both salmonella and listeria can cause serious infections in cats, dogs and — if there is cross-contamination — in young children, frail or elderly people and others with weakened immune systems. Thus far, the company has received no reports of illness in people or animals. For more information call 866-922-9222 or go to the Web at <http://www.bravorawdiet.com>.

XX. SPECIAL RECOGNITIONS

CAMPAIGN TO BRING AWARENESS TO ROLLOVER DANGERS STARTS IN MONTGOMERY

People Safe In Rollovers, a public, non-profit organization dedicated to raising public awareness about the devastating effects of roof crush injuries, has launched a national campaign to create a mosaic of billboards across the country. The erection of its first billboard, which measures 14 feet by 48 feet, in Montgomery, Alabama, is in honor of Claudette Phillips, a victim and survivor of automobile roof crush injuries. On July 14, 2003, Ms. Phillips was wearing a seat belt while driving with her daughter, Tyson, in her Jeep

Grand Cherokee when the vehicle rolled over and crushed excessively into Claudette's survival space. Claudette, who was only 39 years old at the time, was left a complete quadriplegic. Her daughter, Tyson, was unhurt in the rollover. Claudette is taking a stand for what she believes in by using her own experience to highlight the shocking statistics of 10,000 deaths and 24,000 catastrophic injuries yearly in rollover accidents in America.

People Safe in Rollovers Foundation has plans to erect more billboards honoring four more roof crush survivors in four southern cities. Birmingham, Dothan, and Mobile, all in Alabama and Jackson, Mississippi have been selected as the sites. All four of the victims being honored are survivors of roof crush injuries. In each case, juries found the roofs of their vehicles to be defective. Safety advocates are lobbying Congress, which has jurisdiction over NHTSA, to call a congressional hearing on the issue of roof crush in rollovers. Many people in this country don't realize that rollovers are such a serious safety issue on our nation's highways. Neither do they realize that the roofs on many vehicles they ride in are not strong enough to protect occupants in case of a rollover. Clearly, both Congress and the National Highway Traffic Safety Administration (NHTSA) have failed to do their duty. Without such pressure, the automobile industry has refused on its own to adequately deal with the rollover problem.

TOURISM CAMPAIGN FOR ALABAMA ANNOUNCED

Alabama has become a tourist designation state and that's good news. We have lots to see and enjoy in Alabama and that means we have to let folks outside the state know about all we have to offer. A new theme is being used by the state to sell Alabama. "Sweet Home Alabama" is the phrase the state Bureau of Tourism & Travel has selected to lure tourists in 2008. The slogan - and its stylized red, blue,

yellow, and white logo - will be part of the state's \$4.5 million television, print and radio ad campaign. Birmingham-based marketing firm Luckie & Co. was selected by the Bureau to study the phrase's appeal. The firm found that more than 70% of out-of-state residents and 65% of Alabama residents preferred it over five others.

The agency's award-winning "Year of" program will continue, with 2008 declared the Year of Alabama Sports - 2009 the Year of Alabama History - and 2010 the Year of Small Towns and Downtowns. The 2010 campaign will include an Alabama reunion component that invites people back to their hometowns. The agency's Year of Alabama Food campaign, which included a brochure highlighting many restaurant specialties and a chefs' competition, won the top national honor at the National Council of State Tourism Councils' 2006 convention. The tourism industry contributes \$8.3 billion to Alabama's economy and is responsible for 162,688 jobs. Lee Sentell, who heads up the agency, has done a tremendous job. If you get a chance let Lee know you appreciate his good work that is paying off greatly for our state.

Source: Mobile Press Register

THE ALABAMA SHAKESPEARE FESTIVAL IS A STATE TREASURE

The State of Alabama is most fortunate to have within its borders and thus able to lay claim to the Alabama Shakespeare Festival (ASF). In fact, I consider it to be a state treasure in the true meaning of the term. ASF creates positive news media attention, attracts a tremendous number of tourists each year, supplements art education, allows visiting artists to see a different picture of our state, and actually helps attract industry to Alabama. For example, the Hyundai officials from South Korea were greatly impressed with what ASF had to offer when visiting the Capital City before deciding to locate here. Folks from outside Alabama who take in performances of the multitude of plays

that ASF puts on take back home a good feeling about our state and that's very important.

ASF is the fifth largest Shakespeare Festival in the world based on attendance. It is one of the top tourist attractions in Alabama. Thus far ASF has attracted more than 3 million visitors from all 50 states and more than 60 foreign countries. ASF had a \$20 Million annual economic impact on central Alabama and is responsible for over 1,000 jobs in Montgomery. Actually, ASF is an industry. Behind the stages in the building are the shops where costumes, hats, wigs, props and sets are constructed by artisans. Actors are professionals and belong to Actors' Equity Association. While the actors are from New York, Chicago and Los Angeles mostly, many of them have become homeowners in the River Region, which is very good.

Every play at ASF is hand-crafted from scratch by talented artisans, actors, directors and designers. The production of every play is executed by more than 20 persons who are never seen by folks in the audiences. It is said by folks much more knowledgeable than I that theater is people-centric, people-crafted, and people-oriented. Obviously, the creation of each professional play is intricate and quite expensive. We are truly blessed to have ASF in the state and in the Capital City. I am currently serving on the board of directors of ASF and know first hand that we must continue to support ASF in every manner possible. There are lots of states that would give whatever it would take to have something like ASF within their borders!

THE RED TAIL FIGHTER GROUP RETURNS

The historic Alabama fighter squadron commonly referred to as "The Tuskegee Airmen," is returning to Alabama and that's great news. General T. Michael Moseley, Air Force Chief of Staff, announced four significant changes for the air force in Alabama. The formation of an active associate fighter squadron within the Alabama Air National Guard's

187th Fighter Wing will be part of the change. The squadron will remain under the leadership of the Guard, which will maintain equipment, but active duty airmen will become part of the squadron. That's a new approach being utilized and would appear to be a good one.

The 160th Fighter Squadron of the 187th was inactivated and a new squadron was activated on the orders of General Moseley and Governor Bob Riley. The new squadron will be designated the 100th Fighter Squadron, more commonly known as the Tuskegee Airmen of World War II. Before returning to Alabama, the 100th Flying Training Squadron was based at Randolph Air Force Base in Texas. It will now be in Alabama under its new designation and complete with the distinctive red tails that were the squadron's trademark. The squadron will be back in Alabama for the first time since the end of WWII. Lt. Walter Palmer, one of the original Tuskegee Airmen, was a pilot during WWII. He and another Tuskegee airman were special guests at the announcement ceremony, which was held in Montgomery.

To continue the consolidation of training in the Air Force, General Moseley announced that the Air Force Reserve Command commissioning will also move to Maxwell and join the Officer Training School. Other than the Air Force Academy and ROTC programs, Maxwell is the only place active duty airmen can be commissioned. Air Force officials are also looking into holding officer training for the Guard at Maxwell. Governor Riley says bringing the planes with the red tails of the 100th Fighter Squadron back to Alabama solidified the historical impact of Maxwell and Alabama's military. I sincerely hope that all Alabama citizens understand fully the importance of Maxwell Air Force Base to our state and to our nation. We are most fortunate to have it located in the Capital City.

THE STATE OF ALABAMA AND LAWYERS WORK TOGETHER TO PREVENT ELDERLY FRAUD

In a first-of-its-kind partnership, the Riley Administration and the Alabama Association for Justice have teamed up to provide kits aimed at protecting Alabama's elderly from Medicare fraud. The state Department of Senior Services will distribute 100,000 of the Medicare Protection Toolkits through senior citizen centers and Meals on Wheels programs. Interested persons can call the department at 1-877-425-2243 for more information or to get kits. There is a period from November 15th to December 31st when the elderly can change their Medicare Advantage health plans and Medicare prescription drug plans. Governor Riley, who unveiled the toolkits at a news conference last month, observed: "This would not have been possible without the donation of \$75,000 from the Alabama Association for Justice." All Alabama citizens who are eligible to participate in the health and drug plans must be made knowledgeable about the potential for fraud and hopefully these kits will be of great benefit.

Gibson Vance, who is a shareholder in our firm and who is also the association's president-elect, observed that the partnership with the state marked a first for the organization and its charitable arm, the Alabama Civil Justice Foundation. While most Medicare providers are honest, a small number of providers find ways to steal millions of dollars each year. The toolkits, which are now available, remind the elderly to ask questions of anyone promoting health care plans. They should also take enough time to make good decisions. There are also explanations in the materials of red flags to look for and numbers to call to report suspected fraud.

A common type of fraud is for someone identifying themselves as a Medicare employee to call or visit an elderly person to try to sell a service. It should be noted that Medicare does not make home visits or unsolicited phone calls. People who make the calls or

visits may be trying to sell services that sound like a good deal but really are not good. These people may also be trying to get enough information to steal the person's identity. Barbara Dieker, director of the Office of Consumer Choice and Protection at the U.S. Administration on Aging, and Irene Collins, who heads up the State Department of Senior Services, attended the Governor's news conference, along with Gibson from our firm. They observed that the kits were good and would be extremely helpful in the fight against fraud.

Source: *Associated Press*

XXI. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

Ben Locklar

Ben Locklar, who is a graduate of Cumberland School of Law at Samford University in Birmingham, joined our firm in 2005. Prior to going to law school, Ben worked as a Montgomery Police Officer. He practiced law for 14 years in a very good firm in Montgomery. Since coming to work with our firm, Ben has worked almost exclusively in our Mass Tort Division, managing the Vioxx cases this firm has filed around the country.

Ben has been married for almost 23 years to his wife, Angela, and they have two children, Katie and Sarah Beth. Katie is a freshman at the University of Alabama, and Sarah Beth is a junior at St. James School. Angela is currently working on her master's degree in nursing and should become a nurse practitioner within the next year. Ben and his family have had quite a year. Their home was destroyed by a tornado earlier this year, but they recently were able to move back into the home. Other than spending time with his family, Ben feels most at home on the back of a horse. He and his daughters have ridden and competed for the past several years. Ben says he enjoys the

challenges that his job offers and has enjoyed practicing law on more of a national level than he had in the past. He is doing outstanding work and was a welcomed addition to the firm. Ben is a very hard worker who is a credit to his profession.

Bill Robertson

Bill Robertson, a native of Eufaula, Alabama, graduated from Auburn University in 1999 and received his Juris Doctor degree from Thomas Goode Jones School of Law in 2005. Since joining the firm's Fraud Section as an Associate in 2005, Bill has primarily focused his practice on cases that involve fraud and bad faith committed by insurance and finance companies. However, he has handled various other types of claims involving fraudulent activity as well.

Bill is very active in the Montgomery County Bar Association's Young Lawyers Section, and is currently serving the office of Secretary/Treasurer of that organization. As the Secretary/Treasurer of the MCBA's Young Lawyers Section, Bill handles the record keeping and financial affairs of the organization, along with numerous other responsibilities. He is also involved in numerous other bar association activities, both state and local.

Bill is married to the former Leslie Gaither of Eufaula. They are members of First United Methodist Church in Montgomery and are also very active in community affairs. Leslie is expecting the couple's first child in March. Bill is a very good lawyer who is a definite asset to the firm. He is an extremely hard worker who believes in what he does for his clients and puts their interests first and foremost.

Benita Bunch

Benita Bunch, who has been with us since December of 2000, currently serves as Clerical Assistant to Andy Birchfield in the Mass Torts Section. She works with Andy, his secretary Genie, Leigh O'Dell, and Linda Reynolds (Section Head Administrator), assisting them with whatever they need done.

Interestingly, those requirements change daily. Before coming to Mass Torts, Benita worked in our Accounting Department. She has been married to her husband, Darrell, for 29 years and they have two sons, ages 25 and 23. The older son has recently gotten engaged and will get married June of 2008. In her spare time, Benita and her husband love to ride motorcycles. Benita is a very good employee and a valued member of the Mass Torts team.

Mike Bush

Mike Bush, who came to work for the firm as an Investigator in January of 1995, currently works in our Personal Injury/Products Liability Section. He also helps out with other investigative needs for the firm. As I have stated on numerous occasions, our investigators keep a very busy schedule. An important part of their work involves helping the lawyers investigate product liability cases. Mike retired from the Montgomery Police Department after over 20 years of service as an accident reconstructionist. This experience has been most helpful in his work for the firm.

Mike and his wife Michelle recently celebrated their 25th wedding anniversary. Michelle is an RN specializing in labor and delivery and is employed at Jackson Hospital. In fact, she has assisted in the delivery of several children born to firm employees. Mike and Michelle have two sons: Matthew, 18, who recently graduated from Alabama Christian Academy with a 4.05 GPA and is a freshman at the University of Alabama enrolled in the Blount Scholars Undergraduate and Honors Program; and Nolan, 15, who is a 10th grader attending Alabama Christian Academy. Nolan plays the alto saxophone in the Marching Eagle band.

Mike is in charge of the field crew at Alabama Christian and is responsible for striping and painting the football field before each home game. He is also the Director of Staging, Maintenance and Performance for the Marching Eagle Band. In the spare time he has left, Mike enjoys hunting, fishing, and Crimson Tide Football. Mike does a very good

job for the firm and is a valued employee. We are fortunate to have him with us.

Michelle Lysdale

Michelle Lysdale, who has been with the firm over four years, works in the Consumer Fraud Section as a Legal Secretary for Clint Carter. She started in March of 2003 as legal secretary to Roman Shaul before moving to work for Clint in February of 2005. As Clint's Legal Secretary, Michelle makes sure that the day-to-day operations are performed in a timely fashion. She has been working hard on the AWP litigation.

Michelle is married to Casey Shaw, who is a Narcotics Investigator for the Central Alabama Drug Task Force and a member of the Elmore County SWAT team. She has two daughters: Brittnee, 19 and Laken, 13. Brittnee is a second year student at Southern Union State Community College, and Laken is an eighth-grader at Edgewood Academy. Laken is also a member of the Senior Co-ed Level 4 Cheerleading Squad at Top Dog. In her spare time, Michelle enjoys relaxing with family and friends. She works hard and is a very good employee.

Kristi Smith

Kristi Smith, who has been with the firm for eight years, works in the Toxic Torts/Business Litigation Section as Scarlett Tuley's Legal Assistant. In this position, Kristi assists with client work, including filing initial pleadings and discovery items, reviewing documents, organizing and managing document databases, and organizing and managing multi-plaintiff cases. She received her bachelor's degree in Criminal Justice and Public Safety from Auburn University Montgomery in 1999. Kristi also holds a Legal Assistant Certificate. Kristi has been married to Patrick Smith, a Montgomery firefighter, for 4 years, and they live in Wetumpka, Alabama. They are the proud parents of a 2 year old son named Blake and are expecting another baby in April. Kristi and her family are members of Thorington Road Baptist Church in Montgomery,

Alabama. Kristi is another hard worker who does an excellent job for the firm. We are most fortunate to have her with the firm.

XXII. SOME CLOSING OBSERVATIONS

EVERYBODY SHOULD READ THIS OPT ED PIECE

Jay Cook, a lawyer from Athens, Georgia, wrote an opt ed piece that was published in the Atlanta Journal Constitution last month. He covers an area of concern that affects all U.S. citizens. It tells us how corporations put profits over safety and how that corporate mentality hurts folks. Jay, a former president of the State Bar of Georgia, is currently president of the non-profit Georgia Civil Justice Foundation. I am setting out Jay's remarks below:

CORPORATIONS PUT PROFIT BEFORE SAFETY

First it was Vioxx. Then it was poisonous pet food. Now it's toxic toys and chemically enhanced popcorn. Last year alone, unsafe products killed more than 8,000 Americans and sent millions more to emergency rooms. But let's not lay the blame on the crippled regulatory agencies or the Chinese. For once, let's lay the blame where it really belongs: on the doorstep of those megacorporations that cut corners and break rules to gain unfair advantage over American businesses, big and small, that don't.

Recently, The Wall Street Journal reported that Mattel, which has recalled more than 20 million dangerous toys this summer alone, has delayed reporting product defects because it finds the reporting rules "unreasonable." According to The New York Times,

the Consumer Product Safety Commission has fined Mattel twice for such delays since 2001. The Commission collects millions of dollars in penalties every year from U.S. companies that import or sell products that violate mandatory safety standards, fail to report potential hazards and fail to report lawsuits and settlements for product-related injuries. And those are just the ones that get caught. Clearly, dangerous goods are slipping past the safety standards set by the many regulatory government agencies that are supposed to be protecting us, including the Food and Drug Administration and the Environmental Protection Agency.

Last year, Dr. David Graham, the senior FDA drug safety researcher who blew the whistle on dangers of the pain-killer Vioxx, told the Senate Finance Committee that "the FDA is incapable of protecting America from unsafe drugs or from another Vioxx." Now we're learning that the EPA has been suppressing a report on the possible dangers of a chemical used in microwave popcorn. Copies of the report were provided to popcorn producers last July, but kept secret from the public. But even with potent regulatory enforcement, Americans injured by defective products have only one place to turn for a remedy: our court system. But that, too, is being neutered by the same forces that are muzzling our watchdogs. A multimillion-dollar propaganda machine has convinced many of us (and our elected officials) that tethering our tort system will improve the economy.

It may be just the opposite. A briefing paper published last year by the Economic Policy Institute concluded: "The costs of the tort system have been grossly exaggerated, and its supposed impact on job creation, research and development, productivity, and profits has

been exaggerated or simply invented. With respect to job creation in particular, significant tort law change would be more likely to slow employment growth than to promote it." But the so-called "tort reform" movement marches on in perfect step with government deregulation. We've watched state after state weaken the ability of citizens to seek redress in the courts. Access to justice for "the little guy" is the real target of these "reforms"— not the "problems" they've trumped up to trick us into giving them what they really want: damage controls that take the teeth out of our juries and the bite out of compensating the victims of their corner-cutting.

Tort law is a small but important facet of our civil justice system. We call it a tort when somebody acts unreasonably and harms another person's body, property, legal rights or reputation. You can't call the police when somebody commits a tort, but you can file a suit in the civil courts to seek an appropriate legal remedy. The rules of our tort system are roughly the same common-sense principles we all learned as kids: Everybody should play fair. The one who broke the rules of fair play should pay for the damage they caused.

Our Founding Fathers understood that we needed these systems in place to make us safe and regulate the practices of fair play. Let's cut to the chase: There's nothing wrong with making an honest buck. America was built on hard work and free enterprise. There's nothing wrong with wanting higher profits. The American Dream still lives or dies in the profit margin. But there is something wrong when profit-making turns into corner-cutting that puts public safety in peril. And there is definitely something wrong when some conscienceless megacorporations engage in "remedy rigging": gaming the system so that even

*when they cheat and get caught,
they get no more than a gentle
slap on the hand.*

Source: Atlanta Journal Constitution

THE PRESIDENT WARNS OF AN APPROACHING CRISIS

Most of us believe the President of the United States is in a position to know what is good for the people of our country and also to warn us when dangers arise. Being the leader of the most powerful nation in the world carries with it a great number of responsibilities. One of them is to warn people of dangers on the horizon that would affect our country and its citizens adversely. The following warning was apparently based on knowledge acquired by a good man while serving as our President:

*I see in the near future a crisis
approaching that unnerves me
and causes me to tremble for the
safety of my country. As a result of
the war, Corporations have been
enthroned and an era of corrup-
tion in high places will follow, and
the money power of the country
will endeavor to prolong its reign
by working upon the prejudices of
the people until all wealth is
aggregated in a few hands and the
Republic is destroyed. I feel at this
moment more anxiety for the
safety of my country than ever
before, even in the midst of war.
God grant that my suspicions may
prove groundless.*

This profound warning, issued over 100 year ago, came near the end of a

civil war and it wasn't the one now being fought in Iraq. This warning was from President Abraham Lincoln and is found in a letter to Col. William F. Elkins on November 21, 1864. However, it could easily be a current warning for today. We are experiencing a bloody civil war in Iraq, which is not only costly to the American taxpayers, and costing thousands of American lives, but I fear some large and politically powerful corporations are profiting greatly because of the war. Hopefully, our Republic is not being threatened in the manner being foreseen by President Lincoln. My prayer is that we will survive the ill-advised involvement in another country's civil war and get on with solving our own problems at home and abroad.

XXIII. MY CLOSING COMMENTS

Recently, my son Jere Jr. was scheduled to have surgery and all of our family was greatly concerned because there had been no warning signs of any problems and the surgery was of a serious nature. Jody Stewart, who is a local lawyer, and my son have been friends since their grade school days. After hearing about Jere's need for surgery, Jody called me to make sure that we weren't too worried. After the call, he sent me a word of encouragement. Jody simply just wanted to remind me that God is in charge of our lives and offers support in times when we may be concerned over coming

events. I will pass on the comforting message sent by Jody for your benefit. By the way, the surgery was a 100% success and all is now well. Jere Jr. was back at work in a week and hasn't missed a beat since. The following was the reminder I received:

*A Song of Ascents. I will lift up my
eyes to the hills- From whence
comes my help? My help comes
from the Lord, Who made heaven
and earth. He will not allow your
foot to be moved; He who keeps
you will not slumber. Behold, He
who keeps Israel shall neither
slumber nor sleep. The Lord is your
keeper; The Lord is your shade at
your right hand. The sun shall not
strike you by day, nor the moon by
night. The Lord shall preserve you
from all evil; He shall preserve
your soul. The Lord shall preserve
your going out and your coming
in from this time forth, and even
forevermore.*

Psalms 121:1-8

Sometimes, we all need to be reminded that God is sovereign and all-powerful. He is definitely in control of our lives and is available for us at all times - good and bad - and will never let us down. The fact that God really loves all of us unconditionally and keeps His promises without fail is the most reassuring message that any of us could ever receive. I have to be reminded of that from time-to-time and I really appreciate friends like Jody who take the time to do the reminding when it's needed.

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