



THE
JERE BEASLEY REPORT

APRIL 2008

Beasley Allen

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I. CAPITOL OBSERVATIONS

DRUG COMPANIES SETTLE AWP LAWSUIT FOR \$125 MILLION

Abbott Laboratories and several other drug companies have agreed to pay \$125 million to settle a class action lawsuit involving the companies' inflation of average wholesale prices on some medicines. The lawsuit, filed in 2002 by consumers and insurance companies, alleged that drug costs were higher than they should have been because the drug manufacturers had falsely reported prices. The published average wholesale price is used to set the price that federal programs such as Medicare pay for a drug. It is also the method used to set the price for insurance companies and other third parties. As we have reported, the published Average Wholesale Price (AWP) is used to set the price that Medicare and consumers making Medicare Part B co-payments pay for a specific drug. Insurance companies and other third-party payers also pay on the same basis. A tremendous number of drug companies have cheated federal and state governments by supplying false prices, which are used in setting the reimbursement to providers such as doctors or pharmacists.

Under the terms of the settlement, 82.5% of the settlement fund is designated for third-party payers' claims, with the remaining 17.5% being designated for consumer claims. Among the defendants included in this settlement are Abbott Laboratories; Amgen Inc.; Aventis Pharmaceuticals Inc.; Hoechst Marion Roussel; Baxter Healthcare Corp.; Baxter International Inc.; Bayer Corporation, Dey Inc.; Fujisawa Healthcare Inc.; Fujisawa USA Inc.; Immunex Corp.; Pharmacia Corp.; Pharmacia & Upjohn LLC; Sicor Inc.; Gensia Inc.; Gensia Sicor Pharmaceuticals Inc.; Watson Pharmaceuticals Inc., and ZLB Behring L.L.C. The drugs covered in the settlement include Aranesp, Epogen,

Neupogen, Neulasta, Anzemet, Ferrlecit, and Infed. The class includes those making payments to Medicare Part B between January 1, 1991, and January 1, 2005, or those who made payments outside of Medicare Part B from January 1, 1991, through March 1st.

The court is expected to set a trial date for the remaining claims against AstraZeneca Pharma India Ltd. and Bristol-Meyers Squibb Co. on behalf of insurance companies and consumers outside of Massachusetts. Those two companies were ordered in November of last year to pay almost \$14 million to insurance companies and consumers in Massachusetts as part of an earlier settlement in this case. Pharmaceutical companies have been guilty of fraudulently reporting the Wholesale Acquisition Cost (WAC) and AWP prices to state Medicaid agencies over the years.

Source: *Bloomberg*

CONNECTICUT SUES ELI LILLY OVER ZYPREXA MARKETING

The State of Connecticut has filed suit against Eli Lilly and Co. alleging that the drug maker illegally marketed and concealed serious side effects of Zyprexa, its top-selling schizophrenia medicine. Connecticut Attorney General Richard Blumenthal is seeking to recover "millions of taxpayer and consumer dollars improperly spent on Zyprexa as a result of its illegal marketing, and millions more spent for treatment of serious side effects from Zyprexa." Lilly is already a defendant in a lawsuit filed by the state of Alaska. The trial in that case, which began last month, has similar accusations involving marketing and side effects associated with Zyprexa, which is by far Lilly's biggest product. Lilly had sales of Zyprexa of \$4.76 billion in 2007, \$2.24 billion of which was in the U.S.

Lilly is accused of promoting Zyprexa for unapproved uses, including the treatment of children, and of hiding dangerous side effects, such as increased risk of diabetes, weight gain, and heart problems. Attorney General

Blumenthal made this statement when he filed the suit:

Through a complex series of illegal rackets and lies, Eli Lilly built a multibillion-dollar drug enterprise at the expense of taxpayers, consumers and patient lives. Eli Lilly adopted a sick marketing mindset: profits over patients, sales over safety.

The Attorney General accused Lilly of promoting the drug for anxiety, depression, and attention deficit disorder in children despite its not receiving FDA

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approval for those uses. Although doctors may prescribe medicines in any way they see fit, companies are allowed to promote them only for uses approved by U.S. health regulators. The drug maker was accused of corrupting doctors, pharmacies, and public officials nationwide. Between 1996 and 2006, the Connecticut Medical Assistance Programs spent more than \$190 million on Zyprexa, and millions more were spent to treat injuries caused by Zyprexa. The Attorney General has been involved in private negotiations with Lilly over Zyprexa, and a settlement with federal prosecutors may be in the works.

An interesting development occurred during the trial. John C. Lechleiter, an Eli Lilly official who is about to become the company's top executive, wrote an e-mail message in March 2003 that encouraged Lilly to promote Zyprexa for a use not approved by federal drug regulators. His comments were sent to other Lilly executives after he traveled to Cincinnati to watch Lilly sales representatives talk to doctors. In his e-mail message, Mr. Lechleiter discussed the use of Zyprexa by children and teenagers. Mr. Lechleiter, who was then the company's executive vice-president for pharmaceutical products, noted to other Lilly officials that company representatives were already promoting Strattera, a second Lilly psychiatric drug, to pediatricians and child psychiatrists. The representatives could also discuss Zyprexa with these doctors. Mr. Lechleiter wrote in his email message:

The fact we are now talking to child psychs and peds and others about Strattera means that we must seize the opportunity to expand our work with Zyprexa in this same child-adolescent population.

Mr. Lechleiter also encouraged Lilly to get data on the use of Zyprexa in treating "disruptive kids" in order to increase the drug's sales. The trial judge wouldn't allow the email to be admitted into evidence because off-label use isn't at issue in the case. This disclosure

nonetheless comes at a sensitive moment for Lilly, which is also under federal criminal investigation for the way it promoted Zyprexa and played down the drug's risks to doctors. Internal Lilly documents show that from 2000 to 2002 the company aggressively tried to expand Zyprexa's sales into markets for which the drug was never approved, including elderly patients with dementia.

Because Mr. Lechleiter, an organic chemist who is Lilly's president and chief operating officer, is a senior official about to become the chief executive, the public disclosure of an e-mail message in which he appears to have encouraged off-label promotion of Zyprexa could complicate the talks. He is scheduled to become chief executive on April 1st, succeeding Sidney Taurel, and is to succeed Mr. Taurel as Lilly's chairman at the end of the year. The trial in Alaska is being watched carefully by other drug companies.

Source: Reuters & New York Times

CVS Will Pay \$36.6 Million To Settle Medicaid Case

CVS Caremark Corp., which operates 6,200 stores, has agreed to pay almost \$37 million to the federal government and to nearly two dozen states, including Alabama, to settle claims that the nation's largest pharmacy chain billed Medicaid programs for a more expensive formulation of an antacid. The settlement in the case—the first of its kind for a retail pharmacy company—came after a lengthy investigation that began in 2001 when a suburban Chicago pharmacist alerted authorities. The nation's largest pharmacy chain gave Medicaid patients capsules of Ranitidine, a generic version of the heartburn medication Zantac, instead of even less expensive tablets. Both generic versions of the medication have the same active ingredient. The switch is illegal and allowed the company to more than quadruple its charges to state Medicaid programs for each pill, leading to a larger profit. Two versions of the medication are techni-

cally considered different drugs. Michael Behn, the Chicago lawyer who represented the whistle-blower in the case, observed:

Legally, switching tablets for capsules is the same as switching Zantac for Prozac. A prescription for a tablet is not a scrip for the capsule, just as a price for the tablet is not the price for the capsule.

CVS will pay the federal government about \$21 million as part of the settlement. The remaining \$15.6 million will be divided by Alabama, Indiana, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia and West Virginia. The company also will pay \$800,000 for investigative costs and other fees. It agreed to sign a five-year corporate integrity agreement with federal authorities, imposing ethical standards and procedures to prevent such drug switches in the future. U.S. Attorney Patrick Fitzgerald, in a prepared statement, observed:

Switching medication from tablets to capsules might seem harmless, but when that is done solely to increase profit and in violation of federal and state regulations that are designed to protect patients, pharmacies must know that they are subjecting themselves to the possibility of triple damages, civil penalties, and attorney fees.

Caremark gave Medicaid patients a generic version of the heartburn drug Zantac. Both drugs contained ranitidine, but the generic drug was in capsules, which are more expensive to produce and cost more. For instance, by substituting generic ranitidine capsules to patients in Illinois instead of Zantac tablets eight years ago, Caremark was able to charge Medicaid \$79.80 instead of \$17.10 for 60 pills. The company also entered into a five-

year agreement designed with ethical standards and procedures to prevent such drug switches in the future. The settlement came after a lengthy investigation that began in 2001, when a suburban Chicago pharmacist alerted authorities by filing a lawsuit.

Source: Associated Press

BRAND-NAME DRUG PRICES STILL INCREASING

The politically powerful pharmaceutical industry continues to take advantage of American consumers and especially the elderly. Drug makers increased their prices last year by an average of 7.4% for those brand-name medicines most commonly prescribed to the elderly, according to the AARP. The increase was almost three times overall inflation, continuing a long-standing trend. The AARP, a strong advocacy group for the elderly, has tracked drug prices going back to 2002. Specifically, they looked at the prices charged by manufacturers to wholesalers. The price increases have been greater since the Medicare drug benefit kicked in on January 1, 2006, which is certainly no surprise.

In the four years before the drug benefit's startup, tracking reveals that wholesale prices rose between 5.3% and 6.6% annually. According to AARP officials, the outcry over the price of drugs was quite strong when Congress approved legislation establishing the drug benefit. Since the drug benefit began, however, that outcry has diminished somewhat. That's because the federal government is picking up much of the tab for beneficiaries' medicine. John Rother, AARP's policy director, observed:

Unfortunately, many manufacturers have taken the absence of an outcry as a green light to go ahead and raise prices even more.

All but four of the 220 brand-name prescriptions in the study had price increases during 2007 and nearly all exceeded the rate of general inflation.

Among the top 25 drug products, the sleep aid Ambien, manufactured by Sanofi-Aventis, had the largest price increase, at 27.7%. As we have learned in drug industry litigation, the manufacturer's wholesale price is the most substantial component of a prescription drug's retail price. However, insurance companies, such as those that cover Medicare beneficiaries, typically negotiate confidential rebates from the manufacturer. Plans could potentially negate a higher wholesale price by negotiating a steeper discount or by lowering their reimbursement rates to pharmacies. As a practical matter, the latter is unlikely to happen. Still, a change in the wholesale price generally results in a similar percentage change in the price of most prescriptions, according to the AARP.

The trade group representing drug makers, the Pharmaceutical Research and Manufacturers of America, is one of the most powerful lobby groups around. In the past, the trade organization has protested comparing the rise in drug prices to general inflation, saying that a comparison to medical inflation is more appropriate. I disagree with that and so does the AARP. Big Pharma has pretty much had its way in Congress over the past seven years, to the detriment of consumers and taxpayers. Their power and influence should be considerably less once George Bush leaves office.

While the AARP's report focused on higher prices for brand names, federal health officials note that more people are taking generic medicines. They say that trend has accelerated as a result of the Medicare drug benefit. However, the drug companies use tools, such as lower co-payments for generics, to steer consumers to lower-priced medicines. Government economists say that at present about two-thirds of all prescriptions are now generics. In discussing the overall picture, the AARP's Mr. Rother says:

That's been the good-news story. The plans have done what we hoped they would do, which is shift people to lower-cost generic drugs. However, savings from

people shifting to generics are being offset by these higher prices for brand names.

Hopefully, after this fall's elections, the American people will get some needed relief in the form of cheaper drug prices. We can't afford to continue the practice of letting BIG PHARMA call the shots for both the president and the Congress. Americans have been subsidizing drug prices for the rest of the world by paying grossly inflated prices and that must end!

Source: Associated Press & AARP

NATURAL GAS TAXING SYSTEM CHEATS THE STATE

I agree with Gov. Riley who says the state's current system of taxing natural gas pumped offshore by ExxonMobil and other companies is "broken and swindling Alabamians of their rightful tax collections." The Governor is also correct that the actions of the companies are "unconscionable." The people of Alabama are being fleeced by the powerful oil companies and that must be stopped. In an effort to correct things, Gov. Riley has called on lawmakers to pass a proposed law that he says would fix the tax-collection system. The bill, if passed, would double the tax that companies now pay on the natural gas they pump from offshore. The increase would be from about \$40 million a year to about \$80 million a year. Doing nothing could mean that ExxonMobil and other companies, by deducting overhead costs of production as allowed in a recent ruling by an administrative law judge, could pump natural gas in state waters and in effect pay Alabama nothing in severance taxes on the gas.

The administrative law judge's ruling, made in September, could force Alabama to pay more than \$100 million in tax refunds to ExxonMobil and other companies that pump gas from offshore. Gov. Riley, in support of his plan, observed:

It's not only that they want the State of Alabama to repay what

they've already paid us. They want a system that allows them to deduct indirect costs down to the point that they would never have to pay any severance tax going forward.

Gov. Riley has hit the nail squarely on the head in his remarks on the inequitable system that favors the oil companies that are drilling in Mobile Bay. Hopefully, the legislators will pass this bill in short order. But, without any doubt, it will be opposed by the cadre of well-paid and influential lobbyists for the powerful oil companies. If you agree that we deserve fairness and that the companies should pay, contact your Senators and House members and ask them to help pass this badly needed legislation.

Source: *Birmingham News*

PRESIDENT BUSH WILL APPOINT ALABAMIAN TO EEOC

President Bush will nominate Connie Barker to the Equal Employment Opportunity Commission. If confirmed, she would fill the remainder of a five-year term through June 2011. Connie is with Capell & Howard law firm in Montgomery and previously was general counsel for the Mobile County Board of Education. Connie, a former prosecutor, received her bachelor's degree from the University of Notre Dame. She received her law degree from the University of Alabama in 1977. She represents a broad cross-section of commercial, manufacturing, retail and professional firms. Connie's efforts are equally focused on the prevention of discrimination claims and the defense of lawsuits. She works closely with corporate clients to guide their decision-making process in an attempt to keep them out of trouble. Connie should be confirmed by the Senate. In my opinion, she will do an outstanding job on this Commission.

II. LEGISLATIVE HAPPENINGS

A SNAIL'S PACE IN THE ALABAMA LEGISLATURE

So far during the session, the Alabama Legislature has been traveling at a snail's pace when it comes to the actual passage of bills. However, the legislative committees appear to have been hard at work. The real problems will come when the budgets come up for consideration. Most Alabama citizens don't realize how serious the money crisis facing this legislative session really is. Funding for educational needs and for the operation of the agencies that live out of the general fund is going to be very difficult. Both budgets are in serious jeopardy. Politicians have been saying "no new taxes" for years and it's catching up to those who are now having to face the music.

The current group will have to decide whether to drastically cut a number of deserving programs and the services they provide or increase the amount of revenues that fund the state budgets. If anybody really believes we can get through this session without new revenues, they haven't kept up with what is going on in Montgomery. Even though Alabama hasn't been hit as hard by the economic downturn affecting this country as some states, we can no longer take the band-aid approach to funding state budgets. Revenues are not coming in as projected and it appears the short fall will be significantly greater than expected. Eventually, our elected officials will have to get our house in order. As they say where I come from, "it's time to fish or cut bait!"

JAMES FIELD ELECTED TO ALABAMA HOUSE OF REPRESENTATIVES

James Field was elected to the House of Representatives in a special election that was held recently. The Democrat from Cullman County will fill the vacancy that has been created in House

District 12. This man's outstanding record of community service, grass-roots campaigning and civic involvement, as well as his solid character as a pastor, United States Marine, and retired state employee, inspired persons across political boundaries to vote him into office. This was not only a victory for all of the people in Cullman County, it was also one for all Alabamians who want to take our state forward.

James Fields took a positive message of hope, family values and problem-solving to the people of District 12 and the response he received was overwhelming. Despite massive amounts of money, outside campaigning, negative mail pieces, and telephone calls by Republican operatives, the voters of Cullman County—Democrats, Republicans and Independents—made their own choice and it was James Fields. In my opinion, this man will quickly become a leader in the Alabama House of Representatives. His election is a very good sign for Alabama and one that's very encouraging!

ALABAMA'S UNFAIR SYSTEM OF WORKER'S COMPENSATION LAWS MUST BE UPDATED

It's widely recognized that Alabama has one of the worst set of workers' compensation laws in the nation. Workers in our state badly need a change in our archaic system. For example, Alabama's compensation rates for permanent partial disabilities for workers who are hurt on the job, capped at \$220 per week, are not only the lowest in the Southeast, but are the lowest in the entire country. Of our neighbors, the closest state in terms of weekly compensation rates for permanent partial disability is Mississippi, which compensates its workers at close to \$400 per week. The "220-cap," as it is called, hasn't been raised since Ronald Reagan was president. During the 23 years since the 220-cap was put into place, costs have risen sharply for the goods and services consumers purchase. Alabamians know this because they have experienced it. For example, gasoline has risen exponen-

tially since 1985. Workers are paying more and more out of pocket just to get to and from work. We are now facing \$4 per gallon for gasoline, thanks to our federal government's failure to deal with an obvious problem.

To bring the antiquated Alabama workers' compensation system up to date and give the badly-needed relief to the state's injured workers, the Workers' Compensation Section of the Alabama Association for Justice has proposed legislation that would improve injured workers' lives and get them the care they need. The three bills that make up ALAJ's workers' compensation package are Senate Bills 389, 403, and 405. Generally, the bills, which have been introduced only in the Senate, would lift the 220-cap and tie it to the state's average weekly wage. In addition the bills, if they become law, would:

- cause the compensation rate to increase gradually with inflation;
- give injured workers more say over who their treating physician is;
- allow injured workers to continue to receive necessary care and treatment for injuries even while insurance companies fight over the costs of care and treatment;
- provide that employers must provide doctor-prescribed medical devices for injured workers; and
- provide protection from retaliatory discharge for injured workers filing comp claims and for third parties who testify on behalf of injured workers in comp cases.

Alabama's workers deserve better treatment than the current system provides, and that must be changed. The passage of SB389, SB403, and SB405 would certainly be a step in the right direction. Unfortunately, there is a great deal of opposition to these bills from special interest groups. If you agree that Alabama workers are entitled to a fair and equitable system of workers' compensation laws, contact members of the Senate and ask for their support.

It's high time that we start treating Alabama workers with the respect they deserve!

ALFA IS BACK WITH THE CORPORATE HOG BILL

ALFA has introduced its Hog Bill again for the seventh consecutive year. It was assigned to the Senate Agriculture, Conservation, and Forestry Committee. If this bill becomes law, it would virtually make it impossible for folks to protect their homes and communities from the smell, flies, and lowered quality of life that concentrated animal feeding operations (CAFOs) such as a big hog farm would cause. This legislation limits citizens' legal rights and puts tremendous amount of power in the hands of corporate hog farmers. The bill is entitled the "Alabama Family Farm Preservation Act," which is most interesting because it's neither about family farms nor their preservation. What this bill does is make it legally impossible to label those huge CAFOs as public nuisances. This bill is definitely not designed to do anything for small farms in Alabama. Instead, it's strictly for the benefit of large corporate interests. A number of daily newspapers in the state have written strong editorials against this legislation and that's encouraging. Without a doubt, the corporate hog bill should be defeated. If you agree, let your legislators hear from you.

III. COURT WATCH

FEDERAL PREEMPTION OF MEDICAL PRODUCT CASES IS BAD FOR PEOPLE

Consumer rights took another hit on February 20th when the U. S. Supreme Court, in a case styled *Riegel v. Medtronic, Inc.*, 128 S.Ct. 999 (2008), held that the Food and Drug Administration's (FDA) regulation of Class III medical devices bars all state law tort claims for medical injuries from

devices approved by the FDA. Many personal injury suits may have to be dismissed as a result of this ruling. Most legal observers believe consumers have been stripped of rights they once were able to rely on, and justifiably so.

In the case, Charles Riegel and his wife sued Medtronic, Inc., a catheter manufacturer, after Charles was seriously injured when a balloon catheter burst while he was undergoing angioplasty surgery. Medtronic asked the Court to dismiss the lawsuit, arguing the Food, Drug, and Cosmetic Act preempted state-law damage actions brought by patients like Charles who have been injured by medical devices that had received pre-market approval from the FDA. The Court agreed with the manufacturer and dismissed the Riegels' case.

The Court held that a provision of the Medical Device Amendments to the Food, Drug, and Cosmetic Act preempts state-law claims seeking damages for injuries caused by Class III medical devices that had received approval from the FDA before the devices went on the market. Basically, if the device passed the Class III FDA testing before going to market, consumers with injuries caused by these defectively designed or labeled medical devices have no right to sue the manufacturers of these products.

Now, thanks to the decision in the Riegel case, manufacturers that make defective medical devices and fail to warn consumers of the defects are immune from liability. Federal preemption is simply backdoor tort reform that is harmful to consumers. So-called conservatives claim they are for smaller government and less governmental intrusion. Yet, the Supreme Court seems to support the authority of federal administrative agencies—such as the FDA—to draft regulations that provide immunity to Corporate America for making and selling defective products. These rules take away the right of the states to protect its citizens from harmful products. Congress must get involved in this fight and do the will of the American people. If deci-

sions like this one spread to other products, consumers will be deprived of the right to seek justice in the courts. If you agree that federal preemption is bad, contact your U.S. Senator and members of the U.S. House of Representatives and ask them to stand up for the American people on this critically important issue.

HIGH COURT LEAVES DIABETES DRUG CASE INTACT

The U.S. Supreme Court has refused to say that federal regulations preempted a Michigan law that was based on fraud. The High Court left intact a ruling favoring people who sued a pharmaceutical company after being harmed by Rezulin, a drug to combat diabetes. The dispute arose from several suits over Rezulin against Warner-Lambert, which is now owned by Pfizer. The court split 4-4 in the case, with Chief Justice John Roberts not participating because of a conflict of interest. The users of the drug were relying on a Michigan law, alleging that the pharmaceutical company engaged in fraud by misleading federal regulators in order to get the drug approved. Interestingly, the Michigan law shields pharmaceutical companies from product liability lawsuits unless they committed fraud. The question before the Supreme Court was whether the fraud exception, which allows lawsuits to proceed, is preempted by federal regulation of the pharmaceutical industry.

The U.S. Court of Appeals for the Second Circuit in New York ruled that the exception to the Michigan law was not preempted by federal regulations, allowing the plaintiffs to pursue the case. In the case, twenty-seven Michigan residents contended they suffered personal injuries caused by Rezulin. This is a drug that federal regulators approved despite risks to the liver and cardiovascular system. When you consider how weak and ineffective the FDA has been over the years, it's inconceivable that federal preemption would be recognized simply because that agency approved a drug. All you have to

do is count the number of drugs approved by the FDA and later recalled because they were unsafe and dangerous. Vioxx is a classic example of how inept and ineffective the FDA really is, but there are many more such examples. Although this decision is a victory for consumers, it's really not that significant in the larger scheme of things. Had the Chief Justice participated, the Court's ruling could have gone the other way. The fight over preemption will continue in both the courts and in Congress. Without a doubt, it's one of the most important battles for consumers in years and one that consumers can't afford to lose.

Source: Associated Press

JUDGE IN PENNSYLVANIA RULES PAXIL LABELING SUIT NOT PREEMPTED

A Philadelphia judge ruled last month that federal law can't preempt a state product liability claim centering on the alleged failure of the makers of Paxil to warn about the increased risk of suicide. Judge Allan L. Tereshko, the coordinating judge of the Philadelphia Common Pleas Court's Complex Litigation Program, denied a defense motion for summary judgment, ruling that the doctrine of federal preemption does not preclude the plaintiffs from arguing that GlaxoSmithKline failed to fulfill its duty to warn users of Paxil of an alleged association between the use of the drug and suicidality. The defense argued that the plaintiffs should be precluded from making that argument in state court under implied conflict preemption, saying that allowing the state court action over the adequacy of the Paxil label would result in conflicts with the FDA's exclusive authority to determine the content of the label. Judge Tereshko wrote in his opinion:

Defendant asserts that such inquiry is precluded by federal law since the content of the drug's label is governed by federal law and the duty to supplement the label is somehow subsumed into the [federal Food and Drug Administration] regulatory scheme.

Defendant's position is clearly not sustainable. Federal law in question unquestionably places the duty upon the manufacturer and does not pre-empt a state's ability to allow one of its citizens to inquire whether the manufacturer breached that duty.

The Philadelphia mass tort program has always been regarded as one of the finest in the country, and that makes the judge's ruling most significant. There are no other Pennsylvania common pleas court opinions dealing with the federal preemption issue in pharmaceutical cases since the FDA unveiled revisions to its prescription drug labeling requirements in January 2006 and unveiled the "preemption preamble," which said that FDA approval of drug labels preempts conflicting or contrary state law. A case against GSK involving Paxil will now proceed to trial. Sol H. Weiss will try the case for the plaintiffs. There are 60 cases pending in the Philadelphia Paxil program, according to Stanley Thompson, the director of the Complex Litigation Center. Tereshko's decision shows that claimants injured by defective drugs or relatives of people injured by defective drugs can maintain their lawsuits in state court.

Judge Tereshko correctly said that it was not Congress' intent for federal law to preempt state causes of action and that the Federal Food, Drug and Cosmetic Act is silent on that issue. He noted that Congressional hearings leading up to the passage of the Federal Food, Drug and Cosmetic Act included the decision to not include a provision for a federal cause of action because common law rights of action existed. Judge Tereshko dismissed the defense's argument that use of beneficial drugs could be discouraged if they were mislabeled with warning information not based upon scientific evidence of known risks. He concluded such an argument is putting language into the federal law that is not there. The U.S. Supreme Court is slated to take up a preemption case, *Levine v. Wyeth*, which obviously will have a say in the

preemption battle, and likely will decide the issue.

Source: *The Legal Intelligencer*

JUDGE FINES MEDTRONIC \$10 MILLION OVER IMPROPER TRIAL TACTICS

A federal judge in Massachusetts has fined Medtronic Sofamor Danek Inc. and related companies \$10 million for the behavior of their lawyers during a trial. The case involved a patent claim brought by DePuy Spine Inc. Senior District Judge Edward F. Harrington also ordered Medtronic Sofamor, which makes spinal implant devices, to pay a part of the fees of the plaintiffs' lawyers. Judge Harrington ruled that the defendants would have to pay 15% of the fees from the time the U.S. Court of Appeals for the Federal Circuit issued a ruling on the patent claims in November 2006 through the date of the jury verdict. In September 2007, a jury awarded \$226.3 million plus interest to DePuy.

Medtronic Sofamor is a subsidiary of Minneapolis-based implantable biomedical device manufacturer Medtronic Inc. Massachusetts-based DePuy makes spinal surgery devices and equipment. DePuy alleged that several Medtronic Sofamor products used during spinal surgery infringed on a patent DePuy licensed from another party. In his February order, Judge Harrington wrote that the defendants "demonstrated a failure to accept the claim construction governing this case" throughout the trial. He also said Medtronic Sofamor's infringement defense was apparently based "on an attempt to obscure, evade, or minimize" the Federal Circuit's construction of the patent in question. Judge Harrington also wrote that the defendants "sought to take advantage of the technical and legal complexities inherent in this case," and that the defendants "prolonged the proceedings unnecessarily (thus unduly imposing upon the jury's time)," "sought to mislead both the jury and the Court," and "flouted the governing claim construction as set forth by the Federal Circuit." That is some pretty strong lan-

guage from a judge, and one would have to believe it was justified.

Judge Harrington denied the plaintiffs' requests for enhanced damages because of insufficient evidence of willfulness. Following the verdict, the Judge issued a permanent injunction order barring Medtronic Sofamor from making, using, or selling the infringing devices. The court's unwillingness to allow a party to openly flout the law and rules of evidence and conduct is quite refreshing. It will be interesting to see how all of this plays out given that this case will likely go up on appeal.

Source: *National Law Journal*

EXXON SHOULD HAVE TO PAY PUNITIVE DAMAGES

As this issue went to the printer, the U.S. Supreme Court had not ruled in the case against ExxonMobil arising out of the Exxon Valdez accident. The Court is being asked by ExxonMobil to set aside an award of \$2.5 billion in punitive damages. Based on what I know about the case, the powerful oil giant should be punished severely. For a company that is making enormous profits, a payment of \$2.5 billion would be little more than a slap on the wrist. There appears to be good reason to uphold the entire amount of punitive damages.

When the oil tanker Exxon Valdez hit a reef in Alaska's Prince William Sound in 1989, the result was one of the world's worst man-made ecological disasters. Nearly 11 million gallons of crude oil spilled into the Sound, creating a 3,000-square-mile oil slick that fouled more than 1,100 miles of shoreline. The impact of the spill continues to be felt because a considerable amount of oil remains just below the surface of the rocky shore. The spill is expected to have a detrimental effect on wildlife for years to come. The conduct of ExxonMobil was such that the U.S. Supreme Court should uphold the \$2.5 billion in punitive damages levied.

The lawsuit was brought by 32,000 fishermen and businessmen who were adversely impacted, and in many cases

forced into bankruptcy, by the spill. The jury in the civil trial originally ordered ExxonMobil to pay \$5 billion in punitive damages, but on appeal, the amount was cut in half. If it's a question of what amount would be adequate as punishment that seems to be easily answered. How much of a financial pinch can \$2.5 billion be for a company that has been making record-breaking profits? It has been pointed out that ExxonMobil makes that much profit in less than three weeks time. Balancing that against the fact that many of spill's victims have been put out of business and that the environmental cost is continuing to mount, \$2.5 billion really does seem like a slap on the wrist. It's high time for this politically powerful oil giant to pay for its wrongdoing!

Source: *Cordova News*

CALIFORNIA JUDGE REDUCES DOLE'S DAMAGES IN PESTICIDE CASE

The jury verdict in California that awarded millions of dollars to Nicaraguan field hands who applied pesticides to Dole Food Co. crops and who are now sterile has been overturned by the trial judge. Although the decision leaves four workers with \$1.58 million, it will affect claims of an estimated 6,000 others who have sued in the United States for similar injuries suffered outside of this country. The judge overturned jury verdicts in the first trials in this country of claims filed by victims of the pesticide DBCP. This pesticide was produced 30 years ago but is now banned worldwide. The judge found that, because Dole was a user and not a marketer of the pesticide, the firm cannot be subjected to liability without fault.

The judge ruled that punitive damages can't be used to punish "a domestic corporation for injuries that occurred only in a foreign country." The fact that the injuries occurred more than 30 years ago was another factor the judge cited in reversing the verdicts. There are other cases pending in California against Dole filed by

plaintiffs from Nicaragua. I understand there are an additional 10,000 pesticide claims pending worldwide for about \$35 billion.

The case was widely seen by legal scholars as a test of how well the U.S. legal system could respond to injuries inflicted in a globalized economy. Because the harm occurred in Central America, the defendants had argued for years that the trials should take place there, rather than in the United States. Workers in Nicaragua have won as much as \$600 million in damages against Dole and other producers, but have yet to collect one dime. This verdict is being seen as an additional deterrent to future lawsuits in the United States. The chemical DBCP fights pests that attack the roots of fruit trees and boosts the weight of banana harvests by 20%, according to testimony from the California trial. It has rendered field hands and production workers sterile. It appears that these workers may wind up being victims of corporate wrongdoing with no real remedy available to them, and that's unfortunate.

Source: *Los Angeles Times*

ALLSTATE APPEARS TO REALLY LIKE THE COURT SYSTEM

Allstate Insurance Company, a company that has been a strong proponent of shutting down the civil justice system, has actually filed a federal lawsuit in the very system it has criticized. In its suit, Allstate is alleging deception and coercion on the part of a Texas-based chiropractic company. The lawsuit, filed in U.S. District Court for the Northern District of Texas, accused 66 defendants of taking part in an insurance fraud scheme by convincing car crash survivors that they had severe injuries requiring immediate treatment, which Allstate had to cover. The primary defendant is Arlington-based Chiropractic Strategies Group Inc. Other defendants include related law office management companies, telemarketers, and lawyers.

Allstate seeks \$10 million in the

lawsuit, alleging violations of the federal Racketeer Influenced and Corrupt Organizations Act. According to the complaint, a telemarketing company would solicit people who had been in car crashes, offering them a free chiropractic exam. Once at the clinics, located in Texas, Ohio, Indiana, and Alabama, patients were told they needed immediate treatment. Patients were also referred to lawyers, some of whom would show up at the clinic to sign up the patients as clients, according to the lawsuit. If the allegations of this lawsuit are true, then Allstate has every right to go into the courts to seek justice. However, when one of its policyholders, or a claimant who has a claim against a policyholder, has valid claims that the company either fails to pay or pays too little, those persons should have the same right to justice as does Allstate in its current lawsuit.

Source: *Associated Press*

IV. THE NATIONAL SCENE

MY OBSERVATIONS ON THE POLITICAL SCENE

As soon as John McCain locked up the GOP nomination, he made a fast trip to the White House to get the endorsement of President Bush. Why anybody would want to base his run for president tied to the failed politics of the Bush Administration is a mystery that defies logic. When Sen. McCain ran against George Bush in the 2000 Republican primaries, I really believed the Arizona Senator was a straight-shooting maverick who would do the right thing regardless of the consequences, and that was somewhat refreshing. During that race, the attacks on Sen. McCain by Karl Rove and his gang of thugs were lowdown and dirty. As a result, as we all know, Bush prevailed and was ultimately

elected President. Apparently, those attacks have been forgotten by the soon-to-be GOP nominee.

In any event, wanting to give the American people four more years of Bush-Cheney-Rove doesn't seem to be very smart and certainly isn't a winning strategy. Let's take a look at the mantle that is being passed down by the Bush Administration to Sen. McCain and see what the Arizona Senator has inherited:

- A war in Iraq that has already lasted for more than five years with 4,000 soldiers having been killed. The economic cost thus far is in the hundreds of billions of dollars, and no end in sight. There have also been over 30,000 American troops injured with most of the injuries being of a disabling nature. The current cost of the war and occupation is about \$10 billion per month. The costs of this war, which are projected to be between 2 and 3 trillion dollars when all of the items are computed, have been paid with borrowed money. This is the first war in U.S. history that our generation has fought on credit, and future generations will pay for it.
- The federal government is literally being run by special interest lobbyists.
- The record federal deficit is growing daily.
- We have a serious imbalance in foreign trade, with the latest numbers being around \$65 billion.
- Our nation's economy is in recession and it's getting worse by the day.
- Mortgage foreclosures are occurring at a record pace, with the worst yet to come.
- Millions of Americans have no health-care insurance.
- Gasoline prices at the pump are projected to exceed \$4 per gallon this summer with no real plan in place to do anything about it.
- 37 million Americans are living in poverty.

- The Administration has totally failed to address the critically serious issue of global warming as a reality.
- We are experiencing a politicization of the immigration issue with nothing of consequence being done.
- We have serious infrastructure problems in this country. The price tag for repairing crumbling bridges and highways has already reached \$1.6 trillion and little is being done about it.
- We have witnessed a dismal failure to rebuild New Orleans and the Gulf Coast areas of Mississippi after Hurricane Katrina. Some 2 1/2 years after Katrina many people in the region are still suffering and are getting little relief.
- The environmental record has been the very worst in history and has protected the polluters like never before in recent times.
- A failure to deal with the real threat of terrorism by not finishing the job in Afghanistan has caused the terrorists to be stronger than in 2002.
- American's image around the world is at an all-time low.
- The failure to take care of military personnel—many of them disabled—returning from Iraq is a shame and a disgrace.
- This Administration has favored the rich and powerful and has ignored the rest of America.

In my opinion, Sen. McCain would have had a difficult time in the general election even without taking on as part of his campaign all of the problems created and to be left behind by the Bush Administration. With that burden now around his neck, the GOP candidate's prospects are even more dismal. In fact, it will take a total collapse by the eventual Democratic nominee for Sen. McCain to have a chance of being president.

On the Democratic side, the race for the nomination is going forward and apparently will go all the way to the

convention. Sen. Barack Obama clearly has the edge as he and Sen. Hillary Clinton face off in Pennsylvania. This issue of the *Report* went to the printer before the voting day in that state and therefore we didn't have those results at this writing. Sen. Clinton was favored and probably will win there.

Frankly, I have been greatly disappointed in the tactics being employed by the Clinton campaign. That type thing certainly doesn't speak well for Sen. Hillary Clinton or for her husband. Actually, it's been more like a campaign run by Karl Rove than one being run by a Democratic candidate in a primary fight. I suspect that Rove and the right wing of the Republican Party are working hard for a Clinton-McCain race in the general election. Nevertheless, I believe Sen. Obama will wind up as the Democratic nominee, and when that happens, the Democratic Party will unite and back him this fall without question.

I also believe a good number of Independents (who may be a much larger group than many experts project) will support the Obama campaign in November because of the strong opposition among Independents to the policies of the current Administration. It's also quite possible that a fairly significant number of Republicans will vote for Sen. Obama because they too have seen the shape in which the Bush Administration has left the country. Also, many Republicans simply don't trust the GOP standard bearer.

Without question, the mood of the voters is clearly for meaningful change. They want a President who understands the real needs of people, who tells the truth, who is not controlled by the special interests and their powerful lobbyists, and who will keep his promises. The choice will be very clear in November!

WE NEED A REAL STIMULUS PACKAGE TO FIGHT THE RECESSION

The so-called stimulus package pushed through Congress by the Bush Administration, hailed as the thing

needed to stop the recession and bring back prosperity to American citizens, will wind up as being totally ineffective. In my opinion, when folks get the \$600 checks (\$1,200 for couples) from the federal government, it will have very little effect in slowing down the recession. Our economy is in very big trouble, and this package will be like a rock thrown into a tidal wave in an attempt to slow down the recession. What we need is the creation of good-paying jobs—plenty of them—and a sincere effort to end our dependence on foreign oil. It doesn't take an economist to tell us that we must put a stop to the outsourcing of jobs and the borrowing of money from foreign countries such as China to keep our government running.

When we have corporate CEOs making hundreds of millions of dollars annually while their workers are struggling to make ends meet, something is badly wrong and out of kilter. You tell somebody in Clayton, Alabama that a \$600 check is going to help that person pay for \$4 per gallon gas this summer and wait for that person's reaction. The stimulus package that passed Congress will have little, if any, effect on slowing down the downhill slide our economy is in. We have a president who appears to not have a clue on how serious the economic woes facing our nation really are. Thank goodness he will be heading back to Texas next year. The Bush Administration will leave the next President with some of the most serious economic problems our country has faced in years.

KATRINA VICTIMS SUE FEMA OVER FUMES IN TRAILERS

A group of Gulf Coast hurricane victims has filed suit against the Federal Emergency Management Agency (FEMA) for sheltering them in trailers that allegedly exposed them to dangerous fumes. The addition of FEMA to the complaint, which had been filed in federal court, makes the agency a defendant in a number of consolidated cases against several manufacturers

that provided the agency with tens of thousands of trailers and mobile homes after Hurricanes Katrina and Rita in 2005. The cases against trailer makers were consolidated in November 2007 and transferred to a U.S. district court in New Orleans. However, FEMA couldn't be named as a defendant in the litigation at that time. The agency could only be added at least six months after a plaintiff had filed a claim against the agency. Several plaintiffs from Louisiana have met that threshold, allowing FEMA to be named as a defendant in the consolidated litigation.

Many trailer occupants have blamed their illnesses on formaldehyde, a common preservative found in building materials. Formaldehyde can cause respiratory problems and has been classified as a carcinogen by the International Agency for Research on Cancer. The plaintiffs allege that trailer makers used shoddy materials and construction methods in a rush to fill FEMA's demand for emergency housing after Katrina destroyed Gulf Coast homes in August 2005. As previously reported, recent government tests on hundreds of FEMA trailers and mobile homes in Louisiana and Mississippi found formaldehyde levels that were, on average, about five times higher than what people are exposed to in most modern homes.

Nearly 100 residents of Louisiana, Mississippi, Texas, and Alabama are named as plaintiffs in the cases against more than 60 trailer manufacturers. Their lawyers want Judge Kurt Engelhardt, the federal judge, to certify the cases as a class action. Hundreds, if not thousands, of trailer occupants have filed claims against FEMA over the formaldehyde concerns. Interestingly, Justice Department lawyers have been involved in the litigation even though FEMA wasn't a party in the litigation before it was added last month. Gerald Meunier, a New Orleans, Louisiana lawyer, is the lead lawyer for the plaintiffs in the lawsuit.

Source: Associated Press

BRITISH PRIME MINISTER SAYS CLIMATE CHANGE A TOP THREAT

British Prime Minister Gordon Brown said on March 19th that climate change and pandemic disease threaten international security as much as terrorism and that Britain must radically improve its defenses. The Prime Minister listed the greatest threats to Britain's peace as "war, terrorism and now climate change, disease and poverty—threats which redefine national security." Lawmakers in the House of Commons were told by the Prime Minister:

The nature of the threats and the risks we face have—in recent decades—changed beyond recognition and confound all the old assumptions about national defense and international security. Climate change is potentially the greatest challenge to global stability and security.

A classified list of threats to national security is to be released to the public later this year. British officials estimate a flu-type pandemic in the U.K. could cost as many as 750,000 lives. It also claimed that major coastal floods would likely need a military evacuation of hundreds of thousands of people. If global warming has the Brits concerned maybe our President will see the light before he retreats to Texas.

Source: Associated Press

V. THE CORPORATE WORLD

EC MAY HAVE FINALLY GOTTEN MICROSOFT'S ATTENTION

It almost went unnoticed in the media reports, but the European Commission fined Microsoft a record \$1.3 billion last month. This fine is in addition to the \$357 million fine it handed down in 2006. The fines resulted from Microsoft's delay in complying with sanctions in an antitrust case that

started in 2004. The case arose out of a dispute over an order to make it easier for rival software applications to tie into Microsoft's Windows operating system. As you may know, Windows runs 90% of the world's PCs and many corporate servers. It will be interesting to see if the European Commission got the attention of the folks who run Microsoft.

Source: USA Today

BLACKWATER INQUIRY SOUGHT IN CONGRESS

Rep. Henry Waxman, who chairs the House Committee on Oversight and Government Reform, has called for a wide-ranging federal investigation into Blackwater Worldwide. He says that the private security contractor violated tax and labor laws by classifying its guards as independent contractors rather than company employees. In letters sent last month, Rep. Waxman asked the Internal Revenue Service and the Labor Department to investigate whether Blackwater defrauded the government out of tax revenue and violated labor laws. He also asked the Small Business Administration to determine whether Blackwater violated federal regulations by claiming it was eligible for small business preferences. Rep. Waxman, in a memorandum to his colleagues on the committee, observed:

The implications of Blackwater's actions are significant. Committee staff have estimated that Blackwater has avoided paying or withholding up to \$50 million in federal taxes by treating its guards as independent contractors rather than employees.

Rep. Waxman also wrote that Blackwater's claim of eligibility for small business preferences has earned it more than \$144 million in government contracts. It is one of the country's largest private military contractors and has received nearly \$1.25 billion in federal business since 2000. Unlike other security companies operating in Iraq, Blackwater says the guards it trains, equips and deploys to Iraq and

elsewhere are “independent contractors” hired directly by the federal government and therefore are not company employees. As we all know, under federal law, companies must pay Social Security and other federal taxes on employees. The IRS has warned Blackwater that the company’s classification of a security guard as an independent contractor is “without merit.” The IRS’s finding is the result of an inquiry filed by a Blackwater guard. The company has appealed the IRS ruling.

The primary factor in determining whether a worker is an employee or independent contractor is the degree of control the business has over its worker. Incorrectly classifying a worker could mean steep penalties for the company, including a \$25,000 penalty if the IRS determines an appeal is frivolous or groundless. In its March letter to Blackwater, the IRS noted the company paid all of the guard’s travel expenses and signed a written agreement detailing the type of work required. The IRS stated in the letter that a “worker who is required to comply with another person’s instructions about when, where and how he or she is to work is ordinarily an employee.” Interestingly, in defending itself against last year’s shootings involving its security guards, Blackwater officials asserted that they retained “tight control” of their guards and even “fired” some 122 guards in Iraq for improper conduct. Interestingly, Blackwater now contends it does not have enough control over its guards to classify them as company employees, which seems rather odd and certainly inconsistent.

Source: Associated Press

THE ELECTROCUTIONS OF SOLDIERS IN IRAQ IS CRIMINAL

A U.S. House committee chairman has begun investigating the electrocutions of at least 12 service members in Iraq. In the latest incident in January, a soldier was killed by a jolt of electricity while showering. Rep. Henry Waxman, chairman of the House Committee on Oversight and Government Reform, has

asked Defense Secretary Robert Gates to hand over documents relating to the management of electrical systems at facilities in Iraq. Staff Sgt. Ryan Maseth, a native of Pittsburgh, Pennsylvania, who was only 24, died of cardiac arrest in January after being electrocuted while showering at his barracks in Baghdad. Sgt. Maseth’s parents have filed a wrongful death lawsuit in a Pennsylvania state court against KBR Inc., the Houston-based contractor responsible for maintaining the soldier’s barracks. The lawsuit alleges that KBR allowed U.S. troops to continue using electrical systems “which KBR knew to be dangerous and knew had caused prior instances of electrocution.”

An Army investigation found that the soldier’s death was due to improper grounding of the electric pump that supplied water to the building. He died after an electrical short in the pump sent a current through the pipes. The Pentagon has turned the matter over to the department’s inspector general for a full investigation. It is being reported that since 2003, at least 12 service members have died in Iraq as a result of electrocution. In October 2004, Rep. Waxman said in his letter, the Army issued a safety alert noting that five soldiers had been electrocuted that year and that improper grounding was a factor in nearly all of the cases. Rep. Waxman asked that his committee be provided investigative reports on the dead soldiers and reports and communications regarding electrical grounding in military facilities in Iraq.

In a January 21st memo responding to questions from Sgt. Maseth’s family, the Army’s criminal investigations division said the Chinese-made pump was acquired before KBR took over maintenance of the building and did not meet U.S. safety standards. Of course that doesn’t excuse the conduct of KBR. As we all know, this company was formerly owned by Halliburton Co., the oil services conglomerate once led by Vice President Cheney. I was shocked to learn that the military initially did not tell the soldier’s mother that her son was electrocuted, but then told her he died “with a small

electrical appliance in the shower.” Only later did she learn the truth, which is most disturbing.

Source: Associated Press

EXXONMOBIL SPENT MORE THAN \$16.9 MILLION LOBBYING FEDERAL GOVERNMENT IN 2007

ExxonMobil Corp. spent more than \$16.9 million to lobby the federal government in 2007, according to a disclosure form. The company lobbied on various appropriations bills and on pending legislation. One of the pieces of legislation that the giant oil company lobbied for was the energy bill signed into law in December by President Bush. The bill failed to include billions of dollars in higher taxes for large oil companies that would have been used to fund tax breaks for various clean energy industries. Exxon’s lobbyists succeeded with the passage of an energy bill that favors the powerful oil industry to the detriment of the public.

Source: Associated Press

VI. CONGRESSIONAL UPDATE

U.S. SENATE PASSES IMPORTANT CONSUMER PROTECTIONS

The U.S. Senate passed the Consumer Product Safety Commission (CPSC) Reform Act last month. If this significant bill survives, it will bring much-needed improvements to an agency that has too long been ignored and under-resourced. The senators who voted for this bill should be commended for taking meaningful steps toward improving the safety of American consumers. In spite of intense opposition from industry and the White House, those senators who stood tall produced a good bill for American consumers, but its provisions will have to survive a conference committee’s report to become law. As you may know, a separate bill that

passed the House is much weaker than the one passed in the Senate. The two bills will now go to a conference committee.

The CPSC needs more resources and authority, and a greater sense of urgency when it comes to hazards that can injure and kill, especially in light of the record 473 product recalls in 2007. In this regard, the Senate bill is certainly a major step in the right direction. That bill increases the CPSC's funding, creates a public database of information on hazardous products, gives state attorneys general more authority to protect their residents from unsafe products, sets lower acceptable lead levels for children's products, improves safety standards and testing for toys, and offers important whistleblower protection to employees who report unsafe products and legal violations.

Both the Senate and the House bills will wind up before a conference committee where differences in the two bills will be worked out. This committee should keep the health and safety of American consumers and children at the forefront of its discussions. This congressional committee has an opportunity to put together a strong bill that American consumers badly need. Anything less would be unacceptable. The House and Senate have a duty to make significant improvements to consumer product safety law in this country. After a year of recalls of millions of lead-tainted toys and other hazardous products, many made in China, the improvements found in the Senate bill are essential to consumer safety. Lead content in toys should be banned and independent testing of children's products mandated. The ban on chemicals known as phthalates in children's products must remain in the Senate bill. The CPSC's budget, staff, enforcement clout, and presence at U.S. ports must be enhanced. A publicly-available database on mishaps related to consumer products must be created. Protections to whistleblowers inside corporations are also necessary. If you agree that the conference committee should adopt the Senate bill, contact your U.S. Sena-

tors and House members immediately and ask them to see that the conference committee members do the right thing!

Source: *Public Citizen*

SAM WALTON WOULD TURN OVER IN HIS GRAVE

Sam Walton was strongly opposed to lobbying governments at any level, but things have certainly changed since he passed away. Wal-Mart, the world's largest retailer, increased its lobbying budget by a whopping 60% in 2007. The company spent \$4 million to influence the government on issues ranging from energy efficiency to retail crime. While its lobbying budget is still labeled "pocket change" compared with other major trade groups and corporations, Wal-Mart's increased spending marks a growing recognition that the company's bottom line is subject to what happens in Washington. In 2006, the company spent about \$2.5 million in lobbying dollars, up from \$1.6 million in 2005. But less than a decade ago, Wal-Mart barely broke the six-figure mark. This was said to be due largely to Sam Walton's strong dislike for lobbying. He would most likely turn over in his grave if he could see how Wal-Mart operates today. Wal-Mart spent \$140,000 in 1999, after establishing a Washington shop about ten years ago. It spent about \$1 million annually for the next several years, before increasing its lobbying representation and funds in 2005 amid increased criticism of its labor practices and benefits.

The company has 12 registered lobbyists now, up from two in 1999. Wal-Mart also has worked with a number of outside lobbying firms, including Patton Boggs LLP, the Podesta Group Inc., and Mehlman Vogel Castagnetti Inc. for the last few years. Wal-Mart Stores Inc. has easily outspent its major rivals, Target Corp., Costco Wholesale Corp., and Macy's Inc. In fact, the latter two aren't even registered to lobby. Wal-Mart also outdistanced the top retail trade group, the National Retail Federation, which spent about \$1.7

million last year. However, Wal-Mart didn't move into the "K Street stratosphere" of major trade groups and veteran corporate lobbyists.

The drug industry trade group, the Pharmaceutical Research and Manufacturers of America, spent \$22 million in 2007, while ExxonMobil Corp., the world's largest publicly traded oil company, spent \$17 million. Wal-Mart lobbied on numerous issues, including a food stamp program, free trade, consumer product safety legislation, and energy efficiency standards, and pushed for tougher enforcement of organized retail crime. It also lobbied for a bank license, although it dropped its bid last year after it was strongly opposed by banks, unions, and other critics. It continues to push for the ability to offer other financial services, such as prepaid Visa debit cards for millions of low-income shoppers who don't have bank accounts.

Wal-Mart has never really had good employee health-insurance benefits and in recent years hasn't treated its employees very well. The company lobbied against legislation that would allow employees to form, join, or help labor organizations. As you probably know, Wal-Mart employees aren't unionized. The company—which lobbied Congress, the White House, the Consumer Products Safety Commission and the Commerce and Labor Departments, among other agencies—spent more than \$2.2 million in the second half of 2007 to lobby the federal government, according to a disclosure form posted online in February by the Senate's public records office. It spent nearly \$1.8 million in the first six months of 2007 to lobby on similar matters.

As you may know, lobbyists are required to disclose activities that could influence members of the executive and legislative branches, under a federal law enacted in 1995. If the next President will take on the powerful lobbyists in our nation's capitol and break their stranglehold on government, we will all be much better off. That task will be very difficult, but it's one that must be taken on and completed as

soon as possible. In my opinion, the future of our country depends on it.

Source: *Associated Press*

VII. PRODUCT LIABILITY UPDATE

OCCUPANT PROTECTION IN ROLLOVER EVENTS

As we have mentioned in previous issues, it's undisputed that rollover events are foreseeable crashes. Auto manufacturers have made billions of dollars over the last two decades selling large- and medium-sized sport utility vehicles to the traveling public. The National Highway Traffic Safety Administration (NHTSA), along with auto manufacturers, have recognized since the early '70's that vehicles like SUVs, with high centers of gravity, are more susceptible to rollover events than other types of passenger cars. The federal government even compiles statistics regarding the types of accidents that occur on an annual basis in this country. The statistics show that rollover events are common and usually result in severe injuries or death. Despite this evidence, auto manufacturers have failed to provide vehicle designs that incorporate adequate occupant safety features to prevent or mitigate injuries in rollover events.

During a rollover event a number of factors can contribute to serious injuries or deaths for occupants. These factors include roof strength, seat belt design, and airbag systems, as well as glazing or glass. Often, occupants are injured by significant roof crush during a rollover event. Manufacturers are required to meet Federal Motor Vehicle Safety Standard (FMVSS) 216 for roof strength in order to sell vehicles to the public. However, the standard is inadequate. This standard does not require a manufacturer to perform a dynamic rollover test to see how a roof performs in an actual rollover event. As a result, most vehicles have inadequate

roof strength. When the roof crushes because of the forces of a rollover event, occupants are at risk for severe head and/or spine injuries. NHTSA is currently debating whether to strengthen this particular standard. Coincidentally, most manufacturers oppose any change to FMVSS 216.

Occupants are also injured when their head, arms, or body parts break the plane of the door window during a rollover event. In most vehicles, seat belts are anchored to the body of the vehicle, which allows for significant lateral occupant movement during a rollover event. An occupant's head may break the plane of the window and strike the pavement or other obstacles as a result of lateral occupant movement. Manufacturers have known for years that this type of occupant movement in a rollover event can be significantly reduced by mounting seat belts to the seats. Manufacturers have also been aware of seat belt pretensioners which automatically pull the seat belt tighter when the vehicle senses an impending rollover.

Manufacturers also can include a side airbag curtain. This safety technology works like a frontal airbag system, but the airbag fires when sensors detect an impending rollover event. What's significant is that side air curtains prevent the occupant from breaking the plane of the window, thereby limiting the chances that an occupant will be injured during a rollover event.

Additionally, a number of manufacturers have included laminated glass in one form or another in order to prevent occupants from breaking through the plane of the window during a rollover event. Typical safety glass currently used in most vehicles breaks into numerous small pieces during a rollover event and leaves the plane of the window open. Laminated glass remains intact and does not break during a rollover event. This allows an occupant to remain inside the confines of a vehicle, thereby preventing serious injuries or death. In recent years, a number of manufacturers, including Ford Motor Company, have included laminated glass in a small number of

their higher-priced vehicles. Ford has included laminated glass in vehicles manufactured under the Lincoln name plate. However, auto manufacturers often claim that the use of laminated glass is for sound reduction as opposed to occupant safety.

Many of these occupant safety features have been technologically feasible and available since the early 1990s. Because this type of safety technology is available to reduce occupant injuries in foreseeable rollover events, one must ask why manufacturers refuse to make such features standard. In fact, most manufacturers do not even provide sufficient information to the public to allow them to make informed decisions about when and how this technology is available. In most cases, European manufacturers include many of these safety features as standard equipment. Safety should not be optional. Where technology is feasible and available, a manufacturer should include safety features that can reduce severe injuries or death in foreseeable accident events like rollovers.

ROLLOVER STUDY LATEST PROOF THAT NHTSA IS FAILING TO PROTECT PUBLIC

The study released by the Insurance Institute for Highway Safety (IIHS) on March 12, 2008 adds to the mountain of evidence that the federal government is failing to do enough to protect the public from deadly rollover crashes. The Institute's study exposes the junk science that the auto industry has been circulating for years. The automakers have tried to pass off the laughable claim that roof strength has zero relationship to the risks vehicle occupants face in rollover crashes. Hopefully, this study will be the last nail in the coffin for that bogus argument.

Additionally, the IIHS study, which closely follows the methodology used by the National Highway Traffic Safety Administration (NHTSA) in its performance tests, underscores what safety experts and consumer advocates have been saying for years: NHTSA's proposed revision to the 40-year-old roof

strength standard is insufficient. Congress instructed NHTSA in the 2005 highway bill to “upgrade” the decades-old standard. NHTSA has chosen to fiddle around at the margins instead of overhauling its outdated safety standard to reflect the best protection possible for the public. The Institute’s study echoes the urgent warnings by Public Citizen to the NHTSA that its proposed increase of the roof strength standard from 1.5 to 2.5 times gross vehicle weight will not meet the public’s need for safety. As we have reported, rollover crashes kill more than 10,000 people every year. It is long past time for NHTSA to listen to the evidence and give the public the upgraded safety standard it so desperately needs. The failure of NHTSA to protect consumers on important safety issues is proof-positive that it is not doing its job!

Source: Public Citizen

ROOF STRENGTH DOES MATTER

In an effort to avoid more stringent roof strength regulations, the automobile manufacturers have argued to the National Highway Traffic and Safety Administration (NHTSA) and in lawsuits that roof crush is not causally connected to occupant injury. As a result, current roof crush regulations have remained unchanged since 1971. Two recent reports reveal that safety advocates and plaintiff’s lawyers have been right all along. These reports conclude that the amount of roof crush intrusion is directly related to the severity of injury. In short, these studies conclude that stronger roofs will save hundreds of lives.

The first study, published by the NHTSA in October 2007, studied thousands of accidents from 1997–2005. Twenty-four different statistical models were used to evaluate the relationship between injury severity and roof crush. The study concluded that the relationship between roof crush and injury severity remained, regardless of the statistical model used. The other study was conducted by the Insurance Institute

for Highway Safety (IIHS). It was released in March 2008. This study looked at the relationship between roof strengths of eleven mid-size SUVs and the rate of fatal or incapacitating injury in single vehicle rollover crashes. This study concluded that in all cases, increased measures of roof strength resulted in significantly reduced rates of fatal or incapacitating injury. IIHS President, Adrian Lund, observed: “What we do know from this study is that strengthening a vehicle’s roof reduces injury risk and reduces it a lot.”

The IIHS estimates that people in SUVs with roofs as strong as the top-rated Nissan Xterra face up to 57% less risk of serious injury or death in a single vehicle rollover as those in the 1999-2004 Jeep Grand Cherokee or 1996-2004 Chevrolet Blazer. The 1996-2001 Ford Explorer was also among the SUVs that the IIHS said had the weakest roofs. The Alliance of Automobile Manufacturers, which represents major auto makers, calls the IIHS report “flawed.” Unfortunately, there remains no definitive answer as to what effect roof strength has on injury risk and rollover crashes.

About 35% of deaths to occupants in car crashes involve rollovers. This amounted to more than 10,500 people in 2006, federal data showed. The 212 deaths that the IIHS said could have been prevented that year with stronger roofs would have reduced fatalities in those 11 SUV models that year by about one-third. Few issues are more contentious in auto safety than what is known as “roof crush.” The problem first gained attention in the early 1980s after the Ford Pinto in which 20-year old Kelly Sue Green was riding hit a horse near Portland, Oregon. The animal was thrown onto the roof of the damaged car. The roof then collapsed onto Green’s head and she was killed. A jury ordered Ford Motor Company to pay Mrs. Green’s husband \$1.475 million. Since then, automakers and consumer advocates have debated the likely role that auto roofs play in deaths and injuries in rollovers. The acrimony has risen along with the popularity of SUVs. The advocacy group Public

Citizen has led the attacks on automakers about the issue and has long urged NHTSA to upgrade its 37-year-old standard.

NHTSA first proposed upgrading its roof strength rule in 2005. After pressure from safety advocates and victims’ families, NHTSA requested comments on a tougher plan. It would involve testing both sides of a vehicle’s roof. The government has required since 1971 that roofs on cars be able to hold more than 1.5 times the vehicle’s weight. The standard was extended to cover SUVs and pickups in 1991. In 2005, NHTSA proposed raising that figure to two times the car’s weight. Now, it is considering up to three times the car’s weight, something safety advocates have urged.

Robert Shull, deputy director for auto safety at Public Citizen, says NHTSA under-estimates the effects stronger roofs would have. For example, he notes, the agency doesn’t attribute fatalities to roof crush if the deaths occur after a door opens or a window smashes during a rollover and the passenger is totally or partially ejected. Shull argues, though, that a weak roof can also lead indirectly to rollover deaths and injuries. When a vehicle rolls, it causes the whole system to be compromised, Shull says. When a roof can’t handle the weight of a car, he notes, the side pillars alongside the windshields and between the doors must bear the car’s weight and can begin to crumble. Lund, of the IIHS, agrees and says: “Stronger roofs keep doors and windows from opening.” As a result, he disputes the NHTSA’s suggestion that people not using seatbelts are not likely to be helped much by stronger roofs.

Still unclear is the role of seatbelt use in rollover accidents. Two-thirds of those killed in rollover crashes aren’t belted. Automakers contend that crushing roofs aren’t the cause of injuries to unbelted occupants. Victims and advocates reject that assertion. They argue that the issue is simple: No matter how a motorist comes into contact with a car roof, everyone would be safer if the roofs were less likely to crush. Paula

Lawlor, a roof crush consultant who works with plaintiffs, says stronger roofs would aid both belted and unbelted motorists. "You could save thousands of lives a year," says Lawlor, who founded the advocacy group People Safe in Rollovers. "People are dying totally unnecessarily."

Source: USA Today

APPELLATE COURT REFUSES TO REDUCE A JURY'S VERDICT

A California state appellate court has refused to alter or reduce an earlier decision to award \$82.6 million in damages to a paraplegic who claimed faulty design caused her car to crash. The decision by San Diego's Court of Appeals for the Fourth District came after the U.S. Supreme Court had ordered the state court to reconsider its original ruling. In that decision, the nation's High Court held last year that jurors cannot punish defendants for harm to third parties when determining punitive damages.

Jurors in the case originally awarded Benetta Buell-Wilson more than \$368 million in damages, with \$246 million being punitive damages, against Ford Motor Co. In 2006, the Fourth District reduced the total award to \$82.6 million, with \$55 million consisting of punitive damages. This latest ruling affirmed that award, with the three justices unanimously saying there was nothing in the Philip Morris decision that warranted a change in their judgment. The justices wrote:

Based on our review of the record, plaintiffs' counsel was not asking the jury to punish Ford for harm done to third parties. Rather, counsel was discussing the repeated nature of Ford's actions in arguing the reprehensibility of Ford's conduct. That argument was entirely proper and did not create a 'significant risk' the jury would punish Ford for injuries to third parties.

Buell-Wilson, a mother of two, was injured on January 19, 2002, when her

1997 Ford Explorer fishtailed as she tried to avoid a metal object and rolled over four times before coming to rest on its roof. The justices had found Ford's conduct reprehensible on the first appeal. The California Supreme Court denied review, but the U.S. Supreme Court took the case and remanded it back to the Fourth District for further review.

In its latest ruling, the California appeals court listed several reasons why the High Court's opinion in Philip Morris doesn't compel a reversal or further reduction:

- The court said Ford had submitted misleading jury instructions on third-party harm at trial;
- Ford didn't object in a timely manner to Buell-Wilson's closing arguments during the punitive damages phase;
- Ford hadn't requested a limiting instruction during the trial's liability phase and didn't raise instructional error on appeal.

Ford plans to appeal. Jerome Falk Jr., who is with the law firm of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, in San Francisco, represented Ms. Buell-Wilson and her husband. He believes the appellate court was correct to stand its ground, observing:

It's the kind of [ruling] that ought to motivate automobile companies to make their cars safer and not do as Ford did with this vehicle. [The company made] some very tawdry cost-cutting decisions.

It will be interesting to see what happens if the U.S. Supreme Court again takes the case for review. Regardless, it is refreshing to see a state court do the right thing on the issue of corporate wrongdoing and punitive damages.

Source: The Recorder

MAN AWARDED \$40 MILLION FOR DAMAGED HEART

A Superior Court jury in Washington State awarded \$40.1 million to a man

whose heart was damaged so badly by a malfunctioning machine during an operation that he had to undergo a heart transplant. The 54-year-old plaintiff also suffers other problems as a result of the injury and anti-rejection drugs he must take. The plaintiff had checked into a hospital in October 2004 for cardiac bypass surgery when a monitor manufactured by Edwards Life Sciences Corp. of Irvine, California, malfunctioned, causing a catheter to overheat and burn his heart. The award last month included \$8.35 million in punitive damages.

Edwards Life Sciences also had blamed Providence Everett Medical Center, saying it used a damaged cable. Interestingly, the hospital said Edwards failed to disclose a problem with the monitor. The jury ordered Edwards to pay 99.99% of the damages to the plaintiff and his family, leaving the hospital responsible for .01%. Edwards was also ordered to pay the hospital \$310,000 in damages.

Source: Seattle Post-Intelligencer

YAMAHA BLAMES DRIVERS FOR ITS DANGEROUS ATVs

In last month's report, I made you aware of one of the most dangerous ATVs on the market—the Yamaha Rhino. Since the Yamaha Rhino All Terrain Vehicle was introduced to the market in the United States in 2003, it has been involved in a large number of devastating rollover accidents, leaving adults and a number of children seriously injured, permanently maimed, and in some instances dead. The Rhino has been linked with many rollovers because of its narrow and top-heavy design, as well as its small tires. These design features make the Rhino unstable and easily prone to roll over. There have been serious injuries when going around corners at low speeds and on flat terrain. When confronted with the mounting injuries caused by the Rhino design, Yamaha simply blamed the consumers for their own injuries. The following statement was released by Yamaha:

“While the Rhino has been a reliable and versatile vehicle, some operators have engaged in aggressive driving (such as sliding, skidding, fishtailing, or doing donuts) or made abrupt maneuvers (such as turning the steering wheel too far or too fast) that have resulted in side rollovers—even on flat, open areas. Unfortunately, some occupants have been seriously injured during such rollovers when they put their arms or legs outside the vehicle, resulting in crushing or other injuries.”

Yet, without admitting that the Rhino’s design is defective, Yamaha recently developed doors and passenger handholds for the Rhino and is offering them to owners of the 2004-2007 ATV models free of charge. The company claims that these features will help people keep their limbs inside the vehicle during a rollover. While these features may indeed offer extra protection in the case of a rollover, the rollovers should not be happening in the first place. Yamaha is making the offer of these features sound as though they are a “special offer,” rather than the installation of safety features that should have been present from the beginning. Furthermore, Yamaha should admit that the core design of the Rhino is defective. Instead, the company has dealt with the safety problems by doing things such as pasting a sticker to the dashboard of the Rhino encouraging “responsible use” of the vehicle. The sticker contains statements that admit the vehicle’s propensity to roll over, such as:

If you think or feel the Rhino may tip or roll:

- Brace yourself by pressing your feet firmly on the floorboards and keep a firm grip on the steering wheel or handholds.
- Do not put your hands or feet outside of the vehicle for any reason.

These warnings put the blame for defective design of the Rhino on the

driver and passenger of the vehicle and assume that the occupants have time to prepare for a rollover in advance of such an accident. A sticker cannot overcome the defective vehicle design.

NHTSA PROBES HYUNDAI AIR BAG FAILURE

Federal safety regulators are investigating consumer reports of air bag failure, and inadvertent deployment in the 2001 to 2003 Hyundai Elantra. Two people were killed in Elantra crashes when the air bags failed to deploy, according to NHTSA. As many as 340,000 cars could eventually be affected by the NHTSA probe. The NHTSA Office of Defect Investigation (ODI) has also received 35 consumer reports of the “air bag light illumination.” NHTSA investigated two fatal accidents involving the Elantra and failed air bags. “Post inspection and analysis indicate the air bag light had illuminated prior to the crash on both vehicles,” NHTSA reported on its Web site. “The center console covering the air bag control module was removed. The module and the main connector were covered with a brown sticky substance, possibly spilled liquid since the cup holders are positioned above the control module,” according to NHTSA.

The NHTSA Web site document states that the “recovered fault codes indicate a prior short circuit condition that most likely would shut down the air bag control module,” and prevent air bag deployment. In the second fatal crash, NHTSA was told the air bag warning light had come on several months prior to the accident. Three consumers complained to NHTSA that the air bag light came on and the air bag deployed without a crash and without warning. NHTSA received ten consumer complaints reporting a corroded or wet air bag control module. The agency received five reports of loose wiring associated with the control module. The remaining 20 reports complained only of air bag warning light illumination.

Source: Thomas Flanagan, Product Liability Consultant

VIII. MASS TORTS UPDATE

We are constantly being asked about what is going on in our firm’s Mass Torts Section. Lawyers in the Section are currently investigating a number of drugs and medical devices, and are involved in litigation with a number of them. I will give a brief summary of what the Section is doing at present.

AVANDIA®

Avandia, which is widely used to treat patients with Type II diabetes mellitus, has been associated with a significant increase in the risk of myocardial infarction and an increase in the risk of death from cardiovascular causes. Frank Woodson and Roger Smith are the primary lawyers who are handling Avandia cases for the section.

FOSAMAX®

Fosamax® (alendronate sodium), manufactured by Merck, is in a class of drugs called bisphosphonates. Fosamax® is commonly used in tablet form to prevent and treat osteoporosis in postmenopausal women. Recently the *Journal of Oral and Maxillofacial Surgeons* reported a link between bisphosphonates and a serious bone disease called Osteonecrosis of the Jaw (ONJ). Osteonecrosis is a disfiguring and disabling condition of the jaw bone that causes infection and rotting of the jaw bone. Typical presentation of Osteonecrosis is pain, soft-tissue swelling and infection, loosening of teeth, drainage, and exposed bone. Symptoms may occur spontaneously, or at the site of previous tooth extraction. Leigh O’Dell and Chad Cook are the primary lawyers in the section who are handling Fosamax cases.

GADOLINIUM

The U.S. Food and Drug Administra-

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

There are five Gadolinium-based contrast agents which are FDA-approved. One is the Omniscan Contrast Dye, manufactured by GE Healthcare. It is designed for intravenous use in MRI for the brain and the spine. In a recent study, five of the nine patients diagnosed with NSF received an MRI involving Omniscan Contrast Dye. Other studies have shown similar results. The other Gadolinium-based agents include OptiMARK, Magnevist, MultiHance and Prohance. Manufacturers of these products include Bayer Schering Pharma, GE Healthcare, Tyco Healthcare and Bracco Diagnostic, Inc. We are currently evaluating these Gadolinium-based contrast agents involving patients who have developed nephrogenic systemic fibrosis or Nephrogenic Fibrosing Dermopathy. Ben Locklar and Russ Abney are the primary lawyers handling Gadolinium cases for the Section.

GUIDANT HEART DEVICES

In July of 2005, the FDA announced the recall of implantable defibrillators and pacemakers manufactured by the Guidant Corporation. These devices are surgically implanted in persons who have a type of heart disease that creates the risk of a life-threatening heart arrhythmia (abnormal rhythm). Some of the risks associated with the defibrillators are deterioration of wires and their inability to deliver therapy. One of the risks associated with the pacemakers is that a hermetic sealing component used in the subset of devices may experience a gradual degradation, resulting in a higher than normal moisture content within the pacemaker case. We are currently investigating claims involving these types of recalled devices. Ted Meadows and Russ Abney are the primary lawyers in the section handling Guidant Heart Device cases.

MEDTRONIC HEART DEVICES

On April 16, 2004, the FDA announced the recall of numerous implantable defibrillators manufactured by Medtronic, Inc., which were implanted in 1997 and 1998. These devices are considered a Class I recall, which is the highest priority recall. In addition, another recall was issued by the FDA on February 10, 2005, for additional Medtronic defibrillators whose batteries were manufactured between April 2001 and December 2003. We are currently investigating claims involving the particular recalled devices. Ted Meadows and Russ Abney are the primary lawyers in the section handling Medtronic Heart Device cases.

MEDTRONIC HEART DEVICE LEAD WIRE

On October 15, 2007, the Food and Drug Administration issued a Class I Recall involving the Medtronic, Inc., Sprint Fidelis® Defibrillator Leads, model numbers 6930, 6931, 6948 and 6949. This recall specifically relates to those leads manufactured from Septem-

ber 2004 through October 15, 2007. This action does not affect Medtronic pacemaker patients.

In March 2007, Medtronic reported two primary locations where chronic conductor fractures have occurred on Sprint Fidelis leads. Those are at: the distal portion of the lead, affecting the ring electrode and near the anchoring sleeve tie-down, affecting the helix tip electrode, and occasionally the high voltage conductor. High voltage conductor fractures could result in the ability to deliver defibrillation therapy. Anode or cathode conductor fractures may present increased impedance, oversensing, increased interval counts, multiple inappropriate shocks, and/or loss of pacing output. The potential for defibrillation lead fracture to result in or contribute to inappropriate shocks or death has been reported. As of October 4, 2007, there have been approximately 268,000 Sprint Fidelis leads implanted worldwide. Based on current information regarding the 268,000 implanted leads, Medtronic has identified five patient deaths in which a Sprint Fidelis lead fracture may have been a possible or likely contributing factor. We are currently investigating claims involving the particular recalled leads. Ted Meadows and Russ Abney are the primary lawyers handling Medtronic Heart Device Lead Wire cases for the Section.

HORMONE REPLACEMENT THERAPY

For years, women have taken Hormone Therapy (HRT) to reduce the symptoms of menopause. Studies now show that HT medications such as Prempro and Premarin can increase the risk of breast cancer, ovarian cancer, stroke and heart disease. We are currently handling claims against the manufacturers of HT medications. Ted Meadows, Melissa Prickett and Russ Abney are the primary lawyers handling Hormone Replacement Therapy cases for the Section.

ORTHOEVRA

OrthoEvra is a hormone contraceptive available in a transdermal patch. OrthoEvra is manufactured by Ortho McNeil (a subsidiary of Johnson & Johnson). Recently the FDA disclosed that excessive levels of estrogen delivered by the birth control patch can cause serious injuries and even death. According to the FDA women who use the patch are exposed to 60% more estrogen than those who are taking the pill, therefore increasing their risk of a serious adverse event. Injuries or death claims involving OrthoEvra would likely be based on the following criteria: Documented use of OrthoEvra at the time of injury and significant adverse event(s) including blood clots, pulmonary embolism, heart attack, stroke, deep vein thrombosis, and/or death. Chad Cook is the primary lawyer handling OrthoEvra cases for the Section.

PAXIL®

Paxil® (paroxetine) is an anti-depressant manufactured by GlaxoSmithKline. Recently Public Health Advisories have been issued for Paxil® regarding an increased risk of heart birth defects, persistent pulmonary hypertension (PPHN), omphalocele (an abnormality in newborns in which the infant's intestine or other abdominal organs protrude from the navel) or craniosynostosis (connections between sutures-skull bones, prematurely close during the first year of life, which causes an abnormally shaped skull) in children born to mothers exposed to Paxil®. We are handling cases on behalf of children born with birth defects to a mother who has documented use of Paxil® during pregnancy. Chad Cook is the primary lawyer who is handling Paxil cases for the Section.

PERMAX® AND DOSTINEX®

These drugs are prescribed in the treatment of Parkinson's disease and other neurological problems such as

restless leg syndrome (RLS). In a recent *New England Journal of Medicine* study, a statistically significant percentage of those who used these drugs for more than one year developed the potentially serious complication of valvular heart disease (VHD). Valvular heart disease is typically diagnosed by a painless and non-invasive test called an echocardiogram that uses sound waves to determine if the valves of the heart are functioning properly. In many cases, valvular heart disease does not immediately result in symptoms, so if someone has taken either of these drugs, we would suggest that they speak to their physicians about having such a test.

At this point in time, it appears that the only Parkinson's related drugs with a demonstrated association with valvular heart disease are Permax® (also prescribed generically as pergolide mesylate) and Dostinex® (also prescribed as generically as cabergoline). These two drugs are chemically related to the diet drug "Fen-phen", which was also related to the development of valvular heart disease and another very rare condition call Primary Pulmonary Hypertension (PPH). Navan Ward is the primary lawyer in the section handling Permax and Dostinex cases.

RENU MOISTURELOC®

ReNu MoistureLoc®, manufactured by Bausch & Lomb, is a solution used to clean contact lens. Bausch & Lomb announced on April 10, 2006, that it was suspending shipments of this contact solution and retailers were urged to remove the solution from their shelves. Reports of fungal keratitis infections in users of this have been reported in contact lens wearers who use ReNu with MoistureLoc®. Chad Cook is the primary lawyer handling ReNu MoistureLoc cases for the section.

PAIN PUMPS

Pain pumps are portable and often disposable pain management devices

which continuously administer local anesthetic through a catheter to a surgical wound site for several days following surgery to decrease post-operative pain and assist in more rapid rehabilitation. A "Y-connector" accessory is sometimes available so that the pain pump can be used on multiple wound sites. Examples of pain pump manufacturers include Stryker, I-Flow, CME McKinley, Breg, Medical Flow Systems, Baxter and Sgarlato Labs.

Recently, the use of pain pumps to administer medication directly into a joint following shoulder surgery has been linked to a severe condition called Postarthroscopic Glenohumeral Chondrolysis ("Chondrolysis"), in which the cartilage of the shoulder joint process has been destroyed and lost. The destruction of the shoulder cartilage can be attributed to the application of anesthetic medication directly into the joint space via the pain pump catheter. In 2003, it appears that some pain pump manufacturers may have increased the anesthetic dosing capacity of their pain pumps, which may have hastened the onset of Chondrolysis in some patients.

Chondrolysis symptoms usually present between six weeks and six months following surgery and include increased shoulder pain and stiffness, loss of cartilage, decreased range of motion, loss of shoulder joint space, crepitus in the shoulder and loss of strength. Patients suffering from Chondrolysis are usually unable to complete their post-surgical physical therapy due to pain. Whatever the patient's condition was prior to his or her shoulder surgery, the post-operative diagnosis of Chondrolysis is typically much worse. Ultimately, complete shoulder replacement surgery (acromioplasty) could become necessary in order to eliminate the painful and debilitating symptoms of Chondrolysis. Ted Meadows and Russ Abney are the primary lawyers in the Section handling pain pump cases.

RICE LITIGATION

Genetically modified rice—LL601 and LL604—has been discovered in the U.S. rice crop, causing significant loss of revenue to U.S. farmers and threatening the success of U.S.-grown rice on the world market. LL601 and LL604 are types of genetically-modified rice developed, manufactured, and tested by Bayer CropScience. Bayer allowed the unapproved rice to contaminate conventional rice varieties. At the time neither LL601 nor LL604 were approved for human consumption. Rice from farms in a five-state region—Arkansas, Mississippi, Missouri, Louisiana, and Texas—has tested positive for LL601 and LL604. Rice farmers have suffered losses due to crop contamination, lost revenue, and additional costs associated with complying with state and federal efforts to eradicate the contaminated rice. We are currently investigating potential claims of farmers from Arkansas, Mississippi, Missouri, Louisiana, and Texas who produced or sold rice at any point from 2003 to the present. Frank Woodson and Leigh O'Dell are the primary lawyers who are handling these cases.

STEVENS-JOHNSON SYNDROME

Stevens-Johnson syndrome is an allergic reaction that can be caused from an infection or immune response to drugs. It is a severe expression of a simple rash known as erythema multiforme. It affects all ages and genders including pediatric populations. The most severe form of SJS is toxic epidermal necrolysis (TENS). SJS occurs twice as often in men as in women. Most cases of SJS appear in children and young adults under age 30. Females with SJS are twice as likely as males to develop TENS. Frank Woodson is the primary lawyer handling SJS cases for the Section.

TRASYLOL

Trasylol is used to reduce blood loss and the need for blood transfusion in

patients undergoing cardiopulmonary bypass surgery who are at an increased risk for blood loss and blood transfusion. Trasylol was manufactured by Bayer Pharmaceuticals and was approved by the FDA in 1993. On February 8, 2006, the FDA issued an advisory warning to doctors of the potential for renal toxicity and on November 5, 2007, the FDA and Bayer agreed to temporary marketing suspension of Trasylol. We are investigating potential Trasylol claims involving death after undergoing a coronary artery bypass procedure or kidney failure requiring dialysis or transplant. Frank Woodson is the primary lawyer handling Trasylol cases for the Section.

VIAGRA

Viagra is a drug manufactured by Pfizer used to treat erectile dysfunction. We are currently investigating cases involving partial or complete blindness caused by non-arteritic ischemic optic neuropathy (NAION). This is a condition in which blood supply is reduced to the optic nerve causing permanent nerve damage. Chad Cook is the primary lawyer in the Section handling Viagra cases.

VIOXX, CELEBREX & BEXTRA

Vioxx, Celebrex and Bextra are popular and heavily-advertised arthritis drugs commonly referred to as a non-steroidal anti-inflammatory drug (NSAIDs). As you know, Vioxx was taken off the market in September 2004. Bextra was taken off the market in April 2005. Celebrex, which is still on the market, currently carries a black-box warning on its label.

Vioxx, Celebrex and Bextra have all been associated with an increased risk of cardiovascular events such as heart attacks and strokes. These drugs are classified as COX-2 inhibitors. COX-2 inhibitors, like older NSAID drugs such as ibuprofen and naproxen, work to decrease swelling in affected joints. However, unlike older NSAIDs that also

caused irritation to the lining of the stomach by inhibiting the Cox-1 enzyme, it is theorized that COX-2 inhibitors only block the COX-2 enzyme, leaving the stomach protecting COX-1 alone. Published data calls the beneficial advantages of these drugs into question, and raises questions about “serious cardiovascular events” related to this class of drugs. We are currently litigating heart attacks, stroke and death cases involving Celebrex and Bextra. As you know, the Vioxx cases have been resolved and we are busying completing that settlement. We aren't taking any more Vioxx cases.

Andy Birchfield, Leigh O'Dell, Roger Smith, Frank Woodson, Ben Locklar, Melissa Prickett, Navan Ward, Chad Cook and Russ Abney are all working on these cases.

ZITHROMAX

Zithromax (azithromycin), manufactured by Pfizer, is a popular antibiotic used most often to treat respiratory infections, while also used to treat skin infections and some sexually transmitted diseases. Zithromax is taken once daily, usually two to five days under normal dosage. The most serious types of health problems that have been attributed to Zithromax include liver damage resulting in death or liver transplant surgery. The symptoms for liver damage may include yellow eyes, abdominal pain, nausea, clay colored stools, and dark urine. Recent warnings have been added to the label regarding abnormal liver function, jaundice, necrosis, hepatic (liver) failure and death, which have been reported by persons taking this drug. Chad Cook and Frank Woodson are the primary lawyers in the Section handling these cases.

Hopefully, the above information will answer some of the questions we have been getting concerning the Mass Torts Section's activities. In addition to the primary lawyers mentioned for a drug or medical device, once a case is taken, a trial team is put together at an early stage so that preparation for trial can get started. It's been very busy in this

Section and based on what we have learned in litigation, I don't see things slowing down any time soon.

WYETH AND PFIZER ORDERED TO PAY \$27 MILLION IN PUNITIVE DAMAGES

We reported last month on the jury verdict against Wyeth and a Pfizer Inc. unit and the awards of compensatory damages. In the second phase, the jury ruled that the defendants must pay \$27.1 million in punitive damages for menopause drugs that caused the plaintiff's breast cancer. Jurors in federal court in Little Rock, Arkansas, found that Wyeth and Pfizer's Pharmacia & Upjohn showed "reckless disregard" of the health risks posed by their hormone-replacement drugs and should be punished. The jurors had awarded \$2.75 million in compensatory damages to the plaintiff in the first phase of the trial. In the punitive phase, Wyeth, based in Madison, New Jersey, was ordered to pay \$19.3 million in punitive damages. New York-based Pfizer was told to pay more than \$7.7 million.

It's the third time Wyeth has been ordered to pay punitive damages over its handling of the drugs, Premarin and Prempro. A Nevada jury in October awarded \$99 million in such damages to three women after finding that the treatments caused their breast cancers. A judge reduced the award to \$58 million in February. In January of 2007, a Philadelphia jury awarded punitive damages—but the Judge placed the amount under seal, pending appeal. The plaintiff in the Arkansas case was among 6 million women who took the pills to treat menopause symptoms such as hot flashes, night sweats and mood swings. The defendants, in her case, will likely appeal. Jurors found that the hormone-replacement therapies were a cause of the plaintiff's breast cancer and ordered the companies to pay \$2.75 million in compensatory damages. Wyeth and Pfizer must each pay half under Arkansas law.

Wyeth has lost five of eight jury trials over Premarin or Prempro since they began going to trial in 2006. Wyeth has

settled at least two other cases. The company faces about 5,300 lawsuits over the drugs, which are still on the market. We estimate the total number of claimants at about 7,000. Upjohn has lost both of their cases that have gone to trial so far over its Provera menopause drug, which came on the market in 1959. They have settled at least two other cases. Pfizer acquired Upjohn in 2003 as part of a \$54 billion acquisition of Pharmacia Corp. Sales of Wyeth's hormone-replacement drugs reached \$1.06 billion in 2007. Sales topped \$2 billion before a 2002 study linked the medicines to a higher risk of breast cancer.

In 2002, the Women's Health Initiative study, sponsored by the U.S. National Institutes of Health, was halted when it found an increasing incidence of invasive breast cancer among women who took a combination of estrogen and progestin, as found in Prempro. Thereafter, Wyeth revised the labels on its menopause drugs. Until 1996, some menopausal women used Premarin, which contained estrogen, together with Provera, which contains progestin. That year, Wyeth combined the two substances in Prempro. Jim Morris, who is a very good lawyer from Austin, Texas, represented the plaintiff in this case and did a tremendous job for his client.

Source: Bloomberg News

STUDY DETAILS WOMEN'S RISKS AFTER STOPPING HORMONES

In a related matter, a new study has provided more information relating to hormones. Among the many unanswered questions about hormones prescribed for menopause is whether a woman's health risks change after she stops taking the pills. This study shows that virtually all the benefits disappear but that a slightly higher risk for breast and other cancers persists for at least three years after stopping the drugs. The data come from a major study by the Women's Health Initiative that looked at 16,000 women who used the

estrogen and progestin combination drug Prempro, made by Wyeth.

Reporting in the current *Journal of the American Medical Association*, the study's investigators urge caution in interpreting the results, noting that a woman's individual risk remains small. The excess cancer risk among former hormone users translates to an added annual risk of 0.3% for an individual woman, or three additional cases of breast or other cancers a year among 1,000 women. The findings do not change recommendations for hormone use, which advise that women consider using hormones only if they have moderate to severe hot flashes and other symptoms, and only at the lowest dose and for the shortest possible time. Dr. Gerardo Heiss, the report's lead author and a professor of epidemiology from the University of North Carolina, Chapel Hill, observed:

What we found in the study is quite consistent with the current guidelines. There is no reason for alarm. The absolute risk is of small magnitude.

One of the biggest benefits of hormone drugs, an improvement in bone health, all but disappears during the three years after women stopped taking the drugs. But risks like blood clots, stroke, and heart attacks originally seen among older hormone users in the study also quickly dropped back to normal rates once women stopped the drugs. The research was halted in mid-2002 because older women in the study were at higher risk for heart attacks if they began using hormones. It appears that the findings have changed the medical community's views on hormone therapy, which was once used as a treatment to prevent chronic disease. Currently, menopause hormones are advised only for the treatment of moderate to severe hot flashes and other menopause symptoms, and doctors typically prescribe far lower doses of the drugs than those used in the study. The report focuses on the three years after the end of the study, comparing the health of women

who took hormones with that of participants who took placebos.

It was reported that future papers will analyze cancer trends in the study. During the three years women stopped taking hormones, there was some suggestion that their breast cancer risk began to drop from peak levels, but the overall risk remained the same. The breast cancer data were said not to be statistically significant, suggesting chance could play a role. However, researchers say the trends are credible because they are consistent with previous research. Other data on cancer risk also failed to reach statistical significance. For instance, there was a suggestion that lung cancer risk was slightly higher among former hormone users, but that trend could also be due to chance. It was only after researchers combined all the data from various types of cancers that they were able to show a statistically significant difference between the former hormone users and those who had used placebos. It will be most interesting to see what develops in the medical community as a result of this study.

Source: *Associated Press*

FDA ADDS SURVIVAL WARNING TO ANEMIA DRUG LABELS

The FDA has ordered that “black box” warnings be placed on the labels of Amgen Inc’s Aranesp and other anemia drugs to note the drugs have been shown to impair survival in certain cancer patients. The strongest possible warning states the drugs shortened overall survival, or caused more rapid tumor growth, in clinical studies in patients with breast, non-small cell lung, head and neck, lymphoid and cervical cancers, when given at high doses. The so-called erythropoiesis-stimulating agents (ESAs) are approved to treat anemia in patients with chronic kidney failure and in cancer patients undergoing chemotherapy.

About a year ago, the FDA first required a warning to the labels of Aranesp, as well as Amgen’s Epogen and Johnson & Johnson’s Procrit. This

came after studies showed an increased risk of death for some patients. Over the past year, there has been a great deal of negative news about the drugs, which are genetically-engineered versions of a protein that boosts production of oxygen-carrying red blood cells. Sales of Aranesp, Amgen’s top-selling product, fell 12% last year to \$3.6 billion, while sales of Procrit, which is less important to J&J’s bottom line, fell 9.4% to \$2.9 billion.

In a related matter, federal advisers said anemia drugs sold by Amgen Inc. and Johnson & Johnson should be sharply restricted to a segment of cancer patients—a recommendation that could cost the companies millions of dollars. The limits, proposed on March 13th by an FDA panel, were the latest blow to the three blockbuster medications already plagued by concerns over increased risks of death and tumor growth. The cancer experts overwhelmingly voted to keep the drugs on the market for chemotherapy patients, but said use should be limited to those with incurable forms of cancer. The experts also voted to withdraw the drug’s use in patients with breast or head-and-neck cancers, such as those affecting the sinuses, throat, and lymph nodes. The FDA often follows its panelists’ advice, although it is not required to do so. It will be interesting to see what the FDA does with the recommendations.

Source: *Reuters and Associated Press*

A SUCCESSFUL OUTCOME IN A CHILD’S VACCINE CASE

As has been widely reported, mercury is the second most toxic element on earth, behind plutonium. Toxicity of mercury has been linked to many different diseases, including autism, learning disabilities, and bipolar disorder. Thimerosal, a preservative placed in many children’s vaccines, is approximately 50% mercury. There have been years of litigation on behalf of children who suffer from various disorders, including autism, allegedly as a result of thimerosal contained in child-

hood vaccines. Most of these cases have been stalled as the government contends that these cases can only be argued in front of a federal government board and not in a court of law because of the Federal Vaccine Act.

Recently, the National Vaccine Injury Compensation Board ruled in favor of a nine-year-old Georgia girl who developed neurological problems shortly after receiving childhood shots. The amount of the payment to be made is yet to be determined. Although other federal officials have claimed that the girl’s autism-like symptoms were not caused by the vaccinations, these officials on the compensation program found that the shots exacerbated the girl’s underlying medical condition, an extremely rare disorder of the mitochondria. The National Autism Association called this a landmark case for all children suffering from mercury-based autism. Over the past several years thimerosal has been removed from almost all childhood vaccinations. It is uncertain if the thousands of other children will be awarded any payments from the Vaccine Injury Compensation Fund. Hopefully they will be included for payments from the fund.

MEDICATION ERRORS ARE ON THE INCREASE

Over the past months, we have seen a sharp increase in the number of deaths caused by medication errors. Celebrity cases such as Heath Ledger’s recent death from mixing prescription drugs and Dennis Quaid’s newborn twins receiving an adult dose of a blood thinner have gotten lots of media attention. But those two cases only scratch the surface of the growing number of lawsuits over medication errors. The suits include claims against pharmacies for errors in filling prescriptions, doctors and hospitals for mistakes in dosage, nursing homes for giving the wrong pills to patients, and manufacturers for labeling. Pharmacists at the large chains are dealing in large volumes. Hospitals, doctors and nurses have too many patients on occasion. All of this causes problems. Medication

errors are said to be “endemic” in nursing homes and that is directly related to many nursing homes being understaffed.

A recent study by the Harrison School of Pharmacy at Auburn University found that “dispensing errors are a problem on a national level,” and estimated that 51.5 million prescription errors occur during the filling of 3 billion prescriptions each year. There are a number of reasons for this, among which are, the difficulty in distinguishing between packages identifying drugs. The number of generic brands is a factor because now there are many different versions of the same drug with similar packaging. In addition, aggressive direct-to-consumer marketing by the drug companies has popularized drugs and put pressure on doctors to prescribe them. The bottom line is that there are a great number of medication errors being made. The healthcare system must address this problem and come up with some workable solutions.

Source: *Lawyers USA*

SALES REPRESENTATIVES INDICTED FOR ALTERING AND DELETING BEXTRA AND CELEBREX DOCUMENTS

For years Pfizer, the maker of Celebrex and Bextra, has been blamed for promoting off-label use of their drugs. Lawsuits have been filed against Pfizer after users suffered heart attacks or strokes resulting from the ingestion of these pain relief medications. Off-label use occurs when a user is prescribed a drug for purposes other than what the FDA has approved it for. Some pharmaceutical companies have used their sales force to purposefully market their drugs to doctors off-label in order to maximize the profits from those drugs.

Recently, a former sales manager for Pfizer was indicted for obstruction of justice for altering and deleting documents from his computer and for directing other sales representatives to delete marketing and training materials concerning off-label promotion from their computers. Specifically, the indict-

ment states that the Pfizer sales manager directed sales representatives to promote Celebrex and Bextra for doses and usages that had been denied by the FDA over safety concerns. In 2004, Pfizer was under investigation for promoting these drugs off-label and was instructed to preserve all related documents. However, the sales manager changed the clock on his computer in order to alter and resave documents to make them appear as if created earlier in time. He also deleted documents that the sales force used to promote these drugs at unapproved dosages and for unapproved uses. He then directed several other sales representatives to use similar tactics to destroy or alter information in their possession.

The unfortunate truth is that this is not an isolated incident. Evidence suggests that the promotion of unapproved uses of pharmaceutical drugs is a common practice for Pfizer and the pharmaceutical industry as a whole. This was mentioned when discussing the Zyprexa lawsuit in Alaska. This sort of thing has resulted in many people suffering unnecessary injuries from dangerous drugs that are on the market. Nonetheless, one can only imagine how many times similar actions as described above have gone undetected and unpunished.

DEADLY HEPARIN CONTAMINANT IDENTIFIED

U.S. health officials have identified a contaminant in batches of the blood thinner heparin associated with 19 deaths and are trying to determine how the chemical got into the drug. The lots of heparin were recalled in February. FDA officials reported on March 18th, that no new deaths have been reported since the recall. Dr. Janet Woodcock, head of the FDA's Center for Drug Evaluation and Research, said the contaminant is oversulfated chondroitin sulfate, a chemical that does not occur naturally. Chondroitin sulfate is a natural compound that occurs widely and is used as a dietary supplement but the oversulfated version has not been

widely studied. The FDA is investigating to see how it got into the drug.

The FDA has also initiated testing of imported heparin entering this country. Hopefully, the product on the market now has been tested and is safe. Since Chondroitin sulfate with a compound is in the same family as heparin, the FDA says preliminary testing failed to identify it. Apparently, more exacting tests by the government and university researchers uncovered the contaminant. Oversulfated chondroitin sulfate would be less expensive to make than heparin, but FDA officials aren't able to estimate the cost difference. The lots of heparin linked to hundreds of allergic reactions were marketed by Baxter International and produced in China. We should have learned by now that anything coming from China has to be at least suspect.

FDA officials said they could not yet directly associate the oversulfated chondroitin sulfate to the deaths and side effects, but it is the lone contaminant they have found in the product. As we have reported, Heparin is derived from pig intestines, and China is the world's leading supplier. Tiny family-run workshops near slaughterhouses send batches of raw ingredients to larger middlemen before they reach factories. Hopefully, Chinese government officials are working to improve safety of the products they are sending into the U.S. In fact, they claim to have clamped down on the production of heparin.

Source: *Associated Press*

BOEHRINGER'S SPIRIVA MAY RAISE STROKE RISK

Spiriva HandiHaler, which is Boehringer Ingelheim's respiratory drug, may actually increase the risk of stroke. Spiriva was associated with two more cases of stroke in every 1,000 patients treated for one year compared with a placebo medicine in a pooled analysis of 13,500 patients, according to a notice posted last month on the FDA's Web site. The agency is still reviewing the available data and hasn't confirmed an increased risk. Boehringer, the

world's largest family-owned drug maker, markets Spiriva in the U.S. with Pfizer Inc. as a once-a-day inhaled treatment for breathing difficulty caused by chronic obstructive pulmonary disease. The Ingelheim, Germany-based company is assessing the long-term effects of the drug in a four-year study that is expected to report results in June, according to the FDA. The FDA plans to analyze the new study, called Uplift, and make conclusions and recommendations to the public.

Source: Bloomberg

ORGANON'S NUVARING ALLEGED TO HAVE CAUSED WOMAN'S DEATH

The widower of a New Jersey woman who died suddenly while using the NuvaRing contraceptive has filed suit against its maker, claiming the device caused a deadly blood clot. It was alleged that Nuvaring, which the 32-year-old mother of two had been using for six months, contributed to her death. Defendants in the case are Organon BioSciences NV and Schering-Plough Corp., which bought the Dutch biopharmaceutical company in November.

NuvaRing, which was launched in the summer of 2002, is a hormonal contraceptive inside a flexible ring that is inserted in the vagina and left in place for three weeks out of every month. It slowly releases two hormones into the vaginal wall: ethinyl estradiol, a type of estrogen widely used in contraceptives, and a progestin called etonogestrel. Etonogestrel is the active form of a contraceptive hormone called desogestrol contained in several newer birth-control pills, including Mircette, Desogen and Ortho-Cept. Public Citizen Health Research Group has been pushing the Food and Drug Administration since February 2007 to remove those pills from the market because they double the risk of blood clots without having any benefit over other contraceptives, according to the group's director, Dr. Sidney Wolfe.

Source: Associated Press

IX. BUSINESS LITIGATION

A DISPUTE IS SETTLED ON ENRON PAYMENTS

Former Enron employees will now get the remainder of lawsuit settlement payments that had been delayed for a long time because of a dispute. The Department of Labor announced recently that The Enron Creditors Recovery Corp. and the Illinois-based human resources company Hewitt Associates will restore \$11.2 million to the settlement fund. As has been reported, Hewitt had made a serious error in the first wave of payments in 2006. The settlement resolves a contempt motion filed against Hewitt for having misallocated the 2006 disbursement and refusing to make up the difference. The settlement will ensure that all pension plan participants will receive all the funds to which they are entitled. U.S. District Judge Melinda Harmon is overseeing the settlement and fund disbursement.

The lawsuit in question was filed on behalf of employees who were in Enron retirement plans when the energy company collapsed in 2001. The entire case was settled for \$218 million. In 2006, Hewitt erred when it made the first wave of payments. In a disbursement of \$89 million, it misallocated \$22 million in payments—overpaying 7,700 ex-employees and underpaying 12,600.

The problem could have been resolved in part by altering the second set of payments, but that would have left the settlement fund with a \$9 million shortfall. The \$11.2 million settlement includes interest on that money. The rest of the \$218 million remained in limbo until the \$11.2 million was restored. Hewitt took the position that, because it was hired by Enron, Enron was ultimately responsible for Hewitt's errors. That really made no sense and was impossible to justify. The good thing now is that

\$11.2 million in lost funds and interest will finally be restored and paid. However, it seems that Hewitt should be penalized for its failure to act sooner and for the indefensible position it took in the matter.

Source: Houston Chronicle

OSI PHARMACEUTICAL WILL SETTLE LAWSUIT

OSI Pharmaceuticals Inc. has settled a class action lawsuit related to its Tarceva lung-cancer drug for \$9 million, with its insurer covering all but \$500,000 of the amount. The settlement, which is subject to court approval, involves a lawsuit filed in December of 2004, alleging that OSI had made false and misleading statements about Tarceva's potential to increase survival from lung cancer. Under terms of the agreement, the lawsuit will be dismissed with prejudice without OSI or its executives admitting any liability.

Source: Houston Chronicle and Associated Press

X. INSURANCE AND FINANCE UPDATE

AIG TO PAY RECORD \$9.1 MILLION SETTLEMENT TO PENNSYLVANIA REGULATORS

American International Group Inc. will pay \$13.5 million—including a record \$9.1 million in penalties and investigative costs—to settle allegations of bid-rigging and financial misreporting brought by the state of Pennsylvania. The settlement requires the company to provide annual reinsurance reports, maintain compensation disclosure rules for producers and make further compliance initiatives. Acting Pennsylvania Insurance Commissioner Joel Ario made this statement relating to the settlement:

Financial reporting must be accurate for us to protect insurance consumers and be certain that

companies are solvent. When there is any indication of problems with a company's financial reporting, we investigate, take action and hold insurers accountable.

The settlement includes \$9.1 million in penalties and investigative costs, the largest-ever such payment to the state's insurance department. Approximately \$4.4 million of the settlement has already been paid, according to a statement from AIG. The settlement is related to a reinsurance deal in 2000, that federal prosecutors alleged was part of a scheme to inflate AIG's loss reserves, and thereby its stock price. As reported, four executives from Gen Re and one from AIG were convicted recently in federal court in Hartford for their role in the scheme.

In addition to the false reporting, the Insurance Department's investigation of AIG focused on improper activity relating to their bid-rigging and commission practices. The Department is currently working with other states to examine misconduct related to AIG's having possibly underreported workers' compensation premiums. AIG has numerous Pennsylvania-based subsidiaries for which the state insurance department is the primary regulator. The department has previously settled related bid-rigging allegations against broker Marsh Inc., Zurich Insurance Company, and ACE INA Holdings Inc.

Source: *Insurance Journal*

JURY FINDS MERCURY CASUALTY COMMITTED FRAUD

A California state court jury has returned a verdict of fraud and breach of the implied covenant of good faith and fair dealing against Mercury Casualty Co. and awarded compensatory damages of \$170,000 and punitive damages of \$3 million to the plaintiff. Interestingly, five persons who had automobile policies of insurance with Mercury Casualty were on the jury and voted for the fraud verdict and for punitive damages against their own insurance company. Amerigraphics, Inc., a small, three-person graphic design and

printing business, sued Mercury for failing to provide coverage for business property and normal operating expenses suffered as a result of water damage from a ruptured water heater in their leased building. The plaintiff suffered damage to equipment used in the business.

Despite being informed that the firm's scanner and large format printer were permanently damaged and not repairable, Mercury took possession of the equipment and did not return or replace it for more than 650 days. At trial, Mercury didn't dispute that Amerigraphics had coverage under their business policy for normal operating expenses of \$90,000, which the insurer also did not pay. Mercury took two years to pay only \$23,000 on a \$45,000 claim. Mercury's own outside adjuster had recommended payoff of the full claim. The plaintiff claimed that the payment delay and failure to return the equipment put the company out of business.

Amerigraphics sued Mercury for "bad faith" based on improper claims handling and alleged that Mercury failed to investigate or evaluate their claim in a timely manner; used improper and non-existent standards to deny their claim; unreasonably delayed payment of their claim; and failed to advise Amerigraphics of existing coverage. The Los Angeles jury found that Mercury defrauded Amerigraphics and failed to pay proceeds due under their property policy. In this case, the alleged fraud meant not only concealing material facts and doing so intending to harm Amerigraphics, but also affirmatively representing to Amerigraphics that coverage did not exist, when in fact coverage did exist. At trial, Mercury's senior vice-president of claims testified that the company had no property claim handling guidelines in effect during 2003 and 2004.

This was a violation of California state law requiring all insurance carriers to maintain guidelines for the prompt processing of insurance claims. The vice-president also testified that Mercury's own internal training guidelines taught claims adjusters to

"never use your top dollar to begin negotiations," to "use time as your ally," and to "remind claimants that a judge or jury would find them at comparative fault" if they sued. James Osborne, who is with the firm of Osborne and Associates in Sherman Oaks, California, represented the plaintiff and did a very good job.

Source: *Insurance Journal*

ALABAMA INSURANCE DEPARTMENT ISSUES A SIGNIFICANT BULLETIN

A recent Alabama Department of Insurance bulletin discusses possible violations of the Alabama Trade Practices Law (ATPL) by insurers admitted in Alabama. The ATPL prohibits a property and casualty insurer from directly or indirectly requiring an insurance customer to purchase additional types of insurance such as life insurance or automobile insurance from the insurer or its affiliates as an express or implied condition of the customer obtaining homeowners insurance coverage from that insurer. These provisions of the ATPL are also violated if an insurer predicates a decision to renew an existing homeowners insurance policy on whether the insured had in effect other insurance business with the insurer or its affiliates as of a specific earlier date. In the bulletin the Insurance Department required any insurance company that engaged in this practice within the last 12 months to inform the Department by February 28th. Something must have been going on for the Department to send out this bulletin. I would like to hear from any of our Alabama readers who may have knowledge of what prompted the Department to take this action.

CLIMATE CHANGE HEADS THE LIST OF RISKS FACING THE INSURANCE INDUSTRY

Global warming is finally being recognized as a most serious problem and one that will have many ramifications. One area of concern involves the insurance industry. Potential climate change is said to be the greatest strategic risk currently facing the property/casualty

insurance industry, with demographic changes taking priority for the life insurance industry. This is according to a new study by Ernst & Young. Climate change is closely followed by demographic change and catastrophic events among the top ten risks for insurers. According to the Ernst & Young study, "Strategic Business Risk 2008," the top ten risks are:

- Climate change: long-term, far-reaching and with significant impact on the industry.
- Demographic shifts in core markets: offers business opportunities but risk that other sectors will capitalize first.
- Catastrophic events: rising costs and serious impact on earnings for insurers.
- Emerging markets: risk and opportunity but competitive threat from new players.
- Regulatory intervention: increased scrutiny impacting on operations and practices
- Channel distribution: technology is changing the way insurance is sold and purchased.
- Integration of technology with operations and strategy: an enabler to keep pace with competition but lack of integration is a threat at the strategic business level.
- Securities markets: changes in capital providers and the way capital is entering the insurance industry are causing major changes in the industry.
- Legal risk: significant and unexpected change in the legal environment, such as government legislation or evolving case law, will continue to have a critical impact on the insurance industry.
- Geopolitical or macroeconomic shocks: likely causes unknown but consequences potentially severe.

Many of these risks are interlinked, with the consequences from one risk

having direct impact on others, according to the report. For the new study, Ernst & Young and Oxford Analytica interviewed more than 70 industry analysts from around the world to identify the emerging trends and uncertainties driving the performance of the global insurance sector over the next five years. The study identified risks in three broad areas—macro, sector-specific, and operational threats. It identified the top ten risks and five emerging threats. The analysts told Ernst & Young these are the strategic risks that industry leaders must manage if they are to maintain dominant competitive positions, raising questions about how these risks will change what companies offer customers, the way they offer services, and where.

The analysts also identified five emerging risks, just outside the top ten, which have the potential to become as significant during the next five years. These are: over-reliance on model-based risk management; threats to industry reputation; losing the war for talent; increasing exposure to global regulatory heterogeneity; and the possible emergence of entirely new risks. Peter Porrino, global director of Insurance Services at Ernst & Young, made these comments:

As the insurance environment becomes more complex, companies need to shift from traditional risk management approaches to integrated processes that add greater value. Understanding how to respond to current trends is paramount for insurers as they seek to manage risk, optimize performance, and increase operational effectiveness. The top three risks—climate change and demographic shifts in core markets, and catastrophic events—are far reaching social and environmental trends with complex long term ramifications for the industry as a whole.

It was noted that the top ten list demonstrates that change is constant. Interestingly, climate change wouldn't

have registered on a risk list ten years ago. Persons in the industry who deal with risk management will have to deal with reality, and that will include dealing with risks that weren't a problem in years past. Climate change will bring about a new set of risk issues that the insurance industry—as well as governments at every level—will have to deal with. Hopefully, the insurance industry will be better prepared than the Bush Administration has been in dealing with this issue. At least the industry recognizes that there is a problem.

Source: *Insurance Journal*

XI. PREDATORY LENDING

MORGAN KEEGAN'S SUBPRIME MORTGAGE GAMBLE

As we have seen in recent weeks, the stock market can be a volatile place, especially for the investment firms who decide to gamble in the subprime securities market. For the past several months, the nation has watched as the housing market has continued its plunge to levels not seen since the Great Depression. At the center of attention are the investment firms who invested so heavily in the subprime securities market and the investors who entrusted their money to these firms with the belief their investments were secure. Our law firm has recently taken a very hard look at one such investment firm, Morgan Keegan. Morgan Keegan is a Tennessee-based investment firm that advertised their Select Intermediate and High Income Mutual Funds as investments that would provide high yields without excessive risks. However, the investments were actually made in illiquid securities that are rarely traded and do not have active price quotes that are maintained. When the subprime mortgage crash occurred, these investments suffered substantial losses.

Our clients, as well as other investors, were given the false impression that the funds were a safe and stable investment. The reality is neither fund disclosed in their common prospectus that the bonds were exposed to a risk of heavy concentration in one sector. The prospectus did not disclose that the investors were exposed to an untested, thin market subject to constant instability. Further, the funds violated the investment restriction against investing more than 25% in the same industry (in this case, mortgage backed securities). As a result of such investment practices, Morgan Keegan's select funds lost a substantial amount of their value, especially when compared to other funds in the same market. More specifically, the Select Intermediate Bond lost 47% of its value while the Select High Income Fund lost 56% of its value.

Our firm is reviewing cases concerning the Morgan Keegan funds, including the Morgan Keegan Select High Income Fund and the Morgan Keegan Select Intermediate Fund. If you have any questions concerning these funds please contact either Roman Shaul or Scarlett Tuley, who are the lawyers in our firm handling these cases. You can either send your inquires to one of the lawyers at P.O. Box 4160, Montgomery, AL 36103 or call our firm toll-free at 800-898-2034.

DOOR COULD OPEN TO MORTGAGE CLASS ACTIONS

A case between Chevy Chase Bank and a Wisconsin couple is pending in a federal appeals court. Pending the outcome of this lawsuit and the court's decision, it could for the first time enable the nation's homeowners to join together in class action lawsuits against mortgage firms in efforts to get their loans canceled. Wall Street's biggest banks are closely watching this case. A favorable ruling for the Wisconsin couple could cause the banks to bear the large cost of reimbursing all closing costs, broker fees, and mortgage interest to groups

of homeowners who discover mistakes in their loan documents.

In this case, Chevy Chase Bank appealed to the circuit court in Chicago after a federal judge in Milwaukee ruled last year that the Wisconsin couple had been deceived and that other borrowers could join their suit. This has been described as "one of the most important cases for the mortgage industry right now." The ramifications and impact of this case, if a class approach survives, will have a tremendous impact on not only the mortgage lending industry but on homeowners who have been victimized.

While home lending boomed in recent years, standards were loosened at many mortgage firms leading to a rise of abuses, particularly predatory practices. This has led in turn to record numbers of people currently finding themselves with loans that are more than they can afford. Estimates vary widely on the number of homeowners who could stand to benefit from this case. Homeowners who hold a home equity loan or who have refinanced are already eligible for a refund, while others can get monetary damages, and the court's ruling will not change this. But, according to several lawyers and mortgage analysts, allowing plaintiffs to file class action suits would make it much easier and more affordable for groups of homeowners to get that relief. A tremendous number of class action homeowner lawsuits have been filed in California and other states against the nation's largest banks. The decision in the Chevy Chase case could definitely have a bearing on those cases. Kevin Demet, from the law firm of Demet & Demet in Milwaukee, Wisconsin, is representing the plaintiffs in the Chevy Chase case.

Source: *Washington Post*

COUNTRYWIDE IS THE SUBJECT OF A FEDERAL CRIMINAL INQUIRY

Federal authorities have opened a criminal inquiry into Countrywide Financial for suspected securities fraud as part of the continuing fallout over

the mortgage crisis, government officials with knowledge of the case said on Saturday. The Justice Department and the Federal Bureau of Investigation (FBI) are looking at whether officials at Countrywide, the nation's largest mortgage lender, misrepresented its financial condition and the soundness of its loans in security filings. The investigation—first reported last month in the *Wall Street Journal*—was at an early stage at press time. It was unclear whether anyone will ultimately be charged with a crime.

As you know, the FBI is investigating 14 companies as part of a wide-ranging review of business practices in the mortgage industry. In that broader investigation, the FBI is looking into possible accounting fraud, insider trading, or other violations in connection with loans made to borrowers with weak, or subprime, credit. The inquiry into the companies began last spring and it involves companies across the financial industry, including mortgage lenders, loan brokers, and Wall Street banks that packaged home loans into securities.

As part of that investigation, the FBI is cooperating with the Securities and Exchange Commission, which is conducting about three dozen civil investigations into how subprime loans were made and packaged and how securities backed by those loans were valued. Several state prosecutors are also investigating mortgage industry practices. For the 2006 fiscal year, there were 35,600 documented reports of suspected mortgage fraud, up from 22,000 the year before and 7,000 in 2003. State officials have also been active in bringing mortgage cases. I am not certain how all of the investigations will turn out or what the ramifications will be. I am certain, however, that a failure to adequately regulate the mortgage lenders and those other groups that were a part of the whole package is largely to blame for the massive problems that are most apparent. I also believe strongly that the Bush Administration's efforts to protect corporate wrongdoers have contributed to the overall problem.

Source: *New York Times*

FIRM ESTIMATES 42,000 MORTGAGE APPLICATIONS MISREPRESENTED INCOME

Analysts at a mortgage watchdog firm have uncovered more than 42,000 mortgage applications, totaling nearly \$11 billion, containing significant misrepresentations of the borrowers' income. These applications were all originated and submitted for review in the last six months of 2007 by Interthinx, a provider of mortgage fraud detection products. Interthinx is owned by insurance and risk services provider, ISO. Kevin Coop, president of Interthinx spoke at the Mortgage Bankers Association's National Fraud Issues Conference. He told the group:

For the first time, the industry is getting a real-time look at the scope of mortgage fraud, and these numbers are staggering based on what we've seen over the past few years. These results confirm what we've been saying all along: fraud is the rotten core of the mortgage meltdown.

The loans were discovered when Interthinx analysts determined that its FraudNET Loan Exchange (FLEX) program had generated 42,610 income alerts that warn clients that a borrower has submitted multiple applications and that the borrower's income as reported has jumped by at least 15% within a prescribed period of time. The alerts signal that a borrower or another party involved in the transaction has manipulated the reported income to qualify for a loan that would not be made if the true income were disclosed. FLEX is a proprietary program that allows lenders to leverage data from all other Interthinx clients to more accurately assess the consistency and veracity of a given application—something lenders cannot do for themselves. Mr. Coop observed:

The industry has not recognized the pervasiveness of fraud in part because lenders have legal obligations to protect consumer data. So if 'ABC Bank' discovers a fraudulent application, it can't tell 'XYZ

Bank' to watch out. Through FLEX, Interthinx is able to compare data from all of its clients' applications and reveal the deceptions without compromising consumer privacy. Knowing the truth lets our clients prevent billions in losses. What is really disturbing is that the \$11 billion represents just one of the alerts used in the six-month timeframe.

Interthinx analysts are currently evaluating data for when a borrower submits applications for multiple "owner-occupied" properties within a prescribed period of time. Misrepresentation of occupancy causes lenders to inaccurately assess the true level of risk and to incorrectly price the loan, according to the firm. The company sends so-called "straw buyer" alerts that the property and the borrower may be involved in an organized fraud for profit scheme. Loss severity is greatly increased in organized schemes since they can involve hundreds of loans. Interthinx said it intends to release the results of its additional analyses in the near future.

Source: *Insurance Journal*

ARKANSAS ATTORNEY GENERAL CRACKS DOWN ON PAYDAY LENDERS

Arkansas Attorney General Dustin McDaniel has ordered payday lenders throughout his state to shut down immediately or face the likelihood of lawsuits from his office. Letters were sent to about 60 companies that run 156 payday lending firms in Arkansas. The Attorney General said in his letters:

It is the position of this office that you must cease and desist your payday lending practices. In addition, I hereby demand you void any and all current and past-due obligations of your borrowers and refrain from any collection activities related to these payday loans. Be forewarned that your failure to comply with this demand will likely lead to litigation to enforce the laws of Arkansas.

The Attorney General's actions are based on two recent Arkansas Supreme Court opinions that make it clear that the high interest rates charged by payday lenders violate the state constitution and the Arkansas Deceptive Trade Practices Act. According to the Arkansas Constitution, no one should charge an interest rate higher than 17%. But the state Check Cashers Act that allows payday lenders to operate in the state says a fee paid for holding a check written before the date it is to be cashed "shall not be deemed interest." The Supreme Court opinions in two separate cases addressed this conflict. In one case, justices said the Check Cashers Act, passed by the state Legislature in 1999, did not provide "blanket protection" for going over the constitutional cap. In the other case, the court ruled that a customer can collect the surety bond from a payday lender accused of violating the state constitution by charging more than 17% a year to borrow money.

In payday lending practices, typically someone wanting a loan goes to a check-cashing company and writes a check for a certain amount. The company then agrees not to cash the check for a specified time—often waiting until the check-writer's payday, when money can be deposited to cover the amount of the check. Through a payday loan in Arkansas, a customer writing a check for \$400, for example, typically would receive \$350. The lender would keep the check for about two weeks without cashing it, thereby allowing the customer time to buy back the check. The \$50 charge on the \$350 loan for 14 days equates to 371% interest, well above Arkansas' 17% limit. Attorney General McDaniel says:

These businesses have made a lot of money on the backs of Arkansas consumers, mostly the working poor. Charging consumers interest in the range of 300 to 500% is unlawful and unconscionable and it is time that it stops.

Hopefully, this effort by the Arkansas Attorney General will be successful

and consumers in his state will get needed relief. I commend Attorney General McDaniel for taking this needed action. Other states should follow his lead and come down hard on the payday loan sharks

Source: Center for Responsible Lending

XII. PREMISES LIABILITY UPDATE

SOUTH CAROLINA COMPANY ASKS JURY FOR \$420 MILLION

A South Carolina textile company that closed as a result of a train wreck and toxic chemical spill in 2005 wants the railroad to pay \$420 million in damages. The Norfolk Southern wreck ruptured a car carrying chlorine and released a poisonous cloud over the mill town of Graniteville, South Carolina, killing nine people and injuring 250. Some 5,400 people were evacuated. Equipment at Avondale Mills' Graniteville facilities was covered with corrosive chemicals after the crash, and the company's flagship canvas plant was locked down for safety reasons for eight days. Avondale chief executive Steven Felker Jr. closed the company for good in May 2006 after experts determined it would have cost more than the business was worth to clean the buildings and replace the machinery. The railroad has accepted blame for the crash but is contesting damages.

Norfolk Southern's insurance company is also part of the lawsuit. The company, Factory Mutual, says that Norfolk Southern should repay the company the \$215 million to cover what it paid out to Avondale Mills. The civil trial is projected to last for three months. The crash occurred when a Norfolk Southern train veered off the main track onto a spur, rear-ending a parked train whose crew had failed to switch the tracks back to the main rail. Norfolk Southern should be held accountable because the railroad knew that members of the crew operating the

Graniteville tracks the night before the crash had been working long hours in violation of company rules. Avondale Mills says a Norfolk Southern supervisor "could have avoided this tragedy" by mandating that employees adhere to federal regulations requiring that they work no longer than 12-hour shifts.

Source: *Insurance Journal*

STATE OF WASHINGTON WILL PAY \$2.25 MILLION FOR SHOOTING SPREE

The Washington State Department of Corrections has agreed to pay \$2.25 million to the families of five California children who were wounded or traumatized when a prison parolee opened fire in a Jewish community center in 1999. The parolee is serving a life sentence in prison after pleading guilty in 2001 to the shootings at the North Valley Jewish Community Center in Granada Hills, California. The families of the victims had filed a claim against the Department of Corrections (DOC), contending that corrections staff failed to properly supervise the parolee or visit his home, and should have known that he had obtained firearms and ammunition.

The parolee, a self-avowed white supremacist, tried to commit himself to a psychiatric hospital in October 1998. He threatened staff members with a knife, was arrested, pleaded guilty, and served five months in jail for assault with a deadly weapon.

In August 1999, the parolee drove from Washington state to southern California in a van loaded with weapons. He allegedly scouted out several Jewish-related facilities before settling on the North Valley Jewish Community Center outside Los Angeles, where he fired more than 70 rounds. Three boys, a teenage girl who worked as a camp counselor, and a female receptionist were injured by gunfire. The parolee then walked up to a mail carrier, asked him to mail a letter, and then fatally shot him. The parolee surrendered the next day, telling police the shootings were intended as a "wake-up call to America to kill Jews."

The families of the three wounded boys, and of two other children who suffered psychological harm while witnessing the shootings, filed the claim in 2006. The DOC said the parolee reported as directed to his community corrections officer for several months before the shootings. He was banned from possessing firearms or alcohol. Since the shooting, state lawmakers have increased offender supervision. The Offender Accountability Act, which went into place in July 2000, gave the DOC more authority to impose conditions on offenders on probation. Since the shootings, the DOC has also gained easier access to felons' mental health records.

Source: *Seattle Times*

LAWSUIT OVER HOUSE EXPLOSION IS SETTLED

The family of a woman killed in a gas explosion last year has settled a lawsuit against Questar Gas and several contractors. It had been alleged that Questar, Qwest and three subcontractors were at fault in causing the gas leak at the Saratoga Springs, Utah residence. The plaintiff further alleged that the defendants failed to properly repair and safely clear the area. The plaintiff's 24-year-old wife was killed last year, along with a Questar employee, when the house exploded.

The four-hour sequence of events that led to the explosion began around noon. At that time, S&E Cable, working as a subcontractor to Angilau, Niels Fugal, and Qwest, attempted to use a missile—a pneumatically-powered underground mole—to bore a hole toward the home for the installation of a permanent phone and data line. The missile struck and ruptured a Questar gas line. S&E Cable was not a licensed contractor and was not properly trained to perform the work. Neither was the S&E employee, who was working alone, prepared to handle the gas-line rupture.

It took nearly two hours for Questar employees to arrive at the scene, a delay said to have been exacerbated by

the unlicensed contractor's mishandling of the situation. During that time, the ruptured line pumped nearly 9,000 cubic feet of natural gas into the ground on the north and east sides of the home. Once the line was repaired, Questar and its employees failed to perform their duty to determine the safety of the area. The bodies of the homeowners and the employee were discovered in the home's basement near the furnace, which appeared to have been turned on.

Source: *Salt Lake Tribune*

WOMAN FILES SUIT OVER INJURY ON RIDE AT PARK

An Oklahoma woman has sued Six Flags Over Texas over injuries she received during a ride accident that injured eight others in 2006. In the lawsuit, Trista Price accuses Six Flags of being negligent in operating and maintaining the Texas Tornado ride, which spins riders in a wide circle on swing-like chairs. The suit also says the maker of the ride, Chance Rides Manufacturing, which is also a defendant in the suit, sold the Arlington theme park a "defective and unreasonably dangerous" ride.

In March 2006, several park patrons were injured on the Texas Tornado when one of the mechanical bearings that spins the ride malfunctioned. The operator engaged the emergency safety mechanism, which brought the ride to a stop and lowered riders to the ground quickly, causing some riders to bump into others. Nine people were injured, mostly with bruises and back and neck strains, according to Texas Department of Insurance reports. Injuries at a theme park must be reported to the Texas Department of Insurance as part of the park's quarterly reports submitted every three months. In the past three years, Six Flags Over Texas has reported about 50 injuries per year to the department. The latest suit alleges that "operator error" contributed to the accident. It also says the Texas Tornado "contained unreasonably

dangerous design defects and was not reasonably safe as intended to be used."

Source: *Star-Telegram*

WOMAN SUES COLORADO AMUSEMENT PARK AFTER COLLISION ON A RIDE

A woman has filed suit against an amusement park in a Colorado state court. The woman says she suffered permanent injuries after colliding with another rider in an alpine coaster. It was alleged that officials at the Glenwood Caverns Adventure Park, located in Glenwood Springs, California, failed to warn the woman that someone was stopped in a car in front of her when she was on the "Canyon Flyer," a ride similar to a roller coaster that allows people to control their speed as they slide on the tracks. In her lawsuit, the woman says the collision and her injuries were the result of negligence or carelessness in how the ride was built and operated. Reportedly, cars on the "Canyon Flyer" race 3,400 feet through trees and down a mountain-side. The park's Web site says the ride is the first alpine coaster in this country. Customers must sign a waiver and release of liability before getting on the ride. The validity of such a release is generally questionable in a case involving negligent or wanton conduct. The plaintiff injured her left shoulder, left foot, and back. Park owners said there have been more than 300,000 rides on the alpine coaster since 2005 and that they have had "very few" incidents.

Source: *Claims Journal*

KENTUCKY LAWMAKERS TAKING ACTION AFTER AMUSEMENT RIDE ACCIDENT

Kentucky lawmakers are taking steps aimed at improving the safety of amusement rides in the wake of a tragic accident last year that severed the feet of a girl at Six Flags Kentucky Kingdom in Louisville, Kentucky. A Senate committee has approved legislation that bars anyone younger than 18 or anyone under the influence of alcohol from operating amusement

rides. The measure would also require amusement ride operators in Kentucky to inspect rides each day before opening for business.

The move comes less than a year after a cable snapped on the Superman Tower of Power ride, severing the feet of 14-year-old Kaitlyn Lasitter of Louisville. Doctors were able to reattach the girl's right foot. Kaitlyn and her family are suing Six Flags Kentucky Kingdom, claiming the park failed to maintain the ride and equipment and ensure riders' safety. The amusement park has denied liability in the accident. State officials said an operator of the Louisville ride when the accident occurred was 16 years old. The ride was permanently closed after the accident and is being dismantled.

The Kentucky Department of Agriculture, which inspects amusement park rides, is waiting on tests on a cable from the ride to determine what caused it to snap. Once the tests are complete, the Agriculture Department plans to release findings from its investigation into the accident. The State of Kentucky had 32 amusement ride accidents reported last year. In eight of the cases, the injuries required the victims to be treated at hospitals. Among other provisions of the proposal, maximum fines for violations of amusement ride safety laws and regulations would increase from \$1,000 to \$10,000.

All states should strengthen existing laws that deal with safety at amusement parks and those that have no such laws should enact them. The summer months, when children will be out of school, will soon be here. While it's late in the game, any state legislature that is in session—including Alabama's—should take action in this area of concern.

Source: *Claims Journal*

ABIGAIL TAYLOR DIES IN OMAHA

Abigail Taylor, the six-year-old girl who underwent a rare transplant surgery after her intestines were sucked out in a swimming pool, died in an Omaha hospital last month. Abigail's parents were with her when she died

at Nebraska Medical Center in Omaha. We wrote about Abigail in the December issue. She underwent transplant surgery in December at the Nebraska hospital to receive a new small bowel, liver and pancreas.

In December, President George W. Bush signed The Virginia Graeme Baker Pool and Spa Safety Act of 2007, according to SafeKids.net. The legislation provides incentives for states to adopt comprehensive pool safety laws that will protect children from life-threatening injuries and deaths from potentially dangerous pool and spa drains. This legislation was badly needed and long overdue. There were lots of victims like Abigail who died tragic deaths as the result of an industry that refused to correct known defects in the products it manufactured and sold.

Source: TETV.com

XIII. WORKPLACE HAZARDS

OSHA UNCOVERS A NUMBER OF REFINERY VIOLATIONS

A national audit conducted by the Occupational Safety and Health Administration (OSHA) inspectors of U.S. refineries has found 146 violations—many described as potentially life-threatening—after reviewing just 17 refineries in a dozen states. Even though only 17 of 81 targeted refineries in this country have been reviewed so far, those preliminary results have to be most disturbing. OSHA wants to expand the audit to include chemical plants. The nationwide audit was launched last year in response to decades of U.S. refinery deaths, including the massive explosion that killed 15 people and injured 170 others at BP's Texas City refinery in March 2005. It has been reported that at least 29 people have died in U.S. refinery accidents from 2005 to 2008. The National Emphasis Program aims to cover 64 more refineries in the next two years.

Inspectors have proposed \$896,300 in penalties, according to OSHA.

When the refinery program was launched last June, OSHA leaders said the goal was to reduce preventable deaths at refineries, one of the nation's most dangerous industries. OSHA says 52 employees have died in the past 15 years. Yet OSHA's own data undercounts refinery deaths because OSHA and the U.S. Bureau of Labor Statistics don't classify deaths of contract workers as "refinery fatalities." Instead, such deaths typically get counted as construction—or even janitorial—accidents. That is obviously quite misleading. Any death at the refinery, regardless of the victim's employment status, should be included in any list of fatalities.

Despite the widespread problems, about 60 refineries are exempt from the ongoing audit because of their companies' past participation in other OSHA programs. It should be noted that OSHA has few inspectors nationwide who specialize in refinery safety. In recent months, more than 300 inspectors have received crash courses of one to two weeks to assist with the National Emphasis Program. OSHA should be given the authority and resources needed to deal with the issue of safety at our nation's refineries.

Source: *Houston Chronicle*

\$2.13 BILLION SET ASIDE TO SETTLE TEXAS REFINERY ACCIDENT CLAIMS

BP PLC has set aside \$2.13 billion to settle claims arising from the fatal Texas refinery accident in 2005. This is an increase from the previously disclosed \$1.6 billion. The information was published last month in the United Kingdom oil giant's annual report. In addition, BP said it was still in talks with the Chemical Safety Board on the final recommendations to be drawn from the accident, which killed 15 workers. BP also has settled U.S. derivative shareholders' lawsuits against the company and its directors arising from incidents at its Texas refinery and at its Alaska Prudhoe Bay field.

Interestingly, BP's new chief executive, Tony Hayward, has received a dramatic increase in his 2007 bonus, which was much higher than the award granted to his predecessor in 2006. The U.K. oil giant's oil new CEO, who took over in May of 2007, was awarded a bonus of £1.26 million (\$2.5 million) for 2007, according to BP's annual report. The number compares with a £250,000 bonus for Mr. Hayward for 2006 and £900,000 the same year for his predecessor John Browne. In October, Mr. Hayward launched a wide-ranging restructuring at the company, following a difficult 2006, which included a well publicized, part-shutdown at a BP Alaska oil field. It's pretty obvious that the bonuses for these corporate bosses weren't awarded for "excellence" in safety!

Source: *Wall Street Journal*

GEORGIA INSURANCE COMMISSIONER TIGHTENS RULES ON INDUSTRIAL DUST

Industries in Georgia that produce flammable dust must now follow new safety rules imposed by Georgia's top fire official in the wake of the deadly explosion and fire that occurred at the Imperial Sugar refinery in Port Wentworth, Georgia. Insurance and Safety Fire Commissioner John Oxendine said the companies will have to draw up emergency plans, give employees evacuation training, and make regular reports to the state under the regulations issued last month. They will also have to give new attention to their dust exhaust equipment. The rules on the ventilation system of sucking the particles out of a facility have been strengthened. The new rules went into effect immediately and will remain in effect for six months. The Commissioner will take steps to make the new rules permanent. These new rules come in response to the explosion and fire in February at the refinery where 12 workers were killed and dozens more injured. The head of the federal Occupational Safety and Health Administration announced last month that federal inspections will be carried out at hun-

dreds of plants at which combustible dust is a workplace hazard. The OSHA decision also came in response to the Port Wentworth disaster.

Combustible dust standards were put into effect for the grain industry after a series of explosions in the 1980s, but OSHA declined to act on a 2006 recommendation by the U.S. Chemical Safety Board that similar standards be set up for other industries. The Chemical Safety Board's standards are included in Georgia's new regulations. The emergency rule will apply to every industrial facility in the state of Georgia that produces combustible dust, according to Commissioner Oxendine. These could include chemical facilities, food processing businesses, and tire plants, and potentially number in the thousands. All of the industries will be contacted to verify whether they come under the regulation.

Source: *Insurance Journal*

OSHA TAKES HEAT OVER RULEMAKING

The accident at Imperial Sugar refinery in Port Wentworth, Georgia, was the latest of about 300 combustible dust incidents since 1980 that have killed more than 100 workers and injured 800 more. The Occupational Safety and Health Administration, the part of the Labor Department responsible for regulating the hazard, ignored a recommendation to create a single dust-control rule, saying it already had 17 regulations telling employers how to avoid a deadly buildup of dust. In March, an oversight hearing on the subject showed how the Congress has grown weary of the Bush Administration's approach to regulatory policy, which stresses partnerships with industry and voluntary efforts to keep workplaces safe. Rep. George Miller (D-CA), who heads the House Education and Labor Committee, told OSHA director Edwin G. Foulke Jr.:

I see such an incredible lack of urgency on the part of your agency to protect workers that it is astounding. We believe the

agency has taken strong measures to prevent combustible dust hazards.

Since the explosion in Georgia, the agency has created a Web page to make it easier to find guidance material on combustible dust. The agency also sent letters alerting 30,000 employers of their responsibilities to prevent dust buildup. According to Director Foulke, OSHA is inspecting 300 facilities for compliance with rules. Dust explosions occur when fine particles, which might be from coal, sugar, plastics, wood, soap, paper, or dried blood, accumulate and ignite from a spark or other heat source. Combustible dust is prevalent in many industries, including chemical, pharmaceutical and recycling operations.

OSHA insists that the 17 rules, which cover housekeeping practices, emergency plans, ventilation, and other issues, can prevent the explosions. Foulke said that in doing its site inspections, the agency found "if employers had followed the applicable standards, they would have mitigated these hazards and prevented the explosions." Members of the committee pointed out that in 2003, three dust-related blasts took 14 lives. The companies involved paid a total of \$170,000 in fines. One facility closed, and the other two had to be rebuilt.

In 2006, the U.S. Chemical Safety and Hazard Investigation Board, an independent agency, urged OSHA to issue a single rule to address control of the dust, assessment of the hazard and worker training. William Wright, interim executive of the Board, said at the hearing that since OSHA set a grain dust standard in 1987, the agency estimates that deaths and injuries from such explosions have dropped 60%. Miller and Rep. Lynn Woolsey (D-CA), who heads the workplace protections subcommittee, wrote to Labor Secretary Elaine L. Chao the day after the sugar refinery explosion, asking her to make issuing a standard a "high priority." So far, the lawmakers have not received an answer. Chao is being criticized about the sugar plant accident

and other issues on a new pro-labor Internet site called ShameOnElaine. The nonprofit American Rights at Work in the District, whose board includes my friend, John Edwards, said it is exposing that the department isn't doing its job.

Source: *Washington Post*

NEW YORK LIFE SETTLES ERISA SUIT

A federal judge has granted final approval of a \$14 million class action settlement in an ERISA suit against New York Life Insurance Co. (NYL). The suit was brought by employees who claimed the company mismanaged its pension funds by exclusively investing billions in NYL's own mutual funds. According to the suit, the key problem with the practice was that it caused the NYL pension plans to pay investment management fees and expenses far in excess of what the plans should have paid. The suit alleged that the company knew, or should have known, that the fees were far in excess of what the plans would have been charged if they had invested in non-NYL mutual funds, which must compete for the business of large institutional investors on the basis of price.

The NYL mutual funds "never had to compete" for the business of pension plans because the plans' trustees were NYL officers who had "conflicting loyalties" and "effectively rubber-stamped" the recommendations of their investment adviser. But the investment adviser, according to the suit, was the president of the NYL mutual funds and his compensation was tied to the amount of assets under the funds' management. Apparently, he had to know that withdrawal of the pension funds' assets from the mutual funds would be "disastrous" because the mutual funds depended on the pension plans "for their sustainability and profitability."

The plaintiffs contended that "the result of these conflicts was imprudent investing and the waste of millions of dollars each year in excessive investment fees and expenses." Until the suit was filed, NYL did nothing to remedy the situation "even when the impru-

dence of their use of retail-priced mutual funds with associated excessive fees and expenses was directly brought to their attention by a third-party consultant.” The pension plan trustees hired DeMarche Associates in 1999 to conduct an “asset allocation” study for the plans. DeMarche discovered that the majority of the pension plans’ assets were invested in NYL’s proprietary mutual funds and advised the trustees that the plans could save more than \$7 million annually in fees “simply by moving their investments from the funds to NYL’s separately managed account program, which was run by the identical portfolio managers and pursued the identical investment strategies as the funds but at a fraction of their cost,” the plaintiffs team argued. But the plaintiffs’ lawyers said the trustees “did not act on DeMarche’s recommendation for 18 months, and not until after the filing of this lawsuit.”

The settlement also calls for New York Life Insurance to take steps to prevent any future breaches of fiduciary duty by the pension plan trustees. The trustees have agreed to hire an independent adviser, which will also have fiduciary responsibility to act prudently and to provide advice to the trustees about appropriate investments for each of the plans. Under the terms of the settlement, the independent adviser must be retained through May 2010. In approving the settlement, the court concluded that although the maximum recovery in the case was \$70 million, and the plaintiffs were recovering only 20% of that amount, the settlement was “fair and reasonable” in light of the significant risks that further litigation posed. The court found that “the risks of litigation could have negated or reduced any possible recovery.”

The plaintiffs’ lawyers conceded that they faced significant risks in establishing liability because the pension plans are currently “overfunded” from recent contributions by NYL. As a result, the company could argue that even if the pension plans were charged excessive fees, any loss suffered was to the plans’

surplus and did not endanger benefits funding. And for the 401(k) plans, the company could argue that even though alternative investment vehicles could have proven less costly, the use of mutual funds is generally common for 401(k) plans. The judge agreed, saying that if the case had gone to trial, and if the defendants were able to prove that use of the mutual funds “was not so deficient as to preclude their use by a reasonable fiduciary,” any recovery for the 401(k) plans “could be limited or negated.” Taking everything into consideration, this appears to be a good settlement of a difficult case.

Source: *Legal Intelligencer*

COUPLE AWARDED \$7 MILLION IN ASBESTOS LAWSUIT

A San Francisco, California jury has ordered an asbestos manufacturer to pay more than \$7 million in damages for exposing a onetime film actress and singer to the fibers that caused her terminal cancer while she was working in a home-remodeling business with her husband. The state court jury awarded Joan and Daniel Mahoney \$20 million in damages and assigned 30% of the responsibility to Georgia Pacific Corp., the only defendant in the trial. The company most likely will be ordered to pay a slightly higher proportion of the award, \$7.1 million, under the rules on shared liability under California law. The rest of the damages will go unpaid. The plaintiffs previously reached confidential settlements with other manufacturers. The verdict is one of the largest ever in an asbestos case.

The plaintiffs moved to South Lake Tahoe in the late 1960s and started a part-time remodeling business. The products they used included an asbestos compound made by Georgia Pacific to fill cracks in sheetrock. The lawsuit claimed that the company continued making the compound long after learning that asbestos could cause cancer and competitors found substitutes. The use of asbestos was stopped only after the federal government outlawed asbestos products in 1977. The

couple filed suit in 2006 after Joan Mahoney was diagnosed with mesothelioma, a type of lung cancer linked to asbestos exposure. Doctors then gave her no more than nine months to live. Currently, at age 69, she is living in pain from the disease while also caring for her husband of 42 years, who suffered a stroke last year.

Source: *San Francisco Chronicle*

COURT ORDERS STARBUCKS TO PAY WORKERS \$106 MILLION

A state court judge in California has ordered coffee chain Starbucks to pay \$106 million, which includes interest, to workers whose tips unfairly had been shared with supervisors. The court order also required that Starbucks cease letting supervisors share tips. The ruling covers more than 100,000 current and former workers, known as baristas, who worked for Starbucks in California since late 2000. The court’s order stated that the members of plaintiff class “are entitled to restitution against Starbucks in an amount equal to the amount paid out of pooled tips to shift supervisors during the class period.” Starbucks says it will appeal.

Source: *Reuters*

XIV. TRANSPORTATION

FAA LEVELS RECORD \$10.2 MILLION FINE AGAINST SOUTHWEST

The Federal Aviation Administration (FAA) issued a \$10.2 million fine—the largest in its history—against Southwest Airlines last month. The fine is for Southwest flying 46 jets during nine months in 2006 and 2007 without performing required inspections for cracks in the fuselage. Cracks eventually were found on six of the planes. The Boeing 737 jets made 59,791 flights before the airline realized in March 2007 that the inspections had not been completed. The FAA said that the airline deliber-

ately made 1,451 more flights after discovering the lapse. The agency transferred an FAA supervisor who had been overseeing Southwest to another job and has "taken appropriate action" against an unnamed employee, according to a spokeswoman for the FAA. The inspections were ordered after undetected cracks in an Aloha Airlines 737 allowed a portion of the skin to peel away in flight in 1988, killing a flight attendant.

After having discounted the problems for several days, and claiming that safety was never compromised, on March 12th Southwest grounded 41 planes, which is about 8% of its fleet. The company had 520 Boeing 737 jets at the end of last year. Nearly 200 of them are older models, the Boeing 737-300, that were supposed to undergo extra inspections for cracks in the fuselage.

Southwest, the low-fare carrier that has more domestic flights than any other airline, disclosed the missed inspections to the FAA in March 2007. The FAA has a program that encourages airlines to disclose safety problems without fear of being punished. Linda Goodrich, vice president of the Professional Airways Systems Specialists, the union that represents FAA inspectors, said many union members have come forward to complain that the agency abuses the program. They claim that "the agency has allowed (airlines) to use this system to get around enforcement actions" and that airlines have been allowed to "disclose" safety problems and escape fines even though inspectors initially discovered the problems. It should be noted that FAA regulations prohibit that practice.

Whistle-blowers working with the House Transportation Committee had produced "detailed documentation" about the problems at Southwest, according to a February 11th letter from the Inspector General for the Department of Transportation. Committee Chairman Jim Oberstar (D-MN), had asked the agency to investigate the claims. The previous high FAA fine was levied last year against TAG Aviation. That fine, \$10 million, was for operat-

ing charter flights in violation of federal law. Interestingly, airlines often pay less than the amount the FAA initially seeks. Clearly, Southwest needs to improve its safety programs, but the FAA also needs to do its job.

Source: USA Today

FAA CRACKS DOWN ON MAINTENANCE RECORDS

After the Southwest Airlines problems surfaced, the Federal Aviation Administration ordered a check of maintenance records at all U.S. airlines. The FAA's action applies to records on all planes. FAA inspectors will check to make sure the airlines have complied with orders to perform the type of structural inspections that Southwest Airlines missed on some older Boeing 737s. The first check of the airlines' maintenance records was to be done by March 28 and a full audit finished by June 30, according to the FAA. The agency was to check compliance with at least ten safety orders, called airworthiness directives, at every airline by the March 28th deadline. A full audit covering at least 10% of all safety directives is to be finished by June 30. The review will involve both examining paperwork and checking airplanes at 118 operators, according to the FAA.

Everybody isn't satisfied with the FAA's actions. However, a leading FAA critic, Rep. James Oberstar (D-MN), chairman of the House Transportation and Infrastructure Committee, called the FAA move "a positive step." In the past, he has accused the agency of being too cozy with airlines. The agency's recent strategy of relying more heavily on information from the airlines themselves leaves lots to be desired. FAA and airline officials argue that the system correctly focuses on improving safety instead of finding blame. The FAA has a duty to do everything feasible to make the airlines comply with all safety requirements.

Source: Associated Press

CRUISE LINES TO REIMBURSE PASSENGERS \$21 MILLION FOR FUEL SURCHARGES

Carnival and Royal Caribbean Cruise Lines have agreed to reimburse passengers for fuel surcharges that were not adequately disclosed. The settlement affects 300,000 bookings and will return \$21 million to people nationwide who made trip deposits as of November 15, 2007. The world's top two cruise operators announced in November they would start billing passengers \$5 per person, per day to offset rising fuel prices for voyages beginning on February 1st. Florida Attorney General Bill McCollum received more than 300 complaints about the fuel surcharge, which other cruise operators also added. Incidentally, Carnival's Holiday cruise ship sails out of Mobile, Alabama.

Source: Associated Press

LAWSUITS OVER PHILIPPINES CRASH SETTLED FOR \$165 MILLION

Insurance companies have agreed to pay \$165 million to settle lawsuits brought by relatives of those killed in a 2000 plane crash in the Philippines. The families of about 100 of the 131 people killed in the crash sued the American companies that owned the plane and leased it to Air Philippines. The plaintiffs alleged that the companies provided a worn-out plane in need of constant maintenance that the airline was incapable or unwilling to do. The case, filed in state court in Chicago, was scheduled for trial in September, but was settled in late February by Air Philippines' insurers, who negotiated on behalf of the plane's suppliers.

There is clearly a need to improve safety in developing countries, where carriers often buy aging aircraft no longer wanted by U.S. airlines. In this case, the families will get on average more than \$1 million each from the settlement. The judge must still approve disbursements from a trust fund to individual families, which will receive varying awards. The Air Philippines Boeing 737 that crashed was made in

1978 and operated for 20 years by Southwest Airlines Co.

It was alleged that the plane had cracks and a faulty altimeter when it was delivered to Air Philippines. Southwest wasn't sued because it had no role in selling the jet to the foreign carrier. The plane was purchased in 1998 by AAR Corp., an Illinois-based company that sells aircraft parts and leases planes to some of the world's largest carriers. AAR leased the plane to Air Philippines and then sold the plane and the lease to Fleet Business Credit Corp., which is now a subsidiary of Bank of America Corp. In 1999, AAR obtained an airworthiness certificate from the Federal Aviation Administration judging the plane sound enough to export to that country.

While on a commuter flight from Manila to Davao in the Philippines in April 2000, the plane crashed into the side of a hill as the pilot made a second attempt to land on the runway. All 124 passengers and seven crew members were killed. A commission appointed by the president of the Philippines blamed the crash on pilot error and found no evidence of mechanical failure. But lawyers for the families said no one will ever know what caused the crash because parts of the mangled plane were dumped in a pit and buried in concrete before they could be examined by independent experts. Donald J. Nolan, a Chicago lawyer, and Gerald C. Sterns, a California lawyer, represented the families in the lawsuit.

Source: *Insurance Journal*

CAR CRASHES ARE A LEADING CAUSE OF TEENAGE DEATH

Statistics have shown us over the years that car crashes cause a great number of teenage deaths each year. The Alabama Legislature will have an opportunity to do something during the current session that should help reduce of deaths. The following is an excellent editorial on the subject.

ALABAMA DEADLY FOR TEEN DRIVERS

Nationally, more teenagers are killed in car crashes than from any other cause of death. And in Alabama, the carnage is even more staggering. Only Wyoming has a higher death rate for teenage drivers and passengers than Alabama. Rep. Mac Gipson, R-Prattville, wants to change those troubling statistics. Gipson is sponsoring a bill that would strengthen Alabama's weak graduated drivers license law that places limitations on young drivers until they gain experience behind the wheel. According to the National Highway Traffic Safety Administration, 16-year old drivers have crash rates that are about three times greater than 17-year-old drivers, five times greater than 18-year-old drivers, and about twice the rate of 85-year-old drivers. Alabama adopted a graduated license law in 2002, but the state's law is rated as only "fair" by the Insurance Institute for Highway Safety. The institute describes an "optimal system" as having the following:

- A minimum age for a learner's permit of 16; in Alabama it is 15.
- A learner stage that lasts at least six months, during which parents must certify at least 30-50 hours of supervised driving; Alabama requires 30 hours of supervised driving, which meets the recommendation, but barely.
- A night driving restriction starting at 9 or 10 p.m.; Alabama's starts at midnight.
- A strict teenage passenger restriction allowing no teenage passengers, or no more than one teenage passenger; Alabama allows three teen passengers.

It is this last weakness in Alabama's law that may be the biggest problem. Studies have

shown that multiple teen passengers provide a major distraction for young, inexperienced drivers, raising the likelihood of accidents. A tragic example occurred last year when a car carrying seven Alabama high school cheerleaders crashed, killing three of them and injuring the others. The cheerleaders, all students at a high school near Warrior, were returning from a gymnastics event when their car left the highway and tumbled down a hill.

The Blount County coroner was quoted by the Associated Press as saying the girls were laughing and singing moments before the driver lost control on a straight stretch of road. "It looks like she was just distracted. If you can imagine a bunch of kids in a car like that, it's not hard to understand," the coroner said. Gipson's bill would address that shortcoming in the law by allowing no more than one teenage passenger and requiring that the licensed driver in the car with the GDL holder be at least 21 years old. His bill also would ban drivers with graduated licenses from using cell phones, pagers or texting tools while driving and from using an audio or audiovisual device, such as an iPod. It would double the time a person under 18 must hold a learner's license from six months to a year and ban graduated license holders from driving between 10 p.m. and 6 a.m. A similar bill passed the Alabama House last year, only to be allowed to die by the Senate. It's highly possible that several Alabama teens might be alive today if the Senate had acted responsibly by passing that legislation. The Legislature should approve Gipson's bill, and do so soon, so it does not get bogged down in late-session maneuvering. Otherwise, the carnage among teens on Alabama's highways will continue.

*Montgomery Advertiser
March 19, 2008*

Hopefully, the Legislature will pass the bill. Rep. Gipson has worked hard to get it in a position to pass. In my opinion, it is needed and should become law. If you agree, let your Senators and House members hear from you.

MORE ON THE MINNESOTA BRIDGE COLLAPSE

The Interstate 35W bridge over the Mississippi River in Minneapolis, Minnesota collapsed last August after construction workers had put 99 tons of sand on the roadway directly over two of the bridge's weakest points, according to a National Transportation Safety Board report. The Board, in the midst of a reconstruction of the circumstances of the collapse, released a diagram on March 15th showing the location of every car, truck and piece of construction equipment that was on the bridge at the time of the collapse. This diagram assigns a weight to everything on the bridge and is very detailed. Stress at one of the two weakest points on the bridge was 83% more than it could have handled, according to an interim report released earlier by the Federal Highway Administration.

It should be noted that the Safety Board has not established the cause of the collapse, which killed 13 people and injured 145. It is expected to do so by the end of the year. Investigators have previously said that because of design flaws in the 40-year-old structure, several gusset plates, steel sheets that tie girders together, were too thin. The report, which can be found on the Board's Web site, says investigators were looking into "what type of system of checks and balances would have been in place when the bridge was designed back in the 1960s." In all, Board researchers calculated a load of 1.26 million pounds, or 630 tons, including 198,820 pounds of sand at the critical spots. However, some experts say the load would not have been excessive for a well-designed bridge.

Since the collapse, highway departments have begun reanalyzing bridges before bringing in large amounts of

equipment and construction materials. The Board has hired the University of Minnesota's Department of Civil Engineering to build a 1/200th scale model of the bridge to help investigators understand the bridge's supporting structure. The bridge was "fracture critical," which meant that it had numerous parts that had no back-up. Although the design was common when the Interstate highway system was built, what are referred to as "redundant" designs are more commonly used today. A final report on the cause of the collapse is expected by the end of the year.

Source: *New York Times*

XV. HEALTHCARE ISSUES

PROBE BY THE ASSOCIATED PRESS FINDS DRUGS IN DRINKING WATER

A vast array of pharmaceuticals—including antibiotics, anti-convulsants, mood stabilizers, and sex hormones—have been found in the drinking water supplies of at least 41 million Americans. This shocking news comes as a result of the findings by an Associated Press investigation. The concentrations of these pharmaceuticals are very small, measured in quantities of parts per billion or trillion, far below the levels of a medical dose. Utilities insist their water is safe. But the presence of so many prescription drugs—and over-the-counter medicines like acetaminophen and ibuprofen—in so much of our nation's drinking water is not good news by any stretch of the imagination. It has increased concerns among scientists of long-term consequences to human health.

It was reported that members of the Associated Press National Investigative Team reviewed hundreds of scientific reports, analyzed federal drinking water databases, visited environmental study sites and treatment plants, and interviewed more than 230 officials, academics, and scientists. They also surveyed the nation's 50 largest cities

and a dozen other major water providers, as well as smaller community water providers in all 50 states. Here are some of the key test results obtained by the investigators:

- Officials in Philadelphia said testing there discovered 56 pharmaceuticals or byproducts in treated drinking water, including medicines for pain, infection, high cholesterol, asthma, epilepsy, mental illness, and heart problems. Sixty-three pharmaceuticals or byproducts were found in the city's watersheds.
- Anti-epileptic and anti-anxiety medications were detected in a portion of the treated drinking water for 18.5 million people in southern California.
- Researchers at the U.S. Geological Survey analyzed a Passaic Valley Water Commission drinking water treatment plant, which serves 850,000 people in Northern New Jersey, and found a metabolized angina medicine and the mood-stabilizing carbamazepine in drinking water.
- A sex hormone was detected in San Francisco's drinking water.
- The drinking water for Washington, D.C., and surrounding areas tested positive for six pharmaceuticals.
- Three medications, including an antibiotic, were found in drinking water supplied to Tucson, Ariz.

The situation could be much worse than suggested by the positive test results in the major population centers documented by the Associated Press. The federal government doesn't require any testing and hasn't set safety limits for drugs in water. Of the 62 major water providers contacted in the investigation, the drinking water was tested for only 28. Among the 34 that haven't been tested are: Houston, Chicago, Miami, Baltimore, Phoenix, Boston and New York City's Department of Environmental Protection, which delivers water to 9 million people. Some providers screen only for one or two pharmaceuticals, leaving

open the possibility that others are present. The investigation also indicates that watersheds, the natural sources of most of the nation's water supply, also are contaminated. Tests were conducted in the watersheds of 35 of the 62 major providers surveyed by the Associated Press, and pharmaceuticals were detected in 28. This appears to be a problem area that could be much worse than anybody knows. Governments at every level have a duty to do whatever is required to assure that the water we drink is safe!

Source: *Associated Press*

STUDY QUESTIONS UTILITY OF BRAINWAVE SURGERY DEVICE

A widely-used device that employs brainwaves to help doctors prevent patients from waking up during surgery is no more effective than an older, far less costly technique, according to a recent study of nearly 2,000 patients. The study showed the BIS device, made by Aspect Medical Systems Inc., did not help doctors prevent any more patients from waking up while under inhaled anesthesia. Anesthesia awareness occurs when patients have some degree of consciousness. Michael Avidan of Washington University School of Medicine in St. Louis and colleagues wrote in their report, published in the *New England Journal of Medicine*:

Our findings do not support routine BIS monitoring as part of standard practice. Reliance on BIS technology may provide patients and health care practitioners with a false sense of security about the reduction in the risk of anesthesia awareness. If BIS monitoring were routinely applied to all patients in the United States receiving general anesthesia, the cost of disposable electrodes alone would exceed \$360 million annually.

As many as 40,000 of the 21 million patients undergoing surgery in the United States may experience inadequate anesthesia, leading to anxiety

and even post-traumatic stress disorder if the patient regains consciousness, according to the Joint Commission on Accreditation of Healthcare Organizations. Aspect's Bispectral Index or BIS system assesses brainwaves to help doctors accurately gauge unconsciousness and adjust anesthesia. It is used in about 60% of U.S. operating rooms and is the only system of its kind approved by the U.S. Food and Drug Administration.

Apparently, there has been only a single large randomized study suggesting it worked, and yet it was enjoying widespread adoption throughout operating rooms in the U.S. and throughout the world. The research team looked for evidence of anesthesia awareness in 967 patients monitored by the BIS system and 974 people in a control group that used a long-established monitoring method—standard in new anesthesia machines—that measures the concentration of anesthesia gas exhaled by the patient.

Source: *Reuters*

XVI. ENVIRONMENTAL CONCERNS

A LOOK AT HOW THE EPA COMES UP WITH POLLUTION STANDARDS

I would be highly suspicious of anything the Bush Administration does on any front between now and when the President leaves office in January of 2009. In this regard, it's being reported that the Environmental Protection Agency is asking Congress to rewrite the Clean Air Act. The EPA has limited the allowable amount of pollution-forming ozone in the air to 75 parts per billion, a level significantly higher than what the agency's scientific advisers had urged for this key component of unhealthy air pollution. EPA Administrator Stephen L. Johnson is pushing for the rewrite of the nearly 37-year-old Clean Air Act. He wants to allow regulators to take into consideration the cost

and feasibility of controlling pollution when making decisions about air quality, something that is currently prohibited by the law. In 2001, the Supreme Court ruled that the government needed to base the ozone standard strictly on protecting public health, with no regard to cost.

The new pollution rules—one of the most important environmental decisions facing the Bush Administration in the president's final year in office—will be a major factor in determining the quality of the air Americans will breathe for at least a decade. The standards, which are aimed at protecting both public health and welfare, are designed to limit the amount of nitrogen oxides and other chemical compounds released into the air by vehicles, manufacturing facilities, and power plants. In sunlight, the pollutants form ozone.

The EPA recently set a lower but still less-restrictive limit than what the EPA's advisory committees had recommended. Democratic lawmakers, public health advocates, and the EPA's own independent advisers hit the ceiling. Hopefully, with Democrats in control of Congress, the proposal to rewrite the Clean Air Act will be unsuccessful. Nearly a year ago, the EPA's Clean Air Scientific Advisory Committee reiterated in writing that its members were "unanimous in recommending" that the agency set the standard no higher than 70 parts per billion (ppb) and to consider a limit as low as 60 ppb. EPA's Children's Health Protection Advisory Committee and public health advocates lobbied for the 60-ppb limit because children are more vulnerable to air pollution.

The EPA and other scientists have shown that ozone has a direct impact on rates of heart and respiratory disease and resulting premature deaths. The agency calculates that the new standard of 75 ppb would prevent 1,300 to 3,500 premature deaths a year, whereas 65 ppb would avoid 3,000 to 9,200 deaths annually. Under the Clean Air Act, the federal government is obligated to reexamine the science underpinning its smog standards every five years. The

agency last revised the standards in 1997, and 85 counties have yet to meet those rules. If you agree that the Bush Administration's efforts to weaken the Clean Air Act should be defeated, contact your U.S. Senators and members of the House of Representatives and ask them to oppose the efforts.

Source: *Washington Post*

SOUTHERN BAPTIST LEADERS URGE ACTION TO STOP GLOBAL WARMING

In a major shift, a group of Southern Baptist leaders now say their denomination has been "too timid" on environmental issues and has a Biblical duty to stop global warming. The declaration, signed by the president of the Southern Baptist Convention among others, was released on March 10th. It shows a growing urgency about climate change even within groups that once dismissed claims of an overheating planet as "a liberal ruse." As you may know, the denomination has 16.3 million members and is the largest Protestant group in the United States. The new position was set out in "A Southern Baptist Declaration on the Environment and Climate Change," and is most significant. The leaders say that current evidence of global warming is "substantial." Among those signing the declaration is Timothy George, head of Samford University's Beeson Divinity School in Birmingham.

Source: *Associated Press*

W.R. GRACE & CO. WILL PAY FEDERAL GOVERNMENT FOR MONTANA CLEANUP

W.R. Grace & Co. has agreed to reimburse the federal government \$250 million for the investigation and cleanup of asbestos contamination blamed for sickening hundreds of people, some fatally, in the northwestern Montana town of Libby. The settlement must be approved by a federal bankruptcy judge. According to the U.S. Justice Department, \$250 million is a record sum for reimbursement through the government's Superfund environmental cleanup program. Taxpayers

have been footing the bill for the U.S. Environmental Protection Agency's investigative and cleanup work in Libby, where the agency arrived in 1999. Expenses total \$168 million and another \$175 million in costs are likely.

Although the EPA likes the deal, U.S. Sen. Max Baucus (D-MT) called \$250 million "a drop in the bucket compared to the destruction and pain our neighbors in Libby have been through." Asbestos came from the vermiculite mine and processing facilities, a few miles from Libby, that Grace owned and operated from 1963 until the site's closure in 1990. Vermiculite was used in a variety of products and the asbestos was dispersed in a variety of ways. Workers carried it home on their clothing. Asbestos also ended up in the yards of homes where vermiculite was spread as a soil conditioner. Exposure in Libby has been blamed for lung-scarring asbestosis and for mesothelioma, a fast-moving cancer that attacks the lungs. Sen. Jon Tester (D-MT) said in a statement:

Cleaning up the mess and taking care of the Montanans poisoned by W.R. Grace will take years of hard work. It will also require responsibility from a company that knowingly turned so many Montana families into victims.

The industrial-supply company is based in Columbia, Maryland. The agreement would settle a government claim to recover expenses for past and future costs of asbestos cleanup in Libby homes, businesses, and schools. More than 215 asbestos-related deaths in Libby have been confirmed, and a clinic in the community, the Center for Asbestos-Related Disease, is following about 2,000 asbestos cases. The EPA says said the remaining cleanup work in Libby is likely to take three to five years. In 2001, the government filed a lawsuit to recover costs and in 2003, the EPA won a \$54 million judgment for cleanup costs incurred through Dec. 31, 2001. However, the money went unpaid during Grace's bankruptcy protection. The recent settle-

ment includes that 2003 judgment. Besides removing soil around homes and businesses, cleanup has included removing building insulation and debris containing asbestos. Cleanups have been completed at 954 properties, and 450 remain on a cleanup list. Still to be decided: what to do about some 700 properties that are in the Libby area and are contaminated but do not meet removal criteria.

Source: *Associated Press*

HOME DEPOT FINED \$1.3 MILLION FOR CONSTRUCTION SITE RUNOFF

As new Home Depot home improvement warehouses pop up across the country, the Environmental Protection Agency is concerned that our waterways may be deteriorating as a result. Last month, Home Depot agreed to pay 1.3 million dollars to settle alleged violations of the Clean Water Act. The violations were issued for prohibited construction site run-off at 34 new Home Depot stores. The U.S. Justice Department, the Environmental Protection Agency and the State of Colorado agreed to the settlement, which will now need to be approved by the court.

Although construction site runoff is a temporary contamination source, the impact continues long after the building has ceased. During the construction process storm-water that flows off-site carries a great deal of sediment and debris into nearby waterways. Additionally, construction runoff can discharge used oil, pesticides and solvents. Such contamination can result in swimming and fishing restrictions, decreased drinking water quality, and higher treatment costs. As a result, the Clean Water Act requires contractors to implement controls in order to preclude polluted run-off from entering waterways. According to the EPA, the Home Depot neglected to implement such controls.

Specifically, the government complaint alleged a pattern of construction runoff violations. In some instances Home Depot failed to obtain the necessary permits until after building had begun or neglected to obtain the

permits at all. Additionally, even where the necessary permits were secured, Home Depot simply did not follow them. In particular, the company was cited for failure to prepare a required plan to prevent construction runoff, lack of adequate fencing around the site, and failure to install pollution prevention mechanisms at storm drains.

In addition to the \$1.3 million fine, the agreement requires Home Depot to establish a comprehensive storm-water pollution prevention plan at each new construction site nationwide. Under the corporate-wide plan Home Depot will be required to train construction managers on federal storm water rules as well as implement a reporting system to improve management of future construction runoff issues. Additionally, the new plan will require Home Depot to appoint a company official to supervise storm water runoff compliance at all new construction sites. The Home Depot settlement is the most recent in a string of enforcement actions by the EPA to manage construction site pollution. In 2005, a consent decree was entered into with Wal-Mart for similar violations. The Wal-Mart agreement required the company to implement a storm water pollution prevention plan as well as pay a \$3 million fine.

Source: *Environmental News Service*

FEDERAL JUDGE SEEKS MORE STUDIES ON HOW TO DEAL WITH MERCURY POLLUTION

A federal judge in Maine has requested more studies on how best to deal with mercury pollution in the lower Penobscot River caused by the former HoltraChem chemical manufacturing plant in Orrington, Maine. Senior U.S. District Judge Gene Carter concurred with a report filed in January that concluded mercury downriver from the plant site poses substantial risks to people and wildlife. Judge Carter also directed a court-appointed research team to conduct additional studies to determine whether it's better to attempt to remove the mercury, or to leave it alone and let

nature take its course. The chemical plant was last owned by HoltraChem, which ran it from 1993 until the company went out of business in 2000. Another company, Mallinckrodt Inc., based in St. Louis, Missouri, owned the facility from 1967 to 1982, and it has been held liable for the pollution because it is the only former owner still in business.

Judge Carter's decision is the latest in a string of recent legal defeats for Mallinckrodt, which sought in court filings to delay beginning the next phase of the study. Mallinckrodt officials said the company already spent more than \$30 million to clean up the site and worked cooperatively with state and federal environmental agencies on that ongoing project. In his latest ruling, Judge Carter wrote that the main thrust of the next phase of the cleanup should determine whether it is "necessary and feasible" to clean up the mercury—which would likely carry a huge cost—rather than allow the river to naturally flush the contaminants over time. It will be most interesting to see what the new studies find and what is recommended.

Source: *Claims Journal*

UTAH TOWN SUES OVER GAS STATION LEAK

A gas station leak that has spilled 20,000 gallons of gas under downtown Gunnison, Utah, has caused a great number of problems for homeowners and businesses. Gunnison City, a downtown bank, a local theater, and more than a dozen families have filed suit over the massive gas leak. The spill was described as a catastrophe that caused monetary damage and potential health issues. The lawsuit was filed in a Utah state court.

The plaintiffs contend that the company hid the 20,000-gallon leak rather than report it promptly, as required by law. As a result, the Top Stop and associated companies added to the community's injuries, according to the suit. The spill has caused businesses to close, families to be displaced, and the downtown area to be torn up for

pumps and drains and cleanup equipment that may be in place for another decade. It's said that the underground leak has fouled parts of three city blocks with enough gasoline to fill two tankers. It's reported that a number of homes are now "completely uninhabitable" and may never be usable again. The fumes contain cancer-causing benzene, which may not emerge for decades as a health issue in the people who have been exposed.

Source: *The Salt Lake Tribune*

INSURERS MUST PAY TO COVER COSTS OF PCB CLEANUP

A jury has determined that nine insurance companies should cover the costs assessed to the former Appleton Papers Inc. for cleanup of the industrial chemicals PCBs in the Lower Fox River, which is in Wisconsin. After a five-week trial, the jury determined that the insurance policies in effect from 1979-85 covered property damage caused by the discharge of the industrial chemical pollutants polychlorinated biphenyls (PCBs). Columbia Casualty Co. of Chicago sued in 2005, claiming its policy did not cover PCB damage and that the paper company didn't give the insurance company timely notice it was responsible for cleanup costs.

Eight other insurance companies joined the lawsuit. The insurance companies could be required to pay from \$550 million to \$730 million if the jury's decision stands on appeal and if it is determined that Appleton Papers' responsibility is that much. Six other paper mills have been ordered by the U.S. Environmental Protection Agency and the state's Department of Natural Resources to present a design plan for dredging and capping PCB-contaminated sediment from the river.

Source: *Insurance Journal*

OKLAHOMA POULTRY FARMERS AWARDED \$21 MILLION

A six-year battle between Oklahoma poultry farmers and OK Industries Inc. has resulted in a \$21 million jury

award for the farmers. The action brought in the U.S. District Court of Eastern Oklahoma contended that the company had violated the Packers and Stockyard Act. Specifically, plaintiffs claimed the company constituted a monopsony in the area of eastern Oklahoma where it operated and imposed negative pricing and other procedural practices to their detriment. A monopsony is similar to a monopoly except it is where sellers have only one buyer. The plaintiffs originally lost at trial, but the Court of Appeals for the Tenth Circuit reversed the ruling and sent the suit back for a second trial. OK Industries may appeal the award, which would take the case back to the appeals court.

Source: *Class Action Reporter*

OKLAHOMA GAS ROYALTIES CLASS CERTIFIED

An Oklahoma court has certified a class of plaintiffs in a lawsuit filed against Anadarko Petroleum Corporation. The class includes all royalty interest owners in Oklahoma wells where Anadarko is or was the operator, working interest owner, or lessee and relates only to payment of hydrocarbons produced from those wells since 1985. The plaintiffs claim the international gas corporation wrongfully considered the costs associated with compression, gathering, dehydration, and processing in computing their royalties. It appears, considering the recent concerns over not taking these issues into account when selling to end-consumers, the gas corporations may be trying to shift the costs to individuals on both sides of the pump. It will be interesting to see how this case develops.

Source: *Class Action Reporter*

XVII. THE CONSUMER CORNER

THE WORST CARS OF 2008 ACCORDING TO CONSUMER REPORTS

Consumer Reports has released its annual list of the worst cars of 2008. Over 260 vehicles were compared in this year's evaluation. Once again, American SUVs dominated the field, although there were a number of Toyota models, usually the strong players, at the bottom of the field as well. The worst cars are as follows:

- **Jeep Wrangler Unlimited**—The Wrangler Unlimited was characterized by its poor ride and handling, as well as its subpar fuel economy, fit, and finish.
- **Hummer H3 five-cylinder**—Poor performance and fuel economy as well as a low rating for handling and reliability ensured the Hummer H3 was at the bottom.
- **Jeep Liberty Sport**—Rated poorly for fuel economy, NVH levels and fit and finish.
- **Chevrolet Aveo5**—The Aveo5 only suffered from poor acceleration and handling but compared to its rivals the South Korean hatch was the worst performer.
- **Dodge Nitro SLT**—One of the worst cars in the field, the Dodge Nitro SLT was rated as having poor ride, handling, braking, NVH levels and fuel economy.
- **Toyota FJ Cruiser**—A work horse SUV that requires premium fuel and suffers from poor fit and finish and subpar ride and handling.
- **Toyota Yaris**—The Yaris is one of the most popular subcompacts in the world but its poor acceleration and vague steering meant it was one of the worst cars in this year's comparison.
- **Suzuki Forenza**—The Suzuki Forenza was rated poorly because of

its inadequate acceleration, fuel economy, ride, and low results in the IIHS side-crash result.

- **Jeep Patriot Limited**—Another Jeep model made the list of worst performance, once again for poor acceleration, engine noise, driving position, visibility, front-seat comfort and fit and finish.
- **Chevrolet TrailBlazer LT**—Poor handling, braking and fuel economy ensure the Chevrolet TrailBlazer is at the bottom of the list.
- **Mercury Grand Marquis**—The aging Grand Marquis rounds out the list of the 11 worst cars of 2008, and was picked because of its rough sounding engine, poor ride and fuel economy and low IIHS side-crash result.

Source: *Consumer Reports*

THE TOP FIVE HIDDEN HAZARDS IN THE HOME

The Consumer Product Safety Commission released the top five hidden home hazards a few weeks back. It's good to know what to look for and guard against and the list is certainly worth paying attention to. Each year over 33 million people suffer injuries related to consumer products in the home. Unfortunately, the hazards are sometimes hidden or go unnoticed by families in the home environment. The following are the hidden hazards listed by the CPSC:

- **Magnets**—since 2005 there has been one reported death, 86 reported injuries and about 8 million magnetic toys recalled.
- **Recalled Products**—each year there are about 400 recalls including toys, clothing, children's jewelry, tools, appliances, electronics, and electrical products. You can get free recall notices at www.cpsc.gov.
- **Tip-Overs**—there are an average of 22 deaths reported each year from tip-over accidents. In 2006 there were 31 deaths and about 3,000

injuries. Furniture, appliances and Television sets can tip over and crush young children. We have handled cases where adults were killed by tip-overs involving ranges.

- **Windows & Coverings**—there are an average of 12 reported deaths annually from window cords. Window falls cause an average of nine deaths and an estimated 3,700 injuries to children younger than ten years old each year.
- **Pool & Spa Drains**—there have been deaths and injuries that we have written about in previous issues. This major problem continues because of the lobbying efforts by the swimming pool and spa industry.

If you want more information on these hazards, you can go to the CPSC Web site, www.cpsc.gov.

Source: CPSC

SOME TRAILER BRANDS MORE TOXIC

Federal health officials have released the first brand-specific information about which trailer homes provided to Gulf Coast hurricane victims had the highest levels of toxic fumes. Trailers made by Gulf Stream, Keystone, Pilgrim and Forest River each showed higher levels of formaldehyde fumes than the other brands. A study released by the U.S. Centers for Disease Control and Prevention found air samples from those trailers were more than four times what is found in newer U.S. homes. Last month, CDC officials urged that Gulf Coast hurricane victims be moved out of their government-issued trailers as quickly as possible after tests found toxic levels of formaldehyde fumes.

Source: *Associated Press*

IRS WARNS OF PHISHING DANGERS

The Internal Revenue Service is warning people about the dangers of Internet “phishing” by criminals looking for confidential financial information. This tops the annual list of

scams people should be aware of. Officials say people also shouldn’t fall for predators posing as IRS agents asking for information needed for their rebate. The payment will be sent out automatically to anyone filing a return. Acting IRS Commissioner Linda Stiff told Congress last month that people have forwarded thousands of e-mails to the agency, reflecting more than 1,500 different schemes. Thieves use information to empty victims’ bank accounts, run up credit card charges or apply for loans in the victims’ names. A taxpayers advocate is urging the IRS to take a coordinated approach on identity theft.

Source: *Associated Press*

NEW CONSUMER ORGANIZATION FORMS IN ALABAMA

For more than twenty years, automobile insurance companies have been accused of abusing policyholders relating to a practice called “steering.” In fact, there have been lawsuits filed over the practice. The “steering” of customers by insurance companies away from automobile repair shops and/or glass shops is an illegal business practice. All body shops want to be on the “approved list” of an insurance company and that’s not a bad thing. However, some insurance companies require shops to agree to perform repairs in accordance with the insurance company’s guidelines. Some independent body shops believe this practice can result in the customer’s vehicle being repaired in an unsafe manner or not being put back to the standard actually required in the contract between the insurer and the policyholder. But the practice of “steering” can save insurance companies money. A consumer organization has been formed in Alabama to help educate consumers about “steering” and to deal with issues relating to body shops in general.

Collision Repairs for Consumer Choice (CRCC), which is based in Northport, Alabama, hopes to educate vehicle owners and to help them make informed decisions regarding repairs of

their vehicles. Consumers must understand that most body shops view the insurance company as the customer because it has the checkbook. There have been instances where body shops performed repairs, but covered up hidden damage. There have also been reports of vehicles not being repaired in a satisfactory or safe method. Consumers have been conditioned to let the body shops and insurance companies negotiate the repair transaction, leaving the consumer pretty much out of the loop. The following are some questions vehicle owners may want to ask the body shop or their insurance agent prior to having repairs done:

- Have any oral or written agreements been made to use discount parts and/or labor with any outside entity for the repairs to the vehicle?
- Have any oral or written agreements been made with any outside entity that may alter professional recommendations concerning the needed repairs to the vehicle?
- Will the body shop provide a copy of any written agreement that they have with the insurance company handling the claim?
- Should only original equipment manufacturer (OEM) parts be used?
- Are “after market,” non-OEM, and used parts the same as the parts on the damaged vehicle?
- Will the body shop provide a written opinion concerning the use of OEM parts to repair the vehicle?
- Does the body shop install used or salvaged suspension parts to repair vehicles?
- Does the body shop install used air bags, seat belts, or other safety equipment when repairing vehicles?
- Does the body shop install any used or salvaged frame and structural parts?
- Does the body shop install any used or salvaged weld-on structural sections or body panels?

- Will any parts or processes used in the repair of the vehicle alter or void any existing warranties?

These may be helpful questions for any person who—because of an accident—needs repairs to a vehicle. For more information about this new consumer group or to answer any additional questions, you can contact the CRCC at crccal@bellsouth.net.

Source: CRCC News Release

MAKER OF AIRBORNE SETTLES SUIT ON CLAIMS

The maker of Airborne—the herbal supplement once claimed to help fight off colds—will pay \$23.3 million to settle a class action lawsuit brought against the company for false advertising. The Center for Science in the Public Interest (CPSI), one of the groups that joined the lawsuit, a non-profit advocacy group, says the company will refund money to consumers who bought Airborne's product. It will pay for advertisements in major publications instructing consumers how to get refunded, the report added. CSPI Senior nutritionist David Schardt has this to say:

There's no credible evidence that what's in Airborne can prevent colds or protect you from a germ environment. Airborne is basically an overpriced, run-of-the-mill vitamin pill that's been cleverly, but deceptively, marketed.

According to the company's Web site, Airborne was created by a second-grade school teacher, Victoria Knight-McDowell, who "studied the benefits of herbal therapies used in Eastern Medicine." The site says Airborne "boosts the immune system with seven herbal extracts and a proprietary blend of vitamins, electrolytes, amino acids and antioxidants." Airborne Inc., Airborne Health Inc. and Knight-McDowell Labs were among the defendants in the lawsuit, filed in the Central District of California in U.S. District Court. A hearing to consider final approval of the settlement is scheduled for June

16th. I must confess that I really believed Airborne worked in helping avoid colds, but looking back, I realize it has little effect.

Source: *Wall Street Journal*

CREDIT CARD DATA STOLEN FROM U.S. SUPERMARKET CHAIN

It was reported last month that a computer hacker stole thousands of credit card numbers after breaching security at two U.S. grocery store chains owned by Belgium-based Delhaize Group SA. Nearly 2,000 cases of fraud have been linked to the breach, but no personal information such as names or addresses was accessed when the hacker broke into the Hannaford Bros. stores in Massachusetts, New England and New York, and Sweetbay customers in Florida, Hannaford said in a statement. It was reported in Boston that 4.2 million credit and debit card numbers were stolen. Hannaford, headquartered in Scarborough, Maine, said it became aware of unusual credit card activity on Feb. 27 and began an investigation. It said the data was illegally accessed during the credit card authorization process.

There are 165 Hannaford stores in the U.S. Northeast and 106 Sweetbay supermarkets in Florida. This breach is the latest at a big U.S. retailer and comes after U.S. retail group TJX Cos Inc. disclosed last year that data from 45.7 million credit and debit cards were stolen by hackers over a period of 18 months, as well as personal information for 451,000 people. A group of banks later asserted in court documents that the number of consumer accounts that were affected was closer to 94 million, a charge Massachusetts-based TJX denied. Obviously, crimes of this sort can be extremely damaging to individuals whose identity and information is stolen.

Source: *Insurance Journal*

CONSUMER REPORTS CAUTIONS ON NEW-CAR EXTENDED WARRANTIES

Most folks who buy a new car often-

times will also buy an extended warranty. *Consumer Reports* surveyed 8,000 of its readers about extended warranties purchased on new 2001 and 2002 vehicles. About two-thirds of them said the extended warranty did not pay off. The extended warranties cost on average \$1,000, but only provided an average benefit of \$700. That's a net loss of \$300. Forty-two percent of the people in the survey didn't use the extended warranty at all, mainly because they didn't need repairs or because the manufacturers' standard warranty covered the repair.

If you're buying a new car, *Consumer Reports* says your best bet is to buy a vehicle with a good record of reliability, so that you can skip the extended warranty. I suggest letting *Consumer Reports* help you find a reliable vehicle. It predicts the reliability of new cars based on its subscriber survey, which covers more than a million vehicles. This year Honda came out on top as the most reliable vehicle manufacturer overall. I have never believed an extended warranty purchase was a good idea. I agree with the recommendations from *Consumer Reports*.

Source: *Consumer Reports*

SOME HANNAH MONTANA PRODUCTS CONTAIN HIGH LEVELS OF LEAD

The Center for Environmental Health says some Hannah Montana vinyl products that were manufactured in China contain high amounts of lead, *CBS News* reports. Charles Margulis of the independent California lab conducted a study in which he purchased and tested 28 Hannah Montana products and found nine to contain high levels of lead, he told CBS. The paint and vinyl of five products had levels higher than federal standards permit, according to the center. The other four products exceeded the level set for toys by The American Academy of Pediatrics. A "Girls Rock" backpack from Walmart.com and a "Secret Star" wallet from Toys 'R Us had 1,800 parts per million to 8,300 parts per million, according to the lab. That amount is at least triple the federal standard of

safety for lead in paint. Disney officials denied their products have high concentrations of lead.

Source: *Associated Press*

REEBOK TO PAY RECORD FINE FOR TOXIC BRACELETS

Athletic shoe and apparel maker Reebok has agreed to pay a \$1 million fine for importing and distributing charm bracelets that contained toxic levels of lead and resulted in the death of a four-year-old boy. The civil penalty is the largest ever for a violation of the Federal Hazardous Substances Act and follows a 2006 recall of 300,000 of the Chinese made bracelets. The previous record fine of \$600,000 was paid by Winco Fireworks in 2005 for importing dangerous fireworks from China. The bracelets were provided as free gifts by Reebok International Ltd. with the purchase of various styles of children's footwear. In March 2006, the company learned that a four-year-old boy from Minneapolis died after swallowing the bracelet's heart-shaped pendant. There were no other deaths or injuries reported, according to the CPSC. Acting CPSC Chairman Nancy Nord said in a release: "This civil penalty sends a clear message that the CPSC will not allow companies to put children's safety at risk."

The Canton, Massachusetts-based company issued a notice in April 2006 that said it was recalling about 510,000 pendants that were distributed worldwide beginning in May 2004. While the Reebok recall was announced two years ago, problems with Chinese exports continued in 2007. There were a number of high-profile recalls of potentially deadly products made in China last year including toothpaste, other toys tainted with lead, and pet food that contained a toxic chemical. Adidas AG acquired Reebok in 2006 in a \$3.8 billion deal that helped the German company expand in the U.S. to better compete with Nike Inc. and Puma AG.

Source: *MSNBC*

XVIII. RECALLS UPDATE

GM RECALLS AUTOMOBILES

General Motors Corp. is recalling more than 207,500 Buick and Pontiac vehicles because of an engine defect that could cause oil leaks and lead to fires. The recall applies to Buick Regal and Pontiac Grand Prix vehicles with 3.8 liter supercharged V-6 engines, built between 1997 and 2003. According to GM, drops of engine oil deposited on the exhaust manifold might ignite into fires if drivers brake hard. It advised owners to park their cars in the open, and not in a garage or enclosed location. The automaker has received reports of five minor injuries and one moderate injury linked to the engine fires. Owners of vehicles covered by the recall have been sent notices and can have their cars inspected at a dealership free of charge.

FORD RECALLS ABOUT 100,000 F-SERIES TRUCKS

Ford Motor Co. is recalling about 100,000 of its F-Series trucks because a weld on the driver's front seat back could crack. The recall affects 2008 models of Ford's F-250 through F-550 Super Duty trucks. Ford says that no injuries have been reported.

POLARIS INDUSTRIES RECALLS ATVs

Polaris Industries Inc., of Medina, Minnesota, has recalled about 11,300 Select "Outlaw IRS" ATVs, Model Year 2006-2008. A retention bolt can come loose causing the rear wheels to lock up, which poses a risk of serious injury to the rider. The firm has received 11 reports of loss of control, including one rider who suffered a strained leg muscle. The recall involves select 2006-2008 Polaris "Outlaw" ATVs with Independent Rear Suspension (IRS). The affected models are: 2006 OUTLAW 500 "IRS", 2007 OUTLAW 500 "IRS",

2007 OUTLAW 525 "IRS", 2008 OUTLAW 525 "IRS". The model name is printed on decals located on either side of the fuel tank.

The ATVs were sold at Polaris dealers nationwide from January 2006 through January 2008 for between \$6,900 and \$7,400. Consumers should stop using the recalled ATVs immediately, and contact any Polaris ATV dealer to schedule a free repair. Polaris has notified registered consumers directly about this recall. For further information, contact Polaris toll-free at (888) 704-5290 or visit the company's Web site at www.polarisindustries.com.

COMBI USA RECALLS CHILD CAR SEATS

Manufacturer Combi USA is recalling 67,000 child car seats because federal tests show the seats might separate from their bases in front-end collisions. The Fort Mill, South Carolina-based company says it has received no reports of injuries involving the recalled seats. In a letter to consumers, the company says the recall involves its Centre, Centre ARB and Shuttle seats, as well as the travel systems containing the Centre and Shuttle seats. The recall covers seats produced between October 2005 and December 2007. Consumers are being asked to contact the company to obtain a free retrofit kit on its Web site or by calling 1-800-543-7734.

JCPENNEY RECALLS COOKS DEEP FRYERS DUE TO FIRE AND BURN HAZARDS

JCPenney has recalled about 27,000 Cooks Deep Fryers. The deep fryer has a faulty heating element which can cause it to overheat, posing a fire and burn hazard to consumers. JCPenney is aware of five incidents involving the deep fryers, including one report of a minor burn and three reports of damaged countertops. The Cooks deep fryer has a brushed stainless steel exterior, a wire mesh basket with a handle, a lid with a window and black handles. The deep fryer has a 1/3-gallon capacity. "Cooks" is stamped on the side of the deep fryer. Model

number 22016 is printed on the bottom of the deep fryer. JCPenney's stores sold the fryers nationwide by catalog and at <http://www.jcp.com> from August 2007 through January 2008 for about \$50.

MAGNAMAN MAGNETIC ACTION FIGURES RECALLED

Toy distributor Mega Brands Inc. has recalled about 2.4 million Chinese-made toys, because small magnets could fall out and cause internal damage. These tiny magnets could fall out of the toys and be swallowed or inhaled by children. If more than one magnet is swallowed, they can attach to each other and cause intestinal perforation, infection or blockage, which can be fatal. Mega Brands is recalling 1.1 million Magtastik and Magnetix Jr. preschool toys. The company and the Consumer Product Safety Commission have received 19 reports of magnets falling out of these toys. In one incident an 18-month-old boy put a magnet in his mouth, but it was not swallowed. In another, a three-year-old boy needed medical treatment to remove a magnet from his nasal cavity. The recall also includes about 1.3 million MagnaMan magnetic action figures. The company and commission have received 25 reports of magnets falling out of the figures. No incidents involving magnets from the action figures have been reported.

In March 2006, Mega Brands recalled 3.8 million Magnetix magnetic building sets because one child died and four others were seriously injured after swallowing tiny magnets in the toys. About a year later, in April 2007, this recall was expanded to include an additional 4 million Mega Brands magnetic toys. Monday's recalled products were sold at toy stores around the country, including Wal-Mart, Target, Toys "R" Us and Kmart between January 2005 and December 2007. For details on the recall, or on how to return the toys and receive a free replacement, consumers can call 800-779-7122. Information is also available at megabrands.com or cpsc.gov.

AIR COMPRESSORS AT ADVANCE AUTO PARTS RECALLED

About 64,000 Chinese-made portable air compressors sold at Advance Auto Parts stores are being recalled due to fire and electrical-shock hazards, according to the U.S. Consumer Product Safety Commission. The agency said the Strike Force air compressors, supplied by All-Power America in City of Industry, California, had motors that could overheat and ignite the protective cover, posing a fire hazard. The CPSC also said the cover might not prevent internal components from being touched, posing an electrical-shock hazard. No injuries have been reported, but there have been four reports of fires. The recall involves some of the air compressors sold at Advance Auto Parts stores nationwide and online from October 2006 through December 2007 for about \$90. The CPSC says consumers should stop using the affected air compressors and return them to any Advance Auto Parts store for a full refund.

PROGRESS BRAND LIGHT FIXTURES RECALLED

The U.S. Consumer Product Safety Commission announced the recall of about 1,000 Progress brand outdoor ceiling light fixtures due to a safety hazard. The importer of the Chinese-made product, Progress Lighting of Greenville, South Carolina, initiated the voluntary recall after learning a weld that affixes a mounting bracket to the ceiling pan can fail, causing the fixture to fall and possibly injure people. Progress Lighting said it has received six reports of fixtures falling. Only Progress Lighting ceiling-mounted outdoor light fixtures with model numbers P5526-20 and P5526-44 are included in the recall. The light fixtures have three flame-shaped lights inside a beveled glass and solid frame. "Made in/Hecho En/Fabrique Aux China" and the model numbers are printed on the packaging. The light fixtures were sold nationwide from January through

November 2007 for about \$200. Consumers can contact Progress Lighting at 866-418-5543 to schedule a free repair.

GAS CONNECTORS RECALLED

About 50,000 LDR 1200 Series gas connectors, manufactured in China and imported by Chicago-based LDR Industries Inc., have been recalled because they can leak propane or natural gas. This poses a risk of fires or explosions. No incidents have been reported. The 1200 Series Gas Connectors were sold at hardware stores in Alabama, Texas, Louisiana, Oklahoma, Mississippi, Arkansas, Tennessee and Florida between August and September 2007. The recalled LDR series 1200 gas connectors have 3/8 inch fine thread nuts attached. The connectors are used primarily with gas space heaters. The brass nuts are gold colored while the stainless steel tube is silver colored. Consumers should immediately stop using the appliance with the recalled gas connectors. Only a qualified professional, such as a plumber, heating contractor or gas company technician, should check the connectors and replace them. Contact LDR Industries or the place of purchase for instructions on returning the connectors for a full refund. For additional information, contact LDR at (800) 545-5230 ext. 2345 or visit the firm's Web site at www.ldrind.com.

XIX. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

TOM METHVIN

Tom Methvin, a native of Eufaula, Alabama, graduated from the University of Alabama with a degree in Corporate Finance in 1985. He then earned his law degree from Cumberland School of Law in 1988. Tom's family has been involved in the practice of law in Alabama for

over two hundred years. Tom, who says he always wanted to be a lawyer, began his legal career at Beasley Allen in 1988 representing victims of consumer fraud. In 1998, Tom became Managing Shareholder of the firm and continues to hold that position.

Tom has been a very active member of the Alabama State Bar, serving on the Board of Bar Commissioners for nine years, the Executive Council for two years, and serving as Vice President of our Bar in 2005. Tom will be installed as President-Elect at the July 2008 Annual Meeting of the Alabama State Bar Association, and will assume the office of President of the Alabama State Bar in July of 2009.

Tom is a Fellow in the Alabama Law Foundation and a charter member of the Atticus Finch Society. He is also President of the Montgomery Cumberland Law School Club. He serves on the Finance Committee for the Access to Justice Commission, which was formed by the Chief Justice to find new ways to provide access to justice for the poor in Alabama. Tom is a former President of the Montgomery County Bar Association, former President of the Montgomery County Trial Lawyers Association, and serves on the Executive Committee of the Alabama Association for Justice.

Tom currently serves on the Boards of the following charitable organizations: Let God Arise Ministries, a prison ministry; Brantwood Children's Home, a home for abused and neglected children; the Center for Progress and Opportunity, which explores ways to expand opportunity for all underprivileged Americans; and the Cystic Fibrosis Advisory Panel, which helps fight the terrible disease of CF.

Tom, who became a born again Christian in September of 1996, currently attends Pike Road Baptist Church. Tom says this decision really made a difference in his life, as well as in the lives of his family members. He knows that we must give God the glory for everything that happens in our life and that we must trust in him completely. Tom recently shared his testimony with a group of several hundred

lawyers at our firm retreat prayer breakfast. That was an inspiration for others to do the same. In his free time, Tom spends time with his wife and two sons, either doing lake activities or hunting. It is hard to believe that Tom has been with the firm for 20 years.

MICHELLE BAILEY

Michelle Bailey, who has worked as a temp at the firm since last August, was hired as a full time Clerical Assistant this past January. Michelle spends the majority of her time researching information for the Beasley Report. She also performs other duties as needed. Michelle, who graduated from the University of North Alabama in Florence, Alabama with a Bachelor of Science degree in 1999, enjoys baking, sewing, reading and spending time with her ten-year-old son. We are pleased to have Michelle with us and she has already proved herself to be a hard worker. I am confident she will be a valuable addition in her new role to our firm.

ROSEMARY MULLIN

Rosemary Mullin is one of our veterans, having been with our firm for sixteen years. She is currently a legal secretary for Dana Taunton and Graham Esdale in our Personal Injury/Products Liability Section. Rosemary came to the firm as a word processor and database entry clerk before moving up to her current legal secretary position. She has three children, Jessica, Lindsay and Patrick, and five grandchildren. Her latest granddaughter was born just last month and grandchild number six is due in August! Other than spending time with her grandchildren, Rosemary is an active member at Frazer Memorial United Methodist Church. One of her most memorable ministries was a trip to Paraguay to assist in building a school in one of the local barrio neighborhoods. Rosemary is a dedicated employee and a very hard worker. She is a definite asset to the firm and we are blessed to have her with us.

BECKY LAMB

Becky Lamb has been with the firm since January 2006 as a clerical assistant to Roger Smith in our Mass Torts

Section. Due to the firm's prominent role in the Vioxx settlement, Becky's duties vary, but she says there is never a dull moment. Becky, who graduated from Troy University in December 1999 with a Bachelor of Science Degree in Psychology and Human Services, has a five-year-old daughter, Lauren, who attends Pre-K at Highland Home School. Becky is a very good employee and we are fortunate to have her with us.

FERNANDO MORGAN

Fernando Morgan came to work at the firm over four years after he entered law school. He started in our Consumer Fraud Section but last December, was moved to New Client Intake. In this position, Fernando receives all calls from potential clients from every Section of the firm except for Mass Torts. He gathers the initial information from the potential new clients and gets the information to the lawyer who is assigned to the case. This is a critically important function and Fernando has performed well.

Fernando recently completed law school at Faulkner University's Thomas Goode Jones School of Law and passed the Alabama Bar. He is looking forward to practicing law soon. Fernando and his wife, Stephanie, have two children, a 20-month-old son and a three-year-old daughter. He enjoys traveling with his family, fishing and reading. In fact, Fernando also likes to write books and hopes one day to get published. Fernando has been a very good employee and has done an outstanding job for the firm. I am confident he will be a very good lawyer.

XX. SPECIAL RECOGNITIONS

FCA GETS THE JOB DONE

The Fellowship of Christian Athletes does a tremendous job of getting the Gospel message out to athletes and coaches nationwide. The saving message of Jesus Christ reaches young

folks who might never have the opportunity to hear it except for the efforts of the FCA. The FCA is hard at work in Alabama. Throughout the state, FCA Huddles at colleges, high schools, and junior high schools are in place, with more in the process of being added. Since January, the FCA has shared the gospel with over 20,000 students in school assemblies and FCA events throughout the state. As a result, there have been over 500 professions of faith so far this year. It's vitally important to keep the FCA on the battlefield for the souls of our young folks. Accepting Jesus Christ as his personal savior is much more important to a five-star running back in Alabama than his scoring 1,000 touchdowns. That profession of faith is the key to eternal life and that's a fact. What they do has made me a faithful supporter of the FCA. If you aren't aware of the work done by the FCA, you can go to their Web site, www.fca.org, for more information.

TROPHY STAYS IN ALABAMA FOR THE SECOND STRAIGHT YEAR

I am pleased to report that Grant Enfinger won the 32nd annual Rattler 250 in our firm's race car. Grant led the opening laps, went to the back and then charged to the front to hold off Wayne Anderson, a very good driver, for the win at the South Alabama Speedway in Opp, Alabama. Concerning his win, Grant says:

It didn't go how we expected. We were fast ever since we unloaded. This race means so much more than just a 100 lapper. We finally got it to pay off. We had a good car at the [Snowball] Derby but things didn't work out.

The win was the first for Grant since he won at Pensacola two years ago. He had come very close in a number of races, which makes this win extra special. I predict many more for Grant this year. We are all very proud of him.

XXI. SOME CLOSING OBSERVATIONS

Since we have just celebrated what I consider to be the most important time of the year for my family, I asked Leigh O'Dell to write a special report on Easter for this issue. Fortunately, she agreed to do so and I am including it for your edification.

We just celebrated Easter. For many, Easter can be about the Easter bunny, Easter egg hunts, or Sunday lunch with family. But Easter is so much more than those things. Easter is the celebration of the sacrificial death and triumphant Resurrection of the Lord Jesus Christ. There is no more important day in human history. There is no more important day we celebrate each year.

Why is Easter so important? All of us, no matter how well-intentioned, fall short of God's standard of how we should live our lives. We are sinners, and our sin separates us from God. Because God desires for us to be forgiven of our sins, to enjoy a right relationship with Him, and to have the hope of heaven with Him for eternity—because of His great love for us, God sent His Son, Jesus, to be the sacrifice for our sins. Jesus endured the cross, paid the penalty for our sins, so that anyone who believes in Him might not perish but have everlasting life. (John 3:16) There is no other way, no other name, by which we can be saved. (Acts 4:12)

This free gift is available for anyone who would receive it. A person does not need to do more good works than bad works. It is by God's grace that we can be saved through faith in Jesus. (Eph. 2:8). It also doesn't matter what we have done in our past. No sin is too big to be forgiven. The penalty for our sins was paid in full by the blood of Jesus shed at

the cross. (Eph. 1:7). Someone explained God's grace this way recently: God's Riches At Christ's Expense.

Easter is also a celebration of Jesus' triumph over the grave and death. Jesus not only gave His life on the cross and was buried, but on the third day He rose from the dead. Christ triumphed over the grave, sin, and the devil. Now, Jesus is enthroned at the right hand of God, reigning preeminent over our world today. Christ lives! And Christ reigns! At a time when so much of the world seems to be in turmoil and there seems to be so much uncertainty, it is very encouraging to remember that Jesus reigns and rules today.

If we acknowledge we are sinners and ask Jesus to forgive our sins and to be the Lord of our lives, each one of us can live in the freedom and peace of forgiveness, in the power of His resurrection, and with the hope of heaven for eternity. We can enter into a personal relationship with Jesus. For those of us who have done that, Easter is a time to humbly thank the Lord for His great sacrifice and to celebrate His grace in our lives. What a sacrifice He made on our behalf! Maybe you have never acknowledged that you are a sinner and asked for Jesus to forgive you. You need not wait any longer. God loves you. He is waiting and willing to bear your prayer for forgiveness and for eternal life with Him. You need only ask. No fancy prayer is needed. Just share with Him in simple words. He knows your heart. By placing your faith in Jesus, you can have peace with God. (Rom. 5:1). You will never make a more important decision. There is no greater blessing. This old hymn describes Easter best:

*Here is love vast as the ocean
Loving kindness as a flood
When the Prince of Life, our
ransom
Shed for us His Precious blood*

*Who His love will not remember
Who can cease to sing His praise?
He can never be forgotten
Throughout heav'n's eternal days.*

*On the mount of crucifixion
Fountains opened deep and wide
Through the floodgates of God's
mercy
Flowed a vast and gracious tide*

*Grace and love like mighty rivers
Poured incessant from above
Heaven's peace and perfect justice
Kissed a guilty world in love.*

*It is truly humbling to think God
loves you and me that much. Take
a moment this Easter season to
thank Him and if you have not
already done so, to respond to His
invitation at the cross.*

*Leigh O'Dell
March 25, 2008*

FAVORITE BIBLE VERSES FOR THE MONTH

I have really enjoyed hearing from folks on this section of the *Report*. One of our lawyers, Mark Englehart, supplied his favorite Bible verses this month.

*Jesus said, "I am the way, the truth, and the life. No one comes to the Father except through Me."
John 14:6 (CSB)*

*God made Him who had no sin to be sin for us, so that in Him we might become the righteousness of God.
2 Corinthians 5:20 (NIV)*

*Jesus said, "Father, forgive them, for they don't know what they are doing."
Luke 23:34 (NLT)*

*"... Here on earth you will have many trials and sorrows. But take heart, because I have overcome the world."
John 16:33 (NLT)*

*"... I am with you always, to the end of the age."
Matthew 28:20 (CSB)*

I encourage any of our readers, who feels led to do so, to send in a favorite verse for inclusion in the May issue.

XXII. SOME PARTING WORDS

With all of the problems facing Americans today, it's real easy to become uneasy about our country's future.

Oftentimes the economic and social problems seem incapable of solution at least by the standards we try to meet. Dr. Jimmy Jeffcoat, who is with Huntingdon College, taught our Sunday School Class on Easter Sunday and he did a terrific job. Jimmy pointed out that the only way we can handle the current set of problems is to rely on our faith in God and be obedient to the covenant found in the New Testament. Actually, as he pointed out, the formula for our success as a nation is found in the Old Testament:

*If my people who are called by my name humble themselves, and pray and seek my face and turn from their wicked ways, then I will hear from heaven and will forgive their sin and heal their land.
2 Chronicles 7:14*

All of us should pray that our leaders on the national level will take this to heart and follow God's formula for getting things right in this country. All of us must pray diligently for a change of direction in the land. It's obvious that we are heading in the wrong direction on a number of fronts. It's only by trusting God and following the formula for correction set out above will our nation set things in order and secure the future for our children and grandchildren.

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