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This newsletter is published by the law offices of Benjamin W. Glass, III & Associates, P.C. It is for informational purposes only and no legal advice is intended.

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The Road to Justice Starts Here...

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Malpractice - Accidents - Insurance Disputes

Virginia's underage drinking laws strengthened

We received quite a lot of feedback from our postcard mailing highlighting the recent case of parents being sentenced to jail for hosting a huge underage drinking party. My friend, Pat Wirth, president of the PTA at Robinson Secondary School in Fairfax, Virginia, contacted me to remind me that Virginia's laws governing underage drinking got tougher on July 1. Now, any person found guilty of providing alcohol to someone under age 21 can have his or her driver's license suspended for up to a year. It is now also illegal for a person under the age of 21 to consume or attempt to consume alcohol. Under the old law, it was only illegal to possess alcoholic beverages. Thus, drunk teenagers who did not have a beer in their hand could not be charged.

We applaud the Virginia Assembly, and especially local Delegate Dave Albo, for their work in continuing to make Virginia's highways safer for all of us.



Traffic accident statistics in Virginia

In 2004 in Fairfax County, 64 people died in automobile accidents. Ten of those drivers were under the age of 21. Eight other drivers under 21 were involved in crashes that left someone else in the accident dead.



Let's put the cell phones away while driving

The rule in our household is no talking on the cell phone at all while driving. This includes mom and dad.

A study released last month in the *British Medical Journal* looked at information on 456 crashes and compared them with drivers' cell phone records. The study found that drivers who use cell phones were four times more likely to be involved in accidents involving serious injury than drivers who do not use cell phones. It was also not surprising that the study found no difference between drivers using so-called "hands-free devices" and those drivers not using hands-free devices.

BE SAFE! DON'T TALK AND DRIVE

Several states and cities have banned the use of cell phones unless they are hands-free, but no jurisdiction to our knowledge has totally banned the use of cell phones while operating a vehicle.

We predict that one day there will be a complete ban on operating a cell phone and a moving vehicle at the same time. Our friend, Virginia General Assembly Senator Bill Mims, tried to get a cell phone ban for kids passed last session. Keep trying, Bill!

Medical errors still claiming too many lives

The *Journal of the American Medical Association* recently reported an update on the standard of health care in this country. As readers of this newsletter know, there was a landmark report by the Institute of Medicine in 2000 that reported that as many as 98,000 Americans die each year as a result of preventable medical errors.

The newest article says that those rates have not changed much and suggested that more work needs to be done in such areas as computerized prescriptions and team training in the delivery of babies.

There was a glimmer of hope, however. The article reports on a small hospital in Mississippi, Baptist Memorial, which reduced the number of intensive-care patients on ventilators who developed pneumonia to just about zero. Nationwide, however, five to eight percent of intensive-care patients on ventilators will develop pneumonia. The hospital reported that it was able to achieve this significant breakthrough merely by following a simple protocol of bed elevation, drugs, and periodic breathing breaks.



Are you really trying to put doctors out of business?

This is a question that I sometimes get at parties. I am not against doctors at all. I am on the side of doctors **and** patients.

Today, our medical system is run by the insurance industry instead of medical professionals. Insurance companies tell patients what doctors think and see, and what treatments they can receive, regardless of medical need. Insurers tell doctors how to practice medicine.

Insurers have been jacking up prices for patients and doctors alike. Some doctors have seen their malpractice insurance premiums double or triple. Insurers are trying to convince doctors that malpractice lawsuits, filed for innocent victims of medical negligence, are the reason for the rate hikes. They want to put caps on noneconomic

damages; they say that will help.

But that's not what the facts show, according to data that insurers must file with state insurance commissioners. They have doubled their rates, while payouts have increased only eight percent. The industry has raised rates when it knew its costs were declining. As a result, insurers now have record profits and a record surplus.

Under oath, when they could be prosecuted for not telling the truth, insurance industry executives testified that **damages caps will not lower rates**. In states with caps, average rates are a little higher than states without caps. To really help the doctors, you have to do something that will lower insurance rates. It's clear that limiting a patient's right to sue is not the answer, and that a regulation with the insurance industry has worked in the few places where it's been tried.

Requiring the insurance industry to open its books and justify rate changes will end rate gouging. Making insurers compete fairly, like every other business in the country, will help, too. Right now insurance companies do not have to follow the antitrust laws, which keep prices competitive in every other industry. Insurers can and do conspire to fix prices at everyone else's expense. Fix that, and doctors and patients will be better off.

Debunking the malpractice crisis myth one state at a time

We will continue to report on those states that are finally waking up and doing what we have recommended: that the insurance industry "show us the numbers."

On July 7, 2005, the Connecticut Attorney General called for an immediate review of what he called "troubling practices" in the medical malpractice insurance industry. Citing a recent study released by a coalition of national consumer groups, he noted that medical malpractice premiums in his state rose by 213 percent between 2000 and 2004 at Connecticut's three largest malpractice insurers. Yet, during the same period, **claims paid actually decreased by 1.6 percent**. We agreed with the Connecticut Attorney General when he said:

"Affordable medical malpractice insurance is critical to public health. Expensive insurance rates become a matter of life and death when they drive doctors out of business—as is happening in Connecticut and nationwide. Insurance company greed can be hazardous to our health."

Look who's suing who



As readers of this newsletter know, we like to expose frivolous lawsuits and hypocrites. This month we've got both in one punch!

Members of an organization committed a crime. They pled guilty and were sentenced. The crime victims sued the organization for the harm caused. The organization did not want to go to trial (it was going to lose, big time), so it settled.

The organization now has sued its own insurance company, wanting to be repaid for the money it paid for the

criminal acts of its members.

That's outrageous! Insurance is to cover accidental harm you cause—not crimes your members commit.

By the way, who am I talking about?

It's none other than the Republican Party of Virginia. Some of its members illegally eavesdropped on a Democratic conference in December 2003. The Republicans paid \$750,000 in order to avoid the public scrutiny of a trial (and the risk of losing a lot more). Now they have filed a lawsuit against their own insurance company for doing what it should have done—DENIED THEIR STUPID CLAIM.

It's all in the family...



Ben Glass with children Brian (21), Patrick (16), and Caitlin (19) after the Herndon Festival 10k in June.

The kids showed no mercy toward their father.

"30 MINUTES OF CONSULTING, ON US"

"Our business is growing and we have our loyal clients and friends to thank for this."



Each month, we add about 50 people to our newsletter list. (Anyone you want to add in Virginia, Maryland, or Washington, D.C? Send us one or more names of people you think would like to receive our newsletter. We'll tell them you suggested their names, **and we'll send you a neat free gift.** Yes, this is a bribe!)

As a special thanks to everyone on this newsletter list, we are offering free 30-minute consultations on any legal matters to the first 25 people who ask for them. Here's the deal: All lawyers give free consultations on injury cases. That's standard. We would like to "open up the box" a bit and give free consultations on anything you want to talk about. Maybe you have a contract you've always wondered about, or maybe you would like your insurance policies reviewed. Anything at all—give us a call. We'll tell you if it's completely out of our areas of expertise. In most cases, we'll be able to give you some very practical guidance—and it's all free.

Look, we aren't experts in everything, but we can help you strategize on a number of different legal topics and/or help you narrow your search for the right lawyer for your case. You may refer this free offer to a friend. To make an appointment for the free consultation, you must call and mention the "Newsletter Free Consultation" offer. All appointments must be held before the end of October 2005. Call us at **703-591-9829**.

More outrageous lawyer misconduct

I can honestly say that 99.9 percent of attorneys whom I have run into in my almost 22 years of practice are ethical, honest, and hardworking people. They worry about the same things you and I do: Do I have enough money to pay my bills? Are my children “well rounded?” Will I get any new clients next month? Will I be able to pay for all of the kids’ college educations?

Unfortunately, there are a few bad apples. This month, we look at a lawyer who stole half a million dollars; one who lost his license, and his client’s case; and one who was outrageously unethical in his “marketing.”



Judge protects lawyer who stole over \$500,000

An incredible story of a lawyer dishonesty happened right here in Fairfax County. Attorney Robert M. Short pleaded guilty to stealing the money from his own

clients and from a law firm

from which he rented an office. He actually found that firm’s checks, forged the name of one of that firm’s lawyers, and had \$439,000 transferred from their account to his. He then went to Atlantic City and eventually absconded to Argentina.

Months later, Mr. Short returned to the United States and turned himself in.

Incredibly, the judge sentenced Mr. Short to only four months in jail for his admitted crimes. This crime is worse than bank robbery, in part because he was a lawyer. Although he faced a total possible sentence of ten years in jail, there does not appear to be any rational explanation for sentencing him to what was in effect “time already served” for his crimes.

Juror fined \$21,290

A Prince William County juror in a murder trial was ordered to pay \$21,290 for disobeying a judge’s order to avoid watching or reading the news. The judge had told the jury not to pay attention to news broadcasts of any kind while they were serving as jurors in a high-profile murder case in Manassas.

One of the defense attorneys witnessed the juror buying a newspaper at a local 7-Eleven. When questioned by the judge, she denied this, and the judge denied the defense request for a mistrial.

The defendant was convicted of a murder in which witnesses were flown in from Mexico to testify at the trial. The defense attorney was then able to obtain videotape from the 7-Eleven of the woman purchasing the newspaper. Please note she was fined not so much for purchasing the newspaper but for lying about it at a time when her error probably could have been corrected by either questioning her in depth or kicking her off the jury. The \$21,290 fine apparently will go towards the trial costs.

Spending time with some friends...



Here are Matthew (first from left) and Kevin Glass (third from left) at the “A Helping Hand” Adoption Reunion, held in June in Lexington, Kentucky. They met up with friends Scott and Leah, who Ben and Sandi first met when they travelled to China two years ago to adopt Kevin. At the reunion, Ben and Sandi got a “once in a lifetime” opportunity to chat with Christian music superstar Steven Curtis Chapman and his wife Mary Beth. The Chapmans have six children, the youngest three of whom are also adopted from China. The two families shared stories of the blessings and challenges of a full household.

Supreme Court of Virginia throws out Fairfax lawsuit because attorney's license to practice law had been suspended

The Supreme Court of Virginia ordered a personal injury lawsuit to be dismissed after it was discovered that the lawyer who filed the case was actually operating under a suspended (lawyer's) license.

According to the Court's opinion, attorney Burman A. Berger filed a lawsuit in the Circuit Court of Fairfax County in January 2004. Somehow the insurance company defending the suit found out that Berger's license to practice law in Virginia had been suspended for almost a year at that time, and they moved to dismiss the case. You see, if you are not an actual licensed lawyer, then any lawsuit you file for someone else is a nullity.

The judge in the trial court allowed the accident victim to "nonsuit" her case. This would have, in effect, allowed her to refile the case with a real lawyer. This would have been allowed, even though the statute of limitations (two years) on the case had already passed.

The Supreme Court of Virginia agreed with the defendant and permanently dismissed the case. Since the lawsuit filed by the suspended lawyer was invalid, there was no reason to give his client, the victim, another chance.

Note from Ben: It saddens me that our legal system could not come up with a better solution for the auto accident victim. Certainly, she can sue her former suspended lawyer and try to collect from him what she may have received in her lawsuit. One major problem she may have, however, is that one of the reasons he was suspended was for failing to certify that he had legal malpractice insurance.

If you are not an actual licensed lawyer, then any lawsuit you file for someone else is a nullity.

Lawyer gets great referrals—from HIMSELF!

Attorney Andrew White of Cincinnati was suspended from the practice of law.

He set up a corporation called Raw Data Corporation. Apparently, its only purpose was to recommend and promote the use of his services as an attorney to auto accident victims. He had two employees whose job was to inspect auto accident reports filed by the police and to collect the names of persons identified as not being "at fault." His employees would then telephone those persons, ostensibly to help them find a lawyer, but, in fact, simply to refer them to Mr. White.

This was set up to look like a lawyer referral agency.

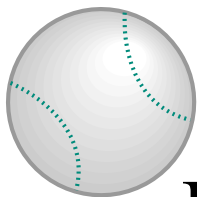
When Mr. White would get the new clients, he would refer them to a local chiropractor in exchange for medical reports that the chiropractor would provide for use in settling or litigating the claims. The chiropractor would get paid when the personal injury claim was settled. The lawyer also leased office space to the chiropractor in the building where he maintained his own office.

The deal fell apart when Mr. White stopped paying the chiropractor's bills and, instead, took a "set off" against amounts that he claimed were owed to him by the chiropractor under the lease agreement. The chiropractor then threatened to sue the clients/patients.

The Board of Professional Responsibility found that the attorney violated several ethics rules. The lawyer was indefinitely suspended.

By the way, the "lawyer to chiropractor" referral is a "kiss of death" to an automobile accident case.

Check out www.theaccidentbook.com.



"But my daughter is a great softball player"

I realize that we live in times where many parents are actually reliving lost sports dreams through their children. Check out any sports field on a weekend morning, and you will find one or more nutty parents who forget that kids' sports are for the kids.

A local federal judge actually had to deal with a lawsuit filed by a disgruntled father who wanted to sue his daughter's softball coach for, get this, not giving his daughter as much playing time as the other girls on the team and for finally telling the whining dad that his daughter could no longer play on the team. The lawsuit claimed all sorts of "civil rights" violations. The judge had no problem unclogging his court docket by throwing this case out of court.

More good news: There was no lawyer involved in this case. The father had filed his case "pro se," meaning that he had drafted the complaint and filed it himself. Undoubtedly, this sad dad was turned down by at least one attorney who told him his case was frivolous.



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IDENTITY THEFT—*help is coming*

Having recently been the victim of identity theft, we did a little research into what can be done to reduce the damages to you and to your credit from credit thieves and/or credit-card companies that let their data be stolen.

In our case, my wife and I had a credit card that we had not used for over five years. We had never cancelled the card. When the bank recently sent us a new card, we did not “activate” it per their instructions.

We found out, first of all, that the little sticker that comes on the new credit card that says, “This card cannot be used unless you call this number from your home phone,” is absolutely meaningless.

Several months later, for the first time in five years, we received a bill from the credit-card company.

Apparently, someone on their end had let the number get out. Remember, we had not used the card in many years and we had **never** purchased anything on the Internet with this card. About \$2,100 worth of overseas expenses suddenly appeared on the bill.

As you can imagine, this has been a real hassle, as Chase

One way to cut down on the chances of identity theft is to get and read your credit reports from the three major credit-reporting companies: Equifax, Experian, and TransUnion.

Bank continues to drop the ball at every opportunity—promising to send affidavits that take a month to get here, making promises they don’t keep about making sure we are not continually dunned for this “overdue” amount, and then by continuing to send very silly “reminder postcards” threatening to sue us. All in all, a real unpleasant experience.

What I did find out through all of this is that one way to cut down on the chances of identity theft is to get and read your credit reports from the three major credit-reporting companies: Equifax, Experian, and TransUnion. While there are companies who you can pay to get these reports from and who claim to be able to regularly monitor your credit report, a new federal law will make much of this information easily available to you for free.

Beginning in September, Virginia citizens will be able to request their credit reports, for free, from these major credit-reporting agencies. You get one report from each agency each year, and what you might want to do is spread out your requests so that once every four months you are getting your own credit report.

You will be able to do this online starting in September at www.annualcreditreport.com.



The Road to Justice Starts Here...

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Chiropractor pleads guilty to defrauding insurance companies

An Austin, Texas, chiropractor pled guilty to defrauding insurance companies. According to a plea agreement filed in federal court, this chiropractor used "runners" to review police accident reports. He then allegedly altered the accident reports so that no one else would contact the accident victims and sign up victims for care. He allegedly paid the runners \$250 and then billed for treatment he never provided. He faces 20 years when sentenced.

Note from Ben: The use of "runners" to track down accident victims via police accident reports is perfectly legal and, amazingly, ethical under the ethics rules of the District of Columbia. This practice is highly unethical, in fact condemned, here in Virginia. If you are ever contacted face to face after being involved in an accident in Virginia, contact **Ben Glass**. He will put you in contact with the proper authorities.

LIVING WILLS

If the Terry Schiavo case hasn't led you to at least talk to your family about "end-of-life matters," then this article probably won't do it either.

Nevertheless, you should get down in writing what it is you want to happen if you become incapacitated or if you die.

For simple wills, advance directives, and living wills, call my friend **Sherri Abrams**. Sherri leases an office from us and really knows what she is doing. During the Schiavo publicity, she had a steady stream of new (and old) clients calling and visiting to get their affairs in order.

If you weren't one of them, call her at **703-934-5450**.

Medical malpractice "Three Strikes Law" comes to Virginia



There was another huge medical malpractice battle in the Virginia General Assembly this past winter. The insurance companies and doctors lobbied for more protection for themselves and less for patients.

What they got instead was a new law that requires the Virginia Board of Medicine to hold a competency hearing for any doctor who pays three medical malpractice claims in any ten-year period.

Most Virginia doctors do a fantastic job in providing good health care to their patients, as pointed out in a recent series of articles in the *Washington Post*; however, there always have been a few bad apples that present a real danger to your health. This new "Three Strikes" law should help Virginia reduce the number of "repeat offenders" here in the Commonwealth by forcing the Board of Medicine to take a closer look at physicians who settle or lose three claims in a ten-year period.

Debunking the malpractice myth—one state at a time

The *Seattle Post-Intelligence* recently reported some interesting figures from its state's malpractice lawsuits. Apparently, the state insurance commissioners finally forced the state's malpractice insurers to cough up some real data. (a point that we raised about Virginia at our [www.tort-reform](http://www.tort-reform.com) Web site). Guess what? No "crisis."



I wonder how many doctors in Texas and Washington bought the "blame the lawyer" nonsense without so much as a whisper, all the while forking over their hard-earned money to the insurance companies?

Results of investigation

- 10,000 closed malpractice claims in ten years
- 50 jury verdicts in favor of patient (note: not 50%, but 50)
- 3,248 cases closed with no payment to patients and no payments for defense costs
- 2,700 resulted in some payment to patients
- 3,721 defense "wins" at trial
- Of 10,000 claims, only 200 resulted in payment in excess of \$1 million.

During these ten years (but before anyone on the outside looked at or analyzed any data), the insurance companies had lobbied the Washington state government for "relief." After they finally discovered the truth, the insurance commissioners ordered refunds to be paid from the insurance companies to the doctors.

In Texas, a study of malpractice claims from 1988 to 2002 found little to support common assertions of baseless lawsuits and doctors settling frivolous claims. Instead, according to David A. Hyman, a professor of law and medicine at the University of Illinois, what they found was a "sea of calm" in Texas medical malpractice claims.

I wonder how many doctors in Texas and Washington bought the "blame the lawyer" nonsense without so much as a whisper, all the while forking over their hard-earned money to the insurance companies? The next time you see one of those "We are collecting extra money from our patients so we can pay our malpractice bill" signs in a doctor's office, please tell your doctor to take a stand—against their malpractice insurance company.

Drinking and driving is very expensive



Another court has ruled that drunk drivers may not even be able to have their medical bills paid, even if they are not convicted of drunk driving.

According to actual court documents, Bryan Tourdot sued his health-insurance company after it refused to pay the bills associated with his car accident. It turns out that hospital records showed that his blood-alcohol level was above the legal limit.

Buried deep within his health-insurance contract (you might want to look at yours right now) was a clause that said the insurance company would not pay if the injuries were caused by an "illegal act."

The court said that even though Mr. Tourdot was never even charged with "drunk driving," his own medical records were enough to justify nonpayment of the claim.

Advice from Ben: Don't drink and drive. Between the increased car insurance premiums, the punitive damages you may be liable for, the DWI defense attorneys, and, now, paying your own medical bills, you are just creating a financial disaster for yourself.

Tidbit about Ben

By Attorney Sandra Rohrstaff

I wrote an article about Ben in the last issue of the newsletter and invited people to share tidbits they knew about Ben. I also promised to publish one in the newsletter. The first tidbit comes from Jennifer McSorley-McLaughlin.

Jennifer needed a referral to a Maryland attorney, and we gave her one. Unfortunately, she found that law firm was not very responsive to her, and she wrote Ben a letter to let him know about her disappointing experience. Here's what she said next:

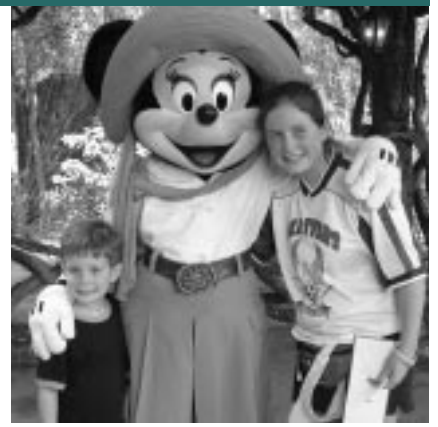
"Several weeks later, I was blown away when I received a **handwritten** note from Ben apologizing for the situation and stating that he personally would look into it. That was an incredible personal gesture I will never forget. That is class. That is caring."

Thanks, Jennifer. Your copy of *1003 Great Things About America* is on the way.

Trip to Disney

Two of Ben's children, Matthew (5) and Kelsey (13), visit with Minnie Mouse.

Ben Glass and his wife Sandi drove (yes, drove) the four younger kids to Orlando for a first-ever trip to Disney. What a world! We loved it, even though the week before Easter ranks as one of the favorite weeks for everyone else to go there, too. We give Disney great credit for innovation, cleanliness, and terrific customer service. We highly recommend the cabins in the "Wilderness Campground" for those traveling with families who don't want to contend with the hassle of hotel living.



Chance meeting with Pope Benedict XVI



Sister Brigid Mary, formerly known as Patricia Glass of Annandale, sister to Ben Glass and (chief assistant) Terry Patterson, is seen here with Pope Benedict XVI the day after he was chosen to be the new Pope.

The Pope made an unexpected visit to his former residence, where he met Sister Brigid Mary. The Pope had returned to collect some of his things from his apartment and had come to call on Cardinal Laghi, a dear friend. Sister Brigid Mary, a Religious Sister of Mercy, is a nurse working at the clinic at the North American College in Rome, Italy.

*Pictured, Pope Benedict XVI, Cardinal Laghi, Sister Brigid Mary.
Photo credit: Observatory Romano*

Client of the Month

Beverly Bugos

We love our clients who "get involved." Beverly Bugos has been a friend of ours for several years. Ms. Bugos is very concerned about how the long-term disability insurance companies treat claimants, and recently she took the time to "take it to the government" and testify before a Department of Health and Human Services Committee studying the legal implications of chronic fatigue.

It is very important that the people who are supposed to be looking out for our interests in Washington really understand what is going on "on the ground." Beverly also told the Committee about our book, "14 Ways to Guarantee That Your Long-Term Disability Claim Will Be Denied" (see www.TheDisabilityBook.com). We can't thank Beverly Bugos enough for advocating on behalf of **others**, and it is for that reason that she is our "client of the month."

Introducing Attorney Armand Alacbay

We keep growing! In order to handle all the referrals our clients, former clients, and readers of this newsletter make, we have hired our fifth attorney.

Armand Alacbay is a graduate of the University of Virginia and George Mason University School of Law. He interned with the Fairfax County Circuit Court judges and worked with us as a law clerk while he was in school. He will help us handle our accident and workers' compensation cases.

In his spare time, he (and Attorney Juliet Purl) plays ice hockey in various adult hockey leagues. You often can find him on the ice at midnight at the local ice rink.

Contact Armand and say "hello" at aalacbay@BenGlassLaw.com.



Attorney Armand Alacbay stands ready to help you with your workers' compensation case.

More shameful lawyer advertising Florida lawyer disbarred

The Supreme Court of Florida recently disbarred an attorney who had a rather unusual method of generating clients. According to the Court's ruling, Attorney David A. Barrett hired an ordained Pentecostal minister to work as a paralegal in his office.

The minister was told to "get business," so he took a chapel course at Tallahassee Memorial Hospital and shortly thereafter began seeing patients. While praying with the patients and families, he would give them one of Barrett's business cards and suggest they call his personal injury office. The minister also referred other people to Barrett and received a share of the attorney's fee for doing so. The Court found that Barrett condoned and even encouraged these highly unethical practices.

We agree with the Supreme Court of Florida that this sort of conduct "brings dishonor and disgrace not only upon the attorney who has broken the rules, but also upon the entire legal profession."

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*This month's
trivia question...*

(It's really easy.)

What law school did Ben Glass graduate from?

The first ten responses by e-mail
(Ben@BenGlassLaw.com)
or fax (703-783-0686)
get copies of a great book,
*Dispensing with the Truth, the Story
Behind the Battle Over Fen-Phen.*

Answers to last month's Trivia Contest

Last month we asked what two things Michael Dell, Walter Cronkite, Peter Jennings, and a whole bunch of other "famous people" have in common.

The answer (and we gave away ten free books to the winners) was (1) **all are millionaires or multimillionaires** and (2) **none has a college degree**. Thus, the title of the book we gave away was *Attitude is Everything*.

Just had this conversation with my son, Brian, as he was choosing what law school to head to this fall. I reminded him that Dad went to a school that was so new (at the time) that it was on no one's "map." Point being that a successful career is not built on the name of the school you went to (or even if you have any degree at all), but, rather, on what you choose to do with your life after you get out. Far too often, people make educational decisions based on perceived "prestige." We've got news for you. You are probably going to be working for 40 years after you get your degree. Two years after you graduate, no one cares where you went to school. The marketplace pays for results, no matter what business/occupation you end up in.



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Most people don't know these kinds of things about their lawyers

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What do these people have in common?

BenGlassLaw.com honored by Disability Networks

Proper estate planning with Attorney Tom Campbell

Pap smear screening

PAGES 3 & 4

Ben Glass's letter to Virginia State Senator Ken Cuccinelli

PAGE 5

Auto accidents.

Continue all therapies

Accidental death insurance policies

Jury waivers.

Beware giving up your rights

This newsletter is published by the law offices of Benjamin W. Glass, III & Associates, P.C. It is for informational purposes only and no legal advice is intended.

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The Road to Justice Starts Here...

BenGlassLaw.com

Malpractice - Accidents - Insurance Disputes

Most people don't know these kinds of things about their lawyers

By Attorney Sandra M. Rohrstaff

When I joined Ben's firm last February, I looked forward to getting to know more about his practice. I had known Ben for many years when I practiced in Alexandria, but it's always different when you change a relationship where you work with each other on professional goals and see each other irregularly, to one where you work on cases together every day. For one thing, you learn things about each other that you never knew before.

So, I'm going to share five things about Ben that I now know are true. Some may surprise you, some may not.

1. Ben loves his work. For many lawyers who have been in practice as long as Ben has, going to the office every day is a grind. Dealing with other lawyers and judges and (some) clients is difficult, and some lawyers get worn down by what they think of as a daily rut. Ben's different. He loves coming to work. He's so enthusiastic, it's truly contagious. When I first started talking to Ben about our working together and he asked me what I wanted to do in my practice, I listed a number of things. I evidently left off one that was important to Ben, because he asked me, "Don't you want to have fun?"

2. Ben shares. Ben shares a lot. Ben knows things that other lawyers don't know. He knows how to do things that other lawyers don't know how to do. Ben has never been reluctant to help other lawyers. He answers their questions. He does a lot of education for lawyers in Virginia and elsewhere. In fact, Ben shares so much that now he's sometimes hard to get in touch with because he has had to restrict access to himself. When you can't reach Ben immediately, it's because he has set aside time so he can work on his cases.

3. Ben values his family relationships. This one is probably not a surprise to you if you've been getting Ben's newsletter for a while. How many other lawyers do you think have written in their newsletters about important events in their

families' lives? I've not read such things anywhere else. But people who have received Ben's newsletters over the last two years met his niece Rachel when she came home from China, and his son Kevin when he came home from China a year later, and rejoiced with Ben and his family over Kevin's successful cleft palate surgery.

4. Ben values relationships with colleagues and clients. Ben works very hard at establishing and maintaining good relationships with his clients and other lawyers and judges. One of the things I have noticed is that everyone likes Ben. You know how some people work very hard to get you to like them? Well, Ben isn't like that. People like Ben because Ben likes them, including attorneys who work on the other side of cases against him. Does that help his clients? You bet it does. (Maybe this has something to do with #1 at left.) Ben works very hard for his clients, and avoiding personal conflicts with other lawyers and judges enables him to keep his focus on his clients.

5. Ben makes noise. If you read his newsletter, you know he feels strongly about working hard to keep insurance companies from taking advantage of individual clients. That's one way he makes noise. But, here's a secret. Ben also hums and whistles and every now and then turns his stereo up real loud. When that happens, we are sure that Ben has had a good day or a good week and is, in fact, having a good time at work.

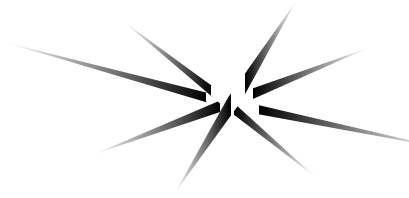
Ben doesn't know I'm going to do this, but I'm taking a chance that he won't read this article all the way through. (He's really busy, you know.) I want to find out what other tidbits you know about Ben. I'll choose six and publish them in six upcoming newsletters. I'll send each person whose tidbit we publish a copy of a book full of useful and fun facts—1003 Great Things About America. You can send your Ben tidbit to me at srohrstaff@benglasslaw.com, or mail it to our office address. Shhh. Don't tell Ben.

What do these people have in common?

Here is an interesting list that we came across. What two things do the following people have in common?

Michael Dell (Dell Computer)
Thomas Monaghan (Domino's Pizza)
Walter Cronkite (CBS News)
Steve Jobs (Apple Computer)
Ted Turner (Turner Networks)
Wayne Huizenga (Blockbuster Video)
Peter Jennings (ABC News)
Rosie O'Donnell (Actress/talk-show host)

The first five people to send an email to **Ben@BenGlassLaw.com** with the correct answer get a free copy of Keith Harrell's book *Attitude is Everything*.



BenGlassLaw.com honored by Disability Networks

On January 1, 2005, we were honored to have our firm's Web site honored by Disability Networks as being a site that "offers a tremendous benefit to those who access and use the Internet on a daily basis."

Proper estate planning with Attorney Tom Campbell

(Keeping your assets in your family's hands after death)

In this issue, we want to recognize our good friend, Fairfax estate planning attorney Tom Campbell. We want to publicly thank Tom for referring a lot of people to our office to have their questions and concerns about malpractice, personal injury, and insurance addressed.

Tom Campbell is a very experienced estate planning attorney in our area. Now, before you decide that you aren't wealthy enough to need an *estate planning attorney*, consider this: If you and your spouse died and you added up everything you owned, including *real estate* and *insurance policies*, would your total assets exceed \$1.5 million? If the answer is "yes," then, under current tax law, the government will take a significant portion of that money for itself. When you are totaling up your assets, don't forget to include any group term life insurance policies. You know, the insurance you may have with your employer (the one that most of us forget about). These policies are often a multiple of your annual salary and, when added to any individual life insurance you own, can be substantial.

The second thing Tom mentioned to me when I talked to him was this: If you have children, what happens if you become temporarily incapacitated due to an accidental injury? Many of us have guardianship directions in our wills, but did you know that there is a way to plan, in advance, on who would make critical decisions for you if you were temporarily incapacitated?

Finally, Tom Campbell says that with many people on second marriages, questions often arise as to how assets will be divided at death amongst the deceased's current and former families. It's not real fun to think about this, but Tom says that it is terrible to see what happens to families after a family member passes **if they have not thought** about these issues.

Tom Campbell practices at the law firm of Yates, Campbell & Yates, LLP, and you can call him at 703-273-4230. If you have any questions about estate planning, give him a call and tell him that Ben Glass says hello.

Pap smear screening

Named for its advocate, Dr. George Papanicolaou, Pap smear screenings are performed quickly, cheaply, and with minimal discomfort. Medical experts believe that failure to obtain screenings represents a significant risk factor for cervical cancer.

The screenings are believed to be responsible for up to an 80 percent decrease in cervical cancer deaths. As many as 50 million women obtain Pap smears annually, with about seven percent receiving diagnoses of irregularities requiring further evaluation.

Screening is not perfect. Even the best labs misjudge results in up to five percent of all cases. In a 1993 Rhode Island case, a patient died of cervical cancer after receiving four false-negative misreadings in seven years.

Litigation is increasingly common, as about one in ten pathologist lawsuits involves misread Pap smears. Some insurers have withdrawn their coverage for such readings.

For more information on Pap smears and the steps patients can take if they suspect errors in screening readings, please contact our office.



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January 24, 2005

Editor
The Connection Newspapers
7913 Westpark Drive
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To the Editor:

Senator Ken Cuccinelli's proposal to "cap" non-economic damages in medical malpractice cases is a slap in the face to Virginians who sit on juries and the judges who oversee medical malpractice trials. Virginia already has a cap on malpractice awards that often prevents even full repayment of medical expenses. His proposal that the government further limit such awards says to juries and judges: "I don't trust you to do your job." Ironically, these are the same judges and juries that he does trust to impose the death penalty in criminal cases.

Despite popular rhetoric that attributes the high cost of medical care to "runaway juries," the truth is that outrageous awards are simply not a problem in Virginia. Virginia juries tend to be among the most conservative in the country when it comes to medical malpractice claims. In the rare instance in which a jury may make an award that is unreasonably high, Virginia judges have the power to decrease the verdict. The truth, however, is that the Senator would be hard-pressed to show even one case in Virginia in the last decade where a jury in a medical malpractice claim returned a verdict for what he calls a "ridiculous monetary claim." If the Senator were to speak to Virginia's judges, he would probably also hear that in addition to conservative monetary verdicts in cases where there is an award to the patient, Virginia juries also tend to side with the doctor in all but the most egregious cases. In other words, if Virginia doctors are paying more for their insurance, it's not because of high verdicts.

While there is no "medical malpractice crisis" in Virginia, there is no doubt that doctors are caught in a real squeeze between health insurance companies who set incredibly low reimbursement rates and their malpractice insurance companies who charge increasingly exorbitant premiums. This is a very serious issue for doctors and their families, but it is not one that can reasonably be attributed to jury awards in Virginia's malpractice trials.

What Senator Cuccinelli and the doctors need to do is to ask this question of the malpractice insurance companies in Virginia: Where are the big, "runaway" verdicts in Virginia? They simply don't exist and Senator Cuccinelli, instead of limiting recovery to the most seriously injured in Virginia, would do well to spend his time investigating just

* NOTE: The Senator's
bill died -
One of the bills that did pass
was a modified "Three Strikes"
Law for bad doctors -
We'll write about that next time!
Ben

Editor
The Connection Newspapers
January 24, 2005
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why doctors pay so much for their insurance in a state where “runaway” verdicts just don’t happen.

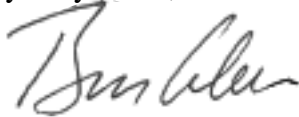
The “doctors are leaving” message is a scare tactic to convince people that their access to health care is in danger and to relinquish their rights. Remember President Bush’s campaign message that doctors were leaving Pennsylvania because of insurance prices? When investigative reporters in that state’s newspaper, *The Allentown Morning Call*, investigated the claim, they found that not only had doctors not left the state in droves in 2002, but that their numbers had actually increased by 800 and in the previous eight years had expanded by nearly 2,000.

The Senator is proposing a very serious law change on [his words] the “hope that this bill will help doctors, which in turn would provide you and your family with more access to affordable medicine.” Before proposing legislation which takes away the legal rights of Virginia families on the “hope” that health care costs will be reduced, he ought to read the report of the non-partisan Congressional Budget Office that concluded that even if all the costs of medical malpractice—all the payouts, all the insurance costs, all the medical expenses—were eliminated, the savings would be no more than one-half of one percent.

The truth is, even if there were a “malpractice crisis” in Virginia, the overwhelming evidence is that imposing damage caps is not the answer to rising insurance premiums. First, the insurance industry has made it clear that it makes no promise of lower premiums in those states that impose caps. Second, according to the Medical Liability Monitor, states with caps on damages have average insurance premiums that are 9.8% higher than insurance premiums in states without caps on damages. In the five states that recently passed new medical malpractice caps (MS, NV, OH, OK, and TX), premiums rose at nearly double the rate as states that did not pass a damage cap.

Still, the people of Virginia are free, on an individual basis, to give away their rights to the insurance industry. For those who think that tort reform is a good idea for their families, forms for entering an agreement with their doctor are available at www.tort-reform.com.

Very truly yours,



Benjamin W. Glass, III

BWG/tgp

Full disclosure: The author is a medical malpractice attorney in Fairfax. Further information is available at www.BenGlassLaw.com.

AUTO ACCIDENTS

Continue all therapies

Individuals suffering injuries in auto accidents should continue medical therapies prescribed by their physicians.

Accident victims should obtain required x-rays or diagnostic tests. They ought to report for all prescribed physical therapies. They should take all pain-control and other medications as directed.

Discontinuing medical therapies, no matter how well recovery seems to be progressing, can reduce one's ability to recover for damages. The other driver's insurance company attorneys can claim that a victim's failure to continue treatment demonstrates that his or her injuries were never serious.

Drivers who suffer injuries in auto accidents may forfeit a variety of damages by prematurely ending treatment, including...

- Disability
- Dismemberment
- Emotional distress
- Interference with marital and/or parental relationships
- Loss of opportunity to enjoy life
- Pain and suffering
- Permanent disfigurement
- Wrongful death
- Recovery for special damages, such as medical bills, lost wages, loss of earning potential, and other out-of-pocket expenses.

Accidental death insurance policies

No matter how careful we try to be, accidents happen. Accidental death insurance provides coverage when an insured dies from unexpected injuries, but not illnesses. Insurers make payment to the policy beneficiary upon the insured's passing. Many death insurance policies also provide coverage for bodily injury, known as dismemberment insurance coverage, such as the loss of a limb or vision in an eye, in which the insured receives a predetermined amount. Combined policies are commonly called AD&D coverage, which stands for accidental death and dismemberment insurance.

AD&D exclusion

When insurers refuse to pay on policies, consumers can obtain satisfaction of their rights through our justice system. When a policyholder's illness contributed to a fall and his death, his accidental death insurer balked. It argued that the death by accident resulted from illness and should be excluded from coverage. The insured's beneficiary sued, and an appeals court held that accidental death insurance policies should provide coverage even when a fall and the resulting death were caused in whole or in part by an illness.

Jury waivers

Beware giving up your rights

Mandatory arbitration has become increasingly expensive, and arbitrators have become less predictable.

In response, some businesses that formerly asked employees to sign employment contracts with mandatory arbitration clauses have now switched strategies. So have some marketers that required consumers to agree to mandatory arbitration clauses in product warranties.

They are now asking their employees and customers to agree to jury-waiver clauses. They want everyone to take their grievances back to court. However, businesses and marketers again want judges—not juries—to make final decisions.

Jury-waiver clauses may turn up in auto loans, employment contracts, residential leases, mortgage contracts, and many other legal documents.

We're encouraging all of our clients to be on their guard about jury-waiver clauses in contracts. Anyone asked to sign a contract should ask if there are mandatory arbitration clauses or jury waivers in the document. If so, one should then seek legal counsel to protect his or her rights.

"I won't sue"

Some physicians are requiring new patients to sign waivers promising not to initiate "frivolous," or any other, lawsuits before they will see patients.

Think carefully before you agree to give up your rights.

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SPECIAL REPORT

*Why did a respected local
judge call a chiropractor
a hired gun?*

*Toll-Free Recorded Message
1-800-561-1670, ext. 703*

Open to Read How Sen. Ken Cuccinelli Insulted Virginia's Judges



Our team, together with attorney Sheri Abrams, decided to do away with traditional gift-giving amongst ourselves and, instead, prepared gift baskets to be distributed to families in the Lorton, Virginia, area.



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Disability Attorney Juliet Purl recommends...Set goals with your attorney

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The Road to Justice Starts Here...

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Malpractice - Accidents - Insurance Disputes

Pennsylvania malpractice suits fell in 2003

Med Society's face is red

If Pennsylvania's Medical Society admitted it presented false statistics to frighten legislators and citizens into believing the state faced a medical malpractice "crisis," can we believe other states' claims?

For years, Pennsylvania's state medical society blamed patient lawsuits for an alleged medical malpractice "explosion." In mid-2004, society officers admitted to making unsubstantiated claims about physicians quitting practices and leaving the state to scare everyone into believing Pennsylvania's patients would not receive medical care and that medical malpractice lawsuits were the cause.

Not only did 1,700 doctors *not leave* in 2002, Pennsylvania's physician rolls actually *increased* by 800 doctors. Furthermore, the number of doctors practicing in Pennsylvania *expanded* by nearly 2,000 between 1994 and 2002.

On top of that, the number of medical malpractice payouts has declined in recent years, and the number of large jury awards has dropped sharply.

The state's *Allentown Morning Call* newspaper broke the story based on data gathered by Public Citizen, a watchdog organization.

Auto accidents—Uninsured motorists

As auto insurance premiums increase, purchasers try to cut costs by changing insurers, upping deductibles, seeking discounts, and eliminating coverage options. One option no driver should eliminate is uninsured/underinsured motorist coverage, or "UM/UIM." Don't sign UM/UIM waivers.

UM/UIM protects the insured against damages and injuries from accidents involving drivers who have no insurance or inadequate insurance. There are a lot of them, too. Experts estimate that, nationally, about 14 percent of all drivers have zero or marginal insurance. In some states, the numbers are much higher.

Subscribe to our electronic newsletter Monthly newsletter is a hit with subscribers

Our electronic newsletter has received a lot of very good feedback from subscribers. The newsletter contains a good mix of interesting legal stories and practical "how to" tips for consumers. Unlike most lawyer newsletters, it's not a pre-packaged "canned" service that we buy and republish. We write it—every month. To subscribe, go to www.BenGlassLaw.com and look at the right-hand column on the front. (Sorry, this offer is not available to employees of insurance companies.)

Getting into an accident with an uninsured driver can be a nightmare. Some accidents are caused by drivers who are at fault and flee the scene. Others don't know that their lane-changing may have caused a crash. Some large trucks drop debris on the road, causing vehicle accidents. In such cases, when the damaged vehicles or injured drivers or passengers have UM/UIM coverage, individuals are able to file claims and receive recoveries for their accidents. Email us at Ben@BenGlassLaw.com for our special report on buying automobile insurance in Virginia.

Restoration of disability benefits for multiple sclerosis sufferer

Insurance company had terminated benefits based on a checkmark!

Cases like this keep us coming to work every day determined to never let the insurance companies get away with their nonsense.

Our client, a 60-year-old former military pilot, had been paid disability benefits for multiple sclerosis for over ten years by a very large and infamous disability insurance company. During that time, he had been under the excellent care of one of the best neurologists in Virginia.

His medical records, which he regularly supplied to the company, showed a clear progression of the disease, manifested by increasing upper body weakness, increasing memory problems, and a crushing fatigue. He had persistent dizziness, difficulty reading, and standard neuropsychological testing showed a definite decrease in his ability to think clearly.

Refusing to believe this evidence, the insurance company had the man followed with undercover video surveillance, and “investigators” combed his neighborhood in an effort to find anyone who would say that “Bill” was not disabled. All of the neighbors told the spies that “Bill” was, to them, disabled.

Not being satisfied, this company resorted to a standard trick of inundating the treating physicians with forms and then combing the forms for inconsistencies. When they found a critical box not checked on a form, they cancelled the monthly checks that “Bill” relied on for financial security.

He asked us to represent him, and we took on the insurance company, presenting them with irrefutable proof, through video documentation, extensive medical literature research, and sworn testimony from his physicians, that not only had “Bill’s” condition not improved to the point where he



could work, but it had indeed deteriorated over the last ten years.

Upon review of the evidence we supplied, his benefits were restored and all back payments were recovered. We suspect that when this gentleman’s claim had come up for review, this insurance company realized it had paid him a lot of money and would continue to do so for a long time. They also probably banked on the fact that he would not be able to find his way to an experienced ERISA disability benefits law firm.

Wrong, wrong, wrong.

Litigation explosion?

What litigation explosion?

Special-interest groups have been falsely decrying the existence of a “litigation explosion” for decades. They oppose the way citizen lawsuits and our civil justice system can serve as fair and fundamental checks on the power of businesses and governments.

To minimize accountability for wrongdoers’ harmful conduct, special-interest groups and their highly paid lobbyists promote efforts to limit the legal rights of American families, claiming that too many lawsuits have led to excessive costs and delays. They just don’t trust the American people.

But there is no litigation explosion.

- Since 1992, lawsuit filings have declined by nine percent.
- Automobile lawsuit filings, which make up the majority of all tort (or personal injury) claims, have fallen 14 percent since the early 1990s.
- Medical malpractice filings per 100,000 persons have dropped one percent.
- In 22 of the 30 states that the National Center for State Courts examined, population-adjusted lawsuit filings declined from 1992 to 2001. The average change in tort filings across all 30 states was a 15 percent decrease.
- The Department of Justice’s Bureau of Justice Statistics reported that the number of civil trials decreased by 47 percent between 1992 and 2001.
- The median inflation-adjusted award in all lawsuits dropped 56 percent between 1992 and 2001 to \$28,000.



Con artists and the elderly



Con artists view some seniors as easy prey in their schemes to steal money. American Association of Retired Persons surveys show that more than half of telemarketing-fraud victims are age 50 or older. Other sources claim that more than 14,000 illegitimate telemarketers steal at least \$40 billion from unwary older—and younger—consumers annually.

The most common scams include calls about phony prize notifications, bad-credit clearance offers, fraudulent home inspections and repairs, expensive buyers clubs, deceptive investments, unnecessary and unwanted phone service subscription “slamming,” and others. Some seniors fall for scams claiming the ability to recapture money from the same scammers who took their money the first time.

To be safe from fraud, law-enforcement authorities often offer these guidelines:

- Never pay up-front fees for prizes or offers.
- Refuse to make payments by wire or through private couriers.

- Always ask for detailed, printed information on any offer.
- Do not release Social Security or credit-card numbers to unknown persons.
- Donate only to known charities.
- If a deal sounds too good to be true, it is.

Life insurance scam

An elderly couple’s insurance agent allegedly promoted a life insurance policy that would provide a \$5 million death payment and other benefits. After the couple pledged \$700,000 in personal assets to collateralize the premium loan, the premium lender demanded an unexpected \$35,000 first-year premium payment, threatening foreclosure on the collateral. When the couple sued for negligence, fraud, securities fraud, and statutory elder abuse, the agent and lender settled before the case went to court.

Auto accident FRAUD

Auto accident fraud—accidents perpetrated by crime rings—drives everyone’s car insurance premiums up. Insurance-industry experts estimate that criminals who plan auto accidents, claim false injuries, and even set up fake health clinics steal hundreds of millions of dollars in insurance payments every year.

Deliberate accidents are so well planned, they even have names:

Swoop and squat—A driver is cut off by a braking car and hits it in the rear. Passengers pretend to be injured.

Drive down—A driver waves another to enter the traffic flow, then rams and blames him or her.

Sideswipe—One car’s driver intentionally strikes another car in two-lane turns at intersections.

Shady helpers—An “eyewitness,” an accomplice, suggests that the victim patronize a complicit body shop, physician, or lawyer following an accident.

Protect yourself

Law-enforcement and insurance professionals encourage drivers to be alert to planned accidents and to follow these steps:

1. Distance your vehicle from others.
2. Call the police right away and get the officers’ names and badge numbers. Obtain a police report.
3. Write down all the details of any accident—car make and year, tag number, registration, driver’s license, phone number, accident description...everything.
4. Write down the names, addresses, and phone numbers of all passengers. Someone not there may claim to have been present. Note if anyone seems seriously injured.
5. Seek medical help if you are injured.
6. Talk to legal counsel.

Shameful lawyer advertising

Recall of Vioxx brings out the worst in lawyers

By now, everyone has heard of the withdrawal of the heavily advertised and very popular arthritis pain medication, Vioxx, by its manufacturer, Merck. According to a press release issued by Merck, patients regularly taking Vioxx faced twice the risk of a heart attack than those taking a placebo.

This, of course, means that many lawyers now advertise that they “accept” Vioxx cases. This is what consumers need to know:

- There are very few lawyers and law firms equipped to actually handle a pharmaceutical liability case.
- Drug cases are extraordinarily difficult, even after a recall.
- There are marketing firms that sell “prepackaged” Vioxx ads that any lawyer can buy.
- Some lawyers are hoping to attract clients for the sole purpose of referring the clients to other, bigger law firms in the hopes of collecting a “referral fee.”

We believe this conduct is shameful. Lawyers should only advertise, we believe, for cases that they are competent to handle and which they are going to handle. Consumers need to ask the right questions.

Frankly, our *Consumer Guide To Lawyer Advertising* should be read by everyone before contacting a lawyer for any case. We guarantee that it will make you a more educated consumer of legal services. If you do not have this free guide, send an email to Ben@BenGlassLaw.com. Put “Lawyer Advertising” in the subject line, and give us your full name and address.

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Leveling the Playing Field Between You and the Insurance Companies



Disability attorney Juliet Purl recommends... Set goals with your attorney

If you or someone you know is in the market for legal services, set a goal for those services. Think about how you have been harmed in your situation and what you want from your lawyer.

Then, communicate with your lawyer to set your goals. Not all goals are achievable through the legal process.

My disability clients were once hard-working, able-bodied individuals who are now unable to work. Although these clients have many characteristics in common, their goals are often varied. Most of my clients have disability plans through their places of employment. Under the law governing these policies, recoveries are generally limited to getting the insurance companies to pay what they should have paid in the first place. The law does not generally provide for “pain and suffering” or punitive damages in these cases.

Even though the monetary recoveries offered by the courts are standard, my clients’ goals differ. Some of my clients need the monthly payments to pay bills. Many clients need the monthly payments to invest because their disabilities contributed to job loss and affected their retirement nest eggs. Some

of my clients need to be deemed disabled so they can remain insured under their employers’ medical plans. Some of my clients have hired me because they are really angry at the insurance companies (and at their employers for buying insurance from such bad insurance companies).

For a number of my clients, they have a very strong work ethic but are unable to work because of medically imposed limitations. These same clients are told by their employers that they are not up to snuff. Their doctors say “you are disabled.” The insurance companies give them the runaround, and they feel exhausted by it all. I have a handful of clients who receive monthly payments, but I help them with ongoing inquiries by the insurance companies.

Whatever the outcomes sought, my relationships with my clients are improved dramatically if I understand each client’s goal and desired outcome when they contact me for my services.

To get a copy of our free book, “14 Ways To Guarantee That Your Long-term Disability Claim Will Be Denied And You Lose In Court,” email Juliet at JCPurl@BenGlassLaw.com.