I. CAPITOL OBSERVATIONS

SENATOR SHELBY STAYS IN TOUCH WITH ALABAMA CITIZENS

Senator Richard Shelby has done an excellent job of staying in touch with the people of our state. Utilizing a strategy that was first used successfully by the late Jim Allen when he was in the U.S. Senate, Senator Shelby makes stops in all 67 counties each year. Senator Allen did the same thing during his time in the Senate, using town hall meetings to carry out his pledge of keeping his ear to the ground in his home state. Some of you may recall that Senator Allen ran his first race against the “Washington” crowd. Senator Shelby, following the Allen lead, has actually perfected the town hall meeting concept. The senior senator from Alabama has already started his annual 67-stop statewide tour through the state for this year. He goes to places that lots of statewide politicians never seem to have the time to visit. On his tour local residents are able to talk with the senator and ask him unscripted questions.

I am told Senator Shelby has had about 1,400 of these town hall meetings since becoming a senator in 1986. He has been known to have five of the hour-long sessions in five different counties in one day. The Senator says these meetings are official business, not political events, and I believe him. In any event, what he does is most unusual and most important. It’s a great way to find out what real people are thinking. I have attended some of the meetings and each time was most impressed.

Alabamians take time out of their day to show up and ask serious and informed questions about issues of local, national, or international significance. I have even seen folks challenge the Senator on specific votes and actually criticize him on occasion for failing to address problems that affect Alabama citizens. I will say, however, that those type confrontations have been few and far between. This man never lets tough questions bother him and he always gives straight answers. We are most fortunate to have Senator Richard Shelby, a very popular public official, representing our state in Washington.

A GOOD YEAR FOR ALABAMA

It certainly appears that Alabama has things headed in the right direction on most all fronts. This is especially true when it comes to the state’s efforts in industrial development. Without question, this past year was very good for Alabama on the economic development front. The announcement of more than $6 billion in new and expanded industries for the state during 2007 was great news. This set a record and the final numbers weren’t even in at press time. The total is expected to grow as state economic development officials continue to add up the year’s growth figures.

According to data from the Alabama Development Office, there were 271 new projects or expansions across the state, creating 17,143 new jobs in 2007. It appears that 2008 will be another good year. The state is currently working with 76 prospects, including 44 that have the potential to create at least 100 jobs each. Together, those 44 prospects represent a potential 17,540 jobs for the state, according to ADO Director Neal Wade. The people of Alabama owe Neal, who has done a tremendous job in his role as Chief Recruiter, a great debt of gratitude. He is to be commended for his role in the state’s historic recruiting year.

Neal says ADO has a global marketing strategy, with plans to aggressively promote Alabama’s economic development scene in international and domestic markets. The plan includes targeting three key business sectors:

• expanding the automotive industry, with suppliers and possibly another assembly plant;
• targeting aerospace, aviation, and defense projects for sites across Alabama; and
• building biotech and life sciences businesses, particularly in Birmingham and Huntsville.

To put things in perspective, the $6.1 billion in announced industrial investments in 2007 breaks the previous investment record of $4.7 billion set in 2005. The only other year the state topped the $4 billion mark was 1981, according to ADO records that date to 1947. The final number of jobs created is expected to be in the 25,000 range. While economic news nationwide hasn’t been good lately, the news for Alabama has been very good. The prospects for this year in Alabama
appear to be excellent. At the time this was being written, there was a great deal of activity that could get 2008 off to a great start.

Source: ADO

THERE IS STILL WORK TO BE DONE IN OUR STATE

Even though Alabama is doing extremely well in almost all areas, there is still lots of work to be done. For example, we still need to work in areas of the state where poverty remains to be a major problem. Also, a recent report gave our state pretty bad marks on environmental issues. Alabama ranked poorly in a survey of “green” states by Forbes Magazine. Frankly, based on what we have learned in environmental litigation, I really wasn’t too surprised at how poorly our state has done in that area of concern. An editorial in the Birmingham News on January 1st tells the story very well. In fact, the state was pretty well taken to task for our failure to protect our natural resources and control the polluters.

Regardless of how our state ranks, and whether everybody agrees with the ranking or the editorial comments, I am convinced we must do a better job on the environmental front. Alabama must do a better job of protecting our natural resources and also protecting the people of Alabama when it comes to their health and safety. We can’t afford to do less than an excellent job in this important area of state government’s responsibility. If you agree, contact Governor Riley, Lt. Governor Folsom, Speaker Hammett, and Attorney General King, and let them know how you feel.

TIm JAMES TO RUN FOR GOVERNOR IN 2010

It appears there will be another candidate for Governor in Alabama in 2010. Greenville businessman Tim James, who ran unsuccessfully in 2002, has said publicly that he will definitely run for Governor. I agree with Tim’s assessment that his timing was bad when he ran before. Polling data, according to Tim, give the former Auburn University running back a “very strong position to win the GOP nomination.” Actually, Tim is the first person to declare publicly his candidacy for the 2010 race for Governor and it will be interesting to see how well his trial balloon flies. There is one thing for certain—he will have lots of company if he does in fact run.

SERIOUS MONEY PROBLEMS IN ALABAMA

The Alabama Legislature is now in session and it’s obvious that money providers will have to be dealt with. Legislative budget hearings started last month, and the news generated was anything but good. Projections presented to legislators show they will have to cut back spending education. I am told the shortfall will be in excess of $500 million. The projections also show there will be about $300 million less for non-education state services, such as state troopers and prisons. A very bleak economic picture was painted by Joyce Bigbee, the director of the Legislative Fiscal Office. Joyce and state Finance Director Jim Main told the panel that the budget problems are the result of a slowdown in the economy. Revenues from income taxes and sales taxes, which go into the education budget, will be hit hard. The state will have to withdraw almost $406 million from a savings account to pay all of the bills for the current fiscal year, which ends on September 30th.

Making matters worse, it appears that the Alabama Medicaid Agency will need several hundred million dollars in additional funds in the next fiscal year if the agency is to continue providing medical services to low income Alabama residents. Medicaid Commissioner Carol Herrmann Steckel believes her agency will likely have to cut some services, including a program to provide over-the-counter cold medications for adults and a program providing artificial limbs. It’s my belief that the state needs to do as much as possible to provide medical care to the state’s children, elderly and poor. We can’t afford to take a step back when it comes to meeting needs for those groups.

Interestingly, state agencies have asked for more than $400 million in budget increases, despite the fact that there will be less money in the General Fund next fiscal year. This didn’t sit well with Rep. John Knight, chairman of the House Government Appropriations Committee, who warned department heads to base their requests on actual needs. Knowing John as I do, the heads of each department had better pay attention to his warning. Now that the Legislature is in session, it will be interesting to see how they work out of the money problems facing the state. Remember, all of the pre-session projections came before we realized that our nation is facing the probability of a recession.

Source: Associated Press

JUDGE SIDES WITH EXXON ON AMOUNT OF DAMAGES

It looks like we are heading back to the Supreme Court in the State’s case against Exxon. The case was back before the trial judge on January 8th for a hearing on one disputed issue, that being how much ExxonMobil owed the state. We had hoped to bring the 9-year-long legal battle over natural gas royalties owed by the powerful oil giant to a conclusion. Just before the hearing, we learned that Exxon had finally agreed it owed $120.4 million in royalties and interest to the state. But, we contended that there was an additional amount due that would have brought the total to $142.8 million.

The argument at the hearing was whether the statutory penalty for not paying royalties under Alabama law should be applied for the period from 2002 to date. This issue has never been before an Alabama court to my knowledge and will be a case of first impression. Robert Cunningham and I appeared for the state at the hearing. We have recommended to Governor Riley and Attorney General Troy King that the remaining part of the case should be appealed to the Supreme Court because
the state’s highest court has never addressed how to compute the penalty in royalty disputes where there are also post-judgment interest payments due. Exxon now contends that the “penalty” is actually “interest,” which is a total reversal of its previous positions on this issue. The company had been consistently labeling the penalty as a penalty and not interest. When it suited their latest position, that labeling quickly shifted from penalty to interest.

The $120.4 million approved by the trial court was based on figures computed at the end of the year. Additional interest for January will push the final payment by the oil company to about $122 million. That amount will have been paid to the state by the time this trial court was based on figures computed at the end of the year. Additional interest for January will push the final payment by the oil company to about $122 million. That amount will have been paid to the state by the time this issue is received if things go as agreed. The remainder will be considered interest and will go into the state general fund as the state has never readdressed how to compute the penalty in royalty disputes where there are also post-judgment interest payments due.

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About $58 million of the total amount will be royalties that will go into a state trust fund, or savings account. The remainder will be considered interest and will go into the state general fund. As you know, the general fund finances non-education functions of government, including prisons, Medicaid, and state troopers. After the last ruling, Senator Roger Bedford (D-Russellville), who handles the general fund budget in the Senate, told the Associated Press:

*The Supreme Court was wrong not to hold a company, which had $40 billion in profits last year, responsible for stealing royalties from the citizens of Alabama through their New York accounting gimmicks on royalty payments.*

Although the Supreme Court’s refusal to recognize the state’s fraud claim against Exxon was a major disappointment, the state will at least receive payment of the royalties that Exxon failed to pay. Ironically, the bosses at Exxon, in internal company memos, had said while devising their scheme, that if the company was ever caught, it would simply pay back the amount it failed to pay to the state, plus 12% interest. It appears these men had things pretty well figured out way back then. In the opinion of many observers, this case will go down in judicial history as one of the biggest miscarriages of justice ever in our state. I would challenge anybody who disagrees to take a look at the Exxon documents and then decide whether Exxon committed a massive fraud on the people of Alabama and were able to get away with it.

Source: Associated Press

II. RECENT SETTLEMENTS BY FIRM

**STATE OF ALABAMA SETTLES CLAIMS WITH TWO DRUG COMPANIES**

The State of Alabama will receive almost $7 million from a settlement reached with two drug manufacturers that were defendants in a lawsuit the state filed against more than 70 pharmaceutical manufacturers. The lawsuit, filed at the direction of Attorney General Troy King in 2005, alleges the drug companies fraudulently inflated their reported prices for prescription drugs, which caused the Alabama Medicaid Agency to overpay pharmacists and doctors. In announcing the settlements, the Attorney General reported that the state has settled the claims against Takeda Pharmaceuticals North America Inc. and Dey, LP. Under the agreement, Dey will pay the state $4.75 million and Takeda will pay $2 million. The money from the settlement will go into the state’s General Fund budget. The General Fund provides money for most non-education state services, including Medicaid, and is very short on available funds at present to meet needs.

The state’s claims against Takeda involved the diabetes drug Actos. Its claim against Dey involved a number of drugs prescribed primarily for pulmonary diseases and asthma, such as albuterol sulfate and ipratropium bromide. Relating to the settlement, Attorney General King observed: “These settlements are a significant step towards protecting Alabama’s poorest citizens and the scarce resources they depend on to provide for prescription drugs.”

Our firm recently settled a wrongful death case against Continental Tire and Ford Motor Co. The lawsuit arose out of the death of an 8-month-old girl in a vehicle rollover. The infant was killed when the car seat in which she was buckled was ejected from a Ford F-150 four-door pickup truck when the left rear door latch self-actuated and the door flew open. We learned a great deal about Ford’s handling of door handle-latch assembly defects during pretrial discovery in the case.

Our clients were heading back home to North Carolina from a family vacation in Mexico when the right rear Continental tire detached, causing the vehicle to go out of control and roll over in the median on I-65 North. During the rollover, the left rear door latch on the F-150 super crew cab self-actuated and flew open. This open door created additional room for the child safety seat to work its way loose from the vehicle’s seatbelt system. The car seat, with the baby still in it, was ejected, resulting in the infant’s death.

Our firm reached a partial settlement with Continental Tire during mediation, but elected to go to trial against Ford. During the trial, which started in an
Alabama state court on January 14th, we proved that Ford knew an occupant was 20 times more likely to be ejected if a door came open. It was also established that Ford knew an occupant who is ejected is 40 times more likely to die. Although learning of Ford’s knowledge on this subject didn’t come as a surprise, we were shocked to learn that it had an extremely dangerous door handle-latch system. We set out to prove what Ford knew, when they knew it, and what they did about it. We learned during discovery that this dangerous condition actually exists in all F-150’s, Ford Expeditions, and Lincoln Navigators for the model years 1997-2001.

Door handle-latch systems on all passenger cars and light trucks are required to meet a federal standard known as FMVSS 206. This standard, which requires door handles to withstand inertial forces of 30g’s, was designed to prevent handles from unlatching the door during an accident and causing the door to fly open. A Ford engineer published a peer-reviewed paper three years before our vehicle was manufactured, stating that the 30g governmental requirement and Ford’s own internal requirements were grossly inadequate. The published paper in the SAE Journal stated that in foreseeable crashes, door handles would experience G-forces ten times greater than the 30g standard. The engineer had learned a great deal about the door latch problems in dealing with a defect in Ford Taurus door handles in the early 1990’s.

It was established during 2½ days of trial that Ford had never conducted any specific crash tests in order to determine how its latching systems performed in side impact accidents. It was also established that in the last 30 years, Ford had not conducted one single rollover test in order to determine how the safety features on any of its vehicles performed in a rollover crash.

During discovery we learned that doors were flying open on F-150’s, Expeditions, and Navigators during government-required testing for fuel systems and seatbelts. Ford looked into these door openings and discovered the handles on 1997-2001 model years for all three vehicles wouldn’t pass the minimum federal requirement under FMVSS 206 of 30g’s. Ford’s internal documents referred to these handles as being “defective.” In short order, Ford began plans for a recall involving over 1.6 million F-series pickup trucks at a cost to the company of some $70 million. Days before the recall was to be announced the very same engineer who wrote the 1997 SAE paper “discovered” a different way to determine whether the minimum federal standard was met. Using a procedure that Ford had never used before, and has never used since, this engineer determined that the minimum standard could be met even with reduced spring tension. The alternative method used by this employee actually was not a new discovery, but dated back to a 1967 General Motors letter to the National Highway Traffic Safety Administration (NHTSA). As a result, even though Ford engineers had recommended it, no recall was issued and Ford “stood down” from the anticipated recall on March 30, 2000.

Ford then adopted a safety modification for the F-150, Navigator, and Expedition. The fix was to attach a counter-mass (weight) to the handle-latch assembly that opposes the inertial forces generated in a crash or impact. The variable cost of the fix was approximately 57 cents according to Ford documents. Interestingly, the counter-mass fix was the same one that Ford used in 1993 and 1994 to remedy a problem Ford was having with the doors on the Taurus unlatching and flying open in crash tests. Incidentally, the same engineer who wrote the SAE paper fixed the Taurus problem.

Despite the known safety concerns, Ford did not implement the fix in the F-150 involved in this recent case, nor did Ford delay the release of the 2001 Ford F-150 to implement the counter-mass safety fix. Ford documents indicate that Ford even considered retrofitting the 1997-2000 F-series, Expeditions, and Navigator vehicles that were in the field by adding the safety enhanced counter-mass. But, the retrofit never came about.

One of the reasons given for not retrofitting the vehicles was the Expedition and Navigator had 100 percent autolock, which precludes inertial opening of outside door handles. Ford failed to acknowledge that autolock was not on all F-150’s. In fact, the vehicle involved in our case was manufactured without an autolock system.

One of the most disturbing things we learned during pretrial discovery was that three years before this F-150 was made, Ford knew the 30g standard was grossly inadequate—Ford knew that the handle spring tension in the 1997-2001 model year vehicles failed to pass the minimum federal standard. Yet, Ford has allowed these vehicles to remain on the road with their unsuspecting customers driving them. Many of these vehicles are still being driven by persons who will never know of the defect unless the vehicle is involved in a highway crash. To this day, Ford has never notified owners that their vehicles have a defective handle-latch assembly. Neither has Ford notified NHTSA of the defect.

During the discovery phase of this case, we obtained information that there are more than 50 lawsuits involving these defective door latches. We also learned from a Ford internal document that the company, instead of a recall, elected to go into “damage control.” Of course, “damage control” means settling lawsuits that involve serious and disabling injuries.

It was our pleasure to represent the family in this case. The mother and father and their two surviving children, who are now 13 and 11 respectively, were emotionally devastated by the loss of little Ashley, which is certainly understandable. Unfortunately, because of Ford’s decision not to fix these defective handles, this will surely happen to other families. There are millions of the F-150s, Expeditions, and Navigators described above that have defective door handle-latch assemblies and the owners don’t even know it. This is inexcusable and NHTSA should be actively involved in dealing with this matter. In fact, we are writing NHTSA and requiring a full investigation of this defect.
which in turn led to their discovery of prompted them to contact ADEM, of petroleum) and leukemia. This link between benzene (a constituent had they not learned of the potential In fact, the Terry family may never was diagnosed with leukemia in 2004. Because of this, we will never know the full extent of the contamination on these properties. In addition, the Terrys will never know for certain what caused their daughter’s leukemia.

David Byrne and Alyce Robertson handled this case for our firm and did a very good job. The amount of the settlement is confidential. It’s troubling to have situations like this develop that potentially cause health and safety concerns along with reducing property values. In any event, we are pleased that our firm was able to help the Terry family.

**Another UST Case Settled in North Alabama**

Our firm has recently settled a case involving an underground storage tank (UST) leak in Decatur, Alabama. In this case, we represented families who lived on property bordering a gasoline station known as Bud’s No. 1. The leak was discovered by the station owner, Petroleum Sales, Inc., in 1999. The station then hired Highland Technical Services, Inc. to clean up the leak and to stop it from spreading.

Our clients did not learn about the leak until 2004, approximately five years after it was discovered by the owner. It is likely that for these five years our clients were unaware of the hazard to which they were being exposed while living on land that was contaminated with petroleum. This is particularly troubling for our clients, Harry and Rebecca Terry, whose then-five-year-old daughter was diagnosed with leukemia in 2004. In fact, the Terry family may never have known about the leak at all had they not learned of the potential link between benzene (a constituent of petroleum) and leukemia. This prompted them to contact ADEM, which in turn led to their discovery of the leak.

Our firm filed a lawsuit against Petroleum Sales and Highland Technical Services. We alleged, among other things, that the defendants failed to take reasonable actions to prevent the UST from leaking and to prevent the leak from spreading after it had been discovered. Among other things, the defendants failed to install monitoring wells on our clients’ properties as part of the initial remediation plan. Although the Terry properties were adjacent to the service station, the defendants did not install monitoring wells on the properties until after our clients learned of the leak in 2004. Because of this, we will never know the full extent of the contamination on these properties. In addition, the Terrys will never know for certain what caused their daughter’s leukemia.

David Byrne and Alyce Robertson handled this case for our firm and did a very good job. The amount of the settlement is confidential. It’s troubling to have situations like this develop that potentially cause health and safety concerns along with reducing property values. In any event, we are pleased that our firm was able to help the Terry family.

**UST Case Settled in Pike County**

Our firm also settled a case regarding an underground storage tank (UST) leak in Pike County, Alabama. Our clients, the Pauls, are an extended family owning property in the Henderson Community near Troy. Their property was contaminated by petroleum that leaked from a UST owned by Jeter Oil Company. CDG Engineers, which was the other defendant in the case, was hired by Jeter Oil, the owner of the UST, to clean up the leak and prevent it from spreading to neighboring properties.

USTs are used to store petroleum and are commonly found at automobile service stations. Many older USTs are simply steel tanks without any lining and obviously are susceptible to rust and decay. Beginning in 1998, USTs in Alabama had to be upgraded with leak-proof protection or with anti-rust protection. Even with this requirement, USTs across the state continue to leak and, as a result, cause damage to surrounding landowners.

In this case, Mr. and Mrs. William Paul suffered the most damage from the leak. They actually had to evacuate their home of forty years because the gasoline vapors from the leak became so intense that the family’s safety was endangered. Although the Pauls evacuated their home in 2005, they have still not been able to return because the safety of living in that home cannot be established. We alleged in our suit that the defendants failed to take appropriate actions to prevent the UST from leaking and to stop the leak from spreading.

David Byrne and Alyce Robertson likewise handled this UST case for the firm. They were able to get a very good result for our clients in this settlement. The settlement amount in this case is confidential. UST cases are becoming more numerous. There are a great number of undetected problems involving USTs that are potential hazards.

**Settlement Of Electrocution Case**

Our firm recently settled a case on behalf of the family of Ronnie Adams, who was a lineman working for Pike Electric Company. Ronnie, who was from Winterville, Georgia, died in Flomaton, Alabama on July 12, 2005. He is survived by his wife, Laura, and two children, Katelin and Corde. In the aftermath of Hurricane Dennis, Ronnie and his crew were working in Flomaton, Alabama, repairing power lines for the Alabama Power Company. While Ronnie was working on the power lines, a person nearby attempted to wire a generator into the circuit breaker at his place of business. When the generator was started, the power from the generator backfed into the lines that Ronnie was repairing because the generator hook-up did not use a safety transfer switch. A safety transfer switch is designed to prevent generator backfeed.

The generator owner’s manual described the need for a transfer switch. Ronnie, who was unaware that the generator had been installed, was working the lines as being de-energized. As a result of the backfeed, Ronnie was electrocuted when the generator was started. This was a tragic case that should never have happened. Had a transfer switch been installed—as required—Ronnie Adams would not have been killed. The settlement was between the Adams family and the Alabama Power Company and the individual who installed the generator. The settlement terms in this wrongful death case are confidential. Greg Allen handled this case and did a very good job for the family.
III.
The Presidential Sweep Stakes

The America People Are Shaking Up The Political Parties

After the votes in Iowa, New Hampshire, Nevada, and South Carolina, it doesn’t take a public opinion poll to tell us that the American people are pretty well fed up with the political system in this country. Neither do we need a pollster to tell us folks are upset with most of the national politicians. The buzzword in the early voting states quickly became “change.” Plainly put, folks just don’t trust most politicians on the national level—with justification in many cases—and are demanding drastic changes in the way the federal government operates. Most American citizens feel left out of the system and during the primary season they are letting their feelings be known. The recent votes are the best evidence of the strong desire for change and that a strong connection to the status quo and especially to the Bush regime simply won’t sell in this unstable climate.

At year’s end, a Wall Street Journal/NBC News poll should have alerted us to what was going on amongst the people across the country. The poll revealed that 46% of the people want major reforms and a brand new and different approach to governing. The mood was said to support more than small incremental changes, and all of the early votes confirm it. Most folks believe that government responds to the rich, powerful, and well-connected and that all of the rest of the citizens are left out. It’s also quite apparent that the American people at year’s end didn’t want what would amount to be a “Bush Third Term” and that feeling seems to have intensified.

The mood of the people certainly appears to be for major changes. Interestingly, three in 10 respondents in the poll conducted for WSJ/NBC say the two-party system is “seriously broken” and that the country is in need of a third political party. That finding by the pollster was most significant, in my opinion. The following are some of the significant findings from the poll, which was done in late December:

- Folks don’t really trust the Bush Administration and blame those in charge for most of the nation’s economic problems.
- A majority of the American people disapprove of the performance of members of Congress.
- The country wants our troops out of Iraq.
- The people want real leadership when it comes to picking a successor to President Bush.
- Democrats display more zeal for their presidential choices.
- Americans of all ages and regions list gasoline prices as the economic woe most affecting them, followed by health costs and retirement savings.
- The subprime lending problems are on the minds of folks all across the land.

When you consider that we have had seven very bad years under a Republican Administration that doesn’t seem to have any concern for the real problems facing most American citizens, the mood for change should favor the Democratic Party. But, it must be remembered that the national Democrats have dropped the ball so badly in the last two presidential elections that I wouldn’t rule out another mess-up this time around. I hope the trend of losing races that should have been won will be reversed this year.

Source: Wall Street Journal

Election Year Issues Are Beginning To Come In Focus

Now that we have some early votes behind us, I will attempt to take a little closer look at the specific issues that are being debated by the candidates from both parties who want to live at 1600 Pennsylvania Avenue next year. It was pretty clear at the end of the year that the economy and pocketbook issues had pushed ahead of the war in Iraq as the main issue. Clearly, that was a most significant change. Most recent polling and also exit-polling during the primary and caucus voting have shown that the economy is the major concern amongst most folks. More than half the voters in an ongoing survey for The Associated Press and Yahoo News revealed that the economy, as well as healthcare issues are extremely important to them personally. Folks are greatly concerned over their individual plights and with good reason, and the early votes confirm it. The following are some of their concerns:

- Folks have a fear that they will face unexpected medical expenses.
- Many who don’t have health insurance see little hope of getting help.
- They worry that their homes will lose value.
- Many worry that they will actually lose their homes.
- There is a fear their mortgage and credit card payments will literally overwhelm them.
- Many are concerned they won’t be able to pay for gasoline for their vehicles.
- Terrorism and national security are still very important.
- Now the reality of a looming recession has everybody greatly concerned.

Certainly, as we move into February, all of these issues still rank highly with the public and will be on the minds of folks when they go to the polls this year. The sinking economy, with a likely recession, and healthcare issues were extremely important to respondents in the poll and that now has become quite evident in early voting. Since we now appear to be heading into a major recession, that can’t be good news for anybody who is currently in office and
who wants to be president. Unless things change quickly, any candidate lined up with the Bush Administration will be in big-time political trouble.

When you consider the tremendous cost of the 5-year war in Iraq, both in lives lost and financial costs, the results of this poll were even more telling. Financial worries have clearly risen in prominence. These new public concerns were reflected on the campaign trail in all of the early primary states. Candidates are now hitting hard on domestic issues and especially the economy. It’s obvious that Democrats have an advantage over Republicans when it comes to connecting with their core voters, and while that should pay off in November only time will tell if the Democrats blow another one.

Source: Associated Press

THE EDWARDS MESSAGE WILL CONTINUE TO BE HEARD

Regardless of how my good friend John Edwards finishes in his run for the White House, he has made a mark on the campaign that is extremely important. The votes in Iowa, New Hampshire, and Nevada weren’t exactly what those of us who believe strongly in John’s candidacy had expected. This issue went to the printer before the Democratic primary vote in South Carolina. So that outcome wasn’t known when I wrote this piece. But, one thing that has come out of the political debate thus far has been John’s message about “corporate greed.” That theme, combined with his discussion of the influence of the powerful lobbyists in Washington, sent a very strong message. Unfortunately, those who own the media outlets froze John out very early in an effort to keep his voice in check. But, his powerful message was heard by the other candidates and that’s undisputed. There are many specific examples of corporate greed and how it works. The no-bid contracts received by Houston-based Haliburton for work in Iraq and the record profits earned last year by ExxonMobil, the world’s largest oil company, were cited by John as prime examples of corporate greed combined with political influence in high places. I agree with John’s conclusion that corporate greed is killing the future for children of ordinary folks in our country.

John was the first Democratic candidate willing to take on the corporate culture that fosters greed and corruption. Now it appears that Senators Obama and Clinton and, even at least one Republican, Mike Huckabee, who is now finding out what John learned the hard way, shows some promise on those issues. John tried hard to convince voters that standing up to the powerful interests in Washington, which run the government for the “glorification of corporate profits” is critically important. But, the “rock-star” quality of Senator Obama and Clinton and the organization skills of the Clintons took center stage in the early voting. As stated above, the national media virtually ignored the Edwards campaign from the beginning, and that hurt John’s chances. The Obama campaign has done a masterful job of making the Illinois Senator “the candidate of change” in this election year. Senator Clinton too has worked hard to keep pace on the “change issue,” and to shock her “status quo” image.

Sadly, standing up to these entrenched moneyed interests that have an iron-fisted grip on government in our country doesn’t always result in a winning campaign. I hope that won’t wind up being the case this year. Although John Edwards hasn’t won a race yet, and may never do so, his message won’t go away. Regardless of whether John winds up as the Democratic nominee, he started a political debate that will continue past this primary season. In my opinion, this man should be commended for taking a stand!

Source: Bloomberg

IV. LEGISLATIVE HAPPENINGS

Legislative Bodies Around the Country Will Be Busy This Year

There are a great number of issues that will be dealt with by state legislatures around the country this year. These issues will cover a number of critical matters, ranging from budgetary problems to immigration issues. State legislators will also be called on to fix everything that went wrong in 2007. That covers lots of issues. For example, there are all sorts of infrastructure issues that must be faced; homeowners, who have been victimized by risky fixed-rate mortgages and outright fraud, must be protected; health care issues are critically important matters to be dealt with; insurance issues of all sorts will have to get immediate attention; and water policy will be getting a widespread reassessment, since the severe drought in our region of this country has really brought these issues to the front burner. There are also a number of perennial hot-button issues, including the death penalty, will have to be dealt with. It appears that immigration may be the hottest of all hot buttons issues this year, which is somewhat of a surprise. Everybody seems to want to get in the act on immigration.

To put things in perspective, there are 44 state legislatures that have regular sessions this year, and they will have lots to do. Interestingly, more than three quarters of all legislative seats in the U.S. will be up for election in November. Fortunately for our legislators, Alabama won’t be one of the states holding legislative races this year. In the states that will have legislative seats up, however, voters will have an excellent opportunity to judge lawmakers on what they have accomplished. Although Alabama voters will have to wait until 2010, I suspect many will be keeping some good notes for later use. Let’s take a look at some of the issues that will be debated in leg-

Source: Associated Press
Budget Problems: Almost every state, including Alabama, will have severe difficulties in funding state budgets. If the nation’s economy takes a nosedive—as predicted—budgets that depend on sales taxes will suffer.

Illegal Immigration: Without a doubt, legislators will debate the immigration issue in virtually every state. In my opinion, this is more political in nature than most of the issues to be debated. Everybody wants to get on the immigration bandwagon. I have to wonder why it took so long to recognize this as a big problem.

Infrastructure Repair: The I-35W bridge collapse in Minneapolis last summer prompted a reassessment of infrastructure across the country. Roads and bridges in disrepair are located in almost every state. It will take billions of dollars to fix the problem. Policy makers must direct substantial revenue to repair and maintain infrastructure. Folks are mad about high gas prices nationwide and that makes an increase in the gas taxes—the source of funding—almost impossible. As a result, legislators must look elsewhere for the needed funds. In addition to the safety risks exposed by the Minneapolis bridge collapse, the rapid rise in construction costs will also loom over each of these discussions. States will likely have to borrow money to build now, before construction prices go even higher.

Mortgage Foreclosures: In response to the national foreclosure epidemic, legislatures in many states are considering overhauls of the lending industry. The next generation of homebuyers must be protected. But, lending reform generally won’t help the hundreds of thousands of homeowners who already have adjustable-rate mortgages and whose interest rates are scheduled to skyrocket. Some states and the federal government are trying to help homeowners in adjustable-rate mort-
gages avoid ever paying the exorbitant interest payments. Lending reform and refinancing are just two pieces of the response to what has quickly become one of the hottest topics in state government. States also are looking at cracking down on appraisal fraud, overhauling the foreclosure process, and assisting communities to reduce unoccupied homes. The foreclosure crisis is a most serious problem and must be addressed. The lack of strong consumer protection laws in many states helped give rise to this problem.

Water Policy: Southeastern states are reassessing anything and everything related to water policy. The lack of rainfall has hurt farmers and created fears of water shortages — fears that, in some states, already have been realized. The drought comes in a region unaccustomed to water woes. Growth is tied directly to our water-supply problems. Alabama is formulating a water management plan, which is long overdue.

Hospitals and Health: It has been reported that bacterial infections kill close to 19,000 Americans a year, which is a much higher number than previously thought. The problem of drug-resistant infections and the danger of hospitals (where most cases develop) as breeding grounds for these infections have created a need for immediate action. In the past few years, about 20 states have enacted laws that require public reporting of hospital-acquired infections. All states will have to face up to this issue in 2008.

Other Health-Related issues: Legislators will also discuss a number of other health-related issues, from controlling Medicaid costs to expanding access to care. This could be a landmark year for universal coverage proposals, with several states, including New York, Colorado, Wisconsin, New Mexico, and California, considering proposals to bring health care to all. My state of Alabama has a tremendous short fall in its Medicaid program.

Insurance: States will be dealing with all sorts of insurance issues, including problems relating to healthcare policies, this year. Coastal states will have to deal with special issues relating to homeowner policy matters. Upgrading insurance regulation at the state level will be considered in a number of states.

Gambling Expansion: After a four-year reprieve from widespread shortfalls, unhappy days are here again for state budgets. This year, policy makers will likely be forced to decide between two distasteful options: to raise taxes or cut spending. Some states are looking at another revenue source to avoid this dilemma and that’s gambling.

Death Penalty: By agreeing to hear a case on lethal injection, the U.S. Supreme Court has created a de facto nationwide death penalty moratorium and turned the debate from abolition to administration. Once the Court rules, at least by the end of June, a flurry of legislative activity is likely, as states try to conform to the Court’s edict.

Campaign Finance Reform: Every state should pass meaningful reform this year, and some states appear to be serious about getting something done. Hopefully, my State of Alabama will be one of them.

It will be interesting at year’s end to review all that has been accomplished in all of the states. The challenges are great and it will take a bipartisan effort to meet them successfully. The power and influence of special interest lobbyists will have to be overcome. I hope we will be able to report that 2008 was a good and productive year for legislative bodies.

Source: Governing.com

Another Editorial Relating to the Badly Needed Jack Cline Act

In the last issue, I wrote about the Jack Cline legislation that the Alabama Legislature should pass during the regular session. There has been a great deal written on editorial pages over the
past several weeks concerning the need to right a grievous wrong when it comes to the issue that gave rise to this legislation. A recent editorial in the Birmingham News that appeared on January 4th is certainly worth reading. It’s one of the best assessments of the issue that I have seen so far. Hopefully, all of our legislators read it!

**Legislators Should Pass Strong Campaign Finance Reform Legislation**

While there has been lots of talk about the need for campaign finance reform, thus far it’s just that—talk. The bills that are being introduced thus far appear to be good ones but they really don’t go far enough to solve the real problem. Unless the Legislature faces up to the real issue, and that is special interest money, the problems affecting Alabama’s political system won’t be solved. I recommend adding the following items to any package of campaign finance reform bills that may be introduced during the session:

- Legislation to restrict the total amount of campaign money in statewide elections that can be given by an individual, corporation, or other entity to $5,000 to a candidate.
- Restrict the total amount of campaign donations that can be given by an individual, corporation or other entity to legislative candidates to $1,000.
- Restrict the amount that a candidate, or his or her campaign committee, can spend for statewide and local races (including races for the Legislature) to a reasonable amount. I would recommend $2 million for a governor’s race and lesser amounts for other offices as a start and $200,000 for legislative races.
- Place a total ban on Pac-to-Pac transfers.
- Put a total ban of all contributions from political action committees to candidates in judicial races.
- Place a ban of spending of funds by groups such as the American Taxpayers Alliance for political purposes.

Without a doubt, the Legislature should act promptly on campaign finance reform legislation. The people of Alabama—in my opinion—expect more than just press releases and political posturing. As the song says, folks expect more action and less talking. If people are to have a real say-so in how the affairs of government are carried out, the flow of money in political campaigns must be controlled. The obscene amounts of money being spent in political races are the root cause of most of the problems that face Alabama citizens. In fact, I would go further and say that’s the case in most states and on the federal level.

**V. Court Watch**

**The Supreme Court Race Loses A Very Good Candidate**

State Finance Director Jim Main announced recently that he won’t be a candidate for the Alabama Supreme Court seat being vacated by Harold See. Jim had planned to run for the court, but his duties as Finance Director will apparently keep him off the ballot this year. It’s being reported that the state’s education and operating budgets will face serious fiscal hurdles in the coming year. Finding solutions to these financial challenges will be extremely difficult. In a statement released to the media, Jim explained:

Because of these financial factors, I have decided I can best serve my state and my governor by focusing my efforts on our complicated budgets, not campaign ballots. Therefore, I will not be a candidate for associate justice of the Alabama Supreme Court in the upcoming elections.

As we all know, Jim is Governor Bob Riley’s top budget adviser. In fact, many observers believe Jim has been the best Finance Director in recent memory. In any event, Jim’s decision not to run came as a real disappointment to lots of folks. He had garnered a great deal of early support to run a very strong race. Jim would have been a very good member of the High Court. Some political experts say Jim may have been perceived as being “too fair” to suit some groups in Alabama. I hope that wasn’t a factor in keeping a good candidate off the ballot. In any event, the people of Alabama lost a very good candidate for the Supreme Court.

**Source:** Birmingham News

**Selling Tort Reform Like Soap Has Been Successful**

The tort reformers in Corporate America have done a great marketing job in over the past 25 years of selling a myth relating to our court system. Their goal was to destroy the civil justice system or weaken it to the extent that it becomes ineffective in order to protect corporate wrongdoers. I must say they have been totally dedicated to the task. The myth was sold like soap. It has been marketed in its slickest form. Lawyers who represent victims have found ourselves having to defend against such labels as “tort reform,” “jackpot justice,” “frivolous lawsuit,” “tort hell,” “greedy trial lawyers,” and “activist judges.” The public has been hearing this sort of thing for years without really understanding what was going on. For example, the term “tort reform” suggests that there is something that needs reforming.

Those of us who represent victims fell into the trap of defending a system that wasn’t really broken. In doing so, we actually helped the bad guys get their message out. The concept that the system had to be broken—otherwise it wouldn’t need to be reformed—was developed by the infamous Karl Rove. I must admit it proved to be most effective. Nobody really ever checked to find out the real truth about the jury system. Had they done so—it would have been clear that the system has worked extremely well.
The American people have been subjected to a constant barrage of information that painted a false picture of a judicial system that was out-of-control. Tremendous sums of money were spent by the tort reform groups, which carried out carefully orchestrated media and grassroots campaigns. Fake grassroots groups were formed in states with names like “Citizens Against Lawsuit Abuse” and were heavily funded in a highly secret fashion. They emphasized electing appellate judges who would protect corporate wrongdoers and ignore legitimate claims by victims. The well-planned, highly-organized and well-financed campaign, which was national in scope and designed to protect corporate wrongdoers, has been most effective.

In recent years, an annual report has been released to the media at year-end that graded the states on how well they have responded to the 15-year tort reform campaign purporting to rank states on how well or poorly the court systems in the states functioned. These reports were carried in state newspapers and reported by media outlets as the “gospel truth.” This was part of the Rove plan and it has worked. States were labeled as judicial hell-holes and nobody ever really asked — why? Hopefully, things have begun to change and the tort-reformers are being exposed as nothing more than paid protectors of corporate wrongdoers.

**Another Voice In The Preemption Battle**

The Bush Administration hasn’t slowed down on their push to protect corporate wrongdoers and punish their victims. The plan to have federal preemption shut the courthouse doors in the state court systems is nothing more than a payback to Corporate America. Significantly, the preemption battle has attracted a number of participants. There are some extremely powerful and politically-influential corporations that are demanding payback from our president during the last year of his tenure in office. But, there are many knowledgeable folks who are strongly in opposition. A recent article in the *New England Journal of Medicine*, written by three doctors, is well worth reading on the subject of preemption. This article explains their perspective on the preemption issue very well and points out why the courts shouldn’t allow it.

If the Bush Administration is successful and persons with legitimate claims involving products and medical devices are denied access to justice, it will be one of the worst things to have happened to the American people in years. I hope people are beginning to understand how serious the preemption issue is and how it affects all American citizens. If you don’t have access to the *New England Journal of Medicine* article, let me know and we will send you a copy.

**Source:** New England Journal of Medicine

**Supreme Court Limits Investors’ Securities Lawsuits**

The U.S. Supreme Court has literally pulled the plug on investors trying to sue suppliers of a company whose stock price was inflated with the aid of the suppliers. Corporate America had worked hard in an effort to get this ruling by the High Court. The court held that the investors didn’t have the private right to sue because they didn’t rely upon the statements or representations made by the suppliers. The investors had sought to impose liability on two entities, which, acting both as customers and suppliers, agreed to arrangements that allowed the investors’ company to mislead its auditor and issue a misleading financial statement affecting its stock price. But the Supreme Court concluded that “the implied right of action does not reach the customer/supplier companies because the investors did not rely upon their statements or representations.” With all due respect to the justices, that’s sort of hard to understand.

In the case, investors accused two suppliers and customers of a cable television company, Charter Communications, of allowing Charter to mislead its auditor and issue a misleading financial statement that inflated its revenue by $17 million thereby affecting the company’s stock price. The deal involved Charter overpaying for supplies it purchased in 2000, with the understanding that the suppliers would return the overpayment by purchasing advertising from Charter. The communications giant was able to post the advertising as revenue and then claim it met revenue projections for the year. While the suppliers had no role in actually preparing the financial statements, it sure looks to me like they had a real involvement in what was prepared to go to investors. The decision, written by Justice Anthony Kennedy, said that it’s up to Congress and not the courts to decide whether to extend the reach of a securities cause of action in such circumstances.

The ruling came in a suit filed by Stoneridge Investment Partners against Motorola Inc. and Scientific-Atlanta Inc., suppliers to Charter. Lower courts had rejected Stoneridge’s claims, and in a 5-3 vote the Supreme Court has now rejected them. The U.S. Chamber of Commerce backed the defendants in the case as did others in Corporate America who want to restrict the rights of victims of corporate abuse and wrongdoing.

The decision will most likely affect the fate of a similar shareholder class action lawsuit involving Enron Corp. Lawyers representing investors in that case had asked the High Court to clarify its opinion, but I understand that request was denied. It will be interesting to see how Congress deals with this issue now that it has been tossed to its members by the Supreme Court.

**Source:** Insurance Journal

**VI. THE NATIONAL SCENE**

**A Critical Look At The Two National Political Parties**

Many believe the national Republican Party is falling apart and largely because of the intense efforts of the party bosses
to distance GOP candidates from the Bush White House. As I have written in prior issues, I am not overly impressed with the men who are seeking the GOP nomination for President. After watching John McCain, who has emerged as the leading candidate for the party’s presidential nomination, read literally word-for-word a lengthy speech after his win in New Hampshire, I had to wonder if the Arizona Senator was really the best the GOP has to offer. My initial reaction to a man who wants to be president reading a speech—obviously written by somebody else—was absolute disbelief. When I realized the Senator was actually reading things like “God bless all of you,” from a script that made me wonder a little bit about his sincerity. In any event, the GOP seems to be trying to keep President Bush, who is still the leader of his party, under wraps and out of sight.

While the predictions of a Republican collapse may be accurate, the big question remains—will the Democratic Party take advantage of it? Based on early voting patterns, it’s obvious the mainstream Republican frontrunners are a rather weird collection. For example, Mike Huckabee, the former Arkansas Governor, actually talks more like a Democrat. Without money, and without staff, he suddenly became a contender in the primaries and now finds himself under attack. Senator McCain, who once was given up for dead politically, is trying hard to regain his former image and still be the Bush candidate. That’s a tough row-to-hoe even for the Senator. A flummeling Mitt Romney is still hanging on after his comeback in Michigan, but his chances at the nomination are still slim and none in my opinion. Fred Thompson never woke up and dropped out after the South Carolina vote. Then there’s Rudy—who is the most scary of all—putting all of his eggs in one basket, Florida. So far, none of the Republican candidates have seemed to excite the voters. I wonder why?

The thing that amazes me is that when you consider their messages, all of the Republican candidates are in round-about-ways promising four more years of the Bush Administration’s failed policies. Those efforts range from continuing the President’s war in Iraq, to pursuing his efforts to privatize Social Security, to extending his budget-busting handouts for his powerful corporate friends, to continuing the rape by the oil and drug industries of the American people. In my opinion, none of those messages will sell this year. I believe the American people want real change and the primary voters on Super Tuesday (February 5th) will determine who in each party can carry that banner. There’s one thing for certain—folks don’t want another four years of the Bush Administration’s policies.

I sincerely believe that George Bush has been the worst President whom I have witnessed over my years of observing national politics. Seven years after taking office, his approval rating is down around 25%, and two-thirds of the American people believe the country is on the wrong track. While the Democrat candidates collectively offer real solutions and new ideas to provide the American people with the change they want, the Republicans seem to offer only what amounts to a third Bush term. The Democratic Party has a real opportunity to take back the White House from the likes of Dick Cheney and Karl Rove and their corporate buddies. The winds of change—blowing very strong across the land—clearly indicate that no person identified with the Bush Administration will do well politically in the general election and that includes the GOP nominee for president. The real question is—will the National Democratic Party find a way to lose again?

**U.S. CHAMBER OF COMMERCE THREATENS CANDIDATES**

In years past, the American people have witnessed lots of arrogance on the political scene and they haven’t liked it very much. Recently, a man who has been a player on the political scene over the last few years has reached a new level on the arrogance meter. Tom Donohue, the president of the U.S. Chamber of Commerce, says he will spend millions of dollars this year to defeat candidates he deems to be unfriendly. In making his political plans known, Donohue boasted:

> We plan to build a grass-roots business organization so strong that when it bites you in the butt, you bleed.

The arrogant warning from the nation’s largest tort reform group came against a background of a growing fear by people over the condition of the U.S. economy. A recession on the horizon, a weak record of job creation, the sub-prime mortgage crisis, declining home values, and other fiscal problems have all helped make the economy the major campaign issue. All of this is really hurting candidates supported by Donohue and the U.S. Chamber, and that may account for his ill-advised threats.

It appears that Donohue is threatening presidential candidates like John Edwards, Hillary Clinton, and Barack Obama. Each of them has been calling for change on behalf of middle-class voters. On the Republican side, former Arkansas Governor Mike Huckabee—emerging as a stronger-than-expected candidate—has used populist themes in his effort to attract independent voters. Huckabee, for example, has blasted bonus pay for corporate chief executives and the effect of unfettered globalization on workers. Donohue brags that his group will punish any candidates who target business interests with their rhetoric or policy proposals. He included congressional and state-level candidates, as well as those presidential candidates mentioned above in his announcement.

Donohue indicates that his organization will spend more than the $60 million it spent in the last presidential cycle. The Chamber president announced the broad outlines of the organization’s plans for the 2008 election and beyond in a news conference. Donohue says he will be active in 140 congressional districts this year, as well as the presidential contest. At the state
level, Donohue will be active in nearly four dozen contests for state Attorneys General and members of state supreme courts. Clearly, the Chamber has become a significant force in state and national politics under Donohue’s control over the past decade. Clearly, the U.S. Chamber has been taken over by tort reformers and is now a strong political force. Since Donohue took over the Chamber, contributions by businesses have soared, often to pay for political advertising known as “issue ads,” which are exempt from many of the Federal Election Commission limits. Under a system Donohue pioneered, corporations contribute money to the Chamber, which then finances attack ads targeting individual candidates without revealing the names of the businesses involved in the ads.

Source: Los Angeles Times

A HAPPY NEW YEAR FOR THE OIL COMPANIES WILL BE A BAD YEAR FOR CONSUMERS

Economists in the year 2100 will look back and note that oil reached the price of $100 per barrel for the first time on January 2, 2008. It was obvious that the powerful oil companies were in for a real Happy New Year. But, individuals and businesses who have to buy their over-priced gas will suffer as a result. Standard & Poor’s chief economist David Wyss pointed out that “the higher the oil price goes, the more likely recession becomes.” In a recent note to investors, he put triple-digit crude in perspective with a comparison of 2007 energy costs he put triple-digit crude in perspective to win the presidency and regain control of Congress, the oil giants will continue to run roughshod over the American people. We badly need a president and a Congress willing and able to stand up to the giant oil companies and rein them in!

MORE ON THE LEGACY TO BE LEFT BY THE BUSH WHITE HOUSE

History won’t record the legacy left by George Bush as a good one. When this President leaves the White House next year, he will leave the federal government in sad shape in a number of important areas. Perhaps, the federal government’s total liabilities and unfunded commitments will be one of the worst things the President will leave behind. Currently, the total amounts to slightly more than $53 trillion. It’s estimated by the Government Accountability Office that the $53,000,000,000,000 will grow by $3 trillion each year unless the brakes are applied. It’s a sad commentary that during the Bush years in office our government has become totally addicted to debt. President Bush inherited a surplus when he came to Washington, and he will leave a staggering deficit for his successor. At last count it was over $250 billion and growing.

There has been a series of mishaps—some accidental and some intended—that have caused a fiscal mess. An example of the irresponsible leadership from the White House was the prescription drug benefit legislation pushed through Congress by the President and the lobby for health insurance industries. That alone represents about $8 trillion of Medicare’s $34 trillion gap. Do you recall how much the White House projected the drug bill—if passed—would cost the taxpayers? The tragic truth is that, as a result of that legislation, U.S. taxpayers are being taken to the cleaners while the drug companies, program benefit managers, and the health insurance companies are getting richer by the minute. Those who are supposed to be benefited by the drug program are caught in the middle and may wind up being as big losers as the folks who are paying the tab.

The fiscal mess that has resulted during the Bush years will take years to clean up. The President looks like a “deer-in-the-headlights” when he attempts to explain his fiscal policies and as a result even most Republicans have lost faith in him. But Congress also needs to get involved and start putting the brakes on the runaway train driven mainly by Vice President Cheney and Karl Rove.

U.S. RULING BACKS BENEFIT CUT AT 65 IN RETIREE PLANS

The Bush Administration has been great for the big bosses of large and powerful corporations. But the Bush years will go down in history as being the very worst for American workers since the Hoover days. A recent ruling by the Equal Employment Opportunity Commission is a prime example of how working folks are being treated. Employers can now reduce or eliminate health benefits for retirees when they turn 65 and become eligible for Medicare. The policy, set forth in a new regulation, allows employers to establish two classes of retirees, with more comprehensive benefits for those under 65 and more limited benefits—or none at all—for those older. More than 10 million retirees rely on employer-sponsored health plans as a primary source of coverage or as a supplement to Medicare. The AARP is opposing this rule. Christopher G. Mackaronis, a lawyer for AARP, which represents millions of people over the age of 50 or above, commented:

This rule gives employers free rein to use age as a basis for reducing or eliminating health care benefits for retirees 65 and older. Ten million people could be affected—adversely affected—by the rule.

The AARP has filed suit in an effort to
More Than Half Of Americans Want Internet Regulation

With increasing levels of violence and sexual content in Internet videos, many Americans believe that the Internet needs a V-chip or some other form of content regulation. A Zogby poll reveals that more than half of U.S. residents want the government to regulate Internet video in some way. Twenty-nine percent of those surveyed said Internet video should be regulated just like television content, and another 24% said the government should institute an online rating system similar to the one used by the movie industry. Only 36% of respondents agreed that government regulation of Internet video would raise constitutional issues.

It should come as no surprise that Americans view Internet video as being as potentially dangerous and offensive as TV programming—especially since much TV programming ends up on the Internet. Movies are rated by the Motion Picture Association of America, and broadcast television programming—though rated by the networks that make it—must at least in theory adhere to indecency laws, which the Federal Communications Commission (FCC) and Congress can enforce. But on the Internet, there are literally millions of content producers. Of course, the real solution to Internet video indecency—like that in the movies or on TV—is for the program creators, and the advertisers who underwrite it, to act responsibly by choosing to produce clean, family-friendly entertainment free of sex, violence, and foul language. Source: Parents Television Council

A Need To Control MySpace

It’s very easy for sexual predators to operate on MySpace which as you probably know is the most popular social networking site for younger teens and perhaps even pre-teens. Currently, there are more than 70 million users in the United States. Sadly, MySpace has been a virtual magnet for sexual predators for a number of years and I expect we only have seen the tip of the iceberg when you consider that many incidents go unreported. I believe we can all agree that we have a very serious problem on our hands. State Attorneys General and law enforcement agencies around the country have been working hard to make MySpace clean up its act. Their efforts need to the support of all Americans. Parents must get actively involved and force the politicians to also get involved and take all action necessary to protect our children and grandchildren.

DaimlerChrysler Gets Record $30 Million CAFE Fine

Corporate Average Fuel Economy (CAFE) regulations were instituted by Congress in the mid-seventies. The law included fines for automakers who failed to meet the standard. The National Highway Traffic Safety Administration is the agency that actually sets the rules for CAFE, calculates the averages and administers the fines. Over the years, carmakers have been fined a total of $735,422,653.50 for selling cars and trucks that use too much fuel. In December, NHTSA released the latest list of fines, including those for the 2006 model year. A record fine of $30,257,920 was levied against DaimlerChrysler for that model year, almost double the $16,895,472 the carmaker paid the previous year. The previous record was held by BMW, which paid almost $28 million in 2001. As the new standards increase over the next decade, companies that produce a lot of high performance cars like Mercedes and BMW will likely be paying a lot more in fines unless they start selling a lot of hybrids and diesels. Source: Associated Press

The Cost Of Climate Change Is Huge

It’s being reported that natural disasters brought about by climate change carry a very large price tag. Unfortunately, according to the reports the cost is growing rapidly. Total economic losses from natural catastrophes in 2007 rose to $75 billion from $50 billion the year before, as extreme weather conditions driven by climate change wreaked havoc across the world. The economic losses include those not covered by insurance such as disruption to power supplies or transportation links, and those are most significant. The review of natural catastrophes is reported annually by Munich Re, the world’s second-largest reinsurer. A disaster is defined as an event that results in more than 10 deaths or causes millions of dollars of losses.

Losses to the insurance industry doubled to $30 billion during the year, as the number of individual disasters rose to 950. This is the highest number since 1974, when Munich Re began its survey. The company says the trend with respect to weather extremes shows that climate change is already taking effect. According to Munich Re, more such extremes are to be expected in the future, which is not good news. The greatest losses to the insurance industry were sustained in Europe, which was hit by an unusually large number of extreme weather conditions throughout the year.

It’s obvious that the world is experiencing tremendous climate changes. Global warming is causing severe problems. All governments have a duty to take the steps necessary to deal with the problems. We can’t afford to sit back and do nothing in this country, as has been the policy during the Bush-Cheney years. Making fun of Al Gore—while it gets laughs—is certainly not the answer.
It's past time for our elected officials to get serious about climate change.
Source: Forbes

VII.
THE CORPORATE WORLD

THERE IS HOPE FOR THE FUTURE ON THE CORPORATE FRONT

Looking back on the past several years, it’s readily apparent that many bosses in the corporate world operated in such a manner as to bring disgrace on themselves and their companies. I hope a lesson was learned from the sad stories of those who led powerful corporations such as Enron, Tyco, and HealthSouth. All Americans should realize that “greed” by corporate bosses, unless recognized and controlled, will eventually destroy even the most powerful corporations. It’s my prayer that these lessons—even though painful for many—were learned and major changes in Corporate America will now take place. Honestly, integrity, and a sense of fair play must be restored in the corporate board rooms of America. I have to believe there is hope for this happening since the American people—including shareholders of publicly-traded corporations—are demanding an end to corporate greed and the corruption that accompanies it.

CORPORATE MELTDOWN ON SEVERAL FRONTS

There has been a corporate meltdown in the United States over the past several months and it is having a disastrous effect on our nation’s economy. The following are prime examples of what can happen when greed takes over in corporate boardrooms. A number of large companies are paying a heavy price for their involvement in highly questionable activities in the subprime mortgage field. For example, consider the current plight of these companies:

• Morgan Stanley took a $9.4 billion hit for its fiscal fourth quarter, $5 billion more than most experts were expecting, even though the company aggressively wrote down its exposures to credit derivatives and mortgage securities. Morgan Stanley’s write-down came as Wall Street was reeling due to the subprime mortgage crisis.

• Bear Stearns, where fourth-quarter losses were $1.79 a share, is another company paying a heavy price for its corporate greed.

• UBS has fourth-quarter write-downs of $10 billion and had to get an $11.5 billion infusion of capital from Singapore and an unnamed Middle Eastern investor.

• Citigroup, as I understand it, had additional write-downs of $13 billion after receiving $7.5 billion from Abu Dhabi’s investment fund.

• Merrill Lynch had larger fourth-quarter write-downs than the $8.4 billion it estimated in November. The figure appears to be closer to $15 billion.

• Bank of America had another $3.3 billion in write-downs and provisions.

• Wachovia set aside $1 billion for expected credit costs.

It’s very clear that companies trying to take advantage of booming fixed income and equity markets got into big trouble. Buying up mortgage companies near the peak of the housing boom proved to be a mistake for a number of very strong companies. It’s been projected that the corporate meltdown has reduced the share value of all companies involved in the subprime lending industry. Consider that the loss of share value in just five major financial giants—Citigroup ($135 billion); Morgan Stanley ($40 billion); UBS ($40 billion); Merrill Lynch ($34 billion); and Bear Stearns ($10 billion)—cost investors $258 billion in 2007, and you can easily see the magnitude of the problem. These companies are among Wall Street’s elite—employing some of the highest-paid individuals in the world, and perhaps some of the smartest and they each let greed at the top of their corporate structure get them into big-time trouble.

Some of the business tactics employed by the bosses at these companies makes me wonder what in the world these “smart” folks were thinking. Unfortunately, these companies were given a green light with little if any oversight by the Federal Reserve Board and the U.S. Treasury. As a result, the subprime debacle has become a full-fledged credit crisis that is affecting our nation’s economy in a most adverse manner. In fact, the corporate meltdown—caused by the greed and arrogance of corporate bosses—is hurting lots of folks worldwide. The economies of our country—and those of numerous others around the globe—are in real trouble.
Source: Forbes

MORE CLASS ACTION FRAUD SUITS RESULT FROM THE CREDIT CRISIS

There has been a sharp increase in the number of class action lawsuits alleging that companies defrauded investors and that shouldn’t come as a surprise. The number increased more than 40% last year and without a doubt it is the result of the subprime credit crisis. Researchers in a recent study said the rise reflected a surge in lawsuits in the last six months of the year. Clearly, the credit crisis resulted in the increase in the number of class action cases. It was reported by Stanford University and Cornerstone Research that 166 companies were sued last year, including 47 financial services businesses, which have been among the hardest hit by losses in subprime mortgages. The 2007 tally contrasts with 116 cases during the comparable period a year earlier. A separate study by NERA Economic Consulting drew similar conclusions.

I am confident that there will be many more lawsuits filed as a result of the fraud and abuses in the subprime lending industry. Law enforcement
authorities are currently investigating possible wrongdoing among brokers, lenders, credit-rating agencies, and financial institutions. Investigations of dozens of companies by officials in several states, the Securities and Exchange Commission and federal prosecutors are looking to see whether the companies failed to disclose mortgage losses or hid problems or risks from shareholders. In some cases, investigators are trying to determine whether corporate executives may have dumped their own stock when they knew of approaching problems.

Source: Washington Post

VIII.
CAMPAIGN FINANCE REFORM

THE BIG MULES ARE ABLE TO HIDE THEIR CAMPAIGN MONEY

The National Republican Committee—masters in the game of dirty tricks in politics—is already hard at work setting up their “Swift-Boat”-like groups in hopes of winning the presidency and regaining a majority in Congress. Because of a strategy devised by Karl Rove, and the dedication of his army of minions in working his plan, the national Republicans have been able to do a super job of organization. The national Republicans have set up groups with names that appear to be worthy and noble, and they have been able to rake in large sums of money. As a result, they have spent hundreds of millions carrying out their mission, which is neither worthy nor noble. New groups that are already being set up to carry out the dirty tricks campaigns will be run by masters of deceit and distortion. Interestingly, these folks will even go after their own when it serves their selfish political purposes. A prime example of that sort of thing was the attack on Senator John McCain in the South Carolina 2000 Republican primary by none other than Karl Rove. What he did to McCain during that race was as bad as it gets.

All of us should be on the lookout for groups like Freedom Watch, Coalition for a Conservative Majority, American Taxpayers’ Alliance, and many others that are being set up for use during this political year. When you find men like Tom DeLay and Newt Gingrich involved in a group, get ready for a barrage of dirty tricks financed by corporate wrongdoers. It’s high time for the American people to stand up to men like Rove, DeLay, and Newt and fight back. While the best way to handle them ultimately is at the ballot box, good people should band together now and expose the groups for what they are before the actual voting time arrives. These groups are most vulnerable because they aren’t able to deal with the truth. When exposed, they will wind up like the Wicked Witch of the West in the Wizard of Oz, and we all know how she fared.

It is absolutely essential for Congress to pass legislation that will curtail the activities of these groups. No group—regardless whether it is set up by Republicans, Democrats or independents—should be able to hide the sources of their funding and disguise the amounts spent and who gets their money. Until these groups are exposed and their despicable activities banned, the political system will never work as our forefathers intended.

KEEP UP THE PRESSURE ON THE POLITICIANS

If each American citizen who really wants the political system in our country changed would take the time to contact their U.S. Senators and member of Congress and ask them to support campaign finance reform—and then follow up with their request on a weekly basis—some real change would come about. Only when enough people get involved and demand action on this front will anything of consequence happen. It’s too important to all Americans for them not to get involved in this battle.

IX.
CONGRESSIONAL UPDATE

FDA LABELING RULE IS A PRODUCT LIABILITY SHIELD FOR DRUG MAKERS

I have known all along that the Bush Administration wants to limit the situations where drug companies can change warning labels when they know of unsafe conditions without waiting for government approval. But now congressional Democrats are charging that the recent proposal from the Food and Drug Administration is a ploy to shield drug companies from liability for unsafe products. As we have reported, the FDA’s proposed rule concerns regulations that permit companies to promptly update their drug and device labels with new safety information without waiting for FDA approval. The FDA says its recent proposal would merely “codify the agency’s longstanding view on when a change to the labeling of an approved drug… may be made in advance of the agency’s review of such change.” That’s far from true since the proposal does more than just codify current practice. The Democrats argue that the proposal would instead “drastically limit the situations” in which a manufacturer is permitted to alter a warning label without waiting for FDA approval.

FDA’s current regulations permit manufacturers to change their labels to add or strengthen a contraindication, warning, precaution, or adverse reaction without waiting for approval by the FDA of such a change. Known as the “changes being effected (CBE) supplements” regulations in theory, they are meant to make sure that patients and healthcare providers are made aware of safety risks associated with their medical products at the earliest possible moment. Under the FDA’s proposal, a manufacturer would be prohibited from adding or strengthening a contraindication, warning, precaution, or adverse reaction in the absence of FDA approval unless there is “evidence of a causal

BeasleyAllen.com
We are concerned that the intent of this proposal is to protect companies in the pharmaceutical and device industry from being held liable for marketing products they know are unsafe. Such a policy change comes at the expense of consumers and violates the mission of the FDA. The issuance of the proposed CBE rule is not an isolated case, but part of a pattern of actions in the Bush Administration’s final months to permanently insulate the drug and device industry from liability.

They are correct that the FDA failed to identify a public health basis for why this proposal was necessary at this point in time. The FDA has not identified a single problem with these regulations that would warrant a change. The letter’s authors asked the FDA to justify the expenditure of the agency’s resources on this effort.

The Democrats are correct that the CBE proposal has “no purpose other than to shore up the industry’s legal arguments for avoiding liability.” Interestingly, the FDA proposal was cited soon after its being made by the Solicitor General in a letter to the U.S. Supreme Court in support of the drug industry’s argument that FDA approval preempts individual product liability cases. It is now apparent that the U.S. House and Senate are in the fight to protect the public in the pre-emption battle.

Source: Insurance Journal

**President Bush Wins Again And Children Lose**

For the second time, the U.S. House of Representatives has failed to override President Bush’s veto of a bill that would greatly increase spending on a popular children’s health insurance program. The House fell 15 votes short of obtaining the two-thirds majority needed for an override. The final vote was 260-152, with 42 Republicans siding with Democrats. It’s difficult to understand how the President and the 152 House members could turn their backs on children. There has been enough money paid out on no-bid contracts to political friends in Iraq—and enough money virtually stolen over the past five years in the occupation of that war-torn country—to have totally funded the children’s insurance program as well as hundreds of other needed programs.

**The Rest Of The Year In Washington**

By the time this issue is received, Congress should have passed a legislative package that hopefully will help stave off a looming recession. I really don’t expect anything other than that of real substance to happen in Congress between now and the November elections. The Democratic leadership in both the House and Senate, however, could prove me wrong. There is a great deal of important legislation that badly needs to be passed. Clearly, President Bush and Congress had to act in a bipartisan manner to head off the recession that may already be with us. In fact, they really didn’t have any choice but to act. But Congress can’t let the President use the recession as an excuse to help the rich and powerful at the expense of the rest of America other than a stimulus package. Hopefully, that didn’t happen. Because we are in an election year, the prospects don’t seem too good for a great deal of needed legislation to pass. Hopefully, I will be proved wrong in making that assessment.

**The Health Care Industry Hires Another Powerful Lobbyist**

The media reports that the American Health Care Association has hired Patton Boggs LLP to lobby the federal government on Medicare-related issues shouldn’t have come as a big surprise. The firm will join a virtual army of lobbyists who work for the powerful drug industry. Novartis AG, Merck & Co., and Sanofi-Aventis SA are among the members of the Washington, D.C.-based American Health Care Association. Lobbyists are required to disclose activities that could influence members of the executive and legislative branches, under a federal law enacted in 1995. Under that law, lobbyists must register with Congress within 45 days of being hired or engaging in lobbying.

Unfortunately, ordinary folks can’t afford to hire high-priced lobbyists to represent them and protect their interests in our nation’s capital. Healthcare issues are critically important to the American people, and most all of the decisions made in Washington are influenced by drug industry lobbyists. That’s why it’s necessary to elect public officials who are not “owned” by powerful special interests and especially by the drug industry. I was told several years ago by a local doctor that the United States subsidized the rest of the world when it comes to the price of prescription drugs. I had never thought of that before, but I am now convinced that was a correct assessment. The Bush Administration and the drug companies pushed the Medicare Prescription Act through Congress, and it’s one of the worst things to happen in recent years. It’s a prime example of how strong the drug and insurance lobby is in our nation’s capital.

Source: Forbes
The Supplemental Notice of Proposed Rulemaking released last month by the National Highway Traffic Safety Administration concedes that testing vehicles for roof crush on both sides of the roof is effective, but the proposal makes no mention of the safety advantages of doing this. The proposal is still a static test—one based on mathematical calculations, rather than a dynamic physical test—and it still is at 2.5 times the weight of the vehicle. The proposal absolutely ignores ejection and containment in the vehicle during rollovers, in which 10,500 people die each year and another 17,000 are seriously injured.

To justify a strong rollover protection standard, NHTSA should address roof crush, ejection and containment as one standard. By dividing it into three standards, the roof crush portion of the protection proposal continues to be totally inadequate. We have just tried a rollover case against Ford Motor Co. and know from that and prior trials that dynamic rollover testing is essential. How NHTSA and the car makers can ignore ejection in their testing is a mystery.

Source: Public Citizen

Defective Medical Implant Devices

As our population ages, the number of citizens with medical implants will increase. Medical implants are being used in almost every organ of the human body. Medical implants have made it possible for millions of people to participate in activities their physical limitations would not otherwise allow. For some, medical implants offer the means to remain independent of nursing homes, assisted living facilities or in-home service providers. Unfortunately, persons living with medical implants have to worry not only about prolonged security checks at the airport, but also about whether the medical implant will fail inside their bodies causing pain, additional surgeries, and/or death.

One would think that before a medical device is implanted inside someone’s body, the manufacturer would ensure that nothing could go wrong. Unfortunately, that is not the case. Almost monthly, we hear reports of yet another medical implant recall. Heart devices, cardiac pacemakers, silicone breast implants, intrauterine contraceptive devices, hip implants, joint replacements, defibrillators, and even jaw implants have been recalled by their manufacturers. There are numerous problems with recalls; but, the primary problem is that recall notices are provided to hospitals and surgeons but not the patients. Consequently, a defective medical implant can be recalled but the patient remains ignorant until the device fails inside his or her body. If the failure does not lead to the death of the patient, the failure will require another operation or operations. The patient is subjected to more pain and suffering along with another recovery period. Finally, the patient is saddled with the costs of the corrective surgery and may lose wages from missing work.

Our firm is currently investigating a number of medical implant device failures. In one, the product was recalled, but the surgery occurred in California over five years ago. The client moved to Georgia and thus had no knowledge of the recall. If notice had been provided, the defective device could have been removed before it failed. Removal before failure still requires corrective surgery, but, a failure inside the body is more likely to lead to more severe injuries or death. Patients receiving medical implants or patients with existing medical implants should research their implants, the manufacturer, and the recall history of identical or similar products. Remember, because the manufacturer will not inform the patient of a recall, patients should check the FDA’s recall website at www.recall.gov to see whether there is a recall on their device. Additionally, patients with medical implants should report any complications immediately to their treating physician. Over eight years ago, our firm handled a case for a client with a defective knee replacement implant. The patient began to experience extreme pain approximately six months after the surgery. He consistently reported his pain and discomfort to the treating physician. After considerable time passed, the surgeon decided he had attempted enough non-invasive treatments and elected to remove the artificial knee for an analysis. The artificial knee had begun to break down, causing the patient’s bone to contact the metal parts of the device. The surgeon knew the knee was not supposed to break down and suggested the client maintain possession of the knee and sell a lawyer. We filed the case, only to be thrown out on summary judgment because the client had come to us over two years after he first experienced pain. One would expect the statute of limitations to begin to run in such cases when the doctor removed the artificial knee and advised the client that the device was the cause of his pain. But, a federal district court judge ruled the statute began to run as soon as the patient began to experience pain even though the patient’s doctor was telling the patient that his problem was unrelated to the artificial knee. Therefore, patients with implants not only have to monitor whether their implant is causing health problems or has been recalled, but must also be vigilant in seeking legal assistance. That surely seems to put responsibility in the wrong place given that manufacturers know about recalls and have the ability to issue appropriate notices.

Defective medical implants are serious threats to citizens of this country. As manufacturers continue to develop more implants, the frequency of recalls will continue to rise. Manufacturers and the government don’t believe it’s necessary to inform patients of defects and recalls; thus, patients are left to fend for themselves. That is a sad commentary on our times.
Van In New Brunswick Crash Is Banned In 40 States

A tragic accident that occurred recently in Bathurst, New Brunswick, involved a 15-passenger van. These vans have long been banned from transportation of public school students in most of the United States and in some Canadian provinces. The design of the 15-seat Ford Club Wagon made it dangerously susceptible to personal injury for passengers and drivers. In the New Brunswick accident, seven members of a high school basketball team and one adult passenger died on January 12th when the Ford Club Wagon in which they were traveling fishtailed and struck an oncoming tractor-trailer.

Similar accidents in the United States have caused many deaths and serious injuries. As we have reported, in 2005 Congress prohibited the sale of 15-passenger vans to transport public school children to and from school. Unfortunately, the vehicles can still be used for extracurricular activities and by private schools, churches, and universities. These vans were manufactured as cargo vans and were never redesigned by the carmakers to safely transport people.

When five or more passengers are riding in a 15-passenger van, the likelihood of rollover increases dramatically. Because the rear of such vans extends from 4 to 5 1/2 feet beyond the rear wheels, any loading of five or more people or a combination of luggage and equipment, causes instability during emergency maneuvers such as sudden turns to avoid a pedestrian, an answer or another vehicle. This causes these vans to fishtail, and because they are top heavy and overloaded in the rear, they are prone to roll over and cause devastating crashes. Passengers are often ejected and most of them are usually killed or seriously injured.

The Washington, DC consumer advocacy group Safety Forum, aptly describes the Ford Club Wagon as “a death trap on wheels.” Like many SUVs, it has a dangerously high center of gravity that becomes worse with increased passenger and cargo load. The New Brunswick van did almost exactly what Public Citizen describes—it fishtailed out of control and was struck broadside by the tractor-trailer. Vans of this type are banned from transporting schoolchildren in several Canadian provinces, including Nova Scotia, which borders New Brunswick. Unfortunately, New Brunswick has no restrictions on their use.

According to Public Citizen, retrofitting vans of this type with dual rear wheels significantly improves stability and handling. The fix can be done for $300-$400 per vehicle, but a long-term solution is also essential. The vans must be redesigned to protect passengers in rollover and side impact crashes, and to comply with school bus and other federal safety standards. It is unbelievable, considering all of the outstanding knowledge, that the federal government hasn’t totally banned these vans from hauling passengers.

Source: Public Citizen

XI. MASS TORTS UPDATE

Vioxx Settlement Update

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 federal Multi-District Litigation (MDL) court are not eligible to participate but are free to continue pursuing their claims through the court system. The reaction to the Settlement Program has been very positive. Lawyers and their clients from around the country are 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 was January 15, 2008. Thus far, over 57,100 individual claims have been registered. This is very encouraging as lawyers anticipate enrolling their eligible clients into the program by the February 29, 2008 deadline. Releases have been submitted for over 3000 claimants. Meeting both the registration and enrollment deadlines is critical to the success of the settlement. Current progress toward meeting these deadlines is most 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 in administering other mass tort settlements, including those arising out of the Diet Drugs, Sulzer, and Dalkon Shield litigations. As Claims Administrator, BrownGreer is receiving all registrations and will ultimately evaluate each claim that is enrolled in the Settlement Program. BrownGreer has done a very good job of getting up and running quickly, and we anticipate they will do an excellent job fulfilling their responsibilities in the future. Andy Birchfield, Leigh O’Dell, and Roger Smith are still working hard to make sure that all of the settlement goals are achieved. Andy and Leigh have already been to a number of states and they have done a great job of explaining the settlement and answering questions from lawyers who represent large numbers of clients. For further information about the Settlement Program, visit www.officialvioxsettlement.com or www.browngreer.com.
LAWYERS RESOLVE POTENTIAL ETHICAL CONCERNS IN VIOXX SETTLEMENT

In a related matter, U.S. District Judge Eldon Fallon, the federal judge overseeing the Vioxx settlement, believes lawyers have resolved all potential ethical concerns about the agreement. Some lawyers for Vioxx patients had challenged a provision of the settlement that bars lawyers with clients who participate in the settlement from representing others who opt out. That could force lawyers to advise all or none of their clients to accept the agreement. However, Judge Fallon reported that the November 2007 agreement was amended so that lawyers are directed to exercise their “independent judgment in the best interests of each client individually before recommending enrollment in the program.”

Judge Fallon is satisfied that “nothing in the agreement imposes on a lawyer any impermissible restriction on the practice of law.” The judge met with lawyers on both sides of the agreement during a hearing in New Orleans on January 18th. Tens of thousands of Vioxx users who sued Merck have tentatively signed on to the agreement, which means the settlement will go forward. If things go as planned Merck will start making payments in August.

Source: Associated Press

MANY UNFAVORABLE DRUG STUDIES AREN’T PUBLISHED

Nearly a third of antidepressant drug studies are never published in the medical literature, and nearly all of those happen to show that the drug being tested failed to work. In some of the studies that are published, unfavorable results have been recast to make the medicine appear more effective than it really is, according to a report released last month. The research team was led by Erick Turner of the Oregon Health & Science University. Even if this selective publication is not deliberate, this can be bad news for patients, they wrote in their report, published in the New England Journal of Medicine.

Selective publication can lead doctors to make inappropriate prescribing decisions that may not be in the best interest of their patients and, thus, the public health.

The idea that unfavorable test results get quietly tucked away so nobody will see them—sometimes call the “file drawer effect”—has been around for years. The Turner team was able to study the question because the FDA has a registry in which companies are supposed to log details of their drug tests before the experiments are begun. They could see which experiments approved by the FDA between 1987 and 2004 were ultimately publicized in the medical literature and the main criteria the researchers planned to measure success.

Of the 74 studies that started for the 12 antidepressants, 38 produced positive results for the drug. All but one of those studies was published. However, when it came to the 36 studies with negative or questionable results, as assessed by the FDA, only three were published; another 11 were turned around and written as if the drug had worked. The team reported that “not only were positive results more likely to be published, but studies that were not positive” were often “published in a way that conveyed a positive outcome.” The following are examples:

• Of the seven negative studies done on GlaxoSmithKline’s Paxil, five were never published,
• Three studies for GSK’s Wellbutrin SR were found, but the two negative ones never made it to print.
• There were five studies for Pfizer’s Zoloft, but the three showing the drug to be ineffective were not published and a fourth study, ruled as questionable by the FDA, was written and published to make it appear that the drug worked.

Source: Reuters

LAWSUITS ARE BEING FILED AGAINST DRUG MAKERS OVER CHOLESTEROL PILLS

The makers of Vytorin and Zetia, the popular cholesterol drugs, are being sued in at least four states over allegations that Merck & Co. and Schering-Plough Corp. misled consumers into thinking the drugs were more effective than generic ones. The four lawsuits—filed in the states of New Jersey, New York, Florida and Washington—all seek class action status. Patients and medical insurers who paid for the expensive cholesterol drugs filed these suits. Merck and Schering-Plough had released a controversial study that raised questions about whether Vytorin and Zetia are more effective than generic drugs. The companies have a joint venture that markets Vytorin, which combines Merck’s Zocor and Schering-Plough’s Zetia.

A congressional committee is broadening its investigation of the two drug makers’ handling of advertising for the products and the delay in releasing the Vytorin study. The study essentially found that Vytorin was no better at reducing plaque buildup than Zocor, which is available as an inexpensive generic drug. The study revealed that Vytorin did reduce cholesterol levels a little more than Zocor alone. Interestingly, Merck and Schering-Plough have pulled television ads for both Vytorin and Zetia. Our firm is looking at a number of potential claims involving these drugs, but thus far have not filed an actual lawsuit.

Source: Forbes.com

HORMONE THERAPY UPDATE

According to the World Health Organization, breast cancer is the most common cancer worldwide among women. It is the fifth most deadly cancer, killing about 502,000 people per year. All of us know a family who has had to deal with this most serious problem. A study published in the January issue of Cancer Epidemiology, Biomarkers and Prevention found that women who used combination
hormone therapy for three or more years had a higher risk of lobular cancer. The study was led by Dr. Christopher Li of the Fred Hutchinson Cancer Research Center and was designed to evaluate the relationship between combination hormone therapy and lobular breast cancers. Previous research indicated that five or more years of combined hormone therapy use was necessary to increase overall breast cancer risk. The study led by Dr. Li found that women who took combined hormone therapy for three years or more had four times the usual risk of lobular breast cancer.

The incidence of invasive lobular cancer rose by 52% in the United States between 1987 and 1999, and cases of ductal-lobular breast cancer rose by 96% during that time. According to Dr. Li, their research “suggests that the use of post-menopausal hormone-replacement therapy, specifically the use of combined estrogen-plus-progestin preparations, may be contributing to this increase.” Following the announcement of the results of the Women’s Health Initiative in July 2002, hormone therapy use fell sharply. The incidence of breast cancer dropped more than 8% between 2001 and 2004. Our firm has been involved in extensive litigation dealing with hormone therapy and breast cancer. I am convinced that there will be more litigation in this area of concern. Ted Meadows and Melissa Prickett from our firm are handling cases for clients at this time.

Source: Reuters

**FDA Warns of Deaths From Fentanyl Patch**

The federal Food and Drug Administration (FDA) reports that the improper use of patches that emit the painkiller fentanyl is still killing people. This is the second warning by the agency in two years relating to the powerful narcotic. Some of the deaths came after doctors prescribed the patches to the wrong patients, according to the FDA. The drug is only for chronic pain in people used to narcotics, such as cancer patients, and can cause breathing problems for people new to this family of “opioid” painkillers. Yet the FDA has found cases where doctors prescribed it for headaches or post-surgical pain. The FDA said patients also accidentally overdosed by using the patches incorrectly, such as putting on more than prescribed, replacing them too frequently, or getting them too hot. FDA Pain Chief Dr. Bob Rappaport observed:

*While these products fill an important need, improper use and misuse can be life threatening. It is crucial that doctors prescribe these products appropriately, and that patients use them correctly.*

The FDA first warned about improper patch use in 2005, announcing at that time it was investigating 120 deaths. Although the FDA has investigated the new reports for several months, the agency hasn’t revealed how many additional deaths the agency has learned of since that first warning. The number of reports is referred to as being small, but of concern because “they are preventable.” The FDA ordered patch makers to create special medication guides that will come with every box, spelling out proper use in easy-to-understand language.

The consumer advocacy Institute for Safe Medication Practices highlighted some cases last summer, including one from July 2002, with the patient intake of fentanyl through the skin is a powerful way to deliver the potent drug. According to medical experts, this poses serious risk to anyone not already opioid-tolerant. Because there is a great need for the patches among the millions of chronic pain sufferers, the FDA isn’t considering curbs on prescribing the patches. The following are among the FDA’s warnings relating to the patches:

- Fentanyl patches can cause severe trouble breathing. Get emergency help if you have trouble breathing or extreme drowsiness with slowed breathing; feel faint, dizzy, confused; or have other unusual symptoms. These can be signs that you were prescribed too high a dose or took too much.
- Fentanyl patches are only for round-the-clock pain that is moderate to severe and expected to last for weeks. They are not for sudden, occasional, or mild pain, or pain after surgery.
- The patches should not be your first narcotic painkiller.
- Ask your doctor how often to apply the patch, whether to reapply one that has fallen off, and how to replace it. Doing any of that wrong can cause an accidental overdose.
- Do not use heating pads, electric blankets, saunas, or heated waterbeds, take very hot baths, or sunbathe while wearing a fentanyl patch. Heat may increase the drug’s absorption, causing a life-threatening overdose. Call a doctor right away if body temperature becomes higher than 102 degrees while wearing a patch.

The patches were first approved in 1990 under the brand name Duragesic. Generic versions are now being sold by other manufacturers. It’s obvious that these patches must be used properly and with proper cautions. The fact that the patches are still killing folks—even though the numbers appear to be small—makes this a serious matter.

Source: Associated Press

**Judge Denies Class in Fosamax Cases Against Merck**

A federal judge has refused to certify a class for users of Fosamax, the osteoporosis drug, who wanted Merck & Co to set up a program to monitor them for an ailment involving jaw bone decay. The judge, in a ruling last month, denied motions to approve classes of current and former users of Fosamax in Pennsylvania, Florida, and Louisiana who have not been diagnosed with the ailment. The court found class treatment of these claims to be inappropriate because the claims “present too many individual questions of fact particular to each class member’s claim.”

Thus far, more than 360 product liability cases have been filed in federal courts against Merck by folks who have
taken Fosamax. The suits allege that Fosamax caused the plaintiffs to either develop the ailment, known as osteonecrosis of the jaw, or to suffer an increased risk of developing the condition in the future. Based on what we have learned, I am convinced that Merck has extensive exposure in the individual lawsuits. It’s always difficult to justify the certification of a class where the individual cases involve personal injury. Our firm is handling a number of Fosamax cases in several states, and we haven’t asked for class treatment. Frank Woodson, Leigh O’Dell, and Chad Cook are the primary lawyers from the firm involved in the Fosamax litigation. Like all pharmaceutical litigation, the Fosamax cases will be fought hard by Merck and its vast army of lawyers. It’s our belief that the individual Fosamax claims have merit and hopefully we will be able to obtain adequate relief for our clients on an individual basis.

Source: Associated Press

XII. BUSINESS LITIGATION

TRAVELERS SETTLES BROKERS’ FEES CLAIMS

Travelers Companies, the commercial insurer, has reached an agreement with Attorneys General from several states to pay $6 million to resolve an investigation into fees it paid to brokers. Travelers also will settle a lawsuit by shareholders who said the company should have disclosed the fees. Terms of Travelers’ agreement with the nine states and the District of Columbia are subject to court approval. The Florida settlement ends an investigation into accusations that Travelers paid the insurance broker Marsh & McLennan Companies to win business without the knowledge of clients. The investigation also examined whether Travelers had created the illusion of competition on insurance deals by submitting fake bids. In December 2006, Travelers reported that it had expected to end the payment of so-called contingent commissions in 2008. The insurer said it has made changes to the practices that got the company in trouble. Contingent commissions, paid to brokers based on how much coverage they sell, are not always known by insurance buyers at the time of a deal.

Marsh & McLennan, the Aon Corporation, and the Willis Group Holdings, the world’s three biggest insurance brokers, banned contingent commissions in 2004, giving up more than $1 billion in annual revenue to settle conflict-of-interest investigations by the New York Attorney General’s office. It was said at the time that the fees were tantamount to kickbacks, encouraging brokers to steer business to the most lucrative insurers. Marsh & McLennan settled in 2005 by agreeing to pay $850 million to customers across the United States. At least 11 insurers, including American International Group, have also reached settlements with regulators over the fees.

Source: Bloomberg News

EX-KODAK WORKERS FILE SUIT AGAINST MORGAN STANLEY

A group of investors has filed a class action lawsuit and are asking for about half a billion dollars in damages from Morgan Stanley. It is alleged one of its brokers gave the investors bad advice to retire early and promised financial security that never materialized. The plaintiffs are all former employees of Eastman Kodak Co. in Rochester, New York. The lawsuit was filed in New York state court and it’s estimated that more than 1,000 people may be members of the class. The plaintiffs contend they wouldn’t have retired early, had their broker not told them they had enough money to do so and live comfortably. At least one contends that the broker, who has since retired, told her she would have even more money to spend once she was retired than she did when she was working.

The lawsuit alleges the broker assured the Kodak employees that they could expect to withdraw about 10% of their savings each year for the rest of their lives without depleting their principal. Three of the named plaintiffs retired in 1998 and the fourth retired in 2000. The amounts these four plaintiffs say they lost after they cashed out of their employer-sponsored retirement plans and put their money with Morgan Stanley range from $120,000 to $320,000. In addition to the class action lawsuit, an arbitration claim making similar allegations on behalf of another 16 former Kodak employees was filed at the Financial Industry Regulatory Authority’s arbitration forum.

Source: Associated Press

OTHER RELATED SECURITY LITIGATION MATTERS

In 2006 and 2007, the National Association of Securities Dealers — one of FINRA’s predecessors — fined Securities America, a unit of Ameriprise Financial Inc., and Citigroup for sales pitches made by brokers to large groups of employees encouraging them to retire early. As is the custom, those firms neither admitted nor denied the charges that resulted in the settlement. Securities America was hit hard in arbitration for its broker’s early-retirement pitches to longtime ExxonMobil Corp. employees. In 2006, an arbitration panel awarded $22 million to 32 former Exxon employees, which remains one of the largest arbitration awards ever handed down. I don’t believe we will see any slow down in securities litigation and arbitration during the rest of this year.

Source: Yahoo News

XIII. INSURANCE AND FINANCE UPDATE

INSURANCE PROFITS ARE CALLED EXCESSIVE BY CFA

The Consumer Federation of America (CFA), a consumer advocacy group, reports that property and casualty insur-
ers booked near-record profits last year, continuing a trend that has cost the average American household about $870 over the last four years in unnecessarily high premiums. For 2007, the companies that provide homeowners and auto coverage will make an estimated $65 billion after taxes, according to the consumer watchdog, not far below the 2006 level of $67.6 billion that represented their best showing ever. CFA, an umbrella organization based in the nation's capital, is a good source of information relating to the insurance industry. Robert Hunter, the Federation's director of insurance, says the profits are excessive. I agree with him.

The percentage of revenue paid to cover policyholders' claims has dropped during the last two decades, according to the report. Last year, the estimated "pure loss ratio" was 54.6%, compared to 66.6% in 1987. The CFA found that the insurance companies have so much available money, they are acquiring other businesses and launching "massive" stock buybacks. Not surprisingly, a good number of the companies gave their top executives substantial pay increases. Last year, the median pay package of insurance company chief executives was valued at $3.2 million, third highest among their counterparts in 21 industries, according to a recent analysis by The Conference Board, a New York-based business organization. When stock options and other forms of "non-cash" compensation are excluded, those insurance bosses ranked first, if the Conference Board figures are correct.

CFA wants state policymakers to look at a number of changes, including a ban on "unjustified geographic discrimination" and a requirement that private insurers provide an "all perils" homeowners policy offering flood and earthquake coverage. I believe insurance regulators at the state level must do a better job of keeping the insurers in line. States like Florida are working hard to protect persons and to make sure the companies are doing the right thing. But, weak regulation has been a major problem in many states. Alabama's Insurance Department has made some progress over the past few years, but most observers believe the agency could do much better. A lack of funding and inadequate staffing have made the department's job more difficult. I hope that will change, but don't count on it. The CFA report gives a pretty good explanation of what all states are facing and offers some good recommendations.

Source: Mobile Press Register

**FLORIDA BANS ALLSTATE INSURANCE FROM WRITING NEW BUSINESS IN STATE**

A real fight is going on in Florida involving that state's Insurance Commissioner and Allstate. Florida Insurance Commissioner Kevin McCarty suspended the certificate of authority of Allstate Companies to write new property insurance in Florida until the company fully complies with the subpoenas served last fall by his Office of Insurance Regulation (OIR). This decision by Commissioner McCarty follows his earlier action halting the scheduled two-day hearing into the Allstate Companies' reinsurance program, their relationships with risk modeling companies, insurance rating organizations, and insurance trade associations. Concerning his most recent action, the Commissioner stated:

In view of Allstate's ongoing, blatant disregard of our subpoenas, I have little choice but to take an action that will send a clear message about how seriously I am taking this issue. Suspending their certificate of authority to write new business in our state should make my point. If Allstate is willing to pay $25,000 per day in fines to a Missouri court for its ongoing failure to provide similar documents, it's obvious to me that it will take more than a monetary sanction to get them to comply with our subpoenas. It will be lifted when I am satisfied that we have received each and every document we need to properly investigate the important issues before us. It continues to trouble me that Allstate has not complied with our subpoenas and is not willing to explain to us their relationships with rating agencies, modeling companies and trade groups and how these relationships might have influenced the huge rate increases they have requested. This clearly cannot be in the best interests of Florida consumers.

Allstate was to have provided all appropriate company documents related to the above topics at or before the hearing last month, but failed to do so. Instead, the OIR received 51 pages of objections to the subpoenas. The suspension applies to Allstate Insurance Co., Allstate Indemnity Co., and Allstate Property and Casualty Co. Since it only suspends the companies from writing new business in Florida, existing policyholders will not be affected. Allstate must continue to service them and the companies must make all required statutory filings, including, but not limited to, audited annual financial statements, quarterly financial statements, and rate filings.

This is the first time the OIR has suspended a company for failure to "freely" provide documents as required by Florida law. Governor Crist, who fully backs the Commissioner in this matter, says he believes "Allstate is concealing something." The Governor has this to say about the action taken involving Allstate:

I applaud Commissioner McCarty for sending a clear message to Allstate Companies and protecting Florida's consumers. It is clear to me that Allstate must have something to hide if they are unwilling to comply with the Commissioner's requests. This type of behavior is an unconscionable disregard for this process and their customers. I am grateful to Commissioner McCarty for taking this bold action today and look forward to further progress through the Senate Select Committee's work next month.

It's good to see the State of Florida
working hard for the Sunshine State’s citizens. If all states had the same type regulation, policyholders would be put on the same footing with the powerful insurance industry and that’s the way it should be. Interestingly, on January 18th an appellate court in Florida granted a stay of the order by IOR, which will allow Allstate to write new policies. I am told Florida officials will attempt to get the stay lifted and hopefully they will be successful. Governor Crist and Commissioner McCarty are to be commended for their good work. Even if the court order stays in effect and the ban is lifted, it still sends a clear message to the insurance industry.

Source: Insurance Journal

TEENAGER DIES AFTER INSURANCE REFUSES TRANSPLANT

A recent story about how an insurance company refused to pay for a procedure that could have saved a young girl’s life is very sad. A 17-year-old girl died just hours after her health insurance company reversed its decision not to pay for a liver transplant that her doctors said the girl needed. Nataline Sarkissian, who died on December 20th at University of California, Los Angeles Medical Center, had been in a vegetative state for weeks. Her mother, Hilda Sarkissian, believes “the insurance company is responsible” for her daughter’s death.

The teenager, who had been battling leukemia, received a bone marrow transplant from her brother. However, she developed a complication that caused her liver to fail. Doctors at UCLA determined she needed a transplant and sent a letter to CIGNA Healthcare on December 11th. The Philadelphia-based health insurance company denied payment for the transplant and the girl died. It was reported that about 150 teenagers and nurses protested outside CIGNA’s office in Glendale, California. While the protesters were rallying, the company reversed its decision and said it would approve the transplant. Despite the reversal, CIGNA said in an e-mail statement before Nataline died that there was a lack of medical evidence showing the procedure would work in her case. That surely doesn’t appear to have been the case, based on what the doctors at UCLA had to say. Our firm handled a similar case several years ago after a health insurance company refused to approve a procedure that was needed by our client’s teenage son. We proved in that case that the insurance company was delaying its approval without any medical justification. In fact, we learned that the company believed the young boy would die during the delay and they could avoid paying for the needed procedure.

Source: Associated Press

In 2003, Congress enacted the Fair and Accurate Credit Transactions Act (FACTA) as part of the Fair Credit Reporting Act to protect consumers from the disclosure of personal and private credit card information by merchants who accept credit and debit cards. Specifically, the new FACTA law prohibits merchants from printing more than five digits of a customer’s card number and/or the expiration number on the receipt provided to the customer. All merchants in the United States had until December 4, 2006 to come into compliance with this law. Basically that entailed reconfiguring the cash register software that is responsible for printing customer receipts.

Many businesses adhered to this law and brought their equipment into compliance. But there are a number of companies that have failed to follow this law and continue to print more than five digits of a customer’s card number and/or the expiration date on the receipt provided to the customer. All merchants in the United States had until December 4, 2006 to come into compliance with this law. Basically that entailed reconfiguring the cash register software that is responsible for printing customer receipts.

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filed by victims against the federal government over damage caused by the failure of levees and flood walls. The U.S. Army Corps of Engineers reports receiving at least 247 claims for at least $1 billion each, including one claim for $3 quadrillion. I can’t even figure out how many zeros follow the 3. The Corp of Engineers’ list includes a $77 billion claim by the City of New Orleans. Fourteen of the filed claims involve a claim for wrongful death.

Fifteen of the claims were filed by businesses, including several insurance companies, which have suffered losses. Hurricane Katrina is blamed for more than 1,600 deaths along the Gulf Coast states of Louisiana and Mississippi and is considered the most destructive storm to ever hit the United States. Katrina caused at least $60 billion in insured losses and could cost Gulf Coast states up to $125 billion, according to the National Oceanic and Atmospheric Administration. The handling of post-Katrina by the Bush Administration and FEMA was a total disaster and will go down in history as an extreme and callous example of bureaucratic bungling.

Source: MSNBC

GROUP OF CLAIMANTS SETTLE 22 KATRINA CASES WITH STATE FARM

State Farm Fire and Casualty Co. has agreed to settle another group of Katrina insurance claim cases. Under the settlement, 22 policyholder cases were resolved, with the terms being confidential. According to Chip Merlin, the lawyer for the policyholders, documents that State Farm had been ordered to produce in previous cases put his clients in a good negotiating position. In September, the Merlin law firm and State Farm settled 103 cases for policyholders. The documents and testimony from State Farm officials indicate the company decided against paying claims in areas hit by storm surge, relying on policy language to deny those claims without thorough investigations.

In cases where wind and water combined to cause a loss, the U.S. Court of Appeals for the Fifth Circuit has ruled policy language precludes coverage. However, that ruling doesn’t relieve insurance companies of their duty under Mississippi law to fully investigate the cause of a loss and pay for wind damage covered under an all-perils policy. State Farm maintains the company investigated each policyholder’s claim and covered independent wind damage.

The information State Farm was forced to turn over in pretrial proceedings is covered by protective orders that seal certain insurance records from public view, including company e-mails about a “wind-water protocol” used internally to adjust claims. State Farm argues such records are “trade secrets.” The protocol itself, however, has been made a public record. It certainly appears that the insurance records should be available to all policyholders.

Source: Sun Herald

SAFETY INSURANCE COMPANY FINED OVER HOME POLICY NON-RENEWALS

The Massachusetts Attorney General has reached an agreement with Boston-based Safety Insurance Co. over allegations that the company violated the Massachusetts Consumer Protection Law by cancelling or non-renewing 31 consumer home insurance policies for insufficient reasons. Safety Insurance has agreed to pay $41,000 to the Attorney General’s Local Consumer Aid Fund and change its practices. A consent judgment was filed in court by the parties, but it must be approved by the court before it becomes effective. Consumers are entitled under the Massachusetts statute to a clear explanation if their homeowner’s insurance policy is going to be cancelled or non-renewed.

Attorney General Martha Coakley says the settlement represents another step toward “ensuring that Massachusetts consumers are treated appropriately under the law by their insurance companies.” In some instances, Safety Insurance failed to provide specific reasons for the cancellation or non-renewal of insurance policies. In notices sent to homeowners, Safety Insurance offered vague reasons such as “underwriting guidelines” for its decisions. Under the terms of the settlement, Safety Insurance is required to send notices containing specific reasons for their cancellation and non-renewal decisions to consumers. This was a good result for citizens in Massachusetts.

Source: Insurance Journal

MURDER SPREE FOUND TO BE A SINGLE EVENT UNDER HOMEOWNER’S INSURANCE POLICY

The Pennsylvania Supreme Court has ruled that an insurance company can be required to defend policyholders accused of negligence in the aftermath of a deadly shooting spree carried out by the adult son of the policyholders. But, the court says the shooting spree that took five lives over several hours at various locations should be considered a single occurrence and not several under the policy issued by the Donegal Mutual Insurance Co. The court reasoned that the parents’ alleged negligence was a single occurrence covered by the policy even though multiple deaths and injuries followed over a span of two hours and at different locations. There were obviously different victims. The policy had a $300,000 per occurrence limit.

The highest court in Pennsylvania agreed with a lower appellate court ruling that coverage under the homeowners insurance policy Donegal issued to the parents was triggered by the actions of their son. He was convicted of killing five people and leaving a sixth paralyzed during a shooting rampage in April of 2000. But, in its split decision, the high court differed with the lower courts on the single occurrence question. The trial judge and the state intermediate appeals court had ruled each shooting qualified as a separate occurrence, which could have exposed Donegal Mutual to as much as $1.8 million in payments to the estates of the victims.

Donegal Mutual had asked the courts to determine whether the multiple
The industry argues that any regulation of credit card practices will only hurt consumers in the end. The approach pushed by the industry says problems in the consumer credit market can be solved through improved disclosure, consumer financial literacy education, and consolidated regulatory oversight for unfair and deceptive practices. That's absolutely unworkable with strong and effective regulation and control by the federal and state governments.

Because the use of credit cards has become so pervasive in the modern economy, consumer financing of their spending habits now exerts a greater degree of influence on the United States' economic stability than ever before. Credit card debt impacts savings rates, bankruptcy filings, inflation, and consumer purchasing power. Credit card usage is like printing additional money, but it is outside of the control of the government. In this regard, increased card usage creates an inflationary pressure on the economy. The more credit available in the economy, the faster inflation rises, with effects felt by all. Similarly, when individuals are forced into bankruptcy and foreclosure, we all pay the cost of failed credit deals. Such vital aspects of our economy and security cannot escape governmental regulation and be left to the whim of the banks. Many of the worst economic and employment abuses this country has seen inflicted on its citizens have been during times when the government failed to regulate powerful corporations that were focused solely on their own well being.

The banking community has apparently seen the handwriting on the wall. It's very clear that the public has grown tired of the rampant abuses in the credit card industry and the adverse effect it has had on American families and economic stability. There is a strong ground swell of support for something positive to be done in this area of concern to protect consumers. As we try to survive the subprime lending crisis this country is experiencing, let's hope that any momentum gained can be sustained and that thousands of working families can get the much needed relief and protection the deserve.


JURY AWARD AGAINST STATE FARM UPHeld ON APPEAL

A Missouri appeals court has upheld an $8 million punitive damages judgment returned against State Farm Insurance Company. The case involved a lawsuit filed by two plaintiffs who accused State Farm of malicious prosecution and breach of contract. The case began a decade ago when one of the plaintiffs reported the theft of her Toyota 4Runner, which was found abandoned and burned. State Farm declined to pay her $10,000 claim and, working through an industry investigative service, referred the case to prosecutors, who charged the two plaintiffs with insurance fraud. After a jury acquitted them in 2001, the two filed the civil action against State Farm.

In September 2005, the jury awarded the plaintiffs each $400,000. Later that year, a judge adjusted those amounts to $250,000 because of a statutory damages cap, and he also assessed the punitive awards. State Farm appealed. The Court of Appeals for the Western District of Missouri upheld the judge's actions. State Farm says a further appeal is being considered. James Frickleton, a lawyer from Leawood, Kansas, represented the plaintiffs in this case and did an excellent job.

TRIA EXTENSION IS APPROVED

President Bush has signed legislation into law that reauthorizes the Terrorism Risk Insurance Act for seven years. The Act was set to expire at the end of 2007. Some key provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 include extending the current program for seven years; eliminating the distinction between foreign and domestic terrorism; and requiring the U.S. General Accountability Office to
conduct two studies. One study addresses the issue of providing terrorist insurance coverage for nuclear, biological, chemical or radiological events and how best to expand such coverage. The other study — to be completed in six months — examines the issue of high-risk areas in the United States that are faced with unique capacity constraints. The bill also makes adjustments to the current mandatory recoupment requirements of the TRIA program through the use of accelerated policyholder surcharges during the first four years of the seven-year extension. It certainly appears that this reauthorization of the Act was needed.

Source: Insurance Journal

XIV.
PREDATORY LENDING

LENDER LOBBYING CONTRIBUTED TO THE NATION’S MORTGAGE MESS

Much has been written and said about the problems caused to homeowners who took out high interest mortgages they couldn’t afford. I don’t want to beat a dead horse, but the impact of the problems, are so great it can’t be ignored. It has been widely reported that foreclosures are now at an all-time high. It was also reported that late payments in January were at a record pace. During the housing boom, the subprime industry succeeded at more than just writing mortgages. The industry’s lobbyists also defeated efforts by some states to control risky lending to borrowers with questionable credit. Ameriquest Mortgage Co., until recently one of the nation’s largest subprime lenders, and certainly one of the worst offenders, was at the center of those battles. Working with powerful Washington lobbyists, Ameriquest paid out more than $20 million in political donations. The lobbyists for the lenders successfully beat back efforts in New Jersey and Georgia to weaken tough new laws. In turn, those victories helped stall efforts other states to crack down on reckless lending. As reported, home loans made by Ameriquest and other subprime lenders are defaulting now in large numbers. As a result, global credit markets are now in deep trouble.

The Bush Administration, regulators and lawmakers should have anticipated the problems and then taken action to protect homeowners and the good lenders. Instead, they collectively sat on their hands and did absolutely nothing. But, the subprime industry worked hard to defeat legislation that certainly would have contained some of the damage. Of course, Ameriquest wasn’t the only company that lobbied heavily against state lending restrictions. Other subprime lenders and banking trade groups, including Citigroup Inc., Wells Fargo & Co., Countrywide Financial Corp., and the Mortgage Bankers Association, spent big bucks on lobbying and political giving. For example, from 2002 through 2006, Ameriquest, its executives and their spouses and business associates donated at least $20.5 million to state and federal political groups, according to the Wall Street Journal. In comparison, over the same time period, Countrywide Financial, once a large subprime lender, gave about $2 million in campaign gifts. The company also spent an additional $6.7 million lobbying in Washington. Ameriquest also was very active at the state level. A number of state legislatures were attempting to crack down on predatory lending and very little—if anything—was accomplished.

It doesn’t take a fiscal expert to figure out that federal lawmakers haven’t been a threat to the subprime industry in recent years. Not surprisingly, members of Congress received at least $645,000 in donations from Ameriquest and large sums from other big subprime lenders. While a number of bills were introduced that would have provided new oversight of the industry, thus far no action was taken. Unfortunately, all of the serious efforts at the state level to deal with predatory lenders were defeated. The intense lobbying efforts and huge sums of campaign money were directly responsible for the wins by the subprime lenders and banks. Sadly, homeowners and consumers generally had no powerful lobbyists working for them. Consumer groups like Public Citizen tried hard to get the attention of the Bush Administration, but their efforts fall on deaf ears. Now our nation’s economy is in deep trouble and President Bush is acting like he has just discovered that we have a serious economic crisis in our country.

Source: Wall Street Journal

MORTGAGE LENDERS ORDERED TO PAY $99 MILLION IN PUNITIVE DAMAGES

A state court jury in Jackson County, Missouri, ordered three mortgage lenders to pay $99 million in punitive damages to Missouri residents who were charged illegal fees for second mortgages. The jury, which had assessed $5.1 million in actual damages against the three companies in the first phase of the trial, awarded the punitive damages in the second phase. Collectively, the awards are among the highest assessed by a Jackson County jury in recent years in a commercial case.

The mortgage companies—Residential Funding Co. LLC, Household Finance Corp. III and Wachovia Equity Servicing LLC—bought second mortgage loans from a lender that had charged excessive interest and illegal origination, loan discount, underwriting, processing, document preparation, and legal fees under Missouri’s Second Mortgage Loan Act. It was proved that the companies knew of the lender’s fraudulent conduct and “stepped into its shoes.”

Missouri’s Second Mortgage Act limits the types and amounts of fees that can be charged in connection with high-interest second mortgage loans. The defendants claimed that they were entitled to rely on the originating lender’s assurance that its loans fully complied with state law. The originating lender, Mortgage Capital Resource Corp. of California, is no longer in business. Its former chief executive was sentenced last year to 57 months in prison for mortgage fraud and ordered to repay
banks $9.27 million.

Residential Funding, which is owned by GMAC Mortgage Group, was ordered to pay $4.33 million in actual damages and $92 million in punitive damages. The jury also ordered Household Finance to pay $420,489 in actual damages and $4.5 million in punitive damages. Wachovia Equity Servicing was ordered to pay $374,957 in actual damages and $2.5 million in punitive damages. The case was filed in 2003.

The case had been certified as a class action. Other Missouri residents who obtained second mortgages from Mortgage Capital Resource will be eligible to share in the damage awards. It is estimated that a total of 324 Missourians will qualify as members of the plaintiff class. J. Michael Vaughan of Walters Bender Stroehbhn & Vaughan, in Kansas City, Missouri, was the lawyer who represented the plaintiffs. Lawyers for Residential Funding Co. say an appeal is likely.

Source: The Kansas City Star

LENDER HAS APPARENTLY COMMITTED FRAUDS ON THE COURTS

A number of federal bankruptcy judges have called into question the fraudulent business practices of Countrywide Financial Corp. As you may know, Bank of America Corp. is buying the mortgage lender. Bankruptcy courts in several locations have found Countrywide to be guilty of actual frauds on their customers and also on the courts. The U.S. Trustee Program, a division of the Justice Department that oversees the bankruptcy system, has been investigating the company’s handling of loan payments and court claims in cases across the country. There are also inquiries from the Securities and Exchange Commission and several state Attorneys General. Shareholder lawsuits tied to Countrywide’s financial decline and other class action and individual suits brought by borrowers for alleged abuses by the company should have Bank of America to be very concerned over its acquisition.


LAWSUIT CLAIMS WELLS FARGO PREYED ON POOR

The City of Baltimore, Maryland has filed a federal lawsuit against Wells Fargo over the subprime mortgage fallout. The suit claims the bank acted as a predatory lender in the city’s poorest neighborhoods, leading to foreclosure rates that nearly double the city-wide average. Baltimore wants to recoup costs of maintaining the predominantly black neighborhoods reeling from the foreclosures. The foreclosures were said to destabilize the communities and decrease tax revenue. The cost of the foreclosures is estimated to be in the tens of millions. The lawsuit alleges the San Francisco, California-based bank targeted black neighborhoods and engaged in deceptive lending practices, such as tacking on fees and surcharges to low-cost homes. Wells Fargo claims it doesn’t “tolerate illegal discrimination against, or unfair treatment of, any consumer.”

Source: Associated Press

CLEVELAND SUES BANKS OVER FORECLOSURES

In a similar undertaking, the City of Cleveland, Ohio, has sued 21 banks and claimed their subprime lending practices created a public nuisance that hurt property values and city tax collections. The lawsuit, filed in Ohio state court, seeks to recover hundreds of millions of dollars in damages, including lost taxes from devalued property and money spent demolishing and boarding up thousands of abandoned houses. Cleveland Mayor Frank Jackson says that the buying and selling of high-interest mortgages by some of the nation’s biggest banks devastated city neighborhoods struggling to recover after the loss of manufacturing jobs. The mayor wants to hold accountable those who are responsible for the mess they helped create. Cleveland based its legal challenge on a state law that relates to public nuisances.

The list of defendants includes Bank of America Corp. and Countrywide Financial, which will be bought by Bank of America. The acquisition will make Charlotte, N.C.-based Bank of America the nation’s biggest mortgage lender and loan servicer. Deutsche Bank Trust Co. and Wells Fargo & Co. were named in the suit as foreclosing the largest number of homes over the past four years in Cleveland and surrounding Cuyahoga County. Deutsche Bank Trust was estimated to have 4,750 foreclosures in that period, and Wells Fargo had roughly 4,000.

Ohio Attorney General Marc Dann also is considering filing a state lawsuit against investment banks. If filed, it probably wouldn’t be submitted as a public nuisance case. A report commissioned last November by the U.S. Conference of Mayors projected that 361 metropolitan areas would take an economic hit of $166 billion in 2008 because of the rise in foreclosures.

Source: Associated Press

MGIC CLAIMS COULD REACH $2 BILLION

MGIC Investment Corp., the nation’s largest mortgage insurance company, will pay losses amounting to $2 billion this year. The Milwaukee-based company had said payouts could be as high as $1.5 billion in 2008, but it has now raised that to a range of $1.8 billion to $2 billion. New delinquencies and growing claim sizes were cited as the reason for the increase. Homebuyers typically must have mortgage insurance when they put less than 20% of their home’s value. When borrowers miss payments, as more have been doing, the insurers pay lenders. If homes end up in foreclosure, lenders and insurers lose money. By the end of 2007, MGIC said it had 107,120 delinquent loans, an increase of about 16,000 delinquencies from the end of the third quarter.

At the end of 2007, MGIC had $211.7 billion in insurance in force. The company said fewer homes that were delinquent are resuming payments, so there are now a higher percentage of delinquent loans that become claims, which are rising in size. It’s being reported that MGIC paid $586 million in claims through the first part of November. The company predicted then
it would wind up paying $875 million for 2007. A final figure will be released with earnings this month. Payouts were $611 million in 2006. MGIC has said it would limit coverage for borrowers with poor credit and higher risk loans. The company will charge more for some loans in soft markets like Florida and California.

Source: Insurance Journal

XV.
PREMISES
LIABILITY UPDATE

TIGER ATTACK EXPOSES OVERSIGHT
WEAKNESS AT THE NATION’S ZOOS

Most folks generally don’t consider animals at a zoo to be a safety risk for patrons visiting the facilities. But when you consider that dangerous animals are confined at zoos, it becomes obvious that safety of patrons should take a high priority by owners and operators of the zoos. A recent incident at a California zoo has resulted in a renewed look at zoo safety. It has been widely reported that a tiger that escaped its San Francisco Zoo pen on Christmas Day killed a San Jose teenager. This incident exposed alarming gaps in oversight—both at this zoo and at other locations and that’s a reason for concern. It appears the 350-pound tiger’s pen walls at the zoo were well short of industry standard. The weak mix of regulations and professional standards that governs the nation’s zoos has been put in focus by this tragedy. A system that rests on overly simplistic wiring to fortify the enclosure. Nevertheless, the AZA does set some standards, which include holding and exhibit enclosure design.

Enclosure guidelines, written in 1994, recommend against barred cages in favor of “naturalistic fenced and moated exhibits.” The recommendations specify that moats should be a minimum of 23 feet wide with a wall at least 16.4 feet high on the visitors’ side. Walls are to be sheer and unclimbable. The AZA said the Christmas incident in San Francisco marked the first escape leading to the death of a visitor among the organization’s accredited zoos. It has been reported that the tiger had been taunted, became agitated, and they went on the attack. But, regardless of why the tiger in this case attacked, the fact is the animal was able to get out of what should have been a secure part of the zoo and attack a patron.

Sources: Mercury News and Associated Press

CHILD AWARDED $2.85 MILLION IN ESCALATOR INJURY

A Worcester, Massachusetts, teenager, whose hand was mangled by an escalator when he was younger, has been awarded $2.85 million dollars in damages in his lawsuit. Thirteen-year-old Kevin Lou has had five surgeries on his right hand since the accident occurred while he visited his grandmother in China at age 4. The accident happened after his hand slipped through a gap between the escalator and its side panels. A jury awarded the damages to the young man in his family’s suit against Otis Elevator Co., the escalator manufacturer. The jury also awarded the boy’s parents $250,000 each. Otis will likely appeal. The young man can’t grasp objects because of the accident. His father will use some of the money awarded for surgery to improve the function of his son’s hand.

Source: Insurance Journal
PARTIAL SETTLEMENT REACHED IN BIG DIG
WRONGFUL DEATH LAWSUIT

After weeks of negotiations, the family of the woman who was killed when a Boston, Massachusetts “Big Dig” highway tunnel collapsed on her car has reached a $6 million settlement with the epoxy supplier on the project. The company, Powers Fasteners Inc. agreed to settle the lawsuit filed in 2006 by the victim’s family. Ms. Milena Del Valle, 39, was crushed on July 10, 2006, when 26 tons of concrete ceiling panels came crashing down as she and her husband drove through a tunnel. Her husband suffered only minor injuries. Investigators determined that the ceiling collapsed because workers secured it with a fast-drying epoxy that was not safe to use for overhead loads.

Powers Fasteners, which is a New York company, is one of 15 Big Dig contractors and agencies that were sued by the victim's family. It’s the only company to face criminal charges resulting from the collapse. The company was indicted in August on a manslaughter charge. Prosecutors accuse Powers Fasteners of failing to warn Big Dig contractors that its fast-drying epoxy glue was unsafe to use to suspend heavy ceiling panels and had a tendency to slowly pull away over time. Company officials insist they informed engineers overseeing the project that the fast-set epoxy was intended only for “short term loading.” The company contends it filled an order for its Standard Set epoxy for use in the ceiling and never knew that its Fast Set epoxy was used.

The wrongful death lawsuit claims tunnel contractors, subcontractors, and others involved in the project were “negligent, grossly negligent and/or reckless in selecting and installing more than 1,500 unsafe and defective bolts in the tunnel project.” None of the other defendants in the civil case have settled with the victim’s family. The death led to tunnel and road closures and caused a public furor over the Big Dig project, which has been plagued by leaks, falling debris, delays, and other problems linked to faulty construction. The Big Dig is the most expensive highway project in U.S. history has been a virtual nightmare for lots of political figures in Massachusetts. It’s a miracle that there have not been any other accidents resulting in fatalities. Source: Associated Press

ANOTHER BIG DIG SETTLEMENT

In a related matter, contractors will pay more than $450 million to settle the State of Massachusetts' lawsuit arising out of the Big Dig project. Bechtel/Parsons Brinckerhoff, the consortium that oversaw design and construction of the nation's costliest public works project, will pay $407 million to the state. Others will pay the rest of the settlement. As a result of this agreement, criminal charges were dropped. Source: Associated Press

LAWSUIT FILED AGAINST MALL ARISING OUT
OF DEATHS

A lawsuit has been filed in Florida for two deaths on the premises of a mall in Boca Raton. The mall had been “put on notice” about security issues at the mall, but allegedly failed to take any measures to protect its patrons. The wrongful-death lawsuit involves the deaths of a mother and her young daughter who were killed at the mall. The owner of Town Center, Simon Property Group, is the sole defendant in the lawsuit. After the incident, Boca Raton City Council members blasted mall officials for their response after the shooting. A carjacking and abduction at the mall reported back in August of last year was not appropriately dealt with in terms of security and public awareness, according to the lawyer representing the plaintiff in this lawsuit.

The wrongful death lawsuit claims tunnel contractors, subcontractors, and others involved in the project were “negligent, grossly negligent and/or reckless in selecting and installing more than 1,500 unsafe and defective bolts in the tunnel project.” None of the other defendants in the civil case have settled with the victim’s family. The death led to tunnel and road closures and caused a public furor over the Big Dig project, which has been plagued by leaks, falling debris, delays, and other problems linked to faulty construction. The Big Dig is the most expensive highway project in U.S. history has been a virtual nightmare for lots of political figures in Massachusetts. It’s a miracle that there have not been any other accidents resulting in fatalities. Source: Associated Press

ALLOSTATE PAYS HOMEOWNER $995,000 FOR
CONCORDE JET DAMAGE

Allstate Insurance Co. has agreed to pay $995,000 to a Brooklyn, New York, couple whose house was badly damaged by vibrations caused by an Air France Concorde jet nearly five years ago. The homeowners had received a $1.15 million verdict against Allstate in a trial in a Manhattan state court. Allstate then filed a notice of appeal. The homeowners had filed suit after Allstate refused to pay for damage to their 12-room concrete and steel house created by vibrations from an Air France Concorde as it took off from New York’s John F. Kennedy airport back in 2002. The lawsuit alleged that the supersonic jet struggled to gain altitude, flew low over Jamaica Bay, and buzzed the areas near the home. Other residents in the area complained about shaking foundations and cracking plaster in their homes.

Following the ear-splitting takeoff, the homeowners said their home began leaking during rainstorms. Water seeped through cracks that had opened in concrete blocks they used to build the waterfront house on Jamaica Bay in

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1990. Allstate had insured the house since it was built in 1990. Allstate had refused to pay the claim, saying bad construction and poor maintenance had caused the leakage problem. Testimony at trial was given by six engineers and a noise expert from the Port Authority. The Concorde, which was used only by Air France and British Airways, was taken out of service by both carriers in 2003. Source: USA Today

**FINES ISSUED IN SOUTH CAROLINA FIRE**

The owners of a Charleston, South Carolina, furniture store that burned down and killed nine firefighters have agreed to pay $13,110 in fines to state regulators. The Sofa Super Store was initially fined $32,775 for three violations in the June 18, 2007. Nine firefighters were killed—the nation’s greatest loss of firefighters since the terrorist attacks on the World Trade Center on September 11, 2001. The store was fined for having padlocked doors and cited for fire doors that failed to work. The business was also fined for not having an emergency action plan in place for its employees. The store also agreed to review fire safety procedures at its other locations. The settlement must be approved by the chairman of the state occupational safety review board.

The city of Charleston had earlier agreed to pay $3,160 in fines arising out of the fire. The city was cited for failing to enforce requirements on protective gear and breathing equipment, and not having written procedures for command at fires. The city has since changed its protective equipment requirements. Officials still have not announced a cause for the blaze, although authorities have said the fire began near a loading dock where employees said they took cigarette breaks. Needless to say, not everybody is happy with the fines. Roger Yow, president of Local 61 of the International Association of Firefighters, is one person who isn’t and with good reason. He believes the modest fines will do little to encourage businesses to boost safety and prevent the future loss of life. I tend to agree with that assessment. Source: Insurance Journal

**STUDENTS IN SCHOOL FIRE SETTLE LAWSUIT**

Two teenagers, who were badly burned when a chemistry experiment burst into a ball of fire at Western Reserve Academy in Ohio, have settled their lawsuit against the private boarding school for $18.9 million. The female students and their families will use part of the settlement to hire a nationally recognized education-safety expert to create a program that will prevent similar accidents. The families of the victims will spend at least $100,000 to hire this expert to improve school safety measures.

One of the students suffered burns over 46% of her body. The other was burned over 18% of her body. Both suffered physically and emotionally as a result of their burns. They were in extreme pain over a long period of time. The pain was so intense that one of the students, who has undergone at least 16 surgeries with more to come, said “debt became very alluring” and would have been “an escape from pain.” The other student has undergone at least three procedures with more scheduled. The two courageous young ladies are now each 17-years-old. They attend Wellesley College and Harvard University respectively.

The two cases were settled without the necessity of a trial and approval by the court took place just before Christmas. Interestingly, one of the students scored 2392 on her SAT—a near-perfect mark—only two months after the fire. The second student is taking the first steps toward her goal of becoming a plastic surgeon. Interestingly, she had wanted to do that before the fire, not as a result of it. The settlements were for $13.1 million to one student and $5.8 million to the other.

The teacher at the school was demonstrating how burning chemical salts produce different colors, with the aid of methanol burning in lab dishes, when the flash fire occurred. Aprons and protective eyewear were available and were supposed to be used, but they were not. It was significant that the contract that students had to sign before taking the lab class required use of the safety gear. The teacher invited the students to gather too close to the experiment, introduced more methanol when the flames diminished, failed to perform the experiment behind a safety shield at least 10 feet away from the students, and failed to use a vent system that would have prevented the fireball that ultimately engulfed the students. This was a tragic accident and one that was clearly preventable. Source: Plain Dealer

**JURY AWARDS $12 MILLION TO MOTHER OF SLAIN TENANT**

A jury in California awarded $12 million recently in a wrongful death lawsuit against owners of a Burbank apartment over the 2004 rape and murder of a tenant. The jury found Scott Villa Apartments and Francis Property Management, Inc. guilty of negligence in hiring, training and supervising a maintenance man who is considered a suspect in the killing of the tenant. The 30-year-old tenant was a financial analyst for Warner Bros. studios who vanished after leaving work on August 17, 2004. Two weeks later, her body was discovered in the trunk of her car near Chinatown.

The victim’s mother filed a lawsuit contending that the killer was a convicted felon and registered sex offender. The suspected killer had been convicted in 2006 of burglarizing apartments in the complex and sexually battering a housekeeper. A police detective testified at trial that the man is the only suspect in the murder of this tenant. In their ruling, jurors agreed that the maintenance man raped and murdered the tenant.

The lawsuit blamed the victim’s death on the lack of a background check before the convicted felon was hired as a maintenance man and given access to all the apartments. Since this man was a convicted felon and a registered sex

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offender, had a background check been carried out, the defendants wouldn’t have hired him and the victim would still be alive. Lawrence Grassini, a California lawyer, represented the victim’s family and did an outstanding job.

Source: Associated Press

XVI. WORKPLACE HAZARDS

BP SHOULD BE WORKING HARD TO IMPROVE SAFETY

It is quite obvious BP PLC has had its safety problems over the past several years. The company’s U.S. operations have experienced a series of safety issues of its own making. The oil giant’s two largest U.S. refineries and its oil field at Prudhoe Bay in Alaska are expected to operate at capacity for most of the year for the first time since 2004. But the main issue isn’t whether the London-based company has fixed problems that caused a deadly March 2005 explosion at its refinery in Texas City, Texas. The real question is whether BP has changed its corporate mindset when it comes to safety. The refinery blast was the first and most serious in a string of disasters that included oil spills from BP’s pipelines on Alaska’s North Slope. It appears that BP Chief Executive Tony Hayward, who took the reins in May, has refocused the company on operational integrity while avoiding the more high-profile role adopted by his predecessor, Lord John Browne.

Cost cutting and a lax safety culture were to blame for the explosion at Texas City, according to a report issued in March by the Chemical Safety and Hazard Investigation Board. The explosion, which killed 15 and injured more than 170, was one of the worst U.S. industrial accidents in years. The conditions were described as the worst ever seen by the former chairwoman of the safety board.

An investigation headed by former Secretary of State James Baker into safety at all of BP’s U.S. refineries found similar problems with the company’s safety culture, although it didn’t focus on the issue of cost cutting. Many believe that BP is now trying hard to improve safety at U.S. refineries. For example, the company has replaced the devices that were responsible for the Texas City explosion. It has also eliminated their use in refining units that process “heavier than air, light hydrocarbons. The company plans to spend an average of $1.7 billion annually between 2007 and 2010 on the integrity and reliability of its refineries, up from $1.2 billion in 2005. While changing the culture will be difficult, it is an absolute necessity. In October, the company pleaded guilty to a criminal violation of the Clean Water Act for failing to properly maintain its pipelines on the North Slope of Alaska, resulting in several large oil spills in 2006. Hopefully, BP is now making safety a top priority at all locations.

Even with BP’s assurances, it’s obvious that BP still needs to work harder and make progress on safety issues. A worker was killed in an accident on January 14th at the company’s Texas City refinery. William Gracia, an operations supervisor who had worked at the refinery for 30 years, died from head injuries suffered when the metal lid of a pressurized water-filtration vessel he was preparing for restart blew open. OSHA is now investigating this latest incident. Mr. Gracia’s death is an indication that the company’s safety performance is still inadequate.

Source: Wall Street Journal

LAWSUIT FILED BY THREE WORKERS INJURED IN CALIFORNIA OIL FIELD EXPLOSION

Three contract workers injured in an oil field explosion in California last year have filed suit against the company that operates the oil reserve. The workers were injured when a highly pressurized gas line exploded at a Taft, California, oil field in February of 2007. Their suit alleges Occidental of Elk Hills Inc. knew the pipeline needed to be repaired and consciously disregarded their safety by allowing them to work nearby.

Source: Associated Press

GM SETTLES RETIREMENT FUNDS LAWSUIT

General Motors Corp. has agreed to pay $37.5 million to settle a class action lawsuit brought by employees and retirees for claims involving company pension and retirement funds. Employees and retirees suffered losses when company stock held in 401(k) plans lost value. The lawsuit, which was filed in 2005, charged that GM invested too much of its own stock in employees’ retirement funds. The suit came as GM was struggling financially and its accounting was being reviewed by the Securities and Exchange Commission.

As part of the settlement, retirees will be offered heavily discounted financial counseling services from Ayco, a subsidiary of Goldman Sachs. In total, the financial counseling services, which typically are offered only to senior executives, are valued at $15 million. At issue in this case is whether GM “breached their fiduciary duties of prudence and loyalty by allowing, encouraging and maintaining a significant portion of the plans’ assets in GM stock.” It was alleged that GM had “failed to take any meaningful steps to prevent the plans from suffering losses as a result of the plans investment in GM stock and the company’s matching contributions in GM stock.”

The Employee Retiree and Income Security Act, which was enacted by Congress in 1974, imposes strict requirements to ensure employers invest retirement funds wisely. In the settlement, GM has also agreed to keep in place structural changes it made to its 401(k) plans. GM stopped automatically making matching contributions in GM stock in 2007. Instead, GM gives employees matching contributions based on their investment selections. About 260,000 employees and retirees were participants in the plans, which held assets of $21 billion as of 2003, according to court documents. The plans, with more than $5 billion in GM
stock, lost hundreds of millions of dollars when the value of GM shares sank by more than 75%, from about $95 a share during the time period covered by the class action to about $23 a share. A federal court in Detroit will have to approve the settlement.

Source: Detroit News

RELIGIOUS BIAS ALLEGED IN EEOC COMPLAINT AGAINST CONOCOPHILLIPS

The U.S. Equal Employment Opportunity Commission filed a religious discrimination lawsuit in December against ConocoPhillips on behalf of a worker at its Bayway Refinery who claims his request for a schedule change so he could attend church on Sunday mornings was refused. The federal lawsuit, filed in New Jersey, alleges that Clarence Taylor, a pipe fitter who has worked in the Bayway Refinery since 1975, was involuntarily placed in 2006 on a 12-week assignment requiring him to work Sunday mornings. Mr. Taylor regularly attends church on Sunday mornings and helps in the preparation for services. So, he asked ConocoPhillips management that his schedule be modified so he could continue to attend Sunday morning services. According to the lawsuit, the only option ConocoPhillips gave Mr. Taylor was to use his vacation time, which would have been depleted by the end of the three-month shift.

While his first two vacation requests for Sundays off were granted, ConocoPhillips refused Taylor's next request. As a result, the employee could not attend services for two months, according to the lawsuit. Spencer H. Lewis, district director of the EEOC's New York district office, made this significant observation:

If reasonable alternatives exist, the law does not allow an employer to force an employee to choose between keeping his job and practicing his faith. ConocoPhillips did not meet its obligation to explore non-disruptive alternatives, such as job swapping, that could have accommodated this man's religious practices.

Source: The Columbus Dispatch

It seems pretty clear that companies should work with their employees to allow them to attend church services and to practice their faith. If they refuse to do so, it now appears the EEOC will get involved. I really believe this is a good development.

Source: NewsDay

UNIVERSITY SETTLES HARASSMENT LAWSUIT

Ohio University (OU) has agreed to pay $225,000 to a former photography student to settle claims that she was sexually harassed by a former art professor. The victim, who has graduated, will receive $100,000 from the university and $125,000 from its insurer. A lawsuit was filed in U.S. District Court alleging that OU failed to promptly respond to her complaints of harassment against the former chairman of the university's sculpture program. The professor was suspended in October 2005 and later resigned as OU sought to strip him of tenure for violating the Athens school's policy against sexual harassment. The plaintiff, who now is 28 and lives in New York City, said that she complained to OU officials about the professor's "unwelcome and unwanted" advances, beginning in 2003.

The professor repeatedly made remarks of a sexual nature, left the student gifts and messages, took photos of her without her knowledge and showed up at her house "professing his love for her," according to allegations in her lawsuit. After an investigation of sorts, OU officials concluded that the man had "engaged in a pervasive pattern of questionable conduct" over several years that involved more than one student. In an unrelated sexual-harassment case, OU paid $350,000 in 2005 to a student who said she was coerced into posing topless by the former director of the School of Visual Communication. The sculpture program's chairman wasn't punished until two years after the student first complained, according to her lawsuit. Clearly, that sort of conduct by a professor at a school—or any employee for that matter—can't be tolerated.

Source: The Columbus Dispatch

FIREFIGHTER WINS LAWSUIT AGAINST CITY

A jury has awarded $1.17 million to a black former Pasadena Firefighter who said he was forced to retire after complaining for five years about other firefighters leaving blood, urine, and feces in his bedding, and scrawling a swastika on his equipment. The penalty was just the latest case of a black firefighter alleging discrimination against a fire department in Los Angeles and surrounding communities. The jury found that the plaintiff's supervisors and co-workers were guilty of inappropriate actions and that a captain referred to him by the "N" word.

The plaintiff says he endured racially-motivated attacks for five years. Numerous complaints were filed with his supervisors, but instead of things getting better, they were said to have gotten worse. Racial discrimination in the workplace can't be tolerated and employers must work to make sure that it is eliminated to the extent possible. In my opinion, most employers realize that the workplace must be free of discrimination. Those who don't realize it or simply don't care will ultimately pay a price for it.

Source: Los Angeles Times

LOCKHEED SETTLES RACIAL-DISCRIMINATION SUIT

In a similar case, Lockheed Martin Corp. has agreed to pay a former African-American employee $2.5 million to settle a discrimination suit brought by the Equal Employment Opportunity Commission. It's being said this settlement is the largest individual racial discrimination payment obtained by the agency. The EEOC, which noted that racial harassment complaints have more than doubled since the early 1990s, believes this settlement will encourage others to pursue legitimate cases.

Companies must pay more attention to individual discrimination cases and not devote most of their resources to class action suits. In a 2005 lawsuit filed by the EEOC against Lockheed in U.S. District Court for the District of Hawaii, the EEOC claimed that an aviation elec-

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trician, who had been employed by the company from 1999 to 2001, was subjected to racial harassment by co-workers on a daily basis and to threats of lynching—including threats of burning and threats of death—which he complained to supervisors. The EEOC said that according to testimony in the case, the company refused to discipline the harassers. Although Lockheed disputes the EEOC’s version of facts in that case, it did settle the matter.

The settlement in the most recent case comes amid rising numbers of racial-discrimination complaints filed with the EEOC, the agency that enforces federal laws prohibiting employment discrimination. EEOC officials said such complaints reached nearly 7,000 in fiscal 2007, up from 3,268 in fiscal 1990. In 2006, the agency launched a campaign to heighten education about and enforcement against racial discrimination in the workplace.

**Source:** Wall Street Journal

**TARGET SETTLES CLAIMS OVER VACATION CLAIMS**

Target Corp. has agreed to pay as much as $10 million to settle California workers’ claims that they weren’t paid for earned vacation days. The settlement, according to a summary filed in federal court in Oakland, California, resolves a class action lawsuit alleging Target, before January of 2007, required workers to forfeit earned vacation pay and didn’t pay fired workers a pro-rated share of their earned vacation time. As many as 270,000 current and former Target workers may share in the settlement funds. The settlement applies to folks who worked for Target in California from 2002 to 2006.

**Source:** Houston Chronicle

**WORKER DIES IN MACHINE-RELATED ACCIDENT AT STEEL-CUTTING COMPANY**

James Hizer, who had been laid off after 27 years of working at a job, took a low-paying, blue-collar job in an effort to feed his family. After being on his new job for five weeks at a Streetsboro, Ohio, steel-cutting company, Mr. Hizer was killed. While working alone on the midnight shift, the worker, a 58-year-old college graduate, was trapped and suffocated inside one of the machines he was operating. A wrongful death lawsuit was filed by his family. The jurors who heard the lawsuit awarded the Mr. Hizers widow $2 million in compensatory damages and $1 million in punitive damages against Singer Steel.

James Hizer was hired by Artisan Industries Inc., a company doing business with Singer Steel. He had worked for years as a white-collar computer technician when he was let go from his job at Greer Steel. Despite two college degrees, his job search took nearly three years and he felt fortunate to get any job. The worker was on the midnight shift at Singer Steel in March 2005, operating a laser cutting machine, when a sheet of steel shifted inside this machine. The custom at the plant was when that occurs, a worker would go inside to straighten it. The company was aware of the quick-fix practice by its workers. It was while performing this task that Mr. Hizer became trapped with his chest pinned against a part of the machine. He died of compressional asphyxiation and was found that morning by co-workers. The crooked sheet of steel was still inside the machine. Mark Ropchock, a lawyer with the Akron, Ohio law firm of Roetzel & Andress, represented the widow and did a very good job.

**Source:** Beacon Journal

**FLIGHT ATTENDANT AND AIRLINE SETTLE LAWSUIT OVER 9/11 TRAUMA**

A former United Airlines flight attendant who narrowly missed being on one of the hijacked jets that crashed into the World Trade Center has settled a federal lawsuit that accused the airline of wrongfully firing her after she was unable to work because of posttraumatic stress disorder. Deborah Jackson of Plaistow, New Hampshire, had worked for United Airlines out of Boston’s Logan International Airport for 17 years when the September 11, 2001, terrorist attacks occurred. She reached a settlement with the airline in her lawsuit. The terms of the settlement are confidential.

After September 11th, there were numerous reports across the country of flight attendants suffering from post-traumatic stress disorder. There has also been other litigation of a similar nature. In 2003, a New Jersey appellate court ruled that Kim Stroka could not receive workers’ compensation for the emotional distress she suffered after trading shifts with a co-worker on United Airlines Flight 93, which terrorists hijacked after takeoff from Newark, New Jersey. As you know, that plane crashed in a field in Pennsylvania, killing everyone aboard.

**Source:** Boston Globe

**JURY RETURNS A VERDICT FOR WORKERS**

A jury returned a verdict recently in favor of five persons who had sued the former General Motors Allison Gas Turbine Division in Indianapolis. The five former employees of the division received $3.1 million in the fraud and broken promises lawsuit against GM. The federal court jury in Indianapolis ruled that GM broke its promise to the employees that they could switch from a salaried position to a unionized hourly job at their request. GM argued that since four of the employees didn’t request the switch before it sold the division in 1993 the promise didn’t apply. A total of 22 employees of the old Allison Gas division sued GM over the promise. Cases for the other plaintiffs are still pending. The jury award represents the lost wages and benefits the employees would have earned if they’d been allowed to switch jobs.

**Source:** Indianapolis Star
XVII.
TRANSPORTATION

PROPOSED NEW SAFETY RULES FOR SCHOOL BUSES

The National Highway Traffic Safety Administration has recently given notice that it intends to implement several upgrades to the school bus crash protection requirements. This notice of proposed changes results from a 2002 comprehensive research program conducted by the NHTSA to evaluate ways to improve school bus safety. One important proposed requirement is the use of lap and shoulder restraint systems in school buses that weigh 10,000 pounds and less. For school buses over 10,000 pounds, the new requirements give guidance to state and local jurisdictions on installing seatbelt systems in these larger buses. Under the proposed upgrades, the state and local authorities would still have the final say on whether to install lap and shoulder restraint systems in the larger buses.

From our work in product liability cases, it is clear that the three-point restraint systems provide an added safety factor. I hope school systems across the county will require appropriate restraint systems for our children in school buses. This is a safety issue that can no longer be ignored. Alabama currently is “studying” the problem. It’s past time for more studies. We need action by those who have the authority to bring about the needed changes.

THE BUSH ADMINISTRATION HAS LITTLE REGARD FOR HIGHWAY SAFETY

The Bush Administration is now allowing full access to roads in this country to another Mexico-based carrier — despite Congress’ clear intent that the reckless NAFTA trucking pilot program be brought to an end. The Federal Motor Carrier Safety Administration announced last month that the Baja-based carrier Madereria Las Lomitas is now authorized to send trucks on U.S. roads. That means 12 Mexico-based carriers are now sending 57 trucks across the U.S. and are no longer restricted to the border zone. This announcement came on the heels of the Administration’s shocking statement. As reported last month, that it would continue with the NAFTA trucks pilot program. In December, President Bush signed into law an omnibus appropriations bill that cut all funds for the program, and that makes the latest move even more weird.

Joan Claybrook, President of Public Citizen, had this to say concerning the Bush Administration’s actions:

FMCSA’s purposeful defiance blatantly disregards the newly passed federal law. The appropriations provision prohibits using any funds to “establish” a pilot program. The dictionary’s definition of “establish” includes “to introduce and cause to grow and multiply.” FMCSA has told reporters that the law bars only the “establishment” of new pilot programs and that its current pilot program—the exact same one that prompted Congress to cut off funding—was “established” in September 2007. Yet FMCSA continues to authorize new carriers, further “establishing” the program in any meaning of the term.

This dubious interpretation isn’t just tortured logic—it’s a willful repudiation of the clear intent of Congress to end this pilot project. Congress has repeatedly and overwhelmingly denounced the flawed program as dangerous and unjustified. The Bush Administration’s insistence on pushing forward, despite requirements to put the public’s safety first, forced Congress to cut funding for the project. It is absolutely unacceptable for the Administration to pick and choose the laws it will respect. FMCSA has no basis to ignore this law and in doing so shows it has no regard for the well-being of American drivers.

It is impossible to understand why the Bush Administration would put innocent citizens at risk for death or serious injury by allowing these Mexican trucks to operate on U.S. highways. Hopefully, the next president will undo what the Administration has done and get these potentially unsafe trucks off our highways.

Source: Public Citizen

ALCOHOL-RELATED MOTOR VEHICLE CRASHES CAUSE GREAT MISERY

In Alabama, 475 people were killed in alcohol-related motor vehicle crashes in 2006. I haven’t yet seen the number of deaths for the state in 2007, but I won’t be surprised if the 2006 totals aren’t eclipsed. Almost half of the total traffic fatalities in the state over the past few years have been alcohol-related. That is bad news and unacceptable. Surveys have revealed that over 10 million people between the ages of 12 and 20 used alcohol in some form over the past 2 years. This is a most serious matter and one that can’t be ignored by public officials at the state and local levels. Of course it’s a national problem with every state having a problem related to drinking and driving by persons of all ages. But the large number of young persons involved is of special concern. If you want to know more about what you can do to combat the problem go to this Web site: www.madd.org. In fact, I would encourage you to support MADD in its fight against the evils of drinking and driving.

DESIGN FLAW CITED IN BRIDGE COLLAPSE

It now appears that steel plates connecting beams in the Interstate 35W bridge in Minneapolis were too thin by half and fractured. This was found to be by the National Transportation Safety Board “the critical factor” in the collapse that killed 13 people and injured 145. The connectors, called gusset plates, were roughly half the 1-inch thickness they should have been because of a design error, according to the NTSB. Investigators found 16 fractured gusset plates from the bridge’s center span.
Concerning this finding, Chairman Mark Rosenker observed:

*It is the undersizing of the design which we believe is the critical factor here. It is the critical factor that began the process of this collapse. That's what failed.*

It hasn’t been determined exactly what actually caused the bridge to collapse during rush-hour traffic. A final report by the NTSB will likely come by fall of this year. As you will recall, the Minneapolis span was a steel-deck truss bridge that opened in 1967. The bridge was called “fracture critical,” or lacking redundancies, meaning that a failure of any number of structural elements would cause the entire bridge to collapse.

The NTSB can’t discount the possibility of similar errors in other like bridges. States and contractors must look at the safety recommendations to the Transportation Department’s Federal Highway Administration suggesting that the agency require bridge owners to do so. Transportation Secretary Mary Peters called on states to calculate how changes in bridge weight, capacity, or evolving bridge conditions will affect gusset plates. It’s essential to find and correct any similar problems.

Structural weight had been added to the Minneapolis bridge in two major renovations, in the 1970s and 1990s. When the weight was added, the margins of safety were reduced to where they didn’t exist. Construction materials on the bridge the day it collapsed, which were part of a resurfacing project, added about 300 tons and were on the same side where failure of the bridge began.

The Minneapolis bridge was deemed “structurally deficient” by the federal government as far back as 1990, and the state’s maintenance of the structure has been questioned. The NTSB investigation has found no evidence that cracking, corrosion, or other wear “played any role in the collapse of the bridge.” Investigators also found no flaws in the steel and concrete material used in the bridge. The bridge was originally designed by Sverdrup & Parcel, a company acquired in 1999 by Jacobs Engineering Group Inc. of Pasadena, Calif.

**ALABAMA HIGHWAY OFFICIALS TO REVIEW THREE BRIDGES**

State highway officials in Alabama are busy reviewing the gusset plates on the state’s three deck-truss bridges. Tony Harris, a spokesman for the Alabama Department of Transportation, told Associated Press that an “engineering review” of the bridges started last month. The three Alabama bridges with designs similar to the Minneapolis bridge span the Tallapoosa River on Alabama 14 in Talladega, the Coosa River on Alabama 22 in Chilton County, and the Tennessee River on U.S. 43 in the Shoals area in north Alabama.

Because other similarly designed bridges may have the same flaw that led to the Minnesota bridge’s collapse, it’s essential that all bridges in our state with this design be checked. In Alabama, the Tennessee River bridge in the Shoals is the only one of the three that has four lanes of traffic. The others carry two lanes of traffic. State transportation officials haven’t been able to say how thick the gusset plates were on the Alabama bridges because they are so old. ALDOT Director Joe McInnes told The Birmingham News:

*Without going into the bowels of design files, no one can tell me the thickness of the respective gusset plates. But we will be overly diligent and follow any and all recommendations for review, inspections and testing of our bridges.*

It’s good to see ALDOT waste no time in checking Alabama bridges for potential structural problems. This is obviously a most serious safety concern. Hopefully, any defective bridge can be identified and corrective work that’s needed.

**DUMP TRUCK COLLISION RESULTS IN A $15.7 MILLION VERDICT**

A jury has awarded $15.7 million to a San Diego, California, man who sued the city of Los Angeles after he was struck by a city-operated dump truck while riding his motorcycle in Northridge, California. The case was filed by Barry Bowman, a 62-year-old retired police officer who suffered brain injuries as a result of the accident. Bowman, a security guard who worked on film shoots, was struck by a dump truck operated by a trucking company that had been hired by the city’s Bureau of Street Services to haul asphalt. The city contended that the truck driver had finished his work for the day and was “off site” when the collision occurred. There was a dispute at trial over the speed of the truck. The plaintiff’s evidence was that the dump truck was going 14 mph but the city claimed the speed was only 2 mph. Mr. Bowman, a 24-year veteran of the Los Angeles Police Department, suffered short-term memory loss and now requires 24-hour care as a result of the accident. The jury verdict included $4.7 million to cover the plaintiff’s medical costs and lost wages and $11 million for pain, suffering, and emotional distress.

**A HIGHWAY CRASH RESULTS IN A VERDICT AGAINST A CALIFORNIA CITY**

A $50 million settlement has been reached in a lawsuit against the city of Dana Point, California. Carol Daniel and Stacy Neria, who were critically injured after a hit-and-run accident on a Pacific Coast highway in 2006, agreed to the settlement. On April 8, 2006, a motorist struck Carol Daniel, Diana McDonald, Stacy Neria and Margaret Senske as they ran along the highway. Fortunately, McDonald and Senske were only shaken up, but Ms. Daniel and Ms. Neria were left quadriplegics. The City of Dana Point agreed to pay the two women $50 million to settle their lawsuit. It was contended the bicycle lane in which they were running was too wide and could be confused as a regular traffic
lane. The city contended the motorist was totally responsible for the accident. The maximum amount of coverage under the city’s four insurance policies will pay the full amount of the settlement. Carol Daniel was a one-time professional volleyball player. The two women, both once-active mothers of three, are now confined to wheelchairs and require 24-hour attention. The women’s future medical care is expected to cost more than $30 million. Their husbands had to quit their jobs to take care of their wives. Daniel Callahan of the firm Callahan & Blaine, located in Santa Ana, California, represented the plaintiffs.

There had been a previous accident in 2002 that had put the city on notice and was damaging to the city’s defense. The 2002 accident, which showed the bicycle lane was wider than state standards and not properly marked with signs and painted pavement, clearly increased the city’s exposure. The motorist testified in a deposition that he thought he was in a proper lane when he hit the women. The motorist, who had three earlier drunk-driving convictions, abandoned his car less than a mile from the accident and fled. He was arrested nine days later, charged with hit-and-run, and subsequently sentenced to four years in prison. The accident could have been prevented if the city of Dana Point had done normal maintenance to the bicycle lane. Had signs been put up—pavement markings put in—had the city listened to the testimony of an expert in 2002—this accident most likely would have never happened. Interestingly, barriers were put up to create a separate lane on the ocean side of the route after two more accidents occurred.

Source: San Clemente Times

**VERDICT IN FAVOR OF KEITH FAMILY IN WRONGFUL DEATH SUIT**

Toby Keith, his mother and his siblings have been awarded $2.8 million in damages in the 2001 collision that killed the country music star’s father. A jury returned the verdict against Elias Rodriguez and Pedro Rodriguez, operators of Rodriguez Transportes of Tulsa, and the Republic Western Insurance Co. According to evidence presented at trial, a charter bus owned by the Rodriguezes was “in urgent need” of brake repairs before H.K. Covel was killed in the March 2001 accident on Interstate 35. The Rodriguezes had been advised of the brake problem before Covel’s truck crossed the center median and struck the bus.

The family initially suspected Mr. Covel had suffered a medical condition that caused the truck to veer out of control, but it was later learned another vehicle had bumped his truck. The plaintiffs included the widow, Carolyn Covel, daughter Tonni Covel and sons Toby Keith Covel and Tracey Covel. It was proved that Mr. Covel would not have died if the bus had been equipped with properly working air brakes. The jury returned a verdict, which not only found the bus company at fault, but also found Mr. Covel totally free of fault.

Source: Associated Press

**PROPOSED LEGISLATION WOULD BAN TEXT MESSAGING BY DRIVERS**

The death of a Massachusetts teenager in December has prompted new calls to ban text messaging while driving a motor vehicle. Craig Bigos was sending a text message to a friend when he swerved and struck the 13-year-old, who was riding his bicycle along the side of a road. Bigos left the scene after the accident, but later turned himself in. At least two bills pending in the Massachusetts Legislature would ban the use of hand-held cell phones while driving. Several lawmakers say they would consider adding to those bills a provision specifically dealing with text messaging, others file a separate bill to ban text messaging while driving. This fatality is a tragic example of what can happen when drivers become distracted. In my opinion, text messaging by drivers should be banned in all states.

Source: Standard Times

**CSX FINED FOR SAFETY VIOLATIONS**

The federal government has fined CSX Transportation Inc. about $350,000 for several violations of rail safety regulations. Following a series of serious train accidents and other incidents in December 2006 and January 2007, the Federal Railroad Administration conducted safety oversight inspections across CSX’s network. The incidents included two separate occasions of CSX employees being struck by trains, and derailments in East Rochester, New York; Woodstock, Maryland; Cheektowaga, New York; North Baltimore, Ohio; and Brooks, Kentucky. The Brooks derailment forced the closure of a 23-mile stretch of Interstate 65, causing difficulties for tractor-trailers trying to reach the United Parcel Service Inc. hub at Louisville International Airport. Smoke from the fire caused by the derailment also caused the airport to close two runways and required residents and businesses in the area surrounding the wreck to evacuate because of hazardous fumes.

The federal rail safety violations were uncovered during a 23-state inspection last year. A system-wide FRA inspection in January 2007 found 3,518 safety defects, including 199 serious violations. Federal rail safety officials believed the company was not doing enough to address safety problems. The government decided to pursue civil penalties in 166 of the 199 serious cases. In a prepared statement, Federal Railroad Administrator Joseph Boardman said:

CSX has made significant strides in the short term to lay new rail, increase its own inspections of track and equipment and install trackside detection systems in more locations to identify potential problems early, but the company must stay focused and not be distracted from making the necessary long-term investments in infrastructure, technology and employees that will strengthen its safety culture and performance.
The $349,265 in penalties settled 141 of the violations, but the other 25 cases remain open. The fines were not in response to any one specific accident, but addressed the series of accidents involving CSX. As you may know, CSX, which is based in Jacksonville, Florida, operates a 22,000-mile rail network, covering 23 states, the District of Columbia, and two Canadian provinces. Based on this report, it appears that this railroad needs to get serious about safety.

Source: Insurance Journal

XVIII.
ENVIRONMENTAL CONCERNS

APPEALS COURT UPHOLDS RULING AGAINST ADEM ON PERMIT CHALLENGE

The Alabama Court of Civil Appeals has upheld a ruling in favor of two environmental groups that had challenged a permit the state environmental agency granted for mining operations in Tuscaloosa County. The court turned back separate appeals filed by the Alabama Department of Environmental Management (ADEM) and Tuscaloosa Resources, Inc., the company which had sought the permit. An excellent ruling in 2006 by Montgomery County Circuit Judge Truman Hobbs Jr. had struck down the Alabama Environmental Management Commission’s decision approving a pollutant discharge permit that ADEM has granted to Tuscaloosa Resources. An administrative law judge had recommended that the Commission, which oversees ADEM, overrule ADEM’s decision to issue the permit, but the Commission in February 2004 voted 4-1 in support of ADEM’s action. Friends of Hurricane Creek, along with Alabama Rivers Alliance, subsequently sued the environmental agency. The appeals court upheld Judge Hobbs’ ruling and that was a tremendous victory for environments.

At issue in part was whether the North Fork of Hurricane Creek in eastern Tuscaloosa County already failed state water quality standards and was off-limits to further degradation by new sources of pollution. Although the Environmental Management Commission (AEMC) had concluded there was no evidence the quality of the water had been degraded, the appeals court said it was compelled to agree with Judge Hobbs’ determination that AEMC’s finding was “clearly erroneous.” In that regard, the appeals court said: “The overwhelming evidence in this case indicates both that the North Fork is impaired and that TRI’s mining will contribute to that impairment.”

This is a tremendous victory for those who want to protect the environment in the State of Alabama. ADEM failed to prove Tuscaloosa Resources Inc.’s coal mine permit complied with federal Clean Water Act standards for a 303(d) listed stream. It’s difficult to understand how the Commission could have ruled as they did. Edwin Lamberth, the lawyer for the winning side, did a very good job. This is a huge precedent-setting decision for all 303(d) listed streams. Congratulations to all who were involved in making this win possible. Hopefully, the coal mining industry in Alabama got the message: ADEM needs to right its ship, as does the Commission, and protect the environment in Alabama.

Source: Associated Press

RULES NOT FOLLOWED IN CHANGE ON TOXICS

A new congressional review says that federal regulators ignored their own rules in deciding to reduce information to the public about industrial chemical releases. In making a major change to the Toxics Release Inventory in 2006, the U.S. Environmental Protection Agency, according to the Governmental Accountability Office report, “did not follow key steps ... designed to ensure that it conducts appropriate scientific, economic and policy analyses” before taking action. The report by the GAO, the watchdog arm of Congress, also states that the EPA probably overstated the amount of money that industries would save because of the lessened reporting requirements.

Under the change, companies in many cases no longer have to say how much of a particular chemical they release into the environment if the total does not exceed 2,000 pounds annually. The previous threshold had been 500 pounds. It’s not clear exactly how many Alabama firms have taken advantage of the new rule. Earlier this year, the GAO estimated that 69 facilities in the state that filed more detailed disclosure reports in 2005 would no longer have to do so. The EPA has defended the rule change as part of a broader strategy to streamline the toxics program while encouraging businesses to continue to reduce discharges. The EPA claims the toxics database—and the publicity accompanying it—has caused polluters to reduce emissions voluntarily. I strongly disagree because relying on voluntary compliance by corporations that pollute the environment simply doesn’t work. Regulation requires strong regulators who do their job effectively to keep the polluters in line.

In November of 2006, Attorneys General for New York and 11 other states filed a federal lawsuit seeking to overturn the changed reporting requirement. Alabama was not among them. There is also an effort in Congress that would accomplish the same goal. Led by lawmakers from New Jersey, members of both the House and Senate are pushing the legislation. But, it appears neither measure is close to final passage. The EPA should follow its own rules, and Congress has a duty to make sure it does.

Source: Mobile Press Register

CALIFORNIA SUES GOVERNMENT FOR REJECTING BID TO CURB EMISSIONS

California and 15 other states have filed suit against the Bush Administration in an attempt to overturn a federal decision in December rejecting the state’s bid to curb greenhouse gases from cars and trucks. The lawsuit, filed in the U.S. Court of Appeals for the Ninth Circuit in San Francisco, is the latest round in the struggle between
California and the federal government over whether states have the power to regulate carbon dioxide and other pollutants that cause global warming. The controversy, which has been going on for five years, also spilled into Congress. Senator Barbara Boxer (D-CA) and Rep. Henry A. Waxman (D-Beverly Hills) are holding hearings on whether the White House and automakers influenced the Environmental Protection Agency’s decision, which was required to be based on scientific and legal grounds.

Under the federal Clean Air Act, California is allowed to enact stricter air pollution laws than the federal government as long as the state is given a waiver from the EPA. Waivers have been routinely granted in roughly 50 cases during the last three decades, allowing the state to lead the way in requiring catalytic converters, unleaded gasoline, and other means of pollution reduction. But in a December 19th letter to California Governor Arnold Schwarzenegger, EPA Administrator Stephen L. Johnson denied a waiver for the state’s landmark greenhouse gas law. The governor calls the EPA decision “unconscionable” and says the EPA is “ignoring the will of millions of people who want their government to take action in the fight against global warming.” The outcome of the court battle may hinge in part on whether California can show that its greenhouse gas law would reduce emissions more than the new fuel-economy standard — which sets a fleet-wide average of 35 mpg for cars and light trucks by 2020.

The EPA claims California’s standards would amount to only a 33.8 mpg equivalent. Calculations by California not only disputed the EPA’s fuel-efficiency estimate, but also concluded that the state’s rules would achieve twice the greenhouse gas reductions expected under the new federal mpg standard. It will be up to the courts to sort out the numbers once the EPA produces its backup studies. The agency has yet to publish the extensive documentation normally provided in the Federal Register, although it has agreed to release all relevant documents to congressional committees.

Nationwide, passenger vehicles generate about 20% of carbon dioxide emissions. In California, the proportion is about a third. Leading scientists worldwide have said that global carbon dioxide emissions must be cut by about 80% by mid-century if the worst effects of climate change are to be avoided. If something isn’t done soon, we will have rising seas, melting snowcaps, spreading deserts, and widespread species extinction. California is particularly concerned about water shortages if seawater overwhelms levees and the Sierra Nevada snowpack melts. The 15 states joining California in the lawsuit are Massachusetts, Arizona, Connecticut, Delaware, Illinois, Maine, Maryland, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Hopefully, this effect by the states will be successful.

Source: Los Angeles Times

TCE IS LINKED WITH CANCER AND OTHER HEALTH PROBLEMS

Residents of Myrtle Beach, South Carolina, are finally getting information regarding the trichloroethylene (TCE) that is contaminating their groundwater. Although ATX Corp., the current owner of the site, knew of the contamination in 1981 and the state’s Department of Health and Environmental Control (DHEC) knew about the problem in 1995, local leaders and adjacent property owners weren’t informed until news reports exposed the contamination in November 2007. TCE has been linked with cancer and other health problems. However a spokesman for AVX has told residents the contamination doesn’t pose a health risk despite the migration of the toxin to a nearby 10-block neighborhood.

The toxin has entered the groundwater of the shallow aquifer, but the city does not use that aquifer as a source of water. Of immediate concern is the possibility of TCE vapors seeping through the soil and into local homes and businesses. These vapors are the most common way by which people are exposed to TCE and are particularly a problem with shallow aquifers like the one in Myrtle Beach. Further exacerbating the situation is the layer of clay found below much of the groundwater in the area. As TCE is heavier than water, the clay allows it to collect in pools. Not only does this create difficulties in cleaning up the area, but also TCE will breakdown into more toxic chemicals, including vinyl chloride, if allowed to remain immersed.

The DHEC is currently working to address any potential vapor issues. It has planned to test air samples in the contaminated area to assess any possible threats. However, groundwater readings of up to 19,200 parts per billion, well over the maximum safe level of 5 parts per billion, have the residents concerned. Gene Connell, a Surfside Beach lawyer, has filed a class action lawsuit on behalf of the property owners affected by the contaminated groundwater. An owner of land adjacent to the AVX site has also filed an independent lawsuit. The DHEC will release the results of the testing when they become available.

Source: The Sun News

SUIT ACCUSES IBM OF TOXIC DISCHARGES THAT CAUSED ILLNESSES

More than 90 plaintiffs have filed suit against International Business Machines Corp., alleging the company discharged toxic chemicals and caused birth defects and other health problems for residents in and around Endicott, New York, where the company was founded. The suit, filed in a New York state court, revolves around an Endicott manufacturing plant IBM operated from 1924 until 2002. The suit alleges that the company used industrial solvents there through the years and “wrongfully, wantonly and recklessly” discharged them, contaminating local air, soil and groundwater. IBM claims the allegations “have no basis in science or law” and says it
will defend the case “vigorously.” This is the latest chapter of a long-running environmental dispute.

IBM began at Endicott, where it made printers, circuit boards, and other products. Since 2004, the company, which has worked to clean up groundwater contamination at the site, has paid out a total of $2.2 million to area residents for related reductions in their property values. Stephen Schwarz, one of the lawyers for the plaintiffs, says the vast majority of his clients didn’t accept such property settlements and those that did are only making claims related to their health in the lawsuit. He says there are lots of people who have illnesses and who need help. IBM sold the plant in 2002.

In the suit, plaintiffs contended the pollution caused lymphoma, kidney cancer, and other serious maladies. Several parents maintain it caused congenital heart defects and other health problems for their children. Lawyers for IBM and the plaintiffs had been in settlement discussions since 2004, but those talks broke down and ended late last year. Interesting, one of the law firms representing the plaintiffs is Masry & Vititoe, the Westlake Village, California, firm that won a $333 million settlement in a water-pollution case against Pacific Gas & Electric Co. As you may recall, that case was the basis for in the 2000 film “Erin Brockovich,” which brought the public’s attention to causes of this sort.

Sources: Wall Street Journal and Reuters

Lawsuit Linking Burlington Northern To Cancer And Birth Defects Goes To Trial

One of many lawsuits against Burlington Northern Santa Fe Corp. claiming a railroad tie factory poisoned residents in the small town of Somerville, Texas, causing cancer and birth defects, has gone to trial in Fort Worth, Texas. The suit was filed by Linda and Donnie Faust, two of the dozens of people living in the Central Texas town who have sued the Fort Worth-based railroad company over a railroad tie factory owned by a predecessor firm until 1995. The Fausts say creosote and other dangerous substances released by the factory helped cause Mrs. Faust’s devastating stomach cancer. Donnie Faust has worked at the plant which is located near the Fausts’ home since 1974.

The couple is seeking at least $6 million in damages from BNSF Railway, a unit of BNSF. In their suit, the Fausts claim the operator of the railroad tie plant “knew the grave, and sometimes fatal, consequences to the plaintiffs and persons of the general public in and around the wood treatment facility.” This lawsuit is one of multiple suits from Somerville residents against BNSF. Although the railroad has denied all of the allegations in this case, the company settled a claim with one former employee for an undisclosed amount.

Other Somerville residents are also targeting Koppers Inc., the company that now owns the factory. Koppers is a Pittsburgh, Pennsylvania, based producer of chemicals, carbon compounds and treated wood products. One of the lawsuits, which is seeking class action status in federal court, calls on BNSF and Koppers to pay to relocate the entire town of about 1,700 people. The plant still treats more than a million railroad ties a year. It’s significant that BNSF maintained control of the property after selling the plant. The railroad is cleaning up groundwater contamination, according to the Texas Commission on Environmental Quality. The Houston Press, a weekly newspaper, published a long article about Somerville’s health problems. The article reported that:

- Stomach-cancer rates in Somerville are far higher than the national average, according to a toxicologist retained by plaintiffs’ lawyers.
- Improper handling and disposal of hazardous substances were common at the factory, while safety training and equipment were scarce.
- Some documents related to the plant’s handling of dangerous substances are missing.
- One longtime factory employee watched his uncle and brother die of cancer, and his granddaughter had serious birth defects, according to the article. The employee himself was diagnosed with cancer in 2006.

This trial will be closely watched and we will keep our readers advised as to further developments.

Source: Dallas Morning News

AIG Insurer To Pay $42.5 Million To Cleanup Sites Of Bankrupt Company

The American International Specialty Lines Insurance Co. Inc. (AISLIC) has agreed to pay $42.5 million to clean up contamination at four industrial facilities run by Fruit of the Loom, a bankruptcy insurer, in a lawsuit. The U.S. Department of Justice had intervened in the lawsuit on behalf of the federal Environmental Protection Agency (EPA) and other agencies. The EPA says the case is a reminder to insurance companies that they can be responsible for their bankrupt clients’ contaminated sites. The four sites, formerly owned by Fruit of the Loom, are located in Michigan, New Jersey, and Tennessee. Granta Nakayama, assistant administrator for EPA’s Office of Enforcement and Compliance Assurance, observed:

Insurers should take note that they may be liable for the cost of cleaning up their bankrupt clients’ environmental messes. EPA will keep pursuing companies who pollute the environment.

This settlement will help clean up contaminated sites in Michigan, New Jersey, and Tennessee. The action is said to demonstrate the Justice Department’s “commitment to pursuing those who pollute or those who inherit their clean-up obligations, whether through insurance arrangements or other agreements.” Fruit of the Loom filed for bankruptcy in 1999 and the court set up two trusts to receive and distribute the company’s remaining assets, including its environmental insurance policies. The trusts subsequently tried to collect environmental cleanup costs from AISLIC, a
Rancher Wins His Land Damage Case

A federal jury in Tulsa, Oklahoma, awarded nearly $200,000 to an Osage County landowner who alleged three local oil and gas companies damaged his property. Don Quarles sued Spess Oil Co., the Little River Energy Co., and the Yarhola Production Co. The jury ordered Spess to pay $100,000 in actual damages to the plaintiff. The jurors ordered Spess to pay $15,000 in punitive damages to the plaintiff. The jurors found that Spess acted in reckless disregard of the rights of others, which justified the punitive damages award in the trial against the Cleveland, Oklahoma, company. The jury also ordered that Little River Energy Co. and Yarhola Production Co. each pay $15,000 in damages. The panel didn’t find that Little River or Yarhola showed reckless disregard of the rights of others, so the two Drumright companies were not subjected to the punitive damages phase. Gentner Drummond, a lawyer from Tulsa, Oklahoma, represented the rancher. He says this case has established that Osage County landowners can successfully pursue any similar claims in court instead of relying on the arbitration process.

The lawsuit, originally filed in 2000, blamed eight oil companies and as many as 1,000 unidentified producers for oil wastes and other pollutants that allegedly have migrated into the Arkansas River, Skiatook Lake, Keystone Lake, Birch Lake, groundwater, surface water, and Osage County ranch land. The plaintiffs initially sought a class action status for the suit, but that request was withdrawn after it became apparent a judge was unlikely to grant it. The judge granted the summary judgment motions of several of the original defendants, leaving only Spess, Little River, and Yarhola in the case.

Source: Associated Press

MINING COMPANY TO PAY $20 MILLION EPA FINE

One of Appalachia’s coal-mining giants has agreed to pay a $20 million fine, which is the largest such fine ever imposed by the U.S. Environmental Protection Agency. An investigation found more than 4,500 instances in which mine runoff tainted nearby waters. Massey Energy Co., based in Richmond, Virginia, also pledged to make about $10 million worth of upgrades to prevent such violations and to clean up a West Virginia stream ravaged by mining-related pollution. It appears the penalty in this case was triggered by the release of Massey’s misconduct. Dirt, powdered coal, and metals leaked out of dozens of Massey-owned sites and into waterways in West Virginia and Kentucky for almost seven years. A year-long investigation had shown that Massey neglected environmental safeguards. Massey is among the top 10 coal companies in the country, and it dominates in central Appalachia, a region that includes Virginia, Kentucky, and southern West Virginia.

Source: Washington Post

HIGH COURT WON’T REVIEW POLLUTION RULING

The Supreme Court has refused to intervene in a rather unusual case in which a Canadian company was held subject to the U.S. Superfund law for polluting the Columbia River in the Pacific Northwest. A federal appeals court ruled last year that Teck Cominco Ltd., based in Vancouver, British Columbia, could have to pay a share of an estimated $1 billion to clean up Lake Roosevelt, a 150-mile stretch of the upper Columbia River behind Grand Coulee Dam. The Columbia has been polluted for a century with heavy metals and black slag leaching downstream from Teck Cominco’s lead and zinc smelter complex in Trail, British Columbia, which is 10 miles north of the U.S. border and about 135 miles north of Spokane. The company asked the justices to overturn the appeals court ruling, arguing that the Superfund law does not apply to a Canadian company discharging hazardous waste unless it “arranged” for the contamination to end up in the United States. The company says the pollution resulted from an “action of nature” — the southward flow of the river from Canada into the United States.

According to Solicitor General Paul Clement, who advised the court not take this case for technical legal reasons, the company discharged millions of tons of hazardous substances into the river just north of the border for 90 years. Under orders from provincial government regulators, Teck Cominco stopped discharging slag into the river in 1994 after Canadian studies showed the waste was toxic to fish and aquatic life. The U.S. Environmental Protection Agency last year reached a voluntary settlement with Teck Cominco to study the extent and seriousness of the contamination. The company will pay about $2 million for the study. The bottom line is that the Canadian company is subject to the superfund law.

Source: Associated Press

XIX.
THE CONSUMER CORNER

O R L A N D O J U R Y R E J E C T S EQUIFAX’S POLICIES AND PROCEDURES

A jury in Orlando, Florida, returned a $2.9 million verdict in December against Equifax in favor of Angela Williams, a consumer whose credit file had been mixed up with another
person with a similar name and social security number. The last two digits of her social security number were reversed. The mixing was first discovered in 1994 and Equifax was repeatedly notified in dispute after dispute that there were many false and derogatory accounts that were on Ms. Williams’ credit report but they did not belong to her. This case reveals a horror story and one that without access to the court system would never have seen the light of day.

Over the course of the next 13 years, Equifax would remove the derogatory collection, charge-off, and repossession accounts, only to later include them and others on Ms. Williams’ credit report given to her existing and prospective creditors. The reporting of approximately 25 false accounts over the years resulted in repeated denials of credit, lost opportunity to receive credit, economic loss, damage to her reputation, loss of self-esteem, invasion of privacy, interference with her normal and usual activities, and emotional distress. To make matters even worse, Equifax reported her account information on the credit reports released to the creditors of the other lady, including debt collectors.

The case revealed that Equifax has little regard for the right of people and don’t follow the law. Equifax denied there was evidence of inaccurate information being included on Ms. Williams’ credit file when it was obvious there was. Equifax resisted producing certain documents even in the face of a court order and as a result the trial judge struck Equifax’s answer. The court’s order details other recent instances in which Equifax was warned by federal judges in Virginia not to engage in such conduct or it would risk severe sanctions. The evidence at trial was that Equifax continually violated numerous provisions of the Fair Credit Reporting Act.

The jury’s verdict was a definite victory for consumers and justice. The jury recognized how important a person’s reputation is. The jury wanted to punish Equifax and deter the company and others from acting this way in the future by awarding punitive damages. Equifax’s net profits over the last five years were approximately $1.1 billion. During that time, the company’s net worth had almost quadrupled. The jury awarded $219,000 in compensatory damages and $2.7 million as punitive damages. The punitive damages amount is only 1% of Equifax’s 2006 profits and that seems quite appropriate.

Hopefully, this verdict will result in a change in the policies of Equifax. When Congress enacted the FCRA, it said the credit bureaus have a grave responsibility to follow reasonable procedures to assure maximum possible accuracy of the information reported on consumers. Equifax should listen to this message and clean up its act. Ms. Williams was represented by Steve Fahlgren of Hilliard, Florida and Robert Sola of Portland, Oregon, who obviously did a tremendous job in this most important case.

**PUBLIC CITIZEN SUES FDA FOR STRONGER WARNINGS**

Public Citizen has filed a lawsuit against the Food and Drug Administration, alleging the agency is ignoring calls for stronger warnings that Cipro and similar antibiotics may cause serious tendon injuries. Labels of the fluoroquinolone family of antibiotics—drugs that include the popular Cipro and Levaquin—already warn about rupture of tendons and other tendon injuries, but at the bottom of a list of other side effects. Public Citizen wants those warnings upgraded to the FDA’s most severe type, a so-called black-box warning—and for patients to get pamphlets with every bottle that describe the risk.

The consumer group contends that too few patients know they’re supposed to quit using the drugs if they experience symptoms such as pain or inflammation, before the tendon actually ruptures. Public Citizen filed a petition seeking the stronger warning in August 2006. The state of Illinois had filed a similar petition the previous year. The FDA is violating its own statutes and putting patients at risk in taking so long to settle the issue, Public Citizen filed the suit in the U.S. District Court for the District of Columbia.

When Public Citizen first filed the petition, FDA’s database showed 262 reports of tendon ruptures between November 1997 and December 2005, along with hundreds of other tendon problems in users of these antibiotics. Since then, the FDA has received an additional 74 reports of tendon ruptures, according to Public Citizen’s Dr. Sidney Wolfe. According to Dr. Wolfe, only a fraction of drug side effects typically are reported to the agency. Hopefully, Public Citizen will be successful in its suit.

Source: Public Citizen

**TOY RECALLS PROMPT ACTION BY SAFETY AGENCY**

After an unprecedented year of toy recalls, the Consumer Product Safety Commission is adding staff at the nation’s busiest ports and pledging to work more closely with U.S. Customs to stop suspect imports and identify potential hazards before toys hit the market. Congress provided the CPSC with an additional $20 million for the current fiscal year, but has stalled on legislation that would significantly strengthen its regulatory powers. Under the new initiatives, the agency will begin to place full-time staff at some of the nation’s busiest ports. The CPSC is being given access to real-time information and data from Customs officials about shipments bound for the U.S. so that the agency’s staff can help pinpoint high-risk products.

According to media reports, the CPSC also plans to boost port inspection of toys, fireworks, electrical products and other goods considered potentially high-risk. The agency will also conduct a study of specific imports to help determine safety compliance. The CPSC’s “early warning” detection system for children’s products such as cribs, bassinets and play yards is reportedly being bolstered. The goal is to foster better agency communication and collaboration, as well as to “connect the dots” among safety complaints, allowing
the CPSC to detect patterns in potential hazards as they emerge.

The agency’s staff has dropped from almost 800 employees in 1974 to an all-time low of about 400 employees. Congress should pass legislation to strengthen the CPSC. A bill passed by the House that would ban lead from children’s products, increase caps on civil penalties, require toy testing by independent labs and boost funding for the next several years should pass the Senate. A broader measure in the Senate, opposed by Commissioner Nord and the manufacturing industry, would also require information about product hazards, such as consumer complaints, to be made public. That bill also should be passed. It’s time to quit winking at safety issues that affect the American people and take the necessary action to protect them.

Source: CBS News

**Toymaker Settles Lead Lawsuit For $30 Million**

The maker of Thomas & Friends wooden Railway toys has agreed to a $30 million class-action settlement in a lawsuit stemming from last year’s recalls. This is the first in what will likely be a number of settlements related to millions of toys recalled because of lead paint. The proposed settlement has already received preliminary approval by an Illinois state court. It calls for reimbursements for hundreds of thousands of consumers combined with required improved product safety. Consumers would be reimbursed in cash for recalled toys or offered a replacement plus a bonus toy if they prefer. Customers who lack toys and proof of purchase will be eligible to get $15 coupons.

Source: USA Today

**Toys Recalled In The U.S. Are Still For Sale In China**

Toys from China that have been recalled in this county are still being sold in China. Many persons buying these toys for their children are unaware that the toys were recalled around the world, including in China. In the U.S. and Europe, a wave of recalls of Chinese-made goods over the second half of 2007 led to heavy news coverage and a coordinated effort by regulators and the toy industry to pull dangerous products off the shelves. In China, it’s quite a different story. The nation has no comprehensive rules governing recalls and no system for tracking injuries from defective products. Together with a thriving trade in black-market products, that means some of the goods that have caused extreme alarm in the West are still available to Chinese consumers.

The situation is a reminder that often the people most at risk from China’s public-health and safety lapses are the Chinese themselves. It raises questions about the responsibility of multinational companies to keep dangerous toys off the shelves in parts of the world where consumer-protection laws are weak and the threat of legal liability is relatively low — but also about their ability to do so. In August, China launched a four-month product-safety initiative, including new regulations dealing specifically with food and toy recalls. The government is currently considering comprehensive product-safety legislation that would include establishing a database for recalled products and a system for tracing products and their components through the supply chain.

**Company Asks Stores To Stop Selling Toys Linked To Asbestos**

As most parents know, the CSI Fingerprint Examination Kit is very popular with children. Four days before Christmas, Planet Toys Inc. asked stores to remove the kit from their shelves after some tests revealed samples of asbestos. The New York toy manufacturer says it sent a “stop sale” notice since an investigation was under way. The announcement came about three weeks after the Environmental Working Group, a nonprofit advocacy group, called on stores to remove the toys from their shelves. Lab studies from the Asbestos Disease Awareness Organization showed asbestos in some samples of the kit’s fingerprint dust.

According to a spokesman with the Consumer Product Safety Commission, the federal agency is investigating the claims. However, at this point, no official recall has been issued. Walgreens stores removed the toy kits from their shelves and is conducting its own investigation. It’s not clear what further action Planet Toys intends to take. We obviously have a most serious problem relating to children’s toys that are dangerous for normal use. Both the government and manufacturers and retail outlets have a shared obligation to protect children.

Source: Associated Press

**CPSC Urges Parents To Not Place Infants On Air Mattresses**

The U.S. Consumer Product Safety Commission has warned families nationwide that air mattresses are too soft for use with sleeping infants. Never place infants to sleep on air mattresses or other soft surfaces such as water beds and adult beds, which are not specifically designed or safe for infant use. Since 2002, CPSC has received reports of 16 tragic deaths, mostly infants younger than 8 months of age who were placed to sleep on air mattresses: 11 suffocated in a face-down position on an air mattress, and 5 died from suffocation after falling into gaps between the mattress and bed frame and mattress and adjacent furniture or wall.

Generic twin-, full-, or queen-sized inflatable mattresses are usually intended for adults and older children. Even properly inflated mattresses are usually too soft for infants to maintain a clear airway. Air leaks and under-inflation also contribute to incidents. Wherever your baby sleeps should be as safe as possible. The CPSC recommends these safe sleeping tips:

- Always place a baby to sleep on his or her back to reduce the risk of SIDS.
- Never place a baby to sleep on an adult bed. Infants can suffocate on bedding or can become entrapped.
between the mattress and bed frame or mattress and wall.

• When using a crib, make sure it meets current safety standards, and has a firm, tight-fitting mattress and tight-fitting bottom sheet.

• When using a portable crib or play yard, be sure to use only the mattress or pad provided by the manufacturer.

Source: CPSC

**EZ Lube Settles Claims Of Allegedly Defrauding Customers**

EZ Lube Inc., which is based in Santa Ana, California, has agreed to pay $5 million to settle allegations that it charged customers for unnecessary or unfinished repairs. A 2004 investigation by the state’s consumer agency that investigates complaints against automobile repair shops gave rise to the settlement. The state is placing the company, which operates about 80 shops in Southern California, on probation for five years. The company was ordered to suspend services other than oil and filter changes and chassis lubrications at many of its shops. EZ Lube also agreed to install surveillance cameras so motorists can watch their vehicles being serviced.

Source: Associated Press

**Consumers Should Be Wary Of Prepaid Funeral Deals**

There is a nationwide debate on whether prepaid funeral services — a multibillion-dollar industry — are a worthwhile investment. Some consumer groups and the AARP recommend against prepaying. They say that funeral homes, particularly those that have changed hands, don’t always honor prepaid contracts or the agreed-upon prices. AARP Texas spokesman Rafael Ayuso says:

We advise consumers to preplan, but not to prepay. And this is largely because pre-need/prepaid contracts can leave many important questions unanswered and the industry is rife with deceptive sales practices and, in many cases, outright fraud.

I wasn’t too surprised to learn that funeral home operators and the Federal Trade Commission support the practice. They say prepaid services “provide families peace of mind.” I tend to agree with those who recommend against prepaying. There is too much opportunity for abuse. The best practice would appear to the preplanning and making sure there will be adequate funds available when the need arises for a family.

Source: Houston Chronicle

**Dog Food Maker Settles Claims Over Pet Deaths**

The company that made contaminated pet food that killed dozens of dogs nationwide has agreed to pay $3.1 million in a settlement with pet owners. The pet food contaminated with a mold called aflatoxin, was produced at Diamond Pet Foods’ plant in South Carolina. As a part of the settlement, Diamond will set up a fund to reimburse pet owners for the loss of their dog, veterinarian bills and the cost of any unreturned contaminated food. The Missouri-based company acknowledged that workers at its South Carolina plant failed to follow internal testing procedures to ensure its products were safe. The pet food was distributed in Alabama and 22 other states. Jim Andrews, a Tennessee, lawyer represented a Knoxville, Tennessee, family that sued the company and did a good job.

Source: Associated Press

**Hunting Tree Stand Manufacturer To Pay Civil Penalty**

According to the U.S. Consumer Product Safety Commission, a company that makes tree stands will pay a $420,000 civil penalty to the government. The penalty settles a government lawsuit alleging that Ardisam Inc, of Cumberland, Wisconsin, failed to immediately report to the CPSC serious injuries to hunters with its Big Foot and Lite Foot series hunting tree stands. In July 2004, 78,000 of these tree stands were recalled by the company. The lawsuit against Ardisam alleged that the company received reports of incidents beginning in April 2000, involving tree stands that unexpectedly detached from trees. These incidents resulted in broken bones or other serious injuries to hunters. Ardisam failed to immediately report this information to the CPSC as required by federal law. The company eventually reported to the CPSC in May 2004.

Under the Consumer Product Safety Act, manufacturers, distributors and retailers are required to immediately report to the CPSC information about products that could create a substantial risk of injury or that create an unreasonable risk of serious injury or death. The Office of Consumer Litigation of the U.S. Department of Justice brought this case before the U.S. District Court for the Western District of Wisconsin on behalf of the CPSC.

**Walgreens Settles Case**

The prescription error lawsuit against Walgreens that we wrote about in the last issue has settled. The wrongful death suit, which was pending in Florida, was settled for an amount that is confidential. This case was at least the fourth prescription error fatality lawsuit that was actually set for trial in a little more than a year involving Walgreens. That is unacceptable in my opinion. Walgreens, the nation’s largest drugstore chain in sales and profits, needs to make sure that its safety protocols are strengthened. Dispensing a painkiller without proper instructions was the cause of the death in this case.

**U-Haul Settles California Class Action**

U-Haul International Inc. has settled a class action lawsuit that had accused the equipment rental giant of deceiving California customers through its reservations policy. The settlement came after U-Haul had appealed a court ruling.

BeasleyAllen.com
that found the company had engaged in fraudulent business practices. In the 2006 ruling, a California state court judge barred U-Haul agents from promising “confirmed reservations” for one-way equipment rentals in California. The settlement, finalized last month, removes the injunction, but in its place U-Haul will be required to pay customers $50 if it fails to honor a guaranteed reservation. Phoenix-based U-Haul, which dominates the do-it-yourself moving industry with more than 200,000 trucks and trailers, had denied that its reservations policy was deceptive. Under the settlement, the plaintiffs have a right to return to court to bring a contempt motion if U-Haul fails to follow requirements of the settlement in dealing with its customers.

The case involved U-Haul’s practice of accepting all advance reservations booked online or with telephone reservation agents. Under the company policy, customers were to be told their reservation was “confirmed” and that they would be called the day before their move with instructions on where and when to pick up their equipment. According to allegations in the suit, many customers were forced to wait hours or days and travel long distances for the pickup. In his ruling, the judge said U-Haul had used “the words ‘confirmed reservation’ in order to lock up customers as soon as possible and minimize the chances that customers are going to shop around.” Under the settlement, U-Haul will still contact customers the day before their move to schedule the pickup time and location. Once there is agreement, the reservation will be considered “guaranteed,” and U-Haul will incur a $50 penalty if it fails to fill it. As a practical matter, however, it may be too late for customers who don’t agree with the terms to find other moving equipment. I understand that U-Haul changed its reservations practices after the 2006 court ruling, San Francisco lawyer Thomas A. Cohen represented the class members in this case and did good work.

Source: Los Angeles Times

XX.

RECALLS UPDATE

There have been a very large number of recalls over the past month. We will set out a few of the more important ones—from a health and safety perspective—in this issue. Because of the number of recalls, however, we will be limited in the facts that will be involved in each instance. You can get more information on a specific recall by giving to the CPSC Web site which is www.cpsc.gov.

**Volvo Recalls 125,000 Trucks In The U.S.**

Volvo is recalling 125,000 trucks in the United States because of a fault with an electrical component. The problem was related to the main circuit-breaker in the lighting system according to Volvo. The Volvo VN, Volvo VHD and Volvo VT models constructed from 2003 to are now being recalled. The trucks have been sold in the U.S., Mexico and Canada. There’s a problem in the main switch in the lighting system that can lead to an overheating in the component. The light can go off, or the component could short circuit and lead to a fire, according to Volvo. Volvo will fix the problem free of charge. There have been 18 cases reported involving the defect through December 6, 2007. Seven of those cases involved fires. There have been no reports of injuries or deaths. The recall involves roughly 105,000 trucks in U.S., 15,000 in Canada and 5,000 in Mexico—all the commercial trucks built in North America since late 2002.

**John Deere Tractors Recalled Due To Collision Hazard**

Deere & Company has recalled about 5,400 John Deere Compact Utility Tractors. The forward drive pedal can get stuck, posing a risk of loss of control and injury to the operator and bystanders. Deere & Company has received seven reports of incidents. No injuries have been reported. The recalled tractor is model number 3203, which is painted on the side of the tractor. The tractors were sold by John Deere dealers nationwide from September 2005 through December 2007 for about $15,500. Consumers should stop using the recalled vehicles immediately and contact any John Deere dealer to schedule a free repair. Registered owners were sent direct mail notification of this recall. For additional information, contact Deere & Company at (800) 557-8233 or visit the firm’s Web site at www.john-deere.com.

**ATVs Recalled By KYMCO**

KYMCO USA, of Spartanburg, S.C. has recalled their 2006-2008 Model Year MXU 500 All Terrain Vehicles. The pivot bolts holding the rear suspension onto the frame can become loose, causing the rear swing arm to detach from the chassis posing a risk of injury or death to the operator. KYMCO has received six reports of incidents, including two reports of injuries. This recall involves all model year 2006-2008 MXU 500 ATVs. The vehicle is identified by a label on the front as KYMCO and the model is determined by a label located on each side of the fuel tank as MXU 500. KYMCO dealers sold the ATVs nationwide from November 2006 through December 2007 for between $6,000 and $6,500. Consumers should immediately stop using the recalled ATVs and contact an authorized KYMCO dealer in their area to schedule a free repair. Registered owners were sent direct mail notification of this recall. For additional information, consumers can contact KYMCO USA at (888)
American Honda Motor Co., Inc. has recalled Model Year 2007 Honda TRX 500 ATVs. Water can enter the throttle position sensor and freeze, causing permanent damage if the rider forces the throttle lever. This could cause the throttle to stick open, posing a risk of injury or death to riders. Honda has received two reported incidents of the throttle sticking. No injuries have been reported. This recall involves Model Year 2007 Honda TRX 500 ATVs, also known as the Honda Foreman and Foreman Rubicon. The adult-size ATVs are designed for use by riders age 16 and older. The 2007 model year ATVs are available in red, black, blue, olive, and camouflage. The Honda name and wing logo are printed on the fuel tank and the model name is printed on the side panel just below the seat. Honda ATV dealers sold the ATV’s nationwide from June 2006 through December 2007 for between $6,500 and $7,600. Consumers should immediately stop using these recalled ATVs and contact any Honda ATV dealer to schedule a free repair. Registered owners of the recalled ATVs have been sent direct notice. For additional information, consumers can contact Honda (866) 784-1870 or visit the firm’s Web site at www.powersports.honda.com.

DEWALT Cordless Drills

DEWALT Industrial Tool Company has recalled about 346,000 DEWALT Cordless Drills. The trigger switch of the cordless drill can overheat, posing a fire hazard to consumers. DEWALT has received 11 reports of trigger switches overheating. No injuries or property damage have been reported. This recall involves 6 different models of the individual cordless drills. The model number is printed on a sticker on the side of the unit. The date code is embossed on the bottom of the unit. Units stamped with an "M" following the date code have been repaired and are not included in this recall. The packaging of repaired drills has a green dot sticker near the UPC label. Consumers should stop using the drills immediately and contact DEWALT for the location of the nearest service center to receive a free inspection and, if necessary, free repair. You can get the model numbers in the recall from either the CPSC or DEWALT. DEWALT can be reached toll-free at (888) 742-9168 and the firm’s Web site is www.DEWALT.com.

Bathroom Medicine Cabinets Recalled

RSI Home Products, of Anaheim, California has recalled 8,600 Medicine Cabinets. The medicine cabinet’s mirrors can separate and break, posing a laceration hazard. RSI has received two reports of mirrors detaching and breaking. No injuries have been reported. This recall involves three styles of bathroom medicine cabinets sold in 30-, 36- and 48-inch sizes with top lights and three beveled mirror doors: Estate by RSI® Tri-view cabinets with four to six lights, crown molding and three finishes: white, solid oak and maple; Insignia® with a wide variety of finishes and manufactured to consumer specifications provided through Lowe’s; MasterBath® cabinets with a wide variety of finishes and manufactured to consumer specifications provided through The Home Depot. The cabinets were sold at Lowe’s Retail Outlet stores nationwide and at www.Lowes.com from August 2007 through October 2007 for between $140 and $220 (Estate by RSI®); Lowe’s Retail Outlet stores nationwide during September 2007 for between $170 and $250 (Insignia®); The Home Depot Retail Outlet stores nationwide during September 2007 for between $160 and $360 (Master-Bath®). Consumers should immediately remove and safely dispose of the cabinet’s mirrors. Consumers should contact RSI to receive free replacement mirrors. For additional information, contact RSI toll-free at (888) 774-8062 or visit the firm’s Web site at www.estatebath.com, www.insigniacabinets.com, www.masterbath.com.

Bayer Recalls Contour Test Strips For Diabetes

A unit of Bayer AG has recalled diabetes test strips used with its Contour TS Blood Glucose Meter because they may result in 5 to 17% higher blood glucose readings. The U.S. Food and Drug Administration (FDA) announced the recall. The test strips are used by diabetic patients to monitor their daily blood sugar levels. According to Bayer Diabetes Care, the recalled test strips were produced on new manufacturing equipment and that it has fixed the problem. Some 53 production lots were affected by the recall, totaling 230,000 bottles of strips. Each bottle typically contains 25 to 50 strips.

Contour TS strips are sold predominantly through mail order in the United States and are also marketed in France, Austria, Turkey, Korea, India and Mexico, according to Bayer. The company said the problem was unrelated to the Contour TS meter and pertained only to certain test strips used with the meter. The recall does not affect strips used with other Bayer meters, Bayer said. Details about the recalled test strips’ product code and lot numbers were posted on
Lowe's retail outlet to receive a recalled lamp and return them to should immediately stop using the lamp. Consumers should immediately stop using the recalled lamp and contact Discount School Supply to receive a credit or refund. For additional information, contact Discount School Supply at (800) 993-3603 between 6 a.m. and 5 p.m. PT Monday through Friday; visit the firm's Web site at www.discountschoolsupply.com or email at tossrecall@discountschool-supply.com.

**Sears and Kmart Recall Play Stoves Because Of Tip-over Hazard**

"My First Kenmore" Play Stoves by Sears, Roebuck and Co. and Kmart Corp., have been recalled. A metal bracket connecting the door to the stove can cause a tip-over when the door is opened. This poses a risk of injury to young children. Sears has received one report of the product tipping over, resulting in bruises to a child. The self-assembled, wooden play stove is painted pink with six white knobs and a timer. The dimensions of the stove when assembled are 11 1/2" W x 13 3/4" D x 32 7/8" H. The stoves were sold at Sears and Kmart stores nationwide from September 2007 through November 2007 for about $100. Consumers should immediately remove and discard the bracket that connects the door to the stove to eliminate the hazard. Consumers may obtain updated assembly instructions by contacting Sears/Kmart or by visiting either firm's Web site. In some products, the updated assembly instructions are already included and replacement instructions are not required. For additional information, contact Sears/Kmart at (800) 659-7026 or visit either www.sears.com or www.kmart.com.

**Recalled Green Beans Pose Risk Of Botulism**

A recall of canned green beans with a risk of botulism affects several states. The recall involves canned cut green beans packed by the New Era Canning Company. New Era has issued a voluntary recall of 171 cases, with six large institutional-sized cans of green beans per case. The problem with the beans was traced to a mechanical failure of a cooker. Some cans of the green beans apparently weren’t being cooked enough. The company fixed the cooker and disposed of the 10 cans in it at the time. Once the FDA inspection found potential contamination, New Era recalled the remainder of the specific lot of beans that went through the cooker on September 12th. The beans have a lot code of 19H7FL and UPC code of 93901 11873. The

**Discount School Supply Recalls Play Mats**

Discount School Supply, of Monterey, California, has recalled about 60 Tic Tac Turtle Toss Mats due to the excess levels of lead on the mats, violating the federal lead paint standard. No injuries have been reported. This recall involves 50-inch vinyl/polyester play mats. The double-sided mats have a number design on one side and a turtle design on the other. The mats are yellow with numbers and designs painted in red, blue, green and black. The mat has the Discount School Supply name and logo printed in the corner on both sides of the mat. Bean bags pictured with the mat are sold separately. The mats were sold through the Discount School Supply catalogs and the company’s Web site from June 2007 through September 2007 for about $40. Consumers should immediately stop using the recalled mats and return them to any Lowe’s retail outlet to receive a refund. For additional information, contact L G Sourcing toll-free at (866) 916-7233 anytime or visit www.lowes.com.

**Battat Toy Magnet Sets Recalled In U.S.**

About 125,000 magnetic toy building sets made in China and sold by Battat were recalled because the magnets could fall out and be swallowed by children, the U.S. Consumer Product Safety Commission said on Wednesday. Each of the toy Magnabild sets included small magnetic rods, metal balls, triangles and squares for children to create designs. The government safety agency said there had been 16 incidents of magnets falling out of the play sets but no injuries had been reported. If swallowed, the magnets could attract each other and cause intestinal perforations or blockages, the agency said. The agency said the toys were sold at various U.S. retail stores and online sites from 2005 through 2007 for $30 to $40. Details of the recalled toys were posted by the safety agency on its Web site: www cpsc.gov/cpsc/pub/ prerel/prhtml08/08173.html.

**TORCHIERE LAMPS RECALLED**

Portfolio Incandescent Torchiere Lamps have been recalled due to a short circuit in the lamps’ wiring can pose a fire hazard to consumers. L G Sourcing has received two reports of lamp fires. No injuries have been reported. The recalled lamp has a black steel frame and a bowl-shaped light fixture. The item number 179878 is printed on the packaging and the bottom of the base of the lamp. Only lamps sold between March 2005 and October 2007 with UL listing number E246506 are included in the recall. Lamps marked “ETL listed” are not included in the recall. Lowe’s retail stores sold the lamps nationwide from March 2005 through October 2007 for about $17. Consumers should immediately stop using the recalled lamps and return them to any Lowe’s retail outlet to receive a refund. For additional information, contact L G Sourcing toll-free at (866) 916-7233 anytime or visit www.lowes.com.
green beans were distributed to food service customers in Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Mississippi, Missouri, North Carolina, Tennessee and Virginia and sold through GFS Marketplace stores in Indiana, Kentucky and Tennessee.

XXI. FIRM ACTIVITIES

Employee Spotlights

LEIGH O’DELL

Leigh O’Dell is a shareholder in our Mass Torts Section. The Autauga County native returned to the firm in April of 2005 and has been working primarily on Vioxx cases for the last two years. Leigh was a lawyer with the firm from 1994 through 1998. She left in 1998 to take a position with Focus on the Family. Under the leadership of Dr. James C. Dobson, Leigh served Focus on the Family as Director of Women’s Ministries. In that capacity, Leigh was responsible for Renewing the Heart, a nation wide series of one-day arena events designed to encourage and refresh women through worship and the Word of God.

Leigh came back to the firm in 2000 for a short time before joining AnGeL Ministries, the ministry of Anne Graham Lotz, daughter of Dr. Billy Graham. As Director of Events for Anne’s ministry, Leigh was responsible for the development and execution of Just Give Me Jesus, a series of two-day revivals that have taken place around the world and are designed to revive God’s people in their relationship with Jesus. Leigh, an outstanding lawyer, and an extremely hard worker, does excellent work. She has been an inspiration to all of us at the firm. We are blessed to have Leigh with us.

ALICIA HILL

Alicia Hill, who has been with the firm for over six years, currently serves as Legal Secretary to Roger Smith in the Mass Torts Section. She played an important role in her work relating to the Vioxx litigation. Alicia has been married to Tommy Hill for 8 years, and they have one dog, Prissy, who is said to be the boss at the Hill household. She enjoys reading and is involved in several church activities, including teaching 1st through 3rd grade Sunday school. Alicia is a very good employee who enjoys her work—which can be very challenging—and we are fortunate to have her with the firm.

SHANNON RATTAN

Shannon Rattan, who was previously employed at the firm in the Accounting Department from 2001-2002, came back to work with us in February 2006 as a Clerical Assistant in our Personal Injury Section. She has recently become Julia Beasley’s legal secretary. Shannon has two boys, Sean and Cade, who are her pride and joy. Sean started kindergarten this year in Millbrook, and Cade just turned 3 in September. In her free time, Shannon enjoys painting wall murals and canvases. Shannon is a very good employee, a very hard worker, and she is dedicated to helping all of the clients represented by Julia. We are fortunate to have Shannon with the firm.

FAMILY SUNSHINE CENTER

Each year our firm adopts several families at the Family Sunshine Center during the Christmas Season. The project is the only one supported exclusively by our lawyers. This year we adopted 6 mothers with a total of 30 children. Gifts for the mothers and children were purchased and were designed to fill out their Christmas wish list. The Family Sunshine Center sends out information on families of all sizes and needs to individuals, groups and corporations. Adopters purchase new gifts from a “Wish List” provided by each adopted family. That approach makes sure individual needs are met for each family. The support of the adopters ensures that each of the families at the Center enjoys the joy and happiness of being together during the holidays. As you may know, the Family Sunshine Center works hard to end family violence and to foster hope and healing in families. The Center serves seven Alabama counties: Autauga, Butler, Chilton, Crenshaw, Elmore, Lowndes, and Montgomery.

XXII. SOME CLOSING OBSERVATIONS

A Request That I Couldn’t Refuse

My daughter Bee McCollum sent me an article last month that had been written by Linda Shook. The article, which was to have been included in a publication by the School of Business at Auburn University, for some reason, was never published. The interview took place over a year ago while I was doing a day of “teaching” at the business school. I thoroughly enjoyed my time at the school and I was most impressed with the faculty members and students.

Linda, who did lots of research on my life history, would like to have her article published in the Report. After thinking about it, I agreed to include it in this issue. I must say I had never read it before Bee sent it and it brought back some fond memories.

“You never truly know someone until you’ve walked a mile in his shoes.”

– Anonymous

Well-known lawyer and victims’ rights advocate Jere Beasley recently returned to his alma mater to address students in the College of Business. The senior member of the firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. has practiced law for over forty years. His springtime return marked a milestone for Beasley. It was his first visit to the College of Business as a guest lecturer since graduating from Auburn in 1959.

“I’ve always believed that Auburn
45 years ago was cause for fond reflection and remembrance of his Auburn education was confirmed. “I was very impressed with the kinds of questions they asked,” specifically citing the extensive knowledge the students had about consumer issues, regulatory agencies, and business law.

During his presentation, Beasley shared his firm commitment to integrity in all areas of life. He presented the students with two important keys to being successful in business and in life. He told the men and women “to be loyal to their firm. Operate within the rules and, remember, loyalty never means cheating.” The second mandate is “to set priorities and (for him) that means God, family, and his law firm in that order.” He also encouraged the students to be involved in the world around them and to be the best they can be. The recurring theme in his discussion was “to do the right thing.”

Beasley also exhorted the students to learn to write well, a skill they will need and use throughout their lives.

Beasley also was impressed with Auburn’s faculty. “The instructors are good and I am impressed with the new dean. Auburn is producing outstanding business leaders,” he said. Beasley’s visit to Auburn after living here as a student over 45 years ago was cause for fond reflection and remembrance of his academic career, which, surprisingly, almost never began.

Beasley traveled an indirect path to Auburn University; and sometimes the road less traveled is the best. In high school, his athletic career was to determine his choice of college. His original college plans involved football and the University of Georgia but his playing career was cut short after an injury; and, so his plan to go east for school ended. Sharing a somewhat startling insight, Beasley said, “I was a college dropout.” After a two-year stint at a junior college in Mississippi, Beasley finally decided to enroll at Auburn University; the time was autumn of 1957. That fall he met someone who would change his life forever. That person was Sara Baker of Adamsville, Alabama. “I had no idea I would get married when I came to Auburn,” explained Beasley. “After I married, I doubled up on school work,” he reflected. One semester he took a course that he “thought would be easy.” The course involved public speaking and presentations. “I was very country and shy. I found it difficult talking in groups or to more than one person,” added Beasley, “The best thing that ever happened to me as far as school was taking this course.”

After his marriage Beasley, worked hard both in the classroom and at various jobs. A life-long sports enthusiast, Beasley, as an AU student, coached the Auburn Babe Ruth Baseball Team that won a championship. Something most people don’t know about him is that he sold mail order shoes as an Auburn student. To help support his new wife and his college career, Beasley landed the job selling shoes, a job at which he proved to be quite successful. He was so successful that he could have had a career in the shoe business. Instead, he chose to take his Auburn University education and use it as the foundation for his next career move—law school.

His choice of going to law school at the University of Alabama was a little unusual since there were no attorneys in his family. “People have asked me why I chose law,” he said. As a child growing up in Clayton, Alabama, he has memo-
I REALLY MESSED UP ON THIS ONE

I wrote last month about my family and soon after the issue was mailed, I got a message from my New Mexico cousin, Mark Beasley, who pointed out a few mistakes. It seems I really messed up this time. My great-great-grandfather was actually William Martin Beasley and not John Giles Beasley as I had indicated. I’m not real sure how this got mix up occurred, but it was definitely my fault. I also failed to include my daddy’s name, Browder Locke Beasley, when setting out the family tree. Even my brother Billy jumped me on that omission. For your information, William Martin Beasley and John Giles Beasley were brothers who married sisters. They came to Barbour County together and all are buried in a family cemetery at Pratt’s Station. I appreciate Mark, a retired Marine, bringing this needed correction to my attention. Hopefully, I learned my lesson!

ALL OF US SHOULD STRIVE TO DO OUR BEST

It has always bothered me when folks with real talents and abilities don’t live up to their full potential. I learned early in life that each person has certain abilities and talents that can be used in whatever vocation or occupation that person happens to pursue. Regardless of the level of our abilities and talent, we can do well in whatever line of work we undertake. Simply put—we can be the best we can be at whatever we set out to do if we utilize fully the ability and talents God has given us. As a young fellow, I was a big fan of Vince Lombardi, who as most of you will recall, was the highly successful coach of the Green Bay Packers. Coach Lombardi made a lasting impression on me at an early age. I recall reading the following and I believe it’s still a good measure of how we should measure our life’s work.

The quality of a person’s life is in direct proportion to their commitment to excellence, regardless of their chosen field of endeavor.

- Vince Lombardi

That which Coach Lombardi, a most successful coach, stated was applicable then and it still is today. A commitment to excellence is a high, but needed standard. Perhaps the best example of a person reaching his full potential by being totally committed to excellence was the athletic career of my friend Bart Starr. As you may know, Bart grew up in Montgomery and attended Lanier High School. Bart was a very good quarterback for the Lanier Poets—but enjoyed a rather average career on the college level at the University of Alabama. Few folks at that time—with the exception of his parents, Ben and Lula Starr—believed a great pro career for Bart would follow. However, once Coach Lombardi took Bart under his wing—so to speak—things really changed for the Montgomery native. Bart soon became a truly outstanding quarterback for the Packers. In fact, in my opinion, Bart was one of the very best to ever play his position. Not surprisingly, Bart has been extremely successful in his business career after leaving football.

BIBLE VERSE OF THE MONTH

There were a number of suggestions this month, but I decided to use the verse submitted by one of our firm’s lawyers as his favorite. Gibson Vance, because of the work he does, says the following verse gives him daily comfort:

Let justice roll on like a river, righteousness like a neverfailing stream!

Amos 5:24 (New International Version)

When lawyers like Gibson go about seeking justice for their clients, if they will follow biblical standards, they will seek justice in the right way. Striving to live a righteous life must be our goal first on a personal level—and we must carry that effort over into the work place. I’m glad Gibson suggested this verse because it sets a goal for all of us who work in the court system. It’s a goal we should continuously strive for. I must confess that achieving the goal in today’s climate in our court system is sometimes difficult, but it’s an
absolute necessity that we strive to reach the goal. If we do, our clients will receive justice.

XXIII.
SOME PARTING WORDS

Dean Albritton, the devoted wife of Pastor Walter Albritton, is one of our teachers in the Frazier Class at St. James United Methodist Church. Recently, in a lesson that dealt with God’s blessings to His people, Dean passed on an Old English Blessing to the class that I had never heard. I will now pass it on to our readers as a blessing for each of them and their families.

*May your joys be as bright as the morning, your years of happiness as numerous as the stars in heavens, and your troubles as shadows that fade in the sunlight of love.*

That is a simple—but profound blessing—and receive it as a gift from God. May God bless each of you and your families in all of your endeavors. Remember that God loves you. He is faithful and true in every respect and is the only source of all our blessings and provisions in this life. That is an assurance that can’t be disputed and it is mighty good to know!
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