

LEGALLY SPEAKING[®]

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

SUMMER, 2003

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.

Recommendation of Services

Over 80% of our current clients have been recommended to our office by former clients or people in the community who are familiar with our work and service. We greatly appreciate the recommendation of our legal 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.*** THERE IS NO CHARGE FOR CONSULTATION.

DON'T BE A VICTIM TWICE!

FREE HANDBOOK FOR MOTOR VEHICLE ACCIDENT VICTIMS. Our publication *Motor Vehicle Accidents: A Victim's Handbook-Alabama Edition* has been updated. This free publication provides motor vehicle accident victims with a general overview of their legal rights. It includes a section on Insurance Coverages and provides important information on how Insurance Companies view and handle claims. It also contains a section on Hiring an Attorney with important questions and considerations when making this decision. Since its original publication in 1994, 25,000 copies of this important booklet have been printed and distributed. IF YOU HAVE BEEN INJURED IN AN ACCIDENT, PLEASE CALL **251 433-7766** FOR A COPY.

AT THE FIRM

NEW EMPLOYEES HELP KEEP M&W RUNNING SMOOTHLY. **Amy Wimberly** has now been hired to work in the Litigation Section of M&W. Amy has 20 years of experience as a legal secretary. Her experience will be a great asset for those clients whose claim or case must go through the litigation process.

That new voice you hear when calling M&W is that of **Rachel Tindle** our new receptionist. Rachel is new to the legal profession having spent the last few years working in the medical field.

EMPLOYEES AND TECHNOLOGY HELP M&W ATTORNEYS PROVIDE QUALITY LEGAL SERVICE. Many clients do not realize that the standard one-third contingency fee contract used by M&W on most injury or death

cases has been used by our attorneys for the last 15 years. This means M&W has not increased or "raised" our rates for service in 15 years! The two main reasons we have not had to raise our fees for standard services is because we have quality employees and use technology to promote efficiency in our office work.

We are very proud of our office staff at M&W. Our employees have the same commitment to helping our clients as our attorneys. Also, they take great pride in helping the attorneys produce a high quality work product for our clients. To help produce, and manage, the high volume of paper work at M&W we have invested in the latest office technology. Every aspect of our law practice has been enhanced and become more efficient because of continued improvements in office technology. In 1996, we were one of the first law firms in the Mobile area to use the Internet for legal research and digital technology for file and document management. We are currently in the process of upgrading our computer software so all of our employees and attorneys can use the most recent and improved programs available. Last year we replaced our old analogue phone system with a state-of-the-art digital phone system that allows for more client options when calling M&W, including our special after hours messaging program that provides the home phone numbers for our attorneys.

Based upon compliments we receive from clients, other attorneys and, even insurance adjusters we know M&W continues to excel in providing the best legal service possible to our clients.

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Moore & Wolfe

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251 433-7766

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

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INACCURATE INFORMATION ON YOUR CREDIT REPORT? YOU MAY HAVE BEEN A VICTIM OF IDENTITY THEFT. By: Earl P. Underwood, Esq.

The FBI calls identity theft the fastest-growing white-collar crime in the nation. It is estimated that over 500,000 people will be victims this year alone. Identity theft occurs when an imposter uses the victim's personal identifiers (name, address, date of birth, Social security number, etc.) to activate cellular telephone service, obtain credit cards, open bank and charge accounts or even purchase automobiles in the victim's name. Often a person who has been a victim of identity theft may not learn of it until months or years later. Victims of identity theft are surprised when they notified by a collection agency or a lending institution that they are past due on a payment on an account that they never opened. Another way victims learn their identity has been used by an imposter is when they discover negative information caused by an imposter on their credit report. A federal law, the Fair Credit Reporting Act, regulates both the credit bureaus that report credit information and the furnishers of the information such as banks and lending institutions.

Both the furnishers of credit information and the credit bureaus are required to investigate inaccurate information on a consumer's credit report when notified by the consumer that the credit report is inaccurate. Their failure to do an adequate investigation gives rise to a case or a cause of action under the Fair Credit Reporting Act. **The Act requires the furnishers of inaccurate information and the credit bureaus to pay the injured consumer his actual damages plus attorney's fees and court costs.**

Protect your identity and your good name by checking your credit report at least once a year and only giving your personal identifiers to trusted and known persons or companies. For more information see:

<http://www.privacyrights.org/fs/fs17-it.htm#crime>

Credit Bureaus

Equifax — www.equifax.com

To order your report, call: 1-800-685-1111
or write: P.O. Box 740241, Atlanta, GA 30374-0241
To report fraud, call: 1-800-525-6285
and write: P.O. Box 740241, Atlanta, GA 30374-0241

Experian — www.experian.com

To order your report, call: 1-888-EXPERIAN (397-3742)
or write: P.O. Box 2104, Allen TX 75013
To report fraud, call: 1-888-EXPERIAN (397-3742)
and write: P.O. Box 9532, Allen TX 75013

TransUnion — www.transunion.com

To order your report, call: 800-916-8800
or write: P.O. Box 1000, Chester, PA 19022.
To report fraud, call: 1-800-680-7289
and write: Fraud Victim Assistance Division, P.O. Box 6790, Fullerton, CA 92834-6790

We can help with FCRA violations.

At M&W we have recently had the privilege of working with an attorney who is this areas leading litigator for consumers under Fair Credit Reporting Act violations. If you think you may have been a victim of a Credit Reporting error, please contact us and we can help you. 251 433-7766 or e-mail us at mcw@moore-wolfe.com

JUSTICE DOUGLAS JOHNSTONE RETIRES

Alabama Supreme Court Justice Douglas Inge Johnstone of Mobile has recently announced that he will be retiring at the end of his term in 2004. His retirement will bring to a close a twenty-year tenure as a judge which started at the District Court level in 1984. Judge Johnstone served the people of Mobile County as a Circuit Court Judge for many years and was elected to the Alabama Supreme Court in 1998. Judge Johnstone has long been a proponent of an independent judiciary. "The duty of every judge at every level is to follow the law as it is written, whether the judge likes it or not" he wrote in his 1999 investiture speech.

Over the years Judge Johnstone's rulings and opinions reflected a true concern and compassion for the hardships faced by many Alabama citizens. Since joining the Alabama Supreme Court he has authored several opinions dissenting to the liberal application of Federal Arbitration laws against Alabama consumers. His passion for the rule of law combined with his true and heartfelt concern for the ordinary citizen will be the legacy of his tenure on the bench. We truly appreciate the years of public service he has given the citizens of Mobile County and the State of Alabama. Thank you Justice Johnstone.

Farmers Insurance Company: Fair to Auto-Injury Victims? By: Mark C. Wolfe, Esq.

The insurance industry has done a great job over the last few years of tainting public opinion against civil litigants in personal injury cases. We've all heard stories of frivolous lawsuits and greedy trial lawyers. As we have previously reported, many of these stories that get reported are not true and are nothing more than Urban Legends slipped into the public domain by tort reform organizations. As most people realize, there are two sides to every story. Unfortunately, mainstream media has continued to ignore the flagrant injustices inflicted upon injury victims by antiquated laws and hardball litigation tactics employed by some insurance companies against injury victims.

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No case in our office exemplifies this situation better than a case currently pending with Farmers Insurance Company. This case involves two gentlemen who were driving in their car on a major roadway in our area. They were headed straight down the road when another driver, insured by Farmer's Insurance Company, going the opposite direction made a left turn in front of their oncoming car. There was no traffic signal where the accident occurred and our clients clearly had the right of way. There was a significant impact and our clients, as well as the other driver, were injured. Fortunately, our clients were not hurt very badly and after a relatively brief course of care, including physical therapy, they made a complete recovery from their injuries. Shortly after the accident they retained our law firm to help them in the presentation of their bodily injury claims to Farmers Insurance. All appropriate medical records and bills were submitted to Farmers Insurance along with supporting witness statements and photographs. At this point this appeared to be a rather routine and straight forward injury claim arising from an accident that was clearly the fault of the other driver. The claim material was submitted to Farmers Insurance on March 27, 2002.

What happened next started a saga that continues to this day. Rather than make a fair settlement offer to our clients that encompassed their economic and non-economic damages, Farmers made settlement offers well below the true value of their claims. (A practice that is now common with Farmers Insurance. In fact we have recently seen several settlement offers from Farmers Insurance that are below the submitted medical bills.) The low settlement offer by Farmers Insurance left our clients with no option to but to file a lawsuit to recover the restitution they were owed. Because their claims were small and because they did not have any permanent injuries, we decided to file their lawsuit in District Court. District Court is a lower level Court that does not involve the time and expenses associated with Circuit Court cases. A Judge, not a jury, decides the case. The only draw back to District Court lawsuits is that Alabama law allows a party to appeal the Judge's decision to Circuit Court and request a trial *de novo*, which means the whole case is tried again in front of a jury.

The lawsuit was filed in District Court in August 2002. During the course of the lawsuit in District Court, Farmers Insurance retained an expert witness at \$350.00 per hour. The expert testified at the trial of the District Court case on February 4, 2003 that he did not like the records kept by our clients' treating healthcare provider. (Something our clients had absolutely no control over.) Ironically, their expert, on cross examination, testified that the charges were reasonable and the treatment was necessary because of the injuries our clients suffered in the accident. Also, at the District Court trial the attorneys hired by Farmers Insurance to defend their insured

stipulated that the accident was the fault of their insured and did not allege that our clients did anything to cause or contribute to this accident. After hearing the evidence, including about two hours of testimony from their "expert", the Judge ruled in favor of our clients and awarded a fair and reasonable amount of restitution to them. End of story? Not hardly,

Farmers Insurance filed a Notice of Appeal to Circuit Court and demanded a jury trial for this case. They then fired their previous expert and have now retained a "new and improved" expert witness. In addition their attorneys are now asserting that our clients caused the accident! This matter will soon be set for trial and we are confident that a jury will reach the same decision as the Judge did in the District Court case. There are two issues that cause concern and question in this matter. The first concern for injury victims demonstrated by the actions and decisions of Farmers Insurance is the amount of money and resources an insurance company can bring to fight an insurance claim. By our estimate Farmers Insurance has now spent **over \$15,000** in legal fees and expert fees fighting the claims of these two clients. By the time this case goes to trial, Farmers Insurance will have spent over **\$25,000** fighting this clear liability case. Most personal injury lawyers work on a contingency fee (a percentage of the recovery) and this enables victims to go head-to-head with the insurance companies with out having to pay legal fees out of pocket. (If this were not the case can you imagine what an advantage the insurance companies would have over most claimants?)

The second area of concern is the fact that in the upcoming trial, we will be prohibited by law from telling the jury anything about the previous trial in District Court. In similar past situations we have found jurors to be upset that their time is being wasted on a "smaller" case. They automatically believe it's the victim's fault for bringing the case in Circuit Court and it's not until after the trial that they learn the "rest of the story."

This is not the first time, nor will it probably be the last, that we have seen an insurance company decide to aggressively fight smaller claims. Their mentality is to force their will onto accident injury victims. The insurance industry realizes that most injury victims are not anxious to go to Court. (A truth that is contrary to the public image their spin doctors perpetuate to the public about injury victims.) These companies have the idea that if they play hardball long enough with injury claimants, those claimants will get discouraged and either go away or accept less than the full restitution they are owed under the law. We believe all victims are entitled to be fairly and adequately compensated. We refuse to allow insurance companies to bully our clients and other injury victims just because it's a "small case." **It continues to be our philosophy that lawsuits and litigation should only be undertaken as a last resort.** However, we want the

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insurance companies that we deal with on behalf of injury victims to understand that we will not hesitate to bring forth our experience and resources for a client, even if it is a “small” case. We are proud to represent injury victims and their families and enjoy the opportunity to fight for our clients in Court when the need so arises.

FARMERS INSURANCE COMPUTER SAYS “NO” TO VICTIM’S PAIN AND SUFFERING

The Seattle Post recently ran a story about the plight of another Farmers Insurance claimant. Barbara Martin made a claim with Farmers after being rear-ended by a speeding SUV. She had been a regular policy holder with Farmers for the last 15 years. She never met with an adjuster and was shocked when Farmers reported that her injuries did not warrant compensation for pain and suffering. Pain and suffering is a legal element of personal injury damages just like medical bills.

In a subsequent lawsuit, Martin learned that Farmers Insurance, like many other insurance companies, uses a highly secret computer program called Colossus to evaluate personal injury claims. The computer program “de-humanizes” the injury claim process thereby giving insurance companies “uniformity and consistency” in decisions related to personal injury claims. Martin has brought suit against Farmers for concealment and fraud. She contends Farmers should have informed her when she purchased and renewed her policy that computers and not adjusters would be determining the value of her personal injury claim.

Insurance Companies Hide Behind Their Insured in Court

Most injury victims don’t realize that under Alabama law, you are not allowed to sue the at-fault driver’s insurance company to recover restitution. Rather you have to bring legal action against their insured. And what is worse is that Alabama law prohibits the jury from being told that the at-fault driver has insurance coverage for the claim being made. Yet the attorney hired by the insurance company to defend their insured gets to tell the jury about the victim’s insurance benefits.

Not only does the insurance company get to hide behind their insured in Court, the insured person under most policies of automobile insurance does not have any say as to whether or not a case settles. Not only does the insured not have a right to request that a claim or case be settled but they better not complain because the insurance company can void their coverage for “failure to cooperate”.

These rules of law demonstrate how antiquated and obtuse Alabama law is when it comes to automobile negligence laws. First, even though Alabama has mandatory insurance

**South Alabama Trial Lawyers Association
makes contribution to CASA of Mobile**

laws, the jury is not allowed to know that the at-fault driver has insurance. Very simply the insurance company gets to hide behind their insured. Second, while the existence of insurance coverage for the at-fault driver is excluded from the jury as not being relevant, insurance benefits the victim has received from his or her own coverage is admissible by the at-fault driver. Third, if I am at-fault in an accident and my insurance company jerks the claimant around, I’m the one who gets sued. And finally, fourth if I tell my insurance company to do the right thing and pay the restitution that is owed, they can pull my coverage for “failure to cooperate.”

The frustrating thing for us as lawyers is to go through a trial and watch a skilled insurance defense lawyer do everything he or she can do to lead the jury to believe that the Defendant will be personally responsible for paying any judgment rendered in a case. We have had two cases involving elderly female defendants where jurors told us after the trial that they limited or reduced the restitution to the victim because they were “afraid” that the Defendant was going to have to pay the judgement “out of her own pocket.” The insurance company just smiled all the way to the bank.

These are just a few of the various Alabama laws that work against auto-accident injury victims. Unfortunately, there are many other laws that also work against victims, and consumers, in Alabama. What’s worse is every time you turn around, another special interest group wants to further limit or restrict the rights of those they victimize.

***Legally Speaking* begins sixth year of publication and has record distribution level.**

It’s hard to believe but we are now beginning our sixth year of publication for *Legally Speaking*. Our first edition was published on July 1, 1998 and was mailed to 300 clients and friends of Moore & Wolfe. Last quarter over **30,000** copies of *Legally Speaking* were mailed and provided to the public. This number passed our previous highest distribution level of 12,000 for the October 1, 2000 edition. We believe this publication, as well as others available through our office, fulfills part of our responsibility to the public. That responsibility has been set forth in the Preamble to the Alabama Rules of Professional Conduct for Lawyers:

As a public citizen, a lawyer should seek improvement of the law, of the administration of justice, and of the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law, and work to strengthen legal education.

SATLA recently made a financial contribution to Court Appointed Special Advocates (CASA) of Mobile. CASA

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volunteers act as advocates for abused or neglected children within the legal system. CASA volunteers receive training in courtroom procedure, social services, the juvenile justice system and the special needs of abused or neglected children. They then serve as the “child’s voice in Court.” SATLA is a local group of attorneys who represent injury victims and consumers. It was formed in 1998 and has donated over \$45,000.00 to local charities and public awareness campaigns. Steve Moore of M&W currently serves as Chairman of the SATLA Executive Committee.

LITIGATION LEGENDS: Will the Myths Ever Stop?

Have you heard the latest Litigation Legends being served up by mainstream media? These are good stories but, not true.

- A woman throws a soft drink at her boyfriend at a restaurant. She then slips on the wet floor her tossed drink made. She breaks her tailbone and sues the restaurant. A jury awards her \$100,000!

- A women tries to sneak through a restroom window at a night club to avoid paying the \$3.50 cover charge. She falls and knocks out her two front teeth. She sues the nightclub and the jury awards her \$12,000 for dental expenses!

These two litigation legends have actually been circulating for several years now and have been found to be totally and completely unsubstantiated. Yet a recent article in U.S. News & World Report references these “lawsuits” as examples of frivolous lawsuits. Despite the fact that these “stories” have long been debunked as false and non-meritorious, a major media outlet has again reported a Litigation Legend as being “fact.”

In the July 1, 2002 edition of Legally Speaking and again in the Winter 2003 edition of Legally Speaking, we reported on other mainstream media writers and publications reporting Litigation Legends to be factual. The web site Snopes.com, long known for debunking Urban Legends, has a special page devoted to various lawsuits that are false.

Every time one of these Litigation Legends gets reported as “fact” it is done so to support or advocate tort reform in our civil justice system. What has been very disappointing to us is the number of “respected” publications and writers who have demonstrated slipshod journalism by not fully investigating these Litigation Legends before reporting them as factual. Of course if your goal is to be a mouthpiece for the Tort Reform lobby and the special interests of the insurance industry, then why let the truth stand in the way of a good story.

...and speaking of Tort Reform,

For years the insurance industry has lobbied and pushed for a variety of monetary caps in civil lawsuits. What has their reasoning for tort reform been? We’ve all heard it. *Out of control jury verdicts and frivolous lawsuits are forcing up insurance premiums.* Voters and elected officials across

America have fallen for this routine for the last ten years. In that time numerous states, including Alabama, have enacted some form of Tort Reform legislation.

Guess what? Insurance premiums in those states with Tort Reform have continued to rise just as fast, and in some states faster, than those states who have not enacted Tort Reform. Now being confronted with questions on this point, insurance executives and insurance trade groups are backtracking and side-stepping. In a press release on March 13, 2003, the American Insurance Association stated, “The insurance industry never promised that tort reform would achieve specific premium savings.” In a legislative inquiry in Wyoming an executive for Ohio Health Insurance Company admitted, “tort reform will not lower rates.” Shortly after Washington State passed a “comprehensive” tort reform package including caps on punitive damages, Allstate Insurance requested permission to raise its premiums 22%!

Americans for Insurance Reform, a non-profit organization, has done an excellent job of putting together clips from various insurance executives and tort reform groups trying to explain why tort reform legislation has failed to bring about the premium savings they promised.

Their web site is: <http://insurance-reform.org/>

HARDESTY APPOINTED AS JUDGE

Veteran Assistant District Attorney, George Hardesty was recently appointed by Governor Riley to fill a vacant District Court Judgeship in Mobile County. The vacancy was created by the untimely death of Judge Delano Palughi. Hardesty was selected by a local non-partisan nominating committee, along with two other attorneys, for Governor Riley’s consideration. Over 30 lawyers applied for the vacancy. District Court judges handle a wide variety of criminal and civil matters including misdemeanor criminal cases, traffic citations, felony preliminary hearings, bond hearings, small claims cases as well as smaller civil lawsuits. Along with his Courtroom and litigation experience, Hardesty had wide spread support among members of the Mobile Bar Association. His hard work and experience will make him a great addition to the Court.

Have a safe and fun Summer!

