

LEGALLY SPEAKING[®]

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

WINTER 2008

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IMPORTANT INFORMATION FOR TEEN DRIVERS

TEENAGE DRIVERS HAVE HIGHEST CRASH RISK Teen drivers have the highest crash risk of any age group. Per mile traveled, they have the highest involvement rates in crashes, from crashes involving property damage only to those that are fatal. The problem is worst among 16-year-olds, who have the most limited driving experience and an immaturity that often results in risk-taking behind the wheel.

THREE SECONDS OF DISTRACTION CAN CHANGE A LIFE OR TAKE A LIFE. Driver distraction is a factor in nearly 80% of all motor vehicle crashes according to a National Highway Traffic Safety Administration (NHTSA) and Virginia Tech Transportation Institute (VTTI) study. Nearly 80% of crashes and 65% of near crashes involved some form of driver inattention within three seconds before the event. Primary causes of driver inattention are distracting activities, such as cell phone use and drowsiness. The study monitored 100 vehicles as they drove 2 million miles over a year. The study also found:

- Drowsiness is a significant problem that increases a driver's risk of a crash or near-crash at least four times.
- The most common distraction for drivers is the use of cell phones. However, the number of crashes and near-crashes attributable to dialing is nearly identical to the number associated with talking or listening.
- Reaching for a moving object increases the risk of a crash by nearly 9 times.
- Looking at a non-traffic related object outside the car increases the risk of crash by 3.7 times.
- Applying make-up increases the risk of a crash 3 times as does manipulating a device such as a stereo, radio, MP3 player, etc.

Previous NHTSA studies and reports also show eating and drinking while driving increases the risk of distraction and inattention and thereby increases the risk of a crash. The clear conclusion of this study is that drivers should limit their attempts to multi-task while driving.

Cell Phones and Driving Don't Mix.

The 2005 National Occupant Protection Use Survey conducted by NHTSA reports that at any given daylight moment 974,000 vehicles on the road are being driven by someone on a hand-held phone. This translates into an estimated 10% of drivers during a typical daylight moment are using some type of phone, whether hand-held or hands-free. The study also showed a 2% increase from 2004 in young drivers age 16-24 using cell phones while driving.

PLZ DNT TXT & DRV

PARENTS CAN HELP TEENAGE DRIVERS

(DOT Service Announcement HS 810 651)

Don't rely solely on driver education. High school driver education may be the most convenient way to learn skills, but it doesn't necessarily produce safer drivers. Poor skills aren't always to blame. Teen attitudes and decision-making matter more. Young people naturally tend to rebel. Teens often think they're immune to harm, so they don't use safety belts as much and they deliberately seek thrills like speeding. Training and education don't change these tendencies. Peer influence is great but parents have much more influence than they are typically given credit for.



Know the law.

Become familiar with restrictions on beginning drivers. Enforce the rules. To learn about the law in your State, go to www.iihs.org/safety_facts/state_laws.

Restrict night driving. Most young drivers' nighttime fatal crashes occur from 9 p.m. to midnight, so teens shouldn't drive much later than 9. The problem isn't just that such driving requires more skill. Late outings tend to be recreational, and even teens who usually follow the rules can be easily distracted or encouraged to take risks.

Restrict passengers. Teen passengers in a vehicle can distract a beginning driver and/or lead to greater risk-taking. Because young drivers often transport their friends, there's a teen passenger problem as well as a teen driver problem. About 6 of every 10 teenage passenger deaths (59%) during 2003 occurred in crashes with a teen driver. While night driving with passengers is particularly lethal, many fatal crashes with teen passengers occur during the day. The best policy is to restrict teenage passengers, especially multiple teens, all the time.

Supervise practice driving. Take an active role in helping your teenager learn how to drive. Plan a series of practice sessions in a wide variety of situations, including night driving. Give beginners time to work up to challenges like driving in heavy traffic or on the freeway. Supervised practice should be spread over at least six months and continue even after a teenager graduates from a learner's permit to a restricted or full license.

Remember that you're a role model. New drivers learn a lot by example, so practice safe driving. Teens with crashes and violations often have parents with poor driving records.

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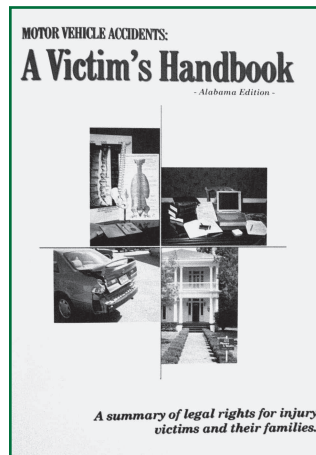
Require safety belt use. Don't assume that belt use when you're in the car with your 16-year-old means belts will be used all the time, especially when your child is out with peers. Remember that belt use is lower among teenagers than older people. Insist on belts all the time.

Prohibit drinking. Make it clear that it's illegal and highly dangerous for a teenager to drink alcohol. While alcohol isn't a factor in most crashes of 16-year-old drivers, even small amounts of alcohol are impairing for teens.

Choose vehicles for safety, not image. Teenagers should drive vehicles that reduce their chances of a crash and offer protection in case they do crash. For example, small cars don't offer the best protection in a crash. Avoid cars with performance images that might encourage speeding. Avoid trucks and sport utility vehicles — the smaller ones, especially, are more prone to roll over.

FREE INFORMATION FOR ACCIDENT VICTIMS

The fourth edition of *Motor Vehicle Accidents: A Victim's Handbook* is available at Moore & Wolfe. This most recent edition includes updates on Alabama laws related to motor vehicle accidents and a new color scheme. "Besides updating the law, the new edition has been edited to make it more reader friendly," said Mark Wolfe. "The past editions have included a lot of legalese which we thought made it a little cumbersome to read," said Wolfe. The new color scheme incorporates the familiar green and white colors used by Moore & Wolfe on other publications and used on the law firm letterhead. Wolfe stated that, "The important thing for injury victims to know is that the publication is still free and that it contains very important information that injury victims should know before trying to settle their injury claims." Since its initial publication in 1994, over 45,000 copies have been printed. The handbook is used as a text for seminars for law enforcement officers, healthcare providers and victim advocacy groups. In 2005, the publication received a National Award of Merit from Mothers Against Drunk Driving (MADD) for its continued warnings against the dangers of drinking and driving. If you, or a friend or family member, have been injured in a motor vehicle accident, please call 433-7766 for a free copy



INSURANCE PAYMENTS FOR INJURY CLAIMS CONTINUE TO DECLINE

DESPITE INCREASING HEALTHCARE COSTS, LIABILITY INSURERS CONTINUE TO PAY LESS ON INJURY CLAIMS. While healthcare costs for auto-negligence victims have continued to increase, liability insurance carriers have continued to decrease the amount they are willing to pay auto-negligence victims. As reported last in last quarter's edition of Legally Speaking, *Profits Soar as Payouts Fall*, more and more auto liability insurance companies are adopting hard ball claim tactics which delay and minimize payouts on claims. This is especially true in the area of soft-tissue injury claims such as whiplash. This despite insurance industry studies that repeatedly confirm the reality of neck injuries in crashes, even low impact crashes. The Insurance Institute for Highway Safety recently reported that two million people a year receive neck injuries in rear-end accidents. **WHY THE HARDLINE? PROFITS.** As more and more insurance companies shift their focus to pleasing stockholders and not policyholders, they exhibit less and less concern for consequences to their policyholders. If they can save \$500 on two million neck injury claims from rear-end accidents, that equates to a **ONE BILLION DOLLAR** savings for their stockholders. In State's like Alabama that have a weak Department of Insurance and little, if any, meaningful regulations for insurance companies, hardball tactics and stalling tactics are easily adopted and implemented. This works to the detriment of victims and policyholders.

WHAT'S THE EFFECT OF HARDBALL CLAIM TACTICS? Underpaid claims and/or lawsuits. In a liability injury claim, the insurance company for the at-fault driver makes an offer that encompasses all of the claimant's bodily injury damages. When these offers are below the actual damages suffered, the claimant can either accept the loss and settle, or the claimant can file a lawsuit. But guess what? In Alabama the claimant must sue the actual at-fault driver (policyholder) and not the insurance company that's playing hardball. The policyholder has no say in whether or not the claim is paid or how much should be paid. This is where our laws are so unfair for claimants and policyholders. The claimant must sue the individual at-fault driver and juries can not be told anything about the insurance company's hardball tactics. In fact, juries can't even be told whether or not the at-fault driver has insurance. This allows insurance companies to hide behind their policyholder at trial. They pay for their policyholder's lawyer and they pay any judgment returned against their policyholder, but they are "invisible" in the courtroom. The misconception by jurors that the individual will have to pay a judgment often results in low verdicts for victims in court. (This is just one reason why compensatory verdicts for injury victims in Alabama continue to be among the lowest in the United States.)

OK, SO THIS IS NOT FAIR TO THE CLAIMANT, BUT HOW DOES IT HURT THE POLICYHOLDER? Being an individual defendant in a civil lawsuit for money damages is *continued on page 3*

Insurance Payments continued...

a public record. In this age of information gathering by large consumer reporting agencies, this lawsuit is a public record and becomes a part of someone's permanent consumer report. If a judgment has entered against that person, this also becomes part of the permanent consumer report. Consumer reporting experts with whom we have discussed this matter indicate that such information can adversely affect a person's credit report by lowering their Beacon score.

So here you go, you're insured with MEGA-STATEWIDE INSURANCE COMPANY and you rear-end someone. You weren't being quite as careful as you should've been. The other driver has a small personal injury claim against you. You assume your insurance company is going to resolve the matter....after all that's why you pay a premium for liability insurance. Unknown to you MEGA has adopted a new hardball claim procedure and offers the victim less than the actual damages. The next thing you know, you are being served with a lawsuit. MEGA tells you, "don't worry, we'll provide you with the best lawyer your premiums can afford and we'll pay any judgment." Meanwhile, you have to endure the aggravation of being a defendant in a civil lawsuit and you get to watch your credit score get zapped. And of course, MEGA's now going to increase your premiums fivefold because they had to "pay for your lawyer." All of this happens without you having any rights in the process, and "oh by the way," you better not protest too much because MEGA will pull your coverage for "failing to cooperate."

It's very simple. In Alabama claimant's get shafted, policyholder's get shafted while stockholders and CEO's of large insurance companies get rich. **SO WHAT CAN BE DONE?**

First, we need to make the Insurance Commissioner an elected position. As it currently stands, the Insurance Commissioner is a politically appointed position by the governor. The position has traditionally gone to an executive officer of a large insurance company. Along with an elected commissioner, we need to give the Department of Insurance more regulatory bite to enforce rules and regulations.

Second, we need to adopt an insurance claimant's bill of rights. Such rights would include timely and fair claim evaluation procedures, outlaw indiscriminate use of "devaluation factors" in computer claim evaluation programs, require timely payment of claims with interest, penalize companies that unjustly and unfairly delay claim payments, penalize companies that intentionally lowball claims without appropriate justification and we need to adopt a "loser pay" standard for simple auto-negligence litigation.



Finally, Alabama needs to adopt a "direct action law." Instead of having to sue the individual at-fault driver (policyholder), claimants should be allowed to bring a lawsuit directly against the insurance company. The insurance company makes all the decisions on the claim, pays for the lawyers and pays the judgment so why should we keep up the legal farce of making them "invisible" in the courtroom?

There are still some liability insurance carriers in Alabama that negotiate liability claims in good faith in order to avoid litigation for their policyholder, but these are becoming the exception and not the norm. By making some

simple changes in Alabama laws, we can bring our state up to par with many other states. Will the insurance industry agree to these changes without a fight? Of course not. Do the politicians in Montgomery and D.C. even care? Probably not. The property and casualty carriers are making record profits right now and they are lobbying to keep it that way. According to Political/Moneyline a unit of Congressional Quarterly, the insurance industry spent \$98 million dollars on lobbying in Washington last year. (Second in amount to only the Pharmaceutical industry.) In Alabama, where lobbying activities are difficult to track and PAC to PAC transfers allow special interest groups to hide money, it's probably impossible to tell how much money the insurance industry has spent to keep the status quo. The problem for claimants and policyholders is that until meaningful changes are made in our State, things will continue to get worse as insurance companies continue their insatiable quest for profits.

ADJUSTER: WE'LL HIDE BEHIND THE WIDOW

As mentioned in the previous article, in Alabama if a claimant can not get an auto-negligence claim settled with the at-fault driver's insurance company, then a lawsuit must be brought against the at-fault driver and not the insurance company. If the at-fault driver has died, then the lawsuit must be filed against the personal representative of the deceased driver's estate. The at-fault driver's insurance company provides the attorney and pays any judgment but jurors are not told about the existence of insurance coverage for the victim's claim. This means in a situation where the at-fault driver has died, victims may find themselves having to sue the deceased's spouse as personal representative. Obviously, this could create sympathy for the surviving spouse and a good insurance defense lawyer will try his or her best to let jurors think the surviving spouse will be responsible for satisfaction of any judgment. M&W has a pending claim where the at-fault driver was driving impaired and crossed the center line and hit the M&W client head-on. The M&W client received extensive injuries and regrettably the at-fault driver was killed in the accident. His insurance company initially indicated that they were going to lowball this claim because as the adjuster said, "A jury will have a lot of sympathy for this widow who is being sued." This adjuster sees an opportunity to try and save the insurance company a few dollars by taking advantage of Alabama's archaic laws of civil procedure, wherein they are allowed to hide behind the widow.

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www.moore-wolfe.com

Alabama's Most Comprehensive Motor Vehicle Accident Website

AT THE FIRM

M&W Newsletter Heads Toward 10 Year Anniversary.

Legally Speaking will soon celebrate its ten year anniversary. On July 1, 1998 the first edition of Legally Speaking was mailed to 300 friends and clients of M&W. It has been published every quarter since and now has a quarterly distribution of over 10,000. Besides being mailed to over 8000 contacts, 2000 copies are distributed to area businesses for use in waiting rooms, reception areas and customer seating areas. It is also available on line via the M&W web site. The focus of Legally Speaking has not changed and it continues to provide auto-negligence victims with important insurance information and provide readers with meaningful information about traffic safety as well as commentary on current trends that effect victims and consumers. We would be glad to add your friends and family to our mailing list (which is private and not shared with any outside agency or company). IF YOU HAVE A FRIEND OR FAMILY MEMBER WITH A TEENAGE DRIVER, please consider calling to add them to our mailing list. Our traffic safety news and information could make a difference for them. 251 433-7766.

M&W Charity Wine Tasting Raises \$8,400.00

The second annual M&W Charity Wine Tasting was held on October 28th at the Bakery Café and Market. It was a huge success and raised money for the USA Children's & Women's Hospital Class Act Program. The program provides a classroom and two full time teachers at the hospital. Through the program children and their school receive attendance credit and children are able to stay current with their school work. Like most schools the teachers are always in need of extra funds for supplies and equipment upgrades, but unlike traditional schools they don't have a PTA to help fund those needs. The funds raised through the M&W charity event went a long way towards fulfilling the teachers "wish list" for supplies and equipment upgrades.

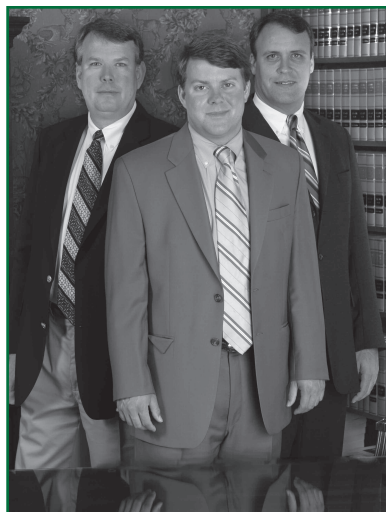


M&W Help Boys and Girls Club with Bike Drive

For the 5th year, the South Alabama Trial Lawyers Association (SATLA) will be helping the South Alabama Boys and Girls Clubs raise funds for bicycles and helmets for area children in need. Through this program almost 500 bicycles have been donated by SATLA members. M&W, as member s of SATLA, will again be participating in this great program.

Steve Moore's Tenure as SATLA Co-Chairman Ends.

For the last two years, Steve Moore has served as co-chairman of SATLA. The organization has about 100 attorney members who represent consumers and injury victims. Through Steve's leadership the organization has continued its focus on events and activities that benefit our community such as the Bike Campaign mentioned above. Over the years the SATLA Charity Golf Tournament has raised over \$25,000 for area charities. Our congratulations to Steve for a job well done.



*Leaders in car accident
claims and litigation*

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...or current resident.

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