

LEGALLY SPEAKING

A quarterly newsletter for friends and clients of
MOORE & WOLFE, Attorneys at Law

July 1, 2001

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.

ATTENTION STROKE VICTIMS

In October of last year the Food and Drug Administration issued a warning regarding the drug, Phenylpropanolamine (commonly known as PPA). Medical studies and reports show that PPA significantly increases the risk of hemorrhagic strokes. Unfortunately, PPA is a very common drug in many over-the-counter cold medicines and diet medications. It was also used in many common prescription drugs.

We now have a list of 165 medications which contain PPA. If a family member has recently suffered a stroke and they were on any type of medication, especially a cold medicine, before the stroke **call our office.**

There is no charge to contact us and we can provide you with more information about the legal remedies that may be available.

Other FDA Recalls

Besides the recall of PPA (which is found in common over-the-counter cold and diet medicines) because of the link to strokes, the Food and Drug Administration has recalled several prescription drugs because of their link to health problems.

-REZULIN. This medicine was prescribed for diabetes but has now been linked to liver damage.

-PROPULSID. This medicine was prescribed for heartburn but now has been linked to heart damage.

-LOTRONEX. This prescription medicine has been recalled because of several side effects including severe abdominal pain, extreme diarrhea and colon tissue damage.

If you, or some one you know, has incurred medical bills and/or damages related to the use of any of these drugs, we can help you. PLEASE CALL US TODAY.

NURSING HOME CARE

Recent studies have indicated that patient neglect is more common in Nursing Homes than people realize. These studies correlate with the increase in Nursing Home neglect cases that

we are now seeing and handling. We recently had the privilege of working with one of the Southeast's leading experts on Nursing Home standards for proper patient care.

If you have a loved one who you feel did not receive proper care while in a Nursing Home, please call us. We can review the details of the matter. If needed we can have the records reviewed by qualified experts to determine if there was a deviation from the applicable standard of care.

Moore Elected Bar Commissioner

In May, Steve Moore was elected as Bar Commissioner for the 13th Judicial Circuit (Mobile County). Steve ran unopposed for the open position and has pledged to the members of the Mobile Bar Association to work hard to protect consumers from unscrupulous lawyers. Steve has already begun drafting proposed Legislation that will make it illegal for "investigators" to have potential clients sign a legal representation contract. This activity borders on practicing law without a license which is a crime. Steve also intends to introduce legislation that makes the Unauthorized Practice of Law a felony.

SATLA raises \$3000 for Charities

The South Alabama Trial Lawyers Association (SATLA) recently held its first annual Charity Golf Tournament at Timber Creek Golf Course in Spanish Fort. The **Principal Financial Group** was one of the major sponsors for the tournament. Moore & Wolfe were also sponsors for this event which raised \$3,000.00. The proceeds were donated equally to the **Salvation Army** and the **Penelope House**.

Since its inception in 1998, SATLA has contributed over \$35,000.00 to local charities and public service projects. SATLA members are lawyers from the South Alabama area who focus their practice on representing consumers and injury victims.

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CLASS ACTION UPDATES

Have you noticed a lot of attorney advertisements on TV and in the newspaper about insurance policies and consumer loans? Some of these ads are from local attorneys but many are from out-of-state attorneys. Most of these ads are for potential cases related to Class Action lawsuits. A Class Action lawsuit is where numerous individuals bring one lawsuit against a company for a wrong that has been committed. The law allows this type of case because many times an individual does not have sufficient damages to justify a lawsuit on their own.

Most of the time when a class action lawsuit is settled, the members of the class are notified by mail or by publication in a newspaper. Usually, if a potential class member is not satisfied with the proposed settlement he or she can "opt-out" of the class and pursue an individual claim. If a large enough group opts-out of the settlement they can sometimes secure a better settlement than the class members. This is what you usually see attorneys advertising for in the newspaper. As a consumer, you want to make sure you use a lawyer or law firm that can obtain the best result. At **Moore & Wolfe** we are not directly handling these type cases, but we can certainly put you in contact with firms that are and we can recommend the attorneys that we think will do the best job for you. What follows are some of the current class action lawsuits that may involve you or a family member:

INSURANCE

- Jackson National Life Insurance Company
- Jefferson Pilot Life Insurance Company
- Equitable Variable Life Insurance Company
- Equitable Life Assurance Society of the United States
 - Pan American Life Insurance Company
 - Guardian Life Insurance Company
- Northwestern Mutual Life Insurance Company
- Massachusetts Mutual Life Insurance Company
 - Principal Life Insurance Company
 - Equitable of Colorado

CONSUMER LOANS

- CitiFinancial
- Associates Financial Services, Inc.
- First Family
- TransSouth Financial Services, Inc.

PLEASE CALL TODAY AND WE CAN HELP YOU SORT THROUGH THE CONFUSION OF LEGAL ISSUES AND LAWYERS.

This publication provided as a service of:

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victims and their families
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New Employees at Moore & Wolfe

We are pleased to announce two new employees at the law firm. **Jennifer Adams** is now working as our litigation secretary. She is doing a great job of keeping up with the numerous litigation files and she is helping Steve with his numerous Mediation files. As many of you know, Steve is one of this areas most successful mediators. (Mediation is a voluntary procedure whereby parties come together and, with the help of a mediator, try to reach a voluntary resolution of there dispute. Arbitration, which we dislike, is a mandatory and expensive procedure wherein the Arbitrator decides the outcome of the dispute and the parties have no right of Appeal.) **Raven McNab** is our new receptionist and she is doing a wonderful job with the phones and managing the pending files.

The McDonald's Hot Coffee Case

THE MOST MISUNDERSTOOD CASE OF THE DECADE. Our firm has the pleasure of working with attorney Reed Morgan on several cases. Reed is the lawyer who represented the victim in the now famous McDonald's Hot Coffee case. This case has received much publicity over the last eight years as an example of the American jury system gone "out of control". Tort reform advocates have used the case as their rally flag for tort reform legislation which restricts the rights of injury victims. You've heard the basics of the case as spun by the media. "A woman goes through a McDonald's drive-thru and orders coffee. She places the coffee cup between her legs and as she drives away the lid comes off and she spills a little coffee in her lap. She sues McDonald's and a jury awards her millions and millions of dollars for spilt coffee." According to the media and the tort reform spin doctors, this case exemplified everything that is wrong with the American civil justice system. "Juries are out of control". The truth is once most people learn the facts of the case, they agree that the jury's decision was not only justified but logical.

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At the time of the incident McDonald's served its coffee at 180 degrees while most other restaurants only served their coffee at 130 degrees. This difference in temperature is the difference between mild third degree burns to the human skin and the more severe second degree burns. Because of the extreme temperature of the McDonald's coffee, the victim received severe third degree burns to her private area. These burns were so severe that she had to undergo several painful skin graft operations. These operations and the time she spent in the hospital cost almost \$100,000.00. In addition she faced the very real possibility of needing more surgery in the future. **The evidence presented to the jury showed that prior to this incident, McDonald's had received 72 complaints from customers who had been seriously burned by the scalding hot coffee.** The evidence also showed that if McDonald's had served its coffee at 130 degrees, the victim would have only suffered minor second degree burns which probably would not have even required medical treatment.

If McDonald's knew that it was serving its coffee at a temperature well above the industry standard and they knew scalding hot coffee would cause serious burns, why did they decide to continue serving coffee that was so hot? The answer is very simple and one that we as trial lawyers see on a regular basis with many large corporations. McDonald's management decided to put corporate profits ahead of safety for their customers. This is the fact that has been lost in the media's reporting of this case, this is what the jurors heard and this is what really should have been reported about this case. You see, the reason McDonald's deliberately chose to serve scalding hot coffee to their customers was because it was more profitable to do so. On this issue two important facts were introduced to the jury about coffee sales at McDonald's. First, McDonald's policy required that all stores had to make coffee available to customers throughout the day. This meant they had to keep fresh coffee available all day. Second, McDonald's offered free refills to those customers who purchased coffee.

Evidence at trial showed that McDonald's management intentionally decided to continue selling their coffee at scalding temperatures even with knowledge of its burn potential. This decision was based on two financial reasons. First, keeping the coffee scalding hot kept the coffee "fresher" longer and decreased the number of times a fresh pot of coffee would have to be brewed. Second, by serving the coffee so hot it would slow down the consumption rate and thereby decrease the number of "free" refills that would have to be given out to customers.

Wanton conduct or gross negligence involves the conscious or deliberate disregard of a known duty with knowledge that injury will probably result. In this case, the jury determined that McDonald's had a duty to its customers to serve coffee at a reasonable and safe temperature. They also decided that McDonald's intentionally breached this duty with knowledge that injuries would probably result from its decision. This is wanton conduct. As such the law authorizes restitution for the injuries and allows the jury to assess punitive damages if they decide punishment is needed. Punitive

damages are meant to be a deterrent for a bad act or decision. In this case the jury determined from the evidence that McDonald's should be punished for its conduct. In addition to restitution the jury's verdict included \$2.4 million in punitive damages. To many that may seem like too much. But this amount of punitive damages was only equal to **two day's** revenue for coffee sales for McDonald's. The jury's decision seems logical. Since McDonald's made a conscious decision to put corporate profits ahead of safety for its customers, the jury punished McDonald's by taking away two days worth of revenue from coffee sales. Evidence at the trial showed that McDonald's made \$438 million annually in revenue from coffee sales alone. (Personally I don't think they were punished enough.)

The assessment of punitive damages against McDonald's was upheld by the Appellate Court; however, the amount was reduced. The facts of this case speak for themselves. The jury's decision was based on the evidence and was logical. Of course, had the facts of the case been accurately reported, it would not have been as sensational and sold as many newspapers. In that regard this case has become the ultimate Litigation Legend. Those are stories that get reported about lawsuits that often have no basis in fact, or the facts have been grossly distorted. Kind of like Urban Legends. The next time you hear a story about an "outrageous" jury verdict or someone tells you about a silly lawsuit, remember it very well could be nothing more than a Litigation Legend.

NEW ACCIDENT MANUAL

Our publication *Motor Vehicle Accident's: A Victim's Handbook* -Alabama edition has recently been updated. This publication is intended to provide accident victim's with a general overview of their rights. It includes a new section on understanding how Insurance Companies view and handle claims. Since its original publication in 1994, 25,000 copies of this manual have been printed.

It also contains a section on Hiring an Attorney and includes important questions and considerations when making this important decision. **IF YOU OR A FRIEND OR FAMILY MEMBER HAS BEEN INJURED IN AN ACCIDENT, PLEASE CALL FOR A FREE COPY.**

NEW AND IMPROVED MOORE & WOLFE WEBSITE: We have recently updated our website and we hope you take a minute to visit our site the next time you are cruising the Internet. [moore-wolfe.com]. The site was designed and put together by our friends at **Computer Management Services**. Call them at 473-3957 for all your computer needs.

Recommendation of Services

dedicated to protecting the rights of injury victims and their families

We truly appreciate the recommendation of our services by our current and former clients and by those people in the community who are familiar with our practice. Unlike lawyers who advertise on TV, we count on each and everyone of our clients to recommend our services to their friends and family

members. *Our next client comes from you, not a TV commercial.*

PLEASE HAVE A SAFE AND
ENJOYABLE SUMMER !