

# LEGALLY SPEAKING<sup>®</sup>

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

SPRING, 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.

## **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.**

## **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.

## **AT THE FIRM**

-Attorney Knox Boteler has become a partner at Moore & Wolfe. For the past three years Knox has been the backbone of the Litigation section. His tireless work in the trenches on motions and briefs as well as his skill in litigating cases has made him a great asset to M&W.

-Steve Moore has been selected as Chairman of the South Alabama Trial Lawyers Association (SATLA). SATLA is an organization of about 75 lawyers from this area who primarily represent consumers and injury victims. Since it was first established in 1998, SATLA has raised and donated over \$45,000 to various charity and community awareness programs.

-M&W made a donation to help buy Scholastic Achievement Test (SAT) preparation material for area students in need. Numerous studies show that children who have practiced and prepared for the SAT do much better on the crucial college entrance examination test. Unfortunately SAT study and practice guides are expensive and many students don't have an opportunity to adequately prepare for the test.

-Tina Booker has been hired at M&W as office manager and bookkeeper. Tina has several years of experience in the area of personnel management and will be an asset to M&W and our clients. Also, Sheila Lucas has been hired as the new M&W receptionist. Former receptionist Raven McNab has been promoted and will be helping in the Claims and Litigation sections of M&W.

-Steve Moore & Knox Boteler recently attended the Alabama Trial Lawyers Association Mid-Winter Conference in Birmingham. The two day conference and seminar allowed them the opportunity to participate in programs and discussions with other victim and consumer attorneys from across the state.

-Mark Wolfe & Knox Boteler are scheduled to attend a five day Trial Advocacy program in Knoxville, TN in mid-March. The intense 40 hour curriculum is sponsored by the National Trial Advocacy College and should help them fine tune their courtroom litigation skills.

This publication provided as a service of:

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& Wolfe**

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

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## TEEN DRIVERS AT RISK

Once again the annual statistics regarding teenage drivers cause us great concern. As attorneys who represent automobile accident victims, we pass along this information in hopes that our readers with teenage drivers will share this information with their children.

\*Motor Vehicle Accidents are the leading cause of death for children age 15 to 19.

\*One out of three teenage drivers will have an accident during their first year of driving.

\*Teenage drivers account for only 7% of the driving population but they account for 14% of all accidents and deaths.

\*In accidents involving teenage drivers, the teenage driver was found to be at fault in 82% of the accidents.

\* The crash rate of 16 year old drivers is three times that of 17 year old drivers and five times that of 18 year old drivers.

Year in and year out the statistics repeat what we already know. Driving is dangerous. A car in the hands of an inexperienced driver can be a lethal weapon. Interestingly, the statistics and reports also indicate teenagers are more likely to adopt safe driving skills if their parents practice safe driving skills. PLEASE BE A SAFE AND COURTEOUS DRIVER.

## ARE YOU AN AGGRESSIVE DRIVER?

The National Highway Traffic Safety Administration (NHTSA) recently reported that 66% of traffic fatalities are caused by aggressive driving behaviors. A recent AAA study showed that 44% of the drivers in the Washington D.C. metropolitan area worry more about encountering an aggressive driver than a drunk driver.

NHTSA offers the following questions to help identify aggressive driving behavior. Do you,

- Speed up when someone tries to pass you?
- Tailgate people who are going slower than you?

One of the most complicated areas of law now faced by injury claimants is subrogation. Subrogation is where one insurance company, or government agency such as Medicare, Medicaid, Veterans Administration, etc., who has paid a benefit seeks to get reimbursed from a payment made to a claimant by another insurance company. For example, if you are negligently injured by an Allstate insured and your health insurance pays some of

- Weave in and out of traffic to get ahead of other cars?
- Pass cars on the right?
- Flash your headlights at slower vehicles ahead of you?
- Overuse your horn?
- Make obscene gestures at other drivers?
- Yell out your window at people?
- Race for a position on the highway?

Aggressive driving incidents have been on the rise for the last 10 years. Given that the last report showed that 91% of people drive to work, its easy to see why commuting has become such a stressful event. M&W encourages you to be a cooperative driver. Rather than getting angry at another driver, try to give them the benefit of the doubt. Adding a little forgiveness and humility to your driving skills will make you a better driver.

## Insurance Adjusters Are Not Attorneys

ACCIDENT VICTIMS CAN RECEIVE BAD "LEGAL" ADVICE FROM ADJUSTERS. Over the last few years we have seen an increase in problems associated with insurance adjusters giving legal advice to claimants. Most insurance adjusters in Alabama are not law school graduates or licensed attorneys yet they summarily decide complicated legal issues. In some instances they even give legal advice or commentary. This is not just a problem in Alabama. In the July 2002 edition of **Legally Speaking** we reported on a case out of Washington where an adjuster was sued for legal malpractice related to bad advice she gave a claimant. In that case the Washington Supreme Court held that the adjuster, who was not a licensed attorney or a law school graduate, was liable for legal malpractice because of improper legal advice she gave to a claimant.

your medical bills, your health insurance carrier may seek to get reimbursed for its payments from your liability settlement with Allstate. The problem is that subrogation is an extremely complex area of law. Some subrogation claims are controlled by Federal case law and/or Federal statutes and some are controlled by State case law and/or statutes. Furthermore, the health insurance policy or the self-funded plan under which the benefits have been

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paid may have exceptions and waivers regarding repayment. Some policies waive repayment if the liability settlement does not fully compensate the victim. Some allow for partial repayment and some do not require any repayment. Yet we have seen numerous occasions where an insurance adjuster tells the claimant that the subrogation claim "must" be repaid without any legal analysis or consideration of what laws may apply. The problem is the victim relies on this statement and allows part of his or her restitution to be given away without ever knowing whether or not the payment was legally owed. Most insurance adjusters are not licensed attorneys or even law school graduates, yet by summarily deciding that a healthcare subrogation claim must be paid back in full they are reaching a legal conclusion.

Recently, we became involved in a claim where the victim's Medicare/Medicaid rights were about to be adversely affected because the insurance adjuster handling his claim did not know the various rules and regulations regarding Medicare benefits and a liability settlement. The adjuster was going to pay the claimants benefits directly to Medicare which would have waived his right to claim a "hardship exclusion" for repayment under the law. Besides allowing for a waiver of repayment in certain cases of hardship, the Federal law also authorizes the establishment of Special Needs Trusts for victims. These SNT's allow a victim to keep a portion of their liability settlement without having to forego future Medicare benefits. In addition to the above error, the adjuster had paid some of the claimants benefits to the hospital even though the hospital had already accepted payment of Medicare benefits.

The Alabama Department of Insurance (ADI), long recognized as one of the worst State agencies in the country for protecting Consumers, has no rules or regulations regarding qualifications to be an adjuster for an insurance company. There is no mandatory State regulated Continuing Education programs for insurance adjusters nor are they licensed by the State. This leaves unrepresented injury claimants at the mercy of the insurance adjuster.

What causes us additional concern is the fact that many insurance adjusters are trained and encouraged to keep injury claimants from seeking legal advice. The insurance industry continues to perpetuate the idea that "only greedy people" go see an attorney. The truth is that insurance industry studies have shown that claimants represented by

an attorney recover more restitution than those who rely on the adjuster to "do the right thing."

### **Have You Been Victimized?**

As the above article indicates, many times claimants resolve their claim directly with an insurance company and do not retain a lawyer. Have you, or a friend or family member, recently settled or resolved a claim wherein the adjuster told you that part of your settlement proceeds had to be paid to another insurance company or government agency? Please contact us and we will be glad to review your situation to try and determine whether or not such a payment was legally required. The consultation is free: 251 433-7766.

### **Large Companies Violating the FLSA**

The Fair Labor Standards Act (FLSA) holds that if a Company is going to require a non-exempt employee to work more than 40 hours in a week, then it must pay overtime. Yet many large companies have been trying to get around this law by claiming an employee is exempt from FLSA. Generally, an employee is exempt from the FLSA if they are in a management and/or supervisory capacity or they have a unique skill, such as a professional.

Recently FLSA cases have been filed against large retail corporations, national restaurant chains, automotive store chains, food processing companies, insurance companies and manufacturers.

### **Moore & Wolfe to Award Grant Funds**

-M&W will help distribute grants for the Alabama Civil Justice Foundation (ACJF). The ACJF is the primary charity of the Alabama Trial Lawyers Association. It recently celebrated its 10 year anniversary. Over that time the ACJF has raised and donated almost 4 million dollars to charity and non-profit groups across Alabama. M&W will be presenting grant funds to Care House and Catholic Social Services of Baldwin County in the next few weeks. If you want more information on grants for a charity or non-profit organization, please call the ACJF at 334 263-3003.