I. CAPITOL OBSERVATIONS

THE RUN FOR THE WHITE HOUSE

Things are changing at a rapid pace in the Republican candidate ranks as the dates for the Iowa caucuses and the voting in New Hampshire draw near. In fact, because of the holidays, this issue most likely won’t be in your hands until after the Iowa vote. It now appears that former Arkansas Governor Mike Huckabee is beginning to pull away from the pack. Collectively, the rest of the Republican candidates are a very weak bunch. In fact, if “none-of-the-above” was one of the options, I believe it would get a majority vote. That may account for why Governor Huckabee is doing much better than the experts anticipated. The recent attacks on his record while he served as Governor in Arkansas indicate that the man from Hope is catching on with people. The Huckabee message is relatively simple and is understandable. He appears to be honest and sincere and that alone is enough to separate him from the rest of the Republican candidates. However, I watched him on the Larry King Live show on December 17th and he came across as being very slick.

On the Democratic side, it appears that Senators Clinton and Obama are still the front-runners. But, I believe that John Edwards is a viable candidate who may surprise the experts in the early voting. The Edwards message reaches middle and low-income citizens who have been totally ignored during the Bush years. John is right on such key issues as health insurance, the economy, the war in Iraq, and specific issues that affect American workers. Perhaps, the best selling point for John is that, of all the Democratic hopefuls, he is clearly the most electable in November. It will be interesting to see how John comes out of Iowa, Nevada, & New Hampshire. If he does well, he will be a real contender. I have a strong feeling that he will come out in good shape.

THE GOVERNOR’S RACE

There has already been a great deal of talk about the next governor’s race in Alabama even though this contest is not until 2010. Many political types in our state go from one race to the next when it comes to trying to influence who will sit in the governor’s office. For that reason, the early interest in a 2010 race is not too surprising. This is especially true when the sitting governor can’t run for reelection. Two names that keep popping up as potential candidates are Artur Davis and Dr. Jack Hawkins. These two men, each of whom has outstanding credentials and tremendous ability, will be formidable candidates if they elect to run. Artur, who is recognized as the rising star in the Democratic Party, has done a very good job in Congress. Jack, an ex-Marine who is currently serving as Chancellor of the Troy University system, has a most impressive resume. As we get closer to qualifying time, there will be others who will get in the race. In any event, an already crowded field of potential candidates may get even more crowded.

CASE AGAINST GEORGIA PACIFIC CORPORATION SETTLED

Our firm settled a wrongful death case recently against Georgia Pacific Corporation that arose out of a workplace incident. On April 18, 2002, IM & MC, LLC, a construction company which was located in Dothan, Alabama, was the general contractor on a job under contract with Georgia Pacific to remove and replace a portion of the roof on an old plywood building on Georgia Pacific’s premises in Cedar Springs, Georgia. The roof of the building at the time was in a bad state of repair. Scott White, an employee of the contractor, was performing work on the roof and fell through the roof. The incident occurred as Mr. White and another employee were carrying a large tin sheet and Mr. White stepped on a rotten part of the roof. He died the following day as a result of his injuries.

A lawsuit was filed by the widow against the contractor and Georgia Pacific. The trial judge granted summary judgment for the contractor because under Georgia law Mr. White was considered an employee because he did not have a written contract that designated him as an independent contractor. We proceeded against Georgia Pacific because of the control it had
over the property and the control and direction it exercised over the work performed on the roof. The general contractor testified on deposition that Georgia Pacific supplied the materials and rented the equipment needed for the job. Georgia Pacific also had a project manager who inspected the work on a daily basis.

The building on the Georgia Pacific premises had a concrete floor and at the time was being used as a storage facility. Georgia Pacific had a maintenance program that required regular inspections of its buildings to provide for repairs; however, this building was not a part of the program because it was not a production facility. A Georgia Pacific representative testified in deposition that the roof was leaky, degraded, and unsafe. The area of the roof to be removed consisted of about 8,000 square feet. The contractor had been working on the roof for about 4 days when the employee fell through an old tin sheet that had deteriorated. According to its own safety policies, Georgia Pacific had a duty to keep the premises in a reasonably safe condition and to require that adequate fall protection systems were in place and were being used on this project.

Mr. White was on his first day working on the roof when he fell through the roof. Georgia Pacific never warned Mr. White of any dangers associated with getting on the old roof. Mr. White was required to handle large sheets of tin while on the roof. Although required by the corporation’s policies, Georgia Pacific never asked the general contractor for certifications relating to OSHA requirements for fall protection measures, and none were in place on the day of the incident. Many workers testified there were no secure places to tie down while on the roof at the place where Mr. White fell. The general contractor also testified by way of a sworn affidavit that the size of the tin sheets provided by Georgia Pacific was too long and he informed Georgia Pacific of that problem. The general contractor was told by Georgia Pacific to overlap the tin 12-15 feet, which required the workers to get on the existing roof to do the work. According to the contractor, no one from Georgia Pacific instructed him not to allow workers on work on top of the roof. Since this incident, Georgia Pacific has demolished the old plywood building where Mr. White fell to his death.

The case was settled shortly after mediation which was conducted by Alan Livingston, a Dothan lawyer, who is an effective mediator. While the amount of the settlement is confidential, our client is satisfied with the settlement. Julia Beasley from our firm and Ben Freeman of the Law Firm of Prim, Freeman, & Mendheim, LLC from Dothan handled the case and did a very good job.

Medial Device Case Settled

We represented a client whose prosthetic leg failed due to an improper fitting by the prosthetist and because the locking device on the prosthetic leg was defective. The locking device on a prosthetic leg is designed to hold the prosthetic leg to a sleeve that is placed over an individual’s remaining stump. If a lock fails for any reason, then the prosthetic leg will detach from the stump and cause the amputee to fall.

Our client was walking along a sidewalk when the locking pin malfunctioned. His prosthetic leg detached from his stump and caused him to fall and suffer severe injuries. Sadly, this formerly active gentleman is a shell of his former self. Recently, he had built a home for he and his wife with very little assistance. Now, he has great difficulty doing any daily activities. His case was settled before jury selection for a confidential amount. Kendall Dunson and Cole Portis handled this case and did a very good job.

Seat Belt Failure Case Settled

Our firm recently settled a wrongful death case against a major automobile manufacturer involving the failure of a seat belt to restrain the driver during a rollover crash. Our client was traveling down the interstate when she was required to take evasive maneuvers to avoid hitting a state trooper patrol car that was parked in the interstate monitoring a construction zone. The SUV that our client was driving rolled over on flat dry pavement and she was partially ejected from the waist up. The rollover event occurred at approximately 60 mph. Our client was properly belted in the vehicle at the time of the crash. Unfortunately, the seat belt retractor failed to remain locked during the rollover event, allowing nearly ten inches of slack to be introduced into the belt and allowing our deceased client to be partially ejected, from which she received a fatal head injury. Although manufacturers know that SUVs rollover nearly two-thirds more than regular passenger cars, most manufacturers do not attempt to design a belt that will retain an occupant during a foreseeable rollover event. The belt system is designed primarily for frontal collisions.

The Federal Motor Vehicle Safety Standards related to seat belt design and performance that manufacturers must meet do not provide any mandatory requirement for seat belt performance in a dynamic rollover event. While the FMVSS provides an optional dynamic rollover test for compliance, we are unaware of any manufacturer that has chosen to certify its seat belts with this test. This dynamic rollover performance test requires that no part of a belted occupant can escape the plane of the vehicle during a rollover. In other words, the seat belt must keep an occupant’s entire body inside the vehicle during a rollover. However, manufacturers do not attempt to meet this standard, and as a result seat belts do not perform safely when a rollover occurs.

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Our expert testing showed that the retractor of the crash vehicle would unlock during a typical rollover sequence, allowing significant spool-out. Since manufacturers do not design or test belts to perform in rollover accidents, most are unaware of exactly how the seat belts will perform. Basic engineering standards require that manufacturers design a seat belt that would protect occupants against recognized hazards such as ejection during a rollover event. Nonetheless, since the federal government does not require such testing, manufacturers do not even attempt to design seat belts that will adequately retain an occupant in a rollover crash.

Our experts have shown that seat belts can be designed to properly and adequately retain occupants in a rollover event by using well-known technology such as cinching latch plates, rollover activated seat belt pretensioners, side air curtains, and/or seats designed with the seat belt attached to them. In our case our experts were able to show that had these alternative designs been employed, as they are in some vehicles, the driver would have survived the crash with only minor injuries. This is just another example of how inadequate the FMVSS standards are when it comes to protecting consumers against well-known, foreseeable hazards. Under the terms of the settlement, the names of the manufacturers and the car model as well as the amount are confidential. Ben Baker and Greg Allen handled this case and did a great job for our client.

II. LEGISLATIVE HAPPENINGS

Priorities For The Regular Session

Hopefully, Governor Riley and the legislative leadership have been hard at work making plans for the regular session of the Legislature, which starts on February 5th. There is a great deal that awaits legislative action, and a workable plan in advance of the session is an absolute necessity. Priorities must first be set and then a bi-partisan plan put in place so that legislation can be passed that is necessary for our state to move forward. I would hope the following will be among the top priorities for the session:

- Prompt passage of the general fund and education budgets.
- Finding adequate revenues for the Medicaid program.
- Passage of the Jack Cline Bill.
- Passage of legislation required to regulate predatory lenders in Alabama, including the payday loan companies.
- Passage of badly needed campaign finance reform legislation.
- Passage of legislation needed to control lobbying activities in our state.
- Passage of strong consumer protection legislation.
- Reform of the current system used to elect judges.

State May Face Education Funding Cuts

It is being reported that the special education trust fund may need more funds to keep existing programs going. A downturn in the national and state economy has caused tax revenues that fund education to fall below expectations. This means Alabama may have to take millions of dollars from savings accounts to fully fund schools for the remainder of the current fiscal year. The reality is legislators may have to decide between cutting programs and finding new revenues for the 2008-2009 fiscal year. When lawmakers begin the session on February 5th, their main job will be to put budgets together for education and for state government. Rep. Richard Lindsey, chairman of the House Education Appropriations Committee, sees funding the budgets as being “a real tough process.” But, the immediate problem deals with the past budget!

If Governor Bob Riley has to dip into savings to prevent cuts during the current fiscal year, which ends September 30th, the money would come from $680 million in reserves meant to prevent spending cuts caused by lower-than-expected tax collections. This is the unpopular process called proration. Although there is some dispute as to how much will be needed, most of the experts believe the savings will have to be tapped substantially.

Although budget writers and finance officers expected education trust fund revenues to total $6 billion last year, revenues fell $146 million short. That reduced the amount of savings carried over from last year from a budgeted $421 million to $275 million. Withdrawals from savings to maintain this year’s education spending could almost drain one of the trust fund’s two reserves:

- One, called the “proration prevention account,” contains $432 million. Governor Riley could withdraw money from that fund to avoid education cuts this year and the Legislature could choose whether to repay the money.
- The other reserve, called the “rainy day account,” contains $248 million. Governor Riley could withdraw money from that fund to avoid education cuts this year and the Legislature could choose whether to repay the money.

The two funds are sort of like a saving account for the first one and a line of credit for the second. My belief is that the first option is the best for the current problem. After solving the shortfall for this fiscal year, the legislators will then have to deal with future needs in the next budget. In my opinion, we can’t afford to step back in funding our education needs.

Source: Associated Press
I mentioned the Jack Cline bill as being a priority for the Legislature. It was widely reported that Jack and his widow were denied justice by the Alabama Supreme Court. The Nabors Court denied Jack and his widow their day in court, relying on a rule that the court itself had created. An editorial in The New York Times described the 5-4 decision by the court as “bizarre.”

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 has effectively eliminated that entire two-year period for victims of exposure to hazardous substances to sue. 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 absolution 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?

Either the current justices on the Supreme Court or the Alabama Legislature can solve this problem. The Legislature will get the first shot since it will be considering the “Jack Cline Bill” in the regular session next month. This legislation, promoted for several years now by the Alabama Legal Reform Foundation under the name “Toxic Substance Civil Justice Reform Act,” is badly needed. The bill would permit revival of a claim based on a toxic exposure that becomes barred by a statute of limitations before the injured person was entitled to sue, and amend the law so that a cause of action would not accrue or arise until the injured person discovered he or she was sick or injured, rather than upon the person’s last exposure to the substance. Bob Palmer and the Cline family haven’t given up and are dedicated to the task of correcting a grievous wrong. I hope that our Alabama readers will contact members of the House and Senate and ask them to support this legislation. It will be a fitting memorial to a real American hero—Jack Cline—a man of great courage!

III. COURT WATCH

JUDGE GREG SHAW TO RUN FOR ALABAMA SUPREME COURT

Criminal Appeals Court Judge Greg Shaw will run for the Alabama Supreme Court, which means the Republican Party will definitely have a contested primary next year. My former law partner Jim Main had announced earlier that he would seek the GOP nomination. Judge Deborah Bell Paseur from Lauderdale County is running as a Democrat.

Two other Republicans, Opelika lawyer Ben Hand and Montgomery lawyer Doug McElvy, are still considering entering the race. Judge Roy Moore, who says he has received a great deal of encouragement to run, has resisted so far. Judge Moore told the Associated Press that he has “no plans” to make the race. If I had to venture a guess as to whether the former chief justice would seek a return to the high court, it would be that he could be encouraged to run.

The primary election for the Supreme Court will be on June 3rd, a runoff on July 15th, if necessary, and the general election on November 4th. It appears the real action next year will be in the Republican primary. It’s very likely that no candidate could win the Republican nomination without a run-off. I wouldn’t be surprised to see a candidate like Doug McElvy, who is not a typical “politician,” run very well in this race if he elects to become a candidate. Doug made a favorable impression on folks around the state during his tenure as president of the State Bar, and that would help him greatly in a judicial race.

THE LAWSUIT MYTH PUT OUT BY THE TORT REFORMERS MUST BE EXPOSED

The annual Stella Awards list, a list of the years seven “most outlandish lawsuits and verdicts in the U.S.,” is nothing more than a fraud on the public. The so-called awards deal primarily with fiction, and many of the lawsuits listed never happened. The examples of what they describe as frivolous lawsuits are at best gross misstatements. The Stella Awards are just part and parcel of the carefully planned efforts designed to destroy the civil justice system. Once these awards are announced, they take on a life of their own. That’s because of the Internet. Unfortunately, the media never bothers to investigate the validity of the cases mentioned in the awards, and then write stories that keep the myths alive.

An example of how these myths originate is this year’s runaway First Place Stella Award winner. Mrs. Merv Grazinski, of Oklahoma City, Oklahoma, who supposedly purchased a new 32-foot Winnebago motor home, was the winner. On her first trip home, from a football game, having driven on to the freeway, she set the cruise control at 70 mph and calmly left the driver’s seat to go to the back of the Winnebago to make herself a sandwich. Not surprisingly, the motor home left the freeway, crashed and overturned. Also not surprisingly, Mrs. Grazinski was supposed to have sued Winnebago for not putting in the owner’s manual that she couldn’t actually leave the driver’s seat while the cruise control was set. It was reported
that an Oklahoma jury had awarded the woman $1,750,000 plus a new motor home. It was also said that Winnebago actually changed their manuals as a result of this suit, just in case Mrs. Grazinski has any relatives who might also buy a motor home. The e-mail that announced the award concludes: “Are we, as a society, getting more stupid?”

The truth is that this sort of nonsense relating to a Winnebago lawsuit never even happened. But, the media bought the story hook, line, and sinker, and never even bothered to check it out. Scores of articles—the vast majority buying the Winnebago story as gospel truth—resulted across the country. Apparently, few journalists bothered to do any research to determine whether they were true. Among outlets falling for the story hook, line, and sinker, and even happened. But, the media bought the Winnebago story as gospel, and the story actually spread around the world. Readers in Canada, England, Australia, Ireland, New Zealand and even Vietnam heard about this fictitious lawsuit that never happened. To his credit, Los Angeles Times reporter Myron Levin, who wanted to learn more about the lawsuit, called Winnebago and found out there was no Grazinski lawsuit. He also learned that the company had not changed the owner’s manual to avoid a swarm of copycat claims as claimed by the Stella awards.

The next time an “Internet tale” makes you believe things are even worse than you thought, check it out. Especially when the story suggests that the American court system is stacked against wealthy Corporate America. If you want to check out the “Stella Awards” and decide for yourself whether they are on the level, a good place to go is www.snopes.com, an excellent site that investigates urban myths. Simply search for “Stella Awards” and find out if the lawsuit stories are true or false.

Source: Houston Chronicle

**LAWMAKERS ASK COURT TO REVERSE LIABILITY CLAIMS RULING**

In an unusual move, four Texas legislators have asked the Supreme Court in their state to reverse a recent decision that, gives refineries and other industrial plants in Texas a new shield against liability claims from contract workers injured on the job. According to the two legislators, Democrats—Rep. Craig Eiland of Galveston and Sen. Rodney Ellis of Houston—and two Republicans—Senator Jeff Wentworth of San Antonio and Rep. Bryan Hughes of Mineola—the ruling does not do what the Legislature intended when the law was passed. In a brief filed with the all-Republican Supreme Court, the legislators stated:

*This Court, by disregarding the express terms of the Legislature’s enactments, has violated the separation of powers clause of the Texas Constitution and impermissibly encroached on the powers and functions expressly reserved to the Legislature.*

In addition, the Texas AFL-CIO is seeking a rehearing of the case. The Texas Trial Lawyers Association also will file a similar request. The court’s opinion, handed down on August 31st, expands the ability of plant owners to seek liability protection from workplace accidents under the state’s workers compensation laws. Had this decision been in effect before the BP refinery explosion in Texas City in 2005, contract workers most likely would not have been able to sue the company for damages. Anybody who has followed the BP litigation will tell you that giving BP immunity from legal responsibility for their wrongful actions would be a gross miscarriage of justice.

In their brief, the lawmakers noted that the Workers’ Compensation Act provides immunity from liability to employers who have purchased workers’ compensation insurance for their direct employees. But they contend the court wrongly expanded that immunity, pointing out that the court’s holding in the case improperly extends that immunity to owners of premises who are not employers. The Texas Legislature never authorized such an extension, never intended to provide such an extension, and has actually repeatedly rejected such an extension. Hopefully, the court will see the error of its ways and correct its mistake.

The Texas Supreme Court ruled against John Summers, a contract worker injured in a 2001 accident at an Entergy Gulf States plant in Bridge City, Texas. The court held that because he was covered by a workers’ compensation policy purchased by Entergy, he couldn’t file a suit for damages based on negligence. The court ruled that under a 1993 recodification of workers’ compensation laws, a premises owner, such as Entergy, can be classified as a general contractor and be entitled to liability protections under the workers’ compensation system according to the legislators. The court had improperly interpreted nonsubstantive changes in the 1993 law. It will be interesting to see what happens in this case. It certainly appears that the court is wrong. You can imagine what would happen if plant owners are given immunity from lawsuits.

Source: Houston Chronicle

**UNIVERSITY OF COLORADO SETTLES SEX-ASSAULT SUIT**

The University of Colorado has agreed to pay two women $2.85 million to settle a lawsuit alleging they were sexually assaulted by football players and recruits, according to school officials. The school also agreed to hire an adviser to monitor compliance with federal laws governing equal treatment of women and add a position in the university Office of Victim Assistance. The women said they were raped at an off-campus party for football players and recruits in 2001. The lawsuit sparked a
scandal over CU’s football recruiting practices that led to broad reforms and a shake-up of the university’s top leaders. The lawsuit by the victims alleged the university violated federal law by fostering an environment that allowed sexual assaults to occur.

A federal judge dismissed the suit in 2005, saying the women failed to show evidence of deliberate indifference, but in September the U.S. Court of Appeals for the Tenth Circuit disagreed and revived the lawsuit, ruling there was evidence the alleged assaults were caused by the school’s failure to adequately supervise players. The recruiting scandal prompted a grand jury investigation, which resulted in a single indictment charging a former football recruiting aide with soliciting a prostitute and misuse of a school cell phone.

A separate inquiry, backed by the university’s Board of Regents, concluded that drugs, alcohol, and sex were used to entice blue chip recruits to the school, but said none of the activity was knowingly sanctioned by university officials. The school responded by overhauling oversight of the athletics department and putting some of the most stringent policies in place for any football recruiting program. The fallout included the resignations of CU System President Betsy Hoffman and Athletic Director Dick Tharp.

**Source:** Associated Press

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**The Preemption Push By The Bush Administration Is A Payback To Corporate America**

The push for preemption, which if successful would destroy the civil jury system in this country, was quietly engineered by the Bush White House and is being aggressively pursued during the last months of the President’s term. The Administration’s goal is to keep persons who are victimized as the result of defective products, dangerous drugs, or unsafe food from being able to file lawsuits in an effort to obtain justice. The Bush plan, which is one final payback to the giants in Corporate America, is to prevent civil lawsuits involving any product that has received approval by a federal agency from being filed. If the president’s plan had been in effect, cases such as those involving Vioxx could never have been filed simply because the drug had received FDA approval. We all know how bad and dangerous Vioxx, which was pulled from the market in 2004, actually was and how many heart attack and stroke victims there were.

In addition to Vioxx, there has been a history of dangerous drugs being pulled from the market after receiving FDA approval. At one point the number of those drugs was over 15 during a relatively short period of time. The American public weren’t yet realized what the push for preemption is all about. Once they do, in my opinion, folks will be outraged. Those in the Bush Administration who are pushing preemption are making a final payback to the manufacturers of products that are regulated by the federal government!

**Another Voice On The Exxon Case**

There has been a great deal said and written about the Alabama Supreme Court’s handling of the State’s case against Exxon. The contacts our office has received from persons all over Alabama makes me realize that folks are concerned. A recent editorial appeared in the Montgomery Independent dealing with the court’s ruling in favor of Exxon. I am setting it out below:

**The Alabama Supreme Court vs. The Taxpayers**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. The 7th Amendment to the Constitution of the United States

Governor Riley has correctly decided that there is no valid reason to ask the State Supreme Court to reconsider its decision to side with ExxonMobil and against the people of Alabama. After all, the state’s highest tribunal has nullified the decisions of two competent Montgomery juries and a competent circuit court judge to satisfy the wants and needs of the giant multi-national corporations that are working by the minute to chip away at the 7th Amendment guarantee of a jury trial in civil cases. Our high court, with the exception of Chief Justice Sue Bell Cobb, winked at fraud in the biggest degree to side with the wealthiest corporation in the world. One has to wonder what would happen if the Exxon Valdez spilled 11 million gallons of oil in Mobile Bay as it did in Alaska’s Prince William Sound 18 years ago. Aside from the wildlife kill, the spill damaged 1,300 miles of coastland, closed the 1989 fishing season in the region, reduced harvests in later years, and caused fish prices to drop.

Would the Alabama Supreme Court justices look the other way again and cost the taxpayers another $3 billion? My guess is, with the same composition as the current court that would be the case. ExxonMobil is still appealing a judgment in the Valdez spill, a fight that began in 1994 after a jury assessed $5 billion in punishment against Exxon, later reduced by the Court of Appeals for the Ninth Circuit to $2.5 billion. This is another reason Riley is probably right in his decision. Let’s at least

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keep the $70 or $80 million in actual damages the state will recover instead of spending them on the cost of what appears to be a useless appeal. The people, the small and medium sized businesses and government must become more keenly aware of the effort being made by the multi-nationals, many of them with significant foreign ownership, to subvert the protections of the 7th Amendment. Their objective is to first keep us out of court, and if they can’t do that, to keep us from being adequately compensated for their wrongdoing. If you don’t believe me, call my friend Jim Martin (no kin), the former GOP congressman, an oil man himself, and Governor Guy Hunt’s Conservation chief who took on ExxonMobil after the company’s fraud in state oil leases was discovered.

The Montgomery Independent December 13, 2007

This editorial is pretty much in line with the views of a majority of Alabama citizens. When you consider that the lawsuit was originally filed at the direction of then-Attorney General Bill Pryor and supported fully by his successor, Troy King, it becomes clear that this wasn’t a lawsuit without merit. Had it been, it wouldn’t have taken the justices almost four years to decide it. Governor Bob Riley felt strongly about the state’s fraud case, as did his experienced legal advisor Ken Wallis. The governor fully supported the state’s position before the Supreme Court. I believe the court made a mistake, but what I think really carries little weight. As I stated last month, the real losers are the Alabama taxpayers.

IV. THE NATIONAL SCENE

THE BUSH ADMINISTRATION HAS DONE GREAT DAMAGE TO OUR COUNTRY

In my opinion, the seven years of the Bush Administration have resulted in tremendous damage being done to our Country. It’s been quite obvious that during those years the rich and powerful have done extremely well and have profited at the expense of regular folks. Cutting taxes for the wealthy, while running up some $3 trillion in new debt, is not something any president could be proud of. In fact, it’s shameful when you consider all that has been neglected that affects middle and low-income citizens during the Bush years.

The powerful and politically active oil and drug industries have reaped record profits during the Bush years, making lots of top officials very wealthy and hurting lots of folks along the way. The war in Iraq, designed and carried out by the Cheney faction in the Bush White House, has been a disaster. We now find our military bogged down in a military occupation in Iraq, one that is projected to last for years. The loss of life—combined with the tremendous number of troops who have been seriously wounded—have taken a monumental toll on our country. The financial costs of the war have gone off the charts. Also, a good number of corporations have made large sums of money in Iraq dealing in huge no-bid contracts. This war will go down in history as one of the worst politically-motivated wars in our nation’s history.

During the last months of the Bush Administration, and during the first months of the next president’s administration, all Americans need to work on Congress to bring about:

- Universal access to health care for all Americans, including children.
- Authority for the federal government to negotiate drug prices under the Medicare program.
- Making the United States energy independent, which means taking on the powerful oil companies, in the near future.
- A workable plan to combat global warming which has been totally ignored thus far by the Bush Administration.
- An independent court system that treats individuals and powerful corporations equally and provides equal justice for all.
- Safeguarding Social Security for future generations.
- Campaign finance reform to assure that regular folks have some input and influence in national elections.
- Control of the powerful lobbyists who control what happens in government for their clients from Corporate America.

A SMALL FIRM FIGHTS TORT REFORM ON THE NATIONAL LEVEL

Bob Peck and his nine law firm partners at the Center for Constitutional Litigation in Washington have been fighting the battle against “tort reform” around the country for years. The lawyers in the firm have been involved in attempting to overturn state and federal laws that rob Americans citizens the right to legal redress. The Center’s lawyers currently have 40 cases pending across the United States in which they are helping plaintiffs challenge government-imposed limits on tort claims. They are fighting to give victims of wrongdoing the right to their day in court and that is a noble cause.

Bob and four other lawyers created the firm in 2001 after prosecuting lawsuits that succeeded in overturning state tort reform laws in Indiana, Ohio and Oregon in late 1999. Their success led to a number of requests for their services. It’s good to have folks like the lawyers in the Center who are willing to take on a righteous cause on behalf of victims of corporate abuse and wrongdoing.

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• More rights for middle-class Americans, including workers.
• An end to the war in Iraq, getting our troops home as soon as possible.
• Regulatory agencies in Washington that can protect American citizens from unsafe and dangerous products, including food.
• Regulation of television programming and the Internet so that children are fully protected.

There are many other things that a Democratic Congress needs to do in order to reverse all of the bad that the Bush Administration has done. That’s why it’s critically important to support Democratic candidates for both the House and Senate. You can rest assured that the big bosses in Corporate America will be working to regain full control of the federal government, including Congress.

**BUSH AGAIN VETOES HEALTH INSURANCE BILL FOR CHILDREN**

President Bush has again vetoed legislation that passed with bipartisan support to dramatically expand government-provided health insurance for children. This was the President’s seventh veto in seven years—all but one coming since Democrats took control of Congress last January. As you know, President Bush also vetoed an earlier version of the health insurance program for children.

Of the 43 million people nationwide who lack health insurance, more than 6 million are under 18 years old. That’s more than 9% of all children. It’s impossible to understand how this president could be so connected to the rich and powerful that he could ignore the needs of children whose families have the misfortune of now falling in either category. A two-thirds vote in both chambers is required to override a presidential veto. I hope there will be enough votes in both the House and Senate this time to override the veto. Those who support the President on this ill-advised veto should be remembered at the ballot box next year.

Source: Associated Press

**KARL ROVE AND THE WHITE HOUSE CHIEF OF STAFF ARE FOUND IN CONTEMPT OF CONGRESS**

A Senate panel found Karl Rove and White House Chief of Staff Joshua B. Bolten in contempt of Congress last month for refusing to testify and to turn over documents in the investigation of the firings of nine U.S. Attorneys in 2006. The Senate Judiciary Committee approved contempt citations against Rove and Bolten, rejecting the White House position that the work of two of President Bush’s closest advisers is covered by executive privilege. Earlier in 2007, the House Judiciary Committee cited Bolten and former White House counsel Harriet E. Miers for contempt. But, there has been no further action by either chamber of Congress on this important matter. It’s predicted by Washington insiders that it will be months before anything more of substance takes place in the cases. Lawmakers and aides say neither house will take up the contempt issue in either case until February at the earliest.

More than six months ago, the Senate Judiciary Committee requested Rove’s public testimony on the firings of the prosecutors, and issued subpoenas for internal White House e-mails, memos and other related documents. As custodian of White House documents, Bolten was cited for his refusal to turn them over. Executive privilege should not be invoked to block investigations into wrongdoing, according to Senate Judiciary Committee Chairman Patrick J. Leahy (D-VT). It was significant that two senior Republicans, Senators Arlen Specter (R-PA) and Charles E. Grassley (R-IA), supported the contempt charges.

The last contempt vote came a year after seven of the prosecutors were removed on one day. The firings led to the resignation of former Attorney General Alberto R. Gonzales. The Justice Department’s inspector general and its Office of Professional Responsibility are conducting an internal investigation of the firings and whether Gonzales, who was a disgrace to the legal profession during his short tenure, obstructed congressional probes of the matter. It’s pretty obvious that Karl Rove believes he is above the law and as a result has turned up his nose at those who have attempted to hold him accountable for his actions.

Source: Washington Post

**WHITE HOUSE LOGS SHOULD BE PUBLIC**

A federal judge has ruled that White House visitor logs are public documents. The Bush Administration had hoped that it could get around the public records laws. Visitor records are created by the Secret Service, which is subject to the Freedom of Information Act. But the Bush Administration has ordered the data turned over to the White House, where they are treated as presidential records outside the scope of the public records law.

Nevertheless, U.S. District Judge Royce C. Lamberth ruled logs from the White House and Vice President Dick Cheney’s residence remain Secret Service documents and are subject to public records requests. In a lawsuit brought by Citizens for Responsibility and Ethics in Washington (CREW), a watchdog group, Judge Lamberth ordered the Secret Service to turn over visitor logs regarding nine political operatives, including James Dobson, Gary Bauer and Jerry Falwell. Anne L. Weismann, the watchdog group’s chief counsel, observed concerning the ruling: “I think it’s hugely significant. The judge saw their arguments for what they were.” The ruling has to be a blow to the Bush Administration. In a separate case, CREW had sought an order declaring illegal a Bush Administration policy under which the Secret Service destroys its copies of the logs.
LOBBYING PAYS OFF FOR TOP BUSH AIDE

Ed Gillespie, who is currently serving as counselor to President Bush, took a cut in pay when he came to work in the White House. Before he began working at the White House, however, Gillespie did extremely well financially as a Washington lobbyist. The wealth that can be accumulated by those at the top of Washington’s lobbying industry is quite impressive. Gillespie, a former head of the national GOP, left his post at Quinn Gillespie & Associates, the high-powered Washington consulting and public affairs firm, to become a senior adviser to President Bush in late June. His White House salary is $168,000, which isn’t bad for a man in his mid-forties. However, Bush’s counselor made $4.75 million from the sale of his share of the lobbying firm, which he co-founded in 2000 with former Clinton White House counsel Jack Quinn.

This information is available only because of Gillespie’s newly released financial disclosure form. The Quinn firm employs two dozen lobbyists and other public affairs employees and billed $8.6 million over the past year, ranking it 10th among the city’s influence businesses, according to The Center for Responsive Politics, a nonpartisan research group based in Washington that tracks money in politics.

It’s worth mentioning to note where Gillespie got his start. In less than a decade, Gillespie went from being a modestly paid congressional aide to Rep. Dick Armey (R-TX), to being a multimillionaire. Working for Armey opened lots of doors to Gillespie, and it appears those connections have paid off very well. Among the more than 120 clients of Quinn Gillespie are health care interests such as Bristol-Myers Squibb, the American Hospital Association, and the Pharmaceutical Research and Manufacturers of America; telecommunications companies Verizon and AT&T; and General Electric, Delta Airlines, Burlington Northern Santa Fe, the National Hockey League, the National Association of Realtors, PricewaterhouseCoopers, and State Farm Insurance. The lobbying firm also lists foreign clients, ranging from Republika Srpska—the mini-state of Bosnia’s Serbs—to Pakistan’s ministry of commerce.

Sirius Satellite Radio Inc. and XM Satellite Radio Holdings Inc. hired Quinn Gillespie Associates in April to lobby the federal government on their proposed merger. The firm also represents Qualcomm Inc., a semiconductor maker. The U.S. International Trade Commission recently decided to ban U.S. imports of new cell phones made with Qualcomm semiconductors, saying the company’s chips violated a patent held by another company. It might be real interesting to see how well Gillespie’s old firm and their clients are faring now. It’s also interesting to consider how the former lobbyist’s past might affect his performance as a key aide to the president.

Another Blow To American Workers

It appears that the U.S. Senate has given Corporate America another prize and one that is difficult to understand. The signing of a NAFTA expansion last month, pushed by U.S. oil, gas, and other large corporations, but opposed uniformly by Peru’s unions, farmers, indigenous peoples, and faith leaders, including Catholic Archbishop Pedro Barreto, will further damage U.S. relations in Latin America. The devastating outcomes of similar agreements are fueling anti-American sentiment in that region. The spectacle of another NAFTA expansion agreement is an insult to Americans’ demands for a new trade policy made vivid in the 2006 midterm elections, where candidates nationwide won by campaigning against more-of-the-same NAFTA deals.

The grass roots group Public Citizen says it will carefully track the outcomes of this NAFTA expansion agreement so those who supported it are held responsible for the damage it will cause. The Peru trade deal includes the same NAFTA agriculture rules that displaced 1.3 million Mexican farmers, dramatically increased hunger and immigration to the United States, and caused economic and political instability. It also includes investment protections that will empower big oil and gas corporations to raze Peru’s pristine Amazon region.

Repeated polling shows that the American public—both Democrats and Republicans—have negative feelings about current U.S. trade policies and the effects on their lives. Democrats in 2006 gained a majority in Congress with scores of candidates winning in campaigns focused on changing the NAFTA trade model. The message of the midterm elections was loud and clear: Voters want a new direction on trade. Congress’ public approval rating will not be helped by ignoring this call and passing another Bush NAFTA expansion.

The Peru NAFTA expansion replicates many of the CAFTA provisions that led most Democratic senators to oppose the earlier pact. This includes foreign investor privileges that create incentives for U.S. firms to move offshore and expose basic environmental, health, zoning, and other laws to attack in foreign tribunals; bans on “Buy America”
and anti-offshoring policies; limits on food import safety standards and inspection rates; and NAFTA-style agriculture rules that are projected to displace tens of thousands of Peru’s Andean farmers and thus increase coca production and immigration. The pact also contains terms that could subject Peru to compensation claims for reversing its unpopular Social Security privatization, the same system Democrats fought against at home.

Source: Public Citizen

**HALLIBURTON SHOULD BE ASHAMED OF WHAT IT HAS DONE TO AN EMPLOYEE**

The shameful treatment of a female employee working for a Halliburton company in Iraq by Halliburton officials is a disgrace. Her plight also has a direct connection to the evils of arbitration that needs to be exposed. The sad story of this young woman illustrates the tragic consequences of binding mandatory arbitration when it is forced upon a victim of wrongdoing. It has been reported that a young female employee of a Halliburton subsidiary was a victim of rape while working in Iraq. The powerful and politically-connected company responded to her plight by attempting to keep her story under wraps—out of the American people.

The employee, Jamie Leigh Jones, a Houston, Texas, woman, was gang-raped by Halliburton/KBR coworkers in Baghdad. In a shocking display of corporate and governmental power and arrogance, the company and the U.S. government have covered up the incident. The woman says that after she was raped by a number of men at a KBR camp in the Green Zone, the company put her under guard in a shipping container and warned her that if she left Iraq for medical treatment, she would be fired. Ms. Jones says she was held in the shipping container for at least 24 hours without food or water by KBR. The company posted armed security guards outside her door, and she was not allowed to leave. Ms. Jones described the container as sparsely furnished with a bed, table and lamp.

The young woman, who is now 22 years old, told her story to *ABC News* as part of an upcoming “20/20” investigation. She described her situation as “like being in prison.”

Ms. Jones says she finally convinced a sympathetic guard to loan her a cell phone so she could call her father in Texas. She told her father that she had been raped and didn’t know what to do. Her father called their congressman, Rep. Ted Poe (R-TX), who then contacted the State Department. They were told of the “urgency of rescuing an American citizen” from Halliburton. Rep. Poe says the State Department quickly dispatched agents from the U.S. Embassy in Baghdad to Ms. Jones’ camp, where they rescued her from the container.

Ms. Jones filed a lawsuit in federal court against Halliburton and its then-subsidiary KBR. According to the lawsuit, Ms. Jones was raped by “several attackers who first drugged her, then repeatedly raped and injured her, both physically and emotionally.” Jones told *ABCNews.com* that an examination by Army doctors showed she had been raped “both vaginally and anally,” but that the rape kit disappeared after it was handed over to KBR security officers. A spokesperson for the State Department’s Bureau of Diplomatic Security told *ABCNews.com* he could not comment on the matter. Over two years later, the Justice Department has brought no criminal charges in the matter. *ABC News* wasn’t able to confirm that any federal agency was investigating the case.

Here is how arbitration comes into her story. Ms. Jones’ former employer doesn’t want this case to see the inside of a civil courtroom. KBR has now moved for Ms. Jones’ claim to be heard in private arbitration, instead of a public courtroom. The company says her employment contract has an arbitration clause, which requires that her claim go to arbitration. As a result, a private arbitrator will decide Ms. Jones’ case. Interestingly, Halliburton has won more than 80% of arbitration proceedings brought against it, according to testimony before a congressional committee.

Since the attacks, Ms. Jones has started a nonprofit foundation called the Jamie Leigh Foundation, which is dedicated to helping victims who were raped or sexually assaulted overseas while working for government contractors or other corporations. Concerning her plight, Ms. Jones commented:

_I want other women to know that it’s not their fault. They can go against corporations that have treated them this way. Any proceeds from the civil suit will go to this foundation. There needs to be a voice out there that really pushed for change. I’d like to be that voice._

This tragic story is one that should never go to arbitration for resolution, which it can be controlled by Halliburton. Ms. Jones is entitled to her day in court, where a judge and jury can hear her case and then dispense justice. Every American citizen, even those working in Iraq, is entitled to a trial by jury when he or she is injured or damaged by the wrongdoing of another. We must continue to work to preserve Americans’ right to a trial by jury. There is a pending bill in Congress, the Arbitration Fairness Act, which would ban binding mandatory arbitration clauses in contracts like the one involving Halliburton and Ms. Jones. It would also ban arbitration in most other consumer, franchise, and securities contracts. We must keep fighting for the right of Americans to hold wrongdoers accountable. As tragic as it was, it’s possible that what happened to Ms. Jones may be the straw that breaks the back.
of consumer arbitration. This tragic story needs to be told to the American people and to our political leaders.

Source: American Association for Justice

MORE ON THE BUSH-CHENEY WAR PROFITEERS

The American taxpayers should be about ready to revolt because of all that is being “wasted” in Iraq. Although nearly all Americans fully support funding the troops as long as we are occupying Iraq, all of the waste and even literal stealing that are going on there at taxpayer expense is quite another story. One doesn’t have to look much further than Halliburton and its affiliated companies to find a great deal of the waste. Recently another story leaked out relating to a Florida company that was paid $31.9 million to construct barracks and offices for Iraqi army units which on its face—while rather strange, considering all of the oil in Iraq—is not the end of this tale. It has been reported by USA Today that nothing was ever built. However, that didn’t stop payment on the contract with Ellis Environmental Group. They have been paid in full.

The work had been assigned to Ellis World Alliance Corp., a related company. You may recall that in 2005 Congress approved the Bush request for $5.2 billion to help train and equip the Iraqi military and police. This money did not stop payment on the contract with Ellis Environmental Group. They have been paid in full.

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The work had been assigned to Ellis World Alliance Corp., a related company. You may recall that in 2005 Congress approved the Bush request for $5.2 billion to help train and equipment. The military didn’t keep adequate records and that is somewhat shocking. In fact, it was reported that some of the weapons purchased may have ended up in the hands of insurgent and terrorist groups. According to USA Today, more than two dozen people have been charged with corruption related to the war and the rebuilding effort. The Ellis project has been halted and yet the money was paid. Strange way to run a war!

THE FCC SHOULD MAKE TV BROADCASTING AS CHILDREN-FRIENDLY AS POSSIBLE

It’s been nearly two years since the Federal Communications Commission (FCC) last handed out fines against a television station for violating federal broadcast decency laws—a fact that has not escaped the notice of broadcasters. This season all of the broadcast networks have upped the ante by introducing increasingly outrageous, explicit, and indecent sexual content. The networks and cable channels are thumbing their noses at the broadcast decency law. In fact, the current state of programming is such that we might as well not have this law on the books if it’s not going to be enforced. A prime example of a program that should be subject to a formal indecency complaint is NBC’s show, Las Vegas. According to Nielsen Media Research this unsavory content was seen by more than 300,000 children. The indecent material crossed the line of common sense decency.

The broadcast airwaves are public property. The television networks don’t own them, and neither do the television stations. They are owned by the American people, and we must hold the industry accountable for the content they air. The advertisers must also be held accountable for the content they underwrite with their sponsorship dollars. I believe that the American people are fed up with sponsors using the children to sell products. The FCC should do its job and protect our children.

Source: PTC

UNIVERSITY TO PAY $2.8 MILLION FOR SERIOUS SECURITY BREACH

The University of California has agreed to pay the federal government $2.8 million over a security breakdown at the Los Alamos National Laboratory in 2006. Under the settlement, the University will not seek a judicial review of the penalty and has accepted responsibility for the violations, according to the National Nuclear Security Administration. The amount of the settlement is slightly less than the $3 million civil penalty the NNSA had imposed in September on the University, which was the sole manager of the northern New Mexico nuclear weapons laboratory for the Department of Energy until June 2006.

The penalty stems from an October 2006 incident in which Los Alamos police discovered more than 1,000 pages of classified documents and several computer storage devices during a drug bust at the trailer of a former worker for a lab subcontractor. The University said in a statement that it strives to provide the strongest security for classified matter at Los Alamos lab and “recognizes that further protections could and should have been provided to reduce the opportunity for the cited unauthorized removal.” The University had previously denied violating DOE security requirements, however, saying the employee who took the information home worked for a lab subcontractor, not the University. The employee later pleaded guilty to a misdemeanor, saying she took the information home to catch up on scanning documents. The drug raid was aimed at another person living in the trailer.

The Los Alamos laboratory has been plagued by security problems in recent years, which led the DOE to put the lab’s management contract out for bid for the first time since the lab was formed in 1943 as a top-secret project to develop the atomic bomb. The lab is now run by a limited liability corporation called Los Alamos National Security, which is made up of Bechtel National Inc., BWX Technologies Inc., the Washington Group International Inc., and UC. It is pretty basic that security at any location of this sort must be strictly enforced and effective. Breaches must be avoided at all costs for obvious reasons.

Source: Associated Press
V.
THE CORPORATE
WORLD

MORE ON THE SUB-PRIME LENDING SCANDAL

The subprime mortgage lending scandal is far from over. In fact, it’s now affecting large banks all over the world. Recently, UBS has announced a $10 billion write-down tied directly to the fall in the value of its assets backed by American subprime mortgages. This comes after USB downgraded its assets by $3.4 billion in October. The Swiss bank now says it will record a loss for the fourth quarter. It could also post a net loss attributable to shareholders for the year 2007. Most investors had already been expecting a relatively large write-down, based on the knowledge that UBS has been heavily involved in the issuing of collateralized debt obligations, or securities that have subprime debt packaged into them. Many had been fearing losses that would be even larger than those announced last month. It had been predicted that UBS would be the worst-hit bank in Europe because of the subprime crisis and would post a loss of around $9.3 billion. So, as bad as it actually turned out to be, the situation facing USB could have been much worse.

Other large European investment banks will soon be announcing their write-downs, though none will likely be as large as UBS. The following French banks will be involved: Societe Generale will likely post a $3.2 billion write-down; Credit Agricole will have a $1.7 billion charge; and Credit Suisse will post a $1.4 billion write-down. BNP Paribas, which froze three of its investment funds back in August to spur the European market turbulence, will likely post a relatively small write-down since its CDO business is not significant. A write-down of slightly less than $4 billion is projected for Deutsche Bank. Lloyds TSB, the U.K.’s fifth-biggest lender, will come out of the credit crunch with a relatively small £200 million ($408 million) write-down.

Source: Associated Press

HEALTHSOUTH AND TWO DOCTORS SETTLE CLAIMS

HealthSouth Corp. and two Alabama doctors have settled a civil lawsuit brought by the Justice Department. The total to be paid to settle civil claims over what the government says was an illegal kickback scheme was almost $15 million. HealthSouth, which is still recovering from a massive fraud, will pay $14.2 million, and Dr. James Andrews—whose patients include some of the nation’s top pro athletes—will pay $450,000. Dr. Larry Lemak, a former associate of Dr. Andrews, agreed to pay $250,000. The settlements involved civil claims only. It was reported that no criminal charges have been brought and none are anticipated. The defendants also stressed that all this was done under the previous management at HealthSouth.

The settlement involved claims made by HealthSouth to Medicare and Medicaid for services provided to patients referred by Drs. Andrews and Lemak when the company had a financial relationship with the doctors. Health care providers—regardless of who they are—must realize that violations of the Anti-Kickback Statute and the Stark Law will be dealt with. However, both of the doctors deny that kickbacks were involved. HealthSouth says all the kickbacks were paid under fired CEO Richard Scrushy, who is currently in prison for an unrelated bribery scheme involving state government. The company had previously disclosed the settlement amount in financial statements.

The Justice Department said HealthSouth disclosed the irregularities in 2004 and 2005, after a massive fraud was revealed at the Birmingham-based rehabilitation company. Authorities say that HealthSouth gave Drs. Andrews and Lemak the title of medical directors along with extra pay. It was alleged that this guaranteed they would refer patients to HealthSouth facilities for treatment. The government maintained the doctors were paid more than fair market value as medical directors when making the referrals. Both doctors deny any wrongdoing.

Source: Associated Press and Birmingham News

VI.
CAMPAIGN
FINANCE REFORM

THE WHITE HOUSE SHOULD NEVER BE FOR SALE

While the highest office in America should not be for sale, the presidential candidates from both parties are collecting truckloads of cash from bundlers and big donors. Congress first addressed this problem after the Watergate saga by creating the presidential public funding system. This was a system that worked for decades. But it’s now time for Congress to modernize the system. Champions of fair elections in both houses of Congress have introduced the “Presidential Funding Act of 2007,” which, if passed, would update the system. This legislation would make the funding system a viable alternative in today’s political environment. Its basic reforms include:

• Making funding available earlier;
• Increasing the amount of funding available to candidates; and
• Requiring candidates to disclose the names of campaign bundlers and the amount they raise.

The presidential public funding system has been unable to keep up with the rapidly increasing costs of running a campaign for president. Candidates are no longer using the system because their opponents can so easily out-spend...
them. That has resulted in bundlers and big donors being given access to the presidential candidates, which leaves regular folks out in the cold. Our system of government was never intended to allow only the rich and powerful to dictate who is elected president. Nevertheless, that is exactly what has developed. George Bush is a prime example of such a president—elected and controlled by a relatively small number of individuals in Corporate America—and who as a result is not a free agent. If you would like a change, ask your members of Congress to co-sponsor the “Presidential Funding Act of 2007.” Our future presidents should be chosen on their merits and not by their large contributors. It’s time for regular folks to have a say-so in who is elected president!

Source: Public Citizen

**FULL DISCLOSURE SYSTEM FOR CAMPAIGN BUNDLING ACTIVITY IS NEEDED**

The term “bundling” meant little to most folks until the last run for the presidency in 2004. It was then that the term took on a most significant meaning. The Federal Election Commission (FEC), which is devising rules for handling fundraisers who bundle large sums of money for candidates, should use the opportunity to create a full and well-developed disclosure system for all bundling activity. Public Citizen submitted comments to the agency documenting the growth and dangers of elite fundraisers who bundle huge amounts of cash for campaigns. The comments were submitted in response to FEC rule-making on how to implement the huge step forward represented by the bundling disclosure requirements of the new lobbying and ethics reform measure signed into law in September. I hope the FEC will do its job and make full disclosure a reality.

As previously reported, bundling is the campaign fundraising tool of pooling together a large number of contributions from political action committees (PACs) and individuals to maximize the political influence of the bundlers and the special interests they represent. Most often, bundlers are lobbyists or corporate executives who represent a particular business or industry and expect something in return for the fundraising efforts. In the comments, Public Citizen praised the FEC for proposing a system of quarterly reporting of bundled contributions, aggregated on a semi-annual basis. The FEC appropriately recognizes the need to create a new bundling filing form for candidates and committees. Public Citizen believes that the agency should take some additional steps and, in this regard, made this observation:

Agents of lobbyists, lobbying organizations and their PACs should be included under any bundling disclosure regime, as intended by the principal congressional sponsors of the Federal Election Campaign Act of 1971; the FEC should develop a separate “bundling schedule” and disclosure reports to clarify bundling activity for the public; and the separate “bundling schedule” in the FEC filing and disclosure reports should include the categories of “bundled contributions during this quarterly period” and “aggregate bundled contributions in the semi-annual period” to avoid over-counting or under-counting of bundled contributions within the covered period.

In 2004, President Bush’s re-election campaign raised $262 million in the primary elections, and about 30% of that—$76.5 million—came from only 548 bundlers. Public Citizen estimates that the Bush bundlers raised closer to 40% of the total primary money. Presidential candidate John Kerry raised $248 million in the primaries, breaking all previous records for a Democrat. For a “terrible candidate” that feat was remarkable. Between 17 and 21% of the Kerry money came from 546 bundlers.

Unfortunately, it appears that bundling is on the rise. The number of registered lobbyists raising money for 2008 presidential candidates is already nearing the total for the entire 2004 campaign—despite the fact that most of the 2004 lobbyist-fundraisers are not yet involved. However, disclosure of bundling activity is very sketchy for most of the 2008 presidential candidates. In fact, none of the 2008 candidates has met the same voluntary disclosure standards of the Bush and Kerry campaigns in 2004. Laura McCleery, director of Public Citizen’s Congress Watch program, observed:

*Bundlers have overwhelmed campaigns with cash, breaking fundraising records each and every election. Bundlers can raise so much money for candidates that most of the presidential candidates in 2008 realize they can raise and spend more cash from bundlers than they could using the presidential public financing system. When wealthy individuals are permitted to be a wellspring for campaign cash, their influence will drown out the voices of ordinary voters.

You won’t be surprised to learn that bundlers and the businesses they represent tend to be treated very well by the lawmakers they enrich. For many bundlers, the purpose of bundling campaign contributions is to gain something for the particular business, special interest, or industry they represent. Obtaining government contracts, tax breaks, earmarks, or public policies are the motivation for a bundler to raise large amounts of campaign funds for a national candidate. Bundlers get the credit when they rake in large sums of money from sources so they can give it *en masse* to a candidate.

The new lobbying and ethics reform law passed this summer requires—for
has been delivered thus far. While there has been a whole lot more than that which has been delivered thus far. While there has been some progress in both the House and Senate, I don’t believe much more than a passing grade could be awarded based on the overall performance last year. Many believe the powerful lobbyists for Corporate America are still in control. That may be the reason that a lame duck President can still have his way in Congress.

The Bush Administration is the worst—and many believe perhaps the most corrupt—in recent memory. Paying back powerful corporate interests has become the order of the day in Washington. The paybacks have intensified in the last few months and will not likely slow down during the remainder of the time the Republicans control the White House.

Most American citizens expect Congress to control the Bush Administration during the remainder of the time George Bush serves as President. If Democrats fail to do so, they could lose their majority control of Congress in the elections next year. The time has come for the American people to tell those in Corporate America who, along with Cheney-Rove faction in the White House, are doing great damage to our nation, that enough is enough!

**CONGRESS TAKES ACTION ON PREEMPTION**

On December 19, by a vote of 407 to 0, the House of Representatives passed legislation reauthorizing the Consumer Product Safety Commission and included statutory language specifically prohibiting the agency from issuing any rule or regulation that expands the scope of federal preemption of state law. This is a victory for the American people, but it’s not a complete victory. The most significant thing about this vote is that it spells out the legislative intent on preemption.

Language in the report from the House Energy and Commerce Committee, which is the official statement of congressional intent, is very strong. The Committee Report language formally and specifically disapproves the CPSC’s effort to override state common law by including preemption language in preambles to its proposed rules and final rules. Specifically, with regard to preemption language in the preamble to a recently issued rule on mattress flammability.

The Committee report states “this preamble should not be accorded deference by State or Federal Courts.” The Report specifically identifies the importance of “tort actions based on negligence” which the Committee says “are predicated on procedures and standards developed over hundreds of years of American and English jurisprudence.” This is what it says about the preservation of common law remedies generally: “The preemption provisions of the statutes under the jurisdiction of the CPSC are clear, and State common law actions and standards are not preempted.” The issue will now go to the U.S. Senate.

This is a tremendous victory for the American people, but it’s not the end of the battle. The bill will still have to pass in the Senate and I believe that it will. The unwarranted and unconscionable regulatory preemption of state law in all areas affecting citizens’ rights is anti-American and must fail. The Senate should take up the matter and pass it as soon as possible.

**VIII. PRODUCT LIABILITY UPDATE**

**VERDICT RETURNED AGAINST FORD IN GEORGIA WRONGFUL DEATH SUIT**

A Cobb County, Georgia, jury has returned a $3 million verdict against Ford Motor Co. in the death of a woman whose seat back broke when her Ford Tempo was struck from the rear. Unfortunately, this is not the first time a seat back in a Ford Tempo has failed. There have been more than 70 lawsuits against Ford over how the back of the Tempo’s front seat breaks from its mountings and falls backward in rear-end accidents. Ford has known for a long time that the design of the seat is defective. The Tempo model was manufactured from 1984 to 1994. The jury awarded the victim’s adult children compensatory damages in the case, but no punitive damages.

Ford claimed at trial that the seats were designed to yield to protect front-seat passengers by absorbing the energy of a rear-end crash and to protect rear passengers from being driven into an “overly rigid” seat back in frontal impact collisions. The carmaker claimed that the severity of the crash killed the 76-year-old woman in 2002. The Tempo was struck in the rear by a truck hauling crushed gravel, and the car went down a steep embankment. The occupant of the Tempo was hospitalized with spinal and head injuries and died 23 days later.
Ford Explorer Settlement Gets Court Approval

A state court judge in California has tentatively accepted the settlement of class action lawsuits on behalf of about 800,000 Ford Explorer owners whose vehicles lost value because of their perceived rollover danger. The settlement ends lawsuits against Ford Motor Co. in California, Connecticut, Illinois and Texas. But all personal injury and wrongful death claims involving the Explorer are excluded from the settlement and will continue.

Under the settlement, folks who bought the sport utility vehicles from model years 1991 through 2001 will be eligible for $500 vouchers to buy new Explorers or $300 vouchers to buy other Ford or Lincoln Mercury products. The vouchers can be transferred to anyone in the same state as the original vehicle owner. Ford, which admits no wrongdoing, will also be required to limit the safety claims in its advertising, and the company will pay as much as $25 million in costs and attorneys’ fees. The judge found the settlement to be in the best interest of all the parties. The plaintiffs alleged Ford falsely advertised the vehicles as safe when the company knew they had a tendency to flip and roll over. Ford still contends the Explorers from that era were the safest compact SUVs on the road. But, if that’s true, why would Ford enter into this settlement?

The consumer protection lawsuits filed on behalf of Ford Explorer owners came after more than 250 people were killed and hundreds more injured in accidents involving tread separation on Bridgestone/Firestone Inc. tires. Most of these tires were on Explorers at the time they failed. The tire manufacturer claimed the Explorer’s design was faulty, while Ford put the blame on the tires. Lawyers for the vehicle owners, led by Tab Turner, argued the SUVs lost about $1,000 in value because of the perceived danger and bad publicity. They wanted Ford to pay as much as $2 billion of its profits from the Explorer.

Notices will be mailed to vehicle owners, and a Web site and toll-free telephone number with more information about the settlement will be set up. The judge is expected to give his final approval to the settlement in April. Frankly, I don’t know whether this is a good settlement or not. Normally, a “coupon deal,” is not one to get too excited about. I hope this one is an exception. I have great respect for Tab Turner and have to believe he would not be a part of a bad settlement or one that would favor Ford to the detriment of class members in the case.

Source: Associated Press

Vehicle Crash Tests Predict Car But Not Truck Safety

If done correctly, and not to achieve a desired result, frontal crash tests in laboratories are strong predictors relating to the safety of passenger cars on the road. But, the tests fail to accurately project driver fatality risks for trucks, according to a recent Virginia Commonwealth University study. The study examined the frontal crash test ratings that vehicles received from the National Highway Traffic Safety Administration (NHTSA) and compared those ratings to fatality rates in the vehicles. It also compared a smaller sample of test ratings given by the privately funded Insurance Institute for Highway Safety (IIHS), which uses a 40% frontal offset crash test, with the vehicles’ fatality rates.

The results indicate that the crash tests held by NHTSA and the IIHS are successful in predicting real-world crash outcomes for passenger cars—the ratings NHTSA and IIHS bestowed on passenger cars generally matched the cars’ safety record on the road. But, the ratings for trucks did not match real-world outcomes. For example, in the case of both NHTSA and IIHS, trucks that received the worst possible crash-test rating had on average lower driver fatality rates than trucks that received the best possible crash-test rating. Study co-author David Harless, professor of economics in the VCU School of Business, observed:

If you’re thinking about buying a passenger car, then the crash test scores can be useful to you. But if you are thinking of buying a truck, we have no evidence that the tests are meaningful in terms of real-world performance in serious crashes.

The study was published in the September issue of Accident Analysis & Prevention. The research was limited to instances of multiple crash tests in a given vehicle line, controlling for the differences in driver behavior in different lines of vehicles. The study examined the testing of vehicles in the 1987-2001 model years. It was pointed out that IIHS had fewer vehicle lines to review, because it did not begin its testing program until 1995. The study authors urged caution concerning their findings regarding the IIHS tests, particularly for trucks, because of the small sample of vehicle lines they were able to include in their research.

Questions have persisted over the years about the value of NHTSA’s frontal crash test ratings because of the difficulty of simulating a real-world crash in a laboratory setting. A very small percentage of automobile accidents mirror the circumstances of a direct head-to-head collision between vehicles of similar size—the scenario NHTSA creates in its lab tests. It’s said by most safety experts, however, that the government does as good a job as the private sector does at predicting the relative death rate for passenger cars.

Source: Insurance Journal
IX. MASS TORTS UPDATE

AN UPDATE ON VIOXX SETTLEMENT

As was reported previously, on November 9, 2007, Merck agreed to pay $4.85 billion dollars to settle the claims of persons who suffered a heart attack or stroke while taking the pain reliever, Vioxx. Individuals who suffered a heart attack or stroke while taking Vioxx and have a filed or tolled claim are eligible to participate in the Settlement Program. Those who have not previously filed a lawsuit or submitted their claim for tolling in the MDL court are not eligible to participate but are free to continue pursuing their claim through the court system. The reaction to the Settlement Program has been very positive. Lawyers and clients from around the country are already taking necessary steps to participate in the Program.

In conjunction with the settlement, the MDL court as well as the courts overseeing consolidated proceedings in New Jersey, California and Texas ordered that all claims relating to Vioxx be registered. The purpose of registration is to inform the courts and parties of the total number of Vioxx claims in the country. In order for an eligible claimant to participate in the Program, his or her claim must be registered. The deadline for registering Vioxx claims is January 15, 2008. Though the deadline has not yet been reached, over 17,000 individual claims have been registered. This bodes very well as lawyers anticipate enrolling their eligible clients into the program by the February 29, 2008 deadline. Meeting both of these deadlines is important to the overall success of the settlement. The current progress toward meeting these deadlines is encouraging.

Another positive development is that the BrownGreer firm has been appointed as the Claims Administrator for the Settlement Program. BrownGreer, which was started by Orran Brown and Lynn Greer in 2002, has achieved a nationwide reputation for fairness and efficiency as they have administered other mass tort settlements, including settlements related to the Diet Drugs, Sulzer, and Dalkon Shield litigations. As Claims Administrator, BrownGreer is receiving registrations and will ultimately evaluate each claim that is submitted to the Program. From the Plaintiffs’ perspective, a huge priority in the negotiating of the settlement was that each individual claim would be analyzed objectively and efficiently. BrownGreer has done a very good job of getting up and running quickly, and we anticipate they will do an excellent job in fulfilling their responsibilities in the future. For further information about the Settlement Program, visit www.officialvioxxsettlement.com.

FDA ADMITS IT CANNOT DO ITS JOB

A year ago, Dr. Andrew von Eschenbach, an U.S. Food and Drug Administration (FDA) Commissioner, requested that the Science Board, which is the Advisory Board to the Commission, form a subcommittee to assess whether science and technology at the agency can support current and future regulatory needs. It has become quite apparent that the FDA has failed to do the job required of the agency in an adequate manner. This special committee recently released its report, and we have summarized some of its major findings:

• The FDA cannot fulfill its mission because its scientific workforce does not have sufficient capacity and capability.
• The lack of a trained workforce means that the FDA is ineffective in fulfilling its mission.
• The FDA cannot fulfill its mission because its information technology infrastructure is inadequate.
• Reports of product dangers are not rapidly compared and analyzed, as inspectors’ reports are still handwritten and slow to work their way through the system.
• There are inadequate emergency backup systems in place, which has resulted in the loss of FDA data in the past.

At a time when the Bush Administration and big Pharma are pushing jointly for total immunity from lawsuits for drugs or products that are FDA approved, these findings by the FDA proves that the crises warned about in previous FDA reports have now become realities. As a result, American lives are at risk.

Those Americans who were at risk and became victims are typical of the folks that our firm represents in lawsuits. Each of the victims has a constitutional right to go to court when he or she is harmed or injured by a product or drug. It’s a fundamental truth that
none of them should have the courthouse door shut in their face by George Bush or by big Pharma. The argument that approval of a product or drug by the FDA, which admittedly cannot perform its job adequately, should immunize those products from scrutiny by a jury, has clearly been refuted by the very organization big Pharma attempts to hide behind. Once the American people became aware of what the Bush White House and big Pharma are trying to do to them, I believe you will see a public outcry against preemption and against a shutting down of the American jury system.

Source: FDA.gov

**ONLY DRUGS THAT ARE SAFE SHOULD BE PUT ON THE MARKET**

Drug developers are just beginning to come to grips with recent FDA oversight reforms and how they will affect drug safety. But, it appears that industry and consumer advocates are not together on how well the overhaul will be able to prevent future drug safety scandals. In fact, there is sharp disagreement. Signed by President George Bush in September, the measures give the Food and Drug Administration more authority over and responsibility for the safety of prescription drugs after they hit the market. Although follow-up historically fell under the agency’s purview, as a practical matter the FDA focused on monitoring drug development and reviewing treatments for approval. But safety scares in recent years, such as the Vioxx saga, sparked closer scrutiny of both drug makers and the FDA, along with big changes.

Despite a development process before FDA approval, which at best has proved to be seriously flawed, a drug’s side effects can go unnoticed or be deemed insignificant in small clinical populations. But once a drug hits the general market and is consumed by millions of persons, fatal risks become apparent. The FDA—simply put—is too dependent on the drug industry and that became most evident in recent years.

Drug makers and the FDA have been criticized for acting too slowly to add warnings to drug labels or recall medicines in the wake of serious safety findings. Calls for reform go back to diet pill Fen-Phen’s removal from the market in 1997, but intensified after Merck & Co. recalled Vioxx because the drug’s use doubled patients’ heart-attack risk. When Merck agreed to pay $4.85 billion to settle Vioxx lawsuits, that told the story of how ineffective the FDA has been. British drug maker GlaxoSmithKline is adding safety warnings to its diabetes drug Avandia because it raises cardiac risks.

The bill calls for a broader range of safety-tracking resources, allowing drug makers and regulators to cull information from hospitals, physician groups, and health insurers as well as the Centers for Disease Control. It projects the creation of a data pool of 25 million patients by 2010 and 100 million patients by 2012 for drugs on the market. While that sounds great, the logistics are still under development. How well this will work in the real world is subject to debate.

I believe it will take more than a database to effect fundamental change in drug safety. As long as the FDA is weak and ineffective, I don’t see how a data ase is going to greatly improve drug safety. Dr. Sydney Wolfe, director of the health research group at consumer and public advocacy organization Public Citizen, observed: “It isn’t just a matter of funding, it’s a matter of decision making. Ultimately, something structurally has to be done.” Until such time as the FDA is made capable of making decisions that are not either dictated or influenced by the drug industry, the newly passed reforms will not get the job done.

Source: Associated Press

**ANOTHER REVELATION ON AVANDIA RISKS**

It’s been said that nearly 21 million people in the United States have diabetes. As we have reported, Rosiglitazone, as Avandia is also called, is widely used in people with Type II, or adult onset diabetes, the most common form of the disease. Just last month, Avandia got a new warning label telling patients that it may, or may not, increase the risk of heart attacks. The FDA is waiting for more research to clear up the alleged controversy dealing with whether the drug increases the risk of heart attacks or not. The recently released news that came out relating another adverse event associated with this medication may be quite telling.

This new research raised the possibility that long-term treatment with Avandia could lead to osteoporosis. Researchers found that in mice, Avandia increased the activity of cells that degrade bones. The results of this study were released in the online issue of Nature Medicine. An earlier study found a higher risk of fractures among women who take the drug. This report is the first to attempt, however, to explain the link between the drug and fractures.

Sales of the pill, GlaxoSmithKline’s second best seller, were already expected to be down by more than $1 billion dollars this year because of the previous announcement of drug’s higher risk of heart attack.

No less than seven GlaxoSmithKline medicines have run into regulatory difficulties or delays this year. The research involving Avandia was funded by the Howard Hughes Medical Institute and the National Institute of Health. Could this new development signal the end of the road for Avandia? In any event, this recent report is the first to attempt to explain the link between the drug and fractures. This study can’t be viewed as good news for the manufacturer of Avandia.

Source: Houston Chronicle
THE BEXTRA/CELEBREX MDL JUDGE HAS SET THE FIRST BEXTRA TRIAL

On the heels of the $4.85 Billion Vioxx settlement, the Multi-District Litigation (MDL) Court for the Bextra/Celebrex litigation has set the first Bextra trial for May 5, 2008. Pfizer is the company that manufactures both Bextra and Celebrex. Bextra, a Cox-2 inhibitor, was not as widely prescribed as Vioxx and Celebrex, which are in the same class of drugs. This is because Bextra was a second generation Cox-2 inhibitor and was not put on the market until 2002. Celebrex and Vioxx went on the market in 1999. Nonetheless, Bextra was prescribed to millions of patients, and in 2004 exceeded $1.2 billion in prescription sales.

Similar to the manufacturers of Vioxx, Pfizer had early signs that Bextra data showed a potential increase in cardiovascular risks associated with Bextra. Specifically, a Coronary Artery Bypass Graft surgery study (CABG 1) in July, 2000 showed an increased cardiovascular signal with Bextra in high risk patients. A Pfizer clinician even commented on the “Vioxx-like” safety profile of Bextra when compared to Vioxx. After other studies indicated similar risk, the CABG 2 study completed in January 2004 echoed the CABG 1 study, by showing a significant increased risk of heart attacks and strokes linked to Bextra. Only months after Merck removed Vioxx from the market, on September 30, 2004, the Food and Drug Administration (FDA) requested that Pfizer remove Bextra from the market because of the increased risk of heart attacks and stroke, among other risks.

The Bextra/Celebrex MDL court, located in San Francisco, California, has ordered limited discovery to be taken in a group of 45 Bextra and Celebrex MDL cases. From this group of cases, the presiding MDL judge has recently announced that he wanted the parties to have several Bextra cases ready for trial on May 5, 2008. The court only plans to try one case at a time, but wants several Bextra cases ready in the event that any case set first is resolved before the first trial date. The MDL court’s commitment to allow these cases to go to trial will help determine the value and ultimate resolution of these cases. Navan Ward and Frank Woodson from our firm are involved in this litigation.

DENNIS QUAIID FILES A LAWSUIT THAT WILL GET ATTENTION

Dennis Quaid, who has always been one of my favorite movie actors, has filed a lawsuit against Baxter International Inc. This lawsuit has received a great deal of attention and likely will put the company under more intense scrutiny because of Quaid’s family being involved. The suit involves Quaid’s newborn twins, who were given an overdose of the Baxter-manufactured blood thinner heparin at Cedars-Sinai Medical Center in Los Angeles, and who suffered injury as a result. The suit alleges that Baxter, a maker of drugs and medication-delivery devices, was negligent because the company’s packaging design for heparin contributed to the hospital mix-up in the dosage given to the twins. Baxter produces vials of two different strengths, each with a blue background. One strength has a concentration of 10 units of heparin per milliliter, and the other has a concentration of 10,000 units per milliliter. The staff personnel at Cedars-Sinai made a “medical error” and administered the product that is 1,000 times as strong, according to allegations made in the suit.

The suit contends that Baxter was negligent because it knew that three infants died last year from similar heparin overdose related to packaging confusion, but had failed to recall the product. Baxter also failed to repack-age the drug or to issue an urgent warning to hospitals that had purchased the product. The fact that Dennis Quaid, who starred in such films as “The Right Stuff” and “Breaking Away,” filed the suit makes this more than just an ordinary case against the pharmaceutical industry.

All too often lawsuits are filed involving serious injury or deaths caused by a defective drug or product and the public never hears about it. That won’t be the case here. Baxter has acknowledged that labeling is a potential issue. At a recent industry meeting in Las Vegas, Baxter highlighted a change in packaging that “provides additional safeguards” to help clinicians correctly identify critical medications. The drug manufacturer said heparin is the first medication offered with the enhanced label. Interestingly, Baxter says the announcement at the conference that took place ahead of the suit was just “a coincidence,” and that the company launched such safeguards earlier this fall.

Quaid, his wife, Kimberly; and twins Zoe Grace and Thomas Boone, are plaintiffs in the suit. The twins have recovered and the family’s goal is not to receive compensation, according to a Chicago lawyer, who is representing the family. She states that the Quaids are not seeking any money or damages but instead simply want to raise the awareness of medication errors in general. It appears Baxter will attempt to shift blame in the Quaid case to the hospital. A spokesperson said the lawsuit was “about improper use of a product” and that the hospital, Cedars-Sinai, acknowledged it “was a preventable error, involving a failure to follow the hospital’s standard policies and procedures.” It will be interesting to see how this case develop because the plaintiffs obviously don’t need the money and are willing to take their case to trial.

Source: Los Angeles Times

ANEMIA DRUGS SHOW HIGHER LEUKEMIA RISK

A recent report indicates that the anemia drugs manufactured by Amgen Inc. and Johnson & Johnson may raise the risk that patients with a bone
Aranesp, with $4.12 billion in sales in the quarter. Aranesp is Amgen's biggest seller of Aranesp to drop 36% in the third quarter versus regulators about the risks caused U.S. researchers used in high doses. Warnings from U.S. heart attack, stroke, and death when used in high doses. Past studies linked anemia drugs to heart attack, stroke, and death when used in high doses. Warnings from U.S. health authorities about the risks caused by U.S. researchers used in high doses. Warnings from U.S. Heart Attack, Stroke, and Death When Used in High Doses: A Link to Leukemia

Mayo Clinic researchers reviewed records of 311 patients with primary myelofibrosis, a scarring of the bone marrow, from 1976 to 2006. Amgen’s Aranesp and Epogen and Johnson & Johnson’s Procrit were linked to leukemia among 27 patients that developed the disease, according to research presented recently at the American Society of Hematology meeting in Atlanta.

Past studies linked anemia drugs to heart attack, stroke, and death when used in high doses. Warnings from U.S. regulators about the risks caused by U.S. researchers used in high doses. Warnings from U.S. Heart Attack, Stroke, and Death When Used in High Doses: A Link to Leukemia

The study also found a higher risk of leukemia among patients who took danazol, a modified form of testosterone. Risk was also higher for patients with a high count of immature leukemia cells, and a low number of platelet cells in the blood. Patients who took other treatments, such as thalidomide and interferon-alpha, had no higher risk, according to the research.

In March, the U.S. Food and Drug Administration (FDA) warned doctors to use the lowest doses possible after studies showed the anemia medicines raised the risk of heart attack, stroke, and death at high doses. The Center for Medicare and Medicaid Services followed that action in July, saying it would only pay for the drugs at doses up to 10 grams a month, lower than the FDA-approved dose of 12. Amgen suffered another setback recently when a study showed more breast cancer patients who took Aranesp died or had growing tumors, compared with those not receiving the drug. The study, known as Prepare, enrolled 733 breast cancer patients before they had surgery to remove tumors. All the patients received chemotherapy. Of those who took Aranesp, 50 out of 356 died, compared with 37 out of 377 patients who didn’t take the anemia drug, the company said. The FDA has asked the company to discuss the risks before an expert panel of advisors by the end of March, which will be the third such public hearing in the last 12 months.

Source: Bloomberg

X. BUSINESS LITIGATION

ASTRAZENECA FILES CRESTOR PATENT SUITS

AstraZeneca PLC has filed patent infringement lawsuits against seven drug makers that have sought permission to market generic versions of Crestor, the company’s blockbuster cholesterol-lowering treatment. The lawsuits were filed in U.S. District Court in Delaware against Cobalt Corp. of Milwaukee, Aurobindo Pharma USA Inc. of Dayton, New Jersey; Canada’s Apotex Inc.; Par Pharmaceutical Companies Inc. of Woodcliff Lake, New Jersey; Germany’s Sandoz International GmbH; Mylan Pharmaceuticals Inc. of Morgantown, West Virginia; and Sun Pharmaceutical Corp. of Dover, Delaware.

As has been reported, Crestor was AstraZeneca’s third-best-selling drug in 2006 with sales of $2 billion. The drug has begun competing with generic versions of Merck & Co. Inc.’s cholesterol blockbuster Zocor, which lost patent protection last year. As a matter of significance, AstraZeneca is just one of several branded pharmaceutical companies struggling with expirations of key drug patents and subsequent competition from cheaper, generic drugs. In addition, the company has faced the loss of late-stage drug candidates in recent years.

Source: Reuters

BIOVAIL SETTLES U.S. SHAREHOLDER SUIT

Biovail Corp., which is Canada’s biggest publicly traded drug maker, has reached a settlement of a U.S. shareholder class action lawsuit that has been going on for more than four years. The total settlement was $138 million, of which about $53 million will come from insurance claims. The proposed settlement covers all persons or entities that bought Biovail’s common shares between February 7, 2003 and March 2, 2004. The case centered on claims Biovail made regarding its two key products, Cardizem LA and Wellbutrin XL. The shareholder settlement is subject to approval by the U.S. District Court for the Southern District of New York.

The company still faces a number of other class action suits. This is the latest lawsuit Biovail has settled in recent months. In September, it settled with a former Banc of America Securities analyst, saying it would drop him from a racketeering case filed in New Jersey state court last year. It also settled with Banc of America Securities itself regarding related legal matters. These are all cases involving claims that the defendants conspired.

Still, it vowed to pursue in court others it has accused of conspiring to drive down the company’s share price. Those defendants include hedge funds, analysts and investment and brokerage firms. In December, Biovail struck a deal with Watson Pharmaceuticals Inc. that will delay a generic version of Biovail’s Cardizem LA heart drug from hitting the market until April 2009. The deal also ended patent litigation in U.S. courts. Biovail still faces an inquiry from the U.S. Securities and Exchange Commission related to its accounting.

Source: Forbes

CLASS ACTION SETTLEMENT AGAINST SPRINT NEXTEL IS APPROVED

A state court judge in Kansas has approved a $57.5 million settlement that resolves a class-action lawsuit against Sprint Nextel Corp. over the recombination of its tracking stocks in 2004. The settlement was found by the

Source: Forbes

Source: Bloomberg

Source: Reuters

Source: Forbes

Source: Bloomberg

Source: Forbes

Source: Bloomberg
court to be fair, adequate, and reasonable. It was also found that the notice to affected shareholders was “the best practicable notice.” The court had given preliminary approval to the settlement in September, but this final ruling now allows the payment process to get under way.

The settlement resolves claims that Sprint management manipulated its FON wireline business at the expense of its PCS wireless venture, and undervalued PCS shares when the stocks were recombined in April 2004. PCS shareholders received a half-share of FON stock for each PCS share. Sprint divided its stock in 1998, with shares trading under the “FON” ticker symbol reflecting its local and long-distance business, and shares trading under “PCS” reflecting its wireless business. At the time, the wireless unit was in start-up mode and the wireline unit was the company’s big cash producer.

The plaintiffs, individual and institutional PCS shareholders, alleged that management artificially depressed the value of PCS by having FON lend it money at an unduly high rate, by failing to properly account for $700 million in tax credits when valuing PCS to determine the conversion ratio when the stocks were recombined, and by using defective or dated information when it calculated the ratio. Terms of the all-cash settlement call for Sprint to pay $10 million and its insurance carrier to pay $47.5 million. At press time, 320,000 shareholders or shareholder nominees had received notices from the claims administrator.

**Federal Judge Combines Investor Lawsuits Against Countrywide**

A federal judge has consolidated several investor lawsuits filed against embattled mortgage lender Countrywide Financial Corp. U.S. District Judge Mariana R. Pfaelzer combined claims in five separate complaints and appointed New York’s Common Retirement Fund and the New York City Pension Fund as lead plaintiffs in the case. In her ruling, Judge Pfaelzer also elected to keep a sixth investor lawsuit separate.

The lawsuits generally claim Countrywide’s management failed to provide a complete picture of the company’s condition and the risks it faced from rising home loan defaults. The investors claim they suffered heavy losses as Countrywide’s troubles sent its stock price into a nose-dive. The company’s stock is off about 76% from its 52-week high of $45.26. It was trading around $10 a share recently. The company had a loss of $1.2 billion in the third quarter.

Source: SFgates.com

**Mortgage Fee Lawsuit in Maryland Reinstated**

A ruling from the Maryland Court of Appeals, the state’s highest court, over prepayment mortgage charges appears to be a good one for consumers. The appeals court found that state-chartered Provident Bank assessed a “prepayment charge” that’s not allowed under state law. The bank had waived $680 in closing costs on a $17,000 loan to Andrew Bednar in 2003, but collected the money after the loan was paid off early when he refinanced with another lender two years later. The ruling overturns a decision by a Baltimore circuit court judge dismissing the lawsuit against Provident.

The ruling in this class action lawsuit against Provident is seen as a victory for borrowers and a validation of some of the state’s most stringent consumer protection laws. The intent of those laws is to prevent lenders from penalizing borrowers for paying off their debts early. It was reported that dozens of Maryland banks offer loans under which they “recapture” waived closing costs if the loans are repaid within a certain period. Banks argue that to make the no-closing cost deal economically feasible, they need to be able to collect interest for a minimum amount of time.

The appellate court said in its opinion that the charge was “plainly” an illegal prepayment charge because it was contingent on the loan being paid off early. The court also asserted its prerogative to interpret the law, despite any interpretation by the commissioner of financial regulation in Maryland. The court remanded the case to the circuit court. Provident could be ordered to pay as much as three times the costs wrongly assessed to the borrowers and possibly the interest charged.

Source: Sun Reporter

**Judgment Against eBay Is Finally Approved**

A federal judge in California has approved the $30 Million judgment against eBay Inc. The judgment results from a jury verdict, which was returned more than 4 years ago. In 2003 a jury had found that the online auctioneer had infringed on the patent of MercExchange LLC, a small company located in Great Falls, Virginia. The judge finally certified the judgment in the case, and frankly I have no idea why it took so long. The dispute involved eBay’s “Buy It Now” option, which sells merchandise at a fixed price rather than taking fluctuating bids. The Virginia-based company claimed that the system tramples on its patented technology. eBay says it will appeal, so there will be a further delay in anything being paid on the jury verdict.

Source: Associated Press

**U.S. Judge Approves $3.2 Billion In Tyco Settlements**

A federal judge has approved settlements worth $3.2 billion for investors who sued Tyco International Ltd following an accounting scandal that led to the imprisonment of ex-chief Dennis Kozlowski. U.S. District Judge Paul Barbadoro wrote in the ruling that “settlement is fair, reasonable and adequate.”
XI.
INSURANCE AND FINANCE UPDATE

MORE ON THE “DEAD PEASANT’ INSURANCE SAGA

We have written on a practice existing in Corporate America known as “dead peasant” insurance. This is the label put on a practice where an employee takes out life insurance policies on their employees without approval of the employees. In fact, neither the employees nor their families even know about the practice. Wal-Mart is now asking a federal judge to dismiss a lawsuit brought by a Tampa man who accuses the company of benefiting from life insurance policies it took out on his late wife and thousands of other rank-and-file employees. The court will decide whether to dismiss the suit by Richard Armatrout, whose lawyer wants to make the case a class action on behalf of survivors of all Florida Wal-Mart employees who died while insured under the policies.

Armatrout was one of about 350,000 employees Wal-Mart secretly insured nationwide. It’s estimated Wal-Mart collected on 75 to 100 policies involving Florida employees who died. The policy payouts ranged from $50,000 to $80,000, depending on the person’s age and gender. These policies were taken out on all full-time Wal-Mart employees who in December 1993 were ages 18 to 70 and participated in the medical benefits plan. Karen Armatrout, who was 50 when she died of cancer, had worked several years in the pharmacy of a Wal-Mart store in Tampa. Wal-Mart is said to have collected $73,200 on the Armatrout policy.

At press time, Wal-Mart was trying to get the lawsuit dismissed on technical grounds. I don’t believe that approach will be successful. Wal-Mart settled two similar lawsuits with employees in Texas and Oklahoma—one for about $10 million, and the other for about $5 million. Wal-Mart says it stopped taking out these policies in 1995. However, the giant retailer continued to receive payouts on employees who died, even those who had left their employment at Wal-Mart. Michael Myers, a Texas lawyer, is representing Mr. Armatrout in this case. He has handled other cases, including those mentioned above, dealing with the “dead peasant insurance.”

Source: Tampa Tribune

RULING ON RESCISSIONS IS BLOW TO INSURERS

In recent issues, we have reported on the growing problem of insurance companies dropping policyholders at inappropriate times. In a significant victory for consumers, a state appeals court in California opened the way for class action lawsuits against insurers that may have improperly dropped individuals for alleged errors and omissions on applications after medical claims had been submitted. The California court, in a case involving Blue Shield of California Life & Health Insurance Co., called into question the practice of health insurers waiting until individual policyholders incurred medical expenses before scrutinizing individual policies for misstatements and then canceling coverage for omissions and errors that were discovered. In a unanimous decision, the three-judge panel said that the practice of looking back at applications after medical claims are submitted, known as post-claims underwriting, “is flatly prohibited.’That is good news for policyholders.

Source: Los Angeles Times

ALLIANZ AGENT THEFT CASE SETTLED IN ARKANSAS

A settlement has been reached involving theft by an insurance agent employed by Allianz Life Insurance Company of North America. The sum of $435,298.25 will be paid by Allianz to Reba Irons of Fort Smith, Arkansas. The insurance company settled the case involving one of its insurance agents who sold annuities for the company. The agent was sentenced in August to twenty years in prison for his role in the theft, with ten years suspended. The agent had pleaded guilty to five counts of Theft of Property and was ordered to pay more than $138,000 in restitution to Ms. Irons, from whom he took money for investment in his personal business ventures. The Arkansas Insurance Department revoked Middleton’s license in November 2006.

Source: Insurance Journal

LOUISIANA COURT SAYS INSURER ACTED IN BAD FAITH

A New Orleans home owner whose home was destroyed during Hurricane Katrina has won an appeal against the home owner’s insurance company that denied his claim. By ruling against Lafayette Insurance Company, the Louisiana Court of Appeals for the Fourth Circuit has given new hope to the thousands of Katrina victims who say their insurance companies acted in bad faith when they denied claims.

Source: Insurance Journal

STATE ACCUSES BLUE SHIELD OF ILLEGAL CANCELLATIONS

In a related matter, California’s top insurance regulator has accused Blue Shield, one of the state’s largest health plans, of 1,262 violations of claims-handling laws and regulations that resulted in more than 200 people losing their medical coverage. Calling the allegations “serious violations that completely undermine the public’s trust in our healthcare delivery system and are potentially devastating to patients,” Insurance Commissioner Steve Poizner said he would seek a $12.6 million fine. The enforcement action is based on an investigation of Blue Shield of California Life & Health, which covers about 167,000 people in individual and group policies licensed by the Department of Insurance.

Source: Los Angeles Times

BeasleyAllen.com
Lafayette had appealed an earlier state court decision that said the insurance company had to pay for damage to an apartment building owned by an Orleans Parish man that was caused by flooding brought on by levy failure following Hurricane Katrina. In addition to being a source of income, the building also served as the man’s home. Lafayette paid the policyholder about $2,700.00 for wind damage, but he estimates his home sustained a total of $223,488.00 in damage that should be covered. Lafayette maintained that because the additional damage was caused by flooding, it did not have to cover the loss.

In March, a jury awarded the policyholder $369,077.00 for property damage and lost rent, plus $184,538.00 in penalties. The judge presiding over the case also ordered Lafayette to pay $258,728.00 in attorney fees. Lafayette appealed the ruling to the Fourth Circuit. The appeals court agreed with the original ruling that Lafayette Insurance Co.’s policy failed to exclude all forms of flooding because its language was ambiguous. Because of that, the court ruled that Lafayette is required to pay for flooding from the destroyed levees. In the majority opinion, the court wrote that “Lafayette failed to specifically exclude all floods because of the ambiguity contained within the water exclusion.” The Louisiana appeals court’s ruling contradicts one made by the US 5th Circuit, which found that insurance companies did not have to cover damage caused by failed levees. Lafayette is expected to appeal to the Louisiana State Supreme Court.

Thousands of homes were reduced to rubble by wind and the massive storm surge created by Hurricane Katrina in 2005. Many Gulf Coast homeowners have accused their insurance companies of using bad faith tactics to try to avoid paying claims. Some insurance companies initially made offers to settle Hurricane Katrina claims for only pennies on the dollar, resulting in thousands of lawsuits along the Gulf Coast. Hurricane Katrina caused more than $80 billion in damage along the Gulf Coast, making it the single most expensive natural disaster in US history. The tactics used by insurance companies have also led to more insurance lawsuits than any other disaster.

**ALLSTATE REFUSES TO ABIDE BY COURT ORDER**

In an arrogant and defiant move, Allstate Insurance Co. has made it clear that it won’t produce key records for public view no matter how much a judge fines the company. Judge Michael Manners has already fined the company $25,000 a day since mid September—a total of $2.4 million and growing. In November, the Missouri Supreme Court ordered the documents produced. At issue are the so-called McKinsey documents that we have written about in previous issues. These documents show how Allstate set up a claims payment system in the 1990s that shortchanges policyholders while earning huge profits.

Allstate contends the 12,500 pages prepared by consultant McKinsey & Co. are trade secrets used to create company policies, methods and claims procedures. I am not sure where this dispute is headed. Judge Manners has had hearings and a trial date was set for a date in July. We will keep you posted on future developments.

**VICTIMS RECEIVING FUNDS FROM AMERIQUEST SETTLEMENT**

About $23 million from a class-action settlement of predatory-lending claims against Ameriquest Mortgage Co. is being distributed among 21,500 residents of New Jersey and Pennsylvania. Ameriquest was the largest supplier of subprime loans to the Philadelphia region in 2005. Checks were sent out in December. The money is part of a multi-state $325 million lending settlement that was reached in January 2006 and that resolved allegations that Ameriquest employees deceived consumers and used high-pressure sales tactics to boost commissions. Pennsylvania Attorney General Tom Corbett said in a news release relating to the settlement:

> Many of the consumers involved in this case had modest incomes or poor credit, and were forced to
A top research and advisory company, Gartner Inc., an information technology research and advisory company, conducted a survey in 2005. The survey revealed that attacks were more successful in 2007 than they were in the previous year. The survey results showed that phishing attacks were more prevalent, with 3.6 million adults losing money in phishing attacks in the 12 months ending in August 2007, compared with 2.3 million in 2006. The survey also revealed that phishing attacks were more successful in 2007, with 3.6 million adults losing money compared with 2.3 million in 2006.

A recent survey revealed that attacks were more successful in 2007 than they were in the previous two years. Of consumers who received phishing e-mails in 2007, 3.3% say they lost money because of the attack, compared with 2.3% who lost money in 2006, and 2.9% who did so in 2005. The survey was conducted by Gartner Inc., an information technology research and advisory company.

I encourage all of our readers to get this report and then read it carefully. If you don’t have access to a source, let us know and we will assist you in getting a copy of the report.

Source: Insurance Journal

XIII. PREMISES LIABILITY UPDATE

THRILL RIDES SHOULD BE MADE SAFE

A tragedy that occurred in December 2005 has again put in sharp focus the issue of safety relating to so-called thrill rides. In that horrific occurrence, 9—year-old Fatima Cervantes and her 8-year-old brother boarded a Sizzler ride at a carnival in Austin, Texas, thrilled to climb into one of the candy-colored cars on rotating arms. But shortly after their blue car started whirling, Fatima slipped beneath the lap bar and was thrown onto the platform, where a metal arm crushed her head.

Since 1997, Sizzlers have been involved in at least four other deaths and dozens of injuries in the United States. Noting similarities in several accidents, a group of 25 state inspection chiefs requested in June that the ride’s manufacturer, Wisdom Industries, take immediate measures to prevent “an unacceptable level of ejection risk.” Wisdom’s owner did not immediately respond, but after a 6-year-old boy in Kentucky was thrown from a Sizzler and struck in the head by whirling equipment in late July, the company recommended to operators that seat belts be added to the rides. But it failed to require that modification. As a result, it’s not certain how many of the 200 or so Sizzler rides in the United States now include the belts.

The Consumer Product Safety Commission (CPSC), the federal agency responsible for regulating traveling carnival rides, hasn’t required Wisdom or any other ride manufacturer to make safety improvements in the past eight years. After a meeting last year on the Sizzler’s troubled safety record, the agency asked only that ride operators pay “greater attention to safety.” Most parents would be shocked to learn that the CPSC has no employee whose full-time job is to ensure the safety of such rides. The agency’s 90 field investigators—who oversee 15,000 products, work from their homes, and live mostly on the East Coast. These inspectors are so overextended that they usually arrive at carnival accident scenes after rides have been dismantled. It should be noted that supermarket shopping carts feature a more standardized child-restraint system than do amusement rides, which can travel as fast as 100 mph. According to federal estimates, thrill rides cause an average of four deaths and thousands of injuries every year. Most folks are shocked to learn that there is little—if any—regulation of these fixed-site amusement park rides.

I believe that folks who go to those parks believe that the rides are inspected and monitored for safety. Although the CPSC regulates children’s toys, strollers, bicycles and car seats, it has no jurisdiction over rides at fixed amusement parks, such as those run by Walt Disney Co., Six Flags, Universal and Anheuser-Busch Entertainment that host an estimated 300 million people on 1.84 billion rides annually. Theme parks currently are exempt from any regulation by the federal government. Theme parks won their exemption in 1981, after a CPSC probe of ride accidents at Marriott theme parks found a coverup of safety hazards. Marriott, represented by Kenneth W. Starr, and the industry as a whole, fought back in the courts and on Capital Hill. The industry’s top lobbyist complained in Washington about the “economic hardship” created by CPSC policing. The exemption was slipped into an omnibus agriculture bill that year.

Oversight and regulation of theme parks should be regulated by state agencies, but that hasn’t happened. Family activists and state regulators say that as
a result, efforts to find and correct safety problems have been inhibited, the number and extent of ride injuries remains uncertain, and families have been prevented from assessing the risks posed by roller coasters and Ferris wheels, wave pools and spinning rides. The Council for Amusement and Recreational Equipment Safety (CARES), a voluntary organization of state regulators, has tried to get some safety regulation going. Alabama, Mississippi, Montana, Utah and Wyoming do not monitor their amusement parks, even though Utah’s Lagoon park is one of the nation’s largest privately held theme parks. Arizona, Kansas and Tennessee don’t require state inspections or accident investigations.

Source: Washington Post

**Lawsuit Against Six Flags**

Just how dangerous thrill rides can be is illustrated by what happened to a 13-year-old Louisville girl who was injured in a ride at Six Flags Kentucky Kingdom in June. Her feet were completely severed when a cable broke on the Superman Tower of Power—which lifted passengers 177 feet, then dropped them at speeds of more than 50 mph. The girl’s family filed a civil suit against the theme park in July. The family sued Kentucky Kingdom contending that it failed to maintain the ride and ensure riders’ safety. The suit also sought a temporary injunction to stop the park from altering or destroying the ride or the cable. Surgeons at Vanderbilt University Medical Center in Tennessee were able to reattach the victims right foot, but her left leg was amputated below her knee.

Source: The Courier-Journal

**Jury Returns Verdict Against Walgreens For False Arrest**

There are lots of companies selling at retail in this country that hire private security guards. Many of these “guards” have no formal training or experience of any kind in police work. In a recent case, a Los Angeles jury awarded $2.1 million recently to a woman in a false arrest lawsuit involving employers performing security work. The woman claimed she was called “hot,” leered at sexually, and falsely arrested by two security guards employed by Walgreens. According to the lawsuit, Alicia Benham and her friend, Daniel Newman, tried to return nine bottles of a diet drink to a Walgreens store on April 17, 2004. Two security guards accused them of theft and “terrorized them” by holding them in separate rooms without windows. Mr. Newman reached a confidential settlement before the trial began in Los Angeles Superior Court. The verdict for Ms. Benham was against Walgreens, S&J Security Investigation Inc., and one of the security guards. The other security guard involved in the incident could never be located and was not involved in the trial.

Ms. Benham testified at trial that she was told by one of the security guards “how hot she looked” and that she “could work this out if she wanted to get her friend released.” The woman says she was scared and believed she was going to be “sexually assaulted.” The security guards demanded private information about Ms. Benham, including her phone number. Testimony was that she tried to call for help when the security guards left the room. She had to reassemble her cell phone that had been smashed against a wall by a guard. After she called police, the guards told her she would be going to jail. The guards made a citizen’s arrest and told police Ms. Benham shoplifted the drinks.

One of the guards told a police officer that had Ms. Benham simply given him her phone number, he would have let her go. It’s significant that one of the security guards had been arrested multiple times, including one arrest in 1997 for assault and another in 2003 for loitering with intent to commit prostitution. In 2003, this character was convicted of a felony possession of cocaine, possession of marijuana for sale, and carrying a loaded firearm. Walgreens had a duty to investigate the background of all persons hired as security guards. Obviously, it failed to do an adequate check in this case. This verdict should be a warning to any company that hires security personnel: “bad folks” can’t be given jobs as security officers and turned loose on the public.

Source: Mercury News

**Parents Awarded $1.5 Million In Hazing Lawsuit Against Fraternity**

The parents of a fraternity pledge who died after 12 days of hazing and torture were awarded $1.5 million in a wrongful death suit against one of the tormentors. According to media reports, John Burnius was ordered by a court to pay a total of $1.5 million to the family of Walter Dean Jennings III. The verdict consisted of $400,000 in compensatory damages, $100,000 for wrongful death, and $1 million in punitive damages. The Jennings family filed suit in 2004 against defendant Burnius and 13 other members of the Psi Epsilon Chi fraternity at the State University of New York at Plattsburgh. All defendants, with the exception of Burnius, settled out of court.

Jennings was a freshman at Plattsburgh State when he died on March 12, 2003. He had been deprived of sleep for days, and was repeatedly forced to drink alcohol until he vomited. Jennings was made to consume drinks that contained urine and sit in a sweat box after he was forced to do calisthenics. The young man died of water intoxication after being forced to drink so much water that his brain swelled and he went into a coma.

At the time of the student’s death, the Psi Epsilon Chi fraternity had been banned from the campus because of alcohol-related incidents dating back to 1998. Eleven students, including Burnius, were charged with dozens of crimes related to hazing. They all even-
ually accepted plea agreements and were sentenced to probation and community service. This was a barbaric series of acts that resulted in a tragic death. It’s hard to believe that none of the defendants were sentenced to prison for what they did. Hopefully, this sort of thing is a rare exception to what goes on today on college campuses.

Source: NewsDay

**SCHOOL WILL PAY FAMILY TO SETTLE LAWSUIT**

Eastern Michigan University will pay $2.5 million to the family and estate of Laura Dickinson, a student who was killed in her dorm room a year ago. The 22-year-old was found dead in December of 2006, but university officials withheld details about her death from her family and the public for two months. A settlement of the claim was worked out before a lawsuit was filed. Ms. Dickin-son’s death and the university’s response to it spawned an investigation by the U.S. Department of Education. That led to the firing of then-university President John Fallon and the resignation of two other officials.

Source: Free Press

**LAWSUIT FILED IN DEADLY BRIDGE COLLAPSE**

The owner of a tugboat and seven other subcontractors are being sued in connection with the June 14th collapse of the Bay of St. Louis Bridge in Mississippi that left two people dead and seven others injured. The lawsuit, filed in federal court, follows a report by OSHA announcing proposed fines totaling $95,725 against four contractors. OSHA said the tragedy was “preventable” and gave the companies two weeks to appeal the fines. Seven survivors from Texas are suing Matthews Marine Inc., Pass Christian, Mississippi; D.T. Reed Steel Co. Inc., Chesapeake, Virginia; Gulf Concrete LLC, Ridgeland, Mississippi; engineering-services firms EFCO Corp., a Des Moines, Iowa, firm with a registered agent in Flowood, Mississippi; URS Corp., a San Francisco, California, firm with a registered agent in Flowood; HNTB Architecture Inc., a Kansas City, Missouri, firm with a registered agent in Flowood; Civil Tech Inc., Jackson, Mississippi and Burns Cooley Dennis Inc., also of Jackson.

The lawsuit alleges that a tugboat struck a support column, contributing to the collapse of formwork under the top span of the bridge, which was being rebuilt after it had been destroyed by Hurricane Katrina. The accident occurred about a month after the $266.8 million bridge opened for travel on two of four lanes. Alger Pennann of Jackson and Delfino Beltran of Mexico both died after they plunged nearly 50 feet into the Bay of St. Louis. The workers were filling a large cage of rebar with wet concrete when it slipped off the bridge.

The lawsuit alleges that the defendants were negligent in their hiring, training, and supervision practices, and negligently placed the workers at unnecessary risk. The lawsuit seeks an unspecified amount in damages and compensation for physical injuries and emotional trauma. The men represented in the lawsuit were employed by Granite Archer Western. They are not suing their employer, but do have pending claims under the Longshore Harborworkers Compensation Act. OSHA fined Granite Archer Western, a joint venture that acted as the lead contractor in the construction project. Also cited for two serious violations was engineering firm HNTB Corp. San Francisco-based URS Corp. was charged with one serious violation along with D.T. Reed Steel Co. from Chesapeake, Virginia.

Source: Associated Press

**BP SETTLES ANOTHER LAWSUIT**

BP has settled the trial that had been going on for several weeks. The trial involving the deadly 2005 explosion at BP’s Texas City refinery ended abruptly last month with a settlement. The plaintiffs hadn’t even finished presenting their evidence, and BP had yet to present a defense. It was obvious that things weren’t going well for the defendant in the trial.

In September, another jury, in the first trial to come up from the blast, was dismissed early when BP reached settlements with four other plaintiffs. BP has sought to settle lawsuits, and has spent about $1.6 billion resolving more than half of about 4,000 claims filed, including all involving deaths. The claims that remain involve injuries and property damage. The next trial is slated for May.

While the case was not the first to go to trial, it was the first to face a jury since BP agreed in October to plead guilty to a felony federal environmental crime, pay a $50 million fine, and serve three years on probation to settle a Justice Department probe into the blast. Plaintiffs were allowed to present the civil jury with evidence about the planned guilty plea. It was admitted by a BP official that BP’s criminal conduct was responsible for the 15 deaths in the explosion. Also damaging to BP was testimony that the company submitted an application for an air-quality permit in February 2003 that wrongly said the unit that exploded a month later had a flare to burn off excess vapors. Instead, that unit had a blowdown stack that spewed emissions into the air, and played a central role in the blast. The plaintiffs alleged that BP fudged the application to make the unit appear safer than it was. The Texas Commission on Environmental Quality issued that permit to BP in July 2005. The permit the unit operated under at the time of the blast was issued in 1990.

As we have written, the explosion happened when a tower in a unit that boosted octane in gasoline overfilled with flammable hydrocarbons, causing a vapor cloud to be released from a blow-down stack. The cloud ignited, most likely from a pickup truck running...
nearby. The 15 contract workers who died were in a trailer 121 feet away, too close to a processing unit under BP’s own policy. Many more people were hurt. BP is replacing the blowdown stacks with flares as part of a $1 billion overhaul to the plant. This sort of conduct by a corporate wrongdoer is the sort of thing President Bush and the tort reformers are trying to protect. The American people are beginning to realize this fact and the pendulum is starting to shift back toward consumers and workers.

Source: Houston Chronicle

**Nancy Baker Should Receive a Medal for Courage**

Nancy Baker, the mother of a happy and healthy child, never envisioned becoming a leading advocate for safer pools and spas. But, the tragic accident that killed her 7-year-old daughter Graeme in 2002 prompted her to act. As Ms. Baker says, “It helps me make some sense of something that makes no sense at all. It was an utterly preventable and senseless death.” This courageous lady’s personal story, coupled with her tireless campaign to make sure such a tragedy doesn’t happen to others, is one of the chief reasons why Congress should enact a federal pool and spa safety bill named for Graeme. The bill, which would direct the Consumer Product Safety Commission to set an anti-entrapment safety standard for pool and spa covers, was passed by unanimous vote in the House in October. It now awaits Senate action. The measure also encourages states, through financial incentives, to pass strong laws to require fences and anti-entrapment drain cover devices to reduce childhood drowning. Although the measure has strong bipartisan support, its fate is uncertain. Senator Tom Coburn (R-OK) has put a legislative hold on the measure, which is difficult to understand.

Graeme Baker, who had been swimming unassisted since she was three, drowned after becoming trapped underwater by hundreds of pounds of suction force from a hot-tub drain. The child had gone to the graduation party of a family friend with her mother and four sisters, including her twin Jackie. Soon after they arrived, one of Ms. Baker’s daughters ran toward her and screamed, “Mommy! Mommy! Graeme is in the hot tub.” Ms. Baker jumped in and tried to save Graeme. As she later testified in Congress: “It took two adults to pull her off this drain, the force so great that the cover of the drain cracked in half removing her.” The little girl died a horrible death and one that should never have happened.

Only days after Graeme’s death, Ms. Baker’s father-in-law, former Secretary of State James Baker, suggested that Nancy take action. He said at the time that the accident should never have happened to Graeme, nor should it happen to any child and he was right. Ms. Baker now reflects on what happened, saying:

> Every day you get up looking for a child that’s gone. You ask yourself, ‘How in the world could I have prevented this from happening?’ ‘What could have been different?’ I found out a lot could have been different. I was angry about it. I’m still angry about it.

After the tragedy, deep in grief, Nancy Baker soon started scanning the Internet to see if there were similar deaths. Slowly and sadly, she says, she began to “realize how many accidents had occurred—and how they were completely preventable.” And that’s when she began to make pool and hot tub entrapment a national issue. She personally visited House and Senate members, making her case, eventually joining up with the nonprofit safety group SafeKids to push for anti-drowning measures. As SafeKids notes on its Web site, drowning is the second most common accidental injury-related killer of children ages one to 14. Each year, there are about 260 drowning deaths of children younger than five in swimming pools. The numbers of entrapment deaths are far smaller: 33 children, 14 and younger, died from pool and spa entrapments between 1985 and 2004; another 100 were injured during the same time period.

Initially, Ms. Baker was told that the entrapment numbers were too low to merit Congressional or regulatory action. But this brave lady was undeterred, especially when she realized that there were relatively simple fixes available, including a safety vacuum release system that automatically shuts off the pump, releasing anyone who becomes entrapped. Fortunately Nancy Baker is translating her grief and anger into meaningful action. For that, SafeKids will name Nancy Baker as one of their safety crusaders. She will join the ranks of other parents who have lost children and are trying to make sure that their misfortune doesn’t become that of others. Nancy Baker had this to say:

> I dream of a day when children swimming in a pool without four-sided barrier fencing and with drain systems capable of pinning a child underwater would be just as unthinkable as children riding in a car without car seats.

I know that the powerful lobbying efforts against the bill are the reason there has not been final passage. All American citizens should join with Nancy Baker—SafeKids—and other safety groups and insist that the U.S. Senate pass this needed legislation.

**$6.1 Million Awarded in Stadium Fatality**

A jury in Massachusetts returned a verdict of $6.1 million in a case arising out of a highway crash. A bus carrying golf tournament spectators to Gillette Stadium was involved. The cause of the accident that badly injured several passengers in 2003, and killed a Cape Cod man was a 300-pound metal security gate that was left unsecured. The gate
appeal in this case.

The jury concluded that Foxboro Realty Associates, Apollo Security, and Standard Parking were at fault for failing to secure the gate that blew into a bus operated by the Peter Pan Arrow line. The security gate shattered the windshield and sliced through the passenger cabin of the moving bus, pinning several passengers in their seats, including the man who was killed.

Source: Boston Globe

XIV. WORKPLACE HAZARDS

JURY AWARDS $17.5 MILLION TO WELDER IN OHIO CASE

A federal jury awarded $17.5 million recently to a welder who sued five companies on claims that he got sick from inhaled fumes. This is only the second time in 18 such cases that worker has received a verdict. It’s the first victory since 2003 for welders, who say companies that made the welding products gave them little warning about the dangers of inhaling welding fumes. Welding companies had previously won 16 of the 17 such cases that have been tried. There will be an appeal in this case.

The jury in U.S. District Court in Cleveland found that the five companies were at fault by not warning the welder of the toxicity of manganese in their products. I believe this verdict can be justified. Manufacturers should properly warn welders and take the necessary step to protect them from the manganese hazards in welding fumes.”

Tamraz and other workers have contended that the fumes lead to tremors, headaches and symptoms similar to Parkinson’s disease. The ultra-fine manganese particles in welding fumes are absorbed in the blood, travel to the brain, and cause damage that results in tremors. The manufacturers have known this and have a duty to warn persons who have to work as welders in their employment.

Defendants in this case were Cleveland, Ohio-based Lincoln Electric Holdings Inc.; Troy-based Hobart Bros. Co.; TDY Industries Inc., part of Pittsburgh, Pennsylvania-based Allegheny Technologies Inc.; ESAB Group Inc., a Florence, South Carolina-based subsidiary of London’s Charter PLC.; and BOC Group PLC, which was acquired last year by Linde AG of Germany. The welding companies contend that the amount of manganese in welding fumes is too low to cause harm and that workers who use masks and fans have nothing to worry about. Medical studies attempting to determine whether there is such a cause-and-effect relationship have been mostly inconclusive.

More than 3,000 lawsuits have been consolidated in U.S. District Court in Cleveland. The 51-year-old plaintiff in this case worked as a welder and iron worker in San Francisco for 27 years. In addition to the $17.5 million awarded to the plaintiff, the jury also found that his wife was entitled to damages and set her compensation at $3 million.

Source: Associated Press

LAWSUIT FILED BY SURVIVOR OF FIRE AT ARACOMA MINE

Another survivor of the January 2006 fire that killed two workers at the Aracoma Alma No. 1 Mine has sued the mine’s owners for allegedly failing to maintain proper safety measures. Massey Energy Co., Massey Coal Services Inc. and Aracoma Coal Company Inc. were sued in state court. Two miners were killed when they got separated from their work crew after a fire broke out on a conveyor belt in the mine in January of 2006. Six other survivors of the Aracoma fire had filed suit earlier this year in the county where Massey Energy plans to build its regional headquarters. In addition, the families of the miners who were killed have filed a joint wrongful death lawsuit against Aracoma Coal, Massey Energy, A.T. Massey Coal Co., and the president of Massey Energy.

In March, the U.S. Mine Safety and Health Administration fined Massey $1.5 million for 25 major safety violations that agency inspectors said contributed to the fire. The fire started as sparks from the longwall mother belt, a conveyor belt used to transport coal out of the mine, ignited the coal dust that accumulated around the mother drive storage unit, the lawsuit alleges. It is contended that the mine’s owners failed in their duties to provide adequate safety measures to protect the miners. The smoke and toxic chemicals inhaled by the miner filing the latest suit caused long-term health issues, including an increased risk of asthma. In addition, he has been diagnosed with chronic post-traumatic stress disorder and cognitive disorders, the suit alleges. The Aracoma fire came just days after an explosion at International Coal Group’s Sago Mine trapped 13 miners underground.

Source: Charleston Gazette

CLASS ACTION NOTICES SENT TO WORKERS IN WAL-MART LAWSUIT

Letters were mailed last month notifying 75,000 current or former Wal-Mart workers in the state of Washington that they are plaintiffs in a statewide class action against the retail giant. The mailing is the latest development in the suit, which was filed nearly six years ago in a state court. Set for trial in the spring of 2009, the suit is the largest wage-and-hour class action ever certified in Washington state. Class counsel Beth Terrell, who is with the Seattle firm of Tousley Brain Stephens, says:

Source: BeasleyAllen.com
The workers will prove that Wal-Mart failed to pay workers for some of the time they worked and deprived them of legally required meal and rest breaks. Wal-Mart’s drive for profits has come at the expense of its low-wage employees.

She estimated that damages against Bentonville, Arkansas-based Wal-Mart Stores Inc. will total tens of millions of dollars in wages wrongly withheld from workers. In Washington, the company operates 46 Wal-Mart stores and three Sam’s Club stores, employing 12,000 to 15,000 workers. Any worker employed at a Wal-Mart or a Sam’s Club between September 10, 1997, and the present is automatically a member of the class, sharing in any benefits resulting from a verdict or settlement. Workers may opt out of the suit if they choose to do so. Many current employees may do so, fearing retaliation by Wal-Mart.

This suit involves what is known as “off-the-clock” working by Wal-Mart employees. The employees are pressured to get their work done and are not given overtime pay if they go past 40 hours per week. Wal-Mart has acknowledged in some cases giving one minute of compensation for an entire day’s work and otherwise manipulating workers’ time records. Similar class actions against Wal-Mart have been filed in more than 35 other states. Four have gone to trial and all have been resolved in favor of the plaintiffs. In California, plaintiffs received a judgment of about $167 million. A Pennsylvania suit resulted in a judgment of $151 million. At press time, a suit was being tried in Minnesota.

Source: Seattle PI

**Madison Square Garden Settles Harassment Case For $11.5 Million**

Madison Square Garden has settled the sexual harassment case filed by Anucha Browne Sanders in the New York Federal Court that had resulted in a jury verdict in her favor a few weeks back. Under the settlement, the Garden will pay the plaintiff $11.5 million. This is only $100,000 less than the punitive damages a jury awarded Ms. Browne Sanders in October. At the time of the settlement, she was in the process of seeking an additional $9.6 million in compensatory damages.

Ms. Browne Sanders, a former senior marketing executive for the New York Knicks, accused Coach Isaiah Thomas of verbally abusing her and of making unwanted advances. She was fired by the Garden and accused them of retaliation for making her accusations against the coach. This sort of conduct can’t be tolerated and in my opinion, the NBA should take action against Thomas, the team owners, and to the extent possible, the Garden. Sexual harassment is not acceptable in the workplace and that includes the NBA. Incidentally, the Garden faces more legal trouble. Another lawsuit, filed in 2004 by a former New York Rangers ice skating cheerleader, alleges sexual harassment. Two former security supervisors, both black women, will soon file a suit alleging sexual and racial discrimination.

Source: Los Angeles Times

**Target Settles Race Bias Suit**

Target Corp. will pay $510,000 to settle a race discrimination lawsuit alleging the Minneapolis, Minnesota-based discount chain refused to hire four African-Americans because of their race. The consent decree signed by a federal judge ends a six-year legal battle between Target and the U.S. Equal Employment Opportunity Commission involving stores in the Milwaukee and Madison, Wisconsin, areas.

The EEOC filed suit against Target in 2002, saying the retailer had denied management jobs to four individuals all college graduates. The EEOC said Target denied job interviews to three of the plaintiffs and did not hire the fourth, who scored higher on a test than the white person hired for the position he sought. The EEOC further accused Target of not keeping proper records of job applicants. The EEOC sought damages for the individuals in the lawsuit as well as for other black applicants who the commission says were denied employment because of their race since January 1, 2000.

The district judge had dismissed the case, but the U.S. Court of Appeals for the Seventh Circuit reversed his decision and ruled that it should go to trial. The appeals court found in 2006 that the EEOC had presented sufficient evidence that Target refused to hire the four applicants for entry-level management positions because of their race. The court also ruled that a trial was required on the record-keeping issue.

John Rowe, director of the EEOC’s Chicago district office, says the appellate court decision is noteworthy because it ruled that the trial court could admit into evidence expert testimony that the employer might have racially identified the applicants as African-American on the basis of their names or accents heard during telephone conversations.

Source: Milwaukee Journal Sentinel

**Wal-Mart Takes Victims’ Money And Doesn’t Bat A Corporate Eye**

Most folks don’t have a clue what the term “subrogation” means unless they have had an experience dealing with an insurance company or an HMO. I will explain more about how unfair it can be, but first let’s take a look at a real life case dealing with the subject. A collision with a tractor-trailer seven years ago left 52-year-old Deborah Shank permanently brain-damaged and in a wheelchair. Her husband, Jim, and three sons agreed to a $700,000 settlement with the trucking company involved. After legal fees and other expenses, the remaining $417,000 was put in a special trust to be used for Deborah Shank’s care. Instead, all of it is now slated to go to her former employer, Wal-Mart Stores.

The retail giant’s health plan sued the
Shanks for the $470,000 it had spent on her medical care. A federal judge ruled last year in Wal-Mart’s favor, backed by an appeals court decision in August.

Now, Deborah’s family has to rely on Medicaid and her Social Security payments to keep up her round-the-clock care. Jim Shanks works as a maintenance worker and runs a tanning salon. Deborah, who needs help with eating and other basic tasks, has spent more time alone since Jim had to let her private caregiver go. At some point, she may have to be moved from a private to a semi-private room in the nursing home where she resides.

How could this have happened? The reason is a clause in Wal-Mart’s health plan that Deborah Shank didn’t even know about when she started to work for Wal-Mart eight years ago. Like most company health plans, Wal-Mart’s reserves the right to recoup the medical expenses it paid for someone’s treatment if the person also collects damages in a personal injury suit. Wal-Mart’s health plan sued Deborah and Jim Shank for the $470,000 it had spent on her medical care.

The legal term for what happened in the Shanks case, as mentioned above, is subrogation. Until recently, many employers didn’t try to enforce the subrogation rights, but that has changed. Employers and health plans are getting more aggressive about going after the money the plan paid for someone’s treatment if the person also collects damages in a personal injury suit. Wal-Mart’s health plan sued Deborah and Jim Shank for the $470,000 it had spent on her medical care.

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Wal-Mart’s health plan sent him several notices to the Shanks saying they had to inform the company before they settled any suit. In 2002, the Shanks did sue and got a settlement from Gem Transportation, the owner of the truck. The trucking company had only $1 million in liability coverage and limited assets. For his own losses, Jim Shank received $200,000, from which $119,000 remained after legal expenses. He spent most of it helping to buy a one-story house fitted with ramps and wider doors, which is more accessible than the family’s previous three-level home.

Deborah Shank’s own settlement was for $700,000. After legal expenses and lawyer fees, the remaining $417,477 was placed in a court-created trust designed specifically for her future care. The Shanks’ lawyer, Maurice Graham, wrote the Wal-Mart health plan informing it about the trust and her needs. Deborah had received no funds directly and therefore had nothing to pay Wal-Mart back. Nearly three years went by before the Shanks heard again from Wal-Mart. Deborah struggled a year rotating in and out of the hospital and rehabilitation programs. She could no longer use her right arm or three fingers on her left hand because of neurological damage, she couldn’t feed or dress herself, and her conversations with her family were limited to all but simple questions. Eventually, her husband moved her to a nursing home for around-the-clock care.

All Jim Shanks wanted was for his wife “to have a decent quality of life.” He wanted to use the money in trust to pay the roughly $130,000 in bills for her wife’s rehabilitation and a return hospital visit after her insurance coverage expired. But in August 2005, Wal-Mart responded with a lawsuit against the Shanks demanding repayment for $469,216 in medical costs out of their settlement. It charged the Shanks with a violation of the terms of the health plan by not reimbursing it. The company also demanded payment of legal fees and interest for the cost of suing the Shanks for the money. The lawyer representing the Shanks tried to settle with Wal-Mart, but was told the health plan wanted to proceed with the lawsuit. Since Deborah Shank hasn’t been fully compensated for her damages in the first place, it would appear that Wal-Mart should expect only partial reimbursement. But that’s not the way Wal-Mart operates—it wanted it all!

The Shanks lost their appeal in August before a three-judge panel in the U.S. Court of Appeals for the Eighth Circuit, and in October were denied a request for a hearing before the entire court. They plan to appeal to the Supreme Court, but only a small percentage of cases are chosen by the justices to be heard. Hopefully, the court will hear this case and correct a very bad legal situation. Millions of people—including workers—are affected by the laws relating to subrogation. Those laws need to be changed without delay.

Source: Wall Street Journal

BeasleyAllen.com
XV.
TRANSPORTATION

PRESIDENT BUSH IS MAKING OUR NATION’S HIGHWAYS LESS SAFE

Our lame duck President has done it again. In what is being described as “a stealth maneuver,” the Bush administration has boosted the threat to the public by increasing the number of Mexico-based trucking firms allowed access to all U.S. roads as part of the North American Free Trade Agreement (NAFTA) trucking “pilot program.” The Department of Transportation recently revealed an increase in the number of NAFTA trucks permitted to all U.S. highways—now 10 carriers, sending as many as 55 trucks throughout the country. The last time the Bush Administration made a public announcement about the number of Mexico-based carriers allowed to participate in the NAFTA trucks pilot program, there were only three carriers. NAFTA is a reckless program that will create major safety problems on U.S. highways.

It has long been the tradition of this Administration to bury bad news like this by sending out press releases on Friday afternoon. But in this case, the Department of Transportation (DOT) reached a new low. It didn’t even send any press release at all, but simply updated a Web page. Both houses of Congress have passed versions of the DOT spending bill that includes provisions to shut down NAFTA. Unfortunately for all members of the public who must travel every day on the nation’s roads, the White House has threatened to veto the final bill. It’s high time for President Bush to let the Senate vote on the final bill before any more lives are put at risk.

In 2001, a NAFTA tribunal ordered the federal government to permit access to all roads in the United States for Mexico-domiciled trucking companies. The Clinton Administration refused to comply with the NAFTA tribunal, citing serious safety and environmental concerns with Mexico’s trucking fleet. The Bush Administration has tried since 2002 to enforce the NAFTA order to open U.S. highways to unsafe trucks. Congress has intervened repeatedly to stop those in the Bush White House who are pushing for Mexican trucking firms to gain access. In September, the Bush Administration tried to meet NAFTA’s dictates by launching a pilot program to allow up to 100 motor carriers from Mexico full access to U.S. highways. But, the project violates a 2001 congressional mandate that Mexico-domiciled trucking companies must meet U.S. safety standards regarding hours of service, driver training and licensing, and vehicle safety before being allowed access to the nation’s roadways. A lawsuit filed by several groups, including Public Citizen, alleging that the pilot program does not meet congressional requirements is still pending in the Ninth Circuit.

Source: Public Citizen

FEDERAL GOVERNMENT LETS TRUCKING LOBBY HAVE ITS WAY ON SAFETY

Christmas came early for the powerful trucking industry in the form of a rule issued by the Federal Motor Carrier Safety Administration (FMCSA). Big trucking companies got their wish when federal regulators kept existing limits on drivers’ hours in effect, rather than endorsing a court order sought by consumer advocates that would have required one less hour behind the wheel each day. The interim final rule issued by the FMCSA maintains the current 11-hour driving limit, under which truckers are required to rest for 10 hours. That is a terrible decision and one that puts motorists on U.S. highways at risk.

In September, the U.S. Court of Appeals for the District of Columbia Circuit delayed until December 27th a requirement that would reduce the continuous driving limit to 10 hours with eight hours of rest. The agency claims its data show that the number of crashes involving fatigued drivers has remained constant in recent years, and that crashes in the 11th hour of driving have been negligible. Consumer advocates sued to reduce the amount of time truckers can stay behind the wheel continuously because they say the industry is putting the public at risk. Joan Claybrook, president of Public Citizen, who had led the fight for safety on the nation’s highways, observed:

“FMCSA is continuing the sweatshop conditions for truck drivers rolling down our highways, which endanger Americans all over the country.”

The Teamsters Union agreed with Public Citizen and in a statement said there has been no peer-reviewed study published that shows the new rule is safer than the previous one. Concerning the government’s cave-in to the trucking industry lobbyists, Teamsters General President Jim Hoffa stated:

“It’s clear the Bush administration has more loyalty to its corporate supporters than to the men and women who actually drive on our roads.”

The FMCSA contends all rules are based first on safety, and claims that the rule is good for safety. American Trucking Association President and Chief Executive Bill Graves was one of those who pushed the agency to maintain the 11-hour limit. The public has 60 days to comment on the interim final rule. Public Citizen opposed any stays, arguing that the FMCSA used the same tactic two years ago to maintain the old requirements. Unfortunately, their plea fell on deaf ears.

If the Administration ultimately issues a final rule inconsistent with the court order, Public Citizen says it will pursue further legal action. In September, the government and the trucking association requested the court issue longer stays of its decision. FMCSA backed industry claims that reducing the limit...
would be expensive and require it to retrain drivers and operating personnel, reprint logs, reengineer routes, and make other changes. ATA members include United Parcel Service Inc., FedEx Corp., JB Hunt Transport Services Inc., and YRC Worldwide. This is just another example of the Bush Administration paying back those who have supported the president in his campaigns.

Source: Public Citizen

OUTSOURCING OF GOOD JOBS TO FOREIGN COUNTRIES

The outsourcing of jobs to foreign countries is becoming commonplace, and in my opinion it’s a disturbing trend. Recently IBM Corp’s expansion in developing countries was discussed in an Associated Press story. It appears from the story that the technology company currently has 73,000 employees in India, which was a 40% increase from 2006. IBM has had about 125,000 employees in the United States in recent years, with the worldwide total being about 356,000. Therefore, almost 1 in 5 IBM employees are now in India. The low labor costs in that country—even for highly skilled workers—is the drawing card. American workers must be protected and Congress has an obligation to stand up for them.

Source: Associated Press

JURY AWARDS $36.5 MILLION IN LAWSUIT FROM FATAL CRASH

A jury returned a verdict in December against Swift Transportation Co., a Phoenix, Arizona-based trucking company, and awarded $36.5 million in damages. The lawsuit resulted from a fatal traffic crash in Kansas. The jury’s verdict included more than $13.5 million in punitive damages. There were several factors at trial that had an obvious effect on the jury’s verdict. Swift failed to turn over driver logs the company was required to keep under federal regulations. The logs, which Swift claimed it was unable to produce, would likely have shed light on whether the Swift driver—who was clearly at fault in the crash—may have been driving down a highway in a physical state of fatigue. It’s difficult to believe that these logs weren’t kept and available.

The man who was killed left behind a widow and eight children. The lawsuit was filed in July 2004 by the survivors of Thomas Steven of Wichita, Kansas, the owner of a plumbing-supply business. The crash, which occurred near Hutchinson, Kansas, occurred in April 2004. The driver of a Swift rig failed to slow down while traveling at 65 mph on a Kansas highway on a sweeping, flat curve leading to an intersection with another highway. The truck driver drove over three sets of rumble strips that are designed to warn motorists of an approaching stop-sign controlled intersection. The driver then ran a stop sign and crashed into a Chevrolet Suburban, killing Steven and seriously injuring two passengers in the vehicle. The truck driver never did more than apply light pressure on his brakes. It appeared that he never made any attempt to stop. Following the crash, the Swift driver was unable to offer an explanation why he failed to stop. This case is a prime example of why the federal government had no business maintaining the current rule on “driver hours,” as mentioned above.

Source: The Arizona Republic

FAMILY OF MADISON TEEN KILLED IN CRASH SETTLES FOR $18.3 MILLION

The family of a Connecticut teenager killed nearly six years ago in a motor vehicle crash will receive $18.3 million from a settlement of their lawsuit. The seventeen-year-old boy was killed on January 25, 2002 when his car was hit by a Guilford Texaco tow truck. Texaco, the company that leased the truck to Guilford Texaco, and the driver were sued in the case that went to trial in October. After weeks of trial, the settlement was reached just before closing arguments were to start. It’s noteworthy that the family had offered to settle the case several years back for only $1 million, but the defendants refused to accept the demand. The jury verdict was obviously for a much larger amount, and certainly was justified based on the evidence at trial.

Source: Newsday

COURT APPROVES $10 MILLION AWARD AGAINST THE STATE OF NEBRASKA

A Nebraska judge has approved a $9.9 million award to the mother of a young man who was severely injured because of a defective traffic signal. The award was approved in December for Gail Fickle, who sued the state of Nebraska on behalf of her son, Jacob Wagner. The young man, who was 16 years old at the time, sustained severe brain and other injuries in a 1999 traffic accident. The Wagner car was struck by a semitrailer in the intersection of two highways in the town of Schuyler. Evidence in the case indicated that the traffic signals were flashing green for all four directions at the time. Additional testimony indicated the state Department of Roads had received a number of complaints about the traffic signals, some several months before the accident.

The trial judge originally awarded about $4 million in the case. His order was appealed and the Nebraska Supreme Court, agreed with the plaintiff. She had argued the amount was inadequate, given the medical expenses her son was likely to accrue during his lifetime. The young man is expected to live in a care facility for the rest of his life. The Supreme Court, in a July opinion, agreed with the plaintiff, noting that the Wagner’s care facility expenses alone would come to $200,000 a year. In its cross-appeal, the state argued the earlier citizen complaints about the traffic signals should not make the state liable for the injuries in this case.

Source: Newsday
because those complaints came long before the injury. The court rejected the agreement. This was a case that should have been settled without the necessity of a trial and the appellate court obviously did the right thing by increasing the award to the family.

Source: Lincoln Star Journal

**Riding In An Ambulance Can Be Hazardous**

An ambulance crash that killed a passenger and seriously injured an emergency medical technician last month in Vermont puts in focus two major concerns in many serious ambulance crashes: questionable driving and hazardous patient compartments. The hospital-bound ambulance in this case slid off a snowy highway and rolled over, killing an 80-year-old woman and seriously injuring an EMT on board. According to the police, speed and slippery roads were factors in the crash.

The driver, who was wearing a seat belt, was not hurt. The two others, who were in the ambulance’s patient compartment, were not belted, according to Vermont State Police. Local and national experts say ambulance services can take steps to improve driving, but making the ambulances safer for patients and EMTs is more of a challenge. According to Dan Manz, head of emergency medical services at the Vermont Department of Health, ambulance workers now can administer many lifesaving procedures at the scene, cutting down on the need to speed to a hospital. The capabilities of emergency medical service personnel on the scene makes speeding to save a person’s life unnecessary in many cases.

Although the compartments for patients in the ambulances are a great environment to provide emergency care, they also are dangerous when an ambulance is involved in a crash. For example, cabinets break off, cardiac monitors go flying, there is heavy equipment in use that is very difficult to secure. Installing airbags in the compartments and harnesses for emergency personnel have been discussed and those practices have potential. Many services also secure their equipment or have cloth nets installed where the EMT rides. Larry Wiersch, of Allentown, Pa., a leader in ambulance safety with the American Ambulance Association, believes EMTs could wear seatbelts more often. He says the majority of the time, an EMT isn’t doing patient care that requires the EMT to be standing and could be belted. Because speed is something required, and ambulance drivers have to maneuver through moving traffic, measures should be taken to make it safer for patients and EMTs.

Source: Insurance Journal

**The High Risk Of Runway Collisions Are A Major Problem**

A recent Associated Press story pointed out that air travelers face a high risk of a catastrophic collision on U.S. airport runways because of faltering federal leadership, malfunctioning technology, and overworked controllers. Congressional investigators gave the Federal Aviation Administration (FAA) credit for reducing runway safety incidents from a peak in 2001. But they said the agency’s “runway safety efforts subsequently waned” as the number of incidents settled at a lower level. Then, in the 2007 budget year that ended September 30th, the incidents spiked to 370—6.05 incidents per 1 million air traffic control operations. That approached the level in 2001, when there were 407 runway incursions and a 6.1 rate. An incursion is described as any aircraft, vehicle, or person that goes where it should not be in space reserved for takeoff or landing.

According to the Government Accountability Office (GAO), at this time “no single office is taking charge of assessing the causes of runway safety problems and taking the steps needed to address those problems.” The report was requested by Rep. Jerry F. Costello (D-IL) and Senator Frank R. Lautenberg (D-NJ). Marion Blakely, who was the FAA Administrator at the time, called for an industry-wide conference to produce ideas for quick action. In October, the FAA reported progress on recommendations from the conference, including speeding improved runway markings and pilot training. While the GAO report approved of those moves, it also recommended more leadership from the FAA, better data collection, and less overtime required of controllers. Senator Lautenberg had this to say about the safety issues:

*This report makes clear that the Bush Administration is cutting corners and failing to put passenger safety first. The FAA is taking too many chances and ignoring too many red flags.*

Serious incursions, where a collision was narrowly averted, declined to a record low 24 in 2007, compared with 31 the year before. But the report makes it clear that the incursions have stayed high enough to pose “a high risk of a catastrophic runway collision.” While the FAA says it is working on the safety issues relating to incursions, and says progress is being made, there is still work to be done. A working group is studying whether scheduling changes could minimize fatigue. The FAA says that runway safety is a priority and the agency “is safely staffing all of its air traffic facilities.” However, Rep. Costello, who is chairman of the House Transportation and Infrastructure Subcommittee on Aviation, observed:

*When there is great public attention and attention by the Congress, then the FAA acts. As soon as the attention goes away, the FAA reduces their attention.*

Rep. Costello and Rep. James Oberstar (D-MN), the full committee chairman, have urged quick approval of a House-passed FAA bill that would provide $42 million for incursion reduction and $72 million for runway lighting; require an FAA runway safety and technology plan;
and force the FAA to reopen contract negotiations with controllers. Predictably, the Bush Administration opposes that provision.

Looking at this issue from a historical perspective, it’s obvious that a safety problem exists. Since 1990, 63 people have died in six U.S. runway collisions. The FAA’s previous definition did not classify some serious runway errors as incursions, including an August 27, 2006, crash in Lexington, Kentucky, of a Comair jet that took off from a too-short runway, killing 49. Also, there have been some dramatic near-misses during the last year:

- On August 16th, two commercial jets carrying 296 people came within 37 feet of colliding at Los Angeles International.
- A Delta Boeing 757 touched down in Fort Lauderdale, Florida, on July 11th and had to take off immediately to avoid hitting a United Airbus A320 mistakenly on its runway.
- A Delta Boeing 737 landing at New York’s LaGuardia Airport on July 5th narrowly missed a commuter jet mistakenly cleared to cross its runway.

The National Transportation Safety Board is investigating those incidents, two others in Denver and one in San Francisco.

The FAA’s Office of Runway Safety has failed to produce a national runway safety plan since 2002, went two years without a permanent director, and had a 45% staff cut over the past four years, according to the GAO findings. That is not good news for air travelers from a safety perspective. Clearly, the FAA must do whatever is required to make air travel as safe as possible. Such things as controller fatigue, properly working radar, and things of that sort can and must be remedied.

**ENGINE BLOW SPURS DEBATE ON SAFETY STANDARDS**

Federal investigators are looking into the need for tougher engine safety standards for commercial jets. A recent midair jet engine failure that sent metal chunks exploding with violent force is causing the government to do the review. Some metal pieces thrown by the engine struck the side of a Southwest Airlines Boeing 737-300, according to federal safety investigators. Engine failures that throw shrapnel toward the passenger compartment or key components of an aircraft have caused several major accidents and draw close scrutiny from accident investigators.

The National Transportation Safety Board launched an investigation into the incident. In the recent incident the debris did not penetrate the jet’s skin, and the pilots were able to land safely on one engine, according to the NTSB. However, because preliminary evidence indicates that pieces of fan blades and other metal parts flew around the armored shield that is designed to prevent engine debris from escaping, investigators are interested in this case. USA Today reports that the NTSB has investigated at least two other cases in which shrapnel from a damaged engine escaped in a similar manner, according to the agency’s database of investigations. Although this investigation has only just begun, it’s possible that a finding that existing protections on engines are not sufficient to prevent metal shards from being flung out of a damaged engine could be found.

Although explosive engine failures are extremely rare, they have caused several notable fatal crashes. Violent, high-energy engine failures can cause severe damage, according to Kevin Darcy, a safety consultant and former accident investigator with Boeing. He says that if the debris that escapes from an engine is made up of slow-moving pieces, a plane’s safety is not threat-
XVI.
ARBITRATION UPDATE

CONSUMERS ARE ENTITLED TO THEIR DAY IN COURT

We have written on many occasions about the evils of mandatory, binding arbitration in disputes between consumers and big businesses. At issue is the fine print in many contracts for goods and services, such as credit cards and cellphones, that mandates disputes to be submitted to arbitration. Consumers and employees are denied a basic American right, the right to go to court. Sen. Russell D. Feingold (D-WI), who is fighting for consumers, observed:

People from all walks of life—employees, investors, homeowners, those enrolled in HMOs, credit card holders and other consumers—often find themselves strong-armed into mandatory arbitration agreements.

As previously reported, Senator Feingold is sponsoring one of the measures aimed at making arbitration voluntary rather than mandatory. His bill, if passed, would prohibit the pre-dispute requirement that all claims have to go to arbitration. Hopefully, the Senator will be successful in his efforts.

Anybody who has been involved in arbitration knows the current system that forces consumers into arbitration lacks fairness. As it has evolved because of court activism—not legislation—the arbitration process favors big businesses. Much of the unfairness is because arbitration firms rely on the companies for repeat business and are not inclined to rule against them. The powerful corporate entities can force their customers or employees into arbitration before any dispute occurs. Consumers are entitled to their day in court when a dispute occurs. If a consumer or employee elects to go to arbitration after a dispute occurs, there can be no complaint.

There are other anti-arbitration measures in Congress at present. One measure, attached to a House bill that deals with the sub-prime loan crisis, would make arbitration voluntary instead of mandatory in residential mortgage contracts. Another, approved by the Senate Judiciary Committee and attached to the farm bill, would prohibit binding arbitration between livestock and poultry producers and packers, unless the parties agree. The broadest and most controversial measure, introduced by Senator Feingold in the U.S. Senate and Rep. Hank Johnson (D-GA) in the House of Representatives, would make arbitration voluntary in consumer, employment, franchise and medical contracts. The Johnson bill—which has been the subject of congressional hearings, but has not moved out of committee—has 53 co-sponsors in the House, including some Republicans. Mandatory binding arbitration amounts to a “private judicial system” that benefits the commercial interests at the expense of consumers and employees. Mandatory, binding arbitration involving consumers and employees was never intended when the Federal Arbitration Act was passed several decades ago. That is undisputed and is a matter of record.

Senator Feingold believes that prospects for passage of the legislation have improved as Congress comes under pressure from an increasing number of consumers and employees who have found themselves “having to choose either to accept a mandatory arbitration clause or to forgo securing employment or needed goods and services.” Ira Rheingold, executive director of the National Association of Consumer Advocates, had this to say:

People are beginning to understand that the use of arbitration clauses—the creation of a private system of justice—is antithetical to what our country stands for.

Public Citizen, which as we all know is one of the most active consumer watchdog groups, has worked hard to end the abuses of arbitration. The fact is that big corporations want to force binding mandatory arbitration clauses on often unsuspecting consumers, pick the private arbitrator of their choice, and deny all appeals when an arbitration decision is clearly unfair. Senator Tom Harkin (D-Iowa), chairman of the Senate Agriculture Committee, who is fighting to protect farmers, is absolutely correct when he says “that these increasingly large and economically powerful companies cannot force contract growers to sign away their right to go to court to resolve disputes as a condition of doing business.”

With elections to the U.S. Senate and House of Representatives coming up this year, it’s a good time to put pressure on the candidates—especially the incumbents—and force them to disclose how they stand on the right to trial by jury that is guaranteed by the U.S. Constitution. Support candidates who are against arbitration and fight to protect the right to trial by jury.

Source: Los Angeles Times

XVII.
ENVIRONMENTAL CONCERNS

ADEM’S LANDFILL RECYCLING EFFORTS FALL SHORT

According to records recently obtained by the Birmingham News from the Alabama Department of Environmental Management (ADEM), the amount of waste dumped in Alabama landfills since the mid-1990’s has risen by 57%. In 1995, approximately 2.79 million tons of general waste and household waste were landfilled in Alabama. In 2007, approximately 4.39 million tons were dumped into general purpose landfills. Keep in mind that these numbers don’t even include waste materials going to Alabama’s specialized...
landfills, such as construction materials or hazardous waste.

If these statistics seem shocking, consider this: Sixteen years ago, the state legislature passed a law requiring ADEM to study and develop recycling programs that would reduce the amount of waste dumped in these landfills by 25%. The reduction goal of 25% was included as part of a nationwide push for recycling and other efforts to reduce waste, conserve scarce landfill space, protect drinking water, and conserve energy.

Two years later, in 1992, ADEM adopted this goal in its Solid Waste Management Plan, which, among other things, promised to achieve the 25% reduction by 1997. Not only did ADEM fail to meet this solid waste reduction goal, it actually allowed a dramatic increase in the amount of solid waste being landfilled in our state.

What’s more, comments made by ADEM spokesman Scott Hughes to the Birmingham News suggest that the agency has no real plans to reverse this disturbing trend. According to Hughes, ADEM has no plans to impose regulations or seek legislation that would give it authority to mandate recycling or pursue the waste reduction goal, even though its Solid Waste Management Plan calls for the agency to do so. Moreover, the ADEM spokesman acknowledged that the agency has no records to show precisely how much waste is recycled in the state. When asked for an estimate, Hughes said that ADEM currently believes that about 8% of the general waste and household waste in Alabama is recycled. By comparison, the U.S. Environmental Protection Agency (EPA) estimates a national waste recycling rate of 32%.

Ultimately, ADEM has got to take action to reverse this embarrassing trend. Yes, recycling programs require a substantial amount of money to design and implement in the short term. But recycling is a far more cost-effective solution in the long run than creating new landfills each and every year to accommodate the solid waste being generated in our state. At the rate things are going right now, we will wind up with more acres of land devoted to landfills than state parks in Alabama if ADEM’s “do-nothing” approach is allowed to continue.

Source: Birmingham News

Lawsuit Seeks $423 Million Against BP For Pollution

The City of Neodesha, Kansas, is seeking more than $423 million from BP Corp. North America Inc. and its predecessors in a massive pollution case. The suit seeks to recover the costs of cleanup and damages caused by an oil refinery that once operated in the small southeast Kansas town. It involves the catastrophic contamination of a small town by BP Corp. and its predecessors. The trial of the lawsuit in Erie, Kansas, which began in August, is expected to last several more weeks. Liability for the spills, breach of contract, and fraud are being claimed in the suit, which seeks at least $279 million for cleanup costs, $52 million in property claims, and $92 million for lost property values, in addition to punitive damages.

The contamination covers almost 70% of the town, including underneath city hall, hundreds of homes, and the community’s schools. Experts found groundwater pollution when they drill tested under 350 acres, about double the area the company had indicated. The plaintiffs contended that the defendants lied to the people of Neodesha regarding their willingness and ability to remediate or control the contamination, and misrepresented the nature and extent of the pollution and the damage it caused. They claim that the defendants weren’t planning to clean it up at all, but instead were planning to leave it.

BP Products North America has acknowledged that its former refinery had incidental, non-negligent leaks, but has denied the allegations of fraudulent concealment, and claims it has no liability to the plaintiffs. BP blamed most of the refinery-related pollution beyond the refinery property to a lighting strike in the late 1960s that struck one of its storage tanks, causing a large explosion and fire. The company claimed residual petroleum products from the former refinery do not pose any health risk to people who live and work in Neodesha.

The company also contended it has already assumed full responsibility for addressing the contamination caused by the operation of the refinery and has committed publicly to remedial actions that the Kansas Department of Health and Environment deemed appropriate. BP Products North America also blamed some of the environmental contamination on other Neodesha businesses. Besides the City of Neodesha, other named plaintiffs in the suit are Wilson County, Unified School District No. 461, the State of Kansas, Neodesha Plastics Inc., Fiberglass Engineering, and Anna Harshman and Wade Jones, a pair of property owners who are acting as class representatives. Named as defendants are BP Corp. North America Inc., formerly known as Amoco Corp.; BP America Inc.; BP Products North America Inc.; Atlantic Richfield Co.; BP America Production Co.; and an individual, Norm Bennett.

At the crux of the lawsuit is the former refinery that operated from 1897 until 1970, when it was dismantled. The property was then donated to the City in 1970. The court ruled in August that a jury will have to decide whether the defendants carried out an intentional and well-rehearsed business plan to defraud the city and its residents and avoid paying for the removal of the pollution. In denying summary judgment, the court found that there was sufficient evidence that some defendants knowingly made fraudulent statements with the intent to deceive.

The lawsuit contends the operation of the oil refinery and associated laboratories and storage facilities generated a variety of poisonous wastes, including benzene, toluene, polyaromatic hydrocarbons, and metals such as arsenic,
lead, and mercury. Although the contaminants are known to cause cancer, the lawsuit is not a personal injury case, but instead seeks property damages.

In 2003, test wells in and around Neodesha reported benzene levels thousands of times more than the permissible safe concentrations, according to the lawsuit. The wells also discovered a layer of pure petrochemical sludge riding above the groundwater. The test wells estimated the sludge layer was up to two feet thick in several places, and the sludge was measured at almost six feet thick at one well. Contamination under this property will keep the owners from selling their houses.

Source: Associated Press

**FEDERAL GOVERNMENT SUES ASARCO**

The U.S. government has filed suit against Asarco and is asking for more than $27 million in past and future costs to repair damage caused by the company’s contamination of soil and groundwater. The company is in bankruptcy in the Southern District of Texas, Corpus Christi Division. The government says while Asarco operated as a smelter from at least 1887 through 1999, it “emitted pollution into the air that settled into earth nearby, resulting in the contamination of soils and groundwater.” The United States International Boundary and Water Commission (IBWC) has spent $268,219, not including interest, to undertake site investigation and testing, remediate contamination, and undertake environmental measures associated with the construction of a guardhouse and a wash rack.

The government is also anticipating $27 million in future costs by the IBWC related to smelter contamination. These costs include $23.9 million to be spent on contamination damage when the American Canal is renovated. Other future costs include about $735,000 to excavate and replace contaminated soil at the American Dam Compound, and $1.8 million to excavate and replace contaminated soil at an area used for equipment storage. The government contends that Asarco is the primary cause of lead and arsenic contamination at the commission’s site, located on the Rio Grande and consisting of the American Dam, the American Canal, and a complex used for equipment storage and maintenance.

The IBWC is forced to face these dangers because of the high contaminant levels that exist and the potential threat to the Rio Grande, which serves as both a significant source of El Paso’s drinking water and as a vital source of irrigation water, according to a brief filed in the case. The IBWC regulates and conserves the Rio Grande’s waters, as well as resolving sanitation and border water quality problems. The Rio Grande provides between 40% and 50% of the city’s drinking water when the city draws water from the canal, and it also provides the irrigation water area farmers use, the brief states.

Although Asarco has ceased its operations, it has left behind lead and arsenic contamination in both the soil and the groundwater. This threatens the Rio Grande and worker safety. The IBWC, or another federal agency, can respond to this contamination, can identify responsible parties and has the right to reimburse its costs. Arizona-based Asarco is awaiting a ruling from the Texas Commission on Environmental Quality on whether it can resume operations. The copper smelter was shut down and mothballed in 1999.

Source: El Paso Times

**BP UNIT PLEADS GUILTY TO ENVIRONMENTAL CRIME**

The Alaska subsidiary of British energy company BP PLC has pleaded guilty to a federal environmental crime for failing to prevent a 2006 spill in America’s largest oil field. BP Exploration Alaska Inc. pleaded guilty to one violation of the Clean Water Act for a 200,000-gallon spill at the Prudhoe Bay field in March 2006. The company agreed to a sentence of $20 million in fines related to the spill, the largest ever in the vast, oil-rich region of Arctic Alaska known as the North Slope.

**CLASS ACTION LAWSUIT FILED AGAINST PREMCOR REFINING GROUP**

About 100 plaintiffs sued the Premcor Refining Group in November of last year in a Texas state court. Conditions such as asthma, upper respiratory, sinus, bronchitis, pneumonia, allergy and rhinitis conditions form the basis of the lawsuit filed in Jefferson County District Court. The plaintiffs claim their suffering from these conditions was created or exacerbated by the sulfur dioxide, hydrogen sulfide, and volatile organic compounds released by an oil refinery owned by Premcor. The refinery has been in operation under one owner or another since 1901.

The plaintiffs claim that over the last seven years the refinery has had numerous upset events, maintenance events, and unpermitted releases of toxic and harmful substances. Some of these releases prompted the Texas Commission on Environmental Quality to issue notices of enforcement or violation against Premcor. The plaintiffs contend that these releases have contaminated their neighborhoods, including their homes, schools, daycares, and places of worship. The claims of negligence, gross negligence, nuisance, and trespass rely, in part, on Texas law that prohibits the release of air contaminants of such concentration or duration as may adversely affect human health or welfare. Damages sought include medical expenses, loss of earnings, mental anguish, and punitive damages.

Source: The Southeast Texas Record

**MARYLAND CLASS ACTION SUIT SEeks RECOVERY FOR FLY ASH CONTAMINATION**

Since 1995, Constellation Power Source Generation, Inc. has been
dumping fly ash into old sand and gravel pits in and around Gambrills, Maryland. The fly ash, an inorganic, incombustible residue from burning coal to produce electricity, has contaminated groundwater with arsenic, lead, and cadmium. These toxins have been linked to cancer and other serious health effects, including kidney damage, weakened bones, and neurological disorders. The company stopped dumping the fly ash in 2007, but residents claim the company saw signs the sites were leaking contaminated groundwater over 7 years earlier. A class action lawsuit was filed against the energy giant on behalf of Gambrills residents. Fly ash is a national problem and that the under-regulated dump sites located throughout the nation are polluting groundwater, surface water, and the air we breathe.

Some 34 residential wells in Gambrills are known to have been contaminated by the fly ash. Contamination levels have been detected at three times the regulated safe standard. Constellation, in conjunction with BBSS, Inc. which owns the land containing the dump sites, entered into a court-supervised consent decree with the Maryland Department of Environment. Under the decree, the companies are to pay a $1 million fine, begin a state-supervised cleanup, and pay to have residents permanently hooked up to public water. Until this last element can be achieved, the company has run above ground lines from distant fire hydrants and provided bottled water. Unfortunately, recent freezing weather in the area has frozen these lines, leaving the households without safe running water.

The plaintiffs contend that the decree fails to address all of the concerns and doesn’t fully compensate the residents. Initially, injunctive relief was sought in the form of medical monitoring, air and soil testing, and well water testing for the community to insure the immediate safety of Gambrills residents. Of immediate concern is other contamination, including the possibility of contamination of the deep aquifer that supplies municipal wells of Crofton, the nearby town. The aquifer sits directly below the dump sites. It’s alleged that the clay cap installed to seal the dump and the “pump and treat” groundwater recovery system have failed to stop continued contamination. The suit also seeks remediation and restoration costs to restore the soil, water supplies, and property; compensatory and punitive damages; and demands a full cleanup to eliminate the threat of future contamination. The lawsuit is being handled by the firm of Murphy & Falcon, P.A. of Baltimore, Md.

**SETTLEMENT FOR PROPERTY OWNERS RESULTING FROM FLOOD DAMAGE IN NEW JERSEY**

As part of a settlement with dam owners, New Jersey landowners will receive $1.85 million. The claims resulted from a 2004 flood that caused damages in the millions of dollars in Burlington and Camden Counties. As a result of the destruction caused by a “1,000 Year Flood,” as defined by the National Weather Service, several communities in both counties were declared disaster areas by President Bush on July 16, 2004. The flooding occurred along branches of the Rancocas Creek in south central New Jersey, with the most severe flooding occurring in Medford Lakes, Medford, Southampton, and Lumberton.

About 180 property owners filed a class action lawsuit seeking over $25 million for property damage as a result of the flooding. The suit alleged that over 50 dams in the area either failed or were damaged during the flood, and that the public and private owners of the dams were responsible for failing to maintain them. The defendants included Pine Acres Associates, Burlington County, Lost Lake Colony Club, the Marlton Lakes Civic Association, and Bowman Contractors, all of whom participated in the settlement.

The $1.85 million settlement, subject to judicial approval, is the fourth reached so far in the case, bringing the settlement total to $4.9 million. Pine Acres Associates, which owns Kenilworth Dams in Evesham, would pay $725,000, making it the largest portion of the latest settlement. $55,000 of the overall settlement will be paid by Burlington County through its insurance company. This is a good settlement for the property owners, and should receive court approval.

Source: CourierPostonline.com

**RESERVOIRS IN LOS ANGELES CLOSED AFTER CARCINOGEN IS FOUND**

Two reservoirs that supply drinking water to parts of Los Angeles were shut down and will be drained after a rare sunlight and chlorine reaction tainted the water with a cancer-causing chemical. The Los Angeles Department of Water and Power plans to drain 600 million gallons from the reservoirs, the Elysian and the Silver Lake. The reservoirs will be out of use for three to four months amid drought conditions, which is not good, but is apparently a necessity. High levels of the carcinogen bromate were found in early October by a commercial customer who ran a laboratory test. The utility confirmed the finding, immediately removed the reservoirs from service, and notified the Department of Public Health. Officials pointed out that the chemical is dangerous only after long-term consumption. The two reservoirs supply the water for about one-third of 1% of the city’s annual consumption, or about the amount the entire city consumes in a day. Some water from the reservoirs may be used for irrigation or firefighting, but none will be used for human consumption. The rest will be dumped into the Los Angeles River, which drains into the Pacific Ocean.

Source: Associated Press
THE Regulators Must Be Regulated

It’s been said that to have good regulation by a governmental agency, somebody has to monitor and check on the regulators. In effect, somebody has to regulate the regulators. The stated mission of the National Conference on Weights and Measures and its four regional associations is “to advance a healthy business and consumer climate through fair and equitable weights and measures standards.” They state that one of the most important factors to a strong national economy is “the trust that is built into every transaction by a [uniform] weights and measures program.” In order to accomplish this, the conference creates the standards and processes to “fairly meet the needs of consumers, businesses, regulators, and manufacturers.” Lately, however, the spotlight has been turned on the Conference over the measurement of fuel or “hot fuel.” That spotlight has revealed the questionable “industry standard” practices of funding regulator events. That’s why the regulators have to be regulated in some manner.

The 62nd Annual Conference of the Southern Weights and Measures Association was held in Little Rock, Arkansas in October of last year. The presiding officer was Steadman Hollis of Alabama. One of the organizers had stated publicly for months that “financial support from Wal-Mart Stores, Inc. was going to help make the regional conference the best ever.” Twenty companies were thanked for making the conference a success, including Wal-Mart. The 3-day conference was attended by nearly twenty oil industry representatives—without consumer groups present—is pretty typical. The oil industry lobby at the meeting that hot fuel reform was a bad idea, with one representative specifically stating that reform could only help plaintiffs in current and future lawsuits.

Wal-Mart, which currently faces such a lawsuit before a Kansas federal court, sells fuel at many of its locations nationwide. The suit alleges consumers are being shortchanged, by Wal-Mart as the amount of fuel isn’t being adjusted to reflect changes based on temperature. The national standard is to measure the fuel at 60 degrees Fahrenheit, while the average temperature at retail locations is 65 degrees (southern states will experience a higher disparity because of the warmer climate). One estimate has this disparity costing American fuel consumers $2.5 billion annually. Wal-Mart argues that this issue is best left to the regulators who have decided the temperature adjustment shouldn’t be required. Where have we heard that before?

Interestingly, neither the national nor regional groups have an established ethics policy. However, some regulators correctly question the practice of industry contribution. In 1998 there was a motion to either end the Conference’s events or the industry financial contributions to them. You won’t be surprised to learn the motion failed to pass. Although the Conference doesn’t accept direct financial contributions, it raises funds in the form of dues paid to an industry membership committee. This approach is no less scandalous than the regional groups’ practices of accepting direct cash contributions for sponsorships since the money comes from the same sources. Even though the national group has urged the regional groups to change this practice, it was said not to create a conflict of interest with the regulators. Should the companies being regulated finance the very regulators whose job it is to regulate them? I believe most Americans would say NO!

Source: Kansas City Star

OVER One-Third Of Toys Contain Dangerous Chemicals

I had hoped that by now the lead problem in the toy industry would have been under control either by specific recalls or by public service announcements. Unfortunately, it appears that I was clearly wrong. A test of about 1,200 children’s products by a group of consumer and environmental-health organizations recently found that more than one-third of the items contained lead and other dangerous chemicals, including mercury, cadmium and arsenic. Seventeen percent of the items tested exceed the federally accepted standards of safety, which is 600 parts per million, and that is shocking.

Tracey Easthope, director of the Environmental Health Project of the Ecology Center, based in Michigan, spearheaded the project. Even though millions of products have been recalled this year, the number of recently recalled lines remains lower than the number of items listed in the study’s announcement. The study found a variety of tainted products, including bedroom slippers, bath toys, and card-game cases. Jewelry products were the most likely to contain high levels of lead. The results of the test were publicized with the hope that the federal government will respond and start doing this kind of testing themselves. It isn’t clear whether the group’s lead testing methodology is similar to the one used by the Consumer Products Safety Commission, which hasn’t announced recalls for most of the toys on the list.

Some toys on the list were found to have more than five times the standard safety level. Among those in the group was a Hannah Montana card game case, which registered a lead level of 3,056 parts per million. A spokeswoman for Cardinal Industries Inc., based in New York, which sells the card game, told the Associated Press that Cardinal was unaware of the environmental groups’ tests or procedures but claimed the product had passed internal tests. Testers also found cadmium at levels greater than 100 ppm in 2.9% of products and arsenic at levels greater than 100 ppm in 2.2% of products. The card
game had not been tested high for lead. The Centers for Disease Control notes that ingesting very high levels of arsenic can result in death, while exposure to lower levels can cause nausea, vomiting, and abnormal heart rhythm. It’s a real mystery why the government doesn’t step up and start doing its job when it comes to the safety of children’s toys.


**PICKUPS AND VANS EARN TOP SAFETY SCORES IN GOVERNMENT CRASH TESTS**

A dozen 2008 pickup trucks and vans earned top safety scores in government crash tests released recently. The top-scoring pickups in 2008 include: Mitsubishi Raider, Toyota Tacoma, Chevrolet Silverado 1500, Dodge Dakota, GMC Sierra 1500, and Honda Ridgeline. Among vans, NHTSA gave the highest scores to the Chrysler Town & Country, Dodge Grand Caravan, Honda Odyssey, Hyundai Entourage, Nissan Quest, and Kia Sedona. Every vehicle in the fleet of 64 trucks and vans scored by the National Highway Traffic Safety Administration received either a four- or five-star rating in front-end or side-impact tests. Some of the vehicles were not tested in all categories. Most of the vehicles received four out of five stars in the government’s rollover test.

Under the ratings system, a vehicle with four stars has a 10 to 20% risk of rollover and a three-star vehicle has a 20 to 30% risk. None of the vans or pickups received five stars in the rollover test. The Ford E-350 15 passenger wagon was the only van or pickup to receive two stars in the rollover ratings, meaning it has a rollover risk of 30 to 40%. Among popular pickups, the Ford F-150 got five stars in the front tests and was not tested in the side. It received four stars in rollover tests. The Toyota Tundra received four stars in the front tests and did not undergo government side-impact tests. In rollover tests, 2-by-4 versions received three stars and 4-by-4 Tundras got four stars.

NHTSA is studying ways to improve its consumer crash test program to take into account new safety features such as electronic stability control and help consumers find meaningful differences among the scores. About 95% of current vehicles receive four or five stars. Many automakers have been implementing safety improvements into the vehicles. General Motors Corporation’s Chevy Silverado and the Honda Ridgeline, for example, have structures that are designed to help prevent the pickups from riding over smaller vehicles in front crashes.

Source: Insurance Journal

**CREDIT CARD COMPANIES MISTREAT CARD HOLDERS**

It is being reported that credit card companies are badly mistreating their customers. In my opinion, this is nothing new. Some of these companies are raising interest rates on good customers even if they pay down their balances every month on time. The reason the companies give is that the customers’ credit rating have fallen in some manner. In addition, some credit card companies increase the interest rates on their cards after the cards are issued for no reason. They solicit customers, offering a low interest rate, and then increase the rate substantially after the cards are issued. I have never heard of a good explanation for how the companies get away with that sort of thing.

Senator Carl Levin (D-MI), is sponsoring legislation that would, among other things, prohibit companies from increasing the rate on individuals who have paid their debt on time and in full. Major credit card companies such as Citigroup and JPMorgan Chase & Co. now say they will discontinue the practice of raising a customer’s interest rate based solely on a credit report. Capital One claims its long-standing policy is not to change customers’ interest rates if their credit scores go down. But, as expected, congressional efforts to make all of them do it is running into strong opposition from the banking industry. I am hopeful Senator Levin will overcome the powerful lobbying efforts and succeed in getting his legislation passed.

Source: Houston Chronicle

**CVS SETTLES COMPLAINT WITH STATE OF FLORIDA**

The Florida Attorney General’s office has reached an agreement with the CVS pharmacy chain that requires CVS to change its business practices at its 669 Florida stores. The settlement comes after complaints from senior citizens regarding CVS’s “Extra Care Rewards” program. The seniors complained that they could not access their account balance for accumulated savings and that advertised prices were not always available at checkout. There were also allegations that points or “Bucks” were not available until several days after purchases.

As part of the agreement CVS will modify its advertising practices and other aspects of the “Extra Care Rewards” program so that prices will be clear and conspicuous and advertised rewards will not be confusing. CVS also agreed to clearly and conspicuously alert potential customers of the conditions and limitations of any offer, including membership requirements, program terms, mail-in rebates, instant rebates, specific items to be purchased, or the quantity of items to be purchased. The company will make a $30,000 contribution to the Seniors Versus Crime program. It’s good to see the Florida Attorney General’s office responding to consumer complaints.

Source: WJHG.com

**FEMA AND CDC START FORMALDEHYDE TESTING**

Federal Emergency Management Agency (FEMA) officials, in partnership with the Centers for Disease Control and Prevention, have finally started...
testing formaldehyde levels in FEMA-provided travel trailers and mobile homes. The tests, which started on December 21st, will last around five weeks and will cover about 500 trailers. The tests will be proportionally distributed by make, model and location among the 46,000 occupied FEMA trailers and mobile homes on the Gulf Coast.

It’s reported that the outcome of the tests will have little effect on FEMA’s efforts to transition people to permanent housing. Potentially unsafe formaldehyde levels in FEMA trailers and mobile homes first surfaced almost two years ago when the Sierra Club ran a series of their own tests. It’s hard to understand why it’s taken so long for the federal government to start testing the trailers. But when you consider how FEMA has handled the Hurricane Katrina-related problems, I don’t believe anybody could be surprised.

Source: Sun Herald

**CONAGRA REMOVES MICROWAVE POPCORN CHEMICAL**

ConAgra has removed diacetyl, the controversial chemical that we have written about, from its microwave popcorn. The chemical gives the snack a buttery, creamy taste. ConAgra manufactures more than half of the nation’s microwave popcorn. Workers exposed to the airborne chemical in plants making microwave popcorn have been diagnosed with a rare lung disease called bronchiolitis obliterans, according to the National Institute for Occupational Safety and Health.

Although the Department of Labor’s Occupational Safety and Health Administration does not have specific regulations regarding diacetyl, it did issue a Safety and Health Information Bulletin in September with recommendations for safety and health standards for its use. ConAgra began reformulating its popcorn over a year ago as a worker safety issue. The company began removing diacetyl from its production lines in November and is in the final stages of taking it out of all products now. By January, reportedly none of the company’s products will contain diacetyl. ConAgra is the nation’s largest producer of popcorn, under its Orville Redenbacher and Act II brands.

The nation’s second-largest producer, General Mills, sells popcorn under the Pop Secret brand. It removed diacetyl from its products in October. The third-largest producer, American Pop Corn Co. of Sioux City, Iowa, sells under the Jolly Time brand. It also is reformulating its flavorings to remove diacetyl. As we have reported, diacetyl is a chemical that occurs naturally in many foods, especially dairy products, coffee, and wine. As a flavoring ingredient, it gives a creamy, buttery taste to manufactured products. It has long been used in microwave popcorn to add to the butter flavor.

Source: USA Today

**XIX. RECALLS UPDATE**

**FOUR RECALLS OF PORTABLE GENERATORS ANNOUNCED**

Since we are entering the winter months, it’s a good time to take another look at the hazards relating to portable generators. The U.S. Consumer Product Safety Commission (CPSC) is warning people to use portable generators outside only. Also, the Commission has announced the recalls of four consumer products. The CPSC has issued a warning to consumers confronted with ice storms and severe winter weather. When there’s a power outage, always exercise extreme caution when using portable generators. Carbon monoxide (CO) is an invisible killer. You can’t see or smell it. A generator’s exhaust contains poisonous CO, which can kill a person in a matter of minutes. In 2006, at least 65 people died from generator-related CO poisoning. Many of the deaths occurred after winter storms knocked out power. Here are important generator safety tips issued by the CPSC:

- Never use a portable generator inside a home, garage, shed, or other partially enclosed space, even if doors and windows are open.
- Place portable generators outside only, far away from the home. And keep the generator away from openings to the home, including doors, windows, and vents.
- Read the label on the generator and the owner’s manual, and also follow the instructions.
- Install CO alarms with battery backup in the home outside each sleeping area.
- Get to fresh air immediately if you start to feel sick, weak, or dizzy. CO poisoning from exposure to generator exhaust can quickly lead to incapacitation and death.

In 2006, the CPSC mandated a new danger label on generators manufactured after May 14, 2007. The label states that, “Using a generator indoors CAN KILL YOU IN MINUTES.” The agency has additional rulemaking underway on generators. The Commission directed staff to investigate various strategies to reduce consumers’ exposure to CO and to enable and encourage them to use generators outdoors only. Those strategies include generator engines with substantially reduced CO emissions, interlocking or automatic shutoff devices, weatherization requirements, theft deterrence, and noise reduction.

Source: CPSC

**FORD RECALLS 1.17 MILLION SUVS AND VANS BECAUSE OF ENGINE STALLING**

Ford Motor Co. is recalling 1.17 million trucks, sport utility vehicles, and vans to fix an engine sensor that could lead to engine stalling. The recalled vehicles are all from the 1997-2003 model
years with 7.3 liter diesel engines, including the Ford E-Series van, Excursion full-size sport utility vehicle, and F-450 Super Duty and F-550 Super Duty trucks. According to the National Highway Traffic Safety Administration, the camshaft position sensor located on the engine could function intermittently and lead to an engine stall and potential crash. The sensor is an electrical component that helps regulate the fuel going into the engine.

There have been 14 accidents associated with the problem, but fortunately no injuries have been reported. Our firm has handled a number of cases involving vehicles involved stalling that did result in serious injuries and deaths. However, none of the vehicles in those cases are involved in this recall. In the event of an engine stall, according to Ford, dealers will inspect the sensor and replace it with a new one free of charge. My advice is to get any such vehicle to a dealer immediately and don’t take any chances. Notification letters have started and will be completed in phases by May 2008. For more information, owners can contact Ford at (866) 436-7332.

**CHRYSLER RECALLS ABOUT 600,000 DODGE TRUCKS AND VANS**

Chrysler LLC is recalling nearly 600,000 Dodge trucks and vans to address concerns that the vehicles could shift out of park without the key in the ignition. The recall affects 576,417 2001-2002 Dodge Dakota trucks, Dodge Durango sport utility vehicles, and Dodge Ram vans and the 2002 Dodge Ram pickup. In some cases, long-term wear on the gearshift assembly could erode the height of the shift blocker, creating the potential for the vehicle to shift out of park.

A Chrysler spokesman says nine incidents involving injuries have been connected to the issue. No fatalities have been reported, according to Chrysler. Owners will be notified beginning this month. Dealers will replace the gearshift blocker and bracket assembly. Vehicle owners were advised by Chrysler to use the parking brake at all times when the vehicle is not in use. My recommendation would be to just get any recalled vehicle to the dealer with delay.

**TOYOTA RECALLING 15,600 TUNDRA PICKUPS**

Toyota Motor Corp. is recalling 15,600 Tundra pickup trucks in the United States because a rear propeller shaft may separate at the joint. The recall involves 2007 model-year Tundra four-wheel drive pickup trucks. According to Toyota a joint in the rear propeller shaft may have been improperly heat treated, resulting in insufficient hardness. This may cause a section of the rear propeller shaft to separate at the joint. No injuries or accidents have been connected to the recall, according to the carmaker.

**GENERAL MOTORS RECALLS 313,000 CARS**

General Motors Corp. has recalled about 313,000 passenger cars and crossover vehicles to fix a fluid leak that could lead to the driver losing control of the vehicle. The recall involves 275,936 vehicles in the United States, including the 2005-2007 Cadillac CTS and STS sedans, 2005-2007 Cadillac SRX crossovers, and 2006-2007 Pontiac Solstice and the 2007 Saturn Sky convertibles. About 38,000 additional vehicles are under recall in Mexico, Canada, the Middle East and Asia. The seal on the rear axle pinion, which provides power to the wheels, does not meet all specifications and could leak fluid, according to GM. The leak could lead to the drive-wheel jamming up and locking while the vehicle is being driven, which could cause the driver to lose control. There has been one crash reported in which the rear wheels locked because of the leak and hit another car. In a separate incident, a driver reported an injury after moving around in the car as the vehicle lost control. There have been “a higher than normal” number of warranty claims because of the problem, according to GM. The recall will begin in February and dealers will replace the pinion seal free of charge. Owners may contact Cadillac at (800) 982-2339, Pontiac at (800) 620-7668 and Saturn at (800) 972-8876.

**DANSK INTERNATIONAL DESIGNS LTD. RECALLS ICE CREAM SCOPS**

Dansk International Designs Ltd., of White Plains, New York, has recalled about 190,000 ice cream scoops. A cap at the end of the handle of the scoop can fly off with substantial force, especially if the scoop is immersed in hot water. The metal cap poses a risk of impact injury to nearby consumers. Dansk says it has received 10 reports of the caps on these scoops flying off, sometimes traveling several feet. Even though the company says no injuries have been reported, that is incorrect. All the recalled Dansk ice cream scoops are made of aluminum and have a 4.5-inch handle. They were sold in four styles: the plain 3.5-inch spade, the plain 2.5-inch scoop, the Penguin-shaped 2.5-inch scoop and the Snowman-shaped 2.5-inch scoop. Each of the scoops is silver colored. The plain scoop and plain spade have the word “DANSK” written on the handle. Ice cream scoops sold by Dansk with a black cap at the end of the handle are not part of this recall.

Dansk Factory Outlet Stores and Lenox Warehouse Clearance Centers nationwide sold these ice cream scoops between January 1988 and November 2001 for about $9. Consumers should stop using these ice cream scoops immediately, and return them to any Dansk or Lenox Factory Outlet store for a $20 coupon. For more information, consumers should call Dansk toll-free at (866) 855-9303.

We are currently handling a claim for a Montgomery woman who suffered an
injury to one of her eyes. When the cap came off, it struck her in the eye, causing an Orbital contusion with retinal hemorrhage. It has resulted in a condition known as episcleritis. The scoop involved in our client's case was under the recall.

**BLACK & DECKER® BRAND TOASTERS RECALLED**

Applica Consumer Products Inc., of Miramar, Florida has recalled about 70,000 Black & Decker® brand Infrawave™ Toasters, because an electrical component in the toaster can overheat and ignite the circuit board, posing a fire hazard. Applica has received two reports of the toasters igniting, including one report of fire that damaged a kitchen countertop and cabinets. There have been no reported injuries. The recalled two-slice toaster is black with stainless steel trim and has a digital display below the toaster lever. The Black & Decker® brand name is on the top of the toaster. Model number ST2000 is printed on the rating plate on the bottom of the toaster. Consumers should stop using the recalled toaster, unplug it immediately, and contact Applica to receive a refund. For additional information, contact Applica at (800) 556-9439 or log on to the firm's Web site at http://www.acprecall.com.

**GE RECALLING COMBINATION WALL ANDMICROWAVE OVENS BECAUSE OF FIRE RISK**

General Electric (GE) has recalled 92,000 combination wall and microwave ovens after at least 35 incidents of fire that damaged property. The door switch in the microwave oven can overheat and ignite plastic components in the appliance, the company said. The lower thermal oven does not pose a hazard and no injuries have been reported, according to the Consumer Product Safety Commission. Department and appliance stores sold the ovens between January 2000 to December 2003. The ovens were built by GE Consumer & Industrial, of Louisville, Kentucky, and sold under the Kenmore, GE, and GE Profile brands.

Consumers should stop using the microwave oven immediately and call GE for its ovens and Sears for Kenmore ovens. General Electric Co. is offering a free repair or rebate on a new product, a $300 rebate toward the purchase of a new GE brand unit, or a $600 rebate toward the purchase of a new GE Profile brand unit. Sears is offering a free repair or $300 rebate toward the purchase of a new Kenmore brand unit. The ovens were sold in white, black, bisque, and stainless steel. The brand name is printed on the lower left corner on the front of the microwave door. Consumers can call: GE's Recall Hotline: (888) 240-2745; Sears' Recall Hotline: (888) 679-0282 or CPSC Recall Hotline: (800) 638-2772.

**ICON HEALTH & FITNESS RECALLS INVERSION BENCHES BECAUSE OF FALL HAZARD**

Icon Health & Fitness Inc., of Logan, Utah, has recalled about 22,000 Nordic Track and Reebok Inversion Benches. The recall is because the ankle clamp mechanism can release unexpectedly, posing a fall hazard to consumers. Icon has received five reports of injuries to consumers, including contusions, lacerations, and back pain. The recalled inversion benches invert a user by securing the ankles in a locking device and rotating the bench. The Nordic Track bench is model number 831.14595.0 and the Reebok bench is model number RBBE1996.0. The model number is located under the seat of the bench. Consumers should stop using the inversion benches immediately and contact the firm to receive a free repair kit. For further information, contact Icon Health & Fitness toll-free at (866) 506-9095 between 8 a.m. and 5 p.m. MT Monday through Friday, or visit the firm's Web site at www.iconfitness.com.

**AUTOZONE RECALLS BOOSTER CABLES DUE TO ELECTRICAL HAZARD**

AutoZone has recalled about 140,000 Valucraft Booster Cables. The booster cables clamps were assembled incorrectly resulting in reverse polarity. This poses an electrical shock and explosion hazard to consumers. AutoZone has received reports of four incidents of reverse polarity that resulted in minor property damage. This recall involves the Valucraft eight gauge and ten gauge booster cables. The cables are orange and have “8GA” or “10GA” printed on them. Consumers should stop using the booster cables immediately and return them to any AutoZone store for a full refund or a free replacement. For additional information, contact AutoZone at (800) 230-9786 or visit the firm's Web site at www.autozone.com.

**RC2 RECALLS CHILDREN'S FEEDING SEATS DUE TO FALL HAZARD**

RC2 Corp., of Oak Brook, Illinois, has recalled about 100,000 First Years Newborn-to-Toddler Reclining Feeding Seats. The restraining straps can pull out of the waist strap slots, posing a fall hazard to young children. RC2 has received 38 reports of straps pulling out or nearly pulling out of waist strap slots. There have been 12 reports of children falling out of the chairs. The First Years Newborn-to-Toddler Reclining Feeding Seat can be adjusted between reclining and upright positions. The seat includes a tray, a reversible cushion, and a three-point safety belt. One side of the seat cushion has a sewn-in label at the top that says "the first years by Learning Curve.”

This recall includes all feeding seats except those with an “R” stamped inside a raised circle located on the far left and right of the back of the seatback or those with waist strap slots that are nine inches apart. Various retailers nationwide from November 2006 through October 2007 for about $30. Consumers should stop using the feeding seat.
immediately and contact RC2 to obtain free replacement straps. For additional information, contact RC2 toll-free at (866) 725-4407 or visit the firm’s Web site at www.recalls.rc2.com.

CHILDREN’S TOYS RECALLED BY DOLLAR TREE STORES

About 300,000 Baby Toys Baby Bead & Wire Toys and Speed Racer Pull Back & Go Action! Cars have been recalled because of excessive levels of lead, which violate the federal lead paint standard. No injuries have been reported. The Baby Bead & Wire Toys are colored wires and colored beads that can slide on a natural wood platform. These bead toys have item number 903419 and date code 71 printed on the back of the packaging. The Speed Racer Pull Back & Go Action! Cars are yellow with black stripes and white with red stripes. Item number 873820 and date code 77 is printed on the back of the packaging. They were sold at the Dollar Tree, Dollar Bill$, Dollar Express, Greensbacks, Only One $1, and Deal$ stores nationwide from March 2007 through October 2007 (Baby Bead & Wire Toys) and from September 2007 through November 2007 (Speed Racer Cars) for $1. Consumers should immediately take these toys away from children and return to the store where purchased for a refund. For additional information, contact Dollar Tree Stores at (800) 876-8077 or visit the firm’s Web site at www.dollartree.com. CPSC was alerted to this hazard by the State of Connecticut’s Department of Consumer Protection.

CHINESE-MADE BODY HARNESS RECALLED

Some 60,000 Chinese-made full body harnesses used by hunters have been recalled because they could allow users to fall from tree stands and risk serious injury. The harnesses were made in China for Gorilla Inc. and sold at U.S. sporting goods stores from April 2007 through October 2007. The pullover-style full body safety harness, model SP40300, was available as an accessory with ladder stands and sold for between $80 and $300. Consumers who bought the recalled harnesses, which are used to secure hunters to trees and prevent falls, should stop using them immediately. The company should be contacted for a free replacement. The CPSC said no injuries had been linked to the harnesses.

MERCK RECALLS COMMON CHILDREN’S VACCINE

Merck & Co. has issued a recall for a routine vaccine for babies because of contamination risks. The recall covers roughly 1.2 million doses of the vaccine against Hib, which causes meningitis, pneumonia, and other serious infections; and a combination vaccine for Hib and hepatitis B. The Hib vaccine is recommended for all children under 5 and is usually given in a three-shot series, starting at 2 months old. Merck produces about half of the nation’s annual supply of 14 million doses of Hib vaccine. Merck recalled the lots after identifying a sterility problem in a Pennsylvania factory. Merck said sample vials from the recalled lots, tested before shipment, were not contaminated but the company could not assure the sterility of the entire lots.

Merck in a statement said there is no known health threat. Dr. Julie Gerberding, head of the Centers for Disease Control and Prevention, backed up Merck in a news conference stating: “This is not a health threat in the short run, but it is an inconvenience.” Merck told The Associated Press that the company will not be able to supply any vaccine for at least nine months.

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FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

SHANNA MALONE

Shanna Malone, who serves as the Editor for the Jere Beasley Report, is responsible for helping me in putting this Report together each month. Currently it goes to over 41,000 persons. We receive a great number of responses from our readers after each issue is received. Shanna previously served as our Public Relations Coordinator in addition to working with the Report. However, in July of last year she decided to work part-time to be with her children more. We were able to work things out by reducing her responsibilities to those relating to the Report.

Shanna graduated from Troy State University with a Bachelor of Science in Print Journalism and Public Relations in August of 1999. She is married to Shannon Malone, and they have two daughters, 5 year-old Sydney and 3 year-old Shelby. The family attends Union Baptist Church in Honoraville, where Shanna is actively involved in the Children’s Ministry. Shanna is a very good and dedicated employee who has done an outstanding job for the firm.

LIBBY RAYBORN

Libby Rayborn has worked with me for 19 years and some say she deserves a special medal of some sort for having to deal with all of the controversial stuff she has to deal with in her job. Libby, who serves as my Executive Assistant, grew up in Douglasville, Georgia, where her father served as the minister of the First Presbyterian Church until his retirement. Libby’s daughter, Ally, is in the 10th grade at Alabama Christian Academy and is a varsity cheerleader. Ally has been involved in competitive cheerleading competitions in a number of states. Libby is an avid Auburn fan and loves watching college football. Most of her spare time is spent watching Ally
cheer at football and basketball games. Libby has had the distinction of working on Coach Tommy Tuberville's contracts with Auburn University in 2004 and 2007. She really enjoyed her role in making sure that Coach Tubs stays in Auburn!

Libby and Ally also spend a good bit of time traveling with Ally's competition cheer team. Libby is a tremendous employee who enjoys working with the many folks from all walks of life who contact my office. She has unbelievable people skills and really enjoys working with people. The fact that Libby really likes folks makes her job easier. I have been blessed to have Libby working with me over the years.

Laurie Weldon, who serves as a Legal Assistant to Ben Baker in our Products Liability Section, has worked in this position for almost 7 years. Before coming to the firm, Laurie worked for the firm Bradley Arant in Birmingham. She worked as a court reporter prior to that time. Laurie and her husband Jack have been married for 20 years. They have two daughters—Hannah, 13-years-old, and Mady, 10-years-old, both of whom are involved in every sport imaginable. The children attend Edgewood Academy. The family attends church at Cold Springs Church of Christ. Laurie is a very good and dedicated employee. She does excellent work and is dedicated to helping to obtain good result for Ben's clients. We are fortunate to have Laurie with us.

18th Annual Father Walter's Charity Golf Tournament

The Montgomery County Trial Lawyers Association is an association comprised of lawyers practicing in the River Region. For eighteen years, the MCTLA has sponsored a charity golf tournament to benefit the Father Walter's Child Care Facility. As you may know, Father Walter's has been responsible for caring for severely disabled children for years. The disabilities that these youth have are too complex for parents to handle on their own. As a result, families from Alabama and surrounding states have sought the skilled services of facilities like Father Walter's, so that their children receive the best care possible.

When visiting Father Walter's Child Care Facility, one would expect that children with such severe disabilities would automatically have a poor quality of life because of their circumstances. Amazingly, because of the quality of skilled care given by the employees at Father Walter's, however, there is a strong environment of love, compassion, and care that the children receive. This allows them the best opportunity for as normal a life as possible.

On October 12, 2007, the MCTLA held its 18th Annual Father Walter's Charity Golf Tournament at Wynlakes Country Club. As usual, all proceeds were donated to the Father Walter's Child Care Facility. Approximately forty golfers participated in this charity golf tournament, in which first, second, and third place prizes were awarded. This year, unlike others, the Father Walter's staff brought a few children from the facility to the tournament in order to meet the participants.

Proceeds from the tournament were presented to Father Walter's on December 6, 2007, during an open house at the Child Care Center. The MCTLA was able to donate about $3,500.00 to Father Walter's from the tournament's proceeds. Our firm gave an additional $2,000.00 donation, to make the total gift $5,500. MCTLA members are truly proud to be a part of such a worthwhile charity event and look forward to continuing to make the tournament better next year. If you have any questions concerning next year's tournament, or would like to participate as a sponsor, please contact Navan Ward at 334-269-2343.

Another Soldier Ministry

In the December issue, I failed to mention another soldier ministry that our employees were involved with before Christmas. Hundreds of thousands of military personnel are serving in far-off places defending our liberties. These men and women are far away from their families, friends, and the comforts of home. Tabitha McGuire, who served as the chairperson for the project, was in charge of sending out care packages to our military personnel serving overseas. She did a very good job on this project. Tabitha is an active duty Air Force spouse of 11 years and she supports our troops with all her heart. All of us at the firm fully realize that our troops deserve our continued support and prayers. Regardless of their specific mission, and how they were put into this war in Iraq, we know that the troops are doing their duty for our country without question.

This year our employees sent a total of 77 care packages to our troops. This project was in addition to the special project for Lt. Leigh Kennedy and his troops in Iraq. These packages included a large variety of items such as candy, personal hygiene items, bath towels, hand and hand towels, coffee mugs, candy, magazines, DVDs, cards, books, games, food items, and much more. We even sent Christmas stockings. Along with these packages, we also sent our thoughts and prayers. Our nation has a tremendous debt to our military personnel and their continued dedication to serving our country. We appreciate all they do for us. Tabitha did a terrific job in heading up this project for our firm. I have read some of the thank you letters from a number of the troops and it made me realize how important projects like this really are.
A GREAT EXAMPLE BY A REAL ROLE MODEL

I doubt there are any young people, and very few adults, in America who don’t know who Tim Tebow is and what he has done over on the football field over the last two years. For those of our readers who don’t know, Tim is the University of Florida quarterback who won the Heisman Trophy last month. This young man has been called everything from Superman to a superhero. Tim Tebow, without a doubt, is a tremendous football player who has had two very good seasons as a Gator. However, he is much more than just an athlete and that’s the best part of his story.

Tim Tebow is a dedicated Christian who obviously loves his Lord and Savior and honors Him in his daily life. He comes from a good family and it’s obvious that his upbringing has paid off in the right way. If you will take the time to learn about the Tebow family, I believe you will come to realize that family life and values are extremely important for young people. We need more families who set the right example for their children and who tell us what sort of person this young man really is. We need more like him!

A GREAT RESTAURANT IN THE CAPITAL CITY

We are fortunate in Montgomery to have a number of very good restaurants and in my opinion that’s a good thing. One of my favorite restaurants in the Capital City is the City Grill. The food at this establishment is excellent and the atmosphere perfect for fine dining. Folks from all over Alabama come in for a good meal when visiting the Capital City. Sara and I try and make a weekly trip to visit this top notch eatery. Anybody who enjoys real gourmet food will really like the City Grill. If you have never tried it, I suggest you go in and sample the fare. I guarantee that you will like it. The restaurant is located on Vaughn Road near the intersection with Taylor Road. The owners and staff—including the chef—are great folks and work hard at making City Grill one of the top-rated restaurants in the state.

MY ROOTS ARE IN BARBOUR COUNTY

My family came to Barbour County, Alabama in 1818 and settled in what became known as Pratt’s Station, which is located between Clayton and Louisville. Brothers John and William Beasley, and their wives, were among the first white pioneers to come into the area. The story is that four brothers came from the Carolinas and parted company somewhere around Montgomery. Two of the brothers went to Barbour and two went to Crenshaw County. My brother Billy and I descended from the John Beasley line. It was reported recently in The Eufaula Tribune that the first white child, James Tarpley Beasley, was born on February 22, 1821, to John and Martha Allums Beasley. At least, this was the first such birth recorded in Barbour County.

The old Beasley Family Cemetery is located at Pratts Station and there is found graves of members of the related Beasley families. All of my ancestors farmed in the Pratt’s Station area for years, with the last being my father, Browder Locke Beasley. He got out of farming in 1961. In fact, during the two years following my first year in college, while I was a college drop-out, I helped out on the farm. It was during that time that my early-rising habits were formed. I returned to school at Auburn University in the fall of 1957. Once I got back, I went straight through Auburn and then through law school at the University of Alabama without taking any time off. I guess I knew that my job on the farm might still be available and that motivated me.

When the farming operations came to a halt in 1961, my great-great-grandfather, John Beasley, my great-grandfather, George Washington Beasley, my grandfather, Martin Luther Beasley, and my father had farmed the same tract of land for over 150 years. They were all hard workers and even though neither of them had any formal education, they were smart men and extremely hard workers. In fact, in addition to the farming my grand-father ran a saw mill and was a fiddler at area square dances on weekends.

Regardless of where I might have lived—including my present home in the Capital City—Barbour County is still my real home. Growing up in a small town prepared me for my career as a lawyer. I learned lots about human nature working on our family farm and in my mother’s small grocery store. My mother, Florence Camp Beasley, was a brilliant lady who loved people. She was a tremendous business person. In fact, had she been given the opportunity, my mother could have run any company in the U.S. She had that kind of ability. In fact, the education I received as a part-time farmer and a clerk in a small grocery store gave me great insight into the needs and desires of people. That has proved to be invaluable to me in my career as a lawyer. I have never forgot-
ten where I came from and am proud to say that my roots are still in Barbour County.

**BIBLE VERSE OF THE MONTH**

Willa Carpenter, who serves as the Human Resources Liaison for our firm, supplied her favorite Bible verse, which is being featured this month. Willa says this verse is the most important one to her to live life by: Jesus said:

*You shall love the Lord your God with all your heart, with all your soul, and with all your mind. This is the first and great commandment. And the second is like it: you shall love your neighbor as yourself. On these two commandments hang all the Law and the Prophets.*

Matthew 22:37-40

When asked by a lawyer, who was a Pharisee, which of the commandments in the law was the greatest, Jesus responded as set out above in Matthew. He then told the lawyer and the others that “on these two commandments, hang all the Law and the Prophets.” The whole of God’s will for humanity rests on the exercise of this love. The lawyer was testing Jesus and issued Him this challenge. The response applies to us in today’s world. Wouldn’t it be a great and glorious thing if we would all follow and live by these two commandments?

**XXII. SOME PARTING WORDS**

WORDS OF ENCOURAGEMENT FROM PASTOR JAY WOLF

I received a letter of encouragement just before Christmas from my good friend Jay Wolf, who is pastor at the First Baptist Church in Montgomery. Jay says that we must keep our eyes and focus on Jesus Christ at all times and he referred me to Hebrews 12:1-4:

*Wherefore seeing we also are compassed about with so great a cloud of witnesses, let us lay aside every weight, and the sin which doth so easily beset us, and let us run with patience the race that is set before us, Looking unto Jesus the author and finisher of our faith; who for the joy that was set before him endured the cross, despising the shame, and is set down at the right hand of the throne of God. For consider him that endured such contradiction of sinners against himself, lest you be wearied and faint in your minds. You have not yet resisted unto blood, striving against sin.*

I will pass this message on to you and encourage you to make it your top priority for this New Year. There are few guarantees in this world, but the promises in this passage are fully guaranteed without any doubt. Jesus is our example of endurance and that can be no greater example or role model for us. As we enter the New Year, we can all be encouraged because of Jesus having himself run and the race. We are told in the scriptures that Jesus has become the author and finisher of our faith and that’s the most reassuring encouragement that we could ever receive.

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