

# LEGALLY SPEAKING<sup>®</sup>

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

SPRING 2008

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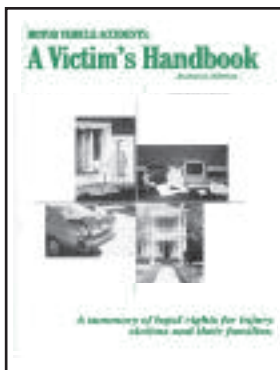
## FORMER M&W LAW CLERK NAMED "CHAMPION OF JUSTICE"

Practicing Montgomery attorney Chuck James, a native of Mobile, was recently designated as a Champion of Justice by the Alabama Association of Justice (AAJ). The AAJ designation is for Alabama attorneys who have demonstrated "concern, character and courage" in the pursuit of justice for consumers and injury victims. Chuck is the son of Charles and Bernadette James of Mobile. He was a law clerk at M&W while he was in law school at the University of Alabama. He now practices with the firm of Thomas, Means, Gillis & Seay in Montgomery. James gave credit to the lawyers at M&W for helping inspire him to represent injury victims: "I clerked down there the summer of my second year in law school, and those guys took me under their wing and showed me the practical side of the legal profession," James said. "I remember being in awe of how well they were respected by the judges and defense bar. In addition, I saw that they actually cared about their clients and were passionate in their work. That made quite an impression on me and I try to uphold those standards in my practice today." James, who originally entered law school with an eye towards politics and being a sports agent, soon realized that his true calling was helping those who had been hurt or wronged recover their losses through the civil justice system. On being a sports agent, Chuck said the cut-throat nature of the business didn't agree with his philosophy of life or his "honest, down-home values." Chuck James is a true asset to the Alabama Bar Association and the citizens of Alabama. The firm of M&W congratulates him on this well deserved designation as a Champion of Justice. Keep up the good work!



## FREE INFORMATION FOR ACCIDENT VICTIM

The fourth edition of Motor Vehicle Accidents: A Victim's Handbook is available at Moore & Wolfe. This most recent edition includes updates on Alabama laws related to motor vehicle accidents and a new color scheme. "Besides updating the law, the new edition has been edited to make it more reader friendly," said Mark Wolfe. "The past editions have included a lot of legalese which we thought made it a little cumbersome to read," said



Wolfe. The new color scheme incorporates the familiar green and white colors used by Moore & Wolfe on other publications and used on the law firm letterhead. Wolfe stated that, "The important thing for injury victims to know is that the publication is still free and that it contains very important information that injury victims should know before trying to settle their injury claims." Since its initial publication in 1994, over 45,000 copies have been printed. The handbook is used as a text for seminars for law enforcement officers, healthcare providers and victim advocacy groups. In 2005, the publication received a National Award of Merit from Mothers Against Drunk Driving (MADD) for its continued warnings against the dangers of drinking and driving. If you, or a friend or family member, have been injured in a motor vehicle accident, please call 433-7766 for a free copy.

## FLORIDA COURT SUSPENDS ALLSTATE IN FLORIDA

Late Friday, April 4, 2008, the District Court of Appeals, First District, State of Florida upheld the Florida Office of Insurance Regulation's suspension of Allstate from writing insurance in the State of Florida. The Office had suspended Allstate weeks before for a refusal to produce the McKinsey documents during an investigation of the company. That investigation, started as a result of the media surrounding Trial Guides From Good Hands to Boxing Gloves, and Robert Hunter's reference to it, resulted in Allstate being cut off from a market comprising 17% of its national sales. The court found Allstate guilty of arbitrary reductions of "bodily injury claim payments to its policyholders and beneficiaries by up to 20%." It also determined that Allstate was engaged in ongoing criminal activity by failing to cooperate with the Office of Insurance Regulation's investigation of a crime, and that this constituted a danger to the public health, safety or welfare of citizens. Realizing the seriousness of this, given the pending shareholder lawsuit against the company for other problems resulting from the company's refusal to turn over the documents in several cases nationally, Allstate posted 150,000 documents related to McKinsey on their web site. This number of documents is substantially more than the number they had represented were "all" of the McKinsey documents, to several courts in the country. But it wasn't that ruling alone that scared Allstate into finally disclosing the documents. It was that Trial Guides is about to release a public version of From Good Hands to Boxing Gloves. As the Miami Herald-Tribune said just as that book was going to print "Berardinelli's plan to publish a book for the general public next month, and a Florida appellate court decision against Allstate on Friday, may have finally convinced Allstate it was losing the war." Published by Trialguides, LLC (see related story on Insurance Reform on page 2)

## TIME FOR INSURANCE CLAIM REFORMS

By: Mark Wolfe, partner Moore & Wolfe Attorneys at Law.

I have been practicing law for 21 years. Most of my legal career has been spent representing injury victims in auto-negligence claims and cases. At no point in my career has it been more difficult for motor vehicle collision victims to receive fair and just compensation for their damages. What follows are just a few examples of difficulties faced by injury victims in Alabama.

### PROBLEM: UNREGULATED USE OF COMPUTER ASSISTED CLAIM EVALUATION PROGRAMS.

Insurance companies have instituted complex computer assisted claim evaluation programs that contain a variety of default devaluation codes resulting in medical bills and lost wages being unrealistically discounted. These same computer programs have allowed companies to streamline their claim adjusting staffs resulting in overworked and underpaid claims adjusters who have little or no latitude in claim resolution. "Sorry the computer says you should've only been off work for 3 days and not the 10 days recommended by your doctor."

**Solution:** If an insurance company is using a computer assisted claim evaluation program, then the claimant should be given information about the program and guidelines to be used when submitting the claim. I.e., "if your doctor keeps you off of work more than 3 days, you will need a note with specific physical limitations otherwise the computer program will only authorize payment for 3 days of lost wages." In Florida, the State's Attorney General recently determined that Allstate had improperly reduced benefit payment of medical bills by 20% via its computer assisted claims program.

### PROBLEM: COORDINATION OF BENEFITS.

A client received terrible injuries when another driver swerved into his lane of travel and hit him head-on. His left hip socket was smashed into several pieces and his right knee cap was practically torn off. He received a severe laceration to his face requiring 300 stitches. He had health insurance with Capital Blue Cross Blue Shield and med-pay benefits with his own auto-insurer for up to \$5000.00. He has a clear liability claim against the at-fault driver but because of the extensive nature of his injuries, it could be months and maybe even years before the liability insurance carrier is willing to discuss settlement. (Remember in Alabama in a liability claim the insurance company for the at-fault driver gets to hold the money they may owe for medical bills, lost wages, etc. until the claimant is willing to sign a release of all claims.) For the last several months, his health insurer has not been paying any of his medical bills because they claim to be "secondary" to the med-pay benefits. His auto-insurer refused to pay because they needed a specific form for their computer program. The hospital would not provide the form until the bill was paid. We were finally able to get this matter resolved but it took weeks of letters and follow-

up phone calls. This is not the only time we have seen this type of delay because of "too much insurance." We've seen health insurance companies refuse or reject payment because the claim "may be covered by a liability claim." We've seen med-pay carriers refuse payment because the health insurance coverage should be primary. **Solution:** We need a realistic Coordination of Benefits regulation that prohibits health insurance companies from refusing to pay a legitimate claim simply because of questions about primary and secondary coverage. As it currently stands more and more companies are writing themselves into "secondary payee" status and it's not going to be too much longer before every insurance policy will claim to be "secondary." We also need guidelines on what "documentation" is necessary for med-pay carriers for benefit payments. The insurance industry already has in place an intra-company arbitration policy to resolve disputes. If a company pays a direct claim that they believe should've been paid first by another insurance company, they can go to arbitration and resolve the dispute. Right now, health insurance carriers and med-pay carriers would rather just not pay and tell the claimant that the other company should pay.

### PROBLEM: INSURANCE CLAIM REGULATIONS ARE "NOT FOR CONSUMERS."

This one takes the cake! The Alabama Department of Insurance does have rules and regulations for Insurance Companies regarding first party claims. There is even a really nice sounding section titled: Standards for Prompt, Fair and Equitable Settlements... This section would be great for consumers except: It's not for consumers. Alabama Insurance Regulation Chapter 482-1-125.02 states: "Evidence of violation [of these standards] shall be utilized for the purpose of administrative and regulatory proceedings conducted by the Department of Insurance and shall not be utilized for any other purpose or admissible as evidence for any purpose in any civil court proceeding." So there you go. The Alabama Department of Insurance, a lapdog agency of the insurance industry, has rules and regulations for fair and equitable payment of claims, but those rules are not for the claimants use. That's the same as having a law against shoplifting but then telling the shop owners that they can't seek to prosecute shoplifters. **Solution:** We need to expand the Rules and Regulations for fair claim resolution to include third party liability claims and then give claimants a right to bring a cause of action against the insurance company if they break the rules.

### WE'D LIKE TO HELP YOUR FRIENDS AND FAMILY

M&W continues to rely on "word of mouth advertising" for new claims and cases. We are proud that almost 97% of our new clients are recommended to our firm by former clients, area healthcare professionals and/or other lawyers. We are glad to have the opportunity to assist your friends with legal questions, even if those questions are related to areas of law outside our main area of practice. Also, remember that our web site: [www.moore-wolfe.com](http://www.moore-wolfe.com) has lots of helpful information for auto-negligence victims.

## TRAFFIC SAFETY NEWS

2006 NHTSA Statistics:

**Fatal Crashes and Fatalities Involving Alcohol-Impaired Drivers.** According to recently released statistics from the National Highway Safety Administration (NHTSA), in 2006, 13,470 people were killed in alcohol-impaired-driving crashes. These alcohol-impaired-driving fatalities accounted for 32 percent of the total motor vehicle traffic fatalities in the United States. Traffic fatalities in alcohol-impaired-driving crashes fell by 0.8 percent, from 13,582 in 2005 to 13,470 in 2006. The 13,470 alcohol-impaired-driving fatalities in 2006 were almost the same as compared to 13,451 alcohol-impaired-driving fatalities reported in 1996. Drivers are considered to be alcohol-impaired when their blood alcohol concentration (BAC) is .08 grams per deciliter (g/dL) or higher. Thus, any fatality occurring in a crash involving a driver with a BAC of .08 or higher is considered to be an alcohol-impaired-driving fatality. The term "driver" refers to the operator of any motor vehicle, including a motorcycle. Estimates of alcohol-impaired driving are generated using BAC values reported to the Fatality Analysis Reporting System (FARS) and imputed BAC values when they are not reported. The term "alcohol-impaired" does not indicate that a crash or a fatality was caused by alcohol impairment. The 13,470 fatalities in alcohol-impaired-driving crashes during 2006 represent an average of one alcohol-impaired-driving fatality every 39 minutes. In 2006, all 50 States, the District of Columbia, and Puerto Rico had by law created a threshold making it illegal per se to drive with a BAC of .08 or higher. Of the 13,470 people who died in alcohol-impaired-driving crashes in 2006, 8,615 (64%) were drivers with a BAC of .08 or higher. The remaining fatalities consisted of 4,030 (30%) motor vehicle occupants and 825 (6%) nonoccupants. [DOT HS 810 801(Updated March 2008)]

**Information About Young Drivers.** The following statistics show how important it is for young drivers to have proper training. There were 202.8 million licensed drivers in the United States in 2006. Young drivers, between 15 and 20 years old, accounted for 6.4 percent (13.0 million) of the total, a 7.2-percent increase from the 12.1 million young drivers in 1996. In 2006, 7,463 15- to 20-year-old drivers were involved in fatal crashes – an 8-percent decrease from the 8,074 involved in 1996. Driver fatalities for this age group increased by 3 percent between 1996 and 2006. For young males, driver fatalities rose by 5 percent, compared with a 3-percent decrease for young females. Motor vehicle crashes are the leading cause of death for 15- to 20-year-olds (based on 2004 figures, which are the latest mortality data currently available from the National Center for Health Statistics). In 2006, 3,490 15- to 20-year-old drivers were killed and an additional 272,000 were injured in motor vehicle crashes. In 2006, 12.9 percent (7,463) of all the drivers involved in fatal crashes (57,695) were young drivers age 15 to 20 years old, and 16 percent (1,621,000) of all

drivers involved in police-reported crashes (10,558,000) were young drivers. Among 15- to 20-year-old drivers involved in fatal crashes in 2006, 28 percent (378) of those who did not have valid operator's licenses at the time of the crash also had previous license suspensions or revocations. For the same age group, 31 percent of the drivers who were killed in motor vehicle crashes during 2006 had been drinking. [DOT HS 810 817 (Updated March 2008)]

## NHTSA ANNOUNCES TEEN DRIVING INITIATIVE.

NHTSA has developed a three-tiered strategy to prevent motor-vehicle-related deaths and injuries for teens: increasing seat belt use, implementing graduated driver licensing, and reducing teens' access to alcohol. The heart of the National Highway Traffic Safety Administration's (NHTSA's) mission is keeping families safe on America's roadways. Young drivers, ages 15- to 20-years old, are especially vulnerable to death and injury on our roadways – traffic crashes are the leading cause of death for teenagers in America. Mile for mile, teenagers are involved in three times as many fatal crashes as all other drivers. Research shows which behaviors contribute to teen-related crashes. Inexperience and immaturity combined with speed, drinking and driving, not wearing seat belts, distracted driving (cell phone use, loud music, other teen passengers, etc.), drowsy driving, nighttime driving, and other drug use aggravate this problem.

**Seat Belt Use:** Teens buckle up far less frequently than adults do. Despite efforts aimed at increasing belt use among teens, observed seat belt use among teens and young adults (16 to 24 years old) stood at 76 percent in 2006 – the lowest of any age group. In fact, in 2006 the majority (58%) of young people 16 to 20 years old involved in fatal motor vehicle crashes were unbuckled.

**Graduated Driver Licensing:** Young, inexperienced drivers, particularly 16- to 17-year-olds are significantly overrepresented in fatal crashes. Our research tells us that immaturity and inexperience are primary factors contributing to these deadly crashes by young drivers. Three-stage GDL laws address these factors by reducing high-risk exposure for novice drivers. Forty-six States and the District of Columbia have a three-stage GDL system. Analysis shows that adopting GDL laws will lead to substantial decreases of crashes for this age group – anywhere between 20 and 50 percent.

**Youth Access to Alcohol:** Teens are at far greater risk of death in an alcohol-related crash than the overall population, despite the fact they cannot legally purchase or publicly possess alcohol in any State. High-visibility enforcement of underage purchase, possession, and provision laws can create a significant deterrent for violation of youth access laws, reduce underage drinking, and decrease alcohol-related crashes. Additionally, parental responsibility is key to educating and protecting our teens.

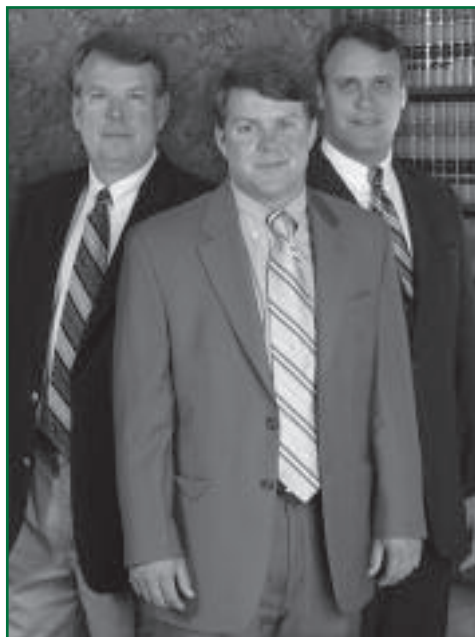
## AT THE FIRM

**M&W Web Site to Get Upgrade.** New and improved site will still be “Alabama’s Most Comprehensive Motor Vehicle Accident Web site”, but it should be easier to find and navigate thanks to our friends at Magnolia Media. In response to complaints about navigational difficulties and “findability” on the national search engines, M&W has decided to upgrade the law firm web site. The content will remain the same but new overlays and easier navigational controls should make the site more user friendly. “Although we just completed the latest improvements to our site in 2005, I thought it was important to move forward with these fairly extensive upgrades,” said Mark Wolfe. “We will incorporate the Motor Vehicle Accident Resource Center [MVARC] site into our site and make ordering publications easier,” he said. The MVARC is currently a stand alone web site sponsored and supported by M&W.

**Client Survey Forms:** Thank you to our former clients who have completed the Client Survey form included with your settlement documents. This multiple question survey form helps us focus on our overall service to our clients. The questions focus on aspects of legal representation that clients have deemed important according to national client surveys and marketing reports.

**Wolfe to Speak at Seminar:** Mark will be speaking at a “lunch and learn” seminar for Alabama lawyers on April 25th in Birmingham. The seminar is sponsored by the Alabama Association of Justice and will cover the complex legal issues related to med-pay subrogation.

**M&W Attorneys Speak at Medical Seminar:** On February 23rd, Steve, Mark and Knox were speakers at a motor vehicle collision seminar sponsored by the Mobile County Chiropractic Society. The one day seminar for healthcare professionals focused on legal and clinical issues for auto-collision victims.



*Leaders in car accident claims and litigation*

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