

LEGALLY SPEAKING[©]

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

FALL, 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.

PUBLICATIONS AVAILABLE

HANDBOOK FOR MOTOR VEHICLE ACCIDENT VICTIMS IS FREE. Our publication *Motor Vehicle Accidents: A Victim's Handbook*-Alabama Edition has been recently 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.

OTHER PUBLICATIONS AVAILABLE. In addition to the Motor Vehicle Accident Handbook, we also have a number of other legal publications and legal brochures available to consumers and injury victims.

At the Firm

MOORE RE-APPOINTED AS JUDGE. On August 20th Steve Moore was re-appointed by Presiding District Court Judge Charlie McKnight to serve another one year term as a Special District Court Judge. The appointment is approved by the Alabama Supreme Court and authorizes Moore to hear and decide cases in the District Court of Mobile County. The position is voluntary and allows Moore to cover dockets for any of the District Court Judges who may need his assistance.

WOLFE SPEAKS AT LAWYER SEMINAR. In August, Mark Wolfe was a guest speaker at a Continuing Legal Education (CLE) seminar sponsored by the Alabama Trial Lawyers Association. Mark is a frequent speaker at CLE seminars for lawyers and is scheduled to speak later this fall at a CLE program sponsored by the South Alabama Trial Lawyers Association.

M&W DONATE TO LOCAL PUBLIC SCHOOLS. Two area schools received donations from the Moore & Wolfe law firm. Craighead Elementary School received a donation to be used for classroom supplies for special education classes. Also, M&W became corporate sponsors of the Daphne Intermediate School PTA.

BOTELER WORKS WITH FUNFEST. Knox Boteler once again helped the Young Lawyers Division of the Mobile Bar Association. The annual event benefits area children with disabilities and involves volunteers from many area law firms.

M&W sponsored the lunch that was served to all the participants and volunteers. This is the fourth year M&W has been a sponsor of this event.

LISTEN FOR THE MOORE & WOLFE MORNING TRAFFIC REPORT

M&W TO SPONSOR MORNING RADIO TRAFFIC REPORT. Starting in October, M&W will be sponsoring the morning radio traffic reports on **WABB-FM (97.5)** and **WABB-AM (1480)**. The traffic reports will occur throughout the morning rush hour and advise motorists of accidents or delays in the Mobile/Baldwin County area. In addition to detailing area traffic conditions, the reports will include various safety reminders for area drivers. "Commuting time has continued to increase in our area over the last several years and we noticed that traffic reports on many area radio shows were not a high priority," said Mark Wolfe. "WABB has made a commitment to us that they will have regular and timely traffic reports during morning rush hour (7:00am to 9:00am) and equally important to us is that they will incorporate safety advisories and safety reminders in their reports," said Wolfe.

Marketing representative and radio personality, Ron Fraser, said his company was looking forward to the cooperative venture with M&W. "With their sponsorship we believe we will be able to offer the public the most consistent and detailed morning traffic information," said Fraser.

This publication provided as a service of:

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Farmers Insurance Customer Fights Back

Over the past six months *Legally Speaking* has been reporting on the unfair claim practices employed by Farmers Insurance Group. For reasons that we do not understand Farmers Insurance has decided not to settle personal injury claims submitted by victims. This means to recover the restitution they are legally owed, victims must file expensive and time consuming civil lawsuits.

By using the Internet, in a bold and innovative move, one Farmers customer has fought back against Farmers' unfair claim practices. The following site was created by a disgruntled Farmers customer after they offered his wife \$450 for her five months of pain and suffering from her severe accident. She suffered several broken ribs in her accident which was reportedly caused by the fault of another driver. If you have any doubt as to the unfair claim practices of Farmers Insurance Group, please visit this web site.

<http://www.msu.edu/user/heinric6/farmersinsurance.htm>

ANOTHER EXAMPLE OF FARMERS' UNFAIR CLAIM TACTICS

In the Summer edition of *Legally Speaking* we told the story of two gentlemen who were the victims of the unfair claim practices of Farmers Insurance Company. Here is another example of how Farmers re-victimizes innocent people who have been injured in a motor vehicle collision.

On April 6, 2001, 14 year old Ashleigh Harrell had the right side of her face slammed into the windshield when a Farmers insured negligently drove into the back of the car driven by Ashleigh's mom. The force of impact was strong enough to shatter the windshield. She was taken by ambulance to the emergency room where she was diagnosed with nose and facial injuries, neck and back injuries and a cerebral concussion. Ashleigh was treated for about 12 weeks for her neck and back injuries and ultimately had to have plastic surgery on her nose to correct the disfigurement caused when her face slammed into the windshield. Despite the fact that her treating doctors all related the treatment and procedures to the accident, Farmers failed to honor the claim submitted by Ashleigh. She then had to file a lawsuit against the Farmers' insured and spend thousands of dollars litigating her claim. Two weeks before trial Farmers tried to identify an "expert" witness who had looked at some pre-accident photos of Ashleigh and determined that her nose was not injured in the accident and that corrective surgery was "unnecessary." Judge James C. Wood disqualified and disallowed their "expert" and the case went to trial on October 6, 2003.

Steve Moore represented Ashleigh. At the trial, the Farmers attorney tried to argue that Ashleigh was not

really hurt in the accident and that she endured the painful corrective surgery and the six week recuperation period *only to make herself prettier.*

The jury did not fall for this ruse and awarded Ashleigh damages in the amount of \$25,000. This was significantly more than Farmers had ever offered to settle this clear liability claim. But why should an innocent victim (a child no less) have to endure this kind of treatment from Farmers Insurance simply to recover restitution owed under the law? An even more interesting question is how can Farmers justify to the shareholders of its parent company (Zurich Ins.) spending thirty to fifty thousand dollars per claim to fight and/or deny clear liability claims? We can understand an insurance company lacking compassion or concern for innocent victims, that's the nature of the beast. But to waste hundreds of thousands of dollars fighting legitimate claims, claims that could easily be resolved without having to pay defense lawyers \$250.00 per hour and questionable "expert" witnesses \$350+ per hour, just does not make sense for the bottom line. (The facts of this report can be verified by reviewing the Mobile County Circuit Court records for this case. The case number is CV 02-2923.)

SEATBELTS MAKE A DIFFERENCE

REPORT INDICATES THAT TWO-THIRDS OF TEENAGERS KILLED IN CAR ACCIDENTS WERE NOT WEARING SEATBELTS. According to a recent report released by the National Highway Traffic Safety Administration (NHTSA), of the 5,341 teenagers killed in crashes in 2001, two-thirds were not wearing seatbelts. NHTSA reports that car crashes remain the nation's leading cause of death for 15 to 20 year olds and that use of seatbelts would have significantly reduced the number of deaths.

NHTSA also reported that recent surveys show that seatbelt usage by those in the 16- 24 year old age group has been increasing. Current surveys indicate that 69% in that age group report regular seatbelt usage. Since its initial publication in July 1998, *Legally Speaking* has been consistently advocating the use of seatbelts.

ROAD FATALITIES INCREASE

A recent report by the Associated Press indicates that traffic fatalities in Alabama have climbed to their highest point since 1999. Fatalities rose by 4% to 1033 in 2002. The information for the report was generated by NHTSA.

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...alcohol a factor in 40% of fatal crashes

In addition to the report showing an increase in fatal crashes in Alabama in 2002, NHTSA also reports that alcohol was a factor in 40 percent of crash fatalities. This is an increase of 10% from 2001. According to the report, the deadliest time to be on an Alabama highway is Sunday morning between 1:00am and 3:00am. In a related Associated Press report, Cpl. Spencer Collier, a spokesman for the Alabama State Troopers, said the increase in alcohol related fatalities could be attributed to a shortage of troopers patrolling Alabama roadways.

BOOSTER SEATS NEEDED FOR KIDS AGES 4 TO 8

Safety advocates warn that children in the age group from 4 to 8 years old are at risk for increased injury during a crash if they are using an adult seatbelt without a booster seat. Seatbelts are designed to fit the average adult man. That means they may improperly fit a child who is not in a booster seat. A study published in the June issue of the Journal of the American Medical Association found that children age 4 to 7 were 59% less likely to be injured when seat belted in a booster seat as opposed to children wearing just a seat belt. Emergency room doctors have reported spinal injuries and abdominal injuries for children wearing only a seat belt during a crash. Using a booster seat with the seatbelt can greatly reduce these injuries the report indicated.

The National Highway Traffic Administration is currently beginning studies and tests to develop child restraint guidelines. Alabama does not require the use of booster seats; however, nineteen states have laws requiring booster seats. In those states that require booster seats the laws vary between 60 and 80 pounds and 6 to 9 years old as the weight and/or age to discontinue using booster seats.

Generous Juror Program

The Thirteenth Judicial Circuit (Mobile County) has a program entitled the Generous Juror Program. The program, implemented by Presiding Judge Robert G. Kendall, allows for jurors to donate their compensation for jury service to the Mobile County Department of Human Resources Foster Care Foundation. The proceeds are then used to help area children in the Foster Care Programs. Since many employers compensate their employees during a term of jury service, the nominal payment from the County and State is extra. The donation is credited to the individual and a receipt is sent.

We encourage you to consider this worth while program if you are called for jury duty in Mobile County.

“LITIGATION LEGENDS” GETTING NATIONAL MEDIA ATTENTION

A Litigation Legend is similar to an Urban Legend but involves a ridiculous report about a lawsuit. Mark Wolfe coined the term about five years ago and *Legally Speaking* has reported on the debunking of these Litigation Legends on a regular basis. In the last several years, Wolfe has continued to question why mainstream media outlets continue to report these Litigation Legends as fact when they are simply not true. Wolfe has also challenged numerous publications and syndicated writers to verify these Litigation Legends by offering a \$500 donation to the charity of their choice if they can prove the case, as reported, actually existed.

Most Litigation Legends follow a common pattern. They center around an individual either doing something illegal or something uncommonly stupid and then being hurt. The individual then files a civil lawsuit for damages and a jury awards an incredible amount of money. These incredible tales of unjust enrichment usually find their starting point with special interest groups such as Tort Reform Associations or other pro-insurance organizations. The problem is that when mainstream media outlets or syndicated writers get a hold of these stories, they report them as factual thereby giving a high degree of credibility to the “story”. People then read or hear about these “true” stories about our “run-away” civil justice system and then support all kinds of radical and draconian restrictions for legitimate injury victims, i.e. Tort Reform.

Either intentionally or because of laziness, mainstream print and broadcast media outlets have perpetuated these Litigation Legends. Unlike Urban Legends, Litigation Legends are much easier to check out and verify or debunk. Lawsuits have a case name and case number and are public records.

It now appears at least one mainstream media organization is willing to look deeper into this issue. A research editor for **ABC News Primetime** recently contacted Wolfe about this subject. The research editor was investigating a specific e-mail that has been circulating for about two years regarding 10 examples of “frivolous” lawsuits. As reported in the Winter 2003 edition of *Legally Speaking*, these 10 examples of civil litigation excesses are not true. One has to wonder why it has taken mainstream media so long to actually realize that these Litigation Legends are nothing more than propaganda perpetuated by the lackey organizations of the insurance industry such as the American Tort Reform Association.

Circulation for *Legally Speaking* continues to grow at an incredible pace. This publication, which started in 1998, now has an average distribution of 10,000 copies per quarter. If you have friends or family members who are not on our mailing list, please encourage them to call 251 433-7766 and they can request to be added to our mailing list.