

# HOLLIS & WRIGHT, P.C.

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## Insurance Companies Using Software to Adjust Claims

Did you realize that up to 70% of personal injury cases in the United States are evaluated using computer programs like Colossus, Claims Outcome Advisor, and Injury Claims

Evaluations? As a practicing attorney, you must know that 16 of the top 20 insurers in the United States are presently using these computer programs to adjust claims. The following companies are known to use one of these programs:

Allstate  
American Family Group  
The Automobile Club of Southern California  
Farmers Insurance  
Hartford Financial Services  
Liberty Mutual  
MetLife  
Nationwide  
OneBeacon  
Royal & SunAlliance  
St. Paul Insurance  
Travelers/Aetna Property Casualty  
21st Century Insurance  
USAA  
Zurich Financial Services

Colossus costs about 10 million dollars per year for

by their policy holders, including "all damages allowable by law." Colossus does not incorporate some damages that are allowable by law.

Further, by using the computer software to assess claims, the claims adjusters need very little training. Their training is to know how to input the factors needed by the software to come up with the value of a case. Most adjusters are allowed very little discretion in settling cases outside of the values set by the software programs assigned by programs such as Colossus. The best selling point of programs like Colossus is that they make the claims department a profit center, which is totally opposite of what a claims department's objectives should be, particularly in first-party insurance claims.

With the preceding having been said, programs such as Colossus require that personal injury claims be broken down into fields of information, including ICD and CPT codes, treatment, duration, and frequency, for

some insurance companies to use. The company that owns Colossus states in its marketing letters that it is "the most powerful cost containment tool in the industry." Think about this for a minute, particularly in your first party insurance claims such as claims for uninsured motorist coverage. The insurance company has a duty in the first party claims to pay monetary claims

every doctor involved, specific dates as to duration of specific injuries, complications of such injuries, and specific dates under duress, as well as number of other large value drivers. Generally speaking, if the factors considered by Colossus are not in the medical records, they will have no value. Some of the most valuable factors evaluated by the computer must be specifically discussed within the demand letter, or they will not be...

(continued

on p. 3)

Products liability cases may often be hidden in your motor vehicle cases. It is important to know what to look for in order to fully evaluate all aspects of your case. Any accident that results in catastrophic injury, such as death, paralysis, or brain damage should be reviewed in order to determine if a products liability claim is present.

I offer the following as an update of recent developments in automotive product's cases and as a checklist for potential future cases that might warrant further investigation. It isn't meant to be all-inclusive, but an overview of certain areas as well as a specific looks at certain problems.

Litigating cases against automobiles manufactures is a costly and time-consuming endeavor. Hollis & Wright, P.C. has the resources and expertise needed to stand against these large corporations. Hollis & Wright, P.C. has long history of representing injured individuals and their families in cases against automobile manufacturers. I would enjoy the opportunity to further discuss your client's case.

### **SEAT BELT DEFECTS**

When they work properly, restraint systems in automobiles and trucks indisputably prevent or lessen injury in crashes. When they fail, seatbelts can allow or even cause serious injury and death. This section is intended to identify some restraint system design defects in modern automobiles in order to acquaint lawyers with potential product liability theories where the injuries are particularly serious and can support the significant case expense required. A typical auto crash can be viewed as having two collisions. The first collision occurs when the vehicle impacts another vehicle or fixed object. The second collision occurs when a vehicle occupant impacts the interior or is ejected. The second collision immediately follows the first collision-- often only by milliseconds. Seat belts and airbags are designed, in part, to prevent the second collision or minimize its injury causing effects.

A seat belt defect may apply if any of these factors are present:

### **DaimlerChrysler Gen III Buckle**

DaimlerChrysler designed and sold the Gen III seat belt buckle from 1993 to 2004. The buckle is dangerously prone to unlatching during auto accidents and may have been installed in as many as 16 million Chrysler, Dodge and Jeep vehicles. The unlatching is caused when the buckle opens as a result of inadvertent contact on the release button with the occupant or a vehicle component.

The Gen III buckle's release button rises high above the buckle's casing. This design causes the buckle to fail an important industry standard created to prevent unintended unlatching of buckles. DaimlerChrysler changed the Gen III from a good design that passed industry standards.

### **Seat Belt Spool Out**

The heart and soul of the shoulder belt is the retractor, which locks the seat belt webbing and holds the occupant in place. When the retractor fails to properly lock, excessive webbing pays out of the retractor and results in seat belt slack. Sometimes as little as a few inches of slack can mean the difference between an injury-free event and catastrophic or fatal injuries. In a frontal collision, for example, a properly locked shoulder belt should prevent injuries due to contact with the steering wheel, windshield or A-pillar. When the retractor locks fails to lock or locks late the occupant may move forward and contact these objects.

Conventional seat belt retractors are designed with an internal pendulum or ball sensor, which swings forward during rapid deceleration as in braking or upon impact. However, many times, this system can fail. If the teeth on the retractor spool do not engage the latch plate quick enough, then excessive slack is spooled out before locking. In order to lessen this slack, manufacturers introduced web-grabber or pretensioning devices. These devices sense the impact and create tension immediately before impact.

Retractor spool out cases often turn on the forensic evidence found on the belt system. This physical evidence, called "load marks", is typically left on the belt webbing, inside the retractor, buckle, or D-ring when the retractor locks under

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## Appellate Notes

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Noteworthy cases from Alabama's Supreme Court and Court of Civil Appeals

**Love v. Hall**, No. 2040834, 2006 WL 964552 (Ala. Civ. App. April 14, 2006). After an automobile accident, defendant client Love as counsel to pursue claims for bodily injuries and property damage. The parties entered into a forty percent (40%) contingent fee agreement). Plaintiff's attorney represented the client for four months, during which he and his staff provided legal services in an effort to settle the client's claims. At some point, the defendant client's insurer as well as the insurer of the other vehicle involved in the accident offered their policy limits to the plaintiff attorney, but it was disputed whether the seat belt was being communicated to the client. "After a period of approximately four months of representation, the defendant client terminated the plaintiff attorney's representation in writing. The attorney attempted to persuade the defendant client to revisit her decision, and he continued to receive documents related to the defendant client's claims. Two months later, defendant client retained other counsel and ultimately settled for the policy limits of both insurers. The attorney filed suit in the Circuit Court of Houston County, seeking a reasonable fee for services rendered as well as a lien on the defendant client's recovery. The trial court conducted an ore tenus proceeding, after which it entered a judgment in favor of the plaintiff attorney as well as a lien. The client appealed, and the Alabama Court of Civil Appeals reversed and remanded the trial court's judgment. The court observed that an appellate court "must be able to discern from the record what factors the trial court considered in determining the amount of attorney fees." Id. at \*2 (quoting *Huntley v. Regions Bank*, 807 So. 2d 512, 518 (Ala. 2001) (quoting in turn *Lanier v. Moore-Handley, Inc.*, 575 So. 2d 83, 85 (Ala. 1991))). The appellate court ordered the trial court to enter a new judgment "supported by written findings consistent with the criteria set out in *Peebles v. Miley*, 439 So. 2d 137 (Ala. 1983)," which are the criteria which govern the reasonableness of attorney fees.

**Stephenson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.**, No. 2040568, 2006 WL 964560 (Ala. Civ. App. April 14, 2006). The Alabama Court of Civil Appeals considered the the trial

## Claim-Adjustment Software (continued from Page 1)

evaluated by the insurer. For this reason, a narrative demand letter is no longer adequate to get a fair settlement for your client. Without the full analysis of the claim using the software's own factors and specific demands, the lawyer cannot get full value for the claim. This is because many of the issues using these programs mandate that both their adjusters and defense lawyers not settle cases outside the settlement amount assigned by the computer program. This means that if you are going to get a reasonable offer at any point prior to verdict, the demand must be done setting forth the factors that the software takes into consideration.

Certainly, a book could be written about Colossus. The fact is, there is just such a book, written by Aaron L. DeShaw, a trial attorney located in Portland, Oregon. The name of the book is "Colossus: What Every Trial Lawyer Needs to Know." This book can be

court's dismissal of the plaintiff's action for failure to prosecute. In the trial court, plaintiff brought suit claiming breach of contract and negligence against defendants, pertaining to her financial portfolio. Defendants moved to compel arbitration and for a stay of the case in the trial court, the latter of which the trial court granted. No further actions were taken in the case until approximately eight months later, when sua sponte the trial court entered an order stating "[t]his case is hereby dismissed for lack of prosecution." *Id.* at \*1. Plaintiff appealed, and the appellate court framed the issue before it as ..(cont'd on Page 4)

ordered through *Trial Guides, L.L.C.*, located at 805 SW Broadway, Suite 2720, Portland, Oregon, 97205, toll-free: 1-800-309-6845.  
[www.trialguides.com](http://www.trialguides.com)

There *are* companies that prepare demand letters tailored to the software used by the insurance companies, helping lawyers increase the value of a case. One such company is Computer Claims Consulting, located at 805 SW Broadway, Suite 2700, Portland, Oregon 97205; contact Elain Hanar toll-free at 888-912-5246 or at [www.computerclaims.net](http://www.computerclaims.net).

...whether the trial court's dismissal of the plaintiff's action with prejudice was supported by the evidence in the record. Upon evaluation, the court found there was no "clear record indicating that [the plaintiff] caused a delay or committed contumacious conduct, and the facts [did] not reflect extreme circumstances warranting the drastic sanction of dismissal with prejudice." *Id.* at \*3. The appellate court reversed and remanded the trial court's judgment accordingly.

*Case v. Alabama State Bar*, No. 1041325, 2006 WL 833065 (Ala. March 31, 2006). After he was suspended from the practice of law by the defendant, plaintiff filed suit in the Circuit Court of Montgomery County seeking declaratory and injunctive relief from said suspension. The circuit court judge issued a temporary restraining order prohibiting the defendant from proceeding with any disciplinary action against plaintiff during its ten-day effective period. During this effective period, defendant petitioned the Alabama Supreme Court for a writ of mandamus, arguing the circuit court was without jurisdiction to enter such an order. After the expiration of the temporary restraining order, the circuit court judge assigned to the case dismissed plaintiff's claims, finding the court did indeed lack jurisdiction to become involved with a state bar disciplinary proceeding; defendant moved to dismiss its mandamus petition accordingly. Plaintiff appealed the circuit court's dismissal of his claims to the Alabama Supreme Court, asserting the circuit court did in fact have the proper jurisdiction to adjudicate his claims. Plaintiff also petitioned for a writ of mandamus directing defendant to set aside or dissolve his suspension. The appellate court found the defendant's proceedings violated plaintiff's due process rights, and thus granted plaintiff's petition and ordered the dissolution of defendant's order suspending plaintiff from the practice of law. The appellate court ordered plaintiff to show cause as to why his appeal should not be dismissed as moot, which plaintiff failed to do to the court's satisfaction. In dismissing plaintiff's appeal, the court stated that the "claims [the plaintiff] presented to the circuit court in his petition for declaratory and injunctive relief are moot; his argument that this Court should nonetheless decide whether the circuit court will have jurisdiction in a case that may or may not be brought against him by the State Bar in the future is a request for an impermissible advisory opinion." *Id.* at 4

## Recent Recalls and Press Releases from the FDA and CPSC

FDA: Recent recalls, withdrawals, and alerts -- this list includes the most significant product actions of the last week, based on the extent of distribution and the degree of health risk.

4-13-2006 -- Boca Medical Products, Inc. Issues Nationwide Recall of Insulin Syringe Product

4-12-2006 -- Blackstone Medical, Inc. Issues Voluntary Recall of ICON(tm) Modular Fixation System

4-10-2006 -- Investigation of Serious Eye Infections Associated With Soft Contact Lens Use and Contact Lens CPSC: Recalls and Product Safety News

4-6-06 -- **Rechargeable Battery Packs Sold with MAX Wireless Conference Phones Recalled for Burn Hazard.** In cooperation with the CPSC, ClearOne Communications, of Salt Lake City, Utah, is voluntarily recalling about 4,200 Rechargeable Battery Packs, which can short-circuit, causing them to overheat and melt the protective plastic covering, posing a burn hazard to consumers.

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06134.html>  
<http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06132.html>

4-4-06 -- **Brookstone Foldable Massaging Bed Rest Recalled for Fire, Burn Hazards.** In cooperation with the CPSC, Brookstone Company Inc., of Merrimack, N.H., is voluntarily recalling about 35,500 Foldable Massaging Bed Rests with Heat. Electrical circuits within the bed rest can overheat, causing the back side of the product to overheat, posing a fire and burn hazard.

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06131.htm>

4-4-06 - **Tecumseh Engines Used on Various Power Equipment Recalled Due to Fire Hazard.** In cooperation with the CPSC, Tecumseh Power Co., Grafton, Wis., is voluntarily recalling about 170,000 Tecumseh Engines used in various Two-Stage Snow Throwers, Ice Augers, Generators, Lawn Mowers, Weed Trimmers, Log Splitters and Fun-Karts. The fuel line on these engines can become loose or disconnected, resulting in a fuel leak. This can pose a fire hazard to consumers.

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06130.html>

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### Recent Recalls from the NHTSA

Courtesy of the National Highway Safety Administration

<http://nhtsa.gov>

NHTSA Campaign ID: 06V099000 Mfg's Report Date : March 31, 2006

Component: **STEERING:GEAR**

**BOX:SHAFT SECTOR** Potential

Number Of Units Affected : 1011.

Summary: On certain heavy-duty Class 8 trucks equipped with Dana steering shafts, there is a potential that the steering shaft pinch bolt hole may be incorrectly located. The pinch bolt fits into a groove in the steering gear input shaft to ensure that the steering shaft does not separate from the steering gear if the pinch bolt comes loose . Consequence: This could potentially lead to **steering shaft separation resulting in loss of control**

of the vehicle if the pinch bolt were to come loose **increasing the risk of a crash**. Remedy: Dealers will inspect the steering shaft and replace it as required free of charge. The recall is expected to begin on May 30, 2006. Owners may contact Volvo Trucks at 1-800-528-6586.

Notes: Volvo Trucks Recall No. RVXX0602. Customers may also contact NHTSA's Vehicle Safety Hotline at 1-888-327-4236, or go to

<HTTP://WWW.SAFERCAR.GOV>.

Make / Models : Model/Build Years: Mercedes Benz / R Class 2006.

Manufacturer : Mercedes-Benz USA, LLC. NHTSA Campaign ID: 06V101000 Mfg's Report Date : March 31, 2006

Component: **SEAT BELTS:**

**REAR:BUCKLE ASSEMBLY**

Potential Number Of Units Affected : 2500. Summary: On certain passenger vehicles, during the production process, the threads in the nut used to secure the seat belt buckle in a limited number of

second row seats may be missing. the absence of the screw threads results in an incomplete connection of the buckle to the seat . Consequence: in the event of a crash, **a seat occupant may not be properly restrained increasing the risk of personal injury**. Remedy: Dealers will inspect and replace all seats as necessary free of charge. The recall is expected to begin on April 30, 2006 . Owners may contact Mercedes-Benz at 1-800-367-6372. Customers may also contact NHTSA's Vehicle Safety Hotline at 1-888-327-4236, or go to

<HTTP://WWW.SAFERCAR.GOV>.

Make / Models : Model/Build Years:

MAZDA / MX-5 Miata 2006

Manufacturer : MAZDA MOTOR COR.P

NHTSA CAMPAIGN ID Number :

06V103000 Mfg's Report Date : April 3, 2006 Component: **AIR**

**BAGS:FRONTAL** Potential Number Of Units Affected : 2600. Summary: On certain passenger vehicles, the bolt attaching the horn assembly to the steering wheel hub may fail during a driver side front air bag deployment in extremely low ambient temperature. Consequence:

Should this occur, the **horn assembly may come loose and could injure the driver**.

Remedy: Dealers will replace the driver-side frontal air bag module with a new one, free of charge . The recall is expected to begin during April, 2006.

Owners may contact Mazda at 800-222-5500. Notes: Mazda Recall No. 3906C. Customers may also contact NHTSA's Vehicle Safety Hotline at 1-888-327-4236, or go to

<HTTP://WWW.SAFERCAR.GOV>.

Hollis & Wright, P.C., was founded in 2002, bringing together litigation attorneys with a combined practice experience of over sixty years, providing legal services for individual clients in Alabama, Georgia, Mississippi, and Florida, and for mass tort and class action clients nationwide.

The Firm's practice is evenly devoted to civil litigation of individual or single-event cases and to complex civil litigation, mass-torts, and class actions

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**Automotive Products Liability**  
**Insurance Fraud and Bad Faith**  
**Commercial Litigation**  
**Complex/Multi-District**  
**Litigation**  
**Automobile Accidents and**  
**Injuries**  
**Mass Torts**

**Products Liability**  
**Wrongful Death**  
**Consumer Fraud**  
**Medical Malpractice**  
**Pharmaceutical Litigation**  
**Premises Liability**  
**Class Actions**

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The State Bar of Georgia Rules require "Contingent attorneys' fees" refers only to those fees charged by attorneys for their legal services. Such fees are not permitted in all types of cases. Court costs and other additional expenses of legal action usually must be paid by the client.

Mississippi Supreme Court advises that a decision on legal services is important and should not be based solely on advertisements. Free Background information is available upon request to a Mississippi attorney. The listing of any area of practice by a Mississippi attorney does not indicate any certification of expertise therein.



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