

LEGALLY SPEAKING[®]

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

WINTER 2011

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.

THANK YOU FOR YOUR RECOMMENDATIONS

The greatest compliment we can receive is the recommendation of our legal services to your friends and family. We truly appreciate the confidence reflected by your recommendation of our legal services. As we look back at the new clients we helped in 2010, almost 95% came to us from a recommendation from someone in our community. Besides recommendations from former clients, our services were recommended by other lawyers and from area doctors and healthcare providers. We believe the fact that most of our new clients come to us from someone's recommendation is a strong indicator of our commitment to provide the best legal service possible to those in need. Thank you again and please don't hesitate to tell your friends and family members to call us about a legal question or issue.

HOWTOHIREPERSONALINJURYATTORNEY.COM

Web site provides a comprehensive overview of information to help injury victims learn how to hire the personal injury attorney that is right for their claim or case. Instead of relying on just slick TV commercials, this web site explains to consumers who may need a personal injury lawyer what factors and information should be considered before meeting with a potential attorney. The web site also provides a free downloadable questionnaire/guide for consumers to use during the meeting and interview with an attorney. In today's competitive market for personal injury clients, more and more attorneys are resorting to TV ads to attract new clients. The web site explains why hiring an attorney who spends all of his or her time in a TV studio making commercials instead of in the Courtroom can be detrimental to the injury victim's claim. For more information and guidance on hiring a personal injury attorney, we hope you will visit this web site: www.howtohirepersonalinjuryattorney.com

AVVO.COM ONLINE RATING SERVICE

Another great internet resource for consumers looking to hire an attorney, or just looking for information about a legal question, is AVVO.com. The web site rates attorneys on a scale of 1.0 to 10.0 based upon public information and professional achievements and accomplishments. The web site also allows for clients to comment and rate the attorney and allows for peer endorsements. Mark Wolfe said, "I really like this site because it pulls together a lot of information about an attorney to better help consumers identify qualified and experienced attorneys in many different areas of practice." The web site also offers consumers free access to a high volume of Legal Guides written by attorneys on a wide variety of legal issues. All of the attorneys at B&W have been rated by the site and each has published a Legal Guide for the site.



FREE RESOURCES

At our firm we take great pride in the free resources we have available to help injury victims and consumers with their questions. Many times an injury victim or consumer may not need an attorney, but we believe that does not mean they should not know their legal rights. B&W will soon be printing the fifth edition of our well known Handbook for Motor Vehicle Collision victims. This latest edition, as well as our five other victim/consumer publications will be available free by mail or can be downloaded directly from our web site in .pdf format. Also, we have added more information and links to our new web site: www.botelerwolfe.com. It continues to be Alabama's Most Comprehensive Motor Vehicle Collision website. It is visited by over 800 unique visitors per month according to Google Analytics. If you have a friend or family member who has been involved in a car crash, tell them to "Google" Boteler & Wolfe to reach our web site.

OIL SPILL UPDATE

SUMMARY OF OPTIONS FOR FINAL AND INTERIM PAYMENT CLAIMS In November, 2010, Ken Feinberg and his administrators with the Gulf Coast Claim Facility (GCCF) established the following procedures for final and interim payment claims. If you need assistance regarding a claim with the GCCF, please contact Knox Boteler or email him at Knox@Botelerwolfe.com.

FINAL CLAIM. A final claim seeks to resolve the entire claim with BP and other responsible parties. You will be required to sign a release of liability. Upon executing this release you will not be able to seek further compensation. The GCCF will fully evaluate and determine the final payment claim within 90 days receipt of the "substantiated" claim. Once receiving your final payment offer, it will be valid for 90 days. You may submit a full review final payment claim at anytime prior to the close of the GCCF program on August 22, 2013.

VOLUNTARY QUICK PAYMENT FINAL CLAIM. The GCCF has establish a "quick payment" of \$5,000.00 if you are an individual claimant, or \$25,000.00 if you are a business claimant. This "quick payment" is only for those who received an emergency advance payment. This option does not require you to submit any additional supporting documentation. However, you will be required to execute a full and final release just as you would with the full review final payment claim.

VOLUNTARY INTERIM PAYMENT CLAIM. If you do not select the quick payment final claim or the full review final payment claim, the GCCF will still allow for submission of an interim payment claim for past losses and damages. You may only submit an interim payment claim once per quarter of each calendar year until August 22, 2013. Within 90 days of receipt of a "substantiated" claim for interim payment, the GCCF will evaluate and review the submitted documentation.

BP OIL SPILL WORKERS UPDATE As reported in the Fall Newsletter, the firm is active in protecting the rights of those oil workers physically harmed by chemical exposure. Earlier this month, Knox Boteler requested Congressman Jo Bonner's office assistance in communicating with the National Institute of Environmental Health Services. This federal agency has been appointed to conduct studies on the effects on the oil spill workers. Funding for such a study was provided by BP. While the practices and procedures for this study were implemented in a recent meeting in Tampa Florida, this information has yet to be shared with these affected workers. With the help of Congressman Bonner, the firm is hopeful the deficiencies in this area of support for spill victims can be corrected.

TRAFFIC SAFETY NEWS

SIDE BY SIDE ATV WARNING. With it being hunting season, we know many of our readers will be in the woods using all-terrain vehicles (ATVs) to access hunting areas. In recent years side by side ATVs have become increasingly popular for use off-road. These side by side ATVs have a higher center of gravity than their traditional single rider counterparts. There have been numerous serious injuries for occupants from rollover accidents. Mark H. Warner of Collision Safety Engineering LC recently presented a paper on this topic to the 2010 Society of Automotive Engineers World Congress. He said, "Rollover crashes involving side-by-side ATVs and injuries related to these crashes represent an increasing percentage of the total population of ATV injury crashes. Unlike traditional ATVs, side-by-side ATVs are designed to carry two passengers abreast and usually include roll bars and seat belts. Most side-by-side ATVs are also designed to carry a limited payload in a rear cargo bed. Primary target uses for these vehicles include a combination of utilitarian tasks and recreational activities. Modifications by consumers often incorporate additional equipment that can change the mass balance and handling characteristics of the vehicle." According to John L. Ryan, a mechanical engineer expert, two specific side by sides with rollover problems are the Yamaha Rhino and the Bad Boy Buggy made by Bad Boy Classic Buggies, Inc. He notes that the Bad Boy Buggy has a higher center of gravity than the Rhino and also has a roof rack on the top of the vehicle. He says, "this will encourage users to utilize this space and load it up with gear. This will only act to increase the height of the center of gravity and lower the speed at which the unit will overturn." He also notes the Bad Boy Buggy has no doors or seatbelts for body and limb containment in a rollover. Finally, he notes the roll over protective structure (ROPS) on the Bad Boy Buggy "may not be a full-strength ROPS but more of a canopy." There are numerous lawsuits pending across the county related to serious injuries caused by poor crashworthiness designs in side by side ATVs. Please use caution and common sense when operating one of these vehicles.

MASS TORT UPDATE – AS SEEN ON TV!

No doubt you have seen numerous TV ads from lawyers all across the country advertising for a variety of cases related to medical issues, drug reactions, etc. These type cases are commonly known as Mass Tort cases because hundreds and even thousands of consumers have potential claims or cases. Law firms specializing in Mass

Tort cases group up clients and proceed with these cases in bulk. This process is in fact beneficial to consumers in that it allows smaller cases that would be very expensive to prosecute individually to go forward in a group. This is similar to a class action lawsuit. The problem for consumers and potential clients is that many times these lawyers or groups who are advertising on TV for cases, are not the lawyers actually handling the cases. Generally in a Mass Tort situation you want your claim or case to be handled by one of the law firms who is recognized as the leader in that area of litigation. Those law firms typically get better results for their clients than some of the non-essential law firms. At B&W we do not handle Mass Tort claims or cases; however, we can help locate the law firm we believe is best suited for a particular Mass Tort case. If you see an ad on TV for a particular claim or case that you think might apply to you or a family member, call us first and we can help connect you to the right firm for claim or case evaluation. Knox Boteler in our office oversees this service. 251 433-7766 or toll free 1 866 975-7766.



HIP REPLACEMENT RECALL A Johnson & Johnson subsidiary, Depuy Orthopaedics, has recalled parts used in its hip implant. Studies prior to this recall indicated there was a significantly higher rate for repeat surgeries when these parts were used. The recall may affect as many as 93,000 people. Hip replacement parts that have been recalled are the DePuy ASR XL Acetabular System and the DePuy ASR Hip Resurfacing System. Reported problems include pain, swelling and problems walking. At present, DePuy has offered to reimburse patients with these implants, including additional surgery costs associated with the recall. However, in exchange for a reimbursement, a patient will have to sign detailed legal forms. Before signing such forms, it is recommended you seek legal advice to fully understand your rights and what additional compensation you may be entitled to under the law.

DARVOCET & DARVON In November 2010, the FDA called for popular painkillers Darvocet and Darvon, and the generic equivalent, propoxyphene, to be withdrawn from the U.S. market. The move came after new studies linked the drugs to serious heart risks that may result in sudden death. The FDA is advising health care professionals to stop prescribing Darvocet, Darvon or generic propoxyphene to their patients, and patients who are currently taking the drug should contact their health care professional as soon as possible to discuss switching to another pain medication therapy. Results of the recent FDA study show that even when taken at recommended doses, propoxyphene causes significant changes to the electrical activity of the heart. These changes can increase the risk for serious abnormal heart rhythms that have been linked to serious adverse effects, including sudden death. If you or a loved one suffered heart problems while using Darvocet or Darvon, you may have a claim for damages and compensation.

INFO ABOUT LIFE INSURANCE CLAIMS

We have recently been helping a client with securing accidental death benefits under a life insurance policy issued for her mother. In working in this area we have learned some

interesting facts about life insurance benefits and accidental death policies.

ACCIDENTAL DEATH POLICIES include what we commonly know as “double indemnity clauses” in a life insurance policy. These clauses state that the benefits will be doubled if the death was accidental. Yet often the policies contain a large number of “exclusions” that give insurance companies an excuse not to pay accidental death benefits. These denials may often occur even if the death certificate states, “accidental” as the cause of death. One internet report states that over 40% of all accidental death benefit claims are denied! In our current case, we have been able to help our client better position the claim with supporting medical records and information and we hope the claim and benefits will now be paid without need of litigation. However, working on this matter has helped us realize and understand how easy it is for insurance companies to deny accidental death benefits or double indemnity benefits. If you are the beneficiary under an accidental death policy or a “double indemnity” clause in a life insurance policy, please consider consulting with us for help. The meeting is free. An early consultation may help you secure benefits quicker and avoid a delay in payment of benefits or possibly a wrongful denial of benefits.

LIFE INSURANCE POLICIES. Insurance industry experts state that 25-30% of life insurance benefits go unpaid every year. Many times this is because beneficiaries are unaware of a policy or can not locate the company that issued a policy. With mergers and acquisitions many insurance companies from just a decade ago can no longer be easily found. To help locate potential policies, look at bank statements or credit card histories to see if regular payments were made to an insurance company. Check with accountants or financial advisors to see if the deceased discussed life insurance policies with them. If the deceased was still working contact their personnel department to see if a life insurance policy was purchased through employment and/or payroll deductions. Also, check with all known insurance agents with whom the deceased did business. Many insurance companies offer multiple lines of insurance and an agent for car insurance may have sold a life insurance policy as well.



There are a number of different types of life insurance policies. The benefits available depend on the type of policy and premium payment history. But even if premiums were not being paid at the time of death, some policies still may have benefits available. Whole Life or “permanent” policies often have a paid in full component meaning once a certain amount of premiums have been collected the policy will continue in effect. Even if a permanent policy was not paid in full at the time of death, many of these policies contain extended term clauses wherein the policy will continue for a certain period even if premium payments have been stopped before death. Other permanent policies may have a “reduced paid up” clause which provides for a reduced benefit. Term Life Insurance policies offer benefits only if the death occurs during the term of the policy, yet some of these policies have a paid in full clause which allows

continued benefits after a set number of premiums have been paid. These policies are often known as “vanishing premium” policies.

As with any insurance claim under Alabama law, the claimant maintains the burden of proof. That burden starts with identifying the existence of a life insurance policy, proving the policy was in full force and effect at the time of loss and proving status as a beneficiary under the policy. With an accidental death policy, that burden also includes proving the death was in fact accidental within the terms and confines of the policy. If you have questions about life insurance benefits or claims, please feel free to contact our office for a free consultation.

AT THE FIRM

Our firm continues its community support of numerous area programs. Last quarter, we supported the Mobile Bar Association’s benefit for the Volunteer Lawyer Program, the ARTsoup Fundraiser for the benefit of the 15 Place Homeless Shelter, a charity wine tasting for the benefit of the Child Advocacy Center and Karlos and Mark attended the Mobile Area Chamber of Commerce’s 2010 Eagle Award Ceremony for minority owned businesses. In addition B&W co-sponsored the annual fund raiser for the Roger Williams Boys and Girls Club at Baumhower’s Wings.

BOTELER ATTENDS OIL SPILL CONFERENCES. Knox has made several trips to New Orleans over the last three months to meet with and work with a large number of attorneys from across the Gulf Coast who are representing claimants in the BP Oil Spill litigation and claims process. SEQ CHAPTER \h \r 1Knox continues to serve as a board member of Family Promise in Mobile. In addition, he has been selected to serve as a deacon at Central Presbyterian Church.

BOTELER’S HARD WORK HELPS BRING ABOUT SETTLEMENT. Knox was co-counsel for the family of a man who was killed when the tire on his vehicle blew out and caused a single vehicle crash. The tire manufacturer denied that its tire was defective and claimed no knowledge of similar problems. Through incredible hard work and diligence, Knox was able to find an employment dispute lawsuit from the State of Washington wherein an employee of the same tire company claimed he was dismissed or terminated for voicing concerns about customer complaints about some of the company’s tires. The same tires involved in our case. Talk about finding a needle in the haystack! In any event, Knox’s hard work helped bring about a meaningful resolution to this difficult case at mediation.

FINLEY CONTINUES IN LEADERSHIP ROLES. Since our last publication, Karlos Finley has worked throughout the community in an effort to continue the firm’s commitment to leadership in our community. In the last few months, Karlos has spoken to area youths at Washington Middle School, the Junior League Headquarters and Council Elementary School. Karlos provides a positive and motivational message to our area children on the importance of education. In November, Karlos served as the Chairman for the ARTsoup Fundraiser for the 15 Place Homeless Shelter and in December he



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was the moderator for the viewing and open forum discussion for the film, *Open Secret* at the University of South Alabama. The film depicts the opening session of the 1901 Alabama Constitutional Convention with a script taken from the actual transcripts of the event 110 years ago. In conjunction with his advocacy for Constitutional Reform in our State, Karlos will be addressing a class at Springhill College in January to discuss why our State needs to reform or replace the antiquated Constitution of 1901. In February, Karlos will be attending the Alabama Lawyers Association's (ALA) Winter Conference in Birmingham. As an officer in ALA he will be helping coordinate the organization's events and seminars for the rest of this year.

FINLEY HELPS PRO SE LITIGANT RECOVER COMPENSATION. At the request of one of our local judges, Karlos helped a man try his lawsuit for personal injuries to a favorable jury verdict. The man had sued a local premise owner for knee injuries he had suffered in a fall on the premises. He had claimed the premise owner had created a dangerous condition that was not open and obvious causing his injuries. He had maneuvered the case through the litigation process without a lawyer. However, the trial judge thought he might benefit at trial from the help of seasoned trial attorney. The judge asked Karlos if he would help with the two day trial. Karlos did and the man recovered a jury verdict in the amount of \$59,000.00 for his injuries.

WOLFE SPEAKS AT LEGAL SEMINAR AND EXPO. Last quarter Mark continued his busy schedule of speaking at Continuing Education Seminars for attorneys. In October he spoke at the Mobile Bar Association's (MBA) "Lunch and Learn" seminar sponsored by the MBA Women Lawyers Group. In November Mark traveled to Montgomery to speak at one the State's largest CLE programs. The November legal seminar and expo was sponsored by the National law firm of Beasley Allen and was attended by over 1500 lawyers from across the State. In December, Mark was asked to participate in a webinar sponsored by the Alabama Association of Justice (AAJ). The AAJ program featured the four top-rated speakers from earlier 2010 seminars and programs. In addition to speaking at CLE programs, Mark has been asked by TRIAL: The Legal Journal of the American Association of Justice to write an article on Practice Management for an upcoming edition in the Summer or Fall of 2011. This will be the third article of Mark's published by TRIAL.

WOLFE MAINTAINS "SUPER LAWYER"™ STATUS. The Thomson Reuters attorney rating service known as Super Lawyers has again included Mark in their list of outstanding lawyers in the United States. According to Barbara McGivern, Vice-President & General Manager for Super Lawyers, the rating is based upon professional achievement, peer recognition, peer evaluation and independent research on each candidate. She also said only 5% of lawyers qualify for this designation. In addition to maintaining this highest designation, Mark has also maintained his AV rating with Martindale-Hubbell and his 10.0 rating with AVO.com. Both of these ratings are also the highest available by the related organization.

