



CKRK&M Briefs

Volume 4
Number 8

A newsletter for friends and clients of Cusimano, Keener, Roberts, Kimberley & Miles, P.C.

WINTER 2003/04

BROUGHT TO YOU BY

**CUSIMANO
KEENER
ROBERTS
KIMBERLEY
&
MILES
P.C.**

Attorneys at Law
153 South Ninth Street
Gadsden, AL 35901

Phone (256) 543-0400
FAX: (256) 543-0488

e-mail:

lawyers@alabamatorlaw.com

Web site:

www.alabamatorlaw.com

Gregory S. Cusimano
Larry H. Keener
Michael L. Roberts
David A. Kimberley
Philip E. Miles
Emily P. Hawk

OFFICE HOURS
Monday-Friday
8:00 a.m.-5:00 p.m.

SEASON'S GREETINGS!

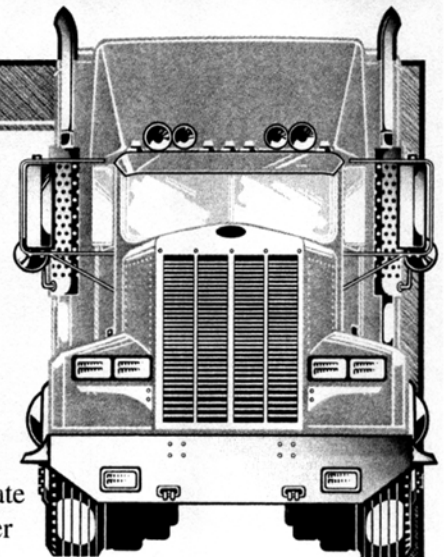
We hope your home will be filled with joy, warmth, and goodwill during this cheerful holiday season. And may you and your family enjoy peace, happiness, and health throughout the coming year.

All of us at Cusimano, Keener, Roberts, Kimberley & Miles, P.C., send our deepest appreciation to all of our loyal clients for calling on us to meet their legal needs over the years. We sincerely thank you from the bottom of our hearts.

Fatigued truck-driver case successfully litigated

Dangers to motorists posed by fatigued and exhausted truck drivers were the subject of recent litigation efforts by the trial team of **Greg Cusimano, David Kimberley, Mike Roberts, and Emily Hawk.**

This case arose from a traffic collision on an interstate in which a commercial truck driven by a fatigued driver struck another vehicle in the rear, causing it to cross an interstate median and hit our client's vehicle. The CKRK&M team litigated the case in the Georgia courts and achieved successful recovery for the client, with emphasis on Department of Transportation standards relating to maximum total hours of service by drivers, as well as required documentation in truck-driver logs.



We take your family's safety and security personally.

America's nursing CRISIS

The nation has too few nurses. Hospitals are actively recruiting overseas and offering substantial employment bonuses to those nurses who come to work for them.

Because of this nursing-care shortage, many health-care professionals fear that the quality of care is suffering. According to *USA Today*, 32 percent of Americans fear for their safety in U.S. hospitals because too few nurses are assigned to care for too many patients in general and specialty units.

Some hospitals are closing critical-care beds because there are not enough nurses to provide attention, and many parents fear babies and children are at risk at understaffed health centers. Some nurses who are admitted to hospitals for their own health-care needs actually hire their own private nurses so that they receive medications, therapies, and other attention correctly and at the right time.



One nursing incident

After a child suffered brain damage and quadriplegia requiring 24-hour care, his parents filed suit against the hospital. A jury's verdict provided an award to the child because jurors were convinced that nurses failed to monitor the mother's progress in a timely fashion and report fetal distress to the attending physician.



You can shield yourself against check fraud by taking some simple steps.

- **Use initials** instead of your first and middle names when you order checks from your bank. Check thieves will be less confident about endorsing them.
- **Shred** credit-card and other receipts that go in the trash.
- **Write only the last four numbers** of your account on any check to pay your credit-card bill. No one can copy your account number.
- **Seal** checks in security mailer envelopes.
- **Review cancelled checks and statements** during reconciliation to look for alterations or inappropriate transactions.
- **Protect deposit slips** since thieves can make bad-check deposits and take cash back.
- **Patronize** retailers that use fingerprints or electronic check-fraud software systems.

- **Report check fraud** to financial institutions and law enforcement immediately.
- **Obtain victim assistance or legal counsel** if fraud leads to emotional problems or serious financial loss.



Brokerage firm "Full disclosure"

In 2002, investment brokerage giant Merrill Lynch paid \$100 million to the State of New York to settle a case alleging that it had defrauded its retail brokerage customers. New York showed that while the firm's analysts were recommending misleading "buy" recommendations to its retail customers, the same analysts were sneering at these investments in internal e-mails and other communications.

What's the lesson from this for the average retail investment customer?

- Consider investment decisions very carefully. Do the proper amount of homework to verify analyst recommendations.
- Understand that some brokerages make more money through stock-and-bond underwriting than through stock sales to retail customers. As a result, some analyst recommendations may be tools to gain highly profitable investment-banking business.
- Be aware of consumers' rights. Investment firms and brokers have "a duty of due care" to disclose *all* material facts about investment recommendations and to never lie to customers.
- Understand that federal laws and recent decisions have diminished investors' rights to recover.

Municipal bond recommendation

Even big investors who do their homework can fall for investment misrepresentations. When municipal bonds defaulted, several mutual fund companies that invested millions in apartment building renovations sued a stock brokerage firm, charging that the brokers intentionally misstated the occupancy levels and conditions of the buildings. A jury awarded significant compensation for damages as well as prejudgment interest costs and fees.

Profiles in

FAMILY BRAVERY

One reason why defective products seem to go undetected for a long time is that victims often settle prior to trial and, as part of the settlement, agree never to talk about the products' deficiencies.

A family that lost its young son in a vacation accident deserves special mention for its bravery in sharing information about a defective elevator. The inn where the family stayed had an old, two-story elevator with an outer door and inner folding gate separated by a seven-and-a-half-inch gap. The family's son was crushed to death after being trapped in the gap.

When the family planned to sue the inn and the elevator manufacturer for their loss, they learned from their lawyer's investigation that several other children had died in similar elevators. Motivated by the loss of their son, they promised to do all they could to prevent other children from being hurt or killed as a result of dangerous elevators.

The case was resolved, but only after the parents insisted that they would not settle until the elevator company agreed not only to make the necessary technical changes to protect riders, but also to publicize the hazard so other children would not be harmed in elevators.



Mandatory arbitration

More and more businesses are adding mandatory arbitration clauses to the fine print of documents they require consumers and employees to sign. They claim that avoiding going to court saves everyone time and money.

In reality, mandatory arbitration bypasses everyone's rights to seek remedies through the courts, which leaves consumers and employees not only unprotected against wrongdoing, but also offers little recourse in disagreements. What's wrong with them? They can be dreadfully unfair and are not bound by state or

federal laws. Further, although corporations pay costs to industry-insider arbitrators, consumers may have to pay thousands in legal fees and are restricted on the evidence they can bring to arbitration.

Service contract

An appeals court invalidated a binding arbitration agreement that a long-distance telephone-service provider required its subscribers to sign. The court said the "take-it-or-leave-it" service contract was "unconscionable" because it did not give consumers a meaningful choice to negotiate, modify, or waive fees or terms and conditions.



DUI & A

A conviction for driving under the influence of alcohol, a controlled substance, or a prescribed or over-the-counter medication is serious.

Q: What are some possible outcomes of DUI?

A: Drivers can lose their driver's licenses, have difficulty obtaining auto insurance, or even lose their vehicles to impoundment, among others.

Q: What's the difference between suspension and revocation of a driver's license?

A: A judge can order a *temporary* DUI suspension for 90 days or six months. Judges can also revoke driver's licenses indefinitely in serious cases or repeat-offender incidents.

Q: What happens to drivers who get caught driving while their license is suspended or revoked?

A: Judges can send them to jail, exact large fines, or sentence them to significant community service for this very serious offense.

Q: What help can a lawyer provide for DUI offenses?

A: The best counsel is to never commit DUI. Lawyers can investigate matters helpful in preparing a defense to obtain alternate punishment, minimize an outcome, or obtain a dismissal.



© Copyright 2003. Newsletters, Ink. Corp. All rights reserved. Printed in the U.S.A. www.newslettersink.com
The information included in this newsletter is not intended as a substitute for consultation with an attorney. Specific conditions always require consultation with appropriate legal professionals.
No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

Kimberley wins Supreme Court appeal in UM auto insurance case

CCKRK&M attorney **David Kimberley** won an important victory for Alabama consumers faced with problems dealing with automobile insurance issues, in a decision released in October. A worker, driving his employer's truck, was injured when an uninsured motorist pulled his vehicle out in front of the truck. Because the injury occurred on the job, the worker received some workers' compensation benefits, including payment of medical expenses, in accordance with Alabama law. However, when he tried to make a claim pursuant to the uninsured/underinsured motorist coverage, afforded by St. Paul Insurance Company, covering the truck he was driving, St. Paul refused. St. Paul argued that previous Alabama case precedent from Alabama appellate courts meant that uninsured motorist benefits could not be collected where there had also been workers' compensation benefits paid.

David Kimberley, on behalf of the worker, litigated the case, including the appellate work in the Alabama Supreme Court. Kimberley achieved a victory in this decision, which held that St. Paul's position was wrong, that the previous cases cited by St. Paul did not apply to these facts, and that the claim for uninsured motorist benefits could be pursued.

Monsanto trial recovery

A settlement was reached in the case against Monsanto, tried in Etowah County Circuit Court, on behalf of about 3,500 residents of Calhoun County whose property and health were damaged by PCBs released by Monsanto Corporation during the years it operated a plant in Anniston. The case was tried by former United States Senator Donald Stewart, and **Greg Cusimano** and **Mike Roberts** contributed to the trial efforts in consultation.

After one of the lengthiest trials in Alabama history, jury verdicts were returned against Monsanto, finding it guilty of outrageous conduct and other torts with regard to the release of PCBs into property in the community, causing property damage and emotional distress. The overall settlement, reached after about 18 months of trial, included benefits payable to other plaintiffs in addition to those involved in this Etowah County trial, with substantial monetary benefits and the funding of health care and education programs.

Have a safe holiday

Your family will greatly enjoy the upcoming holidays if you spend a little time thinking about making your home safe and secure, particularly for your young children.

- Fix your holiday tree to walls or windows so that it can't tip over.
- Check that combustibles are far from fireplaces and heaters.
- String no more than three strands of cooler-operating miniature tree lights together. Slide cords aside to avoid trips and falls.
- Replace breakable and sharp ornaments with safer items. Avoid using tinsel strands, which can choke children. Replace metal ornament hooks with safer string loops.
- Always be mindful of burning candles.
- Store an approved, inspected fire extinguisher in a handy place.
- Replace batteries in smoke and carbon-monoxide detectors.
- Make at least one family gift a home-safety item, such as a first-aid kit or second-floor escape ladder.