



THE
JERE BEASLEY REPORT

MARCH 2009

Beasley Allen

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I. CAPITOL OBSERVATIONS

JURY FINDS SANDOZ GUILTY OF FRAUD

A Circuit Court jury in Montgomery County, Alabama, on February 24th returned a verdict in favor of the State of Alabama against Sandoz, the drug manufacturer. Sandoz was found guilty of defrauding the Alabama Medicaid system. The jury ordered the company to pay \$78.4 million, including \$28.4 million in compensatory damages and \$50 million in punitive damages. The verdict is significant because Sandoz, a subsidiary of Novartis, Inc., manufactures and markets generic drugs. Sandoz is the fourth drug company to go to trial and it was the first generic drug company.

Our firm is representing the State of Alabama against a total of 72 pharmaceutical companies in the Medicaid fraud litigation. All of the companies reported false prices for Medicaid reimbursement. The fact that a generic drug is cheaper than a brand-name drug did not give Sandoz the right to cheat the state out of \$28 million.

Sandoz knowingly reported false prices to the state with the belief it would never get caught. In fact, this company—like all too many other corporate entities—actually believes it is above the law.

In the first trial in February 2008, a state court jury awarded Alabama a \$215 million verdict against Astra-Zeneca PLC. The second trial, in July 2008, resulted in a combined \$114 million verdict in favor of the State against GlaxoSmithKline and Novartis Pharmaceuticals. Settlements have been reached with seven drug companies and negotiations are currently ongoing with a number of others. Companies that have settled include Amgen, Inc.; Bayer; Boehringer/Roxane; Bristol-Meyers Squibb Company; Dey, LP; Ethex Corporation and KV Pharmaceutical Company; and Takeda Pharmaceuticals North America, Inc. Twenty-three states, including Alabama, currently

have pending Medicaid fraud suits. Our firm has been selected to represent seven other states in their litigation against the drug manufacturers. I, along with Dee Miles and Clint Carter from our firm, represented the State in this trial.

AN ALABAMIAN IS A NATIONAL HERO

President Obama has signed the equal-pay bill into law that will benefit working women all over the country. Women leaders who fought hard for the bill's package and Lilly Ledbetter, the woman from Alabama, whose history-making lawsuit gave impetus to the cause, were present for the signing. The President, choosing the Lilly Ledbetter Fair Pay Act as the first bill to sign as President, called it a "wonderful day." His goal had been to end pay disparities between men and women. This was an issue not just for women, but for all workers, and President Obama got the job done.

With Ms. Ledbetter standing by his side, the President signed the bill into law. Ms. Ledbetter lost more than \$200,000 in salary, and even more in pension and Social Security, and she won't be able to recoup any of that. But this brave lady never gave up her fight and it has now paid off for all women. This Act effectively nullifies a 2007 Supreme Court decision and makes it easier for workers to sue for discrimination by allowing them more time to do so. President Obama had this to say:

Making our economy work means making sure it works for everyone. That there are no second-class citizens in our workplaces, and that it's not just unfair and illegal—but bad for business—to pay someone less because of their gender, age, race, ethnicity, religion or disability.

Ms. Ledbetter said she didn't become aware of the large discrepancy in her pay until she neared the end of her 19-year career at a Goodyear Tire & Rubber Co. plant in Gadsden, Alabama. She then filed a lawsuit. But the High Court, in a shocking decision, held in a

5-4 decision that she was late in filing suit and ruled for Goodyear.

In the Ledbetter case, the High Court said that a person must file a claim of discrimination within 180 days of a company's initial decision to pay a worker less than it pays another worker doing the same job. That made it virtually impossible for a woman to file suit and that was clearly wrong. Under the new Act, every new discriminatory paycheck would extend the statute of limitations for another 180 days.

President Obama cited Census Bureau figures showing that women still receive only about 78 cents for

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every dollar that men get for doing equivalent jobs with “women of color” getting even less. The new law, which amends the 1964 Civil Rights Act, also applies to discrimination based on factors such as race, religion, national origin, disability or age. Without question, passage of this Act was the right thing to do and Lilly Ledbetter is a real American hero. In my opinion, the legislation she backed and which bears her name, deserved the vote of every member of Congress.

Source: Associated Press

ARTUR DAVIS MAKES IT OFFICIAL

U.S. Rep. Artur Davis, an early supporter of President Obama, made it official on February 6th. It wasn't a surprise when Artur announced he is running for Governor of Alabama. The announcement by the Montgomery native was made in stops in Birmingham and Montgomery. If elected, Artur would be the first African-American to win Alabama's top office. With his announcement, the 41-year-old, Harvard-educated lawyer became the first Democratic candidate to officially throw his hat into the ring. Personally, I believe that Artur will be a very strong candidate. This leaves Lt. Gov. Jim Folsom and Commissioner Ron Sparks as two other Democrats who are the most likely to join the race. If they all run, it will make for a most interesting primary in 2010.

MORE CHILDREN WILL HAVE HEALTH INSURANCE

President Barack Obama, on February 4th, signed a bill extending health coverage to 4 million uninsured children. This, according to the President, is a first step toward fulfilling a campaign pledge to provide insurance for all Americans. President Obama had this to say about the new law:

As I think everybody here will agree, this is only the first step. Because the way I see it, providing coverage to 11 million children through CHIP is a down

payment on my commitment to cover every single American.

The bill reauthorizes the State Children's Health Insurance Program. Alabama has about 78,000 children without health insurance, according to Cathy Caldwell, director of Alabama's ALL KIDS health insurance program. Of those, about 38,000 are eligible for Medicaid and 14,000 are eligible for ALL KIDS. Ms. Caldwell said that passage of the bill allows the state agency to continue to search out eligible families and enroll them. ALL KIDS currently covers 71,000 children in Alabama whose families have too much income to qualify for Medicaid, but not enough to afford private health insurance.

The children's health bill calls for spending an additional \$32.8 billion on the program, which now enrolls an estimated 7 million children. The revenue was generated when Congress raised the federal tobacco tax. In my opinion, this legislation was badly needed and it's difficult to understand why anybody in Congress voted against it.

Source: Associated Press

PFIZER AND FEDERAL GOVERNMENT SETTLE DRUG PROBES

The drug maker Pfizer Inc. has reached a record settlement with the federal government arising from investigations into improper marketing of its Bextra painkiller and other drugs. Pfizer reached an agreement with the U.S. Attorney in Massachusetts to “resolve previously disclosed investigations” regarding Bextra and “other open investigations.” The settlement is the largest thus far for claims of off-label marketing practices. The previous record of \$1.42 billion was paid earlier this year by Eli Lilly & Co. over its antipsychotic drug Zyprexa. These settlements point out two distinct things. First, it points out that these companies don't mind violating the law to make money. It also proves that they are making lots of it.

The settlement foreshadows resolutions of other pending investigations into other drug makers, according to Patrick Burns of Taxpayers Against

Fraud, a Washington advocacy group. I'm not sure what other investigations were covered by the agreement. As you know, the company recalled Bextra in 2005. The pharmaceutical industry has had the luxury of being regulated by the FDA which has been little more than an extension of the industry. Hopefully, things will change under the Obama Administration.

Source: Bloomberg News

WISCONSIN WINS ITS MEDICAID CASE AGAINST PFIZER

Pfizer Inc.'s Pharmacia unit was found by a Wisconsin State Court jury to have illegally overcharged Wisconsin's Medicaid program. That jury awarded \$9 million in compensatory damages. Jurors in Madison, Wisconsin, found that Pharmacia should pay the \$9 million to compensate the State for its losses. But the most important part of the case involves a penalty phase. A hearing to determine the amount of forfeitures hadn't been scheduled at press time. Attorney General J. B. Van Hollen authorized the lawsuit and said that he considered this a tremendous victory for the people of his state.

The jury ruled that Pharmacia violated Wisconsin's Medicaid Fraud law more than 1.4 million times. Under state law, in addition to the compensatory damages, the judge in the case may award from \$100 to \$15,000 per violation, or as much as \$21 billion. The state will make a recommendation at the low end, which would still be a sizable amount. Even if the judge awards only \$100 per violation, that will still be \$144 million. The theory in the Wisconsin case is the very same as in Alabama's cases.

The pharmaceutical companies are accused of posting artificially-inflated AWP and WAC prices and then “marketing the spread” to win business by encouraging pharmacies and doctors to seek reimbursement from state Medicaid programs at the full reported prices. The wider the spread, the more likely a doctor or pharmacy was to promote a company's product. An example in Wisconsin involved Pharma-

cia reporting an AWP of \$241.36 for a 20 milligram dose of the cancer drug Adriamycin in April 2000 when the medicine was actually selling at wholesale for as low as \$33.43. Doctors were told they could keep the difference. The Attorney General stated that the “verdict confirms that Pharmacia knew when it published false average wholesale prices for its drugs it would cause the state to grossly overpay for prescription drugs.” Pfizer says it will appeal the verdict. Chuck Barnhill of the firm of Miner, Barnhill & Galland in Chicago represented the State and did a tremendous job.

Source: *Bloomberg.com*

STIMULUS PACKAGE WILL BRING \$3 BILLION TO ALABAMA

The federal economic stimulus package signed into law by President Obama on February 16th will benefit Alabama. The massive \$787 billion stimulus bill passed the House and Senate after a compromise was reached. In my opinion, this measure was badly needed to get our economy moving. As I understand it, the package will provide slightly more than \$3 billion to Alabama, which will be broken down as follows: nearly \$609 million for fiscal stabilization of education programs in Alabama; \$850 million for Medicaid; and \$541 million for highways and bridges.

Our economy is in trouble and President Obama inherited a real mess from the Bush gang. The American people should support him as he works diligently to revive the economy. The stimulus package clearly appears to be a step in the right direction. The alternative of doing nothing—as some appear to believe is the proper course—would have been a terrible mistake.

We are going to come through these tough times in my opinion and our Nation will be the stronger for it. All Americans have learned some valuable lessons over the past several months and many of them were extremely painful. It's now time to move forward and fix the wrongs that have put our economy in such a mess. We are all in

this situation and it will take all of us pulling together to get our Nation out of a most severe crisis.

Source: *Associated Press*

PRESIDENT OBAMA REASSURES AMERICAN CITIZENS

When President Obama addressed a joint session of Congress for the first time, he confronted head on the serious economic challenges our Nation faces. He called for a new era of responsibility and cooperation and asked Congress to look beyond short term political calculations and to make vital investments in health care, energy, and education. I agree with the President that his plans will make America stronger and more prosperous well into the future. A little more than a month into his Administration, this President has already taken bold steps to address our nation's urgent economic problems.

Through the Recovery Act, the Stability Plan, and the Housing Plan, the Administration is taking the immediate necessary measures to halt our economic downturn. The measures will provide much-needed assistance to working people and their families. I totally agree with President Obama when he says to set our country on a new course of stability and prosperity, our elected leaders must reject the old ways of doing business in Washington. Clearly, we can no longer tolerate fiscal deficits and runaway spending while deferring the consequences to future generations. The President pledged to cut our government's deficit in half by the end of his first term. He is correct that to achieve that goal will require all of us making sacrifices and hard decisions. It will also require an honest budgeting process that is straight with taxpayers about where their dollars are going.

It's sort of weird to see Republicans in Congress talking about fiscal responsibility when you consider that it was during the Bush years that our economic meltdown occurred. Those folks need to forget politics and support our President. Central to the recovery plan

will be a “renewed commitment to honesty and transparency in government.” Restoring our country's economic health will only happen when ordinary citizens are given the opportunity to hold their representatives fully accountable for the decisions they make. This President is committed to that goal. I support him fully and encourage all Americans to do the same. We must all not only support the President, but continuously pray for him and all members of his Administration as well as all members of Congress.

II. RECENT LAWSUITS FILED BY THE FIRM

WRONGFUL DEATH SUIT FILED IN LOUISIANA HELICOPTER CRASH

We mentioned the Louisiana helicopter crash in this last issue. Our firm has now filed a lawsuit in the United States District Court for the Middle District of Alabama, Northern Division, on behalf of the family of Thomas Ballenger, against Sikorsky Aircraft Corporation. Mr. Ballenger was killed on January 4, 2009 when the Sikorsky S-76C++ helicopter he was piloting crashed into swampy terrain north of the Gulf of Mexico near Morgan City, Louisiana. The crash occurred about seven minutes after take-off from Amelie, Louisiana, and resulted in the death of Ballenger and seven others. The crash's one survivor was critically injured.

The Complaint alleges the crash resulted as a direct and proximate result of defective conditions existing in the S-76C++ helicopter. The helicopter was registered to and operated by Petroleum Helicopters, Inc. (PHI) as an air taxi flight transporting workers from two different oil companies to and from an oil platform. The weather on the day of the crash was good and was not a factor in causing the crash. Greg Allen, Chris Glover, and I from our firm, along with Jimmy Calton and Jim Calton, Jr. of Calton & Calton in Eufaula, Alabama, will handle the case for Ann L.

Ballenger, the widow, and the Ballenger estate.

THE FIRM WILL REPRESENT INJURED AUBURN UNIVERSITY STUDENT

Our firm has filed a lawsuit in the Circuit Court for Lee County, Alabama, on behalf of an Auburn University student who was seriously injured at a campus fraternity house on January 11, 2009. The Complaint was filed on behalf of Taylor G. Jones against Sigma Phi Epsilon Fraternity, the Auburn chapter of Sigma Phi Epsilon, Alabama Alpha chapter, and a fraternity member, Zachary James Quillen.

The Complaint alleges Taylor Jones was injured at the Sigma Phi Epsilon fraternity house on the campus of Auburn University when he was assaulted by Quillen. Jones was hospitalized as a result of his injuries. The fraternity failed to provide proper and adequate security to ensure safety at a party at the fraternity house. Julia Beasley and I from our firm, along with McCollum, Crutchfield & Wilson, P.C., in Auburn, Ala., will handle this case for Taylor and his family.

SUIT FILED ON BEHALF OF DECORATED WAR HERO WHO DIED AT VETERANS HOME

Our firm has filed a lawsuit in the Circuit Court of Baldwin County, Ala., on behalf of the family of Leroy Myers, a decorated war veteran, who died as the result of a fall on May 3, 2007. At the time, he was under supervised nursing care at the W.F. Green State Veterans Home. Defendants named in the suit include HMR Advantage Health Systems, Inc.; Health Management Resources—Governmental Services, Inc.; HMR of Bay Minette, Inc.; and Health Management Resources, Inc. All of these companies had the responsibility for operation and management of the facility. The suit alleges that the Defendants' negligence caused Mr. Myers' death. Specific examples of negligent care prior to the fall were listed in the Complaint.

Mr. Myers served his country during

World War II in the U.S. Army 1st Ordnance Division. He was in five major battles including the invasion of Normandy on D-Day and the Battle of the Bulge, and received five Bronze Stars and one Silver Star. This man was a real American hero.

The W.F. Green State Veterans Home was investigated by the U.S. Department of Justice, Civil Rights Division, which outlined its findings in a letter to Alabama Governor Bob Riley dated Dec. 18, 2008. In this letter, Grace Chung Becker, Acting Assistant Attorney General for the U.S., states that "numerous conditions and practices at W.F. Green violate the constitutional and federal statutory rights of its residents." The letter cites particular danger to residents' well-being as a result of "inadequate medical and nursing services assessment, planning and care."

All residents of nursing homes deserve good care, attention and treatment, regardless of where they are located. That is especially true for a facility that has military veterans under its care. This facility failed to live up to the standards required by federal and state law. As a military hero, Mr. Myers deserved the very best of care, attention and treatment at this facility. He clearly failed to get it and that's a shame and a disgrace. I will work with J.P. Sawyer from our firm, along with Buddy Brackin of Brackin, McGriff and Johnson, P.C., in Foley, Alabama, on this case for the family.

LAWSUIT FILED AGAINST FORD MOTOR CO., TRW AUTOMOTIVE, AND MAZDA MOTOR CORPORATION

Our firm has filed a wrongful death lawsuit in the Circuit Court of Jefferson County, Alabama, Bessemer Division. On December 8, 2006, James and Lula Maddox were front seat occupants in a 1993 Ford Escort. A Chrysler PT Cruiser drifted into their lane of travel and hit the couple head-on. Both vehicles were traveling at relatively slow speeds. Both James and Lula Maddox were killed instantly despite the fact that the occupants of the Chrysler PT Cruiser walked away relatively uninjured. Our

investigation into the crash has determined that defects in the design of the seat belt prevented the belt from providing proper restraint and that the belt itself was the cause of the deaths. The poorly designed system could have been improved with an inexpensive routing clip that would have ensured proper belt performance. Chris Glover and Cole Portis from the firm will handle this case.

ANOTHER LAWSUIT FILED AGAINST FORD MOTOR CO. AND TRW AUTOMOTIVE

Our firm has filed a personal injury lawsuit in the Circuit Court of Etowah County, Alabama against Ford Motor Co. and TRW Automotive. On February 11, 2007, Thomas and Gail Huie were returning from a trip to Mississippi with friends. Mr. Huie was the front seat passenger in a 2004 Ford Expedition. The vehicle lost control and rolled over on I-59 in Jefferson County. During the rollover, the seat belt holding Mr. Huie spooled out several inches allowing him to be partially ejected from the vehicle. As a result, he received massive internal abdominal injuries that have left him severely permanently disabled.

Our investigation in this case revealed that Ford Motor Co. and TRW Automotive purposely designed the retractor to spool out in frontal collisions in order to improve crash test results. These government and IIHS crash test numbers have become important tools in marketing the Expedition. While the Defendants' actions were a quick way to improve the results in frontal collisions, this spooling of seat belt webbing is extremely dangerous in a vehicle rollover. It's significant that rollover testing is not conducted on these vehicles. Chris Glover and Ben Baker from the firm will handle this case for Mr. and Mrs. Huie.

BEASLEY ALLEN REPRESENTING STROTHER FAMILY IN TRAGIC CASE

Our firm has filed suit in the Circuit Court for Mobile County, Alabama on

behalf of the family of Michele Strother, who was killed August 6, 2008, when the 1996 Mercury Mountaineer in which she was a passenger went out of control and rolled over on Interstate 65.

While the vehicle was traveling at a normal rate of speed, the right rear tire, manufactured by Firestone, de-treaded. The driver lost control of the vehicle and it rolled over, fatally injuring Michele. The tire was defective by design and Firestone was at fault for failing to warn the public—including Michele Strother and her family—about its defects. The Mercury Mountaineer was defective and unreasonably dangerous, because it was uncontrollable under certain driving conditions, especially in the event of a rear tire de-tread. The vehicle is unstable, with a high propensity to roll over when there is loss of directional control.

This was a horrendous accident that resulted in the loss of life, and it should never have happened. Manufacturers have a responsibility to make sure their products are safe, or at the very least they must warn the public when they know there is serious risk of injury or death involved. Sadly, this crash was a tragedy that could have been avoided. Among the Defendants named in the Complaint are Bridgestone/Firestone North America Tire, LLC, and Ford Motor Company. Greg Allen, Graham Esdale, and I will handle the case for Missy and Joey Strother, Michele's parents.

III. LEGISLATIVE HAPPENINGS

SENATE DEMOCRATS PROPOSE LEGISLATION

The Alabama Senate's Democratic Caucus wants to take \$1 billion from a state savings account and use it to build roads in Alabama. The Caucus unveiled a legislative agenda early in the session that includes a proposed constitutional amendment for road construction. The sponsor, Senator Lowell Barron, says the proposal would remove \$100 million each year for ten years from the

Alabama Trust Fund. Under the legislation, the money for road work would not be repaid. I agree with Senator Barron that the highway spending will stimulate economic growth.

The Senate Democratic Caucus is also proposing more protection for homeowners. One bill would license loan originators. Another would require mortgage companies to give homeowners more notice before foreclosing on a loan. While these bills are a start, much more in this area of concern is needed. The Democrats in the legislature, who have majorities in both the House and Senate, must take the lead in passing constructive legislation in this session.

Source: Associated Press

THE STATE GROCERY TAX SHOULD BE ENDED

With unemployment rising and food prices soaring, Alabama's working families need some relief. A bill is moving through the Legislature that will help and the bill should be passed. The grocery tax bill (House Bill 116) will go to the House floor for a vote and hopefully will have enough support to pass. The bill would lower the grocery tax without reducing funding for education. It would end the four-cent state grocery tax and pay for the reduction by capping the unfair deduction for federal income taxes, which gives huge tax breaks to people at very high incomes. It's quite obvious that our tax system is out of balance and is in need of reform. While this is only a first step, it's an important step. Those who oppose the legislation are simply protecting wealthy citizens who will pay a little more in taxes. Currently, the top 3% of taxpayers get more than half of the benefit from a deduction that costs \$770 million. By ending this tax break for people at high incomes, the grocery tax can be reduced, which in the long run will benefit all Alabamians. In short, Rep. Knight's grocery tax bill will help put things in our state back into balance. If you agree, encourage your House member and Senator to support this legislation.

THE LEGISLATURE SHOULD MAKE GOVERNOR RILEY'S ETHICS LAW PROPOSAL EVEN STRONGER

Governor Riley has asked the Alabama Legislature to approve a stronger state ethics law. In fact, he has asked for a comprehensive rewrite of the existing law. The Governor made the proposal in his State of the State address to the Legislature on the opening night of the Regular Session on February 3rd and a bill has now been introduced in the House.

The ethics law clearly needs to be upgraded and made much stronger. I believe that any changes in the law, however, should definitely include meaningful campaign financing reforms. Until that area is really dealt with, the real problems plaguing State government won't be solved. Hopefully, the legislators will take the Governor's recommendations and come up with a bill that will address all of the existing ethical problems. In fact, it's their job to make what Governor Riley proposed even stronger. My friend, Rep. Mac Gipson, from Prattville, introduced the Governor's bill in the House of Representatives on February 24th. This bill, among other things, would:

- Give subpoena power to the Alabama Ethics Commission.
- Prohibit public officials from accepting meals over \$50 and gifts valued at over \$25 from lobbyists and others interested in government action.
- Require the registration of lobbyists who lobby the Executive Branch.
- Cap what lobbyists can spend on a public official's meal to \$50 or an aggregate value of \$200 from any one source during a calendar year.
- Prohibit public servants from accepting gifts or any thing of value over \$25 from lobbyists, state contractors, and others interested in government action.
- Require lobbyists to report all spending and financial transactions with public officials.

In addition to this bill, there are

several other pieces of ethics legislation before the Legislature this year. They include bills to require the registration of executive branch lobbyists, give the commission subpoena power, make it easier for the commission to initiate investigations and require more detail on economic disclosure forms filed by public officials. This Legislature has an opportunity to pass legislation that will cover all of the problem areas. Passing an incomplete package that fails to attack the real problems, however, would be a mistake. Hopefully, this will be the year when ethical behavior is made a real priority in the Alabama Legislature. If so, the citizens of our State will be the winners.

Source: Associated Press

THE INMATE WARNING BILL

Another important bill was introduced by Rep. Mac Gipson in the regular session. That bill, if passed, will require the Board of Corrections to warn the media and local law enforcement when an inmate escapes from an Alabama prison. A House Committee has already given a favorable report to the bill. It has gone to the full House for a vote. My brother Billy plans to help Mac get this bill through the House. In my opinion, this legislation should be passed.

ALABAMA LAWMAKERS BACK DRIVER TEXTING BAN

Most members of the Alabama Legislature favor passing legislation to ban text messaging while driving. In an Associated Press survey of lawmakers, 81% of House members responding said they would support such a ban, while just 1% was opposed. Eighteen percent said they were undecided. In the Senate, 77% of respondents said they would support the bill, while 10% were opposed with 13% undecided. State Rep. Jim McClendon observed:

If you're going to text message, you've got to take your eyes off the road and one or both hands

off the steering wheel. It's the worst form of distraction there is.

According to the Insurance Institute for Highway Safety, seven states—California, Alaska, Connecticut, Louisiana, Minnesota, New Jersey, Washington—plus the District of Columbia, ban sending text messages while driving. In Louisiana and Washington, sending text messages is only a secondary traffic violation, which means a driver must be stopped for breaking a different traffic law before he or she can be given a ticket for text messaging. At least nine other states ban text messaging for some teenage or novice drivers.

Rep. McClendon is introducing a bill that would make it illegal to send a text message while operating a vehicle. For the first offense, the driver would receive a \$25 fine, and it would go to \$50 for the second offense and \$75 for the third. Drivers would be assessed points against their driving record and could have their driver's license suspended after a fourth violation. At press time, the bill had already been reported out of a House committee.

Rep. McClendon, who serves as chairman of the Alabama Safety Coordinating Committee, has worked hard in his efforts to improve highway safety. He has introduced a number of safety-related bills. In fact, he introduced a similar bill two years ago that would have made it a violation for people under 18 to drive and use a cell phone at the same time. That bill died after being debated for several hours on the House floor, with some lawmakers complaining it should apply to everybody and not just teenagers. The proposed legislation is supported by officials at the Alabama Traffic Safety Center at the University of Montevallo.

Source: Associated Press

A BILL THAT WOULD ALLOW EARLY VOTING IS BEING CONSIDERED

The House Constitution and Elections Committee has already approved a bill that would allow early voting in Alabama by way of absentee ballots. Rep. Oliver Robinson, D-Birmingham, is the bill's sponsor. The bill would allow

any qualified voter to vote early by casting an absentee ballot even if they will be in town on Election Day. Thirty-one states offer some sort of early voting, according to the National Conference of State Legislatures. Currently, Alabama voters can only vote by absentee if they attest that they will be out of town on Election Day, are too ill to go to the polls or give another accepted reason. Rep. Robinson's bill would remove those conditions from the law and allow any voter to send in an absentee ballot to vote early. I haven't read this bill, but I am for early voting in some fashion. Obviously, the use of absentee ballots would be cheaper. If done properly, it should work well.

Source: Birmingham News

CONSTITUTION CONVENTION PROPOSAL INTRODUCED

A Joint Resolution to Let the People Vote on calling a Constitution Convention to rewrite the 1901 Alabama Constitution, has been introduced by Speaker Pro Tem Demetrius Newton in the House of Representatives and by Senator Ted Little in the Alabama Senate. Going with a resolution rather than a bill is a new approach. It will give the people the right to decide whether a constitution convention would be called. The resolution provides three opportunities for the people to vote:

- June, 2010—Voters would vote on the call for a constitution convention during the gubernatorial state primary.
- November, 2010—Voters would elect delegates during the general election.
- November, 2012—Voters would vote on the convention's proposals during the presidential election.

Specific restrictions on lobbyists are included in the resolution. Delegates would be prohibited from receiving a thing of value, including in-kind, related to their duties as a delegate to the constitution convention. Lobbyists would have to report expenditures by them-

selves or a relative for lobbying activities every two weeks beginning after the convention call vote occurs in June, 2010, and continuing through the final vote in November, 2012, on the convention proposals. The following are key provisions:

- If a Joint Resolution is passed in this legislative session, ACCR will have approximately one year for education and organization, to prepare for the vote on the convention question that will occur at the June, 20, 2010, Gubernatorial Primary.
- Delegate elections in November, 2010, would elect two delegates from each State Legislative House District based on the two highest vote recipients in each House District regardless of gender.
- The compensation for delegates to the convention will be equal to the amount that is paid in compensation and monthly expenses to the members of the Legislature.
- Three potential votes, the call for a convention, delegate election, and ratification vote will happen on scheduled statewide election dates without any additional costs to the Alabama taxpayers.
- Convention officers would be elected from the elected delegates to the convention.

While this resolution will face special interest opposition, making passage difficult, it may have a chance for passage. The resolution has more co-sponsors this time than on previous occasions. It's hard to argue against a new Constitution and even harder to oppose allowing the people of Alabama to vote.

ALABAMA SILVER-HAIRED LEGISLATURE HAS A LEGISLATIVE PROGRAM

Some folks believe that the Alabama Silver-haired Legislature would do a good job if they were the "elected legislature." In any event, they are not. However, there are a number of bills of interest to seniors that are supported by the group. They want the bills to be

considered in the current session of the Legislature. The following are some of the bills that have been endorsed by the seniors' group:

- Long-term care improvements are needed. A bill will be introduced prohibiting the canceling of or increasing the premium on long-term care insurance policies.
- A bill will be introduced making mobility enhancing equipment and handicapped equipment exempt from all sales taxes.
- A bill making Medicaid cover treatment of certain women diagnosed with breast or cervical cancer by any health care provider will be introduced.
- A bill will be introduced prohibiting healthcare providers from charging uninsured individuals more than Medicare would pay for the same type healthcare service.
- A bill prohibiting annual increase in ad valorem taxes if the owner is the same as for previous valuation will be introduced.
- A bill that would cause the income limit for the homestead exemption for the disabled and the aged to be increased from \$7,500 to \$15,000 will be introduced.
- The homestead exemption would be adjusted annually based on Gross National Product if a bill to be introduced passes.
- A bill to increase the current homestead exemption of \$4,000 to \$4,250 will be presented.
- A bill will be introduced to change the reappraisal of property to no more often than every four years.
- Extending the prohibition on parking in handicapped parking places to apply to any public or private property will be the subject of another bill to be introduced.

There are a number of other statewide issues of concern to senior citizens and which are also endorsed by the seniors' group:

- **Transportation**—The creation of a Transportation Commission, consisting of five members, which would appoint the Director of Transportation.
- **Identify theft—Social Security numbers**—Legislation is backed requiring Judges of Probate to redact Social Security numbers from certain records available in electronic format and published on the Internet. Social Security numbers wouldn't be published on records in probate offices.
- **Tax Issues**—The following tax-related items are back: Eliminating the federal income tax deduction from Alabama gross income; decreasing state sales tax on food; and exempting retirement income from defined contribution plans.
- **Arbitration**—Relief from mandatory, binding, arbitration, which is forced on consumers, is needed. There should be some arbitration agreements that are unenforceable in certain circumstances. Parties should be allowed to voluntarily choose arbitration, but shouldn't be forced to accept arbitration in consumer disputes.

It will be interesting to see how many of these legislative issues will actually be dealt with during this session of the Legislature and how many of the recommended bills will pass. There are a number of other areas of concern that the seniors' group took a position on. If you want more information, e-mail them at: AlabamaSHL@aol.com.

Source: *Senior Bill Report*, February 2009

ALABAMA'S COCKFIGHTING LAW RATED NATION'S WEAKEST

The Humane Society of the United States rates Alabama's cockfighting law as the weakest in the Nation. Two state lawmakers are setting out to change that in the legislative session that is now underway. The current law is a misdemeanor punishable by a fine of \$25 to \$50. Senator Hinton Mitchem and Rep. Cam Ward, in a bipartisan effort, introduced bills in the Senate

and House respectively that would make cockfighting a felony punishable by one to ten years in prison. Mindy Gilbert, the state director of the Humane Society of the United States, believes it's time to make the consequences of cockfighting greater than the financial gains that come from breaking the law. I totally agree with Ms. Gilbert and hope the legislation will pass.

Source: *Associated Press*

IV. COURT WATCH

AMERICAN BAR PRESIDENT BELIEVES ELECTING JUDGES IS A POOR SYSTEM

Tommy Wells, who is currently serving as president of the American Bar Association, believes there are better ways to select judges than through elections. Tommy points to the costly Alabama Supreme Court race last year to make his point. The ABA president, who is from Birmingham, Alabama, told a group in his hometown recently that “highly partisan and expensive races impair the public’s faith in judges to rule fairly once they are elected.” The remarks were made in a debate sponsored by the Birmingham lawyers chapter of The Federalist Society.

While I believe our current system is badly in need of repair, I still favor electing judges. But there must be changes in how judicial campaigns are financed and the large sums of money injected into the races and the funding of races by third-party groups must be curtailed. Campaign finance reform—rather than appointing judges—would solve the problems in judicial races and that should be a priority in all state legislative bodies this year, including Alabama.

FEDERAL APPEALS COURT DEALS BLOW TO CLASS-ARBITRATION WAIVERS

Consumers won a major victory when a federal appeals court held that arbitration clauses may be struck

down—under state law—as unconscionable if they prohibit the use of the class action vehicle in cases where a large number of consumers have claims that would individually yield only small sums. The 3rd U.S. Circuit Court of Appeals revived a suit against American Express after finding that a lower court improperly dismissed the suit on the grounds that the consumers were barred from suing in court or as a class and instead were required to bring individual claims before arbitrators. This is a major victory for consumers. The decision clarified an important area of 3rd Circuit law by underscoring the power of state courts to reject arbitration and anti-class action provisions they deem unconscionable. Hopefully, this is the beginning of more good judicial decisions dealing with arbitration.

Source: *Law.com*

COURT SAYS VACCINE NOT TO BLAME FOR AUTISM

A special court has ruled against three families seeking compensation from the federal vaccine-injury fund. Both sides in the debate have been awaiting decisions in these test cases since hearings began in 2007. This was a blow to the movement arguing that vaccines lead to autism. More than 5,000 similar claims have been filed. In the three cases, each decided by a special master, the court found that the families had not shown that their children’s autism was brought on by substances in the vaccines—either the measles virus in the measles, mumps and rubella (M.M.R.) vaccine, or its combination with thimerosal, a mercury-based preservative that was used in most childhood vaccines until 2001.

In a case brought by the family of Michelle Cedillo, a child with severe autism, against the Department of Health and Human Services, the judge ruled that the Cedillos had “failed to demonstrate that thimerosal-containing vaccines can contribute to causing immune dysfunction, or that the M.M.R. vaccine can contribute to causing either autism or gastrointesti-

nal dysfunction.” In his decision, the special master ruled that the government’s expert witnesses were “far better qualified, far more experienced and far more persuasive” than those testifying for the Cedillos. Although the family had to show only that the preponderance of evidence was on their side, the judge ruled that the evidence was “overwhelmingly contrary” to their argument. While expressing “deep sympathy and admiration” for the family, he ruled that they had been “misled by physicians who are guilty, in my view, of gross medical misjudgment.” The other two special masters rendered similar decisions in cases involving two other children. The judges considered 5,000 pages of testimony from experts and 939 medical articles. Lawyers for the Plaintiffs will appeal.

Autism Speaks, which finances research and has sharp divisions among founding members on the vaccine question, said the rulings “do not mitigate the need for further scientific investigation.” The fund was created in 1988 to compensate children hurt by vaccines without the need for lawsuits against vaccine makers. A tax on all vaccines goes into the fund. Many experts believe that in rare cases, vaccines can cause shock, brain inflammation and death, especially in children with allergies or compromised immune systems. While the law recognizes specified side effects for each vaccine, autism is not among them. It allows parents to make claims for other side effects, but sets specific criteria they must meet to show blame.

Source: *New York Times*

V. THE NATIONAL SCENE

KBR’S NEGLIGENCE CAUSED SOLDIER’S ELECTROCUTION

We have written about the electrocution deaths of U.S. Military personnel in Iraq in previous issues. An Army investigation has called the electrocution

death of a U.S. soldier in Iraq a “negligent homicide” caused by military contractor KBR Inc. and two of its supervisors. The *Associated Press* obtained copies of documents that reveal how Staff Sgt. Ryan Maseth was killed. According to an Army criminal investigator, the death of Sgt. Maseth was changed from “accidental” to “negligent homicide.” This was because the contractor failed to ensure that “qualified electricians and plumbers” worked on the barracks where Sgt. Maseth died, according to the *Associated Press*.

Sgt. Maseth, a Green Beret assigned to the 5th Special Forces Group at Fort Campbell, Kentucky, died of cardiac arrest on Jan. 2, 2008. He was electrocuted while taking a shower in his barracks in Baghdad. The document obtained by the AP, dated December 16th, said the case was under legal review at the Army’s Criminal Investigation Command headquarters at Fort Belvoir, Virginia. The Army’s investigation is not over and hopefully will result in wrongdoers being brought to justice. Last year, Sgt. Maseth’s parents filed a wrongful death lawsuit in a U.S. Court against KBR. The suit alleges that KBR allowed U.S. troops to continue using electrical systems “which KBR knew to be dangerous and knew had caused prior instances of electrocution.”

Sgt. Maseth’s mother, Cheryl Harris, has testified on Capitol Hill about electrical problems in military facilities. Since her testimony, the Army has made changes such as creating an electrical code for U.S. facilities in Iraq. At least 18 deaths of U.S. service members and contractors have been under investigation as possible electrocutions. KBR was previously owned by Halliburton Co., the oil services conglomerate that former Vice President Dick Cheney once led. For a long time, Congressional Democrats have been complaining that KBR has benefited from its ties to Cheney. While that may not be entirely true, KBR and Halliburton surely have done well financially in Iraq over the past eight years. It might just be a coincidence.

Source: *Associated Press*

AMERICAN SAILOR ELECTROCUTED IN SHOWER

In another tragic and inexcusable occurrence, a third U.S. service member has been determined to have been electrocuted in a shower in Iraq. Navy Petty Officer 3rd Class David A. Cedergren died on September 11, 2004, while showering. Sadly, his family was told that he died of natural causes. Late last year, the Armed Forces Institute of Pathology changed the manner of the sailor’s death to “accidental,” caused by electrocution and inflammation of the heart. A Naval Criminal Investigative Service spokesman told the *Associated Press* his agency is investigating the matter. Cedergren’s death is also part of a review by the Pentagon’s Inspector General. More will be written on this matter as information is uncovered.

Source: *Associated Press*

KBR GETS ANOTHER GOVERNMENT CONTRACT DESPITE ELECTROCUTIONS

With all of its reported problems, it’s difficult to justify KBR Inc. getting another large contract in Iraq. The fact that the company is under criminal investigation in the electrocution deaths of military personnel in Iraq should have been considered. KBR was awarded a \$35 million contract by the Pentagon to build—of all things—an electrical distribution center and other projects. The Pentagon, in strongly-worded correspondence obtained by *The Associated Press*, rejected the company’s explanation of serious mistakes in Iraq and its proposed improvements. A senior Pentagon official, David J. Graff, cited the company’s “continuing quality deficiencies” and said KBR executives were “not sufficiently in touch with the urgency or realities of what was actually occurring on the ground.”

According to the Corps of Engineers, KBR has earned \$615 million on 30 contracts similar to the newest awarded to the company. The Corps noted that KBR has not been banned or suspended from winning U.S. govern-

ment contracts. The government can ban firms in cases of fraud, antitrust violations, bribery, tax evasion or for actions that reflect “a lack of business integrity or business honesty,” according to federal rules. Obviously, KBR has not been debarred, suspended, nor has it been proposed for debarment from government contracting. Nevertheless, I don’t believe KBR should have been awarded the latest contract because of the very serious problems involving the politically connected company mentioned above.

Source: *Associated Press*

STATE DEPARTMENT FIRES BLACKWATER

Blackwater Worldwide has been fired by the State Department from its job protecting U.S. diplomats in Iraq. Executives of the controversial U.S. security company were notified by the State Department that its five-year contract for services in Iraq at a cost of \$1.2 billion will not be renewed in May. The contract provides yearly options for cancellations. The State Department’s action follows the refusal of Iraqi officials to license Blackwater to operate in the country. The “lingering outrage” over the September 2007 shooting by Blackwater guards that left 17 civilians dead were cited by U.S. officials as leading to the firing.

As expected, the shooting strained relations between Washington and Baghdad and fueled the anti-American insurgency in Iraq, where many Iraqis saw the senseless killings as a demonstration of American brutality and arrogance. But five former Blackwater guards have pleaded not guilty to federal charges that include 14 counts of manslaughter and 20 counts of attempted manslaughter. No charges were brought against the corporation. The new U.S.-Iraq security agreement gives Iraq the authority to regulate private security companies operating in the country. Most American citizens don’t understand all that has gone on in Iraq during this long and expensive war.

Gross misconduct by contracting companies, like Blackwater, in Iraq can’t be tolerated. The State Depart-

ment's decision not to renew Blackwater's contract in Iraq is a dramatic departure from the previous Administration and in my opinion, was proper. Instead of overriding the Iraqi government's decision to deny Blackwater a license to operate, the Obama Administration respected the sovereignty of the Iraqi government and refused to renew Blackwater's contract. Interestingly, Blackwater has changed its name in an effort to polish its tarnished image. It will now be known as "Xe." Hopefully, there will be more changes at this outfit than in name only.

Source: *ABC News*

ARMY SUICIDES AT THREE-DECADE HIGH

Suicides among Army troops are at a nearly three-decade high and that should be of concern to all of us. The numbers increased greatly last year. It appears that at least 128 soldiers killed themselves in 2008. The final count likely will be considerably higher because more than a dozen other suspicious deaths are still being investigated and could also turn out to be self-inflicted.

The new figure of more than 128 compares to 115 in 2007 and 102 in 2006—and is the highest since record keeping began in 1980. This means that 20.2 per 100,000 soldiers—which is higher than the adjusted civilian rate for the first time since the Vietnam War—committed suicide last year. The repeated and long tours of duty, due to the simultaneous wars in Iraq and Afghanistan, have put our troops under tremendous and unprecedented stress. I am not sure how the suicide numbers break out between regular and National Guard troops.

It should be noted that the numbers kept by the service branches don't show the whole picture of war-related suicides because they don't include deaths after people have left the military. The Department of Veterans Affairs tracks those numbers and says there were 144 suicides among the nearly 500,000 service members who left the military from 2002-2005 after fighting in at least one of the two ongoing wars.

The true incidence of suicide among veterans is not known, according to a report last year by the Congressional Research Service. Based on numbers from the Centers for Disease Control and Prevention, the VA estimates that 18 veterans a day—or 6,500 a year—take their own lives, but that number includes veterans from all previous wars. Hopefully, the Obama Administration will take a hard look at this problem and take all necessary corrective action.

Source: *Associated Press*

EXXONMOBIL SHOCKS THE NATION AGAIN

ExxonMobil has reported a profit of \$45.2 billion for 2008, breaking its own record for full-year earnings by a U.S. company. The previous record for annual profit was \$40.6 billion, which ExxonMobil set in 2007. With millions of American citizens having great difficulty paying their bills and with tens of thousands losing their jobs, this giant oil company is doing very well. Something just doesn't seem right about this story.

BONUSES FOR THE BAD GUYS

It's been widely reported that Wall Street bankers paid themselves over \$18 billion in bonuses in 2008. These bonuses went to the very people who appear to have been largely responsible for crippling our economy with their greed, arrogance, and recklessness. Did they receive any type punishment? No—instead the Barons of Wall Street were actually rewarded by the Bush Administration giving them \$350 billion last year and that does not include loans. Hopefully, the Obama Administration will make sure the remaining \$350 billion has conditions attached that will put a stop to this sort of thing. It's quite apparent that the Barons of high finance haven't learned their lesson and it's high time for them to do so.

ESTIMATE FOR COST OF BANK FAILURES IS OVER \$40 BILLION

According to an official with the Federal Deposit Insurance Corp., bank failures in the United States will cost the deposit insurance fund more than \$40 billion over the next four years. It appears that the FDIC's estimate last fall of \$40 billion in losses through 2013 most likely will be surpassed. FDIC Chief Operating Officer John Bovenzi told a House of Representatives hearing that Congress should more than triple the agency's line of credit with the Treasury Department to \$100 billion from the current \$30 billion. He says such an increase would ensure "that the public has no confusion or doubt about the government's commitment to insured depositors." While this is a tremendous increase in the FDIC's line of credit, it may well be needed.

Source: *Associated Press*

FIRST TRIAL DATES SET FOR FEMA TRAILER SUITS

A federal judge has scheduled the first four trials for the lawsuits filed on behalf of hurricane victims who were exposed to potentially toxic fumes while living in government-issued trailers. The order by U.S. District Judge Kurt Engelhardt says cases against Gulf Stream, Fleetwood, Forest River and Keystone RV will be the first to be tried. The federal government will be a Defendant in each case. The first of four trials is tentatively scheduled to start September 14th. The next three are scheduled to start in October, December and January.

Hundreds of residents of Louisiana, Mississippi, Texas and Alabama who were displaced by hurricanes Katrina and Rita in 2005 have sued the government and the companies that furnished the Federal Emergency Management Agency with tens of thousands of trailers after the storms. It has been widely reported that government tests found elevated levels of formaldehyde in many FEMA trailers. Formaldehyde, a preservative commonly found in con-

struction materials, can cause breathing problems and is classified as a carcinogen. In December, Judge Engelhardt refused to grant class action status to trailer dwellers' lawsuits, requiring each person's claim to be tried individually. The judge also has ruled that the federal government isn't entitled to immunity from the suits.

The persons who will be Plaintiffs for the first four trials haven't been named. Judge Engelhardt directed lawyers on both sides of the case to pick four Plaintiffs from a pool of at least 50 persons. The Plaintiffs from the first four cases, according to the Associated Press, will most likely be limited to residents of southeastern Louisiana.

Source: Associated Press

VI. THE CORPORATE WORLD

UPDATED REPORT HIGHLIGHTS FAILURE OF REGIONS MORGAN KEEGAN BOND FUNDS

The Securities Litigation and Consulting Group, Inc. (SLCG) has issued an updated report on six Regions Morgan Keegan (RMK) bond funds: Advantage Income Fund (RMA), High Income Fund (RMH), Strategic Income Fund (RSF), Multi-Sector High Income Fund (RHY), Select High Income Fund (MKHIX) and Select Intermediate Bond Fund (MKIBX).

The SLCG report explains how the RMK funds collectively lost \$2 billion in 2007 because of their concentrated holdings of low-priority tranches in structured finance deals backed by risky debt including subprime mortgages and credit default swaps. The study concludes that losses suffered by investors in these funds were not the result of a "flight to quality" or a "mortgage meltdown."

The study shows that RMK misrepresented hundreds of millions of dollars of illiquid asset-backed securities in its SEC filings as corporate bonds and preferred stocks thereby making the funds seem more diversified and less risky

than they were. The study also illustrates how, contrary to Securities and Exchange Commission guidance, RMK repeatedly compared the performance of its funds to an index—the Lehman Brothers Ba Index—that contained only corporate bonds and no structured finance securities despite the fact that the funds invested 60% to 70% of their portfolios in structured finance. In addition, the study reports that Morgan Keegan—the broker-dealer—misled investors by comparing the performance of the Select High Income Fund to the CSFB High Yield Index which, like the Lehman Brothers index, contained none of the securities that dominated the RMK fund's portfolio.

Many of the RMK Bond Fund investors lost a substantial portion of their life savings. Our firm represents a number of investors who have suffered significant losses. Jay Aughtman and Scarlett Tuley are the lawyers from our firm who are handling claims on behalf of defrauded investors.

GEN RE TO PAY \$72 MILLION FOR FINITE REINSURANCE TRANSACTION

General Re Corp., the reinsurance unit of Berkshire Hathaway Inc., has agreed to pay \$72 million to settle investor claims about its role in a fraudulent transaction involving American International Group Inc. The settlement was announced last month by Ohio Attorney General Richard Cordray, who filed the lawsuit on behalf of three Ohio pension funds. The settlement requires approval by a federal judge in Manhattan.

The case centered on a so-called finite reinsurance transaction with General Re that allowed AIG to improperly boost its loss reserves by \$500 million in 2000 and 2001, smoothing and improving results. Attorney General Cordray said in a statement:

When the truth about this fraud and other AIG manipulations was made public, the price of AIG stock declined. Investors, including Ohio's pension funds, had been deceived and suffered significant financial losses.

The pension fund Plaintiffs included the Ohio Public Employees Retirement System, the State Teachers Retirement System and the Ohio Police and Fire Pension Fund. Four former General Re executives, including onetime chief executive Ronald Ferguson, and a former AIG vice president were convicted last February in federal court in Hartford, Connecticut, over the reinsurance transaction. In 2006, AIG paid \$1.6 billion to settle civil charges brought by the New York Attorney General's office, in connection with the case.

Source: Reuters and Insurance Journal

CORPORATE CORRUPTION IS AT AN ALL TIME HIGH

We have witnessed a great deal of corruption in both government and in the private sector over the years. Corruption in the corporate board rooms of America is now at an all time high. It's been well documented that much of the corruption is aided and abetted by powerful corporate lobbyists. Lobbying and bribery—when it comes to dealing with public officials—are thought by some to be closely related. On occasion, I will admit it's very hard to draw the line between legitimate issue advocacy and outright corruption. Much of the attention on this subject has to be focused on the influence of lobbyists both in Congress and in influencing the various governmental regulatory agencies in Washington.

The laws regulating lobbying—both at the national and state levels—are so lax that lobbyists can come very close to bribing public officials with no fear of even being accused of violating any laws. The goal of lobbyists is to make government officials depend on them for financing and support in elections and the funneling of money into campaigns is done within the laws presently on the books which are very weak. I suggest you read a book by former Secretary of Labor Robert Reich, now a professor at the University of California at Berkeley, entitled Creative Capitalism. In the book Reich argues that the only thing corporations can do to make life better for the

people around them is to “refrain from flooding Washington and any other seat of government with so many lobbyists and campaign contributions so as to stymie democracy.” Over the past several years, K-Street lobbyists have more power and influence over what happens in our Nation’s Capitol than most folks could ever imagine.

Bribery is easily regulated because we all know it’s a crime. In such instances, somebody is trying to break a rule. But getting existing rules changed, on the other hand, is accepted as part of the democratic system. Most of the time ordinary citizens have no concept of who all is lobbying in our Nation’s Capitol. Even if they know about them, few people have any idea what the object of their lobbying really is. Feelings about lobbyists generally depend on who they’re lobbying for and how visible they are. The lobbying industry in Washington has been labeled the fourth branch of government and that’s generally bad news for ordinary folks.

The only way to remove lobbyists and their corruptive influence is for powerful corporations and interest groups to voluntarily disarm and for people to get support for their own causes. Since people are not in Washington and have little contact with their elected representatives, getting anything done is most difficult. The only other alternative is to elect and appoint people who are entirely incorruptible and thus free from the undue influence of powerful lobbyists. Since none of this is likely to ever happen, we will have to live with the lobbyists and do our best to control them. Hopefully, the Obama Administration will be able to at least curtail the power of lobbyists in Washington. The President was elected by real people and that’s why I have to be encouraged about the prospects of his being free of special interest control.

Source: *Forbes.com*

MORE CORPORATE CRIME PROSECUTIONS ARE ON THE WAY

It is very likely that more corporate crime prosecutions are on the way. In a

Corporate Crime Reporter survey of more than 200 of leaders of the American Bar Association’s White Collar Crime Committee, the findings in that direction were almost unanimous. Clearly, the public is demanding accountability, which should result in increased enforcement. According to the survey findings, the emphasis will be in the financial services sector. In my opinion, corporate criminals should pay for their wrongdoing.

Associated Press and *MSNBC* reported last month that the FBI is conducting more than 500 investigations of corporate fraud, many linked to the financial meltdown. FBI Deputy Director John Pistole told the Senate Judiciary Committee on February 10th that investigators are tackling an even bigger mountain of mortgage fraud cases in which hundreds of millions of dollars may have been swindled from the system. According to Director Pistole, there are 530 active corporate fraud investigations. He said 38 involve some of the biggest names in corporate finance in cases directly related to the current economic crisis. Additionally, the FBI has more than 1,800 mortgage fraud investigations, more than double the number of such cases just two years ago.

Interestingly, Deputy Director Pistole says the bureau is focusing on industry professionals generating fraud schemes that could total as much as hundreds of millions of dollars. Lawyers, brokers or real estate professionals who are “systematically trying to defraud the system” are apparently being targeted. It appears that the FBI and the Justice Department are dead serious about these investigations. Anybody who violated the law should be investigated and prosecuted—making an example of professionals who were either directly involved in wrongdoing or aided and abetted wrongdoers. That would deter others from doing the same sort of thing in the future.

Source: *Corporate Crime Reporter*, *Associated Press* and *MSNBC*

KBR PLEADS GUILTY TO FOREIGN BRIBERY

Kellogg Brown & Root LLC (KBR), the global engineering, construction and services company based in Houston, has pled guilty to charges related to the Foreign Corrupt Practices Act (FCPA). This episode arose out of KBR’s participation in a decade-long scheme to bribe Nigerian government officials to obtain engineering, procurement and construction contracts. The company will pay a \$402 million fine and will be sentenced to “corporate probation.” As a condition of probation, KBR will accept a corporate monitor who will report back to the Justice Department.

Source: *Corporate Crime Reporter*

MERRILL LYNCH FINED BY THE SEC

Merrill Lynch has agreed to pay a \$1 million civil fine in a settlement with federal regulators. The company was accused of misleading pension consulting clients and failing to disclose conflicts of interest in recommending the use of its affiliated services. The Securities and Exchange Commission said the violations occurred from 2002 through 2005. Merrill, which was acquired by Bank of America in January, did agree to be censured and to refrain from future violations of the securities laws.

The SEC said Merrill failed to disclose conflicts of interest when recommending that clients direct their money managers to execute trades through the brokerage firm. Merrill claims the events leading to the settlement mainly involved a team of investment advisers in Florida who have since left the firm. It appears that Merrill got off pretty light in this settlement. Our firm is handling claims against Merrill Lynch. If you want additional information on this subject, contact Jay Aughtman (Jay.Aughtman@BeasleyAllen.com) or Scarlett Tuley (Scarlette.Tuley@BeasleyAllen.com) in our firm at 800-898-2034.

Source: *Associated Press*

TVA CONTRACTOR SETTLES FRAUD CASE

A Tennessee Valley Authority contractor, Stone & Webster Construction Inc.,

has agreed to pay the federal government \$6.2 million to end a contract fraud investigation related to work at TVA nuclear plants in East Tennessee and Alabama. The U.S. Attorney's office in Knoxville said in a release that the settlement resulted from a "comprehensive, ongoing parallel criminal and civil investigation" started by TVA in 2004. A search warrant was executed in 2006 on Stone & Webster's premises at the Browns Ferry nuclear site in north Alabama. A subsidiary of The Shaw Group, Stone & Webster has a ten-year, \$1 billion-plus contract with TVA, the nation's largest public utility.

The government alleged that to support claims for safety-related performance fees from 2003 through 2006, the contractor provided false reports to TVA that "misclassified and understated the number and severity of employee injuries." In addition to the \$6.2 million, Stone & Webster has agreed to have the TVA Office of Inspector General monitor its future services. While the settlement resolves allegations against the contractor, the U.S. Attorney's office and the TVA inspector general "continue to investigate individuals involved in the matter." Also, Stone & Webster continues to be an approved contractor for TVA and apparently has other work ongoing with the government. As most of our readers will know, TVA provides electricity to distributors serving nearly 9 million people in Tennessee and parts of Mississippi, Alabama, Kentucky, Georgia, North Carolina and Virginia.

Source: *Associated Press*

CLASS ACTION LAWSUIT IS FILED AGAINST TRIAD GUARANTY

A class action lawsuit has been filed against Triad Guaranty Inc. and its current and former top executive by stockholders claiming that the officials violated federal securities laws. The lawsuit was filed on behalf of an individual Plaintiff, James Phillips, in the U.S. District Court for the Middle District of North Carolina. Stockholders affected are those who bought the common stock of Triad from October

26, 2006, when the share price was \$53.27, through November 10, 2008, when the share price was 88 cents. The company, Mark Tonnesen, its former chief executive and president, and Ken Jones, its current chief executive and president, also were named as Defendants in the lawsuit. The lawsuit alleges:

- that Triad issued "materially false statements concerning the company's business and financial results" in quarterly earnings reports and other statements
- that those comments led stockholders to buy the company's common stock "at prices that were artificially inflated"
- that the Defendants failed to disclose that Triad was not adequately accounting for loss reserves in violation of generally accepted accounting principles, causing its financial results to be materially misstated
- that Triad failed to use proper underwriting practices for its insurance written in 2006 and 2007, including the insurance related to its Alt-A and pay-option adjustable-rate mortgage products
- that Triad had "far greater exposure to anticipated losses and defaults related to insurance written in 2006 and 2007 than it had disclosed."

Triad Guaranty, which has been hit hard by the sharp rise in delinquencies and foreclosures, has cut at least 40% of its work force, or 100 jobs. It should be noted that the company discontinued writing new mortgage-insurance business in July. It will be interesting to see how this lawsuit develops.

Source: *JournalNow.com*

APPRAISALS ARE THE SUBJECT OF FEDERAL LAWSUITS

Lawsuits have been filed in federal courts in Phoenix and Seattle, respectively, which accuse the nation's two biggest mortgage lenders of using their industry influence to twist the independent home-appraisal process into a corrupt moneymaking scheme. Each

lawsuit is requesting class action status. It's alleged in the Phoenix lawsuit that Wells Fargo used an affiliated management company to force appraisers into doing the lender's bidding. The Seattle lawsuit makes similar allegations about Countrywide, which is now a wholly owned subsidiary of Bank of America.

The lenders are accused in the lawsuits of violating the Real Estate Settlement Procedures Act, which protects consumers involved in real estate transactions, and the Racketeering and Corrupt Policies Act. The Wells Fargo lawsuit names Valuation Information Technology LLC, also called Rels Valuation, the bank's designated appraisal management company, as a Defendant. In the Countrywide suit, its appraisal management company, LandSafe, is named as a Defendant.

An appraisal management company arranges with third-party appraisal firms to appraise each property involved in a new or refinanced mortgage loan. It's alleged in both lawsuits that those companies drove down the price of appraisals by threatening to "blacklist" appraisers who didn't agree to the lower fees, but continued to charge the bank's customers a higher rate. The firms are also accused of threatening to "blacklist" appraisers who did not provide whatever appraisal amount the banks were seeking for each home. If the proof in these cases backs up the Complaints' allegations, the Defendants are in trouble. Robert Carey, a lawyer with Hagens, Berman, Sobol, Shapiro, is representing the Plaintiff in the Phoenix case. Steve Berman, a lawyer with the same firm, is handling the Seattle litigation.

Source: *Associated Press*

VII. CONGRESSIONAL UPDATE

WORKING TO SAVE OUR NATION'S ECONOMY

Nobody can seriously dispute that President Obama and this Congress inherited a real mess from the Bush

Administration. The only question is—how bad is it? Nevertheless, Congress is working hard—at least the Democrats are—to right what was a sinking ship. The President has presented his plans and most have been passed by a divided Congress. The GOP leadership needs to forget the 2010 elections and start helping the President get his programs passed. The future of our Nation depends on it!

CAMPAIGN FINANCE REFORM

There is little to report on campaign finance reform this month. All of the problems left by the Bush Administration are consuming the attention of both the President and Congress at present. Hopefully, this needed reform will get on track in the not-too-distant future.

THE ARBITRATION FAIRNESS ACT OF 2009

Rep. Henry Johnson has introduced the Arbitration Fairness Act of 2009 in the U.S. House of Representatives. The legislation would prohibit the enforcement of binding mandatory arbitration clauses in consumer, employment, and franchisee contracts. We have seen the Constitutional right of a jury trial being taken away from American citizens. Guaranteed by the Constitution, this right has been gradually eroded because of the use of mandatory, binding arbitration. Once used as a method for businesses to solve their disputes, arbitration agreements have now found their way into employment, consumer, franchise, and medical contracts.

The Federal Arbitration Act (FAA) was enacted as an alternative to resolve disputes between businesses on equal footing. Today, arbitration is being forced on consumers. Citing it as a cheaper, informal, expedited process, these contracts of adhesion leave consumers, employees, and small businesses at a distinct disadvantage. This legislation would return the FAA to its original intention and take out consumer, medical, franchise, and employment agreements from these

pre-dispute agreements. Mandatory, binding arbitration gives only one side the upper hand and that is totally unfair. The Arbitration Fairness Act (AFA) would allow voluntary arbitration while preserving the right to trial by jury. The bill would prohibit a powerful corporation from forcing a consumer into a rigged mandatory arbitration system.

VIII. PRODUCT LIABILITY UPDATE

OUR FIRM IS HANDLING YAMAHA RHINO LITIGATION

Our firm continues to handle civil cases against Yamaha involving the Rhino ATV because of the dangerous propensity of the vehicle to roll over and injure occupants. In our handling of these cases, we have learned through discovery efforts that the principal engineers at Yamaha were well aware that the Rhino could tip, roll over, and cause serious injuries. Since the Yamaha Rhinos entered the United States market in 2003, over 100,000 have been sold. The Rhino has a narrow track width and a high center of gravity, which decreases the vehicle's stability. The ATV is designed with a heavy, unpadding roll cage that in rollovers creates an additional hazard and makes the vehicle even more dangerous.

The company considered using a safety door or net during the design stage, but Yamaha never implemented either when designing and manufacturing the vehicle. We have also learned that Yamaha failed to adequately test the Rhino prior to putting the vehicle on the market for public use. We were shocked to learn that the company never even tested the Rhino to determine if it would roll over at mid-speed turns on flat ground.

In 2006, Yamaha sent letters to Rhino owners enclosing new warning labels and describing the rollover risks. Occupants were warned that in an event of

a rollover, they should not stick their arms or legs out the vehicle. In August 2007, Yamaha sent out notices that it would install doors and additional passenger handholds on its Rhino's manufactured in the last four years. The upgrades are available to new or used Rhinos and installed free of charge by a Yamaha dealer. These features should be regular equipment when the vehicles are manufactured and sold.

There is an effort around the nation to transfer and consolidate the cases filed against Yamaha in federal court for the purpose of conducting discovery. This effort has been opposed by numerous Plaintiffs, lawyers, Yamaha, and various retailer Defendants. Our firm is pursuing cases in both federal and state courts in a number of jurisdictions. If you have questions about these cases or need information on the Rhino, contact Chris Glover (Chris.Glover@BeasleyAllen.com) or Mike Andrews (Mike.Andrews@BeasleyAllen.com) in our firm at 800-898-2034.

TWO RHINO ROLLOVER LAWSUITS FILED

There have been two Rhino rollover lawsuits filed recently in Texas. I will briefly describe them below.

THE JOYCE CASE

More than four years ago, Vicki Joyce's child was injured when the Yamaha 660 Rhino she was in rolled over and pinned her legs underneath it. Ms. Joyce has now filed a lawsuit alleging the Rhino ATV is defective and unreasonably dangerous. In her suit, she alleges that the "Yamaha Rhino is excessively prone to tip over even at low speeds, on flat or slight grade terrain, and while conducting safe turns."

The lawsuit filed by Ms. Joyce and her child in a Texas state court included as Defendants, Yamaha Motor Corporation, Yamaha Motor Manufacturing Corporation and Yamaha Motor Company. It's alleged that the Defendants should have known that the Yamaha Rhino lacked necessary safety fea-

tures and posed an “additional risk of injury in the event of a rollover.” This suit is one of more than 50 lawsuits against Rhino pending in federal courts across the country.

It’s alleged in the lawsuit that the Defendants were negligent for failing to exercise reasonable care for the safety of Rhino occupants by negligently designing, manufacturing, marketing and selling the vehicle without the necessary safety features. Other causes of action filed against the Defendants include strict liability, breach of express and implied warranties, fraud, concealment, and misrepresentation. The plaintiff is seeking damages for medical expenses, lost wages, and loss of earning capacity, pain and mental anguish. Seeking punitive damages, the Plaintiff argues the Defendants acted “in a malicious, wanton, willful, fraudulent and reckless manner evincing such an entire want of care as to raise the presumption of a conscious indifference to the consequences.”

A Marshall lawyer, Melissa R. Smith, who is with the law firm of Gilliam and Smith, LLP and Houston lawyers Robert E. Ammons, John P. Devine, and Darcy M. Douglas of The Ammons Law Firm, LLP, are representing Ms. Joyce and her child in the lawsuit.

Source: Associated Press

THE MCCLLOUD CASE

The father of Michael Lane McCloud, who was killed while a passenger on a Yamaha Rhino ATV, has filed a lawsuit in a Texas court. In this case, the Rhino flipped over and landed on top of the young man. The suit says that the Rhino has a narrow track width and a high center of gravity, which decreases the vehicle’s stability. The Yamaha Rhino is much narrower than most vehicles in its class, being designed to fit in a pickup truck bed as a convenience to consumers. Such convenience was achieved through designing the vehicle with a narrow track

width, greatly decreasing the vehicle’s stability characteristics. Rob Ammons, a lawyer from Houston, Texas, is handling this case.

If you want more information on this subject contact Cole Portis, Ben Baker, or Rick Morrison in our Personal Injury Section at 800-898-2034.

Source: Associated Press

SEAT BELT INJURIES COULD SIGNAL MORE SERIOUS TRAUMA IN CHILDREN

Ill-fitting seat belts raise the risk of serious injury to children involved in automobile accidents. Seat belt injuries in a vehicle crash should alert physicians to look for signs of more serious consequences, particularly spinal cord injury, which is not always immediately apparent. Dr. Harsh Grewal, in a report published in the August issue of the *Journal of Spinal Cord Medicine*, had this to say:

Unless physicians are diligent, spinal-cord injuries are hard to diagnose in children. In the event of a car accident, seat belt injuries such as bruising and tenderness should warrant a search for other injuries, including spinal-cord injury, vertebral fractures and intra-abdominal injuries. If spinal-cord injury is missed or not diagnosed early, the consequences can be devastating.

Dr. Grewal, a pediatric surgeon at Temple University School of Medicine and Hospital, and his colleagues, reviewed ten years’ worth of medical literature on motor vehicle accidents and children. They found that children involved in motor vehicle crashes who were inappropriately seat-belted were at higher risk for “seat belt syndrome,” a complex of injuries to the spine and abdomen. Consequently, when health-care professionals see bruising or seat belt marks in pediatric car accident victims, they should have a high degree of suspicion about more serious injury. Automobile accidents, the most common cause of injury and death in children,

are also the most common cause of spinal cord injury in children and adolescents. Boys are more affected than girls, and the incidence increases with age. Children who are four to eight years old are most likely to be using ill-fitting seat belts or restraints.

Dr. Grewal recommends that an evaluation of a child or adolescent car-accident victim include a complete work-up for vertebral, spinal cord and intra-abdominal injuries. In addition to bruises or marks from the seat belt, clues of more serious injury include abdominal and/or spine tenderness, and neurological deficits. Ideal treatment of possible spinal-cord injury starts at the scene of the accident with proper stabilization and transportation of the victims. If a child with a spinal fracture has not been stabilized properly, movement can injure more tissue. In general, seat belts and safety restraints should be adjusted according to age and weight.

Adapted from materials provided by Temple University, via EurekAlert!, a service of AAAS. If you have any questions concerning defects in the design of seat belts, please contact J.P. Sawyer (JP.Sawyer@BeasleyAllen.com) or Mike Andrews (Mike.Andrews@BeasleyAllen.com) in our office at 800-898-2034.

NEWS ANCHOR’S FAMILY SUING FORD OVER FATAL CRASH

Anchorwoman Polly Gonzalez was one of the most recognizable and beloved television personalities in Las Vegas. An award-winning veteran reporter, she was the community’s first Hispanic prime-time anchor. Ms. Gonzalez was known for her volunteer work with Hispanic youths and for urging youngsters to stay out of gangs. In 2005, while returning on a family trip from California, she was killed in a single-vehicle rollover accident near Death Valley. Her two young daughters, who also were in the 2000 Ford Explorer, were injured but survived the crash.

Ms. Gonzalez’s family filed suit against Ford Motor Co. alleging that the Ford Explorer she was driving was unsafe and contributed to her death.

It's contended in the lawsuit that the Explorer's roof wasn't strong enough to withstand a rollover accident and that the vehicle's seat belt didn't work properly. The accident report stated that the left half of the Explorer's roof was crushed inward and the entire roof was buckled and bowed. Ms. Gonzalez's seat belt was found partially extended. The 43-year-old mother, who sustained head injuries, died of blunt force trauma. The lawsuit contends that all Ford Explorers of that make and model have those design defects, not just the one Ms. Gonzalez was driving.

As we have mentioned in previous issues, automakers have fought to keep the 33-year-old federal safety standard for vehicle roofs in force, even though the standards are inadequate. In the Gonzalez case, an expert for her family will testify that Ford knew the roof strength in the Explorer "barely met minimum safety standards for rollover protection." Larry Semenza, a lawyer from Las Vegas, is representing the Gonzalez family in this lawsuit.

If you have any questions about the design problems relating to automotive roofs generally, you can contact Ben Baker (Ben.Baker@BeasleyAllen.com) or Cole Portis (Cole.Portis@BeasleyAllen.com) in our office at 800-898-2034. Our firm has handled a number of cases with facts similar to those of the Gonzalez case.

Source: Las Vegas Review-Journal

THE DANGERS ASSOCIATED WITH TIRE FAILURE AND ROLLOVERS

One of the most tragic cases our firm has ever handled involved the tire tread separation of a Bridgestone/Firestone tire on a Ford Explorer that left a family grieving over the death of their only son at age 13, and which left their lovely 17-year-old daughter severely and permanently brain damaged. In another case, also involving tire tread separation of Bridgestone Firestone tires with a resulting Ford Explorer rollover, a father and his four-year-old son were killed, leaving a widow and mother to suffer the aftermath of this preventable disaster.

Another case involving a Ford Explorer rollover with a Firestone tire separation settled for a confidential amount. The driver of the Explorer in that case lost control at low speed when the tire unraveled on the right rear of the vehicle. The driver suffered from a fractured cervical spine, which healed without paralysis. The minor daughter, who was a passenger, suffered soft tissue injuries.

Sadly, many of the recalled Firestone tires are still on the road. In many of the cases, the recalled tires were the spare tire on the vehicles that were overlooked when the recalled tires were replaced. Because all of these deaths and serious injuries could have been prevented, lawyers in our firm's Personal Injury Section represent our clients in lawsuits against the manufacturer of the defective recalled tires as well as the vehicle manufacturers. Our firm currently has a case set for trial in April involving a recalled tire that detreaded, resulting in a vehicle crash. We have lawyers licensed in multiple states, but we also work with local lawyers on these cases throughout the United States. If you have any questions, about this type case, you can contact Greg Allen (Greg.Allen@BeasleyAllen.com) or Cole Portis (Cole.Portis@BeasleyAllen.com) in our office at 800-898-2034.

POWER STEERING FAILURES IN GM VEHICLES

Power steering failures can cause serious problems for vehicle occupants. According to a General Motors company bulletin, the following vehicles are prone to power steering failures during low speed turns: Chevrolet Avalanche, Tahoe, Suburban, and Silverado Classic; GMC Sierra Classic and Yukon; Cadillac Escalade; and Hummer H2. It appears that GM considers this a "normal characteristic" of these vehicles. The problem is a result of a lack of pressure in the power steering system. It can be triggered by low tire pressure and worn or over-sized tires. Folks have been complaining about the problem since 1999, saying that the problem

makes it difficult to navigate in tight spots. But for some reason NHTSA says this issue does not rise to the level of a safety threat.

UNSAFE FUEL SYSTEMS AND FUEL-FED FIRES

Our firm has handled a number of cases over the years involving fuel-fed vehicle fires. In each of our cases one or more occupants were burned to death in a crash from which—absent the fire—they should have survived. In each case the fire came as a result of a defective fuel system. The design and placement of the most dangerous part of a vehicle, the fuel system and fuel tank, is very important. The tank and lines in the system must be properly placed and protected so as not to burst into flame in a collision. Design engineers know that a single gallon of gasoline explodes with the same amount of force as eight sticks of dynamite. That makes proper design imperative.

Despite this common sense logic it is alarming to know that there are millions of cars on our nation's highways and roads that have unsafe and defective gas tanks with fuel systems which are unable to endure even the slightest rear impact collision without bursting into flames. This well-known motor vehicle phenomenon, known as post-collision fuel-fed fires, has the potential to cause severe burns, agonizing pain, and death. If manufacturers design the vehicles properly, post-collision fuel-fed fires can be avoided in many collisions. We have seen too many examples of unsafe fuel systems including:

- Fuel tanks placed on the side or in the rear where they can be easily punctured during a collision;
- Placing fuel lines in positions where they can be ruptured during a crash;
- The use of inexpensive and weak materials to connect the fuel tank to where the fuel is inserted into the vehicle (the fuel filler neck) causing the two to separate and fuel to pour out during a collision; and

- The use of unsafe materials to manufacture fuel lines, causing lines to decay or break during a crash.

Automobile manufacturers have cut corners and costs by choosing fuel tank and fuel system designs that were less expensive. Unsafe designs sacrifice safety for corporate profit and that is wrong. There have been safer fuel system designs available for years, but a number of manufacturers have not incorporated these safety measures into their designs. It appears that the manufacturers found it more cost effective to defend lawsuits than to design the needed safety improvements into their vehicles.

Tragically, every year hundreds of individuals lose their lives in fuel-fed fires and explosions. However, if someone survives an explosion and the ensuing fire caused by an unsafe fuel system, they will likely suffer from severe, disabling and disfiguring thermal third-degree burns. As a result of faulty fuel systems and needless suffering from burn injuries, it is crucial that companies be held accountable for the defective products they sell. If you want more information on this subject contact Greg Allen, Cole Portis, or Ben Baker in our Personal Injury Section at 800-898-2034.

CROWN VICTORIAS ARE PRONE TO FUEL LEAKS AND FIRES

Ford Crown Victoria police cruisers have been controversial for more than a decade for a propensity for fuel leaks and fires when struck from behind. Safety experts also say these cars provide marginal protection of drivers in side-impact crashes. The location of the gas tank has been linked by critics to more than a dozen deaths of police officers, most in stopped cruisers struck from behind at high speeds.

The National Highway Traffic Safety Administration in 2001 and 2002 investigated 23 fires in civilian and police Crown Victorias and mechanically-similar Mercury Grand Marquis and Lincoln Town Cars that involved 14 deaths, mostly police officers. It concluded that the vehicles performed no

worse than other sedans and that there was no evidence of a safety defect. But, even so, Ford has modified the police and civilian cars since the early 1990s including, for police cars starting in 2002, adding five shields designed to reduce the chances that the fuel tank would be ruptured by various bolts, brackets and straps.

Beginning in 2005, Ford also offered, as an option, a fire suppression kit that automatically sprays foam in a crash and can be activated manually by a police officer. In 2009 cruisers, the system has a cost of \$3,495, according to Ford. The Crown Victoria is the most popular car available with police performance packages, accounting for about 85% of sales to law enforcement. Police and civilian versions of the Crown Victoria came under criticism in 2006 from the private Insurance Institute for Highway Safety for what it called “marginal” protection of the driver in side impacts, even when equipped with side-impact airbags.

Accidents can trigger explosions in a number of ways, especially in high-speed crashes. Cars contain flammable materials, including gasoline, oil and other combustibles, so leaks from ruptured fuel lines can ignite quickly. Critics of the Ford Crown Victoria used by police departments say its fuel tank is located within its crush zone, the area that absorbs the energy of a severe impact. Such an impact can rupture the tank and cause an explosion.

Source: National Highway Traffic Safety Administration; www.crownvictoriasafetyalert.com

IX. MASS TORTS UPDATE

FOSAMAX LITIGATION UPDATE

A great deal has been written about Merck’s drug Fosamax and its health and safety problems. As previously reported, there have been a number of Fosamax-related cases filed around the country. The first Fosamax trial is scheduled in federal court in New York

City for August 2009. This will be the first of three bellwether cases tried in the MDL. Lawyers in our firm are working on several Fosamax cases as well, including one set for trial in Montgomery, Alabama, in the fall of 2009. Fosamax users around the country have suffered significant injuries, including osteonecrosis of the jaw, as a result of using Fosamax. Osteonecrosis of the jaw, or “ONJ,” is a disfiguring and disabling condition of the jaw bone which includes severe infection and rotting of the jaw bone. If you have questions about Fosamax, you can contact Chad Cook (Chad.Cook@BeasleyAllen.com) at our firm at 800-898-2034.

PAIN PUMPS FOR SHOULDER SURGERY

As we have written in previous issues, pain pumps used after shoulder surgery have caused injury to the shoulder joint in many individuals. Approximately 100 lawsuits have been filed all over the country. One pain pump manufacturer settled a case in the fall of 2008. There was a trial in Portland beginning on February 23, 2009 on behalf of several Plaintiffs against one manufacturer, Stryker. Stryker is one of several pain pump manufacturers which marketed the pumps off label resulting in cartilage death in the shoulder joint. This injury can lead to devastating damage to the shoulder joint potentially resulting in additional surgeries, including shoulder replacement or fusion. We have cases filed all over the country and we are working with the lawyers who have a trial scheduled in Portland to help them get ready for trial. We have a case set for trial in Birmingham, Alabama, later this year. If you have questions about pain pumps or the associated litigation, contact Frank Woodson (Frank.Woodson@BeasleyAllen.com) in our firm at 800-898-2034.

UPDATE ON FENTANYL PAIN PATCHES

We recently reported about a \$13 million verdict in Florida against the makers of the Fentanyl pain patch.

Shortly thereafter, Ortho-McNeil-Janssen Pharmaceuticals, Inc., a subsidiary of Johnson & Johnson, recalled two lots of its PriCara 50 mg/hr Duragesic pain patches. One of the lots was sold by PriCara and the other lot was sold by Sandoz, Inc., in the United States. Ortho-McNeil-Janssen announced that it was recalling the patches because they were defective and could expose the users to an excess of the fentanyl gel inside the patches. The result of the excess exposure could result in death or other serious injuries.

The company identified the defect, but said the problem has been corrected. The company said the condition resulted in a cut-system defect in "a small number" of affected patches in the lots being recalled. ALZA Corporation of Mountain View CA, an affiliate of PriCara, manufactured the patches being recalled. The patches being recalled may have a cut along one side of the drug reservoir. The result is possible release of fentanyl gel from the gel reservoir into the pouch in which the patch is packaged, exposing patients or caregivers directly to the fentanyl gel.

Despite the claim of this being an isolated defect, this product has proven to be dangerous for some time. The companies which have manufactured and sold this product have had previous recalls of the product. In 2006, the FDA announced that Fentanyl pain patches could be used by those persons who experienced chronic pain and who had been taking pain medications for a long period of time. The patches are applied directly to the skin and are designed to release fentanyl, a strong opiate analgesic. The problems arise when the pain patches are cut or torn and release an excess amount of fentanyl into the blood stream. If you need more information on this subject, contact Ben Locklar in our firm at 800-898-2034.

Sources: FDA Web site and Johnson & Johnson Web site

A TIME BOMB IN 36,000 WOMEN

Mentor Corporation, which is being acquired by Johnson & Johnson, was founded in 1969 and is headquartered

in Santa Barbara, CA. It has principally focused on products for cosmetic surgery, but between 2003 and 2006, its now discontinued Urology Division marketed Obtape® in the United States. The mesh tape was designed as a surgical treatment for stress urinary incontinence (primarily a women's health issue) which affects approximately 14 million women in the U.S. Mentor marketed the product in Europe for several years before it obtained FDA approval to market the product in the U.S. FDA approval was based upon Mentor's representation that its product was substantially equivalent to other products already on the market. This is the lower standard of review which the Court most recently addressed in *Riegel v. Medtronic, Inc.* It is insufficient to cloak the manufacturer with immunity from suit.

Obtape® was financially successful in the United States but, as in Europe, physicians quickly began reporting unacceptable rates of complications for this product compared to competitive devices. A review of the FDA adverse event reporting system reveals 270 adverse events have been reported for this device. Obtape® is essentially an extruded polypropylene mesh that is placed beneath the urethra to support and stabilize it in the correct position to alleviate stress incontinence. Consulting experts tell us Obtape® was favored by some hospitals and surgeons in part because of its price and speed of installation. They also say that it was defectively designed in that its relatively smaller pore size and more dense material was not well absorbed into the body's tissue. The result is vaginal extrusion and urinary tract erosion that manifests itself in extreme vaginal pain, vaginal discharge, and infections. Most women suffering from these side effects must undergo one or more lengthy surgeries, and many are left with a lifetime of pain and unable to have intercourse or bear children.

It is estimated that 36,000 women have Obtape® implanted in them and that 10 to 20% of them will suffer a significant adverse reaction to it. Experts tell us that this failure rate is many times higher than competitive prod-

ucts. It was withdrawn from the market in 2006 amidst very public criticisms of its failure rates. A MDL was created recently for Mentor Obtape® cases and was assigned to the Middle District of Georgia. If you want more information on this subject, contact Russ Abney at 800-898-2034.

WOMEN WHO STOP HORMONE USE SEE BREAST CANCER RISK DROP

Over the years, there have been numerous studies which show that hormone therapy increases the risk of breast cancer in women. It is now well accepted that hormone therapy is a cause of breast cancer. The good news is that new research suggests the risk of breast cancer drops dramatically within two years of stopping therapy. Rowan Chlebowski, lead author of a study published in the *New England Journal of Medicine* says, "It looks like after a couple of years a woman is pretty much back to normal. That's very encouraging." Chlebowski's analysis of data from the Women's Health Initiative (WHI), a significant federal study, showed that breast cancer risks fell rapidly in the first two years after ceasing treatment, even though their screening mammogram rate didn't change. This new data shows that a simple decline in the rate of screening mammograms cannot explain the decline in breast cancer rates: the only plausible explanation is the obvious one: the reduction in hormone therapy use.

Consistent with this new data from WHI, a group of Belgian researchers have just published a study using the Limburg Cancer Registry, HRT vendors and their social security system which shows the incidence of breast cancer in that area, as in the rest of the world, rose markedly until 2002. In 2002 HRT usage fell by 41% as a result of the WHI trial being terminated (the study was terminated because women receiving HRT were getting breast cancer at an alarming rate), and the rate of breast cancer decreased significantly in 2003 and 2004.

The Wall Street Journal has recently reported that 210,000 women were

diagnosed with breast cancer each year before 2002. We have seen that number drop to less than 190,000 each year and remain lower through 2005. While many doctors still hold the position that hormones used during menopause are safe, they recommend that women should take these drugs for as few years as possible and at the lowest effective dose and only if they are experiencing severe menopause symptoms that significantly affect their quality of life.

Source: *USA Today* and *Wall Street Journal*

THREE DEATHS ASSOCIATED WITH GENENTECH PSORIASIS DRUG

According to The Food and Drug Administration, three patients taking a Genentech psoriasis drug have died of a rare brain infection, a known risk with the skin-clearing treatment. The FDA confirmed three cases and a possible fourth of progressive multifocal leukoencephalopathy (PML), which causes swelling of the brain and is usually fatal. The patients had been taking Genentech's once-a-week injection Raptiva, which is used to treat red, scaly skin caused by psoriasis.

In October, the FDA added its most serious warning to Raptiva. This came after a 70-year-old patient died from PML while taking the drug. The agency stressed in a statement posted to its website that patients should be aware of the symptoms of the infection, which include weakness, blurred vision and difficulty speaking. The FDA says doctors should likewise monitor patients taking the drug for these signs. PML is typically seen in patients with weakened immune systems, and previously has been reported in patients taking Rituxan, a blockbuster arthritis and cancer drug marketed by Genentech (DNA) and Biogen Idec.

Source: *Associated Press* and *USA Today*

TAINTED SYRINGES KILLED FIVE PEOPLE

A North Carolina company has been accused of bypassing sterilization tests for medical syringes in a cost-cutting

move. Prosecutors say this has sickened hundreds of patients and led to five deaths. According to U.S. Attorney George Holding, federal authorities have launched an international search for the executive charged with rushing shipments of bacteria-contaminated syringes from an AM2PAT Inc. plant. Two former plant workers who provided prosecutors details about the plant's operations have pleaded guilty for their roles in shipping tainted syringes. The syringes contained heparin, a blood thinner, and saline, and were recalled in December 2007 after an outbreak of illnesses. Health inspectors identified bacterial infections in Colorado, Texas, Illinois and Florida. Heparin and saline are used to flush intravenous lines during cancer treatments, kidney dialysis and other procedures.

The company sold nearly \$7 million worth of heparin and saline syringes in 2006-07. Prosecutors said the facility in Angier, about 20 miles south of Raleigh, N.C., cut corners and failed to follow rules for checking sterility. They also said manufacturing dates were falsified to make it appear that safeguards were followed. The scheme led to bacterial infections in 200 to 300 patients around the country, some of them resulting in spinal meningitis and permanent brain damage, according to the prosecutors. The U.S. Attorney had this to say:

"One of the worst things about this case is that the people who were taking saline and heparin, they're usually sick already or have some debilitating illness and need these medicines to try to get well. Sometimes it's hard to determine whether they were killed from the tainted heparin or whether it was the original illness. In any event, we're not able to say any more than five."

The plant manager, Aniruddha Patel, and the quality control director, Ravindra Kumar Sharma, have been sentenced to four and a half years in prison for fraud and allowing tainted drugs into the marketplace. The CEO of the company has left the country.

Source: *Associated Press*

X. BUSINESS LITIGATION

ROHM & HAAS FILES SUIT AGAINST DOW

Rohm and Haas has filed a lawsuit against Dow Chemical for Dow's failing to consummate an \$18.8 billion takeover. Philadelphia-based Rohm and Haas claims that Dow Chemical had backed out of its takeover plan, despite obtaining all required approvals. In July, Dow said that it would buy Rohm and Haas for \$78 a share to expand its relatively high-margin specialty-chemicals business and expand its global footprint. Dow had agreed to absorb \$3.5 billion of Rohm & Haas's debt as a part of the deal.

Dow was required to close the deal within two business days of the final regulatory approval, which occurred on January 23, 2009. Prior to the approval, Dow could have paid a \$750 million break-up fee to get out of the deal, but that no longer remains an option. Rohm and Haas' lawsuit is an effort to force Dow into closing the deal. The arrangement started to fall apart in December when Dow's joint venture with the Kuwaiti government went bad.

The Kuwait deal was meant to finance part of the acquisition of Rohm and Haas. The Kuwaiti government decided to cancel the \$17.4 billion agreement with Dow to create the world's largest maker of polyethylene, a commodity used in consumer products. The government said the venture became too risky and backed out of the deal.

Source: *Forbes.com*

XI. INSURANCE AND FINANCE UPDATE

MORE ON THE DEAD PEASANT INSURANCE POLICIES

We have written in previous issues

about what has come to be known as “dead peasant” insurance policies. These are secret life insurance policies taken out on employees who as a rule don’t know about the policies. Since emerging several years ago, dead-peasant policies have caused a good number of employers to be sued, accused of profiting off the deaths of rank-and-file employees. More recently, the insurance industry and banks have been brought into the litigation. Both are being accused of illegally benefiting off these policies. In the industry, these policies are known as corporate-owned life insurance policies (COLI).

In Oklahoma, a federal judge recently ruled that employees can sue an insurance company for selling and maintaining secret life insurance policies on their lives. The Plaintiffs in that case claim that the insurance company unlawfully misused their names, Social Security numbers and other personal information to market and sell their product.

Ironically, some unhappy employers are suing their insurance companies. For example, Wal-Mart Stores Inc. is suing AIG Life Insurance Co. and Hartford Life Insurance Co. over COLI policies that have gone bad. Claiming losses of more than \$150 million, Wal-Mart claims the Defendants failed to warn the company of the inherent dangers of buying COLI policies. It will be most interesting to see how this litigation comes out.

Banks may also become Defendants in dead-peasant lawsuits. It’s my belief that lawsuits against major players in the banking industry, accused of taking out life insurance policies on low-level employees, such as tellers, without their consent, are going to be filed. It’s been reported that roughly half of all U.S. banks have admitted to owning bank-owned life insurance (BOLI) policies on employees, at an estimated value of \$120 billion. It appears there are a good number of policies on employees that are still being written and purchased by the national banks. Some of the policies are for very large amounts. Bank of America Corp. officials have issued a statement acknowledging that the company uses BOLI

policies, but say they are legal. The bank claims this is a legitimate business practice used by many companies.

In 2006, Congress adopted new COLI best practices when it passed the Pension Protection Act, which requires that employers get the written consent of rank-and-file employees insured under a COLI policy. They must also notify the employees of the maximum amount of the policy. This raises the issue of informed consent and how much the employees have to be told about the policies and whether they actually realize the effect of what all they are signing. The legislation followed a series of lawsuits that triggered widespread publicity and controversy. One Wal-Mart class action in Oklahoma resulted in a \$10.3 million settlement in 2004; another Oklahoma case settled for \$5 million in 2006. A class action against Fina Oil in Texas settled for \$4 million in 2005. I predict there will be many more significant verdicts in the dead-peasant lawsuits that are being filed.

Source: *The National Law Journal*

KATRINA INSURER LIABLE FOR MENTAL ANGUISH IN DELAYING PAYMENT

The 5th Circuit Court of Appeals has ruled that a homeowners’ insurer is liable for bad faith damages, including mental anguish, for failing to promptly pay a claim related to Hurricane Katrina. The homeowners’ policy covered four classes of wind damage for total coverage of \$300,000, but did not cover flood damage. The insurer paid about \$11,000 five months after an initial inspection, and then paid another \$2,000 about a year later. The company finally acknowledged that there was more extensive wind damage nearly two years after the storm.

The insured filed suit, alleging breach of contract and bad faith against Lexington Insurance Co., the insurer. The trial judge heard the case at trial without a jury and entered judgment for \$175,467, including mental anguish for the delay. On appeal, the insurer claimed that mental anguish damages

are not allowed for breach of contract claims. But the 5th Circuit cited a state statute in Louisiana that imposes a good faith duty to pay a claim within 60 days which specifies that any insurer that breaches its duty “shall be liable for any damages sustained as a result of the breach.” In the appellate court’s decision, it was stated:

Damages for mental anguish may be awarded [under state statute] for breaches of the duty of good faith. ... The statute specifically refers to a breach of the duty of good faith; it does not refer to breach of contract. Furthermore, [the statute] is broadly worded, explicitly permitting liability for ‘any damages sustained,’ including, without limitation, ‘any general or special damage.’ ... By authorizing ‘any damages,’ including ‘any general or special damages,’ the legislature pointedly permitted the award of mental anguish damages.

The 5th Circuit decision is a good one. Hopefully it will send a clear message to insurance companies which either fail to pay legitimate claims or delay paying claims in a timely manner that they can’t get away with this sort of thing.

Source: Lawyers USA

SETTLEMENT REACHED IN LAWSUIT FILED BY HEATH LEDGER’S FAMILY

We wrote about the lawsuit filed against the insurance company that had insured the life of Heath Ledger, the actor, for \$10 million. A settlement has now been reached in that lawsuit. A guardian will be appointed to represent Ledger’s three-year-old daughter, Matilda Rose, who is the life insurance policy’s beneficiary. The lawsuit was filed against ReliaStar Life Insurance Co. last year, contending that the company was wrongfully refusing to pay the death benefits under the actor’s policy. It was alleged that the insurer was refusing to pay because it wanted to investigate whether Ledger’s death was a suicide. A coroner ruled

Ledger's death last January was from an accidental prescription drug overdose and apparently that forced the insurance company to settle the claim.

Source: *Associated Press*

WISCONSIN SUPREME COURT REJECTS LIBERTY MUTUAL APPEAL IN ASBESTOS CASE

An insurance company will have to pay people with asbestos-related injuries as the result of a Wisconsin Supreme Court ruling. The court ruled in a dispute between Plastics Engineering Co. and its insurer, Liberty Mutual. The company made products containing asbestos between 1950 and 1983. Thousands of people contend they were injured by exposure to those products. Liberty Mutual paid \$14.3 million to cover the claims through 2005. But the insurer tried to limit its responsibility by arguing that everyone's injuries amounted to a single occurrence. The Supreme Court rejected that argument, saying each injured person has a separate case. The Court ruled that Liberty Mutual must cover all the costs of injuries and not just a portion.

Source: *Associated Press*

INSURER SEEKS TO LIMIT COVERAGE FOR PEANUT FIRM

Hartford Casualty Insurance Co. has filed a lawsuit in a federal court in Virginia against the Peanut Corp. of America to determine whether it must pay claims for victims affected by a nationwide salmonella outbreak. Hartford Casualty Insurance claims that one or more of the terms, conditions, exclusions or limitations in the policies "exclude or nullify coverage" for PCA for one or more of the salmonella claims. The insurer is seeking a declaratory judgment from the court to determine the extent of our obligation to the Peanut Corp. of America under their policies of insurance.

Hartford, Conn.-based Hartford Casualty Insurance, a subsidiary of Hartford Financial Service Group Inc., issued both a primary general liability policy

and an umbrella policy to PCA. I understand the general liability policy provides limits of \$1 million per occurrence and \$2 million aggregate for bodily injury or property damage included within the "products-completed operations hazard," section of the policy. The umbrella liability policy provides liability limits of \$10 million per occurrence and \$10 million in the aggregate in excess of the underlying insurance for bodily injury or property damage included within the "products-completed operations hazard." Products-completed operations hazard relates to liability for products after they have left a policyholder's premises.

Source: *Business Insurance*

ALLSTATE AND STATE FARM ARE DISMISSED IN KATRINA CASE

A federal appeals court has upheld the dismissal of Allstate Corp. and State Farm Fire and Casualty Co. from a lawsuit accusing them of overbilling the U.S. government for flood damage in Louisiana related to the 2005 storm Hurricane Katrina. But the ruling last month by the U.S. Fifth Circuit Court of Appeals in New Orleans revives the lawsuit against several other insurance companies and adjusting firms. The Defendants left in the case include Fidelity National Insurance Co, Fidelity National Property and Casualty Insurance Co., and Liberty Mutual Fire Insurance Co., among others.

Branch Consultants LLC, a claims adjuster, had accused eight insurers and six adjusters in an August 2006 "whistleblower" lawsuit in Louisiana of violating the federal False Claims Act by treating Katrina wind damage as flood damage. It was alleged that this resulted in overcharging the federal government's National Flood Insurance Program. But the three-judge appellate panel agreed with a 2007 ruling by U.S. District Judge Peter Beer that Allstate and State Farm were properly dismissed because they were Defendants in a similar case filed in April 2006 in Mississippi. This, the panel said, barred the Louisiana lawsuit under the False

Claims Act's "first-to-file" rule even though Allstate faced only "skeletal allegations" in the Mississippi case.

Source: *Reuters UK*

EVERYBODY SHOULD REVIEW THEIR UNINSURED MOTORIST INSURANCE COVERAGE

Due to the economic problems that all Americans are facing, it is likely that there will be increasing numbers of drivers on our highways who are uninsured. Those who do have liability insurance on their vehicles should get with their insurance agent at an early date and make sure that they are adequately protected in the event of an accident with an uninsured driver. All insured drivers should do the following:

- Make sure that you are covered with uninsured motorist coverage. In Alabama, that coverage is mandatory unless the policyholder specifically requests that it be deleted from coverage.
- Get as much uninsured motorist coverage as you can.
- Check your policy's language to make sure uninsured motorist coverage includes "under-insured" motorist coverage. This protects you under your uninsured motorist policy if the wrongdoer in a vehicle accident doesn't have enough liability insurance to cover the amount of injuries and damages you or occupants of your insured vehicle suffer.

Hopefully, none of our readers will have a need for using their uninsured coverage. But just in case such coverage is needed, make sure you are adequately and fully covered.

ADVICE ON HOW TO FILE A LIFE INSURANCE CLAIM

The Ohio Department of Insurance is telling folks in that state how to file a life insurance claim. Working through the process of grieving the loss of a loved one, while at the same time having to go through the claim filing

process, can be most difficult. The Insurance Department prepared the following information to help people in the filing of claims:

- Obtain several copies of the death certificate. This is the standard documentation required for filing a life insurance claim.
- Contact your life insurance agent. The agent who sold the policy can help fill out necessary forms and act as an intermediary with the insurance company. However, if you do not know the name of the loved one's agent, contact the life insurance company directly.
- In the case of a group life insurance policy, such as coverage offered by an employer, first contact the group plan sponsor or the human resources office directly. If you are unable to contact the employer, you may contact the life insurance company directly.
- Submit a certified copy of the death certificate from the funeral director with the policy claim.
- If a claim is being filed during the contestability period—that is, within the first two (2) years of the effective date of coverage—there may be a delay in the settlement because the company has the right to investigate. The company will contact medical providers to verify the cause of death was not pre-existing.
- In Ohio, companies are required by statute to pay interest on the death proceeds, from the date of death.

Ohioans with questions about life insurance can call the Department's toll-free consumer hotline at 1-800-686-1526. A life insurance informational toolkit is also available on the Department's web site at www.ohioinsurance.gov. The toolkit provides tip sheets, publications and links to other helpful websites. While the recommendations and the toolkit apply to Ohio, the advice and recommendations are certainly good for folks in all states.

Source: *Ohio.gov—Department of Insurance*

XII. PREDATORY LENDING

MORTGAGE AND REFINANCE SCAMS HAVE INCREASED WITH THE BAD ECONOMY

With all the talk of mortgage crises filling the air waves, millions of homeowners who are in desperate need of relief are searching ways to modify their existing mortgage obligations. The most recent stimulus package passed by Congress and signed by President Obama recognizes the need for homeowner relief and has established various programs to aid those that need it most. Unfortunately, this nationwide predicament has provided a breeding ground for companies bilking distressed homeowners for thousands of dollars in fees for services that are often available for free. Worse yet, many scam artists simply disappear after collecting their upfront fees from homeowners desperate to prevent foreclosure.

In a recent *Washington Post* article, the paper noted that the mortgage meltdown has given birth to an explosion of companies charging thousands for loan modification services that nonprofits offer for free. Federal law does not prohibit companies from charging for loan modification services. Instead, a myriad network of random state and local laws govern this insidious practice. Many states require companies offering loan modification services to have licenses. However, this does not mean that every business operating out there does, in fact, have a license. If you are dealing with a company that you do not have an existing relationship with, you may want to ask them for their license number. Then, call and check them out with your State Banking Department to see if they are legitimate or have had any complaints filed against them.

To pay thousands of dollars up-front for services that are available for free is kicking the most needy homeowners while they are down. A less obvious cost of these scams is the time lost if the loan modification service never

arrives. The lowest form of mortgage modification scam artist simply disappears after receiving his upfront fee. While the homeowner waits for promised assistance, delinquency notices keep coming. Worse yet, the value of the home continues to plummet while the homeowner waits.

These hucksters prevent distressed homeowners from seeking help where they might actually find it. Hope for homeowners seeking to prevent foreclosure most readily comes either through direct and early contact with the lender or through non-profit services that help homeowners negotiate with their lenders. The U.S. Department of Housing and Urban Development currently sponsors over 2,300 non-profit certified housing counseling agencies around the country. If you need more information on this subject, you can contact Roman Shaul at our firm (Roman.Shaul@BeasleyAllen.com or 800-898-2034) or you can go to this website: www.HUD.gov.

COUNTRYWIDE SETTLEMENT

Countrywide Financial Corp. is trying very hard to settle with states around the country in an effort to limit its exposure arising out of its predatory lending practices. For example, the company has reached a settlement in Pennsylvania. The company has agreed to provide an estimated \$150 million in mortgage relief and cash assistance for Pennsylvania homeowners to settle a state lawsuit over its lending practices. Countrywide, once the nation's largest mortgage lender and now part of Bank of America Corp., also agreed to freeze foreclosure proceedings until it determines whether borrowers are eligible to take part in the settlement. According to state officials, as many as 10,200 borrowers who hold some of the riskiest and highest-defaulting loans written by Countrywide could be eligible for relief estimated to be worth more than \$150 million. Of course, that amount comes from Countrywide which makes it suspect.

The settlement would provide persons who qualify with loan modifi-

cations, relocation assistance and foreclosure relief as well as waivers of default or delinquency fees, according to Pennsylvania Attorney General Tom Corbett. Its office found in its investigation that Countrywide relaxed its underwriting standards to sell risky loans to consumers who did not understand them and could not afford them. That resulted in the state filing suit against Countrywide. The agreement covers loans originated by Countrywide Financial Corp., Countrywide Home Loans Inc. and Full Spectrum Lending Inc. I'm not real sure settlements of this sort are quite as good as they appear to be on paper. Countrywide—and most likely Bank of America—will avoid a great deal of legal exposure to individual citizens who have been hurt financially and emotionally as a result of wrongdoing in sub-prime housing loans.

Countrywide has also reached some sort of a settlement with Texas. Texas homeowners struggling with mortgage loans from Countrywide Financial might qualify for financial settlements or better loan terms under a restitution program. The program includes \$7.5 million for Texas Countrywide customers who lost their homes to foreclosure or who had fallen far behind on payments as of Oct. 6, 2008. Also, \$2.8 million is available to an estimated 1,400 Countrywide customers who have defaulted on their subprime loans or who might soon. They could receive up to \$2,000 each if they “voluntarily and appropriately” turn over their residences, avoiding foreclosure. All of the payments are part of the settlement with the Texas Attorney General's Office over allegations that Countrywide encouraged homeowners to accept loans they could not afford, failed to fully disclose risky loan terms, and wrote loans for unqualified borrowers. It's estimated by Countrywide that distressed Texas homeowners would get \$345 million worth of benefits under the settlement. Frankly, I take anything that involves Countrywide with a large “grain of salt!”

Source: Reuters and Chronicle News Service

XIII. PREMISES LIABILITY UPDATE

TWO MORE SAGO MINE LAWSUITS SETTLED

Families of two more workers who died in the Sago Mine disaster have settled their lawsuits with International Coal Group. The estates of Fred Ware and Marty Bennett reached the settlements with ICG subsidiary Wolf Run Mining in the suits filed in a West Virginia State Court. Details of the settlements are confidential. Thus far, six Sago families have settled lawsuits over the deadly January 2006 mine explosion. Wrongful death cases filed against Wolf Run and ICG by six other Sago victims' families are still pending.

On January 2, 2006, at about 6:30 p.m., an explosion from a sealed underground tunnel ripped through the Sago Mine. Terry Helms, a fire boss, died soon after the blast from carbon monoxide poisoning. Surrounded by smoke and toxic fumes, 12 other miners took shelter behind a makeshift barricade. Eleven of them died before rescuers reached them more than 40 hours later. Only Randal McCloy Jr. survived. McCloy, and the families of 11 of the miners who died, filed suit against Wolf Run, ICG and a variety of mine contractors.

Thus far, McCloy and the families of miners James Bennett, Terry Helms and Davis Lewis have reached other settlements. Confidential settlements have also been entered into between most of the Sago families and two ICG suppliers, Burrell Mining Products and Raleigh Mine and Industrial Supply. Burrell manufactured concrete foam blocks used to seal abandoned areas of the mine and Raleigh distributed the blocks.

Cases are still pending against some ICG contractors and suppliers, including CSE Corp., which made the emergency breathing devices that were said to have malfunctioned during the disaster. Federal investigators pointed to a lightning strike as the “most likely” ignition source for the Sago explosion. The U.S. Mine Safety and Health Administration concluded that stronger seals,

proper methane monitoring and the removal of a pump cable from the sealed area where the explosion occurred could have prevented the disaster. Some found it sort of strange that MSHA investigators failed to cite ICG or Wolf Run with any violations contributing to the accident. Lawsuits filed by the families cited a long string of safety violations prior to the disaster, the lack of required anti-lightning equipment, lax methane monitoring and poor construction of the mine seals.

Source: *The Charleston Gazette*

JURY VERDICT IN TENNESSEE GUARD RAIL CASE

A jury in Tennessee has returned a \$2 million verdict in a wrongful death lawsuit. In the case, the Plaintiff alleged that a defective guard rail in a construction zone caused the death. The decedent, a tractor trailer driver, lost control of his truck, rode along the top of a concrete median barrier and struck the exposed metal end of a negligently installed crash cushion. The crash cushion required a “guard” or transition “piece” to be installed to protect people approaching it from the rear. The driver was cut in half in the crash. The driver had been speeding at the time of the crash, but under the applicable law, he was still entitled to a forgiving roadside. The Defendants in the case were the construction company that installed the cushion and the State of Tennessee, which had inspectors on the scene directing work at the site.

The decedent had \$600,000 in lost earning capacity and household services. Defendants argued that speed in heavy fog was the sole cause of the driver's death. They denied that the installation of the guard rail was negligent. Additionally, the Defendants argued that the man would have died even if the guardrails had been properly installed. They actually claimed that being cut in half by the crash cushion was not what killed the man. The Defendants asked the jury to return a defense verdict. The decedent had an old cocaine trafficking conviction which was allowed in evidence

because it was relevant to his earning capacity. Tennessee is a comparative fault state and the jurors assigned 20% fault to the decedent. Unfortunately, there are a lot of defective guardrail cases out there. Bo Bruner, a Birmingham lawyer, along with Charmaine Nichols, who is with Sid Gilreath's law firm in Knoxville, tried the case and did a very good job.

JURY AWARDS \$2.9 MILLION AGAINST HOME DEPOT

A Delaware jury has awarded \$2.9 million to a self-employed contractor who was injured at a Home Depot store when a stack of 18 wooden doors fell from a shelf above him. Thirty-two-year-old Ronald Payne was injured in 2001 at the Home Depot store in Christiana, Delaware. Payne who had two operations on his back, is still having problems and can't work. He suffers from depression, has lost his home to foreclosure and is now separated from his wife. Interestingly, the jury award was three times larger than the amount suggested by the man's lawyer. He was represented by James Hall, a lawyer in Wilmington, Delaware, who did a very good job.

Source: *Associated Press*

FAMILY SETTLES LAWSUIT IN DEATH OF TEENAGER

The family of a Wisconsin teenager who was killed on a 2007 amusement park ride has settled its lawsuit against the operators. Elizabeth Mohl, 16, died on July 14, 2007, in a fall from a giant swing ride at Lifest 2007 when her safety harness was improperly secured. Her parents filed a wrongful death suit against Life Promotions and Air Glory Inc. The case was settled for \$1 million with the payment to be made by Air Glory's insurance carrier. Apparently, Life Promotions didn't contribute anything to the settlement. Craig Christensen, a lawyer from Appleton, represented the family. It appears that the maximum limits of the policy insuring Air Glory was for only \$1 million and that the policy limits were ten-

dered by the insurer.

The teenager fell 50 feet from a free-fall ride called the "Giant Swing" on the Lifest grounds at the Sunnyview Expo Center in Oshkosh. It was reported that a subsequent investigation determined the fastener attaching Mohl to the harness was not properly locked into place. Also, a safety rope reportedly was not properly attached to the harness. The operator, Air Glory, was banned by the state from operating its rides in Wisconsin for one year as a result of the death.

Source: *Gannett Wisconsin Media*

A JURY VERDICT IN A HOUSE MOLD CASE

A Virginia jury has returned a \$14.75 million verdict in a new house mold case. A family of three became chronically ill about three months after moving into their new home in Loudoun County, Virginia. For months, they had no idea what was making all of them sick. The family filed a lawsuit against its contractor. It was alleged in the Complaint that shoddy construction and unmended leaks had let moisture in, allowing the toxin-producing mold to grow and spread through the three-story house. It was proven at trial that toxin-producing mold was the culprit. Jurors found that the home's builder, the Drees Co., was negligent and violated the Virginia Consumer Protection Act.

The house involved was a 5,900 square-foot structure costing \$900,000. After several months, the homeowners learned that Drees had not allowed the house's frame to dry before installing drywall, creating the perfect conditions required for mold to thrive all over the house. The homeowners used a home testing kit for mold and radon and that's how they found out what was causing their problems. Test samples were sent to a lab, which reported finding "unusual mold conditions." The couple then hired professionals to repeat the tests and they got same results. Drees was informed, and in February 2007, the company hired a contractor to do an inspection. The inspection turned up mold, and the

contractor made recommendations for removing it.

Chin S. Yang, a mycologist who testified as an expert witness in the trial, said that mold grows in houses when excessive moisture is present and that the problem became more common after drywall largely replaced plaster in home construction. He said the paper in drywall contains sugar polymers that can serve as food for organisms. The Plaintiffs still own the house, but say it would cost them about \$400,000 to remove the mold and to make all necessary repairs. They're not sure what to do with the house, and are reluctant to sell it for fear it would cause another family health problems. Problems with the house have cost these folks hundreds of thousands of dollars in medical expenses, legal fees, discarded furniture and other expenses. David H. Wise, a lawyer in Fairfax, Virginia, represented the family and did a very good job.

Source: *Washington Post*

FAMILY FILES SUIT IN DEADLY SEVEN SPRINGS RESORT FIRE

The family of a man who died last year in a fire at a Seven Springs Mountain Resort condominium in Pennsylvania has filed a wrongful death lawsuit against a condo association, a chimney cleaning company, the chimney manufacturer and others. The estate of 22-year-old Jonathan Murt filed the lawsuit in state court. The suit alleges that the condo's owner, a condo guest, the chimney cleaning company, and a defunct chimney manufacturer were guilty of negligence that caused the death. Murt and his girlfriend both died on January 27, 2008, of smoke inhalation.

The fire started inside the condo shortly after midnight. Murt was able to get out of the building, but returned to save his friend. He never made it out and their bodies were found the next day. The fire, which destroyed six condo units, was ruled accidental. While the resort was not named in the suit, it could be added later by amendment. Its involvement will hinge on

what control and ownership connection the resort had with Sunridge Condominium Association. The fire occurred in Sunridge Condominiums in The Villages at Seven Springs. Discovery in the case will determine if additional Defendants will be added.

Sunridge Condominium Association was aware of concerns with the chimney because of a 1993 fire at the condos, which was a result of improper design and installation of a fireplace, according to allegations in the suit. It's alleged that the company failed to warn that the fireplace chimney chaseways were constructed with a fire resistance rating of zero.

The chimney cleaning company contracted to clean the chimneys at the resort, but officials failed to tell the condominium association and the owner that the chimney had a large amount of creosote which caused an increased fire risk. As you probably know, creosote is a corrosive substance formed during the wood-burning process that builds up in chimneys. It's alleged in the suit that Majestic, a fireplace manufacturer, failed to notify condo owners and the association that the fireplace was inadequate and improper for the intended use.

After their son's death, the Murts created the Jonathan M. Murt BVA-WVU Memorial Scholarship, which provides assistance for a Belle Vernon-area high school graduate attending West Virginia University. Jonathan Murt was a graduate of West Virginia University with a degree in engineering and had a good job. He died a tragic death. The Pittsburgh law firm Wilkes & McHugh is handling the case for the family.

Source: *Daily American*

HOMEOWNER SETTLES CLAIM ARISING FROM AN UNDERAGE DRINKING PARTY

A homeowner in Lake Forest, Ohio, has settled a claim for \$2.5 million that should get the attention of parents in all states. A lawsuit was brought by a young man who was paralyzed in a crash that occurred after an *underage drinking party* in the woman's *home*. The woman's teenage daughters

hosted the party. The Plaintiff, who in 2006 was a 19-year-old, went to the home with an 18-year-old friend. While visiting the daughters, they all drank beer in the girls' bedroom. The 18-year-old was intoxicated when he drove home and as a result lost control of his car. The Plaintiff, a passenger, was seriously injured and was left paralyzed.

The homeowner in this case didn't buy the alcohol for the teens or know they were drinking in her home. But the homeowner should have monitored the teens and suspected they were drinking, especially because the daughters had been caught drinking before. The woman's homeowners insurance will pay the \$2.5 million settlement. A lawsuit against the drunk driver was scheduled to start this month.

Source: *Chicago Tribune*

ARKANSAS JURY AWARDS WOMAN \$3 MILLION IN POOL INJURY SUIT

A jury in Arkansas has awarded a Mississippi woman \$3 million in a lawsuit over injuries she suffered in a near-drowning at a Hot Springs hotel in 2006. The jury award was for Demetrica Quenta Scott in the lawsuit against the Rodeway Inn. The hotel was accused of improperly maintaining its pool. It appears the water was "cloudy" on July 3, 2006, the day the Plaintiff dove in and couldn't make her way to the surface. Several people dove into the pool trying to find Ms. Scott, but no one could see her because of the turbidity of the water. Others used the shepherd's hook at the pool as a probe, but still could not locate her. Finally, a person was able to find Ms. Scott and brought her to the surface. Ms. Scott suffered serious brain damage and now is a resident in a Mississippi nursing home.

Source: *Associated Press*

XIV. WORKPLACE HAZARDS

LAWSUIT OVER PLAYER'S DEATH SETTLED WITH NFL

The widow of Minnesota Vikings lineman Korey Stringer has reached a settlement with the National Football League over his heatstroke death during training camp in 2001. Under an agreement with Kelci Stringer, the NFL will support her efforts to create a heat illness prevention program. No other terms of the settlement have been announced. Kelci Stringer had filed a wrongful death lawsuit against the league, claiming the NFL hadn't done enough to ensure that equipment used by players protected them from injuries or deaths caused by heat-related illnesses. According to an NFL spokesman, the heat illness prevention program will be for children and older athletes.

A separate lawsuit against equipment maker Riddell Inc. is still pending in federal court in Columbus, Ohio. It was alleged in the lawsuit that Riddell fails to warn players and coaches that wearing its helmets and shoulder pads in hot temperatures can be dangerous. Korey Stringer, a 27-year-old, 335-pound lineman, died from heatstroke on July 31, 2001, during the second day of pre-season training camp. He practiced in the extreme heat and humidity, which pushed his body temperature to 108.8 degrees. Both Stringer and his wife attended college at Ohio State. Stringer left for the NFL in 1995 after his junior season.

Source: *Associated Press*

COURT RULES FOR WORKER IN A RETALIATION CASE

The U.S. Supreme Court has ruled that workers who cooperate with their employers' internal investigations of discrimination can't be fired in retaliation for implicating colleagues or superiors. The justices without a dissent held that a longtime school system employee in Tennessee can pursue a

civil rights lawsuit over her firing. The court voted to reverse the 6th U.S. Circuit Court of Appeals' ruling that the anti-retaliation provision of Title VII of the 1964 Civil Rights Act does not apply to employees who merely cooperate with an internal probe rather than complain on their own or take part in a formal investigation.

The Cincinnati-based court was alone among federal appeals courts in its narrow view of the civil rights law, which was already understood to bar retaliation against people who complained about harassment and other discrimination. Justice David Souter said for the court:

The question here is whether this protection extends to an employee who speaks out about discrimination not on her own initiative, but in answering questions during an employer's internal investigation. We hold that it does.

Vicky Crawford was fired in 2003 after more than 30 years as an employee of the school system for Nashville, Tennessee, and Davidson County. She did not file a complaint about harassment by a school official. But when she was interviewed by investigators for the school system who were looking into other employees' allegations against the director of employee relations, Ms. Crawford said she had been subjected to unwanted sexual advances. Ms. Crawford related specific instances of sexual advances by a school official.

The school system took no action against the man and Ms. Crawford was fired months later. She filed a federal lawsuit, but it was dismissed by a federal judge and upheld on appeal. The Bush Administration backed Ms. Crawford in her appeal to the U.S. Supreme Court. Ann Steiner, Ms. Crawford's lawyer, said the ruling is a "great win for civil rights," adding:

It means from this point on no matter who instigates an investigation or conversation about harassment, if someone communicates that they've been harassed, they'll be protected

under the retaliation provisions.

The school system and business interests argued that if employees like Ms. Crawford are covered by Title VII's anti-retaliation provisions, employers will refrain from launching internal investigations. Fortunately, the justices didn't buy that argument. Justice Souter wrote that employers already have strong incentives to "ferret out" discriminatory activity as a way to limit their liability.

The civil rights law's anti-retaliation section protects employees who complain about, or oppose, discrimination, as well as those who participate in formal investigations. The court limited its ruling to the opposition clause and did not pass judgment on whether Ms. Crawford also is protected under the participation clause. The school system has said that she had been fired over irregularities in her job as payroll coordinator. It also made other arguments defending itself from the retaliation claim. The case is being sent back to the appeals court to consider those issues.

Source: Associated Press

MEXICAN WORKER'S FAMILY CAN'T RECOVER DAMAGES

An appeals court in Alabama has ruled in a case of first impression in our state that the workers' compensation law cannot provide death benefits to the family of a Mexican worker killed in an accident in Alabama. The result in the case was reached because the family resided in Mexico even though the worker was killed in Alabama. The Alabama Court of Civil Appeals ruled that dependents living outside the United States can't collect death benefits under the Alabama Worker's Compensation Act, a law written in 1919. Greg Davis, a lawyer for the worker's family, says the Legislature needs to change the law to reflect Alabama's modern economy, with not only Hispanic workers but employees from many countries at foreign-owned factories in Alabama. Greg believes, "it's definitely time for change."

Luis Martinez Silva was killed on Sep-

tember 12, 2003, when he fell 30 feet from scaffolding at a construction project in Rockford, Alabama. The Occupational Safety and Health Administration cited two companies for not erecting the scaffolding properly and not training workers. The insurance company for Silva's employer filed suit to determine how to handle death benefits under Alabama's workers' compensation law. Silva had entered the country legally, but his visa had expired by the time of his death. That was not an issue in the case because Alabama's workers' compensation law does not differentiate, according to Greg.

The Appeals Court ruled that Silva's wife and their two children are not entitled to death benefits because state law says benefits shall only be paid to dependents who lived in the United States at the time of the employee's death. Silva's family lives near Mexico City. Silva's family argued that Alabama's law violates the equal protection and due-process guarantees of the United States Constitution. But the Court of Civil Appeals said the dependents can't invoke those constitutional guarantees because they are not citizens or resident aliens of the United States.

The Appeals Court noted that courts in several other states have wrestled with this issue and most, including Georgia, have upheld the power of the state legislatures to distinguish between resident alien beneficiaries and non-resident alien beneficiaries in workers' compensation cases. If Silva's family had won, they would have received about two-thirds of his weekly salary until the children were grown, with the amount exceeding \$100,000. Fortunately, Silva's family will not go without compensation. They sued the primary contractor on the construction job, Pemberton Inc., and a jury awarded a \$3.2 million verdict. Greg says that case was subsequently settled for a lesser amount.

Greg hasn't made a decision on whether to appeal the workers' compensation claim to the Alabama Supreme Court. But he did say, "it's clear the workers' compensation law makes it cheaper for a company if a worker with a foreign family dies on

the job rather than getting seriously injured because injured workers get compensated until they recover from their injuries.” It appears that’s very true under the current law.

Source: *Associated Press*

WAL-MART TO PAY \$17.5 MILLION IN A RACIAL BIAS SETTLEMENT

Wal-Mart Stores Inc., the world’s largest retailer, will pay \$17.5 million to settle a lawsuit claiming the company discriminated against African-Americans in recruiting and hiring truck drivers. The lawsuit was filed in 2004 by Daryal Nelson, who claimed he was rejected for a truck-driver position because of his race. Nelson filed his lawsuit in federal court in Helena, Arkansas, on behalf of all black applicants who believe they were rejected or deterred from applying for the positions because of race. The lawsuit was given class action status in May 2007. Wal-Mart’s motions to dismiss the case or decertify the class were denied last month.

Under the settlement Wal-Mart will provide priority placements for 23 black applicants who provide approved claim forms. The retailer also will have to establish benchmark hiring goals to ensure diversity. Lawyers for the workers and Wal-Mart have asked the judge to set a June 30th hearing to consider approval of the settlement.

Source: *Bloomberg.com*

ALABAMA COMPANY CITED BY OSHA

A Hamilton-based manufacturer has been hit with more than \$192,000 in penalties after an inspection uncovered 36 safety and health violations. The fines were proposed by the Occupational Safety and Health Administration against NTN-Bower’s manufacturing plant. The company makes precision roller-bearings. OSHA area director Roberto Sanchez, who is in Birmingham, says the violations “reflect management’s failure to properly train its employees.” NTN-Bowers had 15 working days to contest the citation

and penalties to the agency.

Source: OSHA website

JUDGE CERTIFIES FLSA COLLECTIVE ACTION AGAINST CITIGROUP

Former bank employees of Citigroup, who sued the company for unpaid overtime, have won a key battle in their case. In February, a federal judge certified a nationwide collective action against Citigroup Inc. in a lawsuit that accuses the banking giant of misclassifying its business banking officers as exempt and failing to pay them for hours worked off the clock. Specifically, the lawsuit alleges that Dana Gilbert, who is the named Plaintiff, and others similarly situated, worked as business banking officers for Citigroup selling the company’s basic business products and services. From 2006 until June 2007, Ms. Gilbert was paid on a salary basis and according to the lawsuit, in June 2007, Citigroup started paying Ms. Gilbert on an hourly basis. The transfer to an hourly position occurred as a result of Citigroup implementing an organizational restructuring in 2007.

But, Ms. Gilbert alleged in her suit that Citigroup misclassified her and other banking officers as exempt employees and failed to pay overtime compensation both before and after the restructuring in violation of the Fair Labor Standards Act. Citigroup sought to limit the size and scope of the class action suit to the geographic regions in California where Ms. Gilbert had previously worked for the bank. Rejecting Citigroup’s arguments, the U.S. District Court for the Northern District of California ruled that because the Plaintiff presented evidence that officers across North America were compensated in the same way, the request for a nationwide class action was warranted.

While we are not involved in the above case, our firm, in an effort to help workers who have been wrongly denied their overtime compensation, routinely pursues class action litigation under the Fair Labor Standards Act to recover unpaid overtime wages. For more information, contact Larry

Golston at 1-800-898-2034 or visit our website at www.BeasleyAllen.com.

XV. TRANSPORTATION

HEARINGS TO ADDRESS MEDICAL HELICOPTER SAFETY

A medical helicopter crashed near Chicago in October, killing three adults and a baby. This tragedy appears to be part of a trend. The crash was the ninth fatal accident nationwide in an 11-month period resulting in 35 people losing their lives. Unfortunately, the Chicago accident, like others preceding it, most likely could have been prevented. The helicopter, which had clipped the support wire of a radio station tower while flying at night, lacked up-to-date safety equipment such as a device to alert the pilot to towers and other nearby obstacles.

The National Transportation Safety Board is trying to reduce the poor safety record of medical helicopters. The Board started four days of hearings in Washington on February 3rd. Safety advocates appeared and demanded a crackdown on the medical helicopter industry. This is a loosely regulated business with annual revenues estimated at more than \$2.5 billion. The industry has grown rapidly and has a pretty bad safety record.

More than 800 medical helicopters are currently estimated to be operating in this country, airlifting the sick and injured, often under emergency conditions. In the last decade, the industry has doubled in size while undergoing a business transformation. Hospitals were the primary operators of such helicopters at the outset. Now the work is outsourced to commercial operators such as the Air Methods Corporation and PHI Inc. Safety experts contend that competition among companies for flights has added to the risks.

The only thing the panel holding the safety board hearings can do is to make recommendations to the Federal Aviation Administration, which regulates the flight safety of medical helicopters.

The sessions brought together aviation experts, helicopter personnel and industry executives, and hopefully the panel will help bring about some needed changes in this industry. The causes of the accidents were examined at the hearing along with other issues relating to both air safety and medical care. Safety advocates say necessary changes include tighter federal and state regulation. Dr. John A. Morris Jr., medical director of the helicopter program at Vanderbilt Medical Center in Nashville, observed: "This industry needs more oversight. There is too much variability in the quality of care and too much variability in safety equipment."

Industry officials say that they recognize a need for some safety mandates, including rules governing flights at nighttime, when most accidents occur. But they argue that companies should be free to choose the technologies best suited to their operations.

In 2006, after 18 people died in six crashes in 2004, the safety board urged the FAA to order companies to take four safety steps, which would include installing obstacle-sensing systems and developing better weather reporting systems. Many accidents occur when pilots, often responding to emergencies, find themselves in deteriorating weather without adequate navigation technology to help them fly safely out of it. Thus far, the FAA has taken action on only one of those mandates. Last fall, the safety board put safer medical helicopters on its list of the nation's top transportation priorities. But so far very little has been done.

Source: *The New York Times*

FEDERAL APPEALS COURT AFFIRMS WRONGFUL DEATH VERDICT

The U.S. Court of Appeals for the Eleventh Circuit affirmed a \$3.1 million verdict last month in the case of *Bowden v. Lincoln County Health System*. The verdict had been returned by a federal jury in April 2007 in the federal district court for the Northern District of Alabama. The wrongful death lawsuit was filed on behalf of the

Bowden family against the Lincoln Medical Center Ambulance Service after 18-year-old Dianna Bowden was killed when a Lincoln County, Tenn., ambulance driver crashed into her car on Highway 231 in Hazel Green, Alabama. Dianna died instantly in the crash. It was reported that the ambulance driver was traveling at 81 miles per hour on a non-emergency call at the time of the crash.

The Defendants, Lincoln County Health System and the ambulance driver, appealed the verdict, saying neither the Alabama nor the Tennessee statutory cap on a governmental entity's liability applied where an Alabama Plaintiff sued a Tennessee county entity and its employee in federal district court in Alabama. The Appeals Court, after review, affirmed the district court verdict. The Bowden family was represented by Harvey Morris, Joe King and Joey Aiello from the firm of Morris, Chonchin & King in Huntsville. They did an excellent job on the case.

Source: *Associated Press*

LAWSUIT FILED BY RELATIVES OF FIREFIGHTERS

Relatives of two contract firefighters killed in a helicopter crash in Northern California last summer have filed lawsuits against the aircraft's owner, manufacturers and a company that performed maintenance. The suits were filed by the families of 23-year-old Matthew Hammer and 29-year-old Bryan Rich. The lawsuits seek \$10 million for the estates of each man. Seven others died when the helicopter crashed on takeoff in the Shasta-Trinity National Forest. Named as Defendants were Carson Helicopters, General Electric, Columbia Helicopters, Sikorsky Aircraft and Sikorsky's parent, United Technologies. Robert Hopkins, a Portland lawyer, represents both families. The suits are the second and third to be filed resulting from the crash.

Source: *Associated Press*

XVI. NURSING HOME UPDATE

THE BUSH ADMINISTRATION STRIKES AGAIN

The Bush Administration took one more swing at the public in a secret move designed to protect the owners of nursing homes that commit wrongs and hurt innocent residents of the facilities. The Administration shut off a needed source of information last fall about abuse and neglect in long-term care facilities that people suing nursing homes consider crucial to their cases. The change, which affects the \$144 billion nursing-home industry, was enacted with neither public notice of any sort nor any public attention. It was done in secret and with absolutely no justification. The rule designates state inspectors and Medicare and Medicaid contractors as federal employees, a group usually shielded from providing evidence in private litigation.

The restrictions affect about 16,000 nursing facilities and 3 million residents in the United States. The practical effect is to force litigants to go to greater lengths, including obtaining court orders, to get inspection reports or depositions that are needed in litigation and which have been available up to now. Eric M. Carlson, a lawyer with the National Senior Citizens Law Center in Los Angeles, made this observation:

This change hurts nursing-home residents and their families by allowing bad practices to be kept in secret by nursing homes and inspectors. Government inspectors have the right to go into nursing homes and investigate, and they learn things that residents and families otherwise could never find out.

The new rule, which was issued in September, prohibits state health departments and contractors from participating in private lawsuits involving facilities that are in the federal assistance program without approval by the

head of the Department of Health and Human Services. The Bush Administration will go down in history as being the most anti-consumer of all time. This is just another example of why!

Source: Associated Press

LAWSUIT FILED AGAINST NURSING HOME OVER COLD-RELATED DEATH OF WOMAN

A lawsuit has been filed by the family of Sarah Wentworth. It's alleged that the nursing home resident was too frail to get out of bed or change her clothes without assistance. The 89-year-old left her Itasca nursing home last month and froze to death in the facility's courtyard. The lawsuit alleged neglect and abuse on the part of The Arbor of Itasca, the nursing home where Ms. Wentworth had lived for more than two years before her death.

It is difficult—if not impossible—to understand how Ms. Wentworth, who had been suffering from symptoms of dementia, could have left her room and the building without staff members noticing. She was found dressed only in a hospital gown after being outside for at least 90 minutes, still wearing an ankle bracelet that should have triggered an alarm when she went through an exit door, according to local authorities. Public records show that the Illinois Department of Public Health had conducted 12 separate investigations of the facility in response to complaints since the beginning of 2008.

Source: Chicago Tribune

XVII. HEALTHCARE ISSUES

REPORT CITES FDA'S WEAKNESSES OVER DRUGS AND MEDICAL DEVICES

I wasn't a bit surprised to read in a report by *Reuters News* that the U.S. Food and Drug Administration hasn't been adequately protecting the public's health. The U.S. Government Accountability Office, the watchdog arm of Congress, made findings

released on January 22nd that came to this conclusion. The GAO said that "as a result, the American consumer may not be adequately protected from unsafe and ineffective medical products." It added the FDA to its list of "high-risk" areas of the federal government and that's not good news for consumers. As previously reported, new laws have challenged the FDA's ability to ensure the safety of pharmaceuticals, biologic drugs and medical devices. The GAO releases its list at the start of each new Congress to help lawmakers set their priorities. The findings in this report are certainly not good news for American citizens, and Congress must get busy correcting things at the FDA.

Numerous other groups, including the Institute of Medicine and various advocacy organizations, have cited the FDA's challenges in keeping dangerous or ineffective products off the U.S. market. Even the agency itself acknowledges that it needs to be retooled. Acting FDA Commissioner Dr. Frank Torti said to members of Congress in a written statement:

We need your partnership to reshape the agency and to provide us with the resources and legislative authorities necessary to support our work. For many issues of risk, science does not give us all the answers. When we do not yet know the answers, the FDA will be honest and forthcoming about our uncertainty.

According to the GAO investigators, the FDA needs to have better data on its inspections of facilities in other countries and conduct more inspections. It also must "more systemically review the claims made in drug advertising and promotional material, and ensure that drug sponsors accurately report clinical trial results," the GAO said. If you would like to see the GAO updated list, go to its website: www.gao.gov/products/GAO-09-271. Also, take the time to contact your U.S. Senators and House members and ask them to get to work on this problem.

Source: Reuters

FDA PANEL RECOMMENDS BAN ON THE PAINKILLER DARVON

Government medical advisers have recommended a ban on Darvon, the prescription medicine that's been around for more than 50 years, and which has been widely used. The drug, which is used to treat pain, has left a trail of problems such as addiction and suicide. A Food and Drug Administration advisory panel voted recently to recommend withdrawing Darvon. A hearing was held during which the risks and benefits of the drug were examined. The panel recommended at the conclusion of the hearing by a 14-12 vote to withdraw Darvon.

As we have reported previously, the FDA is not required to follow the recommendations of its advisers, but often does so. Darvon was first approved in 1957, when there were few alternatives for treating pain except aspirin and powerful narcotics. Now mainly marketed as Darvocet, which includes a dose of acetaminophen, the drug remains one of the top 25 most commonly prescribed medications. More than 20 million prescriptions were written in 2007.

Public Citizen had petitioned the FDA to withdraw Darvon because the drug offers relatively weak pain relief and poses an overdose risk, with the potential to be used in suicides. Dr. Sidney Wolfe, a drug safety expert with Public Citizen, who first sought a ban in the 1970s, had this to say: "With a drug that has almost no evidence of benefit, any risk is unacceptable. Hopefully the FDA will follow the vote of its advisers."

Two companies that market the drug—Xanodyne Pharmaceuticals and Qualitest/Vintage Pharmaceuticals—claim the medication is safe and effective when used as directed. In documents filed with the FDA, the companies said doctors need a range of options to treat pain, and noted that many other painkillers have become drugs of abuse—some with far worse consequences. Dr. Jerry Avorn, a professor of medicine at Harvard and a critic of the pharmaceutical industry, commended the FDA for taking a hard look at Darvon. He observed:

I have been astonished at how widely used this drug is. It's no longer the most abusable and most dangerous drug in its class, but the fact that there are worse drugs doesn't make Darvon a good drug.

It should be noted that the United Kingdom banned its version of Darvon in 2005. While the FDA can follow the Advisory Board's recommendations and ban the drug, it may take other steps, such as requiring stiffer warnings, safety studies or special education efforts aimed at doctors and patients. Dr. Wolfe is recommending that the drug be withdrawn gradually, because some patients have become dependent on it.

In an analysis prepared for the hearing, the FDA's safety office said it had searched the agency's database of reported drug problems, but the result was "insufficient" to allow reviewers to make a clear-cut recommendation. The FDA's safety office found more than 3,000 reports of serious problems. With the top three being suicide, drug dependence and overdoses. In a separate analysis, the FDA office that handles painkillers found Darvon to be a weak pain reliever. Most studies, according to the reviewers, show that in Darvocet, the widely-used combination drug, the Darvon component appears to contribute "little or no" additional pain relief beyond that provided by the acetaminophen component.

Dr. Wolfe presented the advisory panel with new data from the government's Drug Abuse Warning Network, which tracks emergency room visits and deaths. It said that Darvon-related deaths rose to 503 in 2007, from 446 in 2006. In both years, about 20% were suicides. The network covers only about one-third of the U.S. population. Data from Florida's medical examiner reporting system showed that in 2007 Darvon was present in the bodies of 341 people who died of any cause. Medical examiners identified it as the cause of death in 85 cases. Hopefully, the FDA will follow the recommendation of the advisory panel and ban this drug. The benefits certainly don't

appear to override the risks that come with taking Darvon.

Source: Associated Press

FDA WARNS ABOUT DRUG FOR EPILEPSY

The Food and Drug Administration is saying that the epilepsy drug Zonegran can cause a certain type of metabolic disorder that can increase the risk of kidney stones and bone diseases. Zonegran is marketed by the Japanese pharmaceutical firm Eisai Co. and is also sold as a generic drug under the name zonisamide. The product is approved to treat partial seizures in adults with epilepsy with other epilepsy medications. In a posting on its Web site last month, the FDA said doctors need to be aware that treatment with zonisamide can cause metabolic acidosis, a disturbance in the body's acid-base balance that results in excessive acidity of the blood.

The FDA said Zonegran's label would be updated to warn health-care professionals of the problem and to recommend that patients be tested for the condition by measuring a blood chemical known as serum bicarbonate before starting treatment and periodically during treatment. The FDA said metabolic acidosis is often asymptomatic but that it can cause hyperventilation, or fast breathing, fatigue and loss of appetite. More severe symptoms include an irregular heartbeat or unconsciousness.

Source: Wall Street Journal

HIGH LEAD LEVELS FOUND IN DISTRICT OF COLUMBIA CHILDREN

A new study has concluded that hundreds of young children in the District of Columbia experienced potentially damaging amounts of lead in their blood when lead levels were dramatically rising in the city's tap water. In some high-risk neighborhoods, the number of toddlers and infants with blood-lead concentrations that can cause irreversible IQ loss and developmental delays more than doubled after harmful levels of lead began leaching

into the city's drinking water in 2001, according to the study's findings. The peer-reviewed study will be published in Environmental Science and Technology, a journal on advances in chemical and environmental research.

Authors of the study, at Virginia Tech and Children's National Medical Center, said their findings raise concern about the 42,000 children in the District, now ages four to nine, who were in the womb or younger than two during the water crisis. The report says those children might be at risk of future health and behavioral problems linked to lead. The study, based on a detailed analysis of thousands of children's blood tests from 2000 to 2003, contradicts the public assurances issued by federal and District health officials starting in 2004. Although officials acknowledged at the time that the amount of lead in city water were at record-breaking levels, they have said repeatedly that they found no measurable impact on the general public's health.

The researchers in the report, based on a subset of tests reviewed by the CDC, identified hundreds of specific children whose blood lead rose to harmful levels during the city's lead crisis and generally fell when the water lead levels fell. The correlation of timing and geography, several experts not involved in the study said, increases the likelihood that leaded water contributed to the changes in blood readings. Co-author Marc Edwards, a Virginia Tech engineer and MacArthur scholar, had this to say:

There is no doubt that many children in this city were profoundly impacted by the years of completely unnecessary exposure to high lead in the District's water. We hope this study will stop future harm and address the misrepresentations and false statements about what really happened.

Experts agree that fetuses and children younger than two are the most vulnerable to permanent damage from lead. That's because their brains are still developing and also because they tend to both ingest and absorb much more

of the toxic metal than do adults or older children, based on their body weight. Federal health officials have long viewed lead paint as the most dominant source of lead poisoning for children. But because the District's tap water had the highest lead readings ever measured in the nation, many experts have become increasingly concerned. Study co-author Dr. Dana Best, a Children's National Medical Center pediatrician and epidemiological researcher, stated:

I was surprised by how high the blood-lead levels were. And by the time there are measurable levels, the damage has been done. We cannot continue to use children as the canaries in the coal mine. We have to stop testing children to determine what danger is in the environment and start testing the environment to make sure children don't get harmed.

I suspect the debate over this issue will continue. The lead problem as it relates to small children should be of great concern. Hopefully, this most recent study will result in more serious attention being focused on the problem.

Source: *Washington Post*

NEARLY 2,000 PEOPLE WARNED OF POSSIBLE BERYLLIUM EXPOSURE

Los Alamos National Laboratory has notified nearly 2,000 current and former employees and visitors that they may have been exposed to beryllium in the lab and may be at risk of disease. Letters have gone out to all of the potential victims. Concern over possible exposure to the hard, gray metal, which is purified for use in nuclear weapons and reactors and also used in bicycle frames and golf clubs, was first raised last November, when a box containing beryllium was received at the laboratory's short-term storage facility. Since the package appeared to have damage or degradation of the packing materials, the area was tested for additional contamination.

Surface contamination was found,

but it turned out that the box was not the source. Thus far, the source has not been determined. Since the contaminated area had not been tested for the presence of beryllium since 2001, everyone who has entered the restricted-access area since then is being notified. The laboratory covers 36 square miles and has nearly 10,000 employees. According to reports, only a building at one technical area is involved.

Beryllium is hazardous only when its fine, particulate form is inhaled. It was found on surfaces, not in the air. According to a spokesman for the lab, the alert was sent because they felt it was the responsible, prudent thing to do to let people know this contamination was discovered and to answer their questions if they have any concern about potential for exposure. Thus far, there have been no reports of sickness.

The laboratory said about 240 employees and 1,650 visitors were potentially at risk because they visited the contaminated areas. Chronic beryllium disease can impair lung function in people who are susceptible. The employees, because of their more frequent contact, would appear to be at the greatest risk. An operator is available at the laboratory at 505-665-7233 from 8 a.m. to 5 p.m. Mountain Time, Monday through Friday, to answer questions.

Source: *CNN.com*

XVIII. ENVIRONMENTAL CONCERNS

TESTS FIND MORE TOXINS IN TVA ASH SPILL

We wrote in the February issue about the coal ash problems in Tennessee. Independent water quality tests around the massive coal ash spill at TVA's Kingston Fossil Plant show high levels of arsenic and other toxins in river water near the disaster site and several miles downstream. The Environmental Integrity Project, a nonpartisan, nonprofit group, has released prelimi-

nary results from water sampling at 22 locations from December 30th through January 4th. The samples were collected about two weeks after over a billion gallons of ash sludge and water spilled from the containment area at the Kingston Fossil Plant. The high levels of contaminants were found only in river water, not in private wells. The Washington, D.C.-based organization had this to say about the tests:

The preliminary data reveal that contaminant levels in these water samples violate both U.S. primary drinking water standards and Tennessee's water quality criteria.

It should be noted that the president of the Tennessee Valley Authority has finally acknowledged the massive sludge flood was worse than the agency's public relations staff initially said. He now calls the coal ash spill a "catastrophe." This contradicts an internal TVA memo obtained by The Associated Press in which the description of the disaster was changed from "catastrophic" to a "sudden, accidental" release. The TVA memo was also edited to remove "risk to public health and risk to the environment" as a reason for measuring water quality and the potential of an "acute threat" to fish.

Our firm is continuing to work on the lawsuit we filed in a Tennessee federal court and will be doing intense discovery in an effort to obtain more information relating to the overall problem. If you need more information on this matter, contact Rhon Jones who heads up our Toxic Torts Section at 800-898-2034.

Source: *wate.com* and *Associated Press*

PRESIDENT OBAMA REVERSES BUSH EFFORT IN POLLUTION CASE

In a significant happening, President Obama has dropped a Bush Administration appeal of an air pollution case. It now appears the government will embrace tougher rules to cut mercury emissions from power plants and that's good news. The case was due to be considered by the Supreme Court. The Obama Administration asked the court

to dismiss the case. An appeals court had rejected a Bush Administration plan for regulating mercury emissions. It said the plan shouldn't have included allowing utilities to purchase emission credits instead of actually reducing emissions. An appeal was taken. Scientists fear mercury pollution leads to neurological problems in infants.

This was the first outright reversal of a legal position taken by the Bush Administration at the Supreme Court. The power industry still has a separate petition challenging the appeals court ruling, which is unaffected by the Obama Administration's action. The Administration has signaled it is breaking with Bush's course on several issues. EPA Administrator Lisa Jackson says that the Obama Administration will draft its own rules under the Clean Air Act to curb mercury emissions. She said the EPA would likely set limits on the toxic metal from power plants and other sources.

Environmentalists had argued that the Bush system would create "hot spots" of mercury contamination near some power plants. Seventeen states and health groups joined the lawsuit to block the regulation, and the appellate court sided with them. The EPA will now develop appropriate standards to regulate power plant emissions.

Source: Associated Press

FEDERAL AGENCIES SETTLE GLOBAL WARMING LAWSUIT

The federal government has settled a lawsuit that accused two federal agencies of financing energy projects overseas without considering their impacts on global warming. The Export-Import Bank of the United States and the Overseas Private Investment Corp. will provide a combined \$500 million in financing for renewable energy projects and take into account greenhouse gas emissions associated with projects they support. The lawsuit was originally filed in San Francisco federal court in 2002 by Friends of the Earth, Greenpeace and four cities that claimed they would suffer environmental and economic damage from global climate

change. Michelle Chan, senior policy analyst at Friends of the Earth, had this to say on the settlement:

This settlement is a substantial victory for our climate. It will force federal agencies to move away from fossil fuel projects and account for the climate impacts of their lending.

The Plaintiffs alleged the two agencies provided more than \$32 billion in financing and loan guarantees for fossil fuel projects over ten years without studying their impact on global warming or the environment as required by the National Environmental Policy Act. The projects included a coal-fired power plant in China; a pipeline from Chad to Cameroon; and oil and natural gas projects in Russia, Mexico, Venezuela and Indonesia. It was reported that many of the projects are well under way or already completed.

In the lawsuit, the four cities—Boulder, Colorado, and the California cities of Arcata, Oakland and Santa Monica—contended they would feel the environmental impacts of those faraway projects. Oakland argued its airport next to San Francisco Bay could be damaged by sea-level rise associated with global warming, while Boulder claimed warmer temperatures could affect the snowpack it relies on for its water. The Bush Administration had argued that the "alleged impacts of global climate change are too remote and speculative" to require the environmental reviews sought by the Plaintiffs. It also argued that the two agencies are exempt from NEPA.

The settlement was reached after a federal judge rejected the government's arguments and ordered the parties to negotiate an agreement. Under the settlement, the Export-Import Bank, which provides loan guarantees and other financing for overseas projects by U.S. companies, will develop a greenhouse gas policy and start considering carbon dioxide emissions when evaluating fossil fuel projects for investment. The Overseas Private Investment Corp., which supports American invest-

ment in developing countries, agreed to set a goal of reducing by 20% the greenhouse gas emissions associated with projects it supports over the next ten years. Each organization agreed to provide at least \$250 million in financing for renewable energy projects abroad.

Source: Associated Press

XIX. TOBACCO LITIGATION UPDATE

JURY AWARDS FLORIDA SMOKER'S WIDOW \$8 MILLION

Philip Morris has been ordered by a jury to pay \$8 million in damages to the widow of a smoker who died of lung cancer. It's being said this case could set a standard for some 8,000 similar Florida lawsuits. The award was for Elaine Hess, whose husband, Stuart Hess, died in 1997 at age 55 after decades as a chain smoker. The award amounts to \$3 million in compensatory damages and \$5 million in punitive damages against Richmond, Virginia-based Philip Morris USA, a unit of Altria Group.

The Hess case was the first to go to trial since the Florida Supreme Court in 2006 voided a \$145 billion class action jury award in the so-called Engle case, by far the highest punitive damage award in U.S. history. The court said each smoker's case had to be decided on individual merits, but let stand that jury's findings that tobacco companies knowingly sold dangerous products and hid risks from the public. To be included in those findings, smokers or their families had to file individual lawsuits by January 11, 2008.

Source: Jacksonville News

XX. THE CONSUMER CORNER

CPSC WARNS OF DEADLY FIRE AND CARBON MONOXIDE HAZARDS

Even though most of the cold weather is behind us, I believe it is good to mention a problem that has affected thousands of people this winter. We mentioned the safety problems caused by the combination of cold weather and the bad economy in the February issue. According to the U.S. Fire Administration (USFA), there have been more than 150 residential fires that resulted in more than 200 deaths since Thanksgiving. These statistics led the USFA and fire chiefs to declare the recent holiday season and start of the new year as one of the deadliest in recent memory. As families look for ways to save money in these tough economic times, the concern over additional fire deaths and carbon monoxide poisonings from alternative heating sources is greatly increased. The U. S. Consumer Product Safety Commission is urging consumers to keep safety in mind when it comes to heating their homes this winter.

Home heating equipment is among the top causes of fires and CO poisonings. From 2003 through 2005, there was an annual average of 57,300 fires and 270 fire deaths associated with portable heaters, central heating systems, and fireplaces and chimneys. There were also 68 deaths, on average, from carbon monoxide poisoning each year associated with these products. CPSC urges consumers to:

- Schedule a professional inspection each year of all fuel-burning home heating systems, including furnaces, boilers, fireplaces, wood stoves, water heaters, chimneys, flues and vents.
- Take precautions when using space heaters, fireplaces or other heating sources to help stay warm this winter.
- Install smoke alarms and carbon monoxide (CO) alarms in the home

and check that the batteries are fresh and working.

So far this year, there have already been dozens of deaths from fires in the home. Reports by CPSC of residential fire deaths in January include: Eight people died including a mother, her boyfriend and her four sons age six months to ten years old, in their Richland, New York home. There were no smoke alarms in the home. A woman was killed in her Detroit home by a fire believed to have been caused by a space heater that was too close to a chair. Three people, including 13- and 15-year-old sisters and their older male relative, died in their Oklahoma home. Space heaters and an electric stove were being used for heat. CPSC has urged consumers to follow these home heating safety tips for space heaters:

- Place space heaters on a level, hard and nonflammable surface (such as a ceramic tile floor), not on rugs or carpets or near bedding or drapes.
- Keep the heater at least three feet from bedding, drapes, furniture and other flammable materials.
- Keep children and pets away from space heaters.
- To prevent the risk of fire, don't ever leave a space heater on when you go to sleep or place a space heater close to any sleeping person.
- Always turn the heater off if you leave the area. Never use gasoline in a kerosene space heater.

Even small amounts of gasoline mixed with kerosene can increase the risk of a fire. Use a space heater that has been tested to the latest safety standards and certified by a nationally-recognized testing laboratory. These heaters will have the most up-to-date safety features; older space heaters may not meet the newer safety standards. An unvented gas space heater that meets current safety standards will shut off if oxygen levels fall too low. Do not use portable propane space heaters indoors or in any confined space unless they are specifically designed for indoor use. Always follow the manufac-

turer's directions for proper use.

- **Fireplaces:** Have flues and chimneys inspected for leakage and blockage by creosote or debris. Open the fireplace damper before lighting a fire and keep it open until the ashes are cool. An open damper may help prevent build-up of poisonous gases inside the home. Store fireplace ashes in a fire resistant container and cover it with a lid. Keep the container outdoors and away from combustibles.
- **Stoves and Ovens:** Never use electric or gas stoves to heat the home. They are not intended for that purpose and can cause fires and CO poisoning.

All of us should heed these warnings and follow the safety recommendations from the CPSC. It appears that many people still don't realize how deadly carbon monoxide is and don't always take the necessary steps to protect themselves.

Source: CPSC News Release

OVER 33 PEOPLE DIE AND 16,000 ARE INJURED EVERY WEEK DUE TO NON-TRAFFIC INCIDENTS

The National Highway Traffic Safety Administration has released its first-ever "Not-in-Traffic Surveillance 2007" report. It confirms that preventable deaths and injuries associated with motor vehicles happen every year, not only on public roadways, but on private driveways and in parking lots. NHTSA's report estimates that thousands of tragic and costly vehicle incidents occurred in 2007 when backing over children and other pedestrians, as well as the closing of powerful automatic vehicle windows on necks and limbs of car occupants. Janette Fennell, founder and president of KidsAndCars.org, the national nonprofit organization advocating for child and automotive safety, had this to say about the report:

This is an important day, one that has been long in coming. The release of this report solidifies once and for all that focus must be placed on the interaction of

consumers and vehicles...no matter where an incident takes place. These data confirm what parents and safety groups have known for years—that too many children were being killed in their own driveways and nothing was being done about it.

The NHTSA report found that in 2007 alone, 221 people were killed in backover incidents, and 14,000 suffered injuries. An additional 393 fatalities and 20,000 injuries were due to frontover incidents or being struck by a vehicle in some manner. It also concluded that an average of 588 fatalities happen annually involving passengers inside the vehicles where children are strangled to death by powerful rising windows, left in hot vehicles to die from hyperthermia, or perish from carbon monoxide poisoning and vehicle fires.

In 2007, NHTSA estimates there were 1,747 fatalities and 841,000 injuries in non-traffic incidents. This is a shocking number of deaths. Over 33 people die and 16,170 injuries occur every week due to non-traffic incidents. Jacqueline Gillan, vice president of Advocates for Highway and Auto Safety, a coalition of consumer and insurance groups working for improved safety laws, observed:

Passage of the Cameron Gulbransen Kids Transportation Safety Act in 2007 was the pivotal moment in changing how our society thinks about these terrible events.

KidsAndCars.org and the dozens of parents and family members who struggled with us for several years to pass this lifesaving statute are credited with its success. Without their courage and dedication, this official data would not be collected and vehicle safety standards for better rear visibility would never happen.

This legislation, among other key provisions, directed NHTSA for the first time to collect data about motor vehicle incidents that take place off the public roads and highways. For over a

decade, KidsAndCars.org has been calling for the government to collect data about instances that take place off the public roads and highways. As we reported in a prior issue, the work of the group began when Janette Fennell and her family were involved in a near death trunk entrapment incident. Ms. Fennell quickly learned that there were no data available dealing with that type problem. That was because in most cases these incidents took place on private property such as driveways, garages, parking lots and the like.

The response by the government and the automakers was predictable. They collectively said: “no data, no problem.” As a result, Ms. Fennell then began building her own database to prove that indeed these incidents were not only taking place, but there was between a 20-25% trunk entrapment fatality rate. After successfully working towards the implementation of internal trunk releases, many other incidents that take place in and around motor vehicles on private property were brought to her attention.

As a result of Ms. Fennell’s dedication, KidsAndCars.org was born and the organization’s success has been based on data collection, public education and awareness, policy changes, regulations and survivor advocacy. Ms. Fennell, a dedicated safety advocate, had this to say:

My heart pours out to the thousands of families who have lost a loved one in these predictable and preventable non-traffic incidents. Those children who have been lost have always been the inspiration for our work. We know all too well that the human body cannot win in a confrontation with an automobile.

For additional information on this subject, visit www.KidsAndCars.org

Source: KidsAndCars Release

DEPARTMENT OF JUSTICE PUTS AUTO FRAUD DATABASE ON-LINE

The U.S. Department of Justice has made The National Motor Vehicle Title

Information System (NMVTIS), an on-line database, available to states and consumers to discover automobile fraud and to provide new tools for law enforcement to investigate fraud, theft and other crimes involving vehicles. That is very good news. The system was made available for consumers on January 30th and is accessible through third-party, fee-for-service Web sites. The Office of Justice Programs’ Bureau of Justice Assistance administers NMVTIS in coordination with the Federal Bureau of Investigation. It took 16 years and litigation by three consumer safety groups to finally get this project done.

Consumers will have access to some valuable information. The system allows state motor vehicle administrators to verify and exchange titling and brand data and provides law enforcement officials, consumers and others with critical information regarding vehicle histories. Consumers now have access to the vehicle’s brand history, odometer data and basic vehicle information and can be redirected to the current state of record to access the full title record if available. Law enforcement can track the vehicle’s status from state to state by accessing the system directly.

Last year, Public Citizen, joined by Consumers for Auto Reliability and Safety (CARS) and Consumer Action, filed suit against the Department of Justice in a California federal court. In the suit, the government was asked to implement the NMVTIS, which Congress had actually required 16 years ago. In September, the court told DOJ it had until January 30th to make the information available on the Internet and to issue a rule requiring states, insurance companies and junk yards to report safety information.

The information to be made available is still incomplete and covers less than two-thirds of U.S. vehicles, according to Public Citizen. That’s because insurers and junk yards have until March 31st to begin reporting data. Currently, ten states are not reporting vehicle data at all, while two states that are—New York and California—are attempting to prevent public access to that data. Public Citizen has sent letters to the governors of California and New York

asking them to comply with the federal law and court order. Public Citizen also sent a letter to U.S. Attorney General Eric Holder requesting that he address the issue. Deepak Gupta, the Public Citizen lawyer who handled the lawsuit, observed:

We're encouraged by the Justice Department's actions and look forward to working with the DOJ to make sure that consumers from every state can access this potentially lifesaving information. Congress mandated this database in 1992, and it's about time it became a reality.

Ultimately, with full participation from all 50 states and the District of Columbia, NMVTIS will prevent stolen motor vehicles, including clones, from entering into interstate commerce, protect states and consumers from fraud, reduce the use of stolen vehicles for illicit purposes including fundraising for criminal enterprises, and provide consumer protection from unsafe vehicles, according to the Justice Department.

Source: *The National Law Journal*

CONSUMER GROUP SAYS STOP STEERING

If you have been involved in an automobile accident and are being directed by your insurance company to use a particular automobile body repair shop you may want to educate yourself on your rights. You can visit www.stop-steering.com to obtain information about your rights to choose the auto repair body shop of your choice. The choice of auto body shop may affect the quality and cost of repairs performed and also may potentially affect the value of your vehicle. Your insurance carrier or the insurance carrier for the driver responsible for your vehicle's damages can't force you to use a particular auto body shop. Consumers have the right to choose.

STATE OF MISSISSIPPI INVESTIGATES PREPAID FUNERAL POLICIES

Secretary of State Delbert Hosemann and Attorney General Jim Hood have filed a lawsuit against several Mississippi prepaid funeral policy providers accused of misapplying funds. Green Acres of Vicksburg LLC, Prentiss Memorial Gardens in Baldwyn, Sunset Gardens Memorial Park in Laurel, Liberty Memorial Park in Booneville, Pinecrest Memorial Park in Pittsboro, Southern Mortuary in Jackson, George F. West Funeral Home in Natchez, and Jackson Mortuary in Aberdeen were identified as the providers involved in the lawsuit.

The funeral policy providers are accused of not properly funding pre-need trust accounts. Injunctions have been filed in various courts to halt the sale of additional prepaid funeral policies by the companies and other litigation is pending in an attempt to recover missing funds. Folks should be very careful when considering whether to buy a prepaid funeral policy. If you have any unanswered questions or want to get more information, you should contact the Consumer Protection Division of the Attorney General's office in your state.

Source: *Associated Press*

VA SETTLES DATA THEFT CLAIMS

The Veterans Affairs Department has agreed to pay \$20 million to veterans for exposing them to possible identity theft in 2006 by losing their sensitive personal information. The agreement will settle a class action lawsuit originally filed by five veterans groups alleging invasion of privacy. The money, which will come from the U.S. Treasury, will be used to pay veterans who can show they suffered actual harm, such as physical symptoms of emotional distress or expenses incurred for credit monitoring.

A federal judge in Washington must approve the terms of the settlement before it becomes final. "This settlement means the VA is finally accepting full responsibility for a huge problem

that continues to worry millions of veterans, retirees, service members and families," said Joe Davis, spokesman for Veterans of Foreign Wars, which was not involved in the lawsuit. A VA spokesman said they want to assure veterans there is no evidence that the information involved in this incident was used to harm a single veteran.

The lawsuit came after a VA data analyst in 2006 admitted that he had lost a laptop and external drive containing the names, birth dates and Social Security numbers of up to 26.5 million veterans and active-duty troops. The laptop was later recovered intact, but a blistering report by the VA inspector general faulted both the data analyst and his supervisors for putting veterans at unreasonable risk. The data analyst had lost the information when his suburban Maryland home was burglarized on May 3, 2006, after taking the data home without permission. The VA employee promptly notified his superiors, but due to a series of delays, veterans were not told of the theft until nearly three weeks later, on May 22nd.

According to the settlement, veterans who show harm from the data theft will be able to receive payments ranging from \$75 to \$1,500. If any of the \$20 million is left over after making payments, the remainder would be donated to veterans' charities agreed to by the parties. Notices about the proposed settlement will be published in magazines and newspapers around the country, with a toll-free number and other contact information for veterans.

Five veterans groups filed a class action lawsuit in June 2006 in U.S. District Court in Washington on behalf of all veterans, seeking \$1,000 in damages for every veteran whose information was compromised in the computer theft. Douglas J. Rosinski, the lawyer representing the veterans groups, observed:

This is a very positive result. A lot of hard work went into finding a resolution that all the parties could be proud to say they were a part of bringing about.

While it's good that this case has been settled, it points out that com-

puter theft is a most serious problem. It's one that must be dealt with by governments at both the federal and state levels.

Source: Associated Press

CITIZENS SHOULD BEWARE OF ON-LINE TAXPAYER SCAM

The Alabama Department of Revenue has alerted taxpayers of an e-mail scam in which taxpayers are reportedly advised by the Department that they are due an Alabama income tax refund. In the e-mail communication, taxpayers are asked to click on a link provided in the e-mail and complete a "refund form." The Department advises that a person who receives an e-mail from someone claiming to represent the State, seeking personal or financial information, should not reply to the email. The Revenue Department does not initiate taxpayer communications through e-mail.

Taxpayers were strongly cautioned not to open any suspicious e-mails or links. Links or attachments contained in the suspicious e-mail could contain malicious code that would infect the taxpayers' computers. Folks shouldn't open any attachments, nor should they click on any links, and most important of all, they shouldn't provide any personal or financial information such as bank account numbers, credit card PIN numbers, or account passwords. State Revenue Commissioner Tim Russell had this warning:

Taxpayers should always use extreme caution when they receive unsolicited e-mails, from any source, especially those seeking any type of personal or financial information.

If you want more information, you can contact: the Revenue Department's Media Affairs Office: Carla A. Snellgrove or Carolyn Blackstock: (334) 242-1390; fax: (334) 242-0550; website address: www.revenue.alabama.gov.

Source: Alabama Fusion Center Information Bulletin

WAL-MART SETTLES DEATH CASE IN MARYLAND

The family of a Maryland man has settled a botched prescription lawsuit against Wal-Mart. The suit was filed after the man received the wrong medicine from a Wal-Mart pharmacist and subsequently died. The details of the settlement are confidential and were sealed by a federal judge in Baltimore. Sixty-six-year-old George Smith died in March 2007. He became ill eight days after receiving prescriptions intended for someone else. Mr. Smith became ill, was hospitalized, and subsequently died. Harry Barnes, an Elkton lawyer, represented the family.

Source: Associated Press

CPSC MUST EXPAND BAN ON TOY TOXIN

A federal judge has ruled that the U.S. Consumer Product Safety Commission can't let toys containing toxic manufacturing chemicals remain on store shelves now that the ban has taken effect. U.S. District Judge Paul Gardephe said the Commission, whose role is to protect the public from dangerous goods, must eliminate a loophole that lets the substances remain in toys made before the ban's effective date. Manufacturers have said they would have to pull hundreds of millions of dollars' worth of products from store shelves to comply, but consumer advocates called the ruling a victory for children's health.

CPSC will not appeal the ruling, which relates to phthalates, chemicals used to soften plastics. These chemicals are commonly found in bath toys, books, teething rings, dolls and plastic figures. Phthalates can be absorbed through the mouth or skin, interfering with reproductive hormones. A federal law signed last summer bans the chemicals from toys. Two consumer advocacy groups, Public Citizen and the Natural Resources Defense Council, sued the CPSC in December. The groups said the agency created a loophole by saying the ban didn't apply to toys or child-care products manufactured before February 10th.

Aaron Colangelo, the lawyer who argued the case for the NRDC, described the ruling as "a big win for children's health and for consumer safety." Adding, "without this ruling, consumers buying toys after February 10th would have no way of knowing whether they contain phthalates or not." The judge's ruling said the text of the law banning phthalates "provides unequivocally and unambiguously that no covered products may be sold as of February 10, 2009." Hopefully, this will wind this matter up in the U.S. Phthalates already have been banned in some places around the world, so phthalate-free products are already available to toy companies.

Source: Associated Press

CONGRESS MUST END THE FOOD SAFETY OVERSIGHT MESS

While the Food and Drug Administration bears the brunt of food safety oversight, a governmental responsibility called into question in the wake of the massive recall of peanut products, there are at least 15 government agencies that have a hand in "making sure food is safe." Currently, there are at least 30 different laws, some of which date back to the early 1900s, that have a bearing on food safety. Unfortunately, there is no one agency that is solely responsible for food safety. We have seen a real need for a major restructuring of how the federal government operates relating to food safety.

U.S. Rep. Rosa DeLauro and Senator Dick Durbin, D-Ill., have been proposing an overhaul of the nation's food safety structure for more than a decade. Hopefully, the Congress will now do something about the existing food safety problems following the outbreak of salmonella traced to peanuts blamed for sickening 600 people and killing at least nine others. A bill sponsored by Rep. DeLauro would divide the FDA into two agencies, separating the agency's drug oversight from its food safety duties.

Agriculture Secretary Tom Vilsack has gone even farther, suggesting that all the government agencies responsible

for food safety (including those that are part of the Agriculture Department) should be combined into one. This is a major break from his predecessors. While such a radical overhaul would be difficult, it makes sense. Many in the food industry have long opposed any changes and their allies in Congress have resisted new laws. The result, high-profile outbreaks of food-borne illnesses from domestic and foreign food sources, has been center-stage. We need a real change in how we protect consumers and it must take place now.

A study by the Government Accountability Office, the investigative arm of Congress, recommended two years ago that Congress re-examine the system. It said 76 million people are sickened by food-borne illness each year, and 5,000 die. But few changes have been made. And despite the salmonella outbreak, even the lawmakers urging changes say a streamlined new agency is unlikely any time soon. A flurry of food safety bills have been introduced in Congress. Many would strengthen FDA's oversight rather than creating a single lead agency. It might be good to see who all is involved at present. These are departments and agencies responsible for food safety:

- Department of Agriculture—Eight agencies within the department are separately responsible for such matters as the safety of domestic and imported meat, poultry and processed egg products; conducting food safety research; establishing quality standards; providing economic analysis; providing statistical data, including agricultural chemical usage data; and protecting the health and value of agricultural resources.
- Food and Drug Administration—Responsible for safety of all domestic and imported food products except meat, poultry and processed egg products.
- Alcohol and Tobacco Tax and Trade Bureau—Enforces laws covering the production, use and distribution of alcoholic beverages.
- Centers for Disease Control and Pre-

vention—Protecting public health, including food-borne illness surveillance.

- Environmental Protection Agency—Regulates the use of pesticides and maximum allowable residue levels in food commodities and animal feed.
- Federal Trade Commission—Prohibits false advertisements for food.
- National Marine Fisheries Service—Conducts voluntary, fee-for-service inspections of seafood safety and quality.
- Department of Homeland Security—Responsible for coordinating agencies' food security activities.

If you agree Congress should make the needed changes, contact your Senators and House members and ask for their help.

Source: CBS News

XXI. RECALLS UPDATE

There have been a good number of recalls over the last several weeks. The following are some of the more significant ones:

ARMY ORDERS RECALL OF MORE THAN 16,000 SETS OF BODY ARMOR

Army Secretary Pete Geren has ordered the recall of more than 16,000 sets of body armor following an audit that concluded the bullet-blocking plates in the vests failed testing and may not provide soldiers with adequate protection. The audit by the Office of the Defense Department Inspector General faults the Army for conducting flawed testing procedures before awarding a contract for the armor.

In a letter dated January 27, 2009 to Acting Inspector General Gordon Heddell, Secretary Geren

said he did not agree that the plates failed the testing or that soldiers were issued deficient gear. He said his opinion was backed by the Pentagon's top testing director. Despite his insistence that the armor was not deficient, Secretary Geren said he was recalling the sets as a precaution. The Secretary has asked for a senior Pentagon official to resolve the disagreement between the Army and the Office of the Inspector General.

Hundreds of thousands of body armor sets have been manufactured by nearly a dozen different companies over the past seven years. The vests are now standard equipment for troops in Iraq and Afghanistan. The audit by the Inspector General's Office was the second requested by Rep. Louise Slaughter, D-N.Y. She first asked the watchdog agency to look into the acquisition of the ballistic vests in 2006 after she read newspaper reports saying inadequate body armor was causing U.S. casualties. The first audit was completed last year, but Rep. Slaughter said it wasn't thorough enough. She is satisfied with the latest report but remains concerned the Army has not changed its contracting methods to ensure the troops are getting the best gear.

Auditors focused on a step called first article testing, which is used to confirm that the product meets the Army's specifications. But the audit says the Army didn't perform or score the tests consistently. The audit reports: "Consequently, we believe that three of the eight ballistic insert designs that passed first article testing actually failed." The contract examined by the Inspector General's Office is listed in the audit only as W91CRB-04-D-0040. An announcement on the Defense Department's website, which appeared in 2004, states that a contract under that designation was awarded to Armor Works of Chandler, Arizona. The Army bought 51,334 sets of the protective

inserts under the contract for just over \$57 million, according to the Inspector General. Our troops are entitled to have the best when it comes to safety or protective equipment. Above all, the latter category needs to work properly.

Source: *Associated Press*

TOYOTA TO RECALL OVER ONE MILLION CARS WORLDWIDE

Toyota Motor Corp. is recalling more than 1.35 million Vitz and two other models globally to fix a defect in the seat belt, a component in the exhaust system, or both. Subject to the recall in Japan are 525,898 Vitz, Belta and Ractis cars built from January 2005 to April 2008, Toyota said in a filing with the transport ministry. Toyota also will recall a combined 830,000 units of the Vitz subcompact and Belta—called Yaris in many markets, including the United States—exported to Europe, North America, and other markets.

One case of fire was reported in Japan due to the faulty seat belt design, which may cause a noise-absorber device to melt when the seat belt tensioner is activated in a collision, according to Toyota. No accident was reported in Japan from the defective exhaust-gas recirculation (EGR) pipe, which may crack in the worst-case scenario and cause exhaust gases that fail to clear emissions standards to leak. Toyota hasn't disclosed the estimated cost of the recalls.

BRITAX RECALLS 31,392 CHILD RESTRAINT SYSTEMS

The National Highway Traffic Safety Administration is alerting consumers of a recall involving certain Britax Frontier™ child restraints that could fail to properly secure young passengers in the event of a vehicle crash. Britax is recalling these child seats

because the harness straps may detach from the metal yoke on the back of the child restraint if repeatedly loosened one strap at a time. The affected models include Britax Frontier™ models E9L54E7, E9L54H6, E9L54H7, E9L54M6 manufactured on or before September 14, 2008, and model E9L5490 manufactured on or before September 17, 2008.

To fix the problem, Britax will mail rubber caps that prevent the straps from detaching to all registered owners. Owners who have not registered their seats with Britax must either call Britax at 1-800-683-2045 and request a kit or may visit www.frontierrecall.com. For more information, owners may call the telephone number shown above or write to Britax Child Safety, Inc., 13501 South Ridge Drive, Charlotte, NC 28273 or visit the Britax website at www.britaxusa.com.

All parents and caregivers should sign-up with NHTSA to automatically receive updates about child seat recalls via e-mail. NHTSA research shows that less than half of affected consumers respond to child seat recalls. Owners are difficult to reach if they have not registered the seat with NHTSA or the manufacturer and that results in a low return rate. Consumers can sign-up for recall notifications from the federal government by visiting www.safercar.gov and clicking on the "e-mail" or "RSS" option to register. Consumers with questions about this or any other safety recall campaign may call NHTSA's toll-free Vehicle Safety Hotline 1-888-327-4236 (TTY: 1-800-424-9153).

MILESTONE AV TECHNOLOGIES RECALLS TELEVISION WALL MOUNTS

The U.S. Consumer Product Safety Commission, in cooperation with Milestone AV Technologies, of Savage, Minnesota, announced a voluntary recall about 140,000

LCD Television Wall Mounts. The wall mount may crack when used with televisions 26 inches or larger, or with televisions that include a DVD player. The television may then fall from the wall mount and pose a serious risk of injury to consumers standing nearby. These wall mounts are used with flat screen LCD televisions. The recalled wall mounts are INIT models NT-TVM103 and NT-TVM104. The model numbers may be found on the UL sticker on the television interface.

Milestone is aware of 28 incidents in which the mount has cracked and the television has fallen from its mount. Thus far, no injuries have been reported. The mounts, which were manufactured in China, were sold at Best Buy stores nationwide from June 2007 through December 2008 for between \$60 and \$90. Consumers should immediately stop using the wall mounts and contact Milestone to receive a free repair kit. Consumers can call Milestone toll-free at (877) 277-3707 between 7 a.m. and 7 p.m. CT Monday through Friday or log on to the company's recall website at: www.milestone.com/initmount.

LANE HOME FURNISHINGS RECALLS GLIDER RECLINERS DUE TO FALL HAZARD

Lane Furniture Industries Inc., of Tupelo, Mississippi, has recalled approximately 700 Glider Recliners in cooperation with the CPSC. Consumers should stop using the product immediately unless otherwise instructed. The base of the chair, if installed backwards, can allow the chair to tip-over backwards, posing a fall hazard to consumers. The firm has received one report of the recliner tipping-over backwards, causing the consumer to fall to the floor.

The recall involves Lane's Glider Recliners, model numbers 2056

and 2085. Affected recliners have a manufacture date between June 2008 and October 2008. The model number, manufacture date and nine-digit serial number are located beneath the footrest of the recliner. They were manufactured in the United States and sold at various home furnishing retailers nationwide from June 2008 through October 2008 for about \$500. Consumers should immediately stop using the recliners and contact Lane to verify if their product is included in the recall. Lane will arrange for a free in-home inspection and repair of affected products. For additional information, contact Lane Home Furnishings toll-free at (877) 405-3745 between 8 a.m. and 5 p.m. CT Monday through Friday, or visit the manufacturer's Web site at www.lanefurniture.com/customer.

JAKKS PACIFIC RECALLS SPA FACTORY™ AROMATHERAPY KITS

JAKKS Pacific Inc., of Malibu, California, is recalling the following consumer product: Spa Factory™ Aromatherapy Fountain & Bath Benefits Kits. Consumers should stop using recalled products immediately unless otherwise instructed. About 516,000 units are involved in the recall.

Pressure from the buildup of carbon dioxide in the jars of Bath Bombs/Balls or Bath Fizzies can cause the caps on the jars to blow off, posing explosion and projectile hazards. The mixtures also can contain citric acid, which can get into the eyes during an explosion, posing a risk of eye irritation. JAKKS and CPSC have received 88 reports of exploding jars, including 13 injuries. Injuries to children aged 6 to 11 years old include three cases of irritated eyes, two eye injuries from flying caps, a cheek welt and a cheek cut. Injuries to adults include four reports of bruising, one swollen

joint, and one face gash.

This recall involves the purple caps on jars in the Spa Factory™ Spa Fantasy Aromatherapy Fountain and the Bath Benefits™ Kit toys. The jars are used to make Bath Bombs/Balls and Bath Fizzies. The following models, with the item numbers listed, are included in this recall: Spa Factory™ Bath Benefits™ Kit, item number 37836; Spa Factory™ Deluxe Spa Fantasy Aromatherapy Fountain, item number 37908; Spa Factory™ Spa Fantasy Aromatherapy Fountain, item number 37837; Spa Factory™ Spa Fantasy Aromatherapy Fountain, item number 54892; and Spa Factory™ Spa Fantasy Aromatherapy Fountain, item number 54857.

The products, which were manufactured in China, were sold at Sam's Club, Wal-Mart, Target, and toy stores nationwide from August 2008 through January 2009 for about \$13 for the Bath Benefits Kit and between \$30 and \$50 for the Aromatherapy Fountain. Consumers should immediately take the toy's jars and caps away from children and contact JAKKS for free replacement jar caps with vent holes. For additional information, contact JAKKS toll-free at (877) 875-2557 between 7:30 a.m. and 4:30 p.m. PT Monday through Friday, visit the manufacturer's Web site at www.myspafactory.com, or e-mail the firm at caps@jakks.net.

MUSHROOMS RECALLED DUE TO POSSIBLE LISTERIA CONTAMINATION

A southeastern Pennsylvania mushroom farm is recalling packages of enoki mushrooms because they may be contaminated with a bacteria that can cause a potentially fatal illness. According to Phillips Mushroom Farm, located in Kennett Square, Pennsylvania, the enoki mushrooms have been distributed in the United States and Canada through retail and food service

channels. They were packaged under various brand names and sold between January 13 and 30 of this year. The company says the mushrooms were packed in clear plastic bags with blue, green or red graphics panels, plastic tills wrapped with film or one pound bags for food service.

Phillips officials say the mushrooms may be contaminated with *Listeria monocytogenes*, which can cause listeriosis, an uncommon but potentially fatal disease. It's most dangerous to people with weakened immune systems, such as infants, the elderly and people with HIV. The recall covers 3.5-ounce, four-ounce and one-pound packages of the mushrooms.

DISNEY STORE RECALLS TOY TOOL SETS DUE TO CHOKING HAZARD

Disney Store USA LLC, of Pasadena, California, has recalled about 20,000 Playhouse Disney "Handy Manny" Toy Tool Sets. The tools contain eyes that can separate, posing a choking hazard to young children. The firm has received three reports of detached eyes, including two reports of children who started to choke on the pieces. No injuries have been reported. The recalled Playhouse Disney "Handy Manny" Tool Set is a plastic, eight-piece toy set that includes a tool box, hammer, saw, pliers, wrench, tape measure and two screwdrivers. The name "Handy Manny" is embossed on one side of the tool box. The UPC (#40514 4100614 or #422147400633) is located on the product's packaging. The playhouse sets were sold by The Disney Store nationwide from October 2007 through January 2009 for about \$15. Consumers should immediately take the recalled toy away from children and return it to any Disney Store for a full refund. For additional information, contact the Disney Store toll-free at (866) 902-2798

between 8:30 a.m. and 5 p.m. PT Monday through Friday, or visit the company's Web site at www.DisneyStore.com.

EVENFLO® RECALLS CHILDREN'S ACTIVITY CENTERS DUE TO FALL HAZARD

Evenflo Co. Inc., of Miamisburg, Ohio, has recalled about 213,000 Evenflo Activity Centers. When used as an activity table, the cap on one end of the product can loosen and fall off, posing a fall hazard to a young child. Evenflo has received 11 reports of dislodged end caps which resulted in nine minor injuries, including bumps and bruises. Evenflo has also received a report of a dislodged end cap that resulted in a child suffering a broken collarbone in Canada. The recall involves Evenflo ExerSaucer Triple Fun stationary activity centers made between October 2006 and December 2008. The model number is 6231711. Stage 3 position involves converting the product into an activity table. No other ExerSaucer models use end caps and, therefore, no other models are included in this recall.

The products were sold at juvenile product and mass merchandise stores nationwide, including Toys 'R Us and Burlington Baby Depot, from October 2006 through February 2009 for about \$120. Consumers should immediately stop using the activity table in Stage 3 and contact Evenflo to receive a free replacement end cap. The product may continue to be used in Stages 1 and 2 without changes. For additional information, contact Evenflo at (800) 233-5921 or visit the company's website at www.exersaucertriplefun.com.

XXII. FIRM ACTIVITIES

20 YEARS OF SERVICE TO THE FIRM

This month the firm is honoring three persons who have been with Beasley Allen for 20 years. Each has been a dedicated and hard-working employee.

Bruce Huggins was the firm's first investigator and he now serves as chief investigator. He directs and supervises our firm's team of five investigators. Bruce, a true professional, has done an excellent job. We are very proud of Bruce and the great job he has done for the firm.

Cheryl Wells, who works with Linda Reynolds in the Mass Torts Section, was hired on May 1, 1988. At that time, the firm was located on Hull Street and was much smaller. Cheryl does excellent work and is a most valuable employee. We are blessed to have her with us.

Libby Rayborn, who is my Executive Assistant, has worked with me since February 13, 1989. She runs my office in a professional manner, and is a "people person" with exceptional skills. Libby, who is a blessing to work with, has to deal with a variety of interesting issues that come with working in my office.

EMPLOYEE SPOTLIGHTS

We are again spotlighting some of our employees. Our firm is fortunate to have a good group of dedicated, hard-working employees and I always like to mention a few each month.

RUSS ABNEY

Russell T. Abney is one of our firm's newer shareholders. Russ received his undergraduate degree from the University of California, Berkeley and his law degree with honors from the University of Georgia School of Law and after spending eighteen years in Texas he returned to his home state of Georgia to raise his two daughters close to family. Russ started his legal career in Texas in 1989 and spent the first eight

years of his legal career defending insurance companies, contractors, and manufacturers. Fortunately, he saw the light and now uses his talents to seek justice for those who need it most.

Russ officially joined the firm's Mass Torts Section in 2007, but as a result of prior joint venture efforts with his former firm he has enjoyed a long working relationship with Beasley Allen. Russ brings with him an in-depth knowledge of all aspects of mass torts, but he is known around the firm as "Dr. Abney" because of his love of medical and scientific issues. Currently, Russ is part of the Hormone Replacement Therapy, Fosamax and Pain Pump litigation teams, but never turns down an opportunity to assist other lawyers in the firm.

Russ is licensed to practice in all the state and federal courts in Georgia and Texas and the United States Court of Appeals for the Fifth Circuit. Additionally, because his practice has been national in scope, Russ has been admitted to practice before the courts of numerous states for specific cases. Russ lives in Atlanta with his wife of seventeen years, Aileen Nakamura (a native of Japan) and their two young daughters, Mika Keili and Saya Anne. Russ is a very good lawyer and we are fortunate to have him with us.

TONY HARRIS

Tony Harris began working for the firm in July 2007, joining the staff in Toxic Torts. Currently he's the only staff assistant for the department, so he stays busy with a variety of tasks on behalf of everyone in the department. Daily duties may include calling clients, creating Excel spreadsheets, and general clerical assistance like scanning and copying documents. He says the variety is one of the things he most enjoys about the job, working with attorneys, legal assistants and other staff on a wide range of cases and projects. Tony has worked on cases including 3M Minnesota, Occidental Chemical, and Hot Fuel, and also assisted Mass Torts last year as they worked to wrap up Vioxx. "I just really love this job," Tony says. "It definitely seems like it is for me. I don't really like doing the same thing over

and over so all the different and changing tasks in my job keep things challenging and interesting. I like that there's always something new going on."

Tony grew up in Selma and attended Dallas County High School. He attended Wallace Community College in Selma for two years and intends on returning to college in the near future. He moved to Montgomery shortly before beginning work at Beasley Allen, when a friend needed a roommate. He said he was just ready for a change of scenery and a new place, and is enjoying learning more about his new home city. In his spare time, Tony enjoys relaxing with a good book and going to see movies.

BETH WARREN

Beth Warren, who has been with the firm for over seven years, currently works as a Legal Assistant to Roman Shaul in our Fraud Section. Beth works mostly with FLSA employment cases. Beth had previously worked in the Toxic Torts Section. She graduated in May of 2000 with a B.S. degree in Criminal Justice and in December 2002 with an A.S. degree in Legal Studies. Beth passed the National Association of Legal Assistants' National Certification Exam in January, 2003. She is currently training to run the Country Music ½ Marathon for the American Stroke Association's Train to End Stroke Program. Beth does an outstanding job for the firm and is a valuable employee.

CHRISTI BRYANT

Arriving at Beasley Allen in September 2004, just after Hurricane Ivan, Christi Bryant started as a contract worker in the Information Technology department. She handled duties ranging from answering phones and helping other employees with minor tech support, to calling potential clients who contacted the firm through the web site and handling "live chat contacts."

In March 2005, Christi was hired as a full-time employee. From October to December of that year, she worked as a relief receptionist and assisted with mass mailings using Documatch. Christi then became a clerical assistant for

Melissa Prickett, one of our lawyers in the Mass Torts Section, in December 2005. After a year and a half, she became a legal secretary for Melissa, and she has been in that job for nearly two years. Her work has allowed Christi to work on cases involving Bextra, Celebrex and Hormone Replacement Therapy. Christi had this to say:

I do a little bit of everything, from dealing with referring attorneys, to talking to clients, to scanning and making copies, to working with reports and every imaginable job in between. I enjoy the variety immensely! I love working for Melissa and working with the other ladies on our team! We have a wonderful rapport. But the most important thing in my life is my relationship with Jesus Christ as my Savior.

Christi holds a Bachelor's Degree in English Education, and prior to joining the Beasley Allen team she taught history and English at a local Christian school for five years. She's an active member of Perry Hill Road Baptist Church, where she serves as the special music coordinator, a job that includes directing the choir, playing the keyboard and singing. In addition to music, Christi's hobbies include hiking, reading, painting, baking and cooking, and she enjoys spending time with her three dogs. We are blessed to have Christi with us.

ANGIE FAUST

Angie Faust has been with the firm for five years. Angie works in our Mass Torts Section as part of our Vioxx team. Angie stays very busy dealing with file management, case work-up, preparing and filing suits, assisting clients, scheduling depositions, settlements, and special projects assigned by superiors. Angie previously worked in our Personal Injury and Nursing Home Sections. She attended Prince Institute of Professional Studies—Court Stenography. Before entering the legal field, Angie worked for five years with the Department of Health and Human Services in the Maternal and Child Health

Bureau in Rockville, Maryland. Angie and her son Brandon enjoy landscaping, camping, fishing, nature and spending time with family and friends. Angie is a very good employee who does excellent work.

XXIII. SPECIAL RECOGNITIONS

PAULA LAWLOR NAMED CONSUMER ADVOCATE OF THE YEAR

Paula Lawlor, a former legal assistant, who now works as an independent contractor to lawyers who represent victims of automobile rollovers, has received the Consumer Advocate of the Year award from the Consumer Attorneys of San Diego. The award was made at the Annual Awards & Installation Dinner on January 29, 2009. Paula is the founder of the non-profit People Safe in Rollovers. The following is a tribute to Paula.

For the past ten years, Paula, who sees herself as a "social entrepreneur"—one who believes that "to get things done and change society, you must be willing to go outside the normal channels"—has been on a mission to fight for a stronger roof strength standard and to inform the motoring public about the devastating effects of "roof crush" while alerting consumers about the ramifications of the proposed and grossly inadequate Federal Motor Vehicle Safety Standard, FMVSS 216. Due to the efforts of Paula and Kevin Moody, a father from Oklahoma who lost his son Tyler to injuries sustained from "roof crush" in a rollover six years ago, and U.S. Senator Tom Coburn, there was a June 4, 2008 Senate Oversight Hearing on Vehicle Roof Strength in Washington, D.C.

Despite the fact that every year in the U.S. 10,000 die in auto rollovers and 24,000 are catastrophically injured, the roof

strength standard has not changed in 36 years. As we have mentioned in prior issues, the deadline for a new roof strength standard has been repeatedly postponed. Thus far, however, the July 1, 2008 deadline imposed on the National Highway Traffic Safety Administration hasn't been met. Republican and Democrat Senators alike have objected to the new weak standard proposed by NHTSA and the insertion of a preemption clause that would have robbed litigants of their constitutional right to sue and preempted all common law liability for manufacturers. Several deadlines have literally been ignored by NHTSA. A new deadline was set for October 1, 2008 and it was missed. A second deadline was set for December 15, 2008 and it too was missed. The third deadline for the new roof strength standard is now April 30, 2009 and I will be shocked if it will be met.

It was while working on a case that went to trial against General Motors in 2000, which resulted in a \$25.7 million verdict for a rollover and roof crush victim, that Paula realized that GM was not only aware that its roofs would not hold up in a rollover, but that the company actually wrote the woefully inadequate standard to ensure that its own vehicles would pass the test. Paula wanted the public to know what she had learned and what juries were beginning to hear. American auto manufacturers are fully aware that there is no occupant survival space built into many of their vehicles in the event of a rollover and that their roofs are too weak. The problem was that the documents Paula unearthed were protected and went back into protective status after trial and couldn't be given to the news media or others to inform the public.

So Paula changed course and began urging lawyers to help her get documents free of their protective claim. She asked Dana Taunton,

a lawyer in our firm, to get the judge to declassify the videos and test reports of the early GM drop tests from the late 1960s. Dana walked out of court with a judge's favorable order in her hands. The visual evidence of the early GM drop tests provided proof that the carmaker knew its roofs would not hold up when subjected to forces in a rollover. Yet these same vehicles passed the government's static strength test FMVSS 216. Then in 2006, Paula working with Dallas lawyer Todd Tracy, gathered the "roof crush" documents that Paula had worked to declassify and wrote *Deadly By Design* (which is linked to www.PeopleSafeInRoll.org).

For Paula, it's been a battle every step of the way with setbacks, roadblocks, threats and intimidation from auto manufacturers and others opposed to her mission to change the standard for roof strength and save thousands of lives annually. NHTSA's proposed rule, which now appears to have been categorically rejected, would only save 13-44 of the 10,000 people that die annually in rollover related accidents. "This," says Paula, "begs the question, 'Who is protecting the people?'"

Our firm extends our heartfelt congratulations to Paula. She is certainly deserving of this award and is to be commended for her dedication and hard work. We are very proud of her efforts in the fight for stronger roofs on vehicles. We are grateful that our firm played a part in declassifying key documents that helped Paula in her pursuit to convince lawmakers that lives could be saved with tougher regulations.

ALABAMA HALL OF FAME PICKS CORETTA SCOTT KING

Coretta Scott King has been selected for the Alabama Women's Hall of Fame a year after another key figure in the

civil rights movement, Rosa Parks. Mrs. King, who lived in Atlanta, was to be recognized with a bronze plaque at an installation ceremony on March 5th at Judson College in her hometown of Marion, Ala. The induction comes in the first year that Mrs. King became eligible. The Rev. Joseph Lowery, a Huntsville native considered the dean of the civil rights movement, said her selection "shows my home state is making progress." Rev. Lowery said Alabama serves itself well by honoring Mrs. King, observing: "There are few Alabamians who could match her prominence in the world."

The Hall of Fame's board normally selects two women each year, but the last two years, the board has chosen only one because the stature of Mrs. Parks and Mrs. King would have overshadowed any other women chosen. The Hall of Fame guidelines say a woman may be nominated no sooner than two years after her death. Mrs. King, who died on Jan. 30, 2006, was nominated and selected in her first year of eligibility. Cathy Randall of Tuscaloosa, chairman of the Hall's board, said Mrs. King was an easy selection. Cathy had this to say:

Unflinching and elegant, Coretta Scott King is the role model for all women who strive to face adversity with courage and to combat social injustice with informed action.

Mrs. King was born in the Heiberger community, about seven miles northwest of where the Alabama Women's Hall of Fame is located in west Alabama. She studied music in Boston, where she met her future husband, who was a student at Boston University. They married in 1953 and moved the following year to Montgomery, where he became pastor of the Dexter Avenue King Memorial Baptist Church. He led the Montgomery Bus Boycott in 1955 after Parks was arrested for not giving up her bus seat to a white passenger. After her husband was killed in 1968, Mrs. King worked to develop the Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta and to get Congress to honor her husband

with a national holiday.

I am proud to say that my wife Sara serves on the Hall of Fame Board. She was highly pleased to be involved with honoring Mrs. King. My plan at press time was to go to Marion with Sara for the day's activities. I hope that I will be able to go since I really look forward to being present for this occasion.

BEASLEY ALLEN SPONSORS LAW CALL ON WSFA

Gibson Vance, one of the firm's lawyers, is the host of Law Call each Sunday night on WSFA TV. The show airs live beginning at 11:00 p.m. Gibson, who is President of the Alabama Association for Justice, appears live on the program each week to answer legal questions and to field calls from Channel 12 viewers. Gibson practices in the firm's Consumer Fraud Section, focusing on cases involving insurance companies, as well as handling a variety of Personal Injury and Product Liability claims. Law Call touches on a wide spectrum of topics, with a goal of helping people find answers to their legal questions and putting them in touch with the resources they need to find a solution. Every 30-minute show is magazine-formatted, highlighting one call-in topic. A guest lawyer appears on the show each week with Gibson and they take live calls from viewers pertaining to the assigned topics. The response to this show thus far has been tremendous. We offer it as a service to viewers in the station's wide area of influence and hope that it helps folks.

82 RACING STARTS ANOTHER YEAR

Our firm is sponsoring 82 Racing for the fifth year. Grant Enfinger, the driver of the firm's race cars, is busy preparing for the 2009 season. He will be defending his championship at the Rattler 250 Race in Opp on March 8th. Grant, who now operates out of the Charlotte, North Carolina area, will be driving the Beasley Allen ARCA car in several nationally televised races this year, beginning with the April 19th race

to be telecast from Rockingham, North Carolina on SPEED Channel SC.

Grant placed the Beasley Allen car on the pole (besting 50 qualifiers) at the December Snowball Derby in Pensacola. The Derby is considered the "Super Bowl" of short track racing. Grant led the first 70 laps of that 300 lap race and, despite being involved in a big crash on lap 261, finished the race in second place. Grant and his entire crew are looking forward to racing again at the Montgomery Motor Speedway, which is being reactivated, due in part to the efforts of Greg Allen from the firm.

STAR ATHLETE TELLS YOUNG ATHLETES TO BEHAVE AT ALL TIMES

Pat White, who is from Daphne, Alabama, was a great West Virginia quarterback and he had a tremendous career. Pat told athletes at a basketball banquet recently that they are in the spotlight even when they aren't playing in a game. As you may know, Pat was MVP of the Senior Bowl played in Mobile, Alabama. He was the guest speaker at the Mountain State Coal Classic Tip-Off Banquet. The weeklong tournament featured more than two dozen middle and high school teams.

In his speech, the record-setting quarterback directed his comments toward the tournament participants. Pat told the student-athletes that every day is a job interview and that what they do, including the people they hang out with, says a lot about their character. It's good to see a great athlete putting life in its proper perspective and being a good role model for young people.

Source: Associated Press

ALABAMA PENSION FUND GENERATES 5,800 JOBS

A study of Alabama government's pension fund says its investments in Alabama companies helped provide more than 5,800 jobs and more than \$245 million in payroll in 2007. The study of the Retirement Systems of Alabama was done by the Center for Business and Economic Research at the

University of Alabama. The study found that the companies where the Retirement Systems made investments had an average payroll of more than \$42,000 per worker annually. That's more than 14% above the statewide average for 2007. The Retirement Systems investments included Alabama River Corp., Bell Microproducts, Navistar Diesel, Raycom Media and Community Newspaper Holdings, as well as golf courses and hotels. Dr. David Bronner and his folks have done a tremendous job.

Source: Associated Press

ALABAMA NATIONAL GUARD HAS FIRST FEMALE GENERAL

I am pleased to report that the Alabama National Guard has named its first female general. Sheryl Gordon, who has been in the guard for nearly 30 years, is the first woman to be promoted to the rank of General in Alabama. You may recall that in November, General Ann E. Dunwoody became the first female four-star General in the U.S. military. Major General A.C. Blalock, the Adjutant General, has worked with General Gordon several times during her career and aptly observed that the Guard's important step is a reflection of society. General Gordon has taken command of the 62nd Troop Command in Montgomery. She started her career there and the Fort Taylor Hardin unit is now the state's largest with about 5,000 troops. General Gordon's promotion is good news for women and our firm congratulates her on achieving this important milestone in her career.

Source: Associated Press

XXIV. SOME CLOSING OBSERVATIONS

TIME FOR UNITY

I have been extremely disappointed in the refusal of a number of national leaders in the Republican Party to

support President Obama during these trying times for our nation. We have a crisis on our hands and one that demands solutions. The time has come for unity—not division—on matters of importance to our nation and our people. Perhaps, the GOP has forgotten that the failures of the Bush Administration have caused our economic problems. Maybe their leaders should read the words of a revered Republican President.

“We are not enemies, but friends...though passion may have strained, it must not break our bonds of affection.”

– Abraham Lincoln

We all need to put the mistakes of the last eight years behind us—learn from them—defer thoughts and plans relating to the 2010 elections—and then join together in an effort to save our nation!

PRAYER AT THE INVESTITURE OF JUDGE JIMMY POOL

Hundreds of his friends and supporters gathered in the Montgomery County Courthouse on January 29th for the swearing in of Judge Jimmy Pool. While the entire ceremony was quite impressive, a powerful prayer was the highlight of the day. The prayer given by Pastor Walter Albritton was inspirational and appropriate for the occasion. It’s one that should be kept and read daily by every judge in Alabama and by every person associated in any manner with the state’s judicial system. I am setting it out in its entirety:

Almighty God, creator and sustainer of the universe, loving Father of our Lord Jesus Christ, we call upon you to bless your servant, Jimmy Bryan Pool. Give him an understanding heart that he may judge the people before him fairly and justly, and earn the trust of the people of this District. Enable him to serve both you and the people with dignity and grace. Bless him with the wisdom to serve wisely, in the fear of the

Lord, so that his decisions will never be tainted with injustice or partiality. When he has exhausted his own wisdom, keep your promise to give your wisdom liberally to those who ask for it. Give him strength of character to the extent that no one may have cause to question his integrity. Shield him by your grace from the Tempter’s insidious offers to use his influence for personal gain.

Grant that the heavy weight of his responsibilities will not rob him of his rich sense of humor. Save him from the ugly arrogance of a pompous attitude. When he makes a mistake, as all people do, give him the courage to admit it and correct it. Daily fill his heart with gratitude and humility for the privilege of his office. Give him compassion for those who stand before him, with fear and trembling, awaiting the justice that our laws require. Guide him to know when his decisions need to be seasoned with mercy. Allow him to leave at last such a shining legacy of fairness and faithfulness that Montgomery may be known across the land as a city of righteousness. Anoint then this day your servant Jimmy Bryan Pool with all the grace he needs to fulfill the duties of his office. In the name of Jesus Christ, the coming Judge of us all, Amen.

A SPECIAL DEVOTION SENT IN BY A FRIEND

Margaret Gunter, who is with the Alabama Commission on Higher Education, has worked hard to stop the proliferation of “diploma mills” in our state. You may recall that Margaret wrote an excellent article on the subject for the *Report* last year. Fortunately, a great deal of progress has been made by ACHE since that time. Margaret sent in a devotion and asked that I share it with our readers this month. I gladly do so.

When our children were in kindergarten, they memorized

Psalm 100. Having been raised in church, I often draw on scripture to get God’s comfort, assurance, love and peace during difficult times. Today’s challenging world certainly presents many occasions of needing God to reassure me of His immense love during dark days. I only wish I had memorized more verses. So, I was delighted our son and daughter were adding to their Sunday School lessons with a Christian education and learning an entire chapter.

Recently, I was reflecting on our ten-year-old daughter’s kindergarten work and remembered the 100th Psalm assignment. Reaching for my King James Version, I hastily scanned the opening verse, “Make a joyful noise unto the Lord, all ye lands.” The chapter goes on to say: “Serve the Lord with gladness; come before His presence with singing. Know ye that the Lord He is God: it is He that hath made us and not we ourselves; we are His people, and the sheep of His pasture. Enter into His gates with thanksgiving, and into His courts with praise: be thankful unto Him, and bless His name. For the Lord is good; His mercy is everlasting; and His truth endureth to all generations.”

Like a bolt of lightning flashing across the sky, these words flashed across my mind and captured my attention. This is a Psalm of praise. It’s not just something to read and memorize as part of a five-year-old child’s assignment. It’s a foundation for an intimate relationship with the creator of the universe. It’s what He longs to hear from us. Our acknowledgement that He is, “I Am” of Moses toward the children of Israel, Immanuel throughout the Old Testament, Redeemer and Savior in the gospels. The words sound out praise that was timely during the life of King David and praise due to our Lord and Savior today. These words from the Bible spoke

to me in a whole new way. Praise be to God, regardless of what is going on the world. Praise be to God, regardless of what is going on in my life.

The Bible is always my go-to book in my time of need. But, what about the first phase of the ACTS (adoration, confession, thanksgiving and supplication) prayer. The first step in approaching God's throne through fellowship is adoration of the King of kings and the Lord of lords. Shouldn't that be emphasized in my thought life throughout the day? Not just praying, "Lord, help me" or searching scripture for verses to satisfy my needs. My God needs me to adore Him, to worship Him, to praise Him—all the time. Not just in good times, but as Job found out in Job 1:21, all the time. He is the Lion of Judah with authority unlimited and the Lamb of God with tenderness toward all.

I would implore each of you to read several Psalms out loud daily. Pick out those offering praise to our Heavenly Father. Evangelist Billy Graham for years has included in his daily Bible study five Psalms and a Proverb. In the early church, congregations sang psalms, lifting their voices united in praise to God. Start with Psalm 100 and as you offer up the words toward Heaven, feel yourself being drawn into the presence of the one who gives, "peace that passeth all understanding." Like me, take a fresh look at praising God in every situation. May the Doxology not be just a ritualistic chorus, but heartfelt meaning to the words, "Praise God from whom all blessings flow. Praise Him all creatures here below. Praise Him above ye heavenly host. Praise Father, Son and Holy Ghost."

FAVORITE BIBLE VERSES

Last month we didn't receive any

Bible verses to be included in the report. I mentioned that fact in the *Report* and I must say it's been quite different this month. We actually received more than we can include in this issue—so we picked a few at random to put in. I appreciate all of the responses and apologize for not being able to include all of the verses that our readers sent in.

My friend **Charlie Anderson** sent in his favorite Bible verse to be included in this issue. Charlie, a very good Montgomery lawyer, says it's his father's favorite verse.

God made him who had no sin to be sin for us, so that in him we might become the righteousness of God.

II Corinthians 5:21

Hazel McLain, a reader who attends First Presbyterian Church in Montgomery, also sent in her favorite verse:

But those who wait on the LORD shall renew their strength; they shall mount up with wings like eagles, they shall run and not be weary, they shall walk and not faint.

Isaiah 40:31

David A. Bagwell, who grew up in Montgomery and who now is a lawyer in Fairhope, sent in the following:

I was watching in the night visions, and behold, One like the Son of Man, coming with the clouds of heaven! He came to the Ancient of Days, and they brought Him near before Him.

Daniel 7:13

TEKEK: You have been weighed in the balances, and found wanting.

Daniel 5:27

David's mother was a well-respected teacher at Lee High School in Montgomery. She would be proud of her son today for a good number of reasons.

Paula Moore, a reader of the *Report*,

sent the following:

Let the words of my mouth and the meditation of my heart be acceptable in Your sight, O LORD, my strength and my Redeemer.

Psalms 19:14

Debbie Cunningham, one of our employees, sent in the following:

But God, who is rich in mercy, because of His great love with which He loved us, even when we were dead in trespasses, made us alive together with Christ (by grace you have been saved).

Ephesians 2:4 & 5

The Definition Of Love

Bridget Strength, who works for the firm, furnished this verse along with a little information on what real love is all about.

So now I am giving you a new commandment: Love each other. Just as I have loved you, you should love each other. Your love for one another will prove to the world that you are my disciples.

John 14:2

Bridget says a healthy definition of love is crucial to understanding the central message of the Bible. She says:

According to the Bible, love is not confined to sexuality, nor is it primarily a feeling at all. The Bible teaches that love is a commitment. As a commitment, love is not dependent of good feelings, but rather on a consistent and courageous decision to extend oneself for the well-being of another. That commitment then produces good feelings, not the other way around. Jesus became the perfect demonstration of God's unconditional love for us by laying down his life for our benefit.

Faye B. Gaston, a friend from Union Springs, Alabama, also wrote in this month and sent in one of her favorite Bible verses. Faye's personalized car tag

reads “ALA POET” and she has published three books of her original poems. Faye noted that the word **workmanship** in English was translated from the Greek word for poem. She says:

We are God's poem. It makes me very happy to know we are God's poem, his work-of art. Our Creator God, the Godhead of the Trinity, loves us more than we can imagine.

This is Faye's verse:

For we are His workmanship (“poiema,” Greek), created in Christ Jesus unto good works, which God hath before ordained that we should walk in them.

Ephesians 2:10 KJV

I apologize for not being able to include all of the verses that were sent

in for this issue. I appreciate all who responded to our request last month. Hopefully, this will continue to be area of the *Report* that **blesses** our readers.

XXV. SOME PARTING WORDS

I sincerely hope that our news media friends will start looking for some good news and then that they will start reporting the good news on a daily basis. There are lots of good things happening, but they generally take a back seat to the bad events of the day.

If the President or a member of his economic team had “sneezed” during a news conference, it would be on the nightly news. Then the next day, the stock market would tumble as a result. I

am generally an optimistic person and try to see the good that is always around. But I must confess that hearing how bad things are on a daily basis is not a good thing for anybody. I encourage our media friends—even though they have an obligation to report the truth—not to ignore things of a positive nature in their reporting of the daily news.

My request for all of our readers this month is to be positive and look for the good that's all around us. Then we must pray daily for our President and his family, his Administration, and all members of Congress. Praying for all of them and our nation is an absolutely necessity in these trying times and it's our obligation to do so on a daily basis.

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