

# CKRK&M Briefs

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

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BROUGHT TO YOU BY

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OFFICE HOURS

Monday-Friday

8:00 a.m.-5:00 p.m.

## Let American jurors provide justice

Business and corporate executives, through their highly paid lobbyists, constantly pressure national policymakers to enact legislation favorable to them. These special interests want to limit citizens' access to the courts for recourse if they are injured by defective products made by chemical or drug firms, or if they are the victims of fraud or deception committed by companies such as Enron or Arthur Andersen.

Corporate America's most recently repeated attempt to deny victims remedy in court is another outrageous insurance industry-backed bill. The U.S. House's H.R. 5 (S. 607 in the Senate) was designed to drastically limit the rights of patients seriously injured by medical malpractice, elderly victims of abuse in nursing homes, and others harmed by defective medical products and prescription drugs. Earlier this year, the U.S. House, voting along party lines, narrowly passed H.R. 5, which went to the Senate for further deliberation.

### Others want to restrict the role of juries

Proponents of this legislation want to limit the rights of those who are unfairly harmed by preventing juries made up of people like you from hearing injury cases. If passed, the legislation will preempt state law and establish many restrictions—including a \$250,000 one-size-fits-all cap on noneconomic damages for the most serious life-altering injuries—in health care-related liability actions. As a result, many legitimate cases will never get to court to receive fair hearings by jurors.



## Gregory S. Cusimano co-editor of a six-volume national legal publication

Thompson/West Publishing recently released a six-volume work entitled *ATLA's Litigating Tort Cases*. Our own **Gregory S. Cusimano**, along with Roxanne Barton Conlin (the first female president of the Association of Trial Lawyers of America) served as co-editors-in-chief of this important work. The publication has been described as a flagship resource designed for trial lawyers across the United States to assist in preparing every phase of litigation, pleadings, and discovery, as well as a road map for any situation a lawyer may face. The chapters included in these volumes are written by a "who's who" of modern American tort lawyers and include advice on every phase of the trial process. The "Fraud" chapter, covering these issues in a nationwide scope, is written by CKRK&M attorney **Michael Roberts**.

Mr. Cusimano is one of the first five recipients of the ATLA Lifetime Achievement Award. He is a member of the ATLA Board of Governors, serves on the Executive Committee of the National College of Advocacy, is a past chair of the National College of Advocacy, and is a past president of the Alabama Trial Lawyers Association. The six-volume work was introduced at the national convention of the Association of Trial Lawyers of America in San Francisco. A book-signing and reception for Mr. Cusimano and the authors were hosted by the publisher.

*We take your family's safety and security personally.*

# PHARMACISTS' ERRORS

No one really knows how many patients receive incorrectly dispensed prescriptions annually.

However, what is known is that:

- In 2002, researchers found medication errors in one in five doses administered in 36 health-care facilities in two states.
- The Institute of Medicine reports that hospitals alone are responsible for medication errors that cost more than \$2 billion annually.
- More than 7,000 patients died from medication mistakes in 1993, up from just under 3,000 deaths in 1983, according to a university study.

The health-care industry has embarked on improving medication dispensing by appointing pharmacists to hospital treatment teams and using computerization to verify prescriptions, doses, and timing.

Patients can take an active role in making sure they get the right prescriptions. When picking up any medical prescription:

- Ask the pharmacist to verify that the prescribed medication has been dispensed for the medical condition it will control.
- Confirm the correct manufacturer, form, quantity, strength, and use schedule.
- Question the physician or pharmacist about potential side effects.
- Carefully read all accompanying literature to obtain effective treatment.
- Comply with all directions.
- Check with the physician if there are any questions.

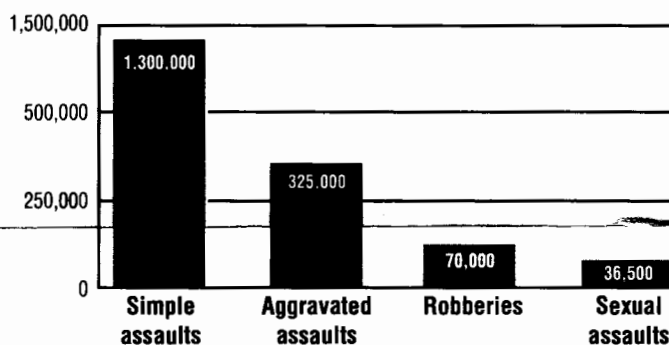
## A misfiled prescription

Verify medication correctness with every refill. A diabetic woman who had taken a blood pressure-reducing medication for years was mistakenly given tablets with twice the dosage that the pharmacy's label indicated. After taking an increased dosage for several weeks, she suffered severe reactions and required hospitalization. Although her daughter discovered the medication error and the patient resumed normal dosages, she suffered a fatal heart attack. Her son and daughter sued on behalf of her estate, alleging the pharmacy was negligent and caused wrongful death by misfilling a prescription. Upon retrial, a jury awarded damages.

# Workplace violence

Violence in the American workplace is becoming increasingly common. The following chart illustrates types of violent crimes committed in factories, businesses, and retail stores.

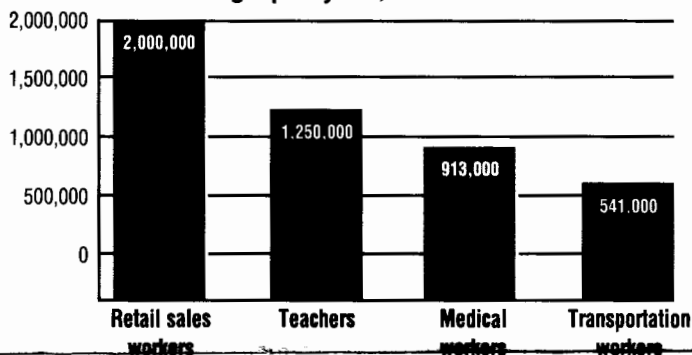
Types of violent crimes committed in workplaces, average per year, 1993-1999



Source: Bureau of Justice Statistics, National Crime Victimization Survey, *Violence in the Workplace, 1993-99 (2001)*

Despite what the mass media report, employees at some workplaces are more prone to violence than others.

Types of workers victimized by crime, average per year, 1993-1999



Source: Bureau of Justice Statistics, National Crime Victimization Survey, *Violence in the Workplace, 1993-99 (2001)*

Workplace crime takes its toll among workers in the form of injury, mental anguish, and even death. Victims' recourse is usually Workers' Compensation. However, in some cases, employees can seek legal remedy through premises liability, negligent or inadequate security, or from third parties, such as unions, franchisors, or security firms.

## The employment manual

The estate of a deceased worker brutally murdered at a steel mill sued for damages. The plaintiff's lawyer won the estate's breach-of-duty-to-provide-employee-security case by using the company employee handbook. The manual stated that the employer would maintain a trained, responsive security force that would keep uninvited individuals—like those who committed the murder—away from the premises.

## Pregnancy discrimination

Several key laws, including Title VII of the Civil Rights Act of 1964 and an amendment, the Pregnancy Discrimination Act, require employers who hire 15 or more workers to treat pregnant women the same as other applicants or employees affected with similar abilities or limitations.

### Q: Can an employer refuse to hire a pregnant woman?

A: No. As long as she can perform her job's tasks, an employer cannot refuse to hire a woman because of her pregnancy or pregnancy-related condition.

### Q: What if a woman is temporarily unable to do her work because of pregnancy?

A: The employer must treat her as it would any other temporarily disabled employee by adjusting job tasks, reassigning other available work tasks, or granting disability leave or leave without pay.

### Q: Must an employer grant maternity leave?

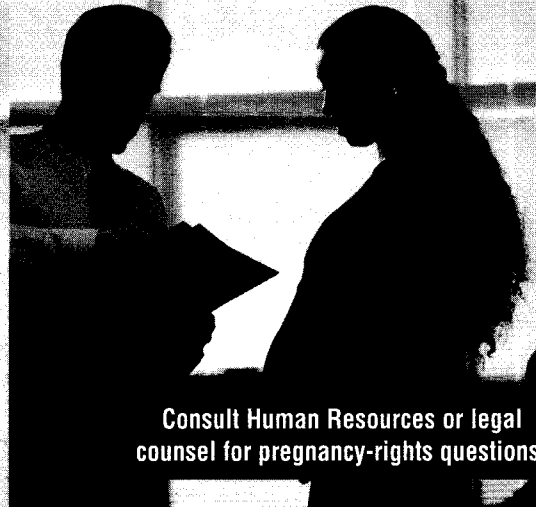
A: Yes. Employees have the right to ask for voluntary leave for pregnancy, childbirth, and parenting under a company's short-term disability plan or the Family and Medical Leave Act.

### Q: How does pregnancy and maternity leave affect other employee benefits?

A: Employers must treat employees who have pregnancy-related disabilities identically to other temporarily disabled employees for salary increases, accrued vacation, seniority, and other benefits.

### Q: How long does an employer have to hold a job for a woman on pregnancy leave?

A: The same length of time as it holds jobs open for other employees on sick or disability leave.



Consult Human Resources or legal counsel for pregnancy-rights questions.

## Oral vs. written contracts

For many people, their word is their bond in business transactions or personal deals. So a lot of buying, selling, and bartering is accomplished through oral contracts, which are earnest and mutual promises to do things.

Usually, these kinds of contracts are pledges to provide products or services for money. They are legally enforceable in court if either party, such as a business and a customer, cannot agree that the terms or conditions of the contract were met.

Oral contracts are subject to many misunderstandings. Language confusion is one. "I'll have it ready for you Friday" may mean "this Friday" or "a week from this Friday." Hearing problems can also mix up results. "Part 6D" can be heard as "Part 60." Physicians' poor handwriting has always put them, and pharmacists, at risk for prescription errors.

It's almost always best for anyone involved in a personal or commercial arrangement to document all oral contracts with simple memos or e-mails. That gives everyone a record of the offer to do something, when it should be done, the acceptance agreement, and the consideration—the money or other value—to be exchanged in the transaction.

Problems with oral contracts should be discussed with an attorney.

## CREDIT-REPORT ERRORS

Any consumer who wants to obtain a credit card, secure a loan such as a mortgage, or conduct most kinds of business needs to have an acceptable credit rating.

Three major agencies—Equifax, Experian, and Trans Union—compile individual consumer credit data and provide almost all of the credit-reporting services used by businesses, lenders, and anyone else investigating a person's credit quality.

Most credit reports issued by these companies have four parts:

**Identifying information**, such as name, address, Social Security number, date of birth, and other basics consumers provide when they apply for credit.

**Credit information** on accounts, including creditor names, dates accounts were opened, credit limits, debt, payment patterns, and other data from companies consumers do business with.

**Public record details** feature bankruptcy and court records, financial judgments, tax liens, and other information from public sources.

**Inquiries** identify anyone who has asked for a consumer's credit report.

### When agencies err

After information appears in a credit report, it can be difficult to change—even if it's incorrect. A study of more than 100 credit reports found that nearly a third contained serious errors that could have jeopardized getting a car loan, mortgage, or employment.

Litigation has increased over the past several years, and a fairly recent case shows how consumers can fight for their rights. An Oregon woman continually asked Trans Union to remove inaccuracies from her credit report for six years. She sued the agency after she was unfairly denied a mortgage. Her attorney won her the largest-ever award under the Fair Credit Reporting Act; her award included compensatory and punitive damages.

Anyone facing serious credit-reporting problems should obtain legal counsel.



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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.

## Protect your family

Here are some basic and enhanced auto insurance coverages to talk to your auto insurance agent about.

**Uninsured motorist coverage** protects you when another driver at fault in an automobile collision has no insurance at all. It covers lost wages, medical costs, and other expenses associated with serious injuries.

**Underinsured motorist coverage** safeguards you if you are injured by a careless driver who has only minimal insurance. Since uninsured motorist coverage doesn't apply, the other driver's minimal liability policy may not cover injuries you suffer. Your own policy may not cover injuries, either.

**Coverage "stacking" can help** if your household insures more than one car. Stacking increases uninsured/underinsured motorist limits based on the number of autos covered. If you purchase \$100,000/\$200,000 coverage and insure two cars, stacked limits equal \$200,000/\$400,000.

**Add a wage-loss benefit.** If your insurance company doesn't provide a wage-loss benefit, request it. Although many carriers cap benefits at 80 percent, some insurance carriers offer additional wage-loss expense enhancements.

**Increase medical expense** to obtain additional coverage for larger medical bills in case of serious injury. Many policies place a limit of \$10,000 for medical expenses, but that may not be adequate. Health-insurance coverages have large deductibles for serious injury, and auto insurance medical coverage may pay for chiropractic or other specialized medical treatment excluded by health insurance.

**Purchase more bodily injury insurance.** The customary \$20,000 minimum coverage may not protect you if you are sued for causing a collision in which someone else is seriously injured. Bodily injury coverage can protect your home, cars, and other assets.

## Gewin Award presented to Roberts

**Michael L. Roberts** was recently honored with the Gewin Award by the Alabama Bar Institute for Continuing Legal Education (ABICLE). This annual award is named for Judge Walter P. Gewin, who, as president of the Alabama State Bar, helped start ABICLE as a cooperative effort between the University of Alabama School of Law and the Alabama State Bar.

Steven C. Emens, Associate Dean and Director of ABICLE, informed Mike that he was the unanimous choice to receive this year's Gewin Award. Steve said, "Your ongoing contributions to continuing legal education over many years reflect the very highest ideals of our profession... your unflinching generosity in sharing your time and expertise with other lawyers has contributed in a very real way to the overall quality of legal education in Alabama."

The award was presented in July at the Alabama State Bar meeting in Mobile.

## Commanding the Courtroom video series by Greg Cusimano and Jim Lees

An educational convenience learning video series was recently released by the Association of Trial Lawyers of America. The five-part *Commanding the Courtroom* series features ATLA trial lawyers **Gregory S. Cusimano** along with West Virginia attorney Jim Lees.

This comprehensive presentation is designed for all levels of trial experience and shares hundreds of tips, insights, and hands-on demonstrations of compelling litigation techniques. Cusimano and Lees rely on their more than 50 years of combined trial experience as they share more than five hours of dynamic, practical, and insightful instruction that will be beneficial to attorneys and clients across the country.