

# LEGALLY SPEAKING<sup>®</sup>

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

SPRING 2007

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## **PAYOUT ON CLAIMS LOWEST IN 20 YEARS** \_\_\_\_\_

*Hardball Tactics of some insurance companies being reported.* A recent study by the Consumer Federation of America (CFA) revealed that property/casualty insurance companies (home and auto) are paying out less in claims compared to premiums collected than at any time in the past 20 years. Robert Hunter, the director of CFA attributed the decrease in payout in part to better underwriting and higher premiums but also in part to more aggressive claim management procedures. Allstate's aggressive claim management procedures have recently been chronicled in a book by David Berardinelli titled *From Good Hands to Boxing Gloves*. Shannon Brady Kmatz, a former Allstate adjuster who left the company in 2000, confirmed Allstate's hardline approach to claim payout: "We called it throwing them [claimants] a bone." In an article on insurance coverage in the March 2007 edition of Money magazine, Kmatz reported that she and other Allstate adjusters were evaluated on how quickly and cheaply they could settle a claim and on how well they did in dissuading claimants from hiring an attorney. Adjusters who excelled at these goals were rewarded with free dinners and monetary bonuses, said Kmatz. Many other home and auto carriers have also adopted similar claim management procedures and have adopted the use of injury claim evaluation software or damage assessment software (see related article on page 2). "The whole time these companies have been playing hardball with consumers, they have also been promoting the concept, via the mainstream media, that a claimant who does not rollover and accept their lowball offer is being greedy," said Mark Wolfe. "This is one of the reasons legitimate injury victims find themselves as the underdog when pursuing their claim through the court system," said Wolfe.

*Court System favors the insurance companies.* Most of the time in court proceedings jurors are not told of the claimants attempts to resolve the claim prior to filing a lawsuit and in many States, such as Alabama, jurors can not be told that the at-fault driver, who is the defendant in a civil suit, has liability insurance that will pay the judgment. "I had one juror tell me that during deliberations they [the jury] concluded that since no one mentioned anything about the defendant's insurance the victim must have already been paid all of the insurance money and was now just being greedy trying to get more money directly from the defendant," said Wolfe. The juror went on to say that the jury awarded the victim no damages in that case. Such inequities in the civil justice system are common for auto-negligence victims in Court. "For the past 15 years we have been reporting on the hardball tactics of insurance companies and the difficulties faced by legitimate injury victims and claimants in our court system," Wolfe said. "Maybe, just maybe, enough people have been victimized by insurance companies that it is attracting the attention of mainstream media,"

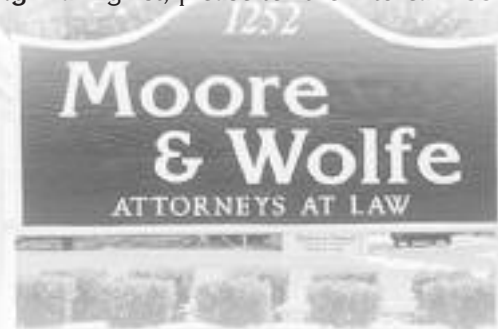
concluded Wolfe. Since Hurricane Katrina devastated the Gulf Coast the media has been intensely reporting on the unfair claim practices of many insurance carriers.

## **WE CAN HELP YOUR FAMILY AND FRIENDS** \_\_\_\_\_

A review of statistics from 2006 reveals that over 91% 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 were from former clients, healthcare professionals and other attorneys. 47.9% of the new claims and cases came from recommendations of former clients and 43.3% came from healthcare professionals and attorneys. At Moore & Wolfe we truly appreciate the recommendation of our services. While our main area of practice continues to focus on personal injury claims related to auto-negligence, we strive to provide assistance and guidance to all people referred 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.

## **DISTRIBUTION STEADY AT 10,000** \_\_\_\_\_

For 2006 the distribution of *Legally Speaking* continued to average about 10,000 copies per quarter. The publication, which was first mailed to 300 friends and clients of Moore & Wolfe in July of 1998, has had quarterly distributions as high as 45,000 for special consumer alert editions. For most quarters the distribution averages around 10,000 copies to friends and clients of Moore & Wolfe. The mailing list is confidential and not shared with outside agencies or groups. If you have a friend or family member who would like to be added to the *Legally Speaking* mailing list, please tell them to call 433-7766.



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*dedicated to protecting the rights of injury  
victims and their families*

## COMPUTER VALUATION PROGRAMS UNFAIR TO VICTIMS

Mainstream media is beginning to expose the insurance industries secrets about the valuation software programs used by most major insurance carriers in auto-negligence injury claims. These programs make the injury claim adjuster little more than a data input clerk. It has been reported that 80% of liability insurance companies are using some form of valuation software when adjusting and trying to settle injury claims. A recent segment on CNN's Anderson Cooper 360 and an article in Money magazine reveal the problem with these programs is they are subject to manipulation by the company using them and some are based upon incorrect medical assumptions about motor vehicle accident injuries. Just as unfair is the fact most insurance companies using these programs keep the criteria of the programs secret so claimants (and their lawyers and doctors) are unaware of how a claim needs to be formatted and/or documented so the claimant receives full credit. Simply put, they use technicalities and incorrect medical assumptions as an excuse to discount the value of legitimate claims. Most of the time adjusters have very little latitude to deviate from the computer generated "value" when trying to settle a claim. Recent reports and articles about these programs also show that adjusters receive very little training on how to use these programs and companies often "teach" their adjusters to deviate from the procedures and guidelines found in the training manuals for these programs. The most widely used software system is a program called Colossus, which is licensed by Computer Science Corporation (CSC). With the wide spread use of these programs, it is important for auto-negligence victims to have an attorney who is familiar with these type programs and who understands how they work and how auto-negligence claims should be presented to insure the claimant receives proper credit for all aspects of his or her claim.

### Attorneys Attend Colossus Seminar

In January, Steve Moore and Mark Wolfe attended an extensive seminar devoted strictly to understanding injury valuation software programs used by insurance companies. The program had four hours devoted to Colossus and reviewed known value drivers and severity factors related to the program. In addition, Mark Wolfe has been extensively researching and reviewing information, articles and texts related to various valuation software programs. "For the most part the value drivers follow common sense and are similar to factors that would be favorably received by a jury if the claim were to have to go to Court," said Wolfe. "The most disappointing thing I have found through my research is how technically abusive these programs can be. A company can 'tune' the program to discount or disallow an item of damage if the treating doctor does not chart or note a diagnosis or treatment in a specific way. Yet the way these programs are set up is different than how doctors might normally note or chart something for health insurance or medicare/medicaid billing," explained Wolfe.

## Moore & Wolfe Have Exclusive Rights to IMPACTforms™.

To better present auto-negligence claims for their clients, M&W has acquired the exclusive rights for the use of IMPACTforms™ in the south Alabama area. These forms have been designed to supplement a claimant's medical records and are designed to be compatible with the valuation software programs used by many insurance companies. "We reviewed a variety of software programs and forms for lawyers and doctors and we felt these forms and their related protocol would best compliment our current claim presentation process," said Steve Moore. He said the biggest problem the firm faced when trying to decide what service or program to use was the fact that, while there were only four main valuation software programs available for insurance companies, each insurance company can "tune" or calibrate the program for so many variables and technicalities that there is no perfectly compatible program for lawyers and doctors. Moore went on to say, "based upon our research into this issue, we believe these new forms will best compliment our goal of helping our clients recover the full amount of restitution owed under the law."

## NO JUSTICE IN ALABAMA FOR CHEMICAL EXPOSURE VICTIMS

In a decision that shocked the nation's legal scholars and legal community, the Alabama Supreme Court recently ruled 5 to 4 that the claim of a chemical exposure victim was barred by Alabama's two year statute of limitations. Jack Cline was exposed to a hazardous substance at work yet the cancer related to that exposure did not appear until many years later. Mr. Cline tried to bring an action for damages against the manufacturer but his case was dismissed because he had not filed his lawsuit within two years of his exposure to the hazardous substance even though no manifestation of the related illness or symptoms occurred during that two years. Ironically, other Alabama cases have held that victims can not bring an action for damages until actual damages have been incurred. This means that in Alabama you can not bring an action unless you have actual symptoms and those symptoms must occur within two years of the exposure. It is well known in the medical community that exposure to hazardous substances and material may create a dormant condition that is asymptomatic for many years or such exposure may increase the likelihood of medical problems many years after the exposure. Based upon this knowledge, 49 other states have adopted, through statutes or case law interpretation, the concept that a statute of limitations does not begin to accrue until the victim has related symptoms or should have reasonably known of the potential claim. It was because of this obvious inequity of Alabama law that most legal scholars and Mr. Cline truly believed the Alabama Supreme Court would have the courage to rectify this flawed Alabama law. Justice Harold See wrote the majority opinion that was affirmed (approved) by Justice Nabers (who is no longer on the bench), and Justices Stuart, Smith and Bolin. The majority was of the opinion the Alabama legislature should fix this anomaly of law. Justice Harwood (now retired)

*continued on page 3*

### *No justice in Alabama for chemical exposure victims continued...*

wrote the dissenting opinion and argued that the Court had the power and moral obligation to adopt the "when symptoms manifest" standard followed by all other 49 states. Justices Lyons, Woodall and Parker joined in the dissent. Shortly after the opinion was released, Jack Cline passed away from the cancer caused by his exposure to the hazardous substance at issue.

## TRAFFIC SAFETY NEWS

Consumer safety group sites three areas for improvement in Alabama traffic safety laws. The Advocates for Highway and Auto Safety, comprised of consumer groups, health and safety groups and insurance companies, has recommended that Alabama law makers look at putting greater restrictions on teen drivers, increase the age for mandatory use of booster seats and adopt an aggravated DUI law. The group suggests that teen drivers be required to have 30 -50 hours of supervised driving in addition to driver's education, ban teen driving from 10 p.m. until 5 a.m. (current Alabama law is midnight until 6 a.m.) and restrict the number of passengers to one (current law allows for four passengers). They also advocate that booster seats should be mandatory for children up until age 8 instead of 6. Finally, the group has urged that Alabama enact tougher DUI penalties for drivers who have a blood/alcohol level of 0.15 or higher.

**Information About Impaired Driving.** The following article is an excerpt from the Centers for Disease Control and Prevention website related to motor vehicle injuries [driving-sp.htm](#).

- Alcohol-related motor vehicle crashes kill someone every 31 minutes and non fatally injure someone every two minutes (NHTSA 2006).

- During 2005, 16,885 people in the U.S. died in alcohol-related motor vehicle crashes, representing 39% of all traffic-related deaths (NHTSA 2006). 1,154 died in Alabama.

- In 2005, nearly 1.4 million drivers were arrested for driving under the influence of alcohol or narcotics (Department of Justice 2005). That's less than one percent of the 159 million self-reported episodes of alcohol-impaired driving among U.S. adults each year (Quinlan et al. 2005).

- Drugs other than alcohol (e.g., marijuana and cocaine) are involved in about 18% of motor vehicle driver deaths. These other drugs are generally used in combination with alcohol (Jones et al. 2003).

- More than half of the 414 child passengers ages 14 and younger who died in alcohol-related crashes during 2005 were riding with the drinking driver (NHTSA 2006).

- In 2005, 48 children age 14 years and younger who were killed as pedestrians or pedalcyclists were struck by impaired drivers (NHTSA 2006).

- Each year, alcohol-related crashes in the United States cost about \$51 billion (Blincoe et al. 2002).

- Male drivers involved in fatal motor vehicle crashes are almost twice as likely as female drivers to be intoxicated with a blood alcohol concentration (BAC) of 0.08% or greater (NHTSA 2006). It is illegal to drive with a BAC of 0.08% or higher in all 50 states, the District of Columbia and Puerto Rico.

- At all levels of blood alcohol concentration, the risk of being involved in a crash is greater for young people than for older people (Zador et al. 2000). In 2005, 16% of drivers ages 16 to 20 who died in motor vehicle crashes had been drinking alcohol (NHTSA 2006).

- Young men ages 18 to 20 (under the legal drinking age) reported driving while impaired more frequently than any other age group (Shults et al. 2002, Quinlan et al. 2005).

- Among motorcycle drivers killed in fatal crashes, 30% have BACs of 0.08% or greater (Paulozzi et al. 2004).

- Nearly half of the alcohol-impaired motorcyclists killed each year are age 40 or older, and motorcyclists ages 40 to 44 years have the highest percentage of fatalities with BACs of 0.08% or greater (Paulozzi et al. 2004).

- Of the 1,946 traffic fatalities among children ages 0 to 14 years in 2005, 21% involved alcohol (NHTSA 2006b).

- Among drivers involved in fatal crashes, those with BAC levels of 0.08% or higher were nine times more likely to have a prior conviction for driving while impaired (DWI) than were drivers who had not consumed alcohol (NHTSA 2006).

### Motor Vehicle Accidents Cause Tremendous Economic Burden as Well as Emotional Burden.

The CDC reports that motor vehicle-related injuries kill more children and young adults than any other single cause in the United States. More than 41,000 people in the United States die in motor vehicle crashes each year, and crash injuries result in about 500,000 hospitalizations and four million emergency department visits annually. The economic burden of motor vehicle-related deaths and injuries is also enormous, costing the United States more than \$150 billion each year.

### Did You Know?

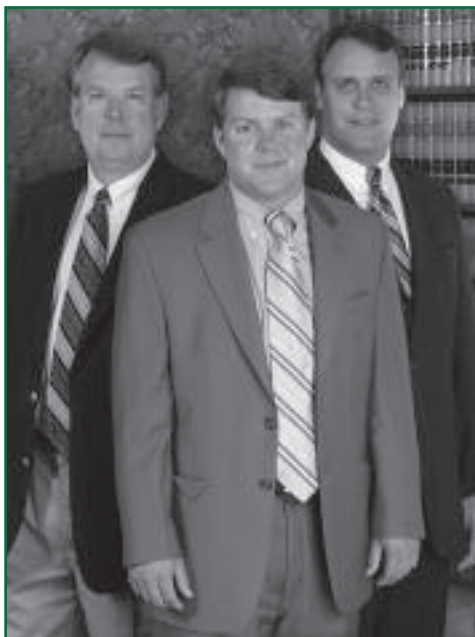
In 2004, there were more than 28 million licensed drivers age 65 years and older— a 17-percent increase from the number in 1994. During this same time period, the total number of licensed drivers increased by only 13 percent (NHTSA 2006). In the United States during 2005, 1,451 children ages 14 years and younger died as occupants in motor vehicle crashes, and approximately 203,000 were injured. That's an average of 4 deaths and 556 injuries each day (NHTSA 2006a). Of the children ages 0 to 14 years who were killed in motor vehicle crashes during 2005, nearly half were unrestrained (NHTSA 2006a). In the United States, 4,641 pedestrians died from traffic-related injuries in 2004, and another 68,000 sustained nonfatal injuries (NHTSA 2005). Nearly one-fifth of the traffic fatalities among children ages 5-9 years were sustained by pedestrians (NHTSA 2005).

## PERSONAL WATERCRAFT SAFETY

With summer weather just a few months away, thousands of Gulf Coast residents will soon be on our waterways on personal watercrafts (PWCs). A 1998 study by the National Transportation Safety Board (NTSB) found that while these vessels were only 7.4% of all recreational boats, they accounted for 41% of all boating injuries. In 2004 the National Marine Manufacturers Association reported that nearly 1.5 million PWCs were in use in the United States. Two factors were reported as serious accident contributors for PWCs by the NTSB. First was operator inexperience and the second was off-throttle steering (OTS) problems associated with PWCs. One of the most serious dangers associated with a PWC is the loss of steering capabilities when the throttle is released or the vessel is in an off-power position. A PWC uses a moveable water jet instead of a rudder to control steering. This water jet is throttle responsive meaning that when the throttle is off, no water is being pumped through the jet for propulsion or steering. When facing a danger such as a collision, an operator's natural instinct, especially a novice operator, is to release the throttle to reduce speed and then to try and turn the vehicle. But without power the PWC lacks steering and this has resulted in the injury and deaths of thousands of people. While the industry has known about this problem for over 20 years, most manufacturers have been slow to offer correction options. As early as 1991 private companies have been offering after-market OTS rudder systems that can be easily fitted onto most PWCs. In 2002 some select Sea-Doo models were fitted with an OTS system and starting in 2006 all Sea-Doo and Bombardier (a/k/a Can-Am) models incorporate an OTS system. However, the industry has not recalled for retro-fitting the hundreds of thousands of models currently in use without an OTS system nor has the industry initiated a post sale warning campaign related to the dangers of off-throttle steering. This summer if you and your family plan to use a PWC please remember that, while fun, these vessels can be very dangerous and require specific safety instructions and procedures. *ALWAYS WEAR A PERSONAL FLOATATION DEVICE WHEN OPERATING A PERSONAL WATERCRAFT.*

## AT THE FIRM

- M&W was again a participating sponsor in the Exchange Club's Luck of the Irish activities. The event, which occurred on St. Patrick's Day, is for the benefit of the Exchange Club Family Center.
- Plans are under way for the 2nd Annual M&W Charity Wine Tasting. The firm is awaiting final approval from this year's beneficiary and the event has tentatively been scheduled for Sunday, October 28 from 3:00 to 6:00 at the Bakery Café.
- 15 local and national charities received donations from M&W last quarter.



*Leaders in car accident claims and litigation*

## LEGALLY SPEAKING®

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