

the jlf report

October 15, 2004 ~ Vol.3 No.4

A Quarterly Publication Of The Joye Law Firm

IN THIS ISSUE

- 1 Tort Reform Myths
- 2 VIOXX Screening Available
- 2 New Attorney Brian Burke
- 2 VOTE INEZ!
- 3 Big Brother or Big Savior?
- 4 J.K. Harris & Company
- 4 Joye To The Cub Scouts

JLF Report Staff:
Editor: Ken W. Harrell
Layout: Louis Ramon



Ken Harrell Angus Lawton Tina Walker Chris McCool Reese Joye Matt Jackson Mark Joye Drew Carroll

TORT "REFORM": MYTHS vs. FACTS

MYTH: South Carolina's legal system is keeping business from coming to and developing in the state.

FACT: Since 2000, companies with a minimum capital investment of \$10 million have invested over \$2.93 billion dollars and created approximately 10,841 direct jobs.

-South Carolina Department of Commerce, Team SC, Capital Investment Figures

MYTH: South Carolina's legal system and venue laws keep businesses from wanting to expand their operation and workforce in the state.

FACT: Existing South Carolina businesses with a minimum capital investment expansion of \$10 million dollars have invested over \$6.29 billion dollars and created approximately 14,304 direct jobs as a result of expansion alone.

-South Carolina Department of Commerce, Team SC, Capital Investment Figures

MYTH: We need to pass Tort Reform, because the longer we don't, businesses will leave the state and go elsewhere.

FACT: "...returns so far look spectacular: Investment numbers for 2004, as compared to the same time last year, are up more than 250%."

-SC Department of Commerce Annual Report 2003

MYTH: Our civil justice system has far too many tort filings.

FACT: Tort filings have fallen by 4% over the last decade. Meanwhile, contract filings (which more likely involve businesses) have risen by 21% over this same period.

-National Center for State Courts, 2004

MYTH: Damage awards have consistently risen over the years.

FACT: The median inflation-adjusted award in ALL tort cases dropped 56.3% during the last decade.

-Department of Justice, Bureau of Justice Statistics, 2004

MYTH: Rising malpractice premiums is solely the result of lawsuits.

FACT: The S.C. Patients Compensation Fund adopted a "pay-as-you-go" policy and, in order to keep premiums low, made a conscious decision NOT to maintain any reserves against claims, NOT to purchase reinsurance as the Insurance Reserve Fund did, and to provide unlimited coverage for very low premiums, and to provide coverage to doctors who did NOT have coverage at the time by allowing them to just pay premiums back to the occurrence, i.e. "retroactive coverage".

-SC Legislative Audit Council 2000 Report

MYTH: Doctors have been and continue to leave SC because of rising malpractice premiums.

FACT: From 1993 to 2003, the number of physicians in South Carolina grew from 5,973 to 8,549.

-SC Budget & Control Board, Office of Research and Statistics

MYTH: Doctors and hospitals can no longer offer certain services or have cut back, due to litigation, which they believe directly affects their premiums.

FACT: "When the insurance companies, drug companies, and HMO's squeeze doctors to the point where they have driven out the profit margin, then doctors and hospitals will more than likely cut back on services. This past year alone, profits for this country's HMO's nearly doubled."

-Modern Healthcare, August 30, 2004

MYTH: Healthcare costs have risen sharply due to litigation.

FACT: "Five of the costliest medical conditions accounted for nearly one-third of the increase of almost \$200 billion in health-care spending from 1987 to 2000. The sharp increase in health-care spending is due in large part to the rise in the number of individuals who undergo treatment for medical conditions like heart disease, pulmonary conditions, medical disorders, cancer and hypertension, among others."

-Modern Healthcare, August 26, 2004

MYTH: Doctors are going to stop coming to South Carolina until medical liability reform passes.

FACT: South Carolina is one of the Top 5 Places in the country to practice medicine.

-Physicians Practice Magazine, July 2003

MYTH: Medical malpractice caps prevent premium increases.

FACT: According to Weiss Ratings Inc, the nation's leading independent provider of ratings and analyses of financial services companies, mutual funds, and stocks, medical malpractice caps fail to prevent premium increases. Physicians in states with caps had a 48% increase in median annual premiums.

-Weiss Ratings is the only major rating agency that receives no compensation from the companies it rates. Revenues are derived strictly from sales of its products to consumers, businesses, and libraries.

VIOXX SCREENINGS AVAILABLE



Vioxx is a non-steroidal anti-inflammatory drug (NSAID) approved by the FDA in 1999 and prescribed to help acute pains associated with osteoarthritis, rheumatoid arthritis, and other physical problems. Due to the nature of our law practice, thousands of our clients have been prescribed Vioxx over the past five years. Merck, the manufacturer of Vioxx, claimed the drug's benefit over existing treatments was its ability to reduce pain without any gastrointestinal side effects, which are typical of other NSAIDs such as aspirin or ibuprofen.

The use of Vioxx has now been linked to several cardiovascular risks, including heart attacks and strokes. On September 30, 2004, Merck announced the immediate voluntary worldwide withdrawal of Vioxx, a decision based on new data from a 3-year Vioxx study.

If you or someone you know has suffered a heart attack, a stroke, or other cardiovascular problems after taking Vioxx, contact our law firm by calling 843-746-2360 or 866-554-3500 so we can assist you with a free investigative screening.

Attorney Brian Burke Joins Joye Law Firm

Joye Law Firm has hired another lawyer to assist with its well-established criminal defense practice. Brian Burke began working with the law firm on August 1. He will assist attorneys Reese Joye and Drew Carroll with the criminal defense and DUI defense case load.

Brian has extensive law enforcement experience, having worked as a police officer for the cities of Cayce and Mount Pleasant, before he decided to attend law school. "I think my background in law enforcement allows me to approach our cases with an open mind," said Brian. "Having worked as a police officer, I realize that in many instances, those persons who have been charged with a criminal offense are

good people who have made a mistake or are the victims of circumstance. I hope to use the skills I learned as a police officer to protect the rights of our clients."

Brian graduated from the Citadel in 1995 before attending the South Carolina Criminal Justice Academy. He obtained his law degree from the University of South Carolina in 2003. Before joining the law firm, he worked as a law clerk for Judge James Williams, a circuit court judge.

When not working, Brian enjoys any outdoor activity, including mountain biking, fishing, hunting and trying to improve a very poor golf game!



The Attorneys At Joye Law Firm
WE FIGHT TO WIN!

VOTE INEZ!



One of the rules of thumb for a successful law practice is to avoid expressing an opinion to a client about religion or politics. But every rule has an exception, and that is why the Joye Law Firm strongly recommends that you vote for Inez Tenenbaum as United States Senator on November 2.

It does not matter whether you are a Republican, a Democrat, or an independent - you have a personal stake in this upcoming United States Senate election. Currently, a group of politicians in Washington is trying to take away the rights

of American citizens to get fair compensation when they are injured by someone else's carelessness or wrongdoing. We must have a senator who will look out for working men and women, instead of the insurance companies and big corporations.

Jim DeMint thinks all lawsuits are frivolous and he wants to do away with the legal rights of American families. Ironically, this belief must not apply to his own family as his mother is pursuing a well-publicized medical malpractice case.

Mr. DeMint's other bad idea is a proposed federal sales tax of 23%. When you add Mr. DeMint's 23% sales tax to the existing South Carolina state sales tax of 5% and to the state income tax of up to 7%, almost every South Carolinian is going to be in a 30 to 35% tax bracket. While this would be good news for the extremely wealthy, it is bad news for the vast majority of South Carolinians and bad for the economy.

Several of our law firm's attorneys have been blessed to know Inez Tenenbaum. We know her to be a person of great integrity and strong character. She possesses an independent mind which she will use to represent the best interests of all South Carolinians. However, Inez Tenenbaum has been targeted by big business and special interest groups that are pouring money into Mr. DeMint's campaign to try to defeat her. We believe it is important to preserve your right to a jury trial, to receive fair and reasonable compensation and to hold wrongdoers accountable for their actions. We urge you to vote for Inez Tenenbaum for the U.S. Senate on November 2.

Visit our web-site: WWW.JOYELAWFIRM.COM
Phone: 843.554.3100 Toll Free: 888-324-3100

BIG BROTHER OR BIG SAVIOR?

HERE COMES THE BLACK BOX



The following article, by JLF attorney Mark Joye, originally appeared in the September 2004 issue of South Carolina Lawyer. (Used with permission.)

Mark Joye was recently elected to the executive committee of the Board of Governors for the South Carolina Trial Lawyers' Association. Said Mark, "It's an honor to serve in this way for the trial lawyers of our state. We have a lot of challenging issues facing our organization and the injured citizens of our state and I look forward to helping out as much as I can." Mark also currently serves on the executive committee for the

Charleston County Bar Association and is an officer of the Charleston Chapter for the American Board of Trial Advocates.

These days, when there is a plane crash, all attention is given to locating the "black box" to find out what happened and hopefully to discover what went wrong. In the aftermath of the September 11, 2001 plane hijackings, we all wanted to hear the cockpit voice recorder and see the data from digital flight recorders. Any time something bad happens, such as a crash, we want to discover the "hows" and "whys" so that the event might be explained and hopefully avoided in the future. With the advent of the event data recorder (EDR), commonly called the "black box," we increasingly turn to them for some of these answers.

As automobiles became more dependent on computers to run various systems, manufacturers built data recorders into them. Initially, the recorders were included for repairmen to diagnose problems with the engine. Electronic fuel injection computers gathered data to measure and manage engine fuel consumption. Anti-lock brakes, another major safety feature on cars, featured a computer that measured individual wheel speeds and reduced brake fluid pressure to the wheel to prevent it from locking up, thereby giving increased directional control. Other black box computers receiving and storing data in vehicles included ones for traction control, cruise control, power train, seat belt tensioners and suspension control.

The 1990s were the real start of the use of black boxes in motor vehicles. When air bags began to make their way into automobiles, those vehicles needed a computer to measure the acceleration forces for a vehicle involved in a crash and electrically deploy the air bags.

How is this information accessed or downloaded? Whether the information comes from just the air bag module or a network of computers throughout the vehicle, the information is recorded and stored in a series of codes. A scanner/computer is plugged into a vehicle data port which then interprets and prints out the codes.

Why is all of this information important? On a broader front, this detailed information can be quickly and efficiently placed into an accident database for people to study the effects of vehicle crashes and how the harm from them can be lessened. For the individual crash scenario, a black box has the potential to provide much more information about a vehicle crash and the systems within a vehicle than an eyewitness to the crash itself. Conflicting eyewitness testimony may be reconciled with data from the black box. Of course, when there are no eyewitnesses to a crash, the black box may be the only information besides the vehicle itself in explaining the hows and whys of the crash. For example, if there are no skid marks on the road prior to a crash and no witnesses, how do you know the brakes were used if the car was equipped with anti-lock (anti-skid) brakes? If there are not enough physical markings on a seatbelt to indicate whether a "load" was placed on the belt (which indicates belt use) during a crash when the air bag deployed, seat-

belt usage information from a black box can be quite helpful.

The effects of black boxes have already made their way to courtrooms across the country. In a case against General Motors, Corp. in 2002, the plaintiff alleged she was driving her 1996 Chevrolet Cavalier when the air bag inadvertently deployed and knocked her hands off of the steering wheel, causing a collision. GM introduced the data recorded from a black box to show that the air bag did not malfunction. The jury returned a verdict for the defense. On appeal, the Illinois appellate court upheld the admissibility of the black box data.

In Canada, information downloaded from a black box helped convict a Canadian citizen who slammed into another car he accused of running a red light. With no witnesses to the deadly collision, the black box information was admitted into evidence and showed the defendant was driving three times the speed limit and that he never hit the brakes.

In Massachusetts, a young woman lost control of her 2002 GMC Yukon as she drove on a two-lane highway and slammed into a tree, killing the passenger. Although the driver claimed she was driving under the speed limit, police downloaded the black box information in the car and charged the driver with negligent vehicular homicide for traveling well above the speed limit.

Ford Motor Company agreed to pay \$1.5 million to the family of a woman who was killed in a low speed collision after data from the black box of her Ford Ranger pickup truck indicated that the vehicle's air bags may have deployed too late. Instead of deploying within 50 to 60 milliseconds after frontal impact with a light pole at 18 mph, the black box indicated airbag deployment at 118 milliseconds - twice as long to deploy.

By 2004, NHTSA says between 65 percent and 90 percent of all 2004 vehicles will have some sort of recording ability. By 2008, the agency wants recorders in all vehicles to collect up to 42 specific data elements, including the time it takes for air bags to deploy.

Of course with the spread of the popularity of these units also comes some thorny issues that are the subject of intense debate right now. Who "owns" this information and who is entitled to view it? If video and audio features are added to black boxes in private vehicles (and there are such units in commercial vehicles now), do the occupants of these vehicles have rights of privacy that are more precious than the information to be gained from these units? "The real issue is one of notice, and the problem arises from the fact that information is being collected about people's driving behavior without them knowing," said David Sobel, general counsel of the Electronic Privacy Information Center, a D.C.-based public research center that focuses on civil liberties issues.

Like another black box in our society (the breathalyzer machine), who wants their rights and liberties decided by a machine over the testimony of a human being and/or the presence of physical evidence at the scene?

One state has taken the first step towards regulating the use of black boxes and addressing the privacy concerns. Effective July 1, 2004, California Vehicle Code § 9951 requires car manufacturers to disclose the existence of the black box in the vehicle's owner's manual. To download information recorded by the black box, one of the following events must occur: the vehicle's owner must consent, a court must issue an order to download the information, the information must be used solely for medical research, to improve motor vehicle safety or to service/repair the vehicle.

Black boxes are here, and one day, all vehicles on our roads will have black boxes installed. As the data access methods become standardized, more people will be able to access this information and manufacturers can continue to improve vehicle safety.

HAVE YOU HAD PROBLEMS WITH J.K. HARRIS & CO.?

We are currently investigating claims on behalf of current and former clients of J.K. Harris & Company with respect to tax resolution services which J.K. Harris & Co. was retained to perform.

If you are dissatisfied with the performance of J.K. Harris & Co. in connection with tax resolution services, please contact us immediately to have your complaints confidentially evaluated.

You can call the Joye Law Firm at (843)554-3100 locally or (888)324-3100 toll free to have one of our attorneys assist you with your complaint.

CUB SCOUTS

Cub Scout Leader Mark Joye (far left) recently invited Captain Koyle Kinard (right) and Corporal David Laurie (left) of the North Charleston Police Department to speak to the scouts on home and personal safety. Mark's son, Mason, (front row, white shirt) and his classmates thoroughly enjoyed the occasion.



JOYE LAW FIRM, L.L.P.

WWW.JOYELAWFIRM.COM Call 24 Hrs.: 843.554.3100 Toll Free: 888.324.3100

This newsletter is published as a service to our clients and friends. Articles contained in the newsletter should not be viewed as legal advice and are not substitutes for legal counsel. You should not act on information contained herein without further, specific, legal consultation.