

LEGALLY SPEAKING[®]

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

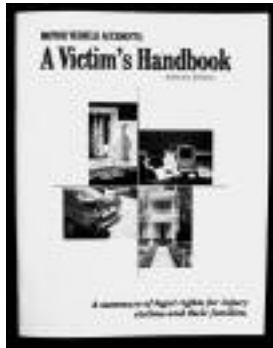
SPRING 2006

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.

PUBLICATION GETS A NEW LOOK

The fourth edition of *Motor Vehicle Accidents: A Victim's Handbook* has now been printed. The new 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 published and the publication has been 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 have a friend or family member who has been injured in a motor vehicle accident, please encourage them to call 433-7766 for a free copy.

LEGALLY SPEAKING ON THE AIR!



Listen for *Legally Speaking* this quarter on 1480amWABB April 7, April 21, May 5, May 19, June 2, June 16, and June 30. The show airs from 7:30am to 8:00am and allows listeners to call in with legal questions and comments about our legal system. Mark Wolfe is the featured guest on the show hosted by Ron Frasier and Shane McBride. Morning Talk with Ron and Shane on 1480amWABB is Mobile's number one rated morning talk radio show and is on the air Monday through Friday from 6:00am to 9:00am.

RECOMMENDATION OF SERVICES

SATISFIED CLIENTS CONTINUE TO BE FIRM'S BEST "ADVERTISING." A review of statistics from 2005 shows 83% of the new claims and cases in our office came directly from recommendations of people in our community who are familiar with our firm. These recommendations mainly come from former clients, healthcare professionals and other attorneys. At

Moore & Wolfe we truly appreciate the recommendation of our services. While our main area of practice continues to be personal injuries related to auto-negligence, we strive to provide assistance and guidance to all people who are recommended to our firm even if they have legal questions outside of our primary area of practice. If you have a friend or family member with a legal question, please encourage them to call our office. There is no charge for telephone consultations. 433 -7766.

ADJUSTERS NOT REQUIRED TO PROVIDE INFORMATION TO CLAIMANTS

ACCIDENT VICTIM LOSES CLAIM BY NOT KNOWING HER RIGHTS. Steve Moore recently had a consultation with a motor vehicle accident victim that waited too long to seek legal advice about a potential claim. The victim had been in continuous contact with the insurance adjuster for the at-fault driver but when she went to try and settle the injury claim of her husband, she was told the claim had expired. At the time of the accident, her husband who was injured in the accident, was suffering from terminal cancer and was near death. He suffered fairly severe injuries in the accident, including a broken arm but the adjuster never told the claimants that his injury claim would expire upon his death. After his death from cancer the widow tried to seek restitution for her late husband's medical bills related to the car accident and that's when she was informed that his personal injury claim had expired because of his death. "Obviously, the widow was upset because the adjuster knew he was suffering from terminal cancer and new his claim would lapse upon his death but she never shared this information," said Moore. He also said, "I think it is clear the adjuster knew what she was doing, but under Alabama law the adjuster had no duty or obligation to provide legal information to claimants in relation to a liability claim." The sad thing about this situation is that had they consulted with an experienced auto-negligence attorney shortly after the accident, his claim could have been easily preserved by a simple court filing that would have allowed his widow to settle his claim even after his death. Many times after consulting with a client and explaining their rights and explaining what coverage may be available, the client will ask, "Why didn't the adjuster tell me that?" The simple answer to that question is that it is not their job. The more detailed answer is that many times determining what claims or coverage may be available requires legal conclusions. Most adjusters are not lawyers and, as a matter of law, they can not offer legal advice to claimants.

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dedicated to protecting the rights of injury victims and their families

ALLSTATE REFUSES TO GIVE CLAIMANT A COPY OF HER OWN MEDICAL RECORDS

In Allstate claim number:18464847xx XBC, Allstate adjuster Beau Cottrell refused to give a claimant a copy of her own medical records. The claimant was injured by an Allstate insured in an accident in July 2005. At Allstate's request the claimant signed a medical release authorization allowing Allstate to get copies of medical records and bills related to the injuries she suffered in the accident. When it came to try and settle her claim, Allstate claimed that information in her medical records required "further investigation" and refused to settle the claim. The claimant then submitted a written request asking Allstate to provide her with a copy of these records. Allstate refused. In a letter dated February 3, 2006, adjuster Cottrell refused to provide the claimant with copies of her own medical records claiming the records were "work product." The result is that now the claimant will have to spend several hundred dollars obtaining her own copies of the medical records in question. At Moore & Wolfe this is the first time we have encountered an insurance company that is not willing to give claimants a copy of medical records and bills obtained by an authorization form signed by the claimant. Most companies require the request for records to be in writing and some companies even require a nominal payment for copy costs, but most reputable insurance companies will provide copies of records to a claimant. Maybe Allstate should change their slogan from the "good hands® company" to the "not getting your records out-of-our hands company."

SAFeway CONTINUES UNFAIR CLAIM PRACTICES

As reported last quarter in *Legally Speaking*, based upon our claims experience, Safeway Insurance Company of Alabama has adopted a policy of not paying, or under paying, claims where the claimant receives treatment with a Chiropractor. As indicated in our previous report on this topic, we believe it is unfair for an insurance company to adopt such a claim strategy and not tell claimants of this policy at the outset of the claim. For victims who suffer a soft-tissue injury in a motor vehicle accident, there are several treatment options. (Kind of like our options for minor pain relief, Aspirin, Tylenol, Advil, Ibuprofen, etc.) If a company has decided that it is not going to reimburse victims for the cost of Chiropractic care, then the company should tell claimants of that policy at the outset of the claim process, not at the end of the claim process when the victim has already incurred the expenses.

TOO MANY FRIVOLOUS LAWSUITS? NOT ACCORDING TO FEDERAL JUDGES

Over the last few weeks representatives from the Alabama Voters Against Lawsuit Abuse (AVALA) have written articles in the Mobile Press Register seeking more rules and regulations to limit "frivolous" lawsuits. By now most people realize that AVALA's true goal is to limit all lawsuits and deny injury victims a right to seek redress through our civil justice system. A recent survey by the Federal Judicial

Center found that only 1% of all federal judges surveyed thought frivolous lawsuits were a problem. 87% of the judges thought that current rules and procedures provided adequate ways to deal with lawyers who file frivolous lawsuits. AVALA receives its funding from large corporations and insurance companies who benefit from restricting a victim's access to a fair civil justice system. It also must keep alive the myth of lawsuit abuse to justify its existence. If you listen to AVALA personal injury lawsuits are "out of control." Yet, according to the U.S. Justice Department, personal injury lawsuits have decreased by 79% since 1985.

TRAFFIC SAFETY NEWS

SLOW DOWN IN WORK ZONES. The Alabama Department of Transportation, in conjunction with the Federal Highway Administration (FHA) recently sponsored a weeklong safety education campaign for highway work zones. The program is designed to remind motorists of the dangers related to speeding through highway construction sites. According to FHA statistics for 2004, twenty-six people were killed in almost 3,500 highway construction and/or work zones.

USE BOOSTER SEATS FOR CHILDREN. According to an article written by Dr. V.H. Reddy, President of the Alabama Chapter of the American Academy of Pediatrics, in 2003 twenty-three children ages four through eight were either killed or catastrophically injured in Alabama auto crashes. Dr. Reddy's article highlights the importance of using an appropriate child restraint system for children. His organization is lobbying for laws in Alabama which would require children under 4'9" to use a booster seat or a seat belt modification device to allow seat belts to better protect children. According to Dr Reddy, "Adult seat belts ride too high on a child's neck and can cause either neck or brain injuries; children who are under 4-foot-9 can slide under the seat belt, which can cause internal injuries; and some children can even roll out of the shoulder belt at an angle, putting tremendous pressure on the head and neck and even causing paralysis."

MORE INFORMATION ON CHILD PASSENGER SAFETY is available online at the web site of the American Academy of Pediatrics: www.aap.org/family/carseatguide.htm. Also, you can find out about recalled child seats or booster seats by calling the Auto Safety Hot Line: 888 DASH-2-DOT (888 327-4236) or you can visit the National Highway Traffic Safety Administration (NHTSA) web site: www-odi.nhtsa.dot.gov/cars/problems/recalls/child-seat.cfm.

Alabama Leads Nation With Largest Increase in Traffic Fatalities. Recent statistics released by the National Highway Traffic Safety Administration (NHTSA), indicate that in 2004 Alabama had the biggest increase in traffic fatalities. In 2004 Alabama had 1154 traffic fatalities. This was 150 more deaths than reported in 2003 and represented the largest increase in traffic deaths in the country.

Alabama Currently Ranks Fourth in Nation Related to Number of Teenagers Killed in Accidents. A report from Kids Count shows that between 2000 and 2002, Alabama had the country's fourth highest accidental death rate for

children ages 14 to 19. According to Janie Applegate, associate director of Alabama Safe Kids at Children's Hospital in Birmingham, the majority of the deaths reported in the study were from traffic accidents.

Alabama Third in Nation for Deadly Truck Accidents.

According to a recent Associated Press report, Alabama ranked third among the deadliest states for truck accidents in 2004. Using statistics from NHTSA, public safety organizations compiled the recent statistics. Alabama averages 4.00 deaths per 100,000 in population. In a related story, the Birmingham News reports that Alabama ranks 48th in the nation related to truck inspections performed. In 2003 Alabama ranked 2nd in the nation for number of fatal accidents involving trucks according to the U.S. Department of Transportation.

MOBILE PRESS REGISTER UNFAIRLY REPORTS STORY OF TUNNEL ACCIDENT

Our law firm handled a tragic motor vehicle accident case which occurred when an 18-wheeler transporting cattle overturned as it exited the Wallace tunnel westbound and crushed an SUV. The operator of the SUV was killed and his passenger was injured. We represented the family of the deceased driver and his injured passenger. After the settlement of the case, the Mobile Press Register ran a story on the case but woefully under reported the facts of the case. In fact the way the story was reported indicated that the accident was caused by our client. Steve Moore wrote a letter to the editor protesting the article. His letter was published but it was significantly cut and edited. Below is the uncut and unedited letter:

The Mobile Register recently reported on the settlement of a case handled by our firm, Moore & Wolfe on behalf of the Estate of Robert Lampley, Jr. and Herbert McCants, Jr. against a cattle truck company. The Mobile Register did not do justice to the facts of the underlying case. Indeed, the Mobile Register article directly attributes fault to our clients without mention of the underlying facts as discerned through the litigation process. Simply put, all the facts do not support the initial conclusion of the investigating officer nor the story as reported in the Mobile Register. Your story left out a number of important facts.

On December 2, 2004, Robert Lampley, Jr. was crushed to death and Herbert McCants, Jr. was severely injured when a cattle truck overturned on top of the Lampley vehicle as they were approaching the Water Street off ramp at the exit curve of the George Wallace Tunnel on I-10 West. The Mobile City Police Department initially placed the Lampley vehicle at fault. During the course of our lawsuit, our firm established the initial report was clearly in error. Consider the following:

1. Seven eyewitnesses came forth and each separately placed the cattle truck traveling at speeds between 70 mph and 85 mph as the cattle truck entered and traveled through the 40 mph speed zone of the tunnel. The investigating officer did not talk to these witnesses before formulating his opinions.
2. Two eye witnesses stated the cattle truck appeared to be "drag racing" another commercial vehicle as the large trucks swerved in and out of traffic in the tunnel.

3. Four separate eyewitnesses stated that upon observing the conduct of the cattle truck they exclaimed "He is going to kill someone".

4. Two eyewitnesses stated they were directly behind the cattle truck when the commercial driver lost control and that the Lampley vehicle did nothing to contribute to the accident.

5. The cattle truck was operating with over two dozen Out of Service Violations as defined by the Federal Department of Transportation. The violations included out of date inspection stickers, improper maintenance records and faulty brakes.

6. The cattle truck driver required crutches to ambulate as a result of a pre-collision leg injury. In addition, the cattle truck driver was on prescription medication for pain and did not have the required medical certification to operate a commercial vehicle.

7. The cattle truck driver had his commercial driver's license suspended five times in the five years preceding the fatal collision in connection with fifteen excessive speed convictions.

8. Moore & Wolfe retained four experts to establish that the accident was in fact caused by the cattle truck operator. The cattle truck company did not identify a single expert witness to rebut the opinions of these experts.

9. The lead expert, a nationally renowned accident construction engineer, established the cattle truck was traveling at a speed of 75 mph in the 40 mph exit curve at the point of the tire mark initiation sequence.

10. The lead expert, in conjunction with Moore & Wolfe's in house investigator, established by detailed photographic evidence that a paint transfer imprint, relied on to support fault on the Lampley vehicle by the Mobile City Police Department, actually resulted from post collision damage incurred during the clean up process at the wreck site. Of significance, the cattle truck company destroyed the commercial vehicle before experts retained by Moore & Wolfe could conduct a definitive analysis of the paint transfer imprint. The cattle truck company was later sanctioned by the Federal Court for the improper destruction of evidence.

Based on the above, Mobile City Police Chief Sam Cochran ordered the Traffic Homicide Team to review the evidence developed by Moore & Wolfe. Our firm commends Chief Cochran and the Traffic Homicide Team on behalf of our clients for their desire to review all the evidence before concluding the investigation. As of this writing, the final report of the Mobile City Police Department has not been released. It should be noted, Moore & Wolfe provided a number of the facts set out above to the Mobile Register in response to requests for information. The Mobile Register elected to not publish the information provided by Moore & Wolfe. Rather the story, as written, makes it appear that undeserving litigants profited from a lawsuit. This is clearly a case of reporting a story in a way that best promulgates your pro-business and pro tort reform agenda.

AT THE FIRM

M&W Provide Free Car Seat Safety Brochure. The publication, *Car Safety Seats: A Guide for Families 2006* from the American Academy of Pediatrics is now available free from M&W. This publication provides important safety information on infant car seats, child car seats and booster seats. If you want to be sure that you are using a child restraint system properly, this publication can help. Please call 251 433-7766 for a free copy.



M&W Raise \$4,000.00 for Midtown Playground Project.

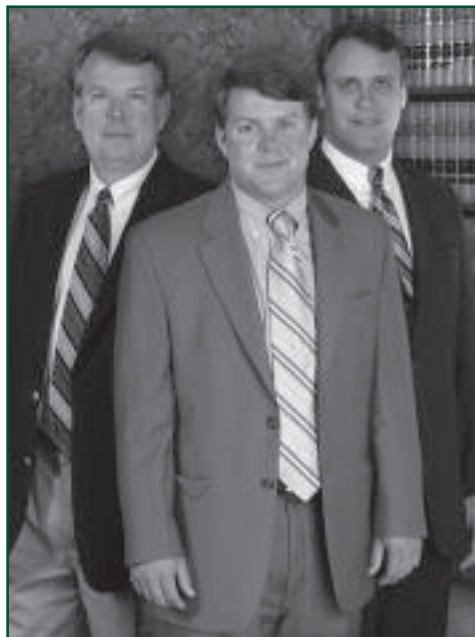
As reported last quarter, plans are now under way for the construction of a new playground area on property located between M&W and Central Presbyterian Church. The new Midtown Playground will replace an older outdated playground and include a safer playing environment for children in the Midtown area. On February 4, the attorneys from M&W sponsored a seminar for Chiropractors on the legal issues related to treating car accident victims. 78 Chiropractors from across the state attended the seminar. Instead of paying for the seminar, they were asked to make a contribution to the CPC Playground Fund. The church received \$4000.00 in donations. Tax deductible contributions to this project can be made to Central Presbyterian Church, 1260 Dauphin Street, Mobile, AL 36604. Designate Mid-Town Playground Fund on your check.

Community Giving. Last quarter charitable activities continued to be an important outreach to our community. At M&W we believe that being active in our community is an important part of our law firm's identity. At M&W doing good work for our community is just as important to us as doing good work for a client. The following programs and/or organizations received contributions from M&W last quarter:

- Mobile Exchange Club - Family Center.
- Judge Robert G. Kendall Scholarship Fund
- The Ronald McDonald House.
- The Child Advocacy Center
- The Elijah House Ministries.
- St Jude's Children Hospital.
- Centre for Living Arts.
- Aimwell Baptist Church.
- Ozanam Charitable Pharmacy.
- Mobile Bar Association - Funfest 2006.
- American Cancer Society.
- Central Presbyterian Church - Landscape Project.
- Little Sisters of the Poor - Annual Fund Raiser.
- National Organization of Black Law Enforcement Executives.
- Murphy High School Alumni Assoc. - Pantherama Fund Raiser.



Alabama Civil Justice Foundation (ACJF) helps Katrina victims. The ACJF is the charitable foundation of the Alabama Trial Lawyers Association. Since being established in 1993 the ACJF has raised and donated over \$7 Million for statewide charities and community organization. Recently, over \$100,000 has been donated to Katrina relief efforts including a \$45,000 grant to Habitat for Humanity for victims in the Bayou La Batre area.



Leaders in car accident claims and litigation

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