

# LEGALLY SPEAKING<sup>®</sup>

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

FALL 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.

## FREE INFORMATION FOR ACCIDENT VICTIMS

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 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.



## WE CAN HELP

A review of statistics from 2005 and the first three quarters of 2006 shows 87% 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 referred 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.

## TV LAWYER DROPS CASE TWO WEEKS BEFORE STATUTE OF LIMITATIONS

LAWYER TELLS CLIENTS HE DOESN'T GO TO COURT AND TELLS THEM TO FIND A NEW ATTORNEY. A year after their accident, a mother and daughter hired a TV lawyer to help them with their claim against the at-fault driver's insurance company. They continued under the care of a doctor for their injuries for the next 11 months so the claim was never in a position to present to the insurance company. Their two-year statute of limitations was two weeks away when the TV lawyer told them he would not be able to help them anymore. They report that the TV lawyer told them he "didn't go to court" and they needed to find another attorney to file their suit before the statute of limitations expired. In Alabama there is generally a two-year statute of limitations for auto-negligence claims. This means a claim either has to be settled within two years or a lawsuit has to be filed to preserve the claim. (Please note there are variations to this time limit that can increase or decrease the time for a claim.) The TV lawyer then recommended they hire an inexperienced lawyer who had been practicing less than a year and who did not even have an office. After meeting with the "recommended lawyer" at a local burger restaurant, the mother and daughter came to M&W. Although the law firm generally has a policy against taking cases with a pressing statute of limitations, the attorneys at M&W voted to take the case mainly because of the poor treatment the clients had received from the TV lawyer. A lawsuit on their behalf was filed to protect and preserve the claim. Steve Moore said, "this was not the typical situation we see where someone waits and waits until the last minute to consult with or hire a lawyer for their personal injury claim. They hired a lawyer in a timely manner, it wasn't their fault that he did not disclose the fact that he would not take their case to Court until a few weeks before the statute ran." A catchy TV ad with a hook line, does not mean the lawyer is right for your case. The M&W web site, ([www.moore-wolfe.com](http://www.moore-wolfe.com)), has an article on hiring a personal injury lawyer. It explains what questions consumers should ask when consulting with a lawyer and what factors consumers should consider when hiring a personal injury attorney.

1252 Dauphin Street • Mobile, AL 36604

[www.moore-wolfe.com](http://www.moore-wolfe.com)

251-433-7766

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

**LEGALLY SPEAKING ON THE AIR!**

Listen for *Legally Speaking* this quarter on 1480amWABB. The show airs every other Friday 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. Morning Talk with Ron Frasier on 1480amWABB is Mobile's number one rated morning talk radio show and is on the air Monday through Friday from 6:00am to 10:00am. This quarter Mark will be on the air October 20<sup>th</sup>, November 3<sup>rd</sup> and 17<sup>th</sup> and December 1<sup>st</sup>, 15<sup>th</sup> and 29<sup>th</sup>.

**DON'T WAIT UNTIL LAST MINUTE TO CONSULT ATTORNEY**

As mentioned in the article on page one, Alabama law generally has a two-year statute of limitations for auto-negligence claims. There are exceptions to this general rule of law, including if the victim is a minor or if the at-fault driver was in the line and scope of employment for a city or state agency. At M&W we have recently seen an increase in the number of people who are trying to handle their personal injury claim without an attorney and then call for a quick consult shortly before the statute of limitations expires.

A woman from Texas recently called our office with her statute of limitations about to expire in a week. She was involved in an accident on I-10 while traveling through Mobile and she had been trying to handle the claim herself without hiring an attorney. The insurance company had finally made her a settlement offer about a week before her statute of limitations would run but it was a lot lower than she expected. She was calling to find out if the offer was "fair" and if to see if she could hire our firm to file suit on her behalf. She consulted with Knox Boteler by phone and she was told of the M&W general policy of not taking on new claims or cases with a fast approaching statute of limitations deadline, especially when there was an offer on the table. He explained that while the settlement offer was probably lower than the true value of her claim, there was not enough time to make a fair evaluation of her claim before the statute of limitations expired. Knox also explained to her that it was not fair of her to expect M&W, or any attorney, to file suit on a case that they had not been given adequate time to investigate or evaluate for purposes of litigation, especially when there was a pending settlement offer.

In another similar situation, M&W received an e-mail request through our web site where a local man asked us to tell him whether the insurance company's settlement offer for his auto-negligence claim was "fair". His statute of limitations was set to expire within two and half weeks. The information he provided indicated the accident aggravated a pre-existing condition. Steve Moore quickly determined that a fair evaluation of his claim would require a review of previous medical records as well as current medical records and there was not enough time to collect and evaluate those records before his statute of limitations expired. Once again, it was suspected that the offer was

lower than the true value of the claim, but without adequate time to investigate M&W was not be able to assist him.

The proper evaluation of a personal injury claim involves a detailed factual review of the accident, which may include witness interviews and interviews with the investigating officer. It also includes a detailed review of the medical records and narrative reports of treating healthcare providers. It may also require the review of past medical conditions if there is an aggravation of a pre-existing condition and it requires the review and analysis of any other additional aggravating or mitigating circumstances related to the accident and/or injury. Finally, the claim is analyzed based upon the legal venue that has jurisdiction of the claim. With this information, an experienced auto-negligence attorney can then begin establishing a Probable Verdict Range (PVR) for that particular claim or case. It is important for victims to remember that if the claim cannot settle then the "value" of the claim will be determined by a jury's verdict within the jurisdiction of the claim or case. The PVR becomes the benchmark to determine whether a settlement offer on a claim is fair.

Even if there is an "offer on the table" before consulting with an attorney, if the attorney is provided adequate time to investigate the claim there may be a variety of benefits the attorney can bring forth for the claimant. At M&W we know many people are reluctant to consult with an attorney about a personal injury claim because they don't want to appear greedy. We also know insurance adjusters are trained with tactics to discourage claimants from consulting with an attorney. Yet in both cases detailed above, we believe we could have provided a significant benefit for both of those victims had they just consulted with our office in a timely manner. If you have an ongoing personal injury claim please consider consulting with an experienced auto-negligence attorney as soon as possible and no later than six months before the statute of limitations expires.

**ADJUSTER GIVES BAD "LEGAL ADVICE" TO PARENTS OF AN INJURED CHILD.**

**MOST ADJUSTERS DO NOT HAVE LEGAL DEGREES AND ARE NOT LAWYERS.** But at M&W we continue to see situations where adjusters give legal advice or draw legal conclusions about issues related to a claim. The parents of a minor recently consulted our office about their 18 year old son's auto-negligence claim. He was hurt in a car accident almost two years earlier and the adjuster was trying to pressure the parents into accepting a settlement offer because the statute of limitations was about to "expire" on the son's claim. The adjuster even sent the parents a letter stating that the statute was about to expire and that they better take the settlement before it was too late. The adjuster's legal conclusion was wrong. Alabama law has special tolling provisions for the statute of limitations for the claims of minors. The statute of limitations was not "about to expire" as claimed by the adjuster. Whether the adjuster's misrepresentation was intentional or because of inadequate training, it exemplifies problems we see when adjusters try to draw legal conclusions or explain legal concepts to claimants. Keep in mind that more and more insurance companies are using "regional adjusters" to handle claims in multiple states. These adjusters are given basic summaries of the laws for the various states but the laws can vary from state to state.

Another area of frequent inaccuracies is when adjusters try to explain and handle legal issues surrounding subrogation claims against benefits owed. Subrogation is where one insurance company or government entity seeks reimbursement from a liability settlement for benefits paid. For example, if you are hurt in a car accident your health insurance carrier may pay for your ambulance bill and emergency room bill. The insurance company for the at-fault driver is obligated to pay you for those bills but you may have to reimburse your health insurance company since they already paid the bills. This is known as subrogation. However, as simple as the concept of subrogation may seem, it is an extremely complex area of law. Depending on what benefits are received, Federal and/or State laws may govern how much money you may have to repay. There are also extreme variations in subrogation clauses in health insurance policies and against what type of benefits a subrogation claim can be asserted. A third party liability adjuster who tells a claimant how much of the settlement proceeds have to be repaid to a health insurance company, or government entity such as Medicare, is making a legal conclusion that he or she may not be properly trained to make. We recently saved an elderly client over \$16,000.00 in settlement proceeds that the adjuster was going to pay on a subrogation claim. In addition, we helped her secure an additional \$15,000.00 over and above the offer made to her before we were hired.

## **M&W CHARITY WINE TASTING RAISES MONEY FOR MID-TOWN PLAYGROUND AT CENTRAL PRESBYTERIAN CHURCH.**

THANKS TO SPONSORS AND MEMBERS OF THE MOBILE BAR ASSOCIATION FOR SUPPORTING THIS EVENT. As you may know from past newsletters, M&W has committed to raise funds for a playground at Central Presbyterian Church (CPC). Besides being a good neighbor to M&W, CPC is a community centered church with numerous programs for people and children in the mid-town area. CPC is part of the Interfaith Hospitality Network which involves 14 churches that house homeless families at their facility. CPC houses numerous families in need and the playground will be a great benefit for those families. In the summer, CPC coordinates a Community Creative Arts Camp for children in the mid-town area and they too will benefit from a safe and fun playground. CPC has partnered with the Alabama School of Math and Science to tutor children from Leinkauf Elementary School and these children will have access to the playground. Plans are also under way at CPC to make sure the playground facility is available to families in the community. The Moore & Wolfe Charity Wine Tasting on October 8th at the Bakery Café was attended by over 140 people who sampled over 35 wines donated by area distributors. A special thanks to the Bakery Café and Russell Thompson Butler and Houston CPA's for their help in making this event a huge success. Tax deductible contributions to this project can be made to Central Presbyterian Church, 1260 Dauphin Street, Mobile, AL 36604. Designate Playground Fund on your check.

*The social function of tort law is to reduce preventable injuries*

## **TRAFFIC SAFETY NEWS**

**THREE SECONDS IS ALL IT TAKES.** 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.

**SPEAKING OF CELL PHONES.** 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.

**DANGEROUS DRIVING DAYS.** According to an article published on the Insurance.com web site, July 4th is the most dangerous driving day of the year with more fatal accidents happening on that day than any other throughout the year. The other most dangerous driving days are: July 3, December 23, August 3, January 1, August 6, August 4, August 12, July 2 and September 2. Saturday is the most dangerous driving day of the week followed by Sunday, Friday, Thursday, Monday, Wednesday and Tuesday.

**SIDE AIRBAGS REDUCE RISK OF FATALITY BY A THIRD.** According to a study by the Insurance Institute for Highway Safety, a driver's risk of being killed in a side-impact accident decreases by more than a third if the vehicle has head protecting side-curtain air bags. Side curtain air bags will be standard equipment in all new vehicles by 2010.

## AT THE FIRM

**M&W Provide Car Seat Safety Brochure Free.** 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.

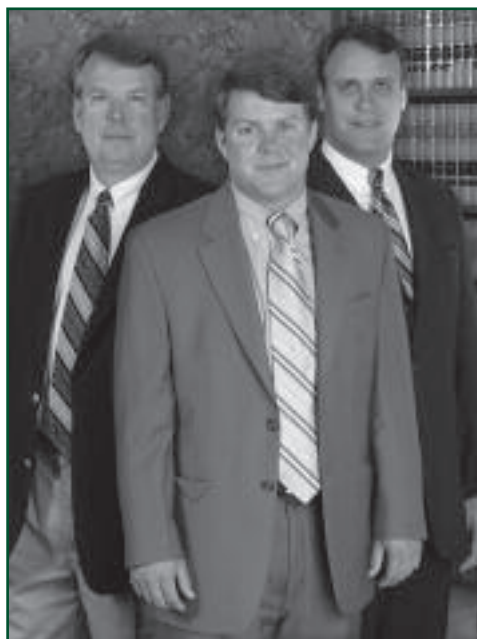


**Community Giving.** Last quarter charitable activities continued to be an important outreach to our community. At M&W we believe that being active in our community is an important part of our law firm's identity. At M&W doing good work for our community is just as important to us as doing good work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

- Fairhope Youth Baseball.
- Mims Park Youth Football
- The Elijah House RTF Ministries.
- American Lung Association.
- Crawford-Murphy Athletic Association.
- Mobile Bar Association f/b/o Bench and Bar Golf Tournament.
- National Multiple Sclerosis Society.
- Cystic Fibrosis Foundation.
- St. Jude's Children's Hospital Building Fund.
- United Methodist Inner City Mission.
- Preschool Center for the Sensory Impaired.
- Central Presbyterian Church – Playground Fund.
- SEEDS Education Foundation.



**M&W WEB SITE HAS MORE INFORMATION FOR AUTO-NEGLIGENCE VICTIMS.** In addition to providing auto-negligence victims with a free handbook, the M&W web site ([www.moore-wolfe.com](http://www.moore-wolfe.com)) also has additional information. Topics include how insurance adjusters handle claims, how to go about selecting a personal injury attorney, information about property damages claims and many other accident related articles. The web site also has over 100 links to other auto-accident related sites.



*Leaders in car accident claims and litigation*

## LEGALLY SPEAKING®

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***...or current resident.***

*FREE TO THE PUBLIC*