

LEGALLY SPEAKING[®]

A quarterly newsletter for friends and clients of
Moore & Wolfe, Attorneys at Law

WINTER 2006

Alabama Bar Association rules require the following disclaimer: No representation is made that the quality of legal services to be provided is greater than the quality of legal services to be performed by other attorneys.

LEGALLY SPEAKING ON 1480AMWABB

Mark Wolfe will be the featured guest on a regular talk radio show hosted by 1480amWABB. The public service broadcast airs every other Friday morning from 7:30 to 8:00. The show is called Legally Speaking and is hosted by Ron Frazier and Kathy Richardson. The show provides listeners an opportunity to call in with questions about legal issues and includes discussions related to current legal topics. 1480amWABB is Mobile's leading radio station for news/talk radio and Ron and Kathy host the regular call-in radio show from 6:00am until 9:00am Monday through Friday. Their lively talk radio program addresses both local and national issues and often features public officials who address questions from listeners. 1480amWABB has over 18,000 regular listeners. "As part of our commitment to keep our listeners informed about important community and consumer issues, we thought a regular call-in show related to legal issues would be a great public service," said Ron Frazier.



Past broadcasts of Legally Speaking have discussed topics such as the rights of illegal immigrants, insurance disputes related to Hurricane Katrina and a discussion with Alabama Supreme Court Chief Justice, Drayton Nabors regarding funding for the Alabama Judicial system. The show right before New Years covered automobile safety issues. "We are glad to have this opportunity to assist 1480amWABB in this important and worthwhile public service project," said Wolfe. He also said, "Ron and Kathy do a great job every morning on focusing on issues which directly impact people in our area and, as members of this community, we really appreciate their hard work and commitment." Next quarters schedule for Legally Speaking will be: January 27, February 10 and 24, and March 10 and 24. If you are not a regular listener to 1480amWABB, tune in tomorrow and see what you've been missing.

RECOMMENDATION OF SERVICES

SATISFIED CLIENTS CONTINUE TO BE FIRM'S BEST "ADVERTISING." A review of statistics for the first three quarters of 2005 shows that 80% of the new claims and cases in our office came directly from recommendations of people in our community who are familiar with our firm. These recommendations mainly come from former clients, healthcare professionals and other attorneys. At Moore & Wolfe we truly appreciate the recommendation of our services. While our main area of practice continues to be personal injuries related to auto-negligence, we strive to provide assistance and guidance to all people who are recommended to our firm even if they have legal questions outside of our primary area of practice. If you have a friend or family member with a legal question, please encourage them to call our office. There is no charge for telephone consultations. 433 -7766.

M&W ATTORNEYS TEACH CONTINUING EDUCATION SEMINARS

On December 16, Knox Boteler of M&W taught a six hour Continuing Legal Education seminar for Gulf Coast attorneys. The seminar was titled *Automobile Insurance Claims in Alabama*. The seminar was sponsored by the National Business Institute and was attended by over 50 attorneys from the Gulf Coast area. On Saturday February 4, the attorneys from M&W along with Johnny Thornton, the M&W investigator, will be featured speakers at a seminar for Alabama Chiropractors titled *Clinical and Legal Issues Related to Motor Vehicle Collision Injuries*. The seminar has been approved by the Alabama State Board of Chiropractic Examiners for six continuing education credits and will be sponsored by the Mobile Chiropractic Association. Dr. Doug Kaul of Mobile Chiropractic Associates will also be a featured speaker. Dr. Kaul has over twenty years of experience in treating victims of motor vehicle collisions and he has received extensive post-graduate training related to treatment of traumatic soft-tissue injuries. The seminar is being provided without charge however participants are being asked to make a donation to the Mid-Town Playground project. (For more information on this project, see At the Firm on page 4.)

LEGALLY SPEAKING CIRCULATION STEADY AT 10,000

AVERAGE QUARTERLY DISTRIBUTION STAYS AROUND 10,000. Over the last four years the average distribution for Legally Speaking has been around 10,000 newsletters per quarter. In addition to the regular mailing list (which is now about 8,000) special editions of Legally Speaking have been distributed as inserts in various publications such as Senior Living and Lagniappe. Circulation for the Winter 2004 edition of Legally Speaking topped 35,000 newsletters! Legally Speaking has been published and distributed by M&W every quarter since July, 1998. The current format has been used since the Spring 2004 edition.



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dedicated to protecting the rights of injury victims and their families

MASS TORTS UPDATE

There are currently hundreds of Mass Tort cases pending across the country involving various medications and products. When there are thousands of individual claims and cases related to one product or event that is commonly referred to as a Mass Tort. These differ from class actions because each individual claim or case has to be brought individually. In a class action thousands of people may be represented in one civil lawsuit. Even though the claim or case may not be part of a "class action", in a mass tort situation victims benefit from being grouped with a large number of other victims who have suffered similar injuries or damages. In the area of Mass Tort Litigation, it is important for claimants to be represented by attorneys and law firms who are experienced in Mass Tort Litigation and who have specific knowledge about the drug or product in question. Also, the attorney and law firm must have adequate financial resources for the large number of claims and/or cases they are prosecuting. At Moore & Wolfe we are not directly handling Mass Tort cases; however, we have helped hundreds of consumers and victims locate attorneys in our State and/or across the country who are handling specific Mass Tort cases. If you, or a friend, or a family member may have a claim related to any of the following and you have not already consulted with an attorney, please call us today at 433-7766:

Medications and Conditions:

- **Baycol:** Linked to the sometimes fatal condition of rhabdomyolysis, a painful disorder that destroys muscle tissue and can lead to kidney failure.
- Hormone Therapy (HT). Drugs such as **Prempro** and **Premarin** can increase the risk of breast cancer, ovarian cancer, stroke, and heart disease.
- **Neurontin:** Off label prescription may contribute to suicidal thought in users. An "off-label" prescription is one that is written for a purpose other than what a drug was initially intended or approved for. Some drug manufacturers provide doctors with other "off label" conditions that a drug can be used for and encourage doctors to write prescriptions for these conditions.
- **Crestor:** Linked to the sometimes fatal condition of rhabdomyolysis, a painful disorder that destroys muscle tissue and can lead to kidney failure.
- **Serevent** and **Advair:** May be associated with an increased risk of asthma-related deaths, especially in African-American users.
- Statins (**Lipitor**, **Pravachol**, **Lescol**, **Mevacor** and **Zocor**): Have been associated with renal failure and the sometimes fatal condition of rhabdomyolysis, a painful disorder that destroys muscle tissue and can lead to kidney failure.

- **Vioxx, Celebrex and Bextra:** These drugs have been linked to heart attacks and strokes.
- **Zyprexa:** Prescribed for psychotic conditions, this drug may be associated with development of diabetes and hyperglycemia in users.
- **Zithromax:** (azithromycin). An antibiotic used to treat respiratory infections; serious health problems such as liver damage have been attributed to this drug.

Medical Conditions Related to Medication:

- **Stevens-Johnson Syndrome (SJS):** A severe skin rash condition with its worst form being toxic epidermal necrolysis (TENS), chances of contracting SJS are increased with use of non-steroidal anti-inflammatory drugs such as Vioxx, Bextra and Celebrex and includes ibuprofen and naproxen.
- **Tardive-Dysinesia (TD):** A syndrome of involuntary movements or movement disorders that may develop in patients who treat with any number of prescribed antipsychotic medications for depression, anxiety, obsessive-compulsive disorder or other such symptoms.

Medical Devices and Conditions:

- **Smith and Nephew Knee Replacements:** Oxinium Genesis II and the Profix II were voluntarily withdrawn from the market because of potential defects. The devices were used from February 2002 through September 2003.
- **Guidant Ancure Endograft System:** Introduced by EndoVascular Technologies (EVT), a subsidiary of Guidant Corporation, this device was used from 1999 to March 2001 for abdominal aortic aneurysms. EVT discontinued production of the Ancure® device after pleading guilty to 10 felony counts for their failure to report more than 2,600 problems, including death, related to the device.
- **Guidant Heart Devices:** In July 2005 the FDA recalled implantable defibrillators and pacemakers produced by Guidant Corporation. The wiring in the recalled devices deteriorates too quickly thereby preventing the devices from delivering the anticipated therapy.
- **Medtronic Heart Devices:** In April of 2004 the FDA recalled implantable defibrillators made by Medtronic Inc. between 1997 and 1998. Also in February 2005 the FDA recalled other Medtronic defibrillators whose batteries were made between April 2001 and December 2003.

**Motor Vehicle Accidents:
A Victim's Handbook
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SAY "NO WAY TO SAFEWAY"

Safeway Insurance Company of Alabama has recently implemented a new policy of non-payment for soft-tissue injury victims who treat with Chiropractors. No case better exemplifies this policy than the case of John Smith*. Mr. Smith was returning home in December 2004 after visiting his father when he was rear-ended by Safeway insured John Doe*. Initially, Mr. Smith did not think he was injured to the point of needing medical care and so he refused to be transported to the emergency room. Several hours later his pain complaints were such that his wife insisted he go to the emergency room for treatment and to make sure he had no broken bones. At the emergency room Mr. Smith was told that he had no broken bones but he did have soft-tissue injuries consisting of muscle and ligament sprains and strains in his neck and back. The emergency room doctor recommended that Mr. Smith seek follow-up care with a Chiropractor. On his initial visit with the Chiropractor, he was told that he needed to stay off work for two weeks and begin a six to eight week course of physical therapy and adjustments. The Chiropractic care was of great benefit to Mr. Smith and in fact he was able to return to work after only one week and was released on February 11, 2005 after only needing six weeks of care. Shortly after that he submitted his medical bills and claim for lost wages to Safeway for payment and reimbursement. Mr. Smith's total medical bills and lost wages were \$ 4,639.30. (Safeway did eventually pay Mr. Smith for his property damage but failed to reimburse him for the rental car he had to get while his car was being repaired.) Did Safeway do the right thing and pay this basic clear liability bodily injury claim? NO. Safeway undertook a tactic of delay that continues to this day. After 12 weeks (three months!) and numerous inquiries, Safeway had made no offer to pay Mr. Smith's injury claim. At that point he realized the only chance he had to recover restitution for his medical expenses and lost wages would be through the Court system.

On July 19, 2005 a lawsuit was filed on behalf of Mr. Smith against John Doe in the District Court of Mobile County, Alabama. Under Alabama law a victim must file a lawsuit against the at-fault driver only and not his or her insurance company. [This gives the insurance companies in Alabama the benefit of "hiding behind their insured" in the Alabama civil justice system because jurors are not allowed to be told that the at-fault driver has liability insurance.] District Court is a lower level Court where the maximum a victim can recover is \$10,000. The cost of District Court is significantly less than Circuit Court and cases are tried by a judge without the costs to the taxpayers associated with a jury trial. Throughout the District Court litigation process, Safeway's lawyers played hardball with Mr. Smith. In the Answer filed on behalf of John Doe, Safeway's lawyers denied he was responsible for causing the accident. They also tried to blame Mr. Smith for causing the accident by "stopping too fast" and they alleged he was not really hurt in the accident. Then they objected to the use of an Affidavit at trial from Mr. Smith's treating doctor. By doing this they forced Mr.

Smith to incur the costs of a deposition of his treating doctor for use at trial, a cost of almost \$500.00. Also, this maneuver further delayed the trial. Safeway's lawyers also failed to have John Doe answer written discovery questions as to why he was denying responsibility for the accident. Simply put they used the litigation process to further Safeway's agenda of not paying claims where victims treat with a Chiropractor.

On November 29, 2005, almost a year after the accident, Mr. Smith's case went to trial. At trial, Mr. Smith was subjected to a lengthy and intense cross examination by Safeway's skilled lawyer. Safeway's lawyer tried to impugn Mr. Smith's veracity and he called into question Mr. Smith's integrity by trying to imply that Mr. Smith was faking or exaggerating his injuries. (This despite the fact that Mr. Smith went back to work a week earlier than anticipated and completed treatment two weeks earlier than originally prescribed.) The District Court Judge ruled in Mr. Smith's favor and awarded \$10,000 in damages to Mr. Smith. This should have been the end of the story and the end to Mr. Smith's long and arduous ordeal with Safeway. But did Safeway pay the judgment entered against their insured and reimburse Mr. Smith for the Court costs they forced him to incur? NO. Now Safeway, in an attempt to teach Mr. Smith a lesson, has appealed the judgment from District Court to the Circuit Court and requested a trial de novo (a new trial) with a jury. Under the rules of civil procedure they have this right but this is clearly not a case where Safeway is seeking justice but rather a case that Safeway has chosen to try and use the legal system to punish a claimant simply because he received care and treatment from a Chiropractor. We have seen other claims and cases where Safeway has been just as obstinate and unfair to their own policyholders who have treated with a Chiropractor. The point that we find very frustrating is that Safeway knew shortly after this accident that Mr. Smith was treating with a Chiropractor but they never suggested or recommended that he treat with another type of doctor. Nor did they ever tell him they were not going to reimburse him for the costs of seeing a Chiropractor. They deceived and misled Mr. Smith and that is wrong. They drug his claim out without payment for months and now they are going to pay their high priced lawyers thousands of dollars to use our already overcrowded Court system as a vehicle to further delay justice. *The names of the parties have been changed in compliance with ARPC 3.6 - Trial Publicity.

**LISTEN FOR MORE OF THIS STORY ON
LEGALLY SPEAKING on-the-air every other Friday
from 7:30am to 8:00am**



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AT THE FIRM

- M&W partner with Central Presbyterian Church for Midtown Playground Project.

Plans are now under way for the construction of a new playground area on property located between M&W and Central Presbyterian Church. The new Midtown Playground will replace an older outdated playground and include a safer playing environment for children in the Midtown area. A committee at the church has been formed to lead the project and the committee has already visited a number of new playgrounds in the South Alabama area and ordered design and construction information. M&W will be undertaking various fund raising projects throughout 2006 to help fund this worthwhile community project. Tax deductible contributions to this project can be made to Central Presbyterian Church, 1260 Dauphin Street, Mobile, AL 36604. Designate Mid-Town Playground Fund on your check.

Community Giving. Last quarter charitable activities continued to be an important outreach to our community. At M&W we believe that being active in our community is an important part of our law firm's identity. At M&W doing good work for our community is just as important to us as doing good work for a client. The following programs and/or organizations received contributions from M&W last quarter:

- Boys and Girls Clubs of South Alabama.
- Upward Basketball.
- The Elijah House Ministries.
- The Brothers of Encouragement.
- American Red Cross - Katrina Relief Fund.
- UMCOR Katrina Relief Program.



Moore Named Chairman. Steve Moore has been named the 2006 Co-Chairman for the South Alabama Trial Lawyers Association (SATLA). SATLA is an organization of

over 100 Gulf Coast attorneys who represent consumers and injury victims. SATLA was first established in 1998 and, in addition to serving as a resource on current legal issues for its members, SATLA has been involved in numerous charitable projects in the South Alabama area. Recently, SATLA members donated over 50 bicycles to the Boys and Girls Clubs of South Alabama for Christmas distribution to deserving children.

Alabama Civil Justice Foundation (ACJF) Helps Katrina Victims. The ACJF is the charitable foundation of the Alabama Trial Lawyers Association. Since being established in 1993 the ACJF has raised and donated over \$7 Million for statewide charities and community organization. Over \$100,000 has been donated to Katrina relief efforts including a \$45,000 grant to Habitat for Humanity for victims in the Bayou La Batre area.



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