

LEGALLY SPEAKING[©]

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

FALL 2009

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MOORE & WOLFE DEEMED "MOST HIGHLY QUALIFIED."

Martindale-Hubbell, a peer review based attorney and law firm rating service, recently announced that the law firm of Moore & Wolfe has qualified for its **Bar Register of Preeminent Lawyers**. Michael Walsh, President and CEO for the company that monitors the peer review rating service (LexisNexis) reported that only 5% of all law firms in America qualify for this special listing. "We are proud to be recognized as one of the few personal injury law firms in Alabama to qualify for this designation," said Steve Moore. In 2004, M&W was included in the top 15% of all American law firms when it received a prestigious AV rating from Martindale-Hubbell. Steve said, "I think the fact that we have now reached the top 5% shows we are continuing to improve and we are committed to always finding ways to improve our representation of injury victims."

GET GEICO. GET SUED?

EVEN A CAVEMAN IS SMART ENOUGH TO KNOW THAT BEING SUED CAN ADVERSELY AFFECT HIS CONSUMER REPORTS. In a recent poll of auto-negligence lawyers across America, numerous attorneys who represent auto-collision injury victims say they have to file more lawsuits to recover restitution for their clients when GEICO is involved. Steve Moore from M&W participated in the informal poll conducted through a national list-serve for auto-negligence attorneys. "When we take on an auto-negligence claim for the victim, we explain it's in their best interest if a fair settlement can be reached without having to file a lawsuit," said Moore. He explained that lawsuits and litigation are expensive and time consuming for victims who are often in a difficult financial situation because of lost wages, co-pays and deductibles. "Companies like GEICO know Alabama procedural, regulatory and substantive laws are in their favor and they are really taking advantage of this situation," he said. Moore went on to explain that not only is GEICO taking advantage of the victim by making "ridiculously low" claim settlement offers but their own insureds as well. He explained that not only are lawsuits difficult for victims but it also means the at-fault drivers insured by GEICO are going to suffer. In Alabama even though the insurance company gets to control the payment, or non-payment, of a liability claim it's their insured that must be named as the Defendant in a civil lawsuit for damages. Moore referenced the recent claim of one of his clients against GEICO as an example of just how unreasonable GEICO is being. The clients were rear-ended by a GEICO insured as they were stopped in traffic.

GEICO's last offer to settle the claim before litigation was less than the clients' medical expenses and lost wages. "This is not a big case," said Moore, "but GEICO has left our clients with the option of either incurring an out-of-pocket loss of several hundred dollars or filing a lawsuit to try and recover full restitution." Not only are they re-victimizing the victim, but they are subjecting their insured to the various adverse consequences of a civil lawsuit and possibly a civil judgment. "Being a Defendant in a civil lawsuit may have adverse consequences to consumer reports and is a factor to be disclosed on credit applications and job applications," explained Moore. In closing he said, "I think the real cavemen at GEICO are the ones making these unfair and unjust decisions."

MARK WOLFE IN ALABAMA TOP 100!

Mark Wolfe of Moore & Wolfe was recently invited to join the Top 100 Trial Lawyers in Alabama by the American Trial Lawyers Association (ATLA). The following is an excerpt from the ATLA web site: "*The Association* is a national organization composed of *The Top 100 Trial Lawyers* from each state. Membership is obtained through special invitation and is extended only to those attorneys who exemplify superior qualifications of leadership, reputation, influence, stature, and profile as civil plaintiff or criminal defense trial lawyers." Mark is only the seventh lawyer from the Mobile/Baldwin County area to be invited to join ATLA. In 2008 Mark joined the prestigious Academy of Trial Advocacy (ATA) which is limited to 1000 members across the United States. He became only the second lawyer in Alabama to qualify for membership in the ATA.



ALABAMA LAW FAVORS INSURANCE COMPANIES

In previous editions of this newsletter, it has been reported that compensatory verdicts in Alabama continue to be among lowest in the Country. This is bad news for auto-negligence victims because insurance companies in our State use these verdicts to justify low settlement offers on current auto-negligence claims. Recently Skip Tucker, on behalf of Alabama Voters Against Lawsuit Abuse (AVALA), wrote a letter to the editor advocating even more "reform" in Alabama laws to protect insurance

companies and big business. Yet all **four critical areas of Alabama law** already overwhelmingly favor insurance companies and work against auto-negligence victims. The following facts outline why the insurance companies don't need any more favorable laws in Alabama. In fact even AVALA's own research shows Alabama to have some of, if not the most, pro-Insurance laws in the United States!

I. Regulatory & Statutory Laws Favor the Insurance Industry in Alabama.

The Alabama Department of Insurance has long been recognized by pro-consumer organizations such as Alabama Watch as a "lap-dog" of the insurance industry. In Alabama we have no pro-consumer laws or regulations to protect claimants. There is no Bill of Rights for claimants, no penalties of any sort for unreasonable delays in processing claims, no rules or regulations for what adjusters may or may not do when processing a claim, no provisions for interest on unreasonably delayed claims, no sanctions, such as the award of attorney fees, for claimants when they are forced to file a lawsuit to recover benefits, no punishment for adjusters who misrepresent the law to claimants, no mandatory guidelines for the adjusting of claims, no Statewide system to monitor claim adjusting activities of specific companies and the list goes on. All of the above areas have been addressed and fixed by other States that have a more fair and balanced approach to insurance regulations and a true interest in protecting the rights of consumers and injury victims. In addition to sadly lacking in the area of pro-claimant insurance regulations and statutes, Alabama procedural, evidentiary and substantive laws all favor insurance companies and work to the detriment of auto-negligence victims.

II. Procedural, Evidentiary and Substantive Laws Favor Insurance Companies in Alabama.

A recent study by the pro-insurance/pro-business organization Pacific Research Institute (PRI), as well as a review of our State's laws, clearly documents that Alabama procedural, evidentiary and substantive laws all overwhelmingly favor insurance companies. The 64 page report published in April 2009 by PRI titled *Tort Law Tally: How State Tort Reforms Affect Tort Losses and Tort Insurance Premiums* reviewed and analyzed a multitude of State laws in the United States and then reported on which ones were considered most-favorable for insurance companies and businesses. The report is now being used by pro-insurance lobbyists across America to justify more "tort-reform" laws in various States. Unfortunately for Alabama auto-negligence victims, our State already has many of the pro-insurance laws advocated by PRI in their report. The following are just a few examples from the report along with specific Alabama laws that work against auto-negligence victims:

A. Procedural Laws: This area deals with how lawsuits must proceed through the Court system. **Number of Jurors Needed to Reach a Verdict.** PRI says the most favorable rule for insurance companies is to require a unanimous verdict of twelve jurors. The study showed by requiring all 12 jurors to reach a unanimous verdict it gives more power to one or two jurors who want to "hold down" the verdict amount. Alabama law requires a unanimous verdict of 12. **Venue Selection.** PRI says rules limiting where lawsuits can be filed helps prevent "greedy Trial Lawyers" from filing lawsuits in pro-victim jurisdictions. Alabama law restricts the jurisdiction of an auto-negligence case to either the County where the collision occurred or the County where the Defendant (at-fault driver) lives. These are just two examples from the PRI report. Another critical procedural law in Alabama that favors insurance companies is that we are **not a direct action State**. That means the auto-negligence victim must sue the at-fault driver and NOT his or her insurance company to obtain compensation for injuries and damages. This procedural rule coupled with favorable evidentiary rules allows insurance companies to be "invisible" in Court and not subject to any examination as to the unfair claims practices they may have used. In addition, Alabama laws allow for the at-fault driver's lawyer, who is being paid by the insurance company, to plead numerous and often non-meritorious "affirmative defenses." It is common for insurance defense lawyers to plead over 25 various "affirmative defenses" in a simple auto-negligence case. **Burden of Proof:** The auto-negligence victim carries the burden of proof on all aspects of their claim or case. This means the auto-negligence victim must produce legally sufficient evidence which is defined as substantial evidence to support each and every aspect of their claim. While this standard is common for most jurisdictions, insurance companies know their lawyers don't have to prove anything in Court but rather get the benefit of raising smoke screens composed of "possibly", "maybe", etc., without being required to have evidence to support their speculative defenses.

B. Evidentiary Rules and Laws: This area deals with what evidence jurors are allowed to consider when deciding a case. **Collateral Source Rule.** PRI says evidentiary laws that allow into evidence payments a victim may have received for their damages from other sources, such as their own health insurance, is helpful for insurance companies and keeps compensatory verdicts lower. Since 1987, Alabama Code §12-21-45 has allowed the at-fault driver to introduce evidence that a victim's own health insurance has paid part or all of the claimed medical bills. This section would not be so bad for victims except the same Code section makes it legally difficult for auto-negligence victims to prove their health insurance company has a right to be repaid those benefits (subrogation) from any money recovered. This, coupled with the fact that Alabama law also **excludes from**

evidence the fact the at-fault driver has liability insurance, often leads jurors to incorrectly conclude the at-fault driver will be personally responsible for paying back a victim's health insurance company. In addition to excluding the existence of liability insurance coverage for the at-fault driver, Alabama evidentiary law also **excludes the accident report** and generally prohibits the investigating officer from stating his or her opinion as to fault.

C. Substantive Laws: These are the laws that jurors must apply to the facts when deciding the outcome of an auto-negligence or tort case. **Contributory Negligence.** The PRI report states that this is the most favorable substantive law for insurance companies and business (page 23). This law holds that if the auto-negligence victim did anything to contribute to the cause of the event and related injury in question, the victim can recover nothing from the Defendant. Theoretically, this means if you are coming into an intersection under a green traffic light and the car opposite you waiting to make a left turn in front of you on a circular green fails to yield the right of way causing the collision, his or her insurance company can try to avoid paying your claim under the argument that you were "speeding" and



therefore contributed to the accident. The vagaries of contributory negligence give insurance companies all kinds of creative latitude in denying and/or delaying claims. [See related story below]. Because jury verdicts in Alabama have to be unanimous with twelve jurors, good insurance defense lawyers hope to "catch" one or two jurors with these "contrib." smoke screens in hopes they will pull the remaining jurors down in their verdict assessment. This situation often leads to a compromise verdict and the auto-negligence victim only recovers a portion of their overall damages. The overall harshness of this antiquated legal doctrine is why only five jurisdictions in the United States still recognize contributory negligence as a complete defense. Most States now use some form of comparative negligence standard. [The five jurisdictions still using "contrib." are: **Alabama**, District of Columbia, Maryland, North Carolina and Virginia.] Another often claimed substantive law defense is that of **Sudden Emergency**. This law is not necessarily bad in that it allows a person a certain amount of deference to their decisions when confronted with a sudden emergency. If a child darts out in front of you and you swerve to the right and strike a parked car, the sudden emergency doctrine would be helpful to you if the owner of the parked car you struck tried to argue you were

negligent because you should've swerved to the left instead. The crux of the Sudden Emergency doctrine is that you can not be the one to have caused the emergency. Yet across Alabama, trial judges are routinely allowing at-fault drivers to avail themselves of the Sudden Emergency doctrine in rear-end auto-negligence cases. "I looked up and cars ahead of me were stopping suddenly!" This becomes one more smoke screen in the hands of a competent and experienced insurance defense lawyer.

CONCLUSION. The examples above are not exhaustive but rather just samples of laws in Alabama that favor insurance companies over claimants. Claimants can expect no help from the Alabama Department of Insurance and must recognize that Alabama procedural, evidentiary and substantive laws all work to the advantage of the Insurance Industry. These laws will not change until enough people contact their representatives and political leaders and urge them to level the playing field for victims of auto-negligence in Alabama.

A TRUE EXAMPLE OF THE WAY INSURANCE COMPANIES USE "CONTRIB" TO DENY AND DELAY A CLAIM.

In GEICO Claim number: 031158603-0101-036, the at-fault driver (insured by GEICO) crossed over the center line and struck the claimant's car head-on. The at-fault driver insured by GEICO admitted to the investigating officer at the scene he had been waiving to friends on the side of the road and drifted into the other lane causing the collision. GEICO denied the claim on the grounds of "contributory negligence" stating the claimant contributed to the collision by not hitting her horn soon enough, not swerving to miss the oncoming driver and not hitting her brakes quick enough or hard enough to avoid the collision. Insurance companies know in the hands of a well paid insurance defense lawyer even these lame excuses can be made to appear as a viable smoke screen in Court. Over the years at M&W we have seen many insurance companies try to use similar lame excuses of "contrib." in support of their DDD claim tactics. (Delay, Deny & Defend.)

MOORE & WOLFE CHARITY WINE TASTING SET FOR SUNDAY, OCTOBER 25TH

The 4th annual M & W Charity Wine Tasting will benefit Victory Health Partners. The event will again be held at the Bakery Café on Dauphin Street and will go from 2:00 until 5:00. In addition to great wines to sample, there will be great raffle prizes, a "best-bid" silent auction, and various draw down games. Tickets will be \$40.00 per person. Opened in January 2003 under the direction of Dr. Robert



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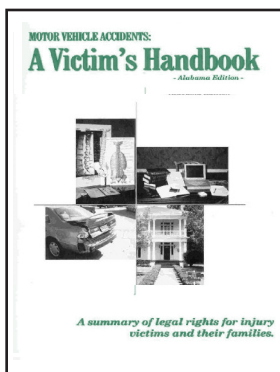
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Mobile, Alabama 36604
(251) 433-7766

...or current resident.

FREE TO THE PUBLIC

D. Lightfoot, Victory Health Partners has a core staff of business and healthcare professionals who perform the day to day operations at the clinic providing healthcare for uninsured adults. Assisting the staff are 60-70 volunteers who work each week. In addition, a network of over 150 physicians and dentists donate their services in their offices to patients at little or no cost to the patient. For more information on this year's beneficiary and to purchase tickets, please visit our web site: www.moore-wolfe.com

INFORMATION ABOUT AUTO-NEGLIGENCE CLAIMS



With 6.5 million motor vehicle collisions each year and 3 million injuries related to those collisions [NHTSA report], chances are you, or someone you know, will need information about motor vehicle collisions and the variety of insurance claims related to car accidents. 1% of the American population is injured annually in a motor vehicle collision. This means out of every 100 people, 1 person will be hurt this year in a car accident. Most of these injuries, approximately 2 million, will be "soft-tissue" sprains and strains. Those relatively minor injuries will require medical care at an average of about \$4,700.00 and cause the average victim to lose 10 days from work. Our publication Motor Vehicle Accidents: A Victim's Handbook (free) and our web site: www.moore-wolfe.com provides motor vehicle collision victims with important information about the insurance coverage and claims related to car accidents. M&W has been publishing the Victim's Handbook since 1994. It has been updated three times and over 45,000 copies have been published and distributed free to the public. **CALL 1 866 975 7766 (toll free) or locally 433-7766 FOR A FREE COPY.**

M&W CAN HELP WITH DISABILITY CLAIMS

Have you or a friend or family member been denied Social Security Disability benefits? Statistically most people are denied their initial disability claim because of the complex filing requirements and procedures. An attorney can help with the appeal and at M&W we may be able to help you recover benefits. We charge no fee unless benefits are recovered and there is no fee for a consultation. Call today, 251 433-7766 or 1 866 975-7766 or e-mail us at jkb@moore-wolfe.com