

# HOLLIS & WRIGHT, P.C.

## ATTORNEYS AT LAW

VOLUME 1 / ISSUE 1

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## Andy Hollis Welcomes You to Hollis & Wright's Newsletter

For those who may not know me, my name is Andy Hollis. In January of 2002, Josh Wright and I formed the law firm of Hollis & Wright, P.C., in Birmingham, Alabama. Since that time, our firm has specialized in the practice of plaintiffs' litigation, handling products liability, wrongful death, catastrophic personal injury, mass tort, class action, bad faith, industrial accident, consumer fraud, and automobile and trucking accident cases on behalf of consumers, victims, and commercial entities nationwide. We are proud that almost 90% of our business comes from referring attorneys. Since Josh and I formed Hollis & Wright, we have been fortunate to add the following attorneys to our firm:

Paul Garrison. Licensed in Alabama, Georgia, and Mississippi, Paul is a 1995 graduate of the Cumberland School of Law. Paul's practice is primarily focused on the firm's mass tort actions, which currently include Vioxx, Zyprexa, Guidant, and Medtronic, as well as medical malpractice.

Steve Couch. Steve is chiefly involved with consumer fraud and insurance cases within the firm. He graduated from the Cumberland School of Law in 1998, and he is also licensed to practice in Mississippi.

Chris Glover. Principally involved in litigating products liability and catastrophic personal injury cases, Chris is a 2001 graduate of the Cumberland School of Law, and a native of Albertville, Alabama. He is also licensed to practice in Florida.

Kitty Rogers. A 2005 graduate of the University of Alabama School of Law and native of Russellville, Alabama, Kitty is the firm's newest

associate. Over the past year, our firm has striven to keep up with emerging technology and the impact of that technology on the practice of law. One of the conclusions we reached was that in order to adequately represent our clients and serve the public, it was necessary that we be aware of as much information as possible. To that end, early in her practice Kitty began surveying dozens of government and private websites and publications and compiling that information into a weekly, internal email for the attorneys at our firm. We have found these emails to be so useful each week that we decided to share that information with you and

other attorneys in the hopes that it might assist you in your practice.

A periodic newsletter, this being the first, was chosen as the medium for passing this information on to you. We hope in each issue to feature other useful information, such as practice pointers, litigation updates, product recalls, and a calendar of upcoming professional events across the state.

Our hope is that you find this newsletter benefits your practice in some fashion. However, if you do not wish to receive future issues, please click the unsubscribe link at the bottom of the blue

column on the left-hand side of this page.

We will appreciate any feedback on our newsletter so that we might improve this publication to better assist you in your practice. To submit such comments, please visit [www.hollis-wright.com](http://www.hollis-wright.com), follow the link for "Attorney Profiles," and email any of us.

Again, I hope our efforts will be of benefit to you and your firm. Thus, our first newsletter follows.



## Enforcement of Arbitration Awards

### Essentials for Alabama Practice

“Arbitration.” The very word inspires dread in the hearts of most trial attorneys and despair in many, conjuring up images of empty courtrooms, and, if not the end of the world, at least an irreparable change in the profession that they have come to love. However, with the increasingly conservative positions of Alabama’s appellate court system, trial attorneys across the state are beginning to use arbitration clauses to their client’s advantage, securing judgments that are, by and large, final when properly entered.

For example, in September of 2005, Hollis & Wright’s Josh Wright, along with Huntsville attorney Joe Cloud, received a \$17.3 million dollar award in an international commercial arbitration in Jefferson County. Drafted by both parties, the contract between Wright and Cloud’s client and the defendants provided that any disputes would be solved by “binding arbitration,” meaning any claims would be decided by a neutral arbitrator rather than a panel of twelve citizens. Throughout the several-week proceeding, the attorneys gave opening arguments, expert witnesses testified and were

cross-examined, and exhibits and evidence were introduced -- it proceeded much like a trial would have, except that at the end of the proceeding, the arbitrator’s \$17,308,000 award was final, meaning the parties would not spend the next few years litigating appeals.

After receiving an arbitration award, particularly one that is “binding,” attorneys must then enforce that award. As noted in Ala. Code § 6-6-12 (1975), “if an award is not performed in 10 days after notice and delivery of a copy thereof, the successful party” may have the award returned to the relevant clerk of court. An objective reading of § 6-6-12 appears to indicate that the award is “entered” (a/k/a “confirmed”) and therefore enforceable upon receipt by the clerk of the court, meaning at that

time the award has the force and effect of a regular civil judgment. Alabama Code § 6-6-15 (1975) appears to require that the clerk actually “enter” an award. Under this section, the clerk does not appear to have any discretion as to whether to enter a presented award. The statute is compulsory in that it says, “the clerk of the register shall enter the award as the judgment of the court.” *Id.*

Similar to Alabama’s rules on “entry” of an arbitration award, the Federal Arbitration Act (FAA) provides a mechanism for post-award “confirmation.” 9 U.S.C.A. § 9 (1976). Note that the FAA, unlike Alabama law, requires confirmation within a year of the time that the award is made.

Like Alabama Code § 6-6-15, Section 9 of the FAA appears to be compulsory, specifically stating if a motion is filed within the appropriate timeframe, the court “must” confirm the award unless it is “vacated, modified or corrected.” *Id.* As with any judgment that requires final entry prior to enforcement, both the FAA and Alabama law prescribe requirements for proper entry and/or confirmation. It

can be argued that until such requirements are completed, your arbitration award does not have the same effect as a final judgment. Accordingly, carefully follow the provisions outlined above under the FAA and/or Alabama law so that your arbitration award may merit the same consideration as a final judgment.

Arbitration is here to stay in Alabama, and trial attorneys must adapt and learn to utilize arbitration proceedings to their advantage. With research, preparation, and timely execution of the charges contained within the FAA and Alabama arbitration law, trial attorneys can achieve successful results for their clients in arbitration proceedings and subsequently effectively enforce arbitration awards.

“... in September of 2005, Hollis & Wright’s Josh Wright, along with Huntsville attorney Joe Cloud, received a \$17.3 million award in an international commercial arbitration in Jefferson County.”

### Arbitration Practice Pointers:

- 1 Both the Federal Arbitration Act and Alabama law prescribe requirements for proper entry and/or confirmation of an award.
- 2 Ten days after an arbitration award is received, it may be “returned” by the successful party to the clerk of court for entry. Ala. Code § 6-6-12 (1975).
- 3 Like a civil judgment, an arbitration award is enforceable once entered with the clerk of court. Ala. Code § 6-6-12 (1975).
- 4 The Federal Arbitration Act also provides a mechanism for post-award “confirmation.” 9 U.S.C.A. § 9 (1976).
- 5 The successful party must, under the FAA provisions, confirm the award within one year. 9 U.S.C.A. § 9 (1976).
- 6 The FAA provides for compulsory confirmation of the award by the court upon motion of the successful party, unless “vacated, modified, or corrected.” 9 U.S.C.A. § 9 (1976).

# HOLLIS & WRIGHT, P.C.

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## Appellate Notes

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

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### Five Drugs and Medical devices Making News:

**1** Zyprexa. Warning issued because of evidence that popular drug used to treat schizophrenia and bipolar mania causes increased risk for developing diabetes, hyperglycemia, and pancreatitis.

**2** Guidant/Medtronic. Hundreds of thousands of implantable defibrillators recalled due to faulty lead wires.

**3** Vioxx. Popular arthritis drug recalled because of increased risk of heart attack and stroke.

**4** Adderall. Warning issued about increased risk of heart attack and stroke with adult ADHD medication.

**5** Aprotinin. Warning issued when drug used to decrease blood loss during bypass surgery caused increased risk of kidney failure, heart attack, and stroke.

For more information, visit our website:  
[www.hollis-wright.com](http://www.hollis-wright.com)

Ex parte Bufkin, No. 1041890, 2006 WL 307831 (Ala. Feb. 10, 2006). After a truck ran over the motorcycle he was riding in Tennessee, the plaintiff filed suit against both the driver and the owner of the truck in the Circuit Court of Sumter County, Alabama. The plaintiff and the owner of the truck were Alabama residents, but the driver of the truck was a Mississippi resident. The driver of the truck filed a motion to dismiss, asserting the trial court did not have personal jurisdiction over him. Because the driver had not responded to plaintiff's discovery, plaintiff filed a motion to compel. The trial court denied the motion to dismiss, but did not rule on the motion to compel. The defendant driver then filed a motion for writ of mandamus with the Alabama Supreme Court, arguing the trial court erred in denying his motion to dismiss. The supreme court denied defendant's petition for writ of mandamus as premature and found the plaintiff was entitled to conduct discovery on the limited issue of personal jurisdiction. The court stated, "Without affording [the plaintiff] the opportunity for limited discovery on the issue of personal jurisdiction, we will not at this stage of the proceeding grant the writ of mandamus and order [the defendant driver's] dismissal from the action." Id. at \*5.

Ex parte Atchley, No. 1041364, 2006 WL 307827 (Ala. Feb. 10, 2006). Plaintiff filed a legal malpractice suit against his former attorney in the Circuit Court of Marshall County, Alabama. One month after plaintiff filed the suit, both of the circuit judges for Marshall County

recused themselves from hearing the case. According to a standing order, the case was then reassigned to the presiding district judge of Marshall County. Plaintiff then moved the district judge to recuse himself, asserting "there has been no appropriate assignment or order appointing [the presiding district judge] to this case," and because "[the defendant] being a local attorney . . . give[s] an appearance of impartiality [sic]." Id. at \*1. After the presiding district judge denied his motion, plaintiff petitioned the Alabama Supreme Court for a writ of mandamus ordering the presiding district judge to recuse himself and permit the Administrative Office of Courts to reassign the case as there would not be a Marshall County judge with authority to hear the case. The supreme court cited Rule 13(A), Ala. R. Jud. Admin., which provides: "The presiding circuit court judge may temporarily assign circuit or district court judges to serve either within the circuit or in district courts within the circuit." Id. Because plaintiff did not attach a copy of the standing order at issue to his petition, the supreme court proceeded under the presumption the standing order provided for "the presiding district judge to temporarily sit in the circuit court when needed" which would be permissible under Rule 13, "and such an order would negate the alleged impropriety of a judge who has recused himself or herself from a case from assigning that case to another judge." Id. at \*2. The court found it could not conclude it was improper to assign the case to the presiding district judge and accordingly denied plaintiff's writ. (*Appellate Notes continue on p. 4*)



Hollis & Wright, P.C.

From left:

Josh Wright  
Paul Garrison  
Steve Couch  
Andy Hollis  
Chris Glover  
Kitty Rogers

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### Appellate Notes (continued)

Prince v. Poole, No. 1030755, 2006 WL 204979 (Ala. Jan. 26, 2006). The Alabama Supreme Court reversed summary judgment in defendant's favor, as the plaintiff had presented sufficient evidence to create a dispute of material fact as to the parties' obligations under fee-sharing and exit agreements. Because the fee agreement did not contain a merger clause and was not intended to be a complete integration of the parties' agreement, the court permitted consideration of other agreements and the obligations they represented. The court also found the trial court erred by striking sections of the plaintiff's affidavit pertaining to defendant's obligations under the fee agreement because the sections did not contradict prior deposition testimony when taken in the context of the entire deposition and plaintiff's claims.

Smith v. Mark Dodge, Inc., No. 1040975, 2006 WL 147511 (Ala. Jan. 20, 2006). The Alabama Supreme Court affirmed the trial court's grant of Mark Dodge, Inc., and DaimlerChrysler's motions to compel arbitration, finding DaimlerChrysler to be an "affiliated entity" as the term was used in the arbitration agreement. The supreme court found the plaintiff's claims against DaimlerChrysler to be "intimately founded in and intertwined with" plaintiff's claims against defendant where those claims arose from and were related to the defendant's repairs to and the subsequent malfunctioning of plaintiff's vehicle and the apparent refusal of the defendant and DaimlerChrysler to perform repairs under the applicable contracts.

Ex parte Harper, No. 1041252, 2006 WL 147514 (Ala. Jan. 20, 2006). The dispute before the Alabama Supreme Court originated in a separate action in Jefferson County Circuit Court between a judgment creditor's agent and a judgment debtor. The plaintiff in the original action, styled Brown, Stagner, Richardson Inc. v. Harper Sales Co., CV-96-6648, was awarded a judgment against "Harper Sales Co., Inc.," which plaintiff discovered in the collection process did not exist. After a series of legal maneuvers involving the circuit courts of both Jefferson and Mobile Counties aimed at amending the complaint, as well as considerable confusion as to the meaning and timing of certain orders, the Mobile Circuit Court entered an order transferring the case to Jefferson County. The original defendant petitioned for a writ of mandamus ordering the trial court to vacate its order transferring the case to Jefferson County and maintain the venue as Mobile County. The court found the original plaintiff waived its right to challenge venue in Mobile County when it did not raise the issue in its initial 12(b) motion, and accordingly granted the petition for writ of mandamus and ordered the Mobile Circuit Court to vacate its order transferring the matter to Jefferson County.

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

Courtesy: the Food and Drug Administration, [www.fda.gov](http://www.fda.gov), and the Consumer Product Safety Commission, [www.cpsc.gov](http://www.cpsc.gov)

FDA: 2/16/2006 -- Bristol-Myers Squibb Company to update prescription information for the antibiotic Tequin (gatifloxacin) due to continued reports of hypoglycemia and hyperglycemia in patients receiving Tequin: <http://www.fda.gov/bbs/topics/news/2006/NEW01318.html>

2/9/2006 -- FDA warned consumers to stop use of The First Years® Liquid-Filled Teethers which were sold nationwide; the distributor voluntarily recalled the product on 1/27/2006: <http://www.fda.gov/bbs/topics/news/2006/NEW01313.html>

2/8/2006 -- FDA issued a Public Health Advisory alerting heart bypass doctors and patients that a drug used to prevent blood loss during surgery, Trasyolol (aprotinin injection), has been linked in the *New England Journal of Medicine* and in *Transfusion* to higher risks of serious side effects in artery bypass graft surgery patients, including kidney and heart problems, as well as strokes: <http://www.fda.gov/bbs/topics/news/2006/NEW01311.html>

1/31/06 -- Class 1 Recall: Boston Scientific Flextome® Cutting Balloon Systems: <http://www.fda.gov/cdrh/recalls/recall-120705.html>

CPSC: 2/16/2006 -- CPSC approves new federal standard for mattress flammability, could prevent 270 deaths per year: <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06091.html>

2/1/2006 -- SunTome baby walkers sold at retail toy stores nationwide recalled for stairway fall hazard: <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06077.html>

2/1/2006 -- Weil-McLain recalls water boilers Models GV-3, GV-4, GV-5, and GV-6 with a serial number/date code range of CP5075477 to CP5221234 and built from April 1, 2005 to October 31, 2005; blower assembly is not properly sealed, which can allow gas to leak during operation and accumulate, causing fire or explosion if an ignition source is present: <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06527.html>

1/26/2006 -- Maxi-Heat™ Dream Tower Heater sold at Wal-Mart stores nationwide recalled for fire hazard: <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06075.html>

1/25/2006 -- Homelite Vac Attack II Blower sold at Home Depot stores nationwide recalled for laceration hazard: <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06073.html>

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### ATLA EVENTS:

March 23-25, 2006

Spring Seminar  
Astor Crowne Plaza  
New Orleans, Louisiana

June 15-17, 2006

Annual Seminar  
Sandestin Beach Resort  
Sandestin, Florida

August 17-19, 2006

Summer Seminar  
Perdido Beach Resort  
Orange Beach, Alabama

January 18-20, 2007

Mid-Winter Conference  
The Wynfrey Hotel  
Birmingham, Alabama

### Recent Recalls from the NHTSA

Courtesy of the National Highway Safety Administration, <http://nhtsa.gov>

#### NHTSA:

2/6/2006 -- Certain Eagle Eyes Combination Headlamps manufactured by Sabry Lee, Inc., sold as replacement lamps for certain passenger vehicles fail to comply with federal requirements due to their lack of amber and red side reflectors which reduce lighting visibility and could cause a vehicle crash. Beginning February 14, 2006, Eagle Eyes will notify owners and provide a full refund for the nonconforming replacement lamps.

2/3/2006 -- Certain Cooper Trendsetter SE, Mastercraft A/S IV, Dean Alphs 365 AVS, and Starfire Flite-Line IV tires manufactured between November 21, 2004 and July 30, 2005 sold as replacement tires for passenger vehicles may contain unauthorized material in the upper sidewall. This material's presence could lead to the formation of small, isolated voids which could result in the tire losing pressure, which could result in tire failure

causing a vehicle crash. Beginning February 10, 2006, the manufacturer will notify owners and replace the tires at no cost to the owners; owners are warned not to drive at highway speeds until their tires have been inspected and replaced.

1/23/2006 -- Defect in aftermarket steering components manufactured by Fabtech Motorsports could result in total loss of steering control in the following vehicles: Chevrolet C/K 2500, 2001-2006 (Fabtech/FTS71000, Fabtech/FTS71001); GMC C/K 2500, 2001-2006; Hummer/H2, 2003-2006. There are 1360 potentially affected vehicles. This recall ONLY applies to the the aftermarket Fabtech components and has no relation to any original equipment on any of the vehicles listed above. Beginning February 2006, Fabtech will contact owners and replace the recalled parts at no cost to the owner.

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

#### Our Practice Areas Include:

Personal Injury  
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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*Alabama State Bar Rules Require The Following in Every Communication Concerning a Lawyer's Services:  
"No Representation is Made About the Quality of Legal Services to be Performed or the Expertise of the Lawyer Performing Such Services."*

*Pursuant to Florida Bar Rule 4-7.2(d), we inform you that the hiring of a lawyer is an important decision that should not be made solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.*

*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.*

*The 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.*