

LEGALLY SPEAKING

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

July 1, 2002

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.

MOORE & WOLFE

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

Recommendation of Services

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 every one of our clients to recommend our services to their friends and family members. ***Our next client comes from you, not a TV commercial.***

Over 85% of our current clients have been recommended to our office by former clients and people in the community who are familiar with our work and service.

This publication is provided free as a service
of:

Victim's Handbook Available Free

Our publication *Motor Vehicle Accidents: A Victim's Handbook*-Alabama Edition has recently been updated. This publication is intended to provide accident victims 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.**

AT THE FIRM

NEW SECRETARY HIRED. Robin Edwards has now been hired to replace Sarah Williams. Sarah is enrolled at LSU and moved to Baton Rouge a few weeks ago to begin preparing for the Fall Semester. We will miss Sarah, but we know she will continue to do well.

Robin's husband Richard works at the Strickland Youth Center and they have three children. Ayanna age 6, Richmond age 4 and a three month old named Ali. Robin will be working in both the Claims Section and Litigation Section.

Moore & Wolfe has been selected to be a participating law firm in the National Union Plus Legal Service program. M&W is the only local law firm selected to participate in this program. The program is part of the Union Privilege program for the 13 million members of the AFL-CIO unions. Union Privilege endorses and recommends merchants and service providers who support local Unions.

Moore & Wolfe to receive Achievement Award from Mobile County Democratic Party. On August 10, Steve Moore and Mark Wolfe will be honored at the annual Mobile County Democratic Awards Ceremony. This award comes in recognition of their years of work for the Democratic Party. Steve currently serves on the Mobile County Democratic Executive Committee (MCDEC) and is the chairman of the Judicial Committee. Mark is a former member of the MCDEC and he is a past Vice President of the Bay Area Democrats. Steve and Mark have worked on numerous local campaigns as well as several statewide campaigns. In 1998 Steve served as the local campaign coordinator for Alabama Supreme Court Justice Douglas Johnstone, who will be presenting the Award to Mark and Steve.

Steve Moore has recently been appointed by the Alabama Supreme Court to serve as a Special District Court Judge. He was nominated for the appointment by a unanimous vote of the sitting District Court Judges of Mobile County. As a Special District Court Judge, Steve will preside over District Court trials when the sitting Judges have conflicts or when they are

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unable to hear their normal docket for health or personal reasons. Since Special District Court Judges serve on a

Last month Mark Wolfe was a featured speaker at the annual meeting of the Alabama Trial Lawyers Association. The theme of the three day seminar was "Fighting for the Cause of Civil Justice." Mark is on the Executive Committee for the Alabama Trial Lawyers Association as well as the South Alabama Trial Lawyers Association (SATLA). Both organizations are composed of attorneys who primarily represent injury victims and consumers.

Steve Moore recently received a Merit Award from the Alabama State Bar Association for his service as President of the Litigation Section. Steve is the immediate Past President and helped organize and coordinate several programs to improve the Litigation process for the public.

Moore & Wolfe are Corporate Sponsors for the Kops for Kids Program. This program is a volunteer program for off-duty police officers. The officers raise money and then use it to buy school uniforms and school supplies for deserving public school children.

Funfest 2002. M&W sponsored the food at this year's event. Funfest is an annual event hosted by members of the Mobile Bar Association Young Lawyers Division for the mentally challenged residents of the Albert Brewer Center. The one day event consists of organized field games and activity booths with games and crafts. It is a very meaningful event for the participants and the lawyers who participate.

Legally Speaking Starts Fifth Year of Publication

This edition of Legally Speaking marks the beginning of our fifth year of publication. Over that period of time our circulation has grown from 300 to 7000! We want to thank our readers for their comments and input. We also want to thank you for sharing this publication with your friends and family. Past editions of Legally Speaking are now archived on our web site, www.moore-wolfe.com The web site also has information about various other M&W publications that are available free to the public. Also, it's easy to be added to our mailing list for future editions. Just call 433-7766 and ask to be added the Legally Speaking mailing list.

***47 to Report Highway Emergencies**

As many of our readers travel this summer we want to remind you that the Alabama Department of Public Safety

volunteer basis, they help to keep crowded dockets moving without additional cost to taxpayers.

encourages you to use *47 (*HP) on your cellular phone to report accidents, drunk drivers and other highway emergencies. We would also remind our readers to use seat belts and that children under three must ride in federally approved child safety seats. (See related story on page 3.)

"Do I Need an Attorney?" Of Course Not..... Just Ask Allstate Insurance Company

Over the last few years Allstate Insurance Company has been providing many claimants across the country with a brochure titled *Do I Need an Attorney?* The basic message of the brochure discourages claimants from seeking legal advice and encourages the claimant to rely on the Allstate adjuster. As reported in the January 1, 2001 edition of *Legally Speaking*, the 4th Circuit Court of Appeals upheld the West Virginia Bar Association's charges against Allstate for its improper use of this brochure. The WVBA felt that encouraging claimants to "rely" on adjusters, who were not licensed attorneys, constituted the Unauthorized Practice of Law. They also argued that the brochure failed to adequately alert claimants to the adversarial relationship between claimants and adjusters.

Last year the ABC News show 20/20 did a report on Allstate's tactics to keep claimants from consulting with an attorney. The show featured many claimants who had failed to seek legal advice because of Allstate's tactics. They later found out that they had been taken advantage of by Allstate when they settled their claim.

Now, in a related story published in the May 27, 2002 edition of *Lawyers Weekly USA*, the Washington Supreme Court upheld a **Legal Malpractice charge against Allstate** because of the actions of one of its adjusters when handling a third party liability claim. Janet Jones was severely injured when an Allstate insured ran a stop sign and broadsided the mini-van operated by Jones. Jones had over \$75,000 in medical bills. Her injuries were in part related to a defective seatbelt in the mini-van. Allstate adjuster Christy Klein told Jones that she did not need to hire an attorney and then convinced Jones to settle the case for a nominal amount. Klein had Jones sign a Release. Shortly after that the mini-van was recalled because of the seatbelt defect and it was then that Jones learned the Release she had signed precluded her from receiving additional restitution from the mini-van manufacturer. Jones filed suit against Allstate on the grounds that Klein failed to properly advise her of the legal consequence of signing the Release and that Klein failed to properly disclose her conflict of interest when she told Jones that she did not need an attorney. The Washington Supreme Court affirmed the allegations of Jones against Allstate. The Court concluded that if Allstate is going to discourage claimants from seeking legal advice then it will be responsible for any errors or omissions it makes when "advising" an unrepresented claimant.

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“Do I Need an Attorney?” Consider these facts.

We applaud the above decision of the Washington Supreme Court. Too many injury victims are “re-victimized” when, without legal representation, they try to deal with insurance adjusters. Adjusters are trained in how to manipulate claimants to discourage them from seeking legal advice. Insurance companies know they have an advantage when their adjusters are dealing with an unrepresented claimant. Consider these facts:

1. An insurance adjuster has no legal obligation to tell a claimant the amount of restitution actually owed. Furthermore, since the adjuster works for the insurance company he or she has a financial incentive to settle a claim as cheaply as possible.

2. In a third party liability claim, the adjuster works for the at-fault driver and not the claimant. That means the adjuster must try to protect the interest of its insured over the interest of the claimant.

3. An insurance adjuster can not offer legal advice to a claimant. This becomes critical when a claim involves aggravating circumstances such as DUI on the part of the at-fault driver, mitigating circumstances and/or complicated legal issues such as subrogation claims.

4. Consulting with an attorney does not make a claimant a “greedy person.” Of all the tactics used by insurance adjusters to discourage claimants from seeking legal advice, this one is the most aggravating for us as personal injury attorneys. Adjusters know most claimants are trusting people and are not looking to recover anything more than the basic restitution owed. They play on these two characteristics and say or imply that the claimant is “greedy” if he or she goes and gets an attorney. “Now Claimant John Doe, you don’t seem like the kind of person that’s going to run out and get you a lawyer.” What is so frustrating about this is that we have seen over and over again situations where insurance adjusters use this technique to take advantage of a claimant. In short they use the good character of the claimant to their advantage and to the serious detriment of the claimant.

5. Insurance adjusters have access to legal advice on various issues which may effect the Company’s exposure on a claim. Simply put, adjusters don’t want a claimant to seek legal advice but the adjuster will get legal advice in a heartbeat if it means the company might be able to “save a buck or two.”

6. If it was not to their advantage, why would insurance companies spend so much time and money developing methods and programs to keep claimants from seeking legal advice? Why would they send adjusters to seminars on this topic? Why

For years Representative Bob Barr, R-Ga, has been an outspoken advocate on the evils of “frivolous” lawsuits. Yet, while in the middle of championing a bill that would severely limit the rights of injury victims, it was disclosed that he himself is the Plaintiff in a 30 million dollar lawsuit against Bill Clinton, James Carville and Larry Flynt for “loss of reputation and emotional distress.” Recently at a hearing of the of the House Judiciary Commercial and Administrative Law

would Allstate take the time and energy to develop a brochure to discourage claimants from seeking legal advice?

The above facts clearly show that injury victims should know their legal rights and should not rely on the insurance adjuster to “do the right thing.” Protecting your rights and expecting an insurance company to pay the full amount of restitution owed does not make you a “greedy” person.

Booster Seats Prevent Injuries

A recent study by Children’s Hospital of Philadelphia, provides clear evidence that children between the ages of 3 and 8 are safer in car seats or booster seats than adult seat belts. Research of data from over 150,000 crashes showed children weighing between 40 to 80 pounds wearing a seat belt without a car seat or booster seat received broken noses, broken jaws and other facial fractures that could have been easily avoided if the seat belts had been used in conjunction with a car seat or booster seat. The researchers also emphasized that seat belt use alone was still much, much safer than no restraint at all.

Partners for Child Passenger Safety make the following recommendations and observations:

-Children are safest in the back seat.

-A rear-facing infant seat or convertible seat should be used for children up to 20 pounds and 1 year old.

-A forward-facing car seat should be used for children weighing between 20 and 40 pounds and more than 1 year old.

-A belt-positioning booster seat should be used for children under 4-foot-9 and weighing between 40 and 80 pounds, and who have completely outgrown a convertible car seat.

-A lap-and-shoulder seat belt should be used for children over 4-foot-9 and weighing more than 80 pounds.

The statistics are overwhelming regarding the benefit of seat belts, car seats and booster seats. PLEASE USE THEM!

DEFINITION OF HYPOCRITE

hyp-o-crite (hip’ a-krit’) *n.* **1.** A person given to hypocrisy; to-wit, the feigning of beliefs, feelings, or virtues that one does not hold or possess; insincerity. **2.** Representative Bob Barr, R-Ga.

Subcommittee, which he chairs, Barr claimed “a national liability insurance crisis” as grounds to support a bill that would severely limit non-economic damages for injury victims. This would include such damages as pain and suffering and mental anguish. The proposed cap for such damages under the bill championed by Barr would be \$250,000. So let’s get this straight. If a doctor negligently causes the loss of a vital organ or a defective product burns over 50% your body you can only

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recover \$250,000 in “non-economic” damages, but if your political rivals say something bad about you, you can sue them for \$30 million for your mental anguish? Can you say hypocrite?

....and while we’re on this subject,

The National Automobile Dealers Association (NADA) continues to lobby Congress for special legislation that would exempt them from having to sign Binding Arbitration Agreements with automobile manufacturers. It seems that the manufacturers are requiring their dealers to sign Binding Arbitration clauses. This would mean dealers could not bring civil lawsuits against the manufacturers for any legal disputes which might arise in the context of their contractual relationship. NADA lobbyists cite excessive costs, difficulty in securing an impartial forum and large discrepancies in the wealth of the parties as reasons for special protection from Arbitration.

Yet these same dealers force consumers to sign Arbitration clauses when purchasing an automobile. The Arbitration clauses prohibit the consumer from bringing a lawsuit against the dealer for any claim related to the purchase of the vehicle such as breach of contract or fraud. For the past several years various consumer advocates in Alabama such as Jere Beasley have repeatedly voiced concerns over the unfairness of Arbitration clauses for consumers. Yet the NADA has repeatedly told the public that Arbitration clauses are “really good for consumers.”

Another Litigation Legend

NATIONAL COMMENTATOR GEORGE WILL CITES LITIGATION LEGEND AS FACT. Most of us are familiar with Urban Legends, those amazing stories of an event or occurrence that always seems to have happened to someone slightly removed from the story teller. “My Aunt’s best friend’s second cousin...” When these stories are actually investigated it turns out that no one can be found to verify the story. Several years ago Mark Wolfe coined the term “Litigation Legend” for similar types of stories that get told involving our legal system. A typical Litigation Legend involves someone suing over a ridiculous issue or element of damage and receiving lots of money. However, when the story is investigated or challenged, no one can seem to verify the lawsuit. The problem is that these Litigation Legends get reported as “fact” by many mainstream media sources. Unlike Urban Legends these Litigation Legends should be very easy to verify. If it is a lawsuit, there has to be paperwork. Yet when challenged, no one seems to be able to verify the lawsuit.

Over the last several years, Mark Wolfe has challenged reporters and/or publications to verify stories that appear to be Litigation Legends. He has pledged a \$500.00 donation to the

charity of their choice upon verification. So far he has challenged Ann Landers, Readers Digest and the California Tort Reform Association, just to name a few, to prove the validity of “frivolous” lawsuits that they have reported. To date no one has even taken up the challenge let alone verified the Litigation Legends in question.

Litigation Legends are often publicized and distributed by organizations that favor tort reform and restrictions on access to the civil justice system. These stories are distributed and reported as fact to the public. Then they become the basis for tort reform legislation that hinders the rights of injury victims and consumers. Most Tort Reform organizations and other groups that advocate restrictions on our civil justice system, such as Alabama Citizens for a Sound Economy, are mainly funded by large corporations and insurance companies.

National columnist George Will was recently guilty of reporting a Litigation Legend as fact. In a column titled *Lawsuit Culture*, Mr. Will referenced a frivolous lawsuit against the City of Oologah, OK by the parents of a child injured on playground equipment maintained by the city. Mr. Will claimed the frivolous lawsuit led to the closing of the playground. Another instance of lawyers ruining it for everybody, right? Wrong.

In a report issued by the American Association of Trial Lawyers, and totally ignored by mainstream media, it was determined that Mr. Will had his facts wrong. Yes a child was injured at a playground in Oologah, OK. However, no lawsuit was filed by the parents against the city and the playground was not closed. Rather the piece of equipment that the child was injured on was removed.

The next time you hear someone talking about a ridiculous lawsuit, just remember the chances are very good that it is a Litigation Legend. If you come across a reference in a newspaper or magazine to a lawsuit that you suspect might be a Litigation Legend, please send it to our office and will issue a verification challenge.

MOORE & WOLFE

OFFICE HOURS

Monday through Friday, 8:30am to 5:30pm

other hours by appointment and our attorneys can meet you at a location convenient for you.

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NURSING HOME ABUSE AND NEGLECT

Two recent government studies report that there is truly a crisis in our nation's Nursing Homes. A study by the General Accounting Office, an investigative division of Congress, shows that 30% of the nation's Nursing Homes have been cited by State inspectors for violations that harmed residents or placed the residents in immediate jeopardy. Another Federal study reveals that 90% of the nation's nursing homes are understaffed to take proper care of residents.

According to government statistics, 1.6 million people currently live in 17,000 Nursing Homes nationwide. This number is expected to increase over the next several years. Yet there are no plans under way by the current administration to set or require minimum standards of care for Nursing Homes. A Bush administration official said that the problems will be resolved through "market forces" and by more efficiently using nurses and nurse's aides.

Last summer our firm concluded a Nursing Home malpractice case wherein a very elderly patient died from complications related to severe dehydration. On that case we worked with one of the Southeast's leading experts on the standard of care for Nursing Home patients. We are also currently investigating several other Nursing Home neglect cases. If you have a loved one in a Nursing Home and believe they have been abused or neglected report it immediately in writing to the appropriate administrative personnel at the facility and the Alabama Department of Human Resources. In Mobile County call 450-1800 and in Baldwin County call 580-2800.

Recalls from the Consumer Product Safety Commission

CHILD CAR SEATS RECALLED. The Consumer Product Safety Commission recently reported two recalls related to child car seats.

Graco is recalling nearly 1 million SnugRide infant car seats because the seat can detach from the base in a crash. Before announcing the recall, Graco had the car seats removed from store shelves. If you have one of the seats in question, contact the retailer for more recall information.

Dorel Juvenile Group, Inc. and the CPSC are recalling 26,000 infant car seats. The models subject to recall are sold under the name Safety 1st and Beatrix Potter "Designer 22". Contact the retailer for more information or you can call the CPSC at 301 504-0626 ext. 1350 or visit the CPSC web site at <http://www.cpsc.gov>

Moore & Wolfe Consumer Alert Network

Each week the Consumer Product Safety Commission issues numerous recall notices. Since our newsletter is only published quarterly it is impossible for us to warn our readers of all the various recall notices. Also, many times the mainstream media fails to report these notices. To help better alert our readers of current CPSC recalls, we have established the Moore & Wolfe Consumer Alert Network. This is an e-mail service where we will forward recall information to subscribers and in turn ask each subscriber to forward that notice to friends and family members on their e-mail list.

There is no charge to subscribe to this service. If you would like to be added to the Network, e-mail M&W at mew@moore-wolfe and put Subscribe in the subject line. You will receive an e-mail bulletin about once a week. You can help prevent an injury by forwarding that bulletin to your friends and family and asking them to do the same.

Letter the Editor

The following is a reprint of Steve Moore's letter to the editor of the Mobile Press Register. The letter was prompted after the Editorial Board endorsed a recent U.S. Supreme Court decision wherein the Court determined that the jury's decision regarding punishment of a Defendant in a Capital Murder case should be followed and judges should not be allowed to override that decision.

Dear Editor:

I am writing in response to the June 25, 2002 editorial entitled "Court is right: Juries should make decisions". I agree with the fundamental premise that the decision of a jury should remain inviolate. My concern is the fact the Editorial Board supports one standard for criminal defendants and another for civil litigants. As a local attorney, I have read countless editorials where the Editorial Board hails the decision of a trial judge or appellate court to reduce substantial monetary verdicts returned by juries. In reverse situations, the Editorial Board routinely chastises the courts when a significant monetary verdict is upheld. Look no further than the recent Exxon decision for an example of this editorial hypocrisy.

There is no question Alabama law recognizes situations in civil cases where the trial judge due to error is mandated to reduce or set aside a monetary verdict. Alabama law at the same time gives great deference to the decision of a trial judge to uphold the sanctity of a civil jury verdict no matter how substantial. In the latter instance, the Editorial Board should follow its own advice and support the wisdom of the twelve Alabamians who rendered the monetary award.

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