

MONSEES MILLER DEFEO MAYER & PRESLEY

A PROFESSIONAL CORPORATION • TRIAL ATTORNEYS



SUMMER 2001

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- Insurance Claims
- ...and many others.

NEW ADDRESS!

EFFECTIVE
MARCH 1, 2001

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Movin' on up

Why the new name on our newsletter? Monsees, Miller & DeFeo is pleased to announce the formation of a new practice to better serve your legal needs.

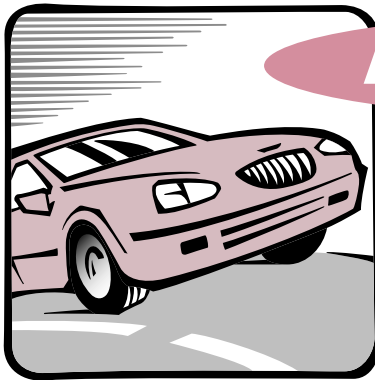
Kirk R. Presley and **Brian J. Amick**, formerly "Of Counsel" to the firm, have become members of the new law firm of **Monsees, Miller, DeFeo, Mayer & Presley, P.C.** **David M. Mayer** has been a member of the firm since 1997. Look for our new offices on the Country Club Plaza of Kansas City, Missouri.

Kirk Presley will continue his practice in the fields of toxic exposure, medical malpractice, and dangerous products, especially dangerous aircraft, automobiles, and watercraft. Kirk has received national recognition in cases involving exposure to carbon monoxide.

Brian Amick has worked closely with the law firm since 1998 when he associated with Monsees, Miller & DeFeo in an "Of Counsel" capacity. The law firm is now pleased to accept Mr. Amick as a member of the firm, as he continues his work in nursing home injuries, automobile collisions, and dangerous products.

Monsees, Miller, DeFeo, Mayer & Presley will maintain its office in Springfield, Missouri, where our associate, **Anne E. Mitchell**, works to serve the legal needs of residents of southern Missouri. Δ

AUTO RECALLS



If you receive an *Official Safety Recall Notice* from your car's manufacturer, treat it seriously. Contact your local dealer and have the defect corrected quickly to keep your car safe to drive and operating efficiently. Dealers customarily make required repairs or parts replacements at no charge.

Chilling recall reminders include Ford's Pinto subcompact and GM pickup trucks and cars, whose gas tanks caused deaths and injuries from explosions or fires during collisions.

Manufacturers contact new car owners about recalls. Used car owners can search online for recall information at the National Highway Traffic Safety Administration Web site by going to <http://www.nhtsa.dot.gov/>.

An engineer's calculations

In 1993, four children and another passenger were burned when their Chevrolet Malibu burst into flames after a rear-end collision. One of the case documents was a 1973 GM engineer's memorandum, "Value Analysis of Auto Fuel-Fed Fire-Related Fatalities." The memo said that "burned deaths" would cost the company \$2.40 per vehicle (assuming each fatality cost \$200,000 and 500 people would die annually in crashes involving fuel-fed fires). The engineer determined it would not be cost-effective for the company to spend more than \$2.20 per new vehicle.

Serving you and your family in times of need.



Safe pesticide use

Pesticides are an important control for our homes, landscaping, and workplaces. Safely handling and storing treatment products is important, since they can poison people and the environment. To reduce the risks associated with pesticides, everyone can take the following steps:

- Do your homework and purchase only what you need. Read labels carefully for application and storage instructions. Use only the amount specified, and under prescribed conditions.
- Wear protective clothing and masks.
- Store pesticides where children or pets cannot reach them.
- Hire professionals for serious pest problems.
- Become familiar with several key phone numbers. Remember 911 for emergency assistance, and post the numbers for the local Poison Control Center and your physician near the phone. Follow their instructions quickly and precisely.

Pesticide exposure on the job



Pesticide treatment of our workplaces is common and most times is done safely and with care. There are instances when pesticide treatment can be hazardous. While installing heating and air-conditioning ductwork in a home renovation, an employee was unknowingly exposed to a powerful insect fumigant, which initially produced flu-like headache, vomiting, and dizziness symptoms. Within weeks, he suffered slurred speech, memory lapses, and was eventually diagnosed with permanent brain damage. When the worker and his wife sued the general and extermination contractors for failing to use proper fumigation procedures, including failing to test for a fumigant following pesticide treatment, a jury awarded compensatory damages.



LEGAL LEXICON

Many clients find the legal terms used in court puzzling. **This is especially true for *Latin* legal terminology.** From time to time, we'll offer some easy-to-understand definitions to help clear things up. These will help you understand our trial system better.

• *Amicus curiae*

This means “friend of the court” and refers to a person or organization not directly involved in a case from which the court accepts legal information or opinions.

• *Certiorari*

When a court issues an order to examine records or decisions made by another court to look for irregularities, it has granted *certiorari*. Today it is used almost exclusively in connection with the U.S. Supreme Court's acceptance of cases for review.

• *Ex parte*

Meaning “by or for one party,” the phrase refers to uncommon legal circumstances where only one party—usually not the adversary—appears before a judge. Some *ex parte* communications with a judge are deemed unethical.

• *Quid pro quo*

This translates to “something for something” and usually refers to contracts in which receiving something of value is exchanged for giving something of value.

• *Res ipsa loquitur*

Literally meaning “the thing speaks for itself,” the phrase points to incidents where it is presumed that negligence caused injury, since harm could not have occurred without someone being negligent.

Negligent auto repairs

When we take an auto in for repairs, we expect the shop to do a good job. That's because we believe that they train their technicians well. We also expect technicians to receive manufacturer-based training and have the manuals, advisories, and updates for the autos the dealership sells and repairs. We trust the shop to use the best tools, computer diagnostic equipment, and parts to complete warranty and other repairs fast and up to specifications. We presume the shop will stand behind the work it does one hundred percent.

The wrong brake pads

When a driver was killed and his wife severely injured in a crash, the wife and her son sued the parts manufacturer and the tire company that installed new brake pads on the auto several days before the accident. The defendants initially claimed that the driver caused the accident by speeding, but settled when the wife's attorney demonstrated that the automotive parts exchange had negligently furnished the tire company with the wrong brake pads, which the tire firm's technicians installed.

BIG TRUCK SAFETY

According to its 1998 annual report, U.S. Department of Transportation records show that more than 5,300 people died on America's roads in crashes involving large trucks. When cars and big trucks collide, automobile drivers and passengers suffer 98 percent of fatalities.

Trucks are big, up to 60 feet long and weighing up to 120,000 lbs., so they can't maneuver or stop as quickly as cars, making them very dangerous. Further, truck drivers face incredible pressure to make long-distance deliveries as fast as they can. As a result, driver fatigue and lack of sleep contribute significantly to crashes and driver deaths. A study showed that nearly three out of five drivers violated rules regarding how many hours they could drive each day, with many drivers falsifying mileage log books to conceal their time on the road.

When you drive on highways, here are several ways to protect yourself and your passengers.

- Wear seat belts and drive the speed limit.

- Avoid truckers' blind spots. Don't tailgate or drive on a truck's right side. If you can't see the driver in the truck's rear-view mirror, the trucker can't see you.

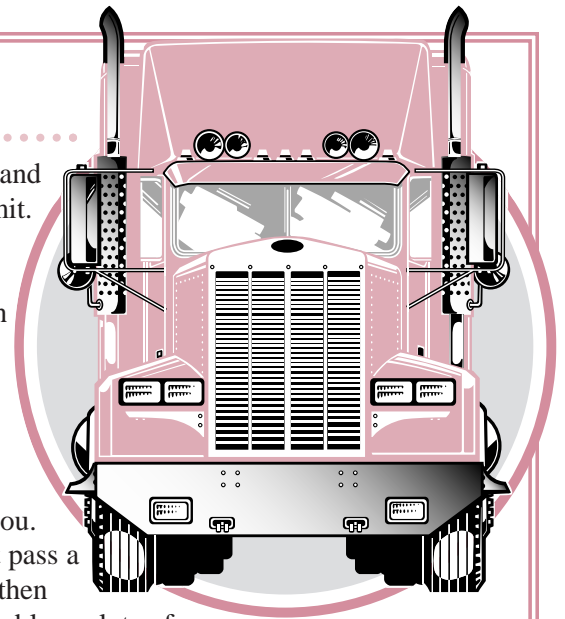
- When you must pass a truck, signal first, then drive on the left and leave lots of room before getting back into your lane.

- Keep your distance from trucks, and pull over when trucks merge on to highways in front of you.

- Be alert to trucks that pull off to register at weigh stations or get into truck lanes on hills.

- If you drive slowly on multi-lane highways, stick to the right lane and use flashers so that trucks can pass you in other lanes.

- Slow down when visibility or weather conditions require it.



FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled products you may have at home or at work.

- ✓ **Binding Corp.** has recalled 3,000 paper shredders. Owners could lift the paper shredder lid, which lacks a protective shield, while it is running and suffer cuts or amputations of finger tips from spinning blades.

- ✓ **Small Beginnings, Inc.**, has recalled 16,000 baby pacifiers that failed U.S. Consumer Product Safety Commission testing standards and can choke infants.

- ✓ **Lifetime Hoan Corp.** recalled 132,000 fondue sets to replace alcohol burners that can produce high flames beyond the pot, or tip over and burn diners.

- ✓ **Kent International, Inc., and Kash 'N Gold, Ltd.**, recalled nearly 100,000 Kent Kickin' Mini-Scooters lightweight scooters. Handles can loosen from the steering column when securing clamps are not tight and injure riders.

- ✓ **Cosco, Inc.**, has called back about one million Options 5 High Chairs, whose seats can separate from the frame in the reclining position and cause head, face, and bodily injuries to infants.

- ✓ **American Honda Motor Company, Inc.**, recalled 22,000 off-road motorcycles. Two handlebar bolts can break, causing the rider to lose control and become injured.

Your rights in truck accidents

CASE 1: After a driver was severely injured in a crash with a cement truck, her lawyer sued the driver's employer for negligence. The cement company settled when the attorney demonstrated that the company's high-pressure delivery policies provided an incentive for its drivers to drive aggressively to maximize their compensation.

CASE 2: A husband sued a trucking company after his wife died in a fiery accident involving one of their vehicles. The firm settled when his lawyer proved that the truck's driver had violated federal motor carrier safety regulations by driving more than 18 hours without eight consecutive hours off at the time of the accident.

CASE 3: Several passengers were severely injured when their car collided with a truck that had jack-knifed while trying to back up to a missed exit. The plaintiff's lawyer sued on their behalf, alleging trainee-driver negligence for improperly backing up, failing to adequately train a new driver, and not having a policy that required the truck's owner, who was in the cab, to stay awake and supervise his trainee-driver.

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Victories for insurance consumers

Insurance regulators and courts in many states have issued rulings about improper practice-of-law policies among insurance companies that use non-attorneys to direct litigation of claims brought against policyholders.

Allstate Insurance has attempted to decrease auto claim costs by negotiating directly with people injured by their auto insurance policyholders. The firm strives to identify consumers who haven't retained a lawyer to assist them with the claims process and prevent them from retaining counsel. Allstate uses a *Customer Service Pledge* letter and a *Do I Need an Attorney?* brochure to lead consumers to believe that insurance company attorneys are really representing them.

To date, numerous states have taken the following actions against Allstate's Customer Service Pledge and Brochure:

Arizona—Issued a “cease and desist” order after finding Allstate guilty of unauthorized practice of law.

California—Found non-attorney claims adjusters were practicing law illegally.

Connecticut—Allstate forced to stop sending customer pledge service letters. Legislature passed law forbidding insurers from advising against retaining an attorney in personal injury cases.

New Jersey—Supreme Court issued an order for Allstate to stop sending the letter and brochure.

North Carolina—Found that the letter and brochure constituted an illegal practice of law.

Maryland—State Insurance Commissioner sent letter of concern to Attorney General and state bar association for deliberation.

Missouri—Barred the current service pledge brochure and outlined changes to be made.

Montana—Found in-house insurance company operations violated state rules for professional conduct of lawyers.

Pennsylvania—Attorney general pursuing formal proceedings to halt the brochure and filed suit claiming fraud.

South Carolina—Allstate agreed not to use the brochure, and to revise the customer service pledge.

Washington—Allstate found guilty of unauthorized practice of law by state bar association.

West Virginia—Allstate found guilty of unauthorized practice of law.

Vermont—Department of Banking and Insurance compelled Allstate to amend the customer service pledge and note that the claim representative is an Allstate employee.

Officials in the following states are also undertaking action against Allstate's brochure and letter: Florida, Indiana, Kansas, Michigan, New Mexico, Oregon, Tennessee, and Texas.

