



THE
JERE BEASLEY REPORT

JULY 2009

Beasley Allen

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Attorneys at law

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I. CAPITOL OBSERVATIONS

THE DAVIS FOR GOVERNOR CAMPAIGN

I have agreed to serve as Chairman of the Artur Davis for Governor Campaign. Throughout my involvement in Alabama politics over the years, I have seen Governors come and go. They have fit every political description: Republican and Democrat, liberal and conservative, and some were even independent thinkers. My conclusion, in retrospect, is that the best Governors had a definitive leadership quality. I see that in Artur Davis. That's why I'm proud to chair his campaign for Governor. I believe in his ability to lead and bring people together to attract jobs and transform our state to unlock its full potential. In my opinion, he is the right man for the job. I sincerely believe that Artur can and will be Alabama's next Governor. In the event that any of our readers want to become involved with the Davis campaign, please contact Anna Ruth Williams by email at ARWilliams@arturdavis2010.com or call (205) 322-9096.

II. GENERAL MOTORS & CHRYSLER BANKRUPTCIES

OUR CLIENTS ARE EXAMPLES OF THE HARDEST HIT VICTIMS OF THE GM AND CHRYSLER BANKRUPTCIES

On November 4, 2006, Shona Scott was riding as a passenger in her 1994 Pontiac Bonneville. The car ran off the roadway resulting in it overturning. The roof on the passenger side where Shona was sitting crushed in. As a result, Shona, who was properly belted, suffered a C-7 spinal fracture of the neck, rendering her a quadriplegic. The driver walked away from this acci-

dent with only minor injuries. The 1994 Pontiac Bonneville was manufactured by General Motors. This vehicle was part of a project within GM known as the "2500 Project."

The goal of this project was to reduce the manufacturing cost of each vehicle by \$2,500. To save that much money, GM used lighter, less-safe materials. GM thinned the metal and shaved the door beam. GM used low-strength steel rather than high-strength steel in order to save money. As a result of GM's choice to put profits over safety, Shona now faces a life where she is completely dependant on others for her care. She faces astronomical medical expenses. Shona is only 45 years old.

On June 24, 2007, Florian Hinrichs was a passenger in a GM pickup truck. Florian was properly belted. While driving down a rural county road in Alabama, the GM truck was unexpectedly hit by another vehicle that failed to yield the right-of-way. As a result of the impact, the truck went off the roadway overturning once. The rollover caused the roof of the GM truck to completely collapse onto Florian. Florian is now a quadriplegic. The driver of the GM truck walked away from the accident with minor injuries.

Florian was a 27-year-old helicopter pilot with the German Air Force. He was in Alabama training at Ft. Rucker. Florian, too, is now completely dependant on others for his care and faces substantial financial hardship. He obviously can no longer pilot a helicopter. His life has been tragically and forever changed.

These are the stories of two of the victims hardest hit by GM's bankruptcy. These are our clients who we must now tell that they may not get their day in court. If the Bankruptcy Court allows GM to shed its legal responsibility to our clients, a jury will not hear how GM's motivation to maximize its profits destroyed Shona's and Florian's lives. But their stories are just two of the thousands of folks who have been or will be killed or injured by GM or Chrysler vehicles. These are

the stories of average folks who have been seriously injured or who have lost a loved one as a result of a defective GM or Chrysler vehicle. They have twice been victimized by these companies.

The bankruptcy has, in the case of Chrysler, and will, in the case of GM, immunize these companies from the responsibilities for death and injuries from the defects in all of their automobiles sold before the bankruptcy. There are approximately ten million Chrysler vehicles currently on the road. There are approximately 30

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million GM vehicles on the road. People don't realize that, according to the bankruptcy plans, families driving these vehicles now on the road, who may be severely injured or killed as a result of a safety defect in the car in the future, will have no legal recourse against GM or Chrysler.

In a sad ironic twist, the U.S. Bankruptcy Court that handled the Chrysler bankruptcy determined **that public policy** was served when it determined that Fiat should only assume the liabilities that promote **its commercial interest**. Under the terms of the deal, Fiat or "the new Chrysler" will have no further responsibility for injuries or wrongful death claims linked to defects in the cars they sold.

U. S. Senator Claire McCaskill of Missouri recently hit the nail on the head at a Congressional hearing related to the bankruptcy when she was questioning a GM representative:

McCaskill: I understand that you guys are going to try to do a 363 bankruptcy similar to Chrysler.

Henderson: Yes.

McCaskill: In an almost unprecedented fashion, there has been a decision made in the Chrysler bankruptcy that if someone bought a Chrysler six weeks ago and there is a defect in that car there will be liability in the new company for the recall costs, for the warranty costs -- they will be required to fix the car. But if because of that defect a child loses their life because of an accident or if a man loses his legs because of an accident, there is absolutely nowhere for that person to turn. Now that, to me, seems like a very weird result. And it is very unusual in bankruptcy to have absolutely no require-

ment of insurance for any kind of defects that may be there, especially if the product is going to be carried forward. I need to know on the record, Mr. Henderson, if you are going to seek that same kind of immunity for existing claims and potential claims for any cars that have been sold prior to the closing of your bankruptcy.

Henderson: That would be our expectation.

McCaskill: Well, I'm very troubled by that. I don't get how we can afford to fix the car but if someone loses their life or limb there is no liability. And by the way. I've understood that since that happened we've had several companies go back and make filing for 363s now, thinking they can come in and absolve themselves of any liability they might have for defects. I think that is very troubling moving forward.

Think about this -- right now there are 40 million Chrysler and GM cars on the road, some of which tragically will have defects that will kill or injure people. Historical data compiled for the National Highway Transportation Safety Administration indicates that 47% of all deaths and injury claims filed against auto manufacturers involve Chrysler and GM cars. In the last five years alone, these claims involved 3,497 casualties connected to problems with Chrysler cars; 15,284 connected to problems with GM cars. Examples include seatbelts that fail and strangle children; seat backs that collapse and cause brain injuries; unstable vehicles that flip and roofs that cave, crushing occupants; cars with gears that "self-shift" from park to reverse and end up running people

over; and gasoline tanks and brake fluid containers that are improperly positioned and catch fire or explode, severely burning and killing occupants. You can do the math. Thousands and thousands of ordinary everyday folks, as it stands today, just lost their legal right to any recourse against Chrysler and potentially GM, even if they are injured or killed in the future. This is outrageous, and the numbers are potentially staggering.

Our leaders in Washington need to close this ticking time bomb loophole now and protect consumer safety. Force GM and Chrysler to accept responsibility for their existing products. It simply isn't right or fair to use taxpayer dollars to bail out GM and Chrysler in a way that takes away those same taxpayers' legal rights. A company that has been badly managed should not receive billions of our taxpayer dollars from the U.S. Government while individual taxpayers who have been injured or killed by these companies are left with no remedy.

The victims' stories have been virtually buried in all of the reports about the bankruptcies of Chrysler and General Motors. Hopefully, that story is now being heard and the Obama Administration and Congress will respond. I urge all of our readers to write their Senators and members of the House, as well as President Obama, about this travesty of justice.

III. RECENT FILINGS AND SETTLEMENTS BY THE FIRM

SERIOUS EYE INJURY CASE SETTLED IN PIKE COUNTY

On January 16, 2008, Henry Jinright left Ken Cox Ford in Troy, Alabama where he was employed as a salesperson. As he was driving home on U.S. Highway 231 to Brundidge, to pick up his wife and attend church, Mr. Jinright

was involved in a motor vehicle wreck. The wreck occurred within the city limits of Troy. A car, driven by an employee of Werner Enterprises, failed to yield the right-of-way, pulling in front of Mr. Jinright. Werner Enterprises had sent a driver and two other persons to Troy to pick up an 18-wheeler truck. When the crash occurred, the airbag in the Jinright car deployed. Mr. Jinright suffered a fracture to the right orbit and severe trauma to his right eye.

As a result of his injuries, Mr. Jinright suffered traumatic glaucoma to his right eye which required surgery. The lens in the eye had to be replaced and he also suffered some damage to the retina in that eye. As a result of the injuries, Mr. Jinright lost the sight in his right eye.

In addition to his employment at the Ford dealership, Mr. Jinright also had a job as a catastrophic property appraiser. He was unable to resume that job because of the depth perception problem resulting from his eye injury. The case settled recently for a confidential amount. Mike Crow from our firm handled the case for Mr. Jinright and did a very good job. We are greatly pleased to have reached a good settlement for him.

LAWSUIT FILED IN GEO TRACKER ROLLOVER DEATH CASE

Our firm has filed a lawsuit for an Alabama woman whose husband was killed in a **vehicular rollover accident** while driving his 1993 **Geo Tracker**. The lawsuit was filed in U.S. District Court for the Middle District of Alabama Northern Division, and names as Defendants Suzuki Motor Corporation; American Suzuki Motor Corporation; General Motors; General Motors of Canada, Ltd.; Cami Automotive Inc.; Takata Inc.; Takata-Fischer Corporation; Takata Fabrication Corporation; and Key Safety Restraint Systems, Inc.

Charles Mims was driving the Geo Tracker down a county road in Chilton County, Alabama, on April 9, 2008, when the vehicle became unstable and rolled over. He was ejected from the

vehicle and died from the injuries sustained in the accident. The Geo Tracker is **defective and unreasonably dangerous** in its design, manufacture, and sale, and also in the **warnings** that accompanied the vehicle. We will prove that the Geo Tracker is unstable and prone to roll over. In this incident the vehicle's restraint system failed to restrain the occupant. The lawsuit sets out four counts contributing to the wrongful death of Mr. Mims, including negligence in the design, manufacturing, warnings, and inspection, and failure to recall the Geo Tracker when problems with the model became apparent after it entered the market. We will seek jury-determined compensatory and punitive damages on behalf of Mr. Mims' family. Cole Portis from our firm and Rob Riley of the Birmingham firm of Riley & Jackson will handle this case for the family.

COMPLAINT FILED AGAINST ARKANSAS NURSING HOME

Our firm represents the family of an Arkansas man who suffered at the hands of a staff that was not equipped to care for him at the White Hall Nursing and Rehabilitation Center, located in White Hall, Arkansas. The Complaint, filed in the Circuit Court of Jefferson County, Arkansas, alleges that Defendants, including Central Arkansas Nursing Centers, Inc., Nursing Consultants, Inc., and Park Health Care, LLC, misrepresented the skill and number of the facility's nursing staff in order to qualify for government funding.

The Defendants held themselves out to the Arkansas Department of Human Services (DHS) and to the public at large as being properly staffed, supervised and equipped to meet patient needs with a skilled nursing, rehabilitative and medical support staff. This was done in an effort to have government-funded patients placed at the nursing facility. But the Defendants actually hired and retained unqualified and untrained nursing staff and the facility was grossly understaffed. As a result, the facility was unable to provide even the minimum standard of

care to the weak and vulnerable residents. Frank Mayweathers developed severe bedsores from the neglect during his stay at the facility and he suffered emotional and physical trauma as his health deteriorated before his death.

It is absolutely shameful that a facility having the responsibility to care for the most vulnerable folks would put profits first and knowingly place their patients' health and safety in jeopardy. Mr. Mayweathers endured pain, distress and humiliation as he was neglected and virtually ignored while at the facility. The Complaint alleges both negligence and violations of the Arkansas Long Term Care Residents' Rights Statute. J.P. Sawyer from our firm and Robert Sexton from the firm of Rainwater, Holt & Sexton, P.A., located in Little Rock, will handle this case.

IV. LEGISLATIVE HAPPENINGS

A SPLIT DECISION IN SPECIAL ELECTIONS

Two of the special elections to fill seats in the Alabama Senate have now taken place. Marc Keahey - the Democrat - won in District 22 by a very large margin over a strong and well-financed opponent. It's my belief that Marc will be a force in the Senate. In Senate District 7, the Republican, Paul Stanford, won handily over his opponent, Laura Hall, who is in the House and was said to have led in the polls. At press time, the race in the 19th Senate District hadn't taken place, but it will go to a Democrat.

SENATOR HANK SANDERS WILL RETIRE

I was surprised to learn that Hank Sanders won't seek reelection to the Alabama State Senate when his term ends next year. Hank has been an outstanding member of the Senate and will be most difficult to replace. I am setting out below Hank's news release relating to his decision.

For the last few months I have been struggling with a decision whether to run for the State Senate again in 2010. This decision has weighed heavy on my mind and heart and did not come easy. Representing the people of Alabama in the State Senate has been an honor and one of the great privileges of my life. I will look back only with fondness at the many long hours, the battles, the victories, and defeats. Most of all I will miss the many colleagues and friends I've met on this wonderful journey.

I truly hope that I made a difference in the State Senate and for the State of Alabama in some small way. As chair of the Senate Finance and Taxation Education Committee, I committed myself to the school children of this state, and tried to make a real difference in the programs, the teaching and the environment in which our children live and learn. I hope our children will continue to be a priority of the State Senate and the State of Alabama.

I will not run for re-election in 2010. This political phase of my life is complete, and it is time for me to move on to new challenges, new responsibilities and new commitments. In particular I want to finish writing a series of books I started several years ago but could not make the time to finish then.

But one thing will never change: I will continue to work to make a difference in the life of this area and in the life of this state; however, that contribution, will now come through my new roles, whatever they may be. My unwavering commitment to improving the ordinary lives of our citizens remains as strong as ever; only my roles will change.

Senator Hank Sanders
News Release
June 4, 2009

Hank has been an extremely effective legislator and will be very hard to replace. We wish him the very best in all his future endeavors. I am looking forward to reading his next book!

GOP LAWMAKERS WARNED BY ALFA

Alfa political chief John Pudner fired a warning shot recently aimed directly at Republican state legislators. John said efforts to change insurance laws to make coastal coverage cheaper and more available could "hurt" the GOP lawmakers in the 2010 elections. The warning was sent by e-mail after Republican Paul Sanford won the special election in Huntsville for a state Senate seat. Alfa backed the new senator with a \$26,000 campaign contribution, which I am told was his largest. As you probably know, the Farmers Federation is the "agriculture arm" of Alfa, the state's second-largest property insurer, and one of the strongest lobbying groups in the state. I have always thought that Alfa was really an insurance company with an agricultural division, but on paper they are separate.

It appears Alfa is concerned that the unpopularity of the GOP nationally will hurt GOP state senators in Alabama who voted, as John put it, for "the same kind of anti-insurance legislation that chased all insurance companies out of Florida." John claimed that type law would only benefit rich owners of beach condos. The message warned that 99% of lawmakers' constituents would be forced to pay more to subsidize premiums near the Gulf. While that might be true, I was sort of surprised that Alfa would put its veiled threat in an email and apparently leak it to the media for the world to see.

Source: *Mobile Press Register*

V. COURT WATCH

RECENT DECISIONS FROM THE U.S. SUPREME COURT

On June 8th the U.S. Supreme Court released a number of important decisions. I am setting out below a few of the more significant results. The High Court did the following:

- The Justices ruled that judges must step aside from cases when large campaign contributions from interested parties create the appearance of bias. The High Court on a 5-4 vote sent back to the West Virginia Supreme Court a case where a judge remained involved in a lawsuit filed against the company of the most generous supporter of his election.
- The Court ruled that the current government in Iraq cannot be held responsible for the actions of Saddam Hussein's regime. The High Court unanimously rejected lawsuits from Americans who were held in Iraq during the Gulf War. The Court said a federal law enacted in 2003 gave Iraq back the immunity that was stripped because of the Hussein government's designation as a sponsor of terrorism.
- The Court turned down a challenge to the Pentagon policy forbidding gays and lesbians from serving openly in the military. The Court refused to hear an appeal from former Army Capt. James Pietrangelo II, who was dismissed under the military's policy. He had asked the High Court to rule that the policy is unconstitutional.
- The Justices agreed to find a way to determine where a company's principle place of business is located. Hertz Corp. wanted a lawsuit alleging wage and hour violations moved from California courts to federal court because that state is not its principle place of business. A federal court said a plurality of Hertz's business occurs in California, even

though its headquarters is in Delaware, and sent the case back to state court. Hertz said different courts have used different criteria, including headquarters location, center of corporate activities and places of operation.

- The Court refused to hear an appeal from two former top executives of Tyco International that challenges their convictions for fraud and larceny involving more than \$100 million in bonuses. Tyco's former CEO L. Dennis Kozlowski and former CFO Mark Swartz will serve prison terms of eight and 1/3 years to 25 years for taking unauthorized pay.
- The Court refused to hear a Marine's lawsuit blaming the government's dumping of toxic chemicals at Camp Lejeune in North Carolina for his son's illnesses. The Marine argued that the dumping of trichloroethylene, an ingredient in cleaning solvents, into the ground in the 1970s polluted the water and made his son ill.
- In an interesting decision, the Court told a military court it can re-examine the guilty plea for a Nigerian-born serviceman who faces deportation. Jacob Denedo says he pleaded guilty to larceny because his lawyer told him he would not be deported. He found out that his lawyer had an alcohol problem after deportation proceedings had started. The military court said it could not look at the case again because Denedo is no longer in the Navy.
- The Court won't stop Pennsylvania officials from prosecuting a man whose computer was found to contain child pornography while it was at Circuit City being upgraded. Kenneth Sodomsky wanted the videos found on his computer suppressed. He had taken it into the store to get a DVD burner installed. A worker found questionable files and called police, who found child pornography.

- The Justices turned down an appeal from Indian tribes who wanted to block expansion of a ski resort on a mountain they consider sacred. A half-dozen Western tribes wanted to block the expansion of the Arizona Snowbowl ski area north of Flagstaff because the resort plans to use treated wastewater to make artificial snow on the mountain.

Source: *Associated Press*

SUPREME COURT RULES AGAINST MASSEY UNIT IN JUDICIAL BIAS CASE

In one of the cases mentioned above, a divided U.S. Supreme Court ruled that a West Virginia justice should not have participated in state court decisions overturning a \$50 million judgment against A.T. Massey Coal Co., whose chief executive had been a major contributor to the justice's political coffers. The Supreme Court ruled 5-4 that West Virginia Justice Brent Benjamin should have recused himself from the cases because the A.T. Massey campaign contributions created a serious risk that Benjamin would be biased in the case. Benjamin twice was the deciding vote in West Virginia High Court rulings that threw out the judgment against A.T. Massey, a unit of Massey Energy Co.

The \$50 million verdict stems from a business fraud lawsuit filed against A.T. Massey by Harman Development Corp., a privately-held mining company based in Beckley, West Virginia. Don Blankenship, the A.T. Massey executive, contributed more than \$3 million to Benjamin for his 2004 campaign for the state High Court, which represented more than half of the campaign funds for Benjamin's political campaign. The Supreme Court's decision reversed the West Virginia court ruling for Massey and sent the case back for further proceedings. Hopefully, this decision will force some meaningful reform in how we elect state court judges.

Source: *Associated Press*

COURT UPHOLDS SETTLEMENT IN ASBESTOS LAWSUITS

The U.S. Supreme Court has agreed to reinstate a roughly \$500 million settlement of asbestos lawsuits against the Travelers Companies Inc. Travelers had been named in lawsuits alleging that it tried to hide dangerous health effects of asbestos. The company argued that asbestos claims should be paid out of a trust created by Johns Manville in the 1980s and approved by a federal bankruptcy judge.

Travelers settled with several groups of plaintiffs with the caveat that federal courts make clear the company wouldn't have to face any new lawsuits of a similar nature. The U.S. Court of Appeals for the Second Circuit in New York overturned lower-court approval of the settlement, saying a bankruptcy judge lacks the authority to act so broadly. The U.S. Supreme Court overturned that decision.

Source: AL.com

JUDGE SAYS A PROPOSED ASBESTOS SETTLEMENT WAS COLLUSIVE

A federal bankruptcy judge has blasted a proposed bankruptcy plan to resolve asbestos claims as the product of collusion and refused to approve it. It was reported that the proposal was put together by lawyers at McGuire-Woods representing the debtor, Skinner Engine, and the law firm representing claimants, the Maritime Asbestos Legal Clinic of Detroit, according to the *Madison St. Clair Record*. U.S. Bankruptcy Judge Bruce McCullough said the asbestos settlement plan was reached despite "strong evidence as to the futility of such claims." The debtor's insurance company, Travelers Casualty and Surety Co., had objected to the settlement. Judge McCullough said the plan could not be approved over the insurer's objection.

Travelers defended the now-defunct Skinner Engine against about 28,000 claims over 20 years and apparently they hadn't lost a single claim. Skinner made ship engines insulated with

asbestos and was still an operating company when it initially filed for bankruptcy.

The rejected proposal provided that claimants who used a dispute resolution process to resolve their claims would have to agree to give 20% of the proceeds to the debtor company. In Judge McCullough's view, the provision gave Skinner Engine an incentive "to sabotage its own defense or, more aptly, the insurers' defense of itself vis-a-vis the asbestos claims." In his order, the judge wrote:

The asbestos claims settlement is neither reasonable nor one that was entered into in good faith. The ground for such holding is that the asbestos claims settlement is the result of patent collusion between the debtor and the co-proponents, on the one hand, and the asbestos claimants, on the other hand.

Later in his opinion, Judge McCullough said he uses the word "collusion" for the collective problems with the proposed plan, including the disincentive for the company to win its defense of asbestos claims. He wrote: "However, whether it be collusion or not is not really important; what is important is that all of the foregoing demonstrates bad faith on the part of the debtor, the co-proponents, and the asbestos claimants in entering into the asbestos claims settlement."

Apparently, the judge did not hold an evidentiary hearing before making his decision and writing his opinion. The judge converted the bankruptcy to a Chapter 7 liquidation, and was said to be unlikely to approve any reorganization plan. One of the lawyers in the case said this judge "has strong feelings about asbestos claims." That certainly appears to be true.

Source: ABA Journal

EXXON ORDERED TO PAY \$507.5 MILLION FOR 1989 ALASKA OIL SPILL

ExxonMobil Corp. has been ordered to pay \$507.5 million in punitive damages to Alaska natives, fishermen,

business owners and others harmed by the massive 1989 oil spill off Alaska. The ruling by the U.S. Court of Appeals for the Ninth Circuit in San Francisco on June 15th affirms the amount set by the U.S. Supreme Court last year. It also awards interest payments at 5.9% to Plaintiffs from the date of the original judgment in 1996. The Plaintiffs originally were awarded \$5 billion, but that amount was cut in subsequent appeals by Exxon. Exxon was responsible for the worst oil spill in the nation's history when the tanker Exxon Valdez ran aground March 24, 1989, spewing 11 million gallons of crude into Prince William Sound. It now appears that Exxon - after some 20 years - will finally have to pay the victims. Even so, the giant oil company has to believe that it really won this battle.

Source: Associated Press

RICHARD SCRUSHY IS HELD TO BE RESPONSIBLE FOR HEALTHSOUTH FRAUD

A Jefferson County judge ordered Richard Scrusby to pay HealthSouth Corp. \$2.87 billion, finding Scrusby responsible for the company's fraud. The ruling by Jefferson County Circuit Judge Allwin Horn marks the first time HealthSouth founder Scrusby has been found responsible for the \$2.6 billion in faked profits and assets that almost plunged the company into bankruptcy once the subterfuge was detected in 2003.

In the suit, shareholders of Birmingham-based HealthSouth were seeking \$2.6 billion plus interest from Scrusby, saying he fabricated profits to boost the stock price and trigger bonuses for himself. The trial was before the judge without a jury. The shareholders sued on behalf of the company, with all proceeds less legal fees to be paid to the corporation.

During the trial, Scrusby denied under oath that he knew anything about the fraud. He tried to prove that he was flim-flammed by devious subordinate executives who carried out the fraud behind his back. Five former chief financial officers pleaded guilty in 2003 and 2004 to federal criminal charges related to the \$2.6 billion

fraud that ran from 1996 through 2002. All of them said Scrusby was in on the fraud, and that thousands of small but fictitious entries were made to HealthSouth's financial records to artificially boost profit.

Source: Birmingham News

VI. THE NATIONAL SCENE

JOAN CLAYBROOK HONORED IN WASHINGTON

Consumer advocate Joan Claybrook, who retired earlier this year as the head of Public Citizen, was honored last month in Washington. The organization held a dinner event in honor of her 27-year leadership. Without a doubt, Joan was one of Washington's most relentless consumer-interest lobbyists. Her work has influenced rules on automobile safety standards, Congressional ethics, campaign finance and more.

Among the lawmakers who praised Claybrook's efforts were House Speaker Nancy Pelosi, Representatives Henry Waxman and Ed Markey, and Senators John McCain and Russ Feingold. Actor and longtime environmental advocate Robert Redford also spoke highly of Joan and her distinguished career. He called her one of his mentors. At the event, Joan told dinner guests that Public Citizen was successful because of its determination. She described its efforts like this:

One of our operating principles is that we fight back when we're attacked, and we try to have fun doing it. If you don't have some fun, it's hard. So we're scrappy, and agile and bold and creative and determined and principled and relentless.

Joan has seen both sides of policy-making, revolving through government roles and consumer advocacy. After working at the Social Security Administration, she turned toward Capitol Hill as a Congressional fellow. Joan then

joined the agency that would later become the National Highway Traffic Safety Administration.

In 1971, Ralph Nader created Public Citizen. A few years later, Joan was the founding director of the organization's Congress Watch division, a Congressional lobbying group. But Joan didn't stay out of the government very long. She was selected in 1977 by President Jimmy Carter to head NHTSA. In this position, she oversaw the introduction of the original automobile fuel economy standards. Interestingly, automakers referred to her as the "dragon lady," which I consider a compliment considering the source. Joan rejoined Public Citizen as president in 1982. I am proud to call this courageous woman my friend and I wish her the very best in all of her future endeavors.

Source: *Associated Press*

PRESIDENT OBAMA CALLS FOR NEW CONSUMER PROTECTIONS

President Barack Obama is running into strong opposition from hard-line defenders of a financial system that has exploited consumers for years. The president is pushing for a law this year which would impose and enforce new rules for the nation's embattled financial system. The goal is to prevent a repeat of the breakdown that sent the U.S. economy reeling during the last months of the Bush Administration. There will be a tough fight in Congress. There is opposition from some leaders in the banking and insurance world who simply don't want to be regulated. When you consider that the lack of regulation in the financial industry was the root cause of our nation's economic woes, it's hard to accept this opposition to regulation.

One important part of the president's plan is the creation of a new consumer watchdog office that would protect people's interests. Ordinary Americans who rely on credit cards, home loans and other financial instruments must be protected. The new Consumer Financial Protection Agency would specifically take over oversight

of mortgages, requiring that lenders give customers the option of "plain vanilla" plans with straightforward and affordable terms, among other changes.

The new agency would have the power to set tough new rules so that companies compete by offering innovative products that consumers actually want and actually understand. President Obama's changes would begin to reverse the easing on federal regulations that actually came about starting in the 1980s. Democratic leaders in Congress are promising legislation will get passed this year, but that depends in part on how key questions are addressed on Capitol Hill, including the role of the Federal Reserve. Hopefully, the president's proposal will pass without significant change.

Source: *Associated Press*

VII. THE CORPORATE WORLD

BIG PHARMA SPENT \$6.9 MILLION LOBBYING

The pharmaceutical industry's main trade group spent more than \$6.9 million lobbying during the first three months of this year. Its main focus was health care reform, according to a recent disclosure report. The \$6.9 million was almost twice the amount spent last year. The Pharmaceutical Research and Manufacturers of America spent \$3.6 million on lobbying in the year-ago period. The group's members include Pfizer Inc., Merck & Co., Johnson & Johnson and more than two dozen other U.S. and foreign companies.

Among the areas where the money was spent, PhRMA lobbied on health-care-related aspects of the 2010 federal budget, the federal stimulus plan, and the budgets of health-related agencies. Interestingly, the group also lobbied Congress on the confirmation of Kansas Governor Kathleen Sebelius as

Secretary of Health and Human Services prior to her approval by the Senate on April 28th.

Besides Congress, PhRMA also lobbied the Department of Health and Human Services and several of its agencies, and the Commerce Department. Among those registered to lobby on the trade group's behalf in the first quarter were: Jennifer Swenson (former legislative director for Sen. Pat Roberts, R-KS); Matt Sulkala (former senior legislative assistant to Rep. Allen Boyd, D-FL); Valerie Jewett (former legislative director to Rep. Rodney Frelinguysen, R-NJ); Michael Woody (formerly a professional staffer on the Senate Health, Education, Labor & Pensions Committee); and David Boyer (who served in about a half-dozen positions in the Food and Drug Administration, the White House and elsewhere).

Interestingly, former Congressman William J. "Billy" Tauzin (who was known to be a lackey for the drug manufacturers in Congress) now serves as President and CEO of PhRMA. He served as chairman of the House committee that regulated the pharmaceutical industry. After Tauzin pushed a major drug bill through Congress, he resigned and took his new job on January 3, 2004.

Source: *Associated Press*

LOBBYISTS CAN HONOR LAWMAKERS WITH FEW RESTRICTIONS

An article in the June 8th edition of USA Today tells in detail how lobbyists are allowed to operate in our Nation's Capitol. I encourage all of our readers to get a copy of this article and read it carefully. It shows how effective the lobbying tactics are and how the lobbyists do their "work" in an area that pays dividends. While the lobbyists play favorites, generally they spend their clients' money in a bi-partisan manner. But the party in power always seems to do better for obvious reasons. Years of service by the lawmakers and their committee assignments also count with the lobbyists.

Despite a ban on gifts to lawmakers

and limits on campaign contributions, lobbyists and groups that employ them can spend unlimited money to honor members of Congress or donate to non-profits connected to them or their relatives. The public has never had any real insight into the scope of this largely hidden world of special-interest influence. That is changing now because of some new rules.

For the first time, under ethics rules passed in 2007, lobbyists had to report any payment made for an event or to a group connected to a lawmaker or other top federal official. To its credit, *USA Today* undertook the first comprehensive analysis of the lobbying reports and found 2,759 payments, totaling \$35.8 million, were made in 2008. The money went to honor 534 current and former lawmakers. Also, almost 250 other federal officials and more than 100 groups, many of which count lawmakers among their members, were honored. The total cost is said to be roughly “equivalent to what the U.S. government spends to operate Yellowstone National Park each year.”

USA Today reported that most of the money — about \$28 million — went to non-profit groups, some with direct ties to members of Congress. The lobbyists found a way to do an “end-run” around campaign-finance laws with this type spending. The campaign laws “are designed to limit the appearance of undue influence,” according to Ellen Miller of the Sunlight Foundation, a watchdog group. The money reported came from companies, trade associations and labor groups that lobby Congress and the government on a range of issues, including “seeking a share of last year’s \$700 billion financial bailout package.” The efforts were also aimed at trying to shape the debate on climate change.

Congressional leaders have promised to sever ties between lawmakers and special interests. But the reports indicate that lobbyists often give to non-profits associated with the lawmakers who regulate their industries. While the causes reported are good ones, I suspect there is an ulterior

motive to the giving.

As a matter of interest, last year Amgen spent the most in honor of members of Congress. Amgen was among 20 corporations and unions responsible for \$17.6 million — or nearly half — of the spending in honor of lawmakers and federal officials last year, the *USA Today* analysis shows. Those groups spent a total of \$137.5 million to lobby Congress and federal agencies last year. Amgen also donated to the Frontier Foundation in honor of Rep. Steve Buyer (R-IN), who is on the House panel that regulates the drug industry. That foundation, which provides college scholarships and was once headed by the Congressman’s daughter, received \$385,000 in donations from pharmaceutical companies from 2005 through 2007, according to its IRS filings.

Interestingly, Rep. Buyer, who has worked on health policy issues in Congress for years, helped kill a provision in 2007 opposed by drug companies and broadcasters that would have imposed a three-year ban on advertising new drugs. Consumer advocates, including the Consumers Union, pushed that important legislation. It’s been my position that drug manufacturers should not be allowed to advertise their products to consumers. There is no way to justify that in my opinion. Trained medical doctors should decide what drugs to prescribe for their patients and not some slick advertising clip on television.

Aggressive drug advertising unduly sways patients to seek treatment from drugs before their safety records have been established, according to the consumer group. It appears that Rep. Buyer has been a very good and loyal friend of the drug industry. During debate by a Commerce subcommittee, he co-sponsored an amendment that stripped the advertising ban from a larger bill overhauling the Food and Drug Administration. There may not be a connection between Rep. Buyer’s legislative actions and the donations to the foundation, but it simply doesn’t look right.

If we are ever to get government

under control and make it really work as it should, lobbyists’ activities in Washington must be controlled. But that will be most difficult to bring about unless citizens back home get involved and demand reform in Congress of a broken system. Over the years the powerful lobbyists have had far too much power and authority in Washington and I believe ordinary folks have suffered as a result. If you agree, get involved and let your members of Congress know how you feel, and ask them to help reform the system.

Source: *USA Today*

MARVEL SETTLES SHAREHOLDER LAWSUIT

Chipmaker Marvell Technology Group Ltd. will pay \$72 million to settle a shareholder lawsuit. It appears the company has settled the final outstanding shareholder lawsuit related to its past stock option-granting practices. The settlement is subject to approval by the U.S. District Court for the Northern District of California. If given final approval, it appears that the settlement, along with the previously announced settlement of a derivative lawsuit, would put an end to all shareholder litigation involving Marvell and its stock option practices.

Source: Reuters

\$40 MILLION RECOVERED IN WHISTLEBLOWER CASE

A whistleblower case that has been in the courts for 15 years, filed by a former employee against Healthways, Inc., has been settled for approximately \$40,000,000. The case was filed in June 1994, by Scott Pogue, who had been fired from his job as a marketing representative for a company called Diabetes Treatment Centers of America (DTCA). The case was filed in Nashville under the False Claims Act against his former employer.

On March 13, 2009, the Board of Directors of Healthways, Inc., DTCA’s parent corporation, approved a settlement under which the United States will receive \$28,000,000 in damages.

Mr. Pogue's lawyers' fees and litigation expenses, totaling about \$12 million, will be paid by Healthways, Inc.

My friend Scott Powell, a partner in the Birmingham law firm of Hare, Wynn, Newell & Newton, was one of the lawyers representing Mr. Pogue. Scott had this to say about what was accomplished:

The law established and developed by the Pogue case has enabled the Department of Justice to recoup several hundred million dollars in taxpayer money wrongfully and fraudulently taken through Medicare fraud and illegal kickbacks.

This case was filed pursuant to the False Claims Act. Under the Act, a whistleblower, formally known as a "relator," is empowered to file a case seeking to recover damages suffered by the United States as a result of a knowing violation of contract or other requirements by a government contractor. *Qui tam* relators are rewarded for their service with a percentage of the funds recovered by the United States in settlement or judgment.

False Claims Act cases are filed under seal and investigated by the Justice Department, which must elect whether to intervene in the case and take over primary responsibility or decline to intervene, in which case the whistleblower is empowered to litigate the case on the Government's behalf. It's significant that the Justice Department declined intervention in Mr. Pogue's case in early 1995. But his lawyers - without the Justice Department's direct involvement - carried it forward for 15 long years. Initially filed in Nashville, the case was moved to Washington, D.C., in late 1999 as part of multi-district litigation proceedings against Columbia HCA, which was DTCA's largest customer.

Initially, Jennifer Verkamp and Frederick Morgan who are with a Cincinnati law firm, Morgan Verkamp, represented Mr. Pogue. When the case was transferred to multi-district proceedings in 2002, Scott and Don McKenna, who is also with the Hare,

Wynn, Newell & Newton firm, joined the litigation team.

DTCA violated the Anti-Kickback Statute by paying kickbacks to more than 200 doctors in exchange for referring their patients to DTCA's hospital customers around the country. DTCA paid these kickbacks under the guise of payments to the doctors as "medical directors" of diabetes care centers based at those same hospitals. DTCA's primary source of revenue was the "management fees" paid by the hospitals based on DTCA's promise to increase the number of patients referred to the hospital, which DTCA accomplished by paying numerous "medical directors" to bring their patients to the facilities.

Violations of the Anti-Kickback Statute can be the basis for a civil lawsuit under the False Claims Act. Extensive discovery against DTCA and its parent company by the Pogue legal team led to a waiver of the attorney-client privilege by the founder and CEO of the company during deposition testimony. The resulting discovery of all correspondence between DTCA and its lawyers revealed that the company's lawyers were greatly concerned that the company's payments to doctors violated the Anti-Kickback Statute. It also showed that DTCA elected to take the risks anyway.

After 15 years of litigation during which DTCA refused to acknowledge any liability, U.S. District Judge Royce Lamberth denied DTCA's motion for summary judgment on July 21, 2008, clearing the way for a jury trial in Nashville. The judge conducted an extensive review of the evidence, concluding in his order:

In sum, the Court finds that relator has produced a wealth of evidence supporting his claim that Defendant compensated physicians for their referrals to DTCA centers, and a reasonable jury could decide the issue in relator's favor.

Settlement negotiations followed that decision and finally a very good settlement was reached - the result of

a fifteen-year effort by Mr. Pogue and his lawyers - between the parties. It was a classic example of persistence and good lawyering by the litigation team.

Statistics maintained by the Justice Department show that the total of all recoveries in *qui tam* cases where the Department decided not to intervene in the case have exceeded the \$28,000,000 mark in only three prior years. The Pogue settlement is one of the highest recoveries in such a case in the history of the False Claims Act.

Source: *The Montgomery Independent*

VIII. CONGRESSIONAL UPDATE

SUPPORT ACCOUNTABILITY AND TRANSPARENCY IN GOVERNMENT

In recent months, we have seen an organized effort by some in Corporate America to keep employees from reporting fraudulent or illegal conduct by their employers. When scientific research is altered or suppressed, when government contractors waste millions of taxpayer dollars, or when national security documents are falsified, employees with knowledge need to know that they can blow the whistle without threatening their careers. We are very close to ending retaliation against those who speak up to protect the American people, but the U.S. Senate needs to strengthen the current bill that's being debated. President Obama often has said that transparency and accountability are priorities for his Administration.

During his campaign, then-candidate Obama said he would work to strengthen whistleblower laws to protect federal workers who expose waste, fraud, and abuse of authority in government. He said as President, he would ensure that federal agencies expedite the process for reviewing whistleblower claims and whistleblowers would have full access to the courts and due process.

The legislation that will make Obama's campaign promise law is the Whistleblower Enhancement Act of 2009. Public Citizen and its partners in the Make It Safe Coalition strongly support the House version of the bill (H.R. 1507), which is on track to pass again for the third time. It includes two critical provisions missing from the Senate bill (S. 372):

- The House bill provides federal employees and contractors access to jury trials for their claims of retaliation when the government's administrative review process fails, as it often has in the past. This right has been repeatedly granted to private-sector employees over the past ten years and makes the law work.
- The House bill also recognizes the special circumstances of intelligence and national security workers, providing safe channels for disclosure of wrongdoing without compromising our national security.

I hope all of our readers will help federal employees uphold the public trust! You can do this by asking your Senators to support the strongest possible protections for federal employees who keep the government transparent and accountable. It's time for the Senate to improve the bill and add these two provisions! It's our government - so take action today so that it will work for you in the immediate future.

Source: Public Citizen

ARTUR DAVIS ATTEMPTS TO HELP AUTOMOBILE DEALERS

Alabama auto dealers rejected by Chrysler LLC and General Motors Corp. could see their franchise agreements restored if U.S. Representative Artur Davis has his way. Davis, D-Birmingham, was among 14 members of Congress who introduced H.R. Bill 2743, called the Automobile Dealer Economic Restoration Act. The bill aims to force GM and Chrysler to restore franchise agreements that existed with dealers prior to each automaker's bankruptcy filing. He

said:

This may be the dealers' last hope. Our hope is that we can get other members of Congress and the Obama Administration to support our efforts to save these dealers and preserve jobs. GM and Chrysler's assumption is that they have too many dealerships and thus they take business away from each other, costing them money. The arbitrary closing of thousands of dealerships will not save GM and Chrysler money, but will cause the loss of potentially a hundred thousand jobs including some in Alabama.

The bill appears to have strong bipartisan support and the backing of automobile dealer groups across the country. Among its provisions, the legislation aims to preserve affected GM and Chrysler dealers' franchise agreements as protected by state laws. Hopefully, the bill will pass and become law.

Source: Birmingham News

CONGRESS LEAVING THE PRESIDENT ON ENERGY BILL

Last month, newspapers across the country printed an important story from the Associated Press with this headline: "Congress abandoning Obama clean energy goals." Congress is currently considering an energy bill that has been opposed by the oil industry and some Republicans. The bill does have good parts, but the powerful oil industry, with help from coal interests, has severely weakened it. The following is a recap of where Congress is at present on the energy bill:

- Oil and coal lobbyists have badly weakened the energy bill, even though it still has good parts.
- The current bill wouldn't require any more clean energy than is already in the works. Wind and solar create more than twice as many jobs as coal and oil, so the current bill won't create the new jobs needed in

this country.

- Even worse, the bill would repeal parts of the Clean Air Act, preventing President Obama from cracking down on dirty power plants.
- For the sake of our economy and our planet, we need our representatives in Congress to fight to fix the energy bill.

Congress will soon be voting on this energy bill. Hopefully, enough Senators and House members will make the bill one that addresses real needs and not one that is pushed through by lobbyists for oil and coal interests.

A REPORT ON THE MEDICAL DEVICES LEGISLATION

Patients' health and safety should not be compromised because of the ongoing questions surrounding the Food and Drug Administration and its oversight of medical devices. Recently, a hearing by the U.S. Energy and Commerce Subcommittee on Health examining the regulation of medical devices took place only a week after another Medtronic device - 37,000 pacemakers - were recalled because the devices were found to seriously, even fatally, injure patients. Medtronic has recommended the removal of the pacemakers, further putting patients' health at risk by subjecting them to invasive surgery. Earlier this year, thousands of patients were denied their day in court for another Medtronic medical device that was recalled, the Sprint Fedelis defibrillator lead. Sue Steinman, Director of Policy for the American Association for Justice, had this to say:

Manufacturers must play a role in ensuring their products are safe and that when their products fail, they must be held accountable. Patients of faulty medical devices should not have to suffer when manufacturers rush-to-market a product, putting profits over patients' safety.

Currently, makers of medical devices have complete immunity for their devices because of a 2008 Supreme Court ruling in *Riegel v. Medtronic*. The High Court ruled that because the FDA had approved the medical devices, the manufacturer cannot be held accountable if the device is defective, even in cases when the device has been recalled. As we all know, in March 2009, the Court ruled in *Wyeth v. Levine* that manufacturers bear the responsibility for the safety of prescription drugs and do not have immunity.

The Medical Device Safety Act has been introduced in Congress to restore the rights of injured consumers to hold negligent medical device manufacturers accountable for the safety of their products in state tort actions. The legislation, introduced by Rep. Frank Pallone (D-NJ) and House Energy and Commerce Committee Chairman Henry Waxman (D-CA), has over 90 co-sponsors in the U.S. House.

The FDA's oversight of medical devices has been called into question by the GAO, members of Congress, and even the FDA's own doctors and scientists. They sent a letter to President Obama in April outlining numerous instances where "wrongdoing and cover-up is nothing new but is part of a longstanding pattern of behavior." The scientists call on manufacturers to revisit medical devices that were not made in accordance with the laws, rules and regulations that govern the process. The legislation needed to protect consumers must be passed. Please contact your U.S. Senators and House members and urge them to push this act and help make it law.

Source: AAJ

IX. PRODUCT LIABILITY UPDATE

THE SINGLE VEHICLE ACCIDENT: A SERIES HIGHLIGHTING OFTEN OVERLOOKED PRODUCT CLAIMS

Three months ago, we began a series of articles discussing product liability

claims that arise from single vehicle accidents. A product liability claim focuses on whether or not a product is defective. The purpose of this series is to educate our readers on the many different kinds of product liability claims. In automobile cases, the defective product could be the entire vehicle, or a component part such as the seat belt or tires. Unfortunately, the average motorist has no idea how unprotected he will be in an accident as a driver or passenger in a defective vehicle. Our attorneys are trained to recognize defect claims in motor vehicle accident cases. Any single vehicle accident involving serious injury or death, including paralysis, loss of limb or brain damage, should be carefully analyzed for possible product liability claims. Last month, we looked at tire failures and the injurious consequences of those defects. This month, we look at fuel-fed fires.

Almost everyone remembers the infamous Ford Pinto (discussed in great detail below). That vehicle had a fuel tank mounted behind the rear axle. This position allowed for dangerous and often explosive consequences in rear impact accidents. Similarly, there are GM trucks with gas tanks mounted on the sides of the truck outside the structure of the frame. These "sidesaddle" tanks leave the vehicle vulnerable to fuel-fed fires that result from a side impact. The overall safest positioning of a gas tank is between the front and rear axles of the vehicle. However, manufacturers do not always follow this guideline and many vehicles do not provide the proper structural protection for the tank.

It is not always the location of the fuel tanks that can lead to fuel-fed fires. Design defects related to fuel-fed fires can involve several different vehicle systems. The design issues range from fuel filler cap design and fuel line design to fuel tank design and fuel pump design. Fuel systems should be designed to maintain their integrity during reasonably foreseeable accidents so that occupants do not lose their lives in otherwise survivable acci-

dents. If the occupants can survive crash forces without serious injury, so should the fuel system. For years, the automobile industry has known that simple shielding of the gas tank can prevent fuel-fed fires.

Obviously, if a manufacturer makes a conscious decision not to implement a safety design because of a profit motive then that manufacturer should be subject to a substantial punitive award. In a 1981 case, *Grimshaw v Ford Motor Co.*, Ford's internal documents showed that the placement of the gas tank of the Pinto over the axle surrounded with a protected barrier would have cost \$9.95 per car and that equipping the car with a reinforced rear structure, smooth axle, improved bumper and additional crush space would have cost only \$15.30 per car. Despite this information, management decided to defer these "fixes" based on cost savings. The court noted:

There is evidence that Ford could have corrected the hazardous design defects at minimal cost but decided to defer correction of the shortcomings by engaging in a cost benefit analysis balancing human lives and limbs against corporate profits. Ford's institutional mentality was shown to be one of callous indifference to public safety. There was substantial evidence that Ford's conduct constituted a conscious disregard of the probability of injury to the members of the consuming public.

In 1999, a Los Angeles jury awarded \$4.9 billion to the Anderson family as a result of GM's defectively-designed Malibu vehicle. When the Andersons' 1979 Malibu was rear-ended in an accident, the fuel tank was punctured, causing the car to explode into flames. The Plaintiffs, Trisha Anderson and her four children, suffered horrible and debilitating third-degree burns over their bodies as a result of that accident. The worst part of this story is that the injuries were preventable. GM knew years before the accident that there were defects in the fuel system

and yet it placed the Malibu on the market anyway.

In fact, GM had performed a cost-benefit analysis comparing the cost of human life, in a dollar amount, to the cost of redesigning the fuel tank system. This cost-benefit analysis became known as “the Ivey Memo,” named for GM engineer Edward Ivey who conducted the cost-benefit analysis at the request of his GM superiors. In that memo, Mr. Ivey found that the estimated 500 fatalities per year caused by fuel fires would cost the company on average, \$200,000 per fatality. He further concluded that, based on the numbers of such anticipated fatalities, divided by the number of GM automobiles on the road, that “fatalities related to accidents with fuel-fed fires are costing General Motors \$2.40 per automobile in current operation.” This amount is much less than the \$8.59 it would cost to use the safer over-the-axle alternative design.

Unfortunately, manufacturers often choose to place profits over the safety of their consumers. To determine if a fuel-fed fire was the cause of death, our firm routinely reviews all automobile accidents in which an occupant was killed or seriously injured by the fire and suffered no skeletal or other life threatening injuries. If you would like more information or have a question, you can contact Greg Allen (Greg.Allen@beasleyallen.com) or Cole Portis (Cole.Portis@beasleyallen.com) in our office at 800-898-2034.

FORD CRUISE CONTROL DEACTIVATION SWITCHES

Since 1998, Ford Motor Co. and the National Highway Traffic Safety Administration (NHTSA) have known that the cruise control deactivation switches in some Ford vehicles fail, igniting fires that have destroyed hundreds of trucks, SUVs and luxury vehicles while parked with the engine off. In the last 11 years, this alleged defect has affected more than 9.6 million vehicles in eight different models, has been blamed for 1,500 fires, sparked five

separate NHTSA investigations, one consumer advisory and six recalls. These rolling recalls have added up to the largest automotive recall to date. Ford’s most recent and final attempt to tackle the problem – an August 2, 2007 recall for 3.6 million more Ford vehicles, has not been entirely successful at removing the risk from millions of affected vehicles.

These fires have caused hundreds of thousands of dollars in property damage, and to date, are alleged to have caused three injuries and three deaths. In May, an Iowa man was injured and his wife was killed in a fire that started in their F-150 truck and spread from their garage to their home, the family alleges in a lawsuit. A separate lawsuit maintains that a four-year-old Woodstock, Ga. girl died in a house fire on New Year’s Day 2004, allegedly caused by the family’s F-150 pick-up truck, which was parked in the family’s garage. In 2007, the family of Al Gavegan Sr. alleged that the San Antonio man died in a house fire that originally ignited in his 1994 Mercury Marquis parked in an attached garage.

Ford literally has studied ignition in this switch for eight years. Over that time, its public explanation regarding these fires has shifted from, first, placing the blame on defective switches damaged in the manufacturing process to, second, blaming a systemic problem caused by a series of related events influenced by the switch’s position in the engine compartment and the electrical architecture of the speed control system, to, finally, an age issue.

The basic elements of switch fires—leaking brake fluid, corrosion, an electrical short and melting plastic—have been known since 1999. But until the most recent NHTSA investigation in August 2006 closed with a comprehensive analysis, the automaker had been unable to tease out the nuances of the scenario: Why are some vehicles with this speed control system more prone to switch fires than others? What has also been clear, since Ford and Texas Instruments began digging into the problem, is that any effective solution

would have to interrupt the sequence of events that lead to engine fires. But, until 2005, Ford rejected basic design fixes, in favor of merely replacing the switch.

Ford first began recalling vehicles in May 1999, with a small campaign to replace the switches in 279,000 1992-93 Lincoln Town Car, Crown Victoria and Grand Marquis vehicles. But problems with the cruise control deactivation switch in vehicles with a powered-all-the-time configuration surfaced a year earlier, when Ford and its supplier launched an internal investigation to determine what was causing them to fail. According to documents submitted by Texas Instruments and Ford in one NHTSA investigation, early on, Texas Instruments identified the powered-all-the-time configuration as a key factor in the scenario that led to a short circuit and fire. It suggested that Ford install a relay circuit to disrupt the continuous power to the switch. Ford resisted this suggestion as too difficult for technicians to implement. Instead, it turned its attention to the robustness of the switch. Texas Instruments insisted that its switch met and exceeded the design specifications. The issue became so contentious that the two companies severed their long-standing business relationship.

The 2006 Office of Defects Investigation report showed that switches would be prone to short-circuit in vehicles where braking released vacuum pressure on the switch powerful enough to invert the seal. Over many braking cycles, this action fatigued the Teflon-coated Kapton seal, causing it to develop cracks that allowed water to seep in and corrode the electrical elements. If the switch was mounted vertically, or angled downwards on the master cylinder, over time, those corrosive products could form dendrites that would complete the path from circuit to ground and short the switch. The continuous power allowed the short to heat up to the point of ignition, even when the vehicle had been turned off and parked for hours.

Ford phased out the powered-all-the-

time design in most vehicles by 2003. (Only the Econoline and the Expeditions still employed that strategy.) On January 27, 2005, Ford finally came around to the Texas Instruments point of view. It launched a recall of some vehicle models with a history of reported switch failure problems that would address the powered-all-the-time issue. (In previous recalls, Ford blamed the component and simply replaced the switch.) It announced that it would install a fused wiring harness on the speed control system on 1.2 million Econolines, F-Series (excluding the F-150), Excursions, Explorers, Mountaineers and the E450. Ford followed up in September 2005 with another recall to install the fused wiring harness in 3.8 million F-Series pick-ups, Lincoln Navigators, Ford Expeditions and Bronco SUVs roughly covering model years 1994-2002.

This latest recall represented another twist in the saga of the cruise control deactivation switch. Now the problem is not caused by the unique combination of a powered-all-the-time electrical architecture coupled with an upside down position on the master cylinder, but by age. In its Defect and NonCompliance Report to NHTSA, Ford said that an investigation initiated in February 2007 found that switches were leaking in vehicles older than 13 years, "indicating that a long term durability issue may be affecting the speed control switch." While the mechanism of failure was different, the outcome was the same: "leakage causing increased electrical resistance within the leaking switch, and the potential for an unattended vehicle fire."

Ford, however, launched the campaign without actually having sufficient jumper harnesses available to make the repair. Despite the success of the final campaign, NHTSA was concerned that too few vehicle owners had taken advantage of the repair. On February 28, 2008, the agency issued a Consumer Advisory, urging owners of certain unrepaired Ford, Lincoln and Mercury SUVs, pickup trucks, and vans to "bring their vehicles to dealer repair

shops immediately to have the cruise control switch disconnected." The agency said that only half - about 5 million - of the affected vehicles had been repaired in the five previous recall campaigns. If you want more information or need to discuss the above referenced subject matter, contact Rick Morrison at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

ILLINOIS JURY RETURNS \$2 MILLION ASBESTOS INJURY VERDICT

A McLean County, Illinois jury returned a \$2 million verdict recently in favor of the family of a woman who died from asbestos exposure-related cancer. Leslie Corry, of Bloomington, Ill., died from mesothelioma lung cancer after she laundered the work clothes of her first husband, a former worker at Union Asbestos & Rubber Company.

The jury heard testimony stating Corry was exposed to toxic asbestos fibers when she washed the work clothes of her first husband. Her spouse was employed at the former UNARCO Industries, Inc., Bloomington plant in the 1950s. The lawsuit named Union Asbestos & Rubber Company, UNARCO Industries Inc., Pneumo Abex, LLC, Honeywell International, Inc., Johns-Manville, Raybestos-Manhattan, Owens-Illinois, Owens Corning and Metropolitan Life Insurance Company as Defendants.

The Plaintiffs proved at trial that the company conspired, with a long list of product manufacturers and other businesses, to conceal information about the hazards of asbestos. The companies involved in the concealment of information agreed not to warn employees, consumers, and area residents about the dangers of direct and secondary exposure to asbestos materials. The jury also returned \$100,000 in punitive damages against Pneumo Abex and \$400,000 in punitive damages against Honeywell International. Exposure to asbestos fibers can cause asbestos-related illnesses and diseases like mesothelioma lung cancer,

for which there is currently no cure.

Mike Andrews handles mesothelioma cases for our firm. If you would like more information or have any questions about asbestos exposure, you can contact Mike at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com.

THREE TEENS KILLED AND SIX HURT IN SUV ROLLOVER

Hardly a day passes that a report doesn't appear on the nightly news saying that an SUV went out of control and crashed somewhere in the U.S. In most of these reports, either deaths or serious injuries are involved. On June 5th, three Jacksonville, Fla. Ed White High School students died and six other young people were hospitalized after an SUV rolled several times and crashed on an interstate highway. The victims, all teenagers, had skipped school that day and were headed for a day at the beach rather than attending their last day of school. Their trip ended when a rear tire blew out on the SUV. The driver lost control and the SUV rolled over and crashed with tragic consequences. It has been determined that the left rear tire on the vehicle separated; the driver then lost control; the vehicle traveled over onto the shoulder of the roadway and struck a light pole. Everyone except the driver was ejected from the SUV.

Source: News4Jax.com

X. MASS TORTS UPDATE

BAUSCH & LOMB SETTLES 600 EYE FUNGUS LAWSUITS

Contact lens maker Bausch & Lomb Inc. has settled close to 600 fungal-infection lawsuits. As you may recall, the company went private in 2007 in an effort to handle a devastating recall of MoistureLoc, its flagship lens cleaner. Over the past year - away

from the glare of public scrutiny – the optical products company attempted to settle these lawsuits without being monitored in a court of law. While it was largely successful, there are still dozens of individual claims yet to be resolved. The cost of the settlements thus far is more than \$250 million. It's estimated the lens cleaner debacle could wind up costing the company as much as \$500 million.

More than 700 lens wearers in the United States and Asia were exposed to a potentially blinding infection known as *Fusarium keratitis* while using ReNu with MoistureLoc, a new-formula multi-purpose solution for cleaning, storing and moistening soft contact lenses. The damage was irreparable in some instances. For example, seven people in Florida, Maryland, New York, Oregon, Tennessee and West Virginia had to have an eye removed. At least 60 more Americans needed vision-saving corneal transplants. There have been a number of incidents where the victims' eye problems ended careers.

The U.S. Centers for Disease Control and Prevention confirmed 180 cases in 35 states from June 2005 through September 2006, when the agency's dedicated surveillance stopped, according to Dr. Benjamin Park, a CDC epidemiologist. In an interview, Dr. Park told *USA Today* that the CDC continued to hear of sporadic, unconfirmed cases in the months after MoistureLoc was withdrawn from the market in April of 2006. Victims typically complained of eye irritation that progressed to a sudden onset of searing pain. Many were mistakenly treated with antibiotics and steroids — a delayed diagnosis that worsened the condition – and by the time the real problem was discovered, in many cases, the damage was already done.

Dr. Arthur Epstein, who was chairman of the American Optometric Association's contact lens and cornea section during the highly-publicized crisis, had this to say in an interview with *USA Today*:

The truth has been very carefully buried, and it appears to have

been buried going back to the beginnings of the outbreak. All settlements were predicated on silence about the clinical findings and blame and so forth. My hope was that what actually happened would become part of public record in a courtroom. That way, we'd be able to learn from it and move on and make sure it never happened again.

While Bausch & Lomb told *USA Today* that it has settled "the vast majority of fungal infection cases," the company is defending another 500-plus lawsuits where it is alleged that MoistureLoc is linked to assorted bacterial, viral and parasitic afflictions. A pretrial hearing was held last month in New York. Orders from the court may well establish that there's a reliable scientific basis for the Plaintiffs' allegations. Bausch & Lomb was acquired by private equity firm Warburg Pincus for \$3.67 billion in October 2007. If you need more information contact Chad Cook at 800-898-2034 or by email at Chad.Cook@beasleyallen.com.

Source: *USA Today*

NEW WARNING ON HORMONE REPLACEMENT

In addition to other health problems, it's now being reported that hormone therapy taken by women to counter the effects of menopause can increase the risk of dying from lung cancer. These findings from a recent study represent the latest black mark against the therapy that is already being used much more sparingly than it once was. Researchers pointed out that women should not be using hormone therapy and smoking cigarettes at the same time. This new analysis used data from The Women's Health Initiative Study. In that study, women took either Prempro, a drug combining estrogen and progesterin, or a placebo.

The study was discontinued in 2002 after it was found that the hormone therapy increases the risk of breast cancer. The new analysis looks specifically at lung cancer for the five and a

half years that the women took either the drug or the placebo and for more than two years afterward. Dr. Rowan Chlebowski of the Harbor-U.C.L.A. Medical Center in California and lead author of the study, which was presented at the annual meeting of the American Society of Clinical Oncology, observed: "We shouldn't be using both combined hormone therapy and tobacco at the same time." Dr. Chlebowski said there was one avoidable lung cancer death over eight years for every 100 women who both smoked and took hormone therapy.

Our law firm represents over 600 women who have suffered breast cancer caused by hormone replacement therapy. There are currently between 9,000 and 10,000 lawsuits pending across the United States against Wyeth, Pfizer and other hormone replacement therapy manufacturers. Hopefully, these companies will step up to the plate soon and pay these victims fair compensation for their injuries and suffering. If you need more information, contact Frank Woodson in our firm at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

Source: *New York Times*

OTHER HORMONE REPLACEMENT NEWS

Wyeth Pharmaceutical Company has manufactured hormone replacement drugs and promoted therapy since the 1960s. The company has been very aggressive with the marketing of these medications. Wyeth has argued in trials to the jury that a scientist or physician should get a Nobel Prize for being able to figure out that hormones could cause cancer. One of our law partners, Russ Abney, recently discovered a Nobel lecture on December 13, 1966 given by Charles Huggins entitled *Endocrine – Induced Regression of Cancers*.

Little did Wyeth know that the statement by its lawyers to some of the juries would actually turn out to be true. Dr. Huggins received his Nobel Prize for discovering that a subset of certain types of cancer was promoted

by hormones. These specified cancers were hormone positive prostate, breast and uterine cancer.

Pharmaceutical manufacturers have a duty and responsibility to doctors and patients to stay current on all science related to the drugs the companies are selling to the public. The entire hormone replacement fiasco may have been prevented if Wyeth had done a thorough investigation of the science involving hormone replacement in the 1960s. In fact, it could have taken advantage of Dr. Charles Huggins's Nobel Prize winning research. The Wyeth lawyers can now tell juries that someone did in fact win the Nobel Prize long ago for figuring out that hormones can cause cancer. But, do you really believe they will ever tell that bit of news to any jury?

MEDICAL DEVICE LOBBYING

According to a recent disclosure report, medical device maker Medtronic, Inc. spent more than \$1.2 million lobbying Congress in the first quarter. The company lobbied lawmakers on a bill aimed at updating the U.S. patent system and on legislation that would increase the regulation of medical devices manufactured in foreign countries.

Additionally, Medtronic lobbied against efforts in the House to make it easier for patients to sue medical device companies. The Medical Device Safety Act was recently introduced and, if passed, will restore the right to pursue state court claims for injuries caused by defective medical devices.

Last year the United States Supreme Court ruled in *Riegel v. Medtronic* that manufacturers of class III medical devices that have been approved by the FDA's pre-market approval process are essentially immune from liability. Medical device companies are shielded from patient lawsuits at the state court level, and the immunity could apply even in instances when a company actually knew that a device was defective and dangerous and when the device has been recalled. The medical

device industry has argued that overriding the decision would allow state courts to second-guess the FDA's medical experts. The Medical Device Safety Act is needed to restore patients' rights.

Sources: *Associated Press*

MEDTRONIC INFORMS DOCTORS OF FAULTY PACEMAKERS

Medical device maker Medtronic sent a letter recently to doctors worldwide warning that nearly 37,000 of its Sigma and Kappa pacemakers, most of which were manufactured between November 2000 and November 2002, could have faulty wiring that can cause the pacemakers to work improperly or not at all. This defect can be deadly for the estimated 1.7 million people who have the pacemakers implanted in their chests. The defect involves a separation of wires that connect the electronic circuit to the pacemaker components. Patients with the defective devices reported feeling faint or lightheaded. Medtronic has received two reports of patient deaths that may be a result of the faulty pacemakers.

An estimated 15,200 active Kappa devices and 6,100 active Sigma devices are affected by the issue. Many of the devices have been implanted in patients for five years or longer and may be nearing what Medtronic calls normal elective replacement time. Of the active Kappa and Sigma devices, Medtronic has observed 285 Kappa devices and 131 Sigma devices with the failure mechanism. The company predicts failure rates of 1.1% for the Kappa pacemaker and 4.8% for the Sigma pacemaker over the remaining lifetime of the pacemakers because of the defect.

In accordance with the HRS recommendations on device advisory communications, Medtronic will begin informing patients with registered devices that fall within the above-mentioned parameters with a letter dated May 27, 2009. The letter will advise patients to contact their physician for more information. The warning comes

on the heels of a massive recall of Medtronic's Sprint Fidelis Defibrillator leads because of reports of fractures in the leads which can result in the defibrillators unnecessarily shocking patients or failing to work altogether. To date, the Sprint Fidelis Defibrillator leads defects have been blamed for at least 13 deaths. If you need more information on this subject, contact Leigh O'Dell in our firm at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com.

Source: www.Medtronic.com

A REPORT ON ZYPREXA LITIGATION

Some 30,000 lawsuits have been filed against Eli Lilly by persons suffering from psychiatric problems who were treated with the anti-psychotic drug Zyprexa. Those persons principally allege in their complaints that Zyprexa caused side effects of hyperglycemia and diabetes. Litigation involving this drug was initiated in 2003 with a Multi-District Litigation (MDL) being formed in 2004. Many of the cases have been settled.

While most of the Plaintiffs elected to resolve their individual claims, there are still issues to be resolved in other cases that remain in court. A series of summary judgment motions filed by Lilly against individual Zyprexa-user actions are now pending. Expert testimony is critically important in these cases. The MDL judge has excluded some proposed expert testimony submitted by Plaintiffs' lawyers and has approved other expert testimony. But, on May 29, 2009, the MDL Court issued an order in one individual's case granting summary judgment.

The Plaintiff in that case was Lewis Ortenzio, a 56-year-old resident of Harrison County, West Virginia, who was formerly a medical doctor licensed to practice in the state of West Virginia. The court made several significant findings in the Ortenzio case, including the following:

- A finding that there was no evidence that Dr. Ortenzio read the warning

label. Thus there was no evidence from which a jury could find that a different warning by Lilly would have prevented him from taking Zyprexa;

- There was also no evidence that his doctor even knew Dr. Ortenzio was taking Zyprexa during the relevant time periods; and
- There was no evidence presented of a causal connection between Zyprexa and Dr. Ortenzio's pancreatitis, which made the case impossible to prove.

I don't believe that the ruling will affect many - if any - of the other pending cases. Each case should stand on its own from a factual perspective. The MDL Court appears ready to rule on additional Zyprexa cases and has issued orders that some of the cases should be ready for trial very soon. If you need more information on Zyprexa, contact Frank Woodson in our firm at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

LILLY SOLD ZYPREXA FOR DEMENTIA KNOWING IT DIDN'T HELP

In a related matter, it was reported last month that Eli Lilly & Co. urged doctors to prescribe Zyprexa for elderly patients with dementia, an unapproved use for the antipsychotic, even though the drugmaker had evidence the drug didn't work for such patients. This revelation came about when unsealed internal company documents were made public because of litigation. In 1999, four years after Lilly sent study results to the FDA showing Zyprexa didn't alleviate dementia symptoms in older patients, it began marketing the drug to those very folks, according to documents unsealed in insurer suits against the company for overpayment. In April 2005, regulators required Lilly and other antipsychotic drug-makers to warn that the products posed an increased risk to elderly patients with dementia.

The documents show the health

dangers in marketing a drug for an unapproved use, called off-label promotion, according to Dr. Sidney Wolfe, head of the health research group at Public Citizen in Washington. Dr. Wolfe had this observation:

By definition, off-label means there is no clear evidence that the benefits of a drug outweigh the risks. The reason why off-label promotion is illegal is that you can greatly magnify the number of people who will be harmed.

In 1999, when Lilly began its marketing push, Zyprexa's only approved use was for patients suffering from schizophrenia, according to the FDA. In 2008, Zyprexa was Lilly's best-selling drug, with \$4.7 billion in sales, while antipsychotics as a group topped U.S. drug sales last year, with \$14.6 billion.

In a request for a December 2003 meeting over a proposed label change, Lilly told the FDA that data from seven studies showed Zyprexa didn't alleviate symptoms of Alzheimer's or other dementia. The studies showed that death rates among older dementia patients taking Zyprexa were "significantly greater" than those who didn't get the medicine, and the company knew it.

The internal documents also revealed Lilly officials wrote medical journal studies about Zyprexa and then asked doctors to put their names on the articles, a practice called "ghost-writing." Lilly employees actually compiled a guide to hiring scientists to help promote drugs and combat unfavorable information about Lilly drugs. Documents, including a 2002 business plan, called for expanding prescriptions in off-label use. They also pointed to notes from Lilly sales representatives through 2003 recording efforts to press doctors to prescribe Zyprexa to elderly patients for mood symptoms, irritability and insomnia.

Lilly pleaded guilty in January to a federal misdemeanor charge of illegally marketing Zyprexa for off-label uses to elderly consumers. The company admitted illegal promotions from Sep-

tember 1999 through March 2001, while denying such practices beyond that date. All of this is bad news for Lilly, and unfortunately is typical of how the powerful drug industry operates.

Source: Bloomberg

THE FDA FAILED TO SHUT DOWN A TROUBLED PLANT

Natalie Fullerton died a tragic death at a tender age. Natalie, a one-year-old child, underwent a double-lung transplant and had a remarkable recovery after the surgery. Her father carefully tended to Natalie, following an intricate regimen to keep her healthy, and never suspected any real difficulties. After doctors implanted a tube in Natalie's chest to give her intravenous medication, her father dutifully used fluid-filled syringes to clean it. A few days after he started using the syringes, the child was back in a Texas hospital, breathless and feverish, and in real trouble. Bacteria had infected her blood, the first in a cascade of complications over a period of four months. Sadly and inexcusably, Natalie died on March 12, 2008.

Natalie's father had used syringes from a contaminated lot made in a North Carolina factory. That batch and another have since been linked to four deaths and 162 illnesses nationwide, including 22 in Illinois. Moreover, an examination of inspection reports and other documents reveals that the U.S. Food and Drug Administration had several chances to stop the tainted syringes from being used by patients and failed to act.

Three months before the prefilled syringes were shipped in October 2007, an FDA inspector visited the plant in North Carolina where they were made. She investigated reports of red, brown and black particles in syringes and reported that managers at the plant had a plan to deal with rust. But the inspector failed to note that the plant had switched to an unreliable sterilization method. A week later, the FDA learned that a distributor was

recalling 1.3 million of the syringes. The agency's own operations manual required that a thorough inspection be done, but that didn't happen. An FDA spokeswoman now says that, because the agency is so understaffed, it no longer follows the policy. That is, unless the recalled product poses a reasonable probability of serious injuries or deaths. The conditions at the syringe manufacturing plant certainly should fit within the criteria. It's difficult to understand why follow-up investigations by the FDA didn't take place.

Finally, after receiving reports of harm in late 2007, FDA inspectors did go back to the plant, called AM2PAT, and discovered a "gummy brown" substance on the syringe-filling machine and brown water flowing from taps, among other safety-related problems. The plant was closed in January 2008. Federal prosecutors went after Dushyant Patel, the president of AM2PAT, who lived in Chicago. He had commuted from his home to operate the plant. An indictment on fraud, conspiracy and other charges alleges that Patel's firm lied about performing sterility tests and produced prefilled syringes laced with bacteria.

In an effort to avoid prosecution, Patel fled the country. Two employees, including the plant manager, were sentenced in February to prison terms for fraud and for allowing tainted drugs into the marketplace. For some reason, the syringe case has not received much media attention. It's clearly another example of the FDA dropping the ball on a serious safety issue. Consumer advocates and experts who follow the FDA say safety breakdowns at the agency are the predictable result of a long-term shift from aggressive enforcement to "partnership" with the industries the FDA oversees. That sort of thing - historically - has never worked for any regulatory agency.

Margaret Hamburg, the newly-appointed FDA Commissioner, has pledged to make product safety a "top priority." She had this to say about the Patel plant:

This incident underscores my belief that it is critically important for the FDA to take an aggressive approach to inspections and maintain vigilance in ensuring that manufacturers fully comply with their regulatory, legal and moral obligations to ensure that the products they produce for the American people are safe and effective.

The Obama Administration and Congress must make an overhaul of the FDA a top priority and make sure that it happens. It will take increased funding and authority to deal with the health and safety issues that the FDA is charged with upholding. The death of this small, innocent child should never have occurred. Nothing like this should happen in the future.

Source: *Chicago Tribune*

FDA ASKS FOR CAUTION ON MERCK ASTHMA DRUG

Singulair, Merck & Co Inc.'s top-selling drug, and similar medicines, should come with a caution about reports of psychiatric problems in some patients, according to the federal government. The Food and Drug Administration has requested a precaution in the prescribing instructions for Singulair, Accolate (AstraZeneca) and Zyflo and Zflo CR (Cornerstone Therapeutics). Of course, a precaution is a less-serious alert than a warning. Problems that were reported to the FDA include agitation, aggression, suicidal thinking, suicide, depression, insomnia and irritability.

The FDA says that psychiatric problems were uncommon in clinical trials of the drugs but those data were limited because the studies were not designed to evaluate those issues. Some post-approval reports of psychiatric events "included clinical details consistent with a drug-induced effect," the FDA added. The agency says that doctors should be aware that "mental issues could arise and consider discontinuing the drugs if patients develop

psychiatric symptoms."

Merck said in a prepared statement that it was confident in the safety of Singulair. It said the drug has been prescribed to tens of millions of patients with asthma and allergies since its approval in 1998. But the company said it would revise the drug label as requested.

The types of problems the FDA cited already were mentioned in a less-prominent section of the prescribing instructions. Singulair is Merck's biggest product with annual sales of \$4.5 billion. The drug's generic name is montelukast. The FDA announced in March 2008 that it was reviewing safety data that raised concerns Singulair might be linked to suicidal behavior or mood-related side effects.

AstraZeneca says it is adding a precaution about reports of depression and insomnia to the label for Accolate, which had sales of \$73 million worldwide in 2008. The drug's generic name is zafirlukast. So far, officials at Cornerstone Therapeutics haven't made any comment on Zflo, known generically as zileuton.

Source: *Reuters*

XI. AN UPDATE ON SECURITIES LITIGATION

MORGAN KEEGAN BROKERAGE REPORT

Morgan Keegan & Co., the stock brokerage unit of Regions Financial Corp., has been involved in a great deal of litigation brought by investors who were victims of fraud. The company has spent the past ten months fighting these claims. Unfortunately for Morgan Keegan, there appears to be no letup in sight. At the heart of the current disputes are seven investment pools operated by Morgan Keegan, all of which operated under some variation of the name "RMK Fund." These were mutual funds that invested in bonds. Investors who were hurt

contend that these were risky bonds that speculated on the odds that people and companies with bad credit ratings would pay their high-interest debts such as equipment leases and home mortgages.

Morgan Keegan stockbrokers led their clients to believe the funds contained safe, highly-rated corporate bonds suitable for retirees. Some of the funds lost more than half their value when the housing market got in deep trouble in 2007, leaving investors with more than \$2 billion in losses that year. Currently, there are hundreds of cases pending against Morgan Keegan over the funds.

Morgan Keegan and Regions claim there was nothing improper about the management, promotion or selling of the funds. They say the assets that backed the funds were entirely proper given the prevailing economic conditions and that the risks were properly disclosed. But our experience in handling cases against Morgan Keegan and Regions indicates otherwise. We believe the cases brought by our clients have merit and will be successful.

The Morgan Keegan disputes are handled in arbitration under the Financial Industry Regulatory Authority (FINRA) which is based in Washington. FINRA is authorized by the government as a "self regulatory" organization, meaning its members agree to abide by certain rules and accept whatever penalties are levied by the group if these rules are broken. Investor disputes are heard in arbitration by a three-person panel. The panel is chosen from a pool of people by mutual consent of the lawyers representing aggrieved investors and the lawyers representing the FINRA-member company. There were about 5,000 claims filed against FINRA members last year. If you need more information on this subject, contact Scarlett Tuley or Jay Aughtman at 800-898-2034 or by email at Scarlette.Tuley@beasleyallen.com or Jay.Aughtman@beasleyallen.com.

Source: Birmingham News

SEC CHARGES EX-COUNTRYWIDE CEO WITH FRAUD

Former Countrywide Financial CEO Angelo Mozilo and two other former officials of the mortgage giant have been charged with fraud by federal regulators. This is the first government lawsuit against top corporate executives for actions related to the financial crisis. The Securities and Exchange Commission accused Mozilo, former Countrywide CFO Eric Sieracki, 52, and David Sambol, 49, former president, of falsely leading investors to believe the mortgage giant had avoided subprime-lending mistakes, even as Countrywide issued "riskier and riskier" loans.

Those loans generated billions in profits for Countrywide, a major player in the national subprime mortgage market that collapsed in 2007, helping start a global financial meltdown. As we have reported, Bank of America acquired Countrywide last year. Mozilo, a Countrywide co-founder renowned for his high salary and other corporate perks, was also charged with insider trading that allegedly produced profits of nearly \$140 million on sales of the stock in the nation's largest mortgage lender. The Los Angeles federal civil court lawsuit accused the three Defendants of failing to tell investors that Countrywide was:

- Matching any mortgage offered in the marketplace, even risky loans offered by subprime specialists.
- Approving a high percentage of loans with risks above the firm's "increasingly lax" guidelines.
- Defining "prime" loans as mortgages approved for borrowers whose credit scores were "well below" any definition of prime credit quality.

According to SEC enforcement director, Robert Khuzami, evidence shows the three executives painted a cheerful "mirage" that falsely characterized Countrywide as operating under "prudent business practices and tightly controlled risk."

"But the real Countrywide, which could only be seen from the inside, was buckling under the weight of deteriorating mortgages, lax underwriting and an increasingly suspect business model," Khuzami said. As proof that the executives knew of Countrywide's increasingly risky financial condition, the SEC lawsuit cited a corporate e-mail in which Mozilo allegedly told Sambol the firm was "flying blind" on how some risky loans would perform amid rising unemployment and slowing home sales.

In a separate e-mail to Sambol, Sieracki and others, Mozilo allegedly wrote that subprime mortgages had been originated "through our channels with disregard for process (and) compliance with guidelines." The SEC charged that Mozilo, while aware of non-public red flags in the firm's operations, established four stock sales plans, exercised more than 5.1 million Countrywide options and sold the underlying shares for nearly \$140 million. The SEC seeks unspecified fines against the three individuals. The Commission also seeks repayment of allegedly improper stock gains by Mozilo and Sambol, who allegedly got at least \$40 million in profits.

It's good to see the SEC going after the "bad guys" who have knowingly committed fraud. We have known about the wrongdoing by Countrywide for a long time. Our firm has been suing Countrywide in fraud cases for about five years, representing clients who were victims of the fraud.

Source: USA Today

SEC AND ALABAMA REGULATORS SUE AURA FINANCIAL SERVICES

The Securities and Exchange Commission and the Alabama Securities Commission have sued Aura Financial Services Inc., a Birmingham-based firm, and six of its employees over what was described as "rampant churning" of customer accounts. ASC Director Joe Borg gave Aura 28 days to show why its registration should not be revoked. The agencies allege that

Aura and its brokers used fraudulent sales practices and high-pressure sales tactics to convince customers to open and invest money in brokerage accounts, which the brokers subsequently churned.

The SEC alleges that Aura Financial Services, Inc., and six registered representatives used fraudulent sales practices and high-pressure sales tactics to convince customers to open and invest money in Aura brokerage accounts, which the brokers subsequently churned. Aura and the brokers enriched themselves with approximately \$1 million in commissions and other fees paid by the customers while largely depleting the customers' account balances through trading losses and excessive transaction costs.

Churning is a fraudulent practice that occurs when a broker engages in excessive trading without regard to the customer's investment objectives for the purpose of generating commissions and other revenue.

Source: *Birmingham News*

XII. EMPLOYMENT AND FLSA LITIGATION

WAL-MART WINS INITIAL APPROVAL FOR WAGE SETTLEMENTS

Wal-Mart Stores Inc., the world's biggest retailer, will pay as much as \$85 million to settle 30 lawsuits claiming the company didn't pay employees for all hours worked. The settlement covers cases filed in federal courts in 29 states and Puerto Rico. The settlement, which is part of a global \$640 million resolution of wage-and-hour claims reached between Wal-Mart and workers in December, has received preliminary court approval. The settlement is "fair, reasonable, and adequate," U.S. District Judge Philip M. Pro said in granting tentative approval, adding that the agreement was a "hard-fought compromise of claims that have been actively litigated before this court"

since February 2006.

The suits claimed that Wal-Mart violated wage and hours laws by denying workers' rest breaks and manipulated time cards to "shave" their pay. The suits were filed as class actions, or group lawsuits, on behalf of all hourly workers in the individual states, including Alabama, Michigan, Maryland, Oregon and Texas. The lawsuits are combined in the U.S. District Court, District of Nevada (Las Vegas).

Source: *Bloomberg*

SETTLEMENT IN WAGE-AND-HOUR LAWSUITS AGAINST WAL-MART

A Minnesota judge has given final approval to a settlement of a wage-and-hour lawsuit against Wal-Mart Stores, Inc., the world's biggest retailer, valued at an amount up to \$54.25 million. Previously, in a non-jury trial, the judge held that Wal-Mart required hourly employees to work off-the-clock and denied full rest or meal breaks in violation of state wage-and-hour laws. The judge ruled that Wal-Mart broke labor laws more than two million times and owed the employees back pay. The settlement concludes seven years of litigation over Wal-Mart's employment practices in Minnesota. Wal-Mart has faced dozens of similar lawsuits across the country.

Source: *Associated Press*

FORMER FREEDOM EXECUTIVE AWARDED \$4 BILLION IN AN EMPLOYMENT CASE

A California court issued a \$4.1 billion judgment last month against China's iFreedom Communications International Holdings Ltd., its U.S. affiliate, and its founder. This result came after an arbitrator found the Defendants liable in an employment dispute with a former executive. Judge Teresa Sanchez-Gordon of the Superior Court of California in Los Angeles County confirmed the final award for former Chief Marketing Officer Paul Thomas Chester, who had been fired.

Source: *Law 360*

CIGNA SUBSIDIARY TO SETTLE OVERTIME CLASS ACTION

The lead Plaintiff and Cigna unit Connecticut General Life Insurance Co. (CGLIC) have asked a Court to approve a settlement on behalf of approximately 6,500 current and former employees to resolve alleged violations of federal and state overtime wage laws. The suit alleged CGLIC failed to pay hourly employees for time spent booting up and down their computers before and after signing into the electronic time keeping system of the companies. It was contended that the employees were entitled to compensation for that time because the booting up and down of the computer was a task they were required to perform and thus constituted hours worked.

Source: *Law360*

HALLMARK TO SETTLE OVERTIME CLASS ACTION

A judge has preliminarily approved a class action settlement under which Hallmark Marketing Corp. agreed to pay current and former hourly employees in California to settle their claims. It was alleged that the employees were denied overtime pay. A final hearing is scheduled for October 16, 2009. The Plaintiffs alleged that Hallmark encouraged certain hourly employees to work off the clock, failed to reimburse them for business expenses, and denied them rest periods. The class is estimated to include up to 3,900 current and former employees who worked as retail merchandisers, territory assistants, installation leaders, administrative assistants and casual laborers.

Source: *Law360*

SUNTRUST REACHES SETTLEMENT IN FLSA ACTION

SunTrust Banks, Inc. has reached a settlement with technical support specialists employed by the company in a Fair Labor Standards Act collective action accusing the financial institution of failing to pay the employees

overtime wages. In March 2007, the court certified a class of all current and former client technology specialists who worked for SunTrust from March 14, 2004 to March 14, 2007, and were paid on a salary basis without getting premium pay for hours worked over 40 hours a week.

The technical support specialists were classified as exempt from overtime pay requirements before the Fall of 2006, but were reclassified as non-exempt. The employees duties included installing telephones, relocating equipment, providing computer and server support and providing installation and support of network communication equipment.

Source: Law360

STARBUCKS WINS REVERSAL OF THE \$100 MILLION TIPS VERDICT

Starbucks Corp. won a major victory last month when a California appeals court reversed a ruling that had ordered the coffee giant to pay more than \$100 million in restitution for allowing shift supervisors to share baristas' tips. The class-action lawsuit was brought on behalf of more than 100,000 current and former baristas in 2004 by former barista Jou Chau, who complained that shift supervisors were illegally getting a cut of employee tips. San Diego County Superior Court Judge Patricia Cowett ruled in favor of the baristas last year after a bench trial and awarded \$86 million in restitution plus about \$20 million in interest. Starbucks called the decision "fundamentally unfair and beyond all common sense and reason." It appealed the decision.

The State Court of Appeals in San Diego reversed the trial court's ruling, saying that the original decision was improperly based and that supervisors at the nation's largest coffeehouse chain "essentially perform the same job as baristas." The Court said in the decision:

We conclude the trial court erred in ruling that Starbucks' tip allo-

cation policy violated California law. The applicable statutes do not prohibit Starbucks from permitting shift supervisors to share in the proceeds placed in collective tip boxes.

It was reported that lawyers for the baristas will appeal the decision to the California Supreme Court. David Lowe, one of the lawyers for the baristas, had this to say:

Up to this point, every court that has addressed this issue has found that an employer cannot pay supervisors from a tip pool. This is the first case that goes in a different direction. We will be looking to the California Supreme Court to fix this error.

Lowe, of San Francisco law firm Rudy, Exelrod, Zieff & Lowe, said Section 351 of the state labor code states that an employer or agent can't take or receive any part of tips left for employees. The legal definition of an agent, he said, is "anyone who has authority to supervise, direct or control workers."

Starbucks had argued that its supervisors spend most of their workdays – as much as 95% – performing the very same jobs as baristas, including making coffee and taking orders. They say that, although supervisors have some authority to supervise or direct baristas, they can't enforce those directions and can't hire, discipline or terminate them. At a Starbucks location in Los Angeles, baristas and shift supervisors work side-by-side to serve customers, according to Tameko Aubry, a supervisor, who worked as a barista for five years. Ms. Aubry had this to say:

We do the same thing the baristas do. That's why we supervisors think we should get tips too... If they took the tips away, I would have to work extra hours or get another job.

On average, Ms. Aubry said supervisors make about \$3 more an hour than baristas do. Money collected in tip jars

is put into safes at each Starbucks and apportioned weekly to eligible employees based on the number of hours they work. It was reported that the average tip distributed to baristas and supervisors last year was \$1.71 an hour. It would be interesting to see what position Starbucks would be taking if the case was one involving a supervisor in an "overtime" lawsuit.

Source: Los Angeles Times

XIII. INSURANCE AND FINANCE UPDATE

OBAMA BACKS A FEDERAL INSURANCE OFFICE

The Obama Administration has called for a new U.S. Treasury Department office on insurance, but the president won't propose federal regulation of the industry as a part of the sweeping financial reform plan laid out on June 17th. The Office of National Insurance, as proposed, would monitor all aspects of the industry and flag any risks that could contribute to a future financial crisis. The Office could recommend to the Federal Reserve that large insurers be subjected to strict capital and risk rules that would apply to large financial holding companies under other aspects of the Obama plan. It also would coordinate industry policy, but it would stop short of being a direct regulator.

As you may know, the nation's 6,000 insurers are now regulated by state and territorial governments. The industry has been divided for years about changing this. Large life insurers and some large property-casualty firms favor creating an optional federal charter. Many smaller firms, state regulators and other segments of the industry want to keep the present system. I tend to favor keeping regulation at the state level. The Administration's plan represents limited centralization, and postpones further any final decision on federal oversight.

Source: Reuters

MAINE SETTLES WITH BANKERS LIFE AND CASUALTY IN IMPROPER SALES PRACTICES LAWSUIT

Maine Insurance Superintendent Mila Kofman has entered into a settlement with Bankers Life and Casualty Company. Under the agreement, the company will pay a \$500,000 civil penalty for improper sales practices and inadequate sales force training. Additionally, the Company has agreed to offer refunds plus incurred interest to any consumers who answered Medicare solicitations and were then sold other Bankers Life insurance products. Superintendent of Insurance Kofman stated:

We do not tolerate unlawful insurance sales practices in Maine, and we find it especially egregious when seniors or other vulnerable populations are targeted. In this case, the improper sales practices were the result of inadequate training and the company has accepted responsibility and agreed to make all affected consumers whole.

The agreement concludes an investigation by the Bureau of Insurance and the Office of the Attorney General resulting from a complaint to the Bureau of Insurance by an 80-year-old woman who had answered a mailing from Bankers Life offering "an important booklet concerning your latest Medicare Hospital and Medical benefits and deductibles." After meeting with two Bankers Life agents in her home, the woman was persuaded to use \$37,000 of the \$42,000 in her bank account to purchase an annuity.

Concerns about these "cross-selling" tactics led the Maine Legislature to pass a law in 2007 prohibiting insurance agents from making appointments to discuss Medicare products and using them to solicit business for annuities, life insurance or health insurance products. Bankers Life admitted that it failed to properly train its agents about Maine's cross-selling law.

In addition to the \$500,000 civil

penalty and refund aspect, Bankers Life has also agreed to an independent audit that will identify all sales of other products that resulted from Medicare appointments after the cross-selling law took effect. This will identify affected consumers, giving them the opportunity to cancel these transactions, and making them whole for any adverse tax consequences or other financial losses. Finally, Bankers Life has agreed to provide training in the new law for all of its sales representatives.

Source: *Associated Press*

XIV. PREDATORY LENDING UPDATE

FORMER EMPLOYEES CLAIM RACISM IN WELLS FARGO SUBPRIME LOAN PUSH

Wells Fargo loan officers guided minorities toward high-rate mortgages and joked that they were "riding the stagecoach to hell" for routinely steering prime-loan-qualified customers toward subprime loans, according to sworn testimony by two former employees which has been filed in a federal court. The affidavits were offered as evidence in a lawsuit filed on behalf of the City of Baltimore last year. This lawsuit alleges that "tens of millions" of dollars in losses from racist, predatory lending, known as "reverse redlining" - the targeting of minority borrowers, regardless of credit history, for unfavorable subprime loans - took place. The City says the practice led to increased foreclosures, vacant properties and crime in black communities. City Solicitor George Nilson told the *Baltimore Sun* in an interview:

Our minority residents and homeowners, many of whom were first-time buyers, were led down a disastrous primrose path by Wells Fargo, one of the biggest lenders in the city of Baltimore.

We're trying to do what we can to get some kind of redress.

Lawyers for the City filed 20 exhibits with the court, including the employee affidavits, ten studies about reverse redlining, and statements from Baltimore residents about the problems of living near foreclosed-upon, vacant homes. There was a hearing on June 29th in the case before U.S. District Court Judge Benson E. Legg. The Judge was to rule on whether the case will go forward or be dismissed. We did not have his order at press time.

Former loan officer Tony Paschal said in his affidavit that Wells Fargo targeted black communities for bad loans by focusing on African-American churches, using black employees as its public face, and using software to translate marketing materials into various languages, including something called "African American." He also said that other employees called subprime loans in predominantly minority neighborhoods "ghetto loans" and used racial slurs, including "mud people." Paschal worked for the bank between 1997 and 2007 with a two-year hiatus beginning in 1999.

Another former bank employee, Elizabeth Jacobson, a top Wells Fargo subprime loan officer, outlined techniques in her affidavit that she and others used to turn prime borrowers into subprime borrowers, including talking them into borrowing the full amount even if they could actually afford a large down payment. Loan officers employed other methods to steer clients into subprime loans, according to the affidavits. Some officers told the underwriting department that their clients, even those with good credit scores, had not wanted to provide income documentation. That flipped those loans from prime to subprime. It was also stated in the Jackson affidavit that loan officers cut and pasted credit reports from one applicant onto the application of another customer. These practices were said to have taken a great toll on customers.

For a homeowner taking out a \$165,000 mortgage, a difference of

three percentage points in the loan rate - a typical spread between conventional and subprime loans - adds more than \$100,000 in interest payments.

The lawsuit, filed in January of 2008, was among the first in a number of similar suits filed in states across the country, including Alabama, Texas, Tennessee and California. In the California case, earlier this year, a federal court judge allowed the National Association for the Advancement of Colored People to pursue its lawsuit against nearly two dozen mortgage lenders. Hopefully, the judge will allow the Baltimore case to go forward.

Source: *Baltimore Sun*

COURT RULES AGAINST COUNTRYWIDE IN MORTGAGE LAWSUIT

A federal judge in San Diego has rejected Countrywide Financial Corp's attempt to dismiss a lawsuit accusing it of steering borrowers into risky mortgages to maximize profit. The class-action complaint accuses Countrywide of inappropriately convincing borrowers to take on subprime mortgages they could not afford, violating federal racketeering and conspiracy laws, as well as state laws barring unfair competition and unjust enrichment. As we have previously reported, Countrywide was the nation's largest mortgage lender before being acquired last July by Bank of America Corp.

U.S. District Judge Dana Sabraw rejected Countrywide's argument that the Plaintiffs did not show sufficient evidence of a "racketeering enterprise" among independent mortgage brokers to warrant dismissal of that part of the case. Judge Sabraw also denied Countrywide's motion to strike the state claims. But the judge did dismiss claims by one Plaintiff because he lacked standing to pursue his case.

Bank of America has faced a good number of lawsuits and regulatory investigations relating to Countrywide. As we all know, the name Countrywide became synonymous with the risky lending practices that helped fuel the U.S. housing boom and subsequent

bust, affecting millions of Americans. Interestingly, Bank of America has dropped the Countrywide name from its mortgage operations, renaming the business Bank of America Home Loans. While that's a smart move, it doesn't take away Bank of America's exposure since it assumed all liabilities of Countrywide. The case is pending in the Southern District of California.

Source: *Reuters*

XV. PREMISES LIABILITY UPDATE

CPSC RELEASES NEW POOL AND SPA SAFETY DATA

Memorial Day marked the beginning of summer fun and activities for folks all across the country. For millions of Americans, summer fun involves cleaning the back yard pool for the season's first use or heading to the community pool with the children. This is why the U.S. Consumer Product Safety Commission released its latest pool and spa safety report just before the Memorial Day weekend. The report contains updated data on child drowning deaths and injuries in pools and spas. The CPSC's records reveal that approximately 300 children under the age of five drown in swimming pools and spas every year, while some 3,000 others receive injuries that require emergency medical attention. Pool and spa-related accidents often cause serious, debilitating and lifelong injuries.

About two-thirds of those deaths and injuries involved the youngest children between one and two years of age, and 80% of all the fatalities happened in a residential pool, be it at the victim's home, or in a pool belonging to friends, other family, or neighbors. According to the CPSC, "drowning occurs more commonly when children get access to the pool during a short lapse in adult supervision." In community or public pools, children who are

trapped underwater or struggling to stay afloat are more likely to be noticed by lifeguards or other pool users if the parents fail to notice.

Data collected by the CPSC from 1999 to 2008 reveals that 83 incidents of pool and spa entrapments were reported which resulted in 11 deaths and 69 injuries. CPSC Acting Chairman Nancy Nord, who appeared with other safety advocates, including Scott Taylor, whose daughter received fatal injuries from an evisceration incident in a wading pool, reminded parents, caregivers, and pool owners to make safety a top priority this swimming season. She stated:

Preventing child drownings is a key part of CPSC's mission. I call upon all parents, caregivers and pool and spa operators to ensure that fencing and other layers of protection are in place; that there is constant supervision of children in and around the water; and that new, safer drain covers that prevent entrapment incidents are installed.

The Virginia Graeme Baker Pool and Spa Safety Act (P&SSAct), which was signed into law in December of 2007, went into effect last December. This badly needed legislation boosts pool safety by requiring all public pools and spas to have anti-entrapment drain covers, and in some cases, an additional anti-entrapment system. Because most fatalities and injuries involve young children, the CPSC has made regulation and enforcement of safety measures in public wading pools, kiddie pools, and in-ground spas its highest priority. To learn what you can do to make sure your children remain safe this summer, you can visit the CPSC's new website about pool and spa safety. You can also receive information on safety issues by subscribing at no cost to the pool/spa information e-mail list. This is available by going to the agency's Website at www.cpsc.gov.

Source: CPSC

DISNEY AND TRAM-INJURED WOMAN REACH SETTLEMENT

A Chinese woman who fell out of a moving Disneyland tram and suffered injuries that left her needing 24-hour medical supervision for the rest of her life has reached a settlement in the lawsuit filed against the Walt Disney Co. The settlement was reached between Disney and Qi Zhao, the Plaintiff, while the trial of the case in Los Angeles County Superior Court was in its second week.

Mrs. Zhao, who is now 48, filed her suit in 2007, alleging the tram driver was going too fast. She was riding the tram with two sisters and a niece. One of the sisters fell from the King tram as it moved toward a parking lot. Reacting to the fall, the other two sisters also fell out. The sisters suffered relatively minor injuries. But Mrs. Zhao hit her head on the pavement, suffering severe traumatic brain injuries and skull fractures. She was in a coma for three weeks.

Mrs. Zhao and her husband were born in China, but were living in Northern California when they visited the Anaheim theme park in February 2007. Mrs. Zhao is now being cared for in Beijing. Her husband, Zuchun Wang, had a claim for loss of consortium.

Disney, which says safety is its top priority, contended the tram was not moving too fast and had a device limiting its top speed to 11 mph. This was disputed during the trial. The settlement came just as lawyers had started their closing arguments. The judge then dismissed the jurors. Mrs. Zhao's two sisters had settled their claims against Disney before the trial.

Source: *Associated Press*

FIREFIGHTERS' FAMILIES SETTLE THEIR LAWSUITS

The families of two Boston firefighters killed in a restaurant fire and a third firefighter injured in the blaze have settled their lawsuits brought against the restaurant, its landlord, and a grease-cleaning company, for a total

of \$2.2 million. Firefighter Warren Payne died instantly, and his co-worker, Paul Cahill, died from smoke inhalation in the August 2007 fire. It was said that the fire was fueled by grease buildup that had seeped from a kitchen exhaust pipe into the ceiling of the Tai Ho Restaurant on Centre Street. Firefighter Kenneth Gibson was injured.

The families of Cahill and Payne filed wrongful death suits last year against Continental Realty, the Tai Ho Corp., and J & B Cleaning. It was alleged that all of the Defendants "knew or should have known that dangerous and defective conditions existed" at the restaurant "created by the carelessness, negligence, and/or gross negligence of the Defendants." Gibson filed a similar suit against the same Defendants for his injuries.

A Fire Department investigation found explosive conditions in the restaurant's kitchen, with grease built up to dangerous levels. Restaurant employees had placed a container on the stove to catch drippings from the exhaust hood overhead. State fire codes mandate that restaurants have their exhaust ducts cleaned quarterly and cleared of grease buildup. Tai Ho had hired J & B Cleaning just months before the fire, but a cleaning receipt indicated the company cleaned the stove and the hood, but did not clean the duct. Both the city of Boston and the state have since enacted tough regulations for commercial kitchen grease cleaners. In Boston, cleaners now must pass a certification test and register with the Fire Department before they are cleared to work in city restaurants.

The state Board of Fire Prevention Regulations has given final approval to a measure that would require commercial kitchen grease cleaners across the state to pass tests administered by the state fire marshal before they are allowed to clean restaurant kitchens. In the past, the fire code specified only that the cleaning be done by a "properly trained, qualified, and certified company or person." Many local fire officials never checked cleaners' certi-

fications. The new testing will begin in September and the regulation will go into effect on January 1st. This regulation should provide a high standard for individuals involved in cleaning hood systems and hopefully reduce fires and prevent a tragedy similar to the one that took the lives of firefighters in Boston.

Source: *Boston Globe*

A BELATED VICTORY FOR A SICK GROUND ZERO WORKER

After a year-long struggle, the state's Workers' Compensation Board ruled in favor of Daniel Arrigo, an ailing Ground Zero worker, forcing insurance giant Zurich North America to finally pay his just claim. Arrigo, the married father of three, has now received a check for nearly \$20,000 in back payments from Zurich. The *New York Daily News* highlighted his plight in May and that must have gotten the public's attention as well as that of the insurer. The deserving claimant said after his ordeal:

It's despicable how the government and insurance companies make sick people fight so hard and wait so long for what is due them. Thank God and thank the Daily News.

Zurich insured Tishman Construction, which employed the construction worker at a location at Ground Zero for four months after the Sept. 11 attacks. The worker was later diagnosed with severe lung disease from the toxic dust and vapors he inhaled at the site. He finally gave up his job in January 2008 when he could no longer bend down to tie his boots without gasping for breath. Sick and unemployed, Arrigo fell behind on his rent and he and his family were evicted from their Staten Island home. They were forced to move into two cramped rooms with the worker's brother.

In addition to the \$20,000, Zurich has to pay over \$400 a week to Arrigo and provide health coverage. This man

is far from out of the woods health-wise and must undergo a lung biopsy in August. It's a shame and disgrace for an insurance company to treat a man who needs help in this manner. Arrigo called himself a "poster boy" for thousands of sick 9/11 responders who have been caught between the slow-moving state compensation board and insurance firms that skillfully "game the system" to fight claims.

Source: *New York Daily News*

FAMILY SUES ZOO OVER TRAIN ACCIDENT

A lawsuit has been filed in Jefferson Circuit Court against the Louisville Zoo. The suit arises out of the derailment of a zoo train on June 1st that resulted in a number of injuries. Indiana resident Darren Bamforth and his wife, Amy, and their two-year-old son filed the lawsuit over the derailment that sent 22 people to the hospital. It was alleged in the complaint that the zoo was "grossly negligent" in its maintenance and operation of the train.

The Bamforths allege that they were sitting in the middle of the train with their son and other family members when the female driver approached them and appeared to be "flustered." The train's driver was 18 - the minimum age required by state law for those operating such rides - and inexperienced. It was further alleged that the train began accelerating into the tunnel and continued to gain speed before the train tipped over and overturned.

The train derailed as it made a turn behind the zoo's popular Gorilla Forest exhibit. The engine and cars, containing about 30 passengers on board, flipped on their sides. Seventeen children were taken to Kosair Children's Hospital. All but two were treated and released on the day of the incident. Five adults were taken to University Hospital, where three received treatment for several days. The crash is under investigation by the state Department of Agriculture, which oversees amusement rides. During the

investigation, the state has ordered that the train be shut down.

The lawsuit is seeking monetary damages, as well as a temporary court injunction preventing the zoo from altering or destroying the train or any photographs, videos, reports or statements taken after the derailment. The lawsuit is seeking a jury trial and compensatory and punitive damages.

Source: *Courier Journal*

GAS LEAK CAUSED NORTH CAROLINA PLANT EXPLOSION

An explosion that killed three workers at a North Carolina Slim Jim plant is said to have been caused by a natural gas leak that ignited in a room housing vacuum pumps used for sealing the snacks. It will now be up to state and federal workplace investigators to determine how the leak happened and what caused it to ignite in the blast last month at the ConAgra Foods Inc. plant in Garner.

Earl Woodham, an agent with the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, is involved in the investigation. ATF agents believe the gas was sparked by a piece of equipment such as a fan motor or thermostat, but they said another cause, like static electricity, couldn't be ruled out. Agent Woodham observed:

Such electrical equipment would be capable of catching natural gas on fire even if it were operating normally. It could have been anything that could have created a spark. By the very nature of the fact that whatever caused it is no longer there due the destructive explosion, we're never going to be able to say, 'yes this motor' or 'yes this thermostat' did that.

The ATF concluded the explosion was an accident and closed its criminal investigation. The explosion ripped through the 500,000-square-foot plant in Garner while 300 people were at work. Officials said 38 employees were injured, four of them suffering critical burns. Three firefighters were

treated after inhaling fumes from ammonia, which is used in the plant as a refrigerant. Some workers in and near the pump room reported smelling gas in the hours before the blast, Woodham said.

On the day of the explosion, workers were installing a new piece of equipment in the room, but it's not clear if that played a role, according to Agent Woodham. Omaha-based ConAgra says it will assist the state Department of Labor, OSHA, and the U.S. Chemical Safety Board as they take over the investigation. The company also says it has no timetable on when the plant could be reopened. The plant has 900 employees in the town of 25,000, just south of Raleigh.

Source: *Insurance Journal*

LAWSUIT FILED IN FATAL LANDFILL ACCIDENT

The widow of one of the four men killed in a Superior landfill accident has filed a wrongful death lawsuit against J. Kimmes Construction, a construction company located in Superior, Wisconsin. The lawsuit alleges that the company was negligent in failing to provide a safe workplace at the construction materials landfill. Forty-seven-year-old Tim Olsen, an employee of Lakehead Blacktop & Materials, managed the landfill. He and the three other men died on November 1, 2007 when they were overcome by hydrogen sulfide gas, lost consciousness and fell into a water-filled pit. The men had, one after another, climbed inside the confined space trying to assist each other.

Source: *Associated Press*

SOUTH CAROLINA JURY RETURNS A RECORD VERDICT

A Darlington County jury has returned a verdict of \$9 million against Progress Energy, finding the company responsible in the wrongful death of 21-year-old Allen Toney. The jury awarded the victim's mother \$3.5 million in actual damages and \$5.5

million in punitive damages. This was the largest award in Darlington County history. Toney died as the result of being electrocuted by a downed power line at his home.

Evidence at trial was that Progress Energy was negligent in responding to numerous inspection notifications of the hazardous condition of the utility pole in the months prior to the incident. Jurors also heard evidence that Progress Energy was negligent in responding to numerous phone calls made to the utility's Energy Call Center after a storm and prior to the electrocution incident. Those calls provided notification and warning to Progress Energy about the downed power line situation and the dangerous conditions present. The jury found that Progress Energy was negligent and that its negligence caused the tragic death of the victim.

Source: *Hartsville Messenger*

XVI. WORKPLACE HAZARDS

MASSACHUSETTS MAN KILLED AT SEAFOOD PROCESSING PLANT

Federal workplace safety regulators are investigating the death of a 20-year-old man at a food processing plant in Fall River, Massachusetts. Justin Cordeiro, an employee at Blount Fine Foods, died last month from injuries he sustained when a container full of clams and ice fell on him. The accident happened on the soup production floor. The Occupational Safety and Health Administration has opened an investigation and the company says it will cooperate. Blount makes chowders, soups, sauces and other seafood products.

Source: *Insurance Journal*

TYSON FOODS FINED \$500,000 FOR A WORKER'S DEATH

Tyson Foods has been ordered to

pay a \$500,000 fine and to serve a year on probation for the death of a Texarkana worker overcome by poisonous fumes at a rendering plant. The Occupational Safety and Health Administration won the maximum fine in federal court for a willful violation of worker safety regulations. OSHA said maintenance worker Jason Kelley was overcome by hydrogen sulfide gas generated by decomposing poultry feathers. Five other people were injured.

The federal regulators said Springdale, Arkansas-based Tyson didn't take sufficient steps to reduce exposure to the gas after a March 2002 incident at the River Valley Animal Foods Plant in Texarkana. Tyson Foods pleaded guilty in January. But the company said then that the incident was an accident, and that steps had been taken to prevent additional accidents.

Source: *Associated Press*

TARGET APPEALS \$3.1 MILLION VERDICT

Target Corp. is appealing a federal court jury's decision to award a Greer woman \$3.1 million after the superstore wrongly accused her of trying to pass a counterfeit bill in Greenville three years ago. The appeal is being heard in the Court of Appeals for the Fourth Circuit. U.S. Magistrate Bruce Howe Hendricks ruled in May that the amount awarded was "necessary" to deter Target from similar future behavior. In his order denying Target's request to overturn or alter the jury's decision, Judge Hendricks said:

Target engaged in moderately reprehensible behavior, which can only be deterred through an award of a moderately large magnitude. Because of the Defendant's financial strength, a number not unlike the one returned by the jury seems necessary to accomplish that end.

Target also sought a new jury trial to consider damages in the absence of overturning the verdict. Judge Hendricks denied that motion. In October

of last year, a federal jury in Greenville found that Target defamed Rita Cantrell when a Target employee distributed an e-mail to other businesses and law enforcement agencies characterizing her as a potential shoplifter and as someone who had tried to pass a counterfeit \$100 bill. The U.S. Secret Service arrested Cantrell at her workplace, a Belk store, before determining that her \$100 bill was authentic. The jury awarded her \$100,000 in actual damages and \$3 million in punitive damages.

Source: *Greenville News*

XVII. TRANSPORTATION

HIGH COURT OVERTURNS WORKER'S \$5 MILLION AWARD

The U.S. Supreme Court says that a Tennessee railroad worker isn't entitled to the \$5 million awarded him by a jury for being exposed to asbestos. The High Court ruled against Thurston Hensley, who sued CSX Corp. for monetary damages based in part on his fear of developing cancer in the future. The railroad contended that the jury instructions in the case were too favorable to the worker. The railroad wanted the jurors to be instructed that it was Hensley's responsibility to show his cancer fears were "genuine and serious," but that request was denied by the lower court. In a 7-2 ruling, the Supreme Court sided with CSX, saying the trial judge erred in delivering the jury instructions. The Court's opinion stated:

Although Plaintiffs can seek fear-of-cancer damages in some ... cases, they must satisfy a high standard in order to obtain them.

The Plaintiff, former CSX Corp. railroad worker Thurston Hensley, suffered from brain damage and the lung disease asbestosis. At trial, Hensley's lawyer sought pain and suffering damages that included fear of develop-

ing lung cancer. The trial judge refused to submit jury instructions proposed by CSX that would have required jurors to find the fear was “genuine and serious” and outlining standards of proof established in the Supreme Court decision, *Norfolk & Western v. Ayers*.

The Tennessee court said little would be served by issuing the proposed jury instruction because “the mere suggestion of the possibility of cancer has the potential to evoke raw emotions,” and “any juror who might be predisposed to grant a large award based on shaky evidence of a fear of cancer is unlikely to be swayed by the language of *Ayers*.”

Justice John Paul Stevens dissented from the ruling, saying the *per curiam* opinion was premised on a footnote in the *Ayers* case that he did not read as requiring the “genuine and serious” instruction. Justice Stevens suggested this ruling will raise more questions. In the dissent, he wrote:

For instance, if it is per se error for the trial court to deny a request for a genuine-and-serious instruction, is it also per se error to fail to employ particularized verdict forms? After all, that too is a verdict control device listed in footnote 19. The risk that the Court's opinion will generate more confusion than clarity is inherent in a summary decisional process that does not give the parties an opportunity to brief and argue the merits.

It does appear that the majority of the Court has gone much farther in its requirements of proof than Congress intended. Hopefully, this issue will be revisited by the Court.

Source: UPI.com

FAA INSPECTOR PREDICTED DANGER BEFORE BUFFALO CRASH

We have written in previous issues about the tragic crash of a commuter airplane in Buffalo, New York, that resulted in 49 people being killed. The

New York Times, in a recent article, disclosed that a federal inspector predicted danger long before the crash. The *Times* reported that, more than a year before the twin-engine turboprop flown by Colgan Air crashed on approach to Buffalo, a Federal Aviation Administration inspector complained to his superiors about problems the airline was having with that model plane. According to the *Times*, the inspector, Christopher J. Monteleon, was actually in the cockpit when the airline got its first such plane, a Bombardier Dash 8 Q400, and put it through a series of test flights.

The *Times* article reveals that Colgan was aware that its pilots had experienced difficulties with this airplane. Monteleon told the *Times* that when he reported problems to his FAA superiors, “he was suspended from important portions of his job overseeing Colgan’s acquisition of the Dash 8 and given a desk job.” His complaints about Colgan, which, according to the *Times*, were repeated three months later to the Office of Special Counsel, a federal agency established to hear whistleblower complaints, foreshadowed some of the issues that emerged 13 months later at the National Transportation Safety Board hearings on the crash near Buffalo. Monteleon said that Colgan crews were flying fatigued, and were not fully focused on the tasks in front of them. These are two factors that are allegedly being looked into in the Buffalo crash. All 49 people on board the flight, which took off from Newark, were killed, along with one man on the ground.

While the safety board usually takes about a year to issue a final report on crashes like the one in Buffalo, its hearings in May made it clear that the quality of the FAA’s regulation of Colgan was one of the areas under investigation. The FAA, through a spokeswoman, told the *Times* that “after Monteleon made his allegations, the agency called in a team made up of inspectors from around the country, who could review the issues with an impartial eye.” Apparently, some

changes in FAA procedures were recommended and carried out. But the FAA told the *Times* it didn’t find any “major regulatory issues.” That appears to be in conflict with the claims by Monteleon relating to safety concerns.

The Office of Special Counsel doesn’t settle safety issues, but sends them on to the inspector general of the department in question if it finds a “substantial likelihood” that they are at least partly accurate. The Office did send Monteleon’s complaints to the inspector general of the Department of Transportation (the parent agency of the FAA), but the inspector general’s office hasn’t completed its investigation.

It should be noted that the claims by Monteleon, a 40-year veteran of the aviation industry who joined the FAA in 1997, rely mostly on documents he himself wrote when the events occurred, and on his memory. But apparently, there have been other inspectors who were penalized by their supervisors who overruled them in favor of the airline. The *Times* reports that in 2008, two FAA inspectors assigned to Southwest Airlines testified before Congress that their managers let Southwest fly its Boeing 737s without inspections for cracks that the safety agency required.

Office managers referred to the airline as the regulatory agency’s “customer.” Top FAA officials eventually conceded that the inspectors were right and the middle managers were wrong. It should be undisputed that FAA inspections are critically important to safety in the airline industry. If the agency isn’t paying attention to reports from their own inspectors, it appears there is a serious problem. Either the supervisors are too cozy with the airlines or the inspectors are not good at their job, according to the *Times*. In any event, neither is acceptable!

Source: *New York Times*

PILOTS IN CRASHES FAILED MULTIPLE TESTS

It was reported by *USA Today* last month that in nearly every serious

regional airline accident during the past ten years, at least one of the pilots had failed tests of his or her skills multiple times. This conclusion came from an analysis of federal accident records. In eight of the nine accidents during that time, which killed 137 people, pilots had a history of failing two or more "check rides," tests by federal or airline inspectors of pilots' ability to fly and respond to emergencies. In the lone case in which pilots didn't have multiple failures since becoming licensed, the co-pilot was fired after the non-fatal crash for falsifying his job application. Pilots on major airlines and large cargo haulers failed the tests more than once in only one of the ten serious accidents in this country over the past ten years, according to a *USA Today* review of National Transportation Safety Board accident reports.

Regional carriers have had four fatal aviation accidents since 2004, compared with one by a major airline. It was reported that regional airlines fly roughly half of all airline flights, carrying about 20% of passengers. As mentioned above in the Colgan story, the issue of pilot qualifications on regional carriers was at the center of the NTSB hearing into the Buffalo crash. It appears that the pilot at the controls when the plane crashed had failed five checks, according to records revealed at the hearing. Three of the accidents in which pilots had repeatedly failed tests involved a single airline conglomerate, Pinnacle Airlines. Interestingly, the Buffalo crash was on Colgan Air, which is owned by Pinnacle. The captain on a Pinnacle jet that crashed in 2004, after accidentally killing both engines, had failed seven checks.

The NTSB has voiced concern about a loophole in a law requiring airlines to check pilots' records when hiring. The 1996 Pilot Records Improvement Act orders airlines to check pilot records from previous employers, but that does not cover failures that occurred while a pilot was in flight school. Airline pilots receive dozens of written and flying tests during a career. When a pilot fails multiple tests that should send up a red flag to anybody who has safety responsibility for both the FAA and the airline either employing or

considering employing that pilot. After a meeting on June 15th, the FDA said it plans to:

- Write new regulations on how many hours pilots can work. Several efforts in recent decades have failed, but Babbitt said, "We will get a new rule."
- Pressure all airlines to adopt safety programs that closely monitor data from every flight. All the major carriers use such programs, but many regional carriers do not.
- Improve the ability of airlines to research the flying records of pilots before they are hired. Currently, airlines are only required to look at a prospective pilot's records at other carriers for the past five years. *USA Today* reported last week that at least one pilot in eight of the last nine regional airline accidents had previously failed multiple flight tests.
- Conduct a review by airlines and pilot unions into pilot training.

The FAA will continue to schedule meetings with airlines on safety in the coming months, according to Transportation Secretary Ray LaHood. While safety experts said airlines deserve credit for making many voluntary improvements, they said the FAA also needs to follow up with tough enforcement. It seems pretty clear that the regional airlines need to improve safety practices without further delay. Also, there must be strong FAA oversight. Regional airlines, which mostly operate under contract to major carriers, fly half of all flights and carry about 20% of passengers.

Source: *USA Today*

JURY RETURNS \$19 MILLION VERDICT IN AIRPLANE CRASH CASE

An Itasca County, Minnesota, jury has awarded more than \$16 million — originally more than \$19 million — to the families of two Grand Rapids men who died in a crash of a Cirrus Design Corp. airplane near Hill City in 2003. Jurors determined that Cirrus, the Uni-

versity of North Dakota Aerospace Foundation and the pilot were all negligent in the crash that killed the pilot and a passenger on January 18, 2003. The jury found Cirrus and the University of North Dakota Aerospace Foundation to be 37.5% negligent, and found the pilot to be 25% negligent in the cause of the plane crash.

Jurors awarded the pilot's family \$6 million for loss of counsel, guidance, aid, advice, comfort, assistance, protection and companionship they experienced as a result of his death, and \$6 million for economic losses, which would include past and future wages lost. Because the pilot was found to be 25% negligent, the award will be reduced to \$9 million. The passenger's family was awarded \$6 million for loss of counsel, guidance, aid, advice, comfort, assistance, protection and companionship, and \$1.4 million for economic losses. His family sued Cirrus, the pilot's estate, and the University of North Dakota Aerospace Foundation. The pilot's family sued Cirrus and the University of North Dakota Aerospace Foundation.

A National Transportation Safety Board investigation concluded that the probable cause of the accident was "disorientation experienced by the pilot, due to a lack of visual references, and a failure to maintain altitude." Weather conditions varied from mostly cloudy to clear, depending upon their location, according to the NTSB report. The pilot had 248 hours of flight time — 18.9 in the SR-22. Daniel O'Fallon of the Robins, Kaplan, Miller and Ciresi law firm in Minneapolis, who represented the passenger's family, says Cirrus omitted required training necessary to sell the airplane to the pilot. Cirrus contracted with the University of North Dakota Aerospace Foundation to provide the pilot training. The pilot hadn't receive an "IFR Flight [non-rated]" lesson, which was part of the Cirrus training sold and promised.

The lawsuit contended that if the pilot had been provided the omitted training, he would have had critical information necessary to handle the conditions he faced on the morning of the crash. The victims were flying in a Cirrus SR22 on their way to St. Cloud,

Minn., to watch their sons play in a hockey tournament when the crash occurred south of Hill City. As mentioned above, Daniel O'Fallon represented the passenger's family. Ed Matonich, a lawyer from Hibbing, Minnesota, represented the pilot's family and did a good job. Each of these lawyers did a very good job for their clients.

Source: *Duluth New Tribune*

HURRICANE RITA BUS FIRE CASES SETTLED

Nearly four years after 23 Bellaire nursing home residents died in a fiery bus while evacuating from Hurricane Rita, their families have reached an \$80 million settlement with the Defendants. The bus caught fire just 35 miles from its destination in Dallas. In the week leading up to Hurricane Rita, Brighton Gardens, a Bellaire nursing home owned by Sunrise Senior Living Services of McLean, Virginia, ordered buses for its residents and staff so they could evacuate to a sister facility in Dallas. On September 23, 2005, as Rita moved through the Gulf of Mexico, nursing home residents and staff boarded two buses provided by Global Limo Inc., of Pharr, Texas. On the way to Dallas, one of the buses caught fire and 23 persons on board died.

The National Highway Traffic Safety Administration later determined the probable cause of the accident was insufficient lubrication of a rear axle, which overheated and caused a fire in the wheel well that quickly filled the 1998 bus with flames and heavy smoke. The settlement was disclosed on June 4th to a South Texas court by Richard Mithoff, the Plaintiffs' lead liaison lawyer.

The families claimed Brighton Gardens' corporate parent and its bus broker failed to screen Global Limo properly before contracting with them and that Global Limo then used a bus that was unsafe. The Plaintiffs contended that Motor Coach Industries, the bus manufacturer, along with component makers, were aware of a design defect in the hub and axle system that could fail and result in injuries. The settlement includes a prior agreement

in 2007 to end a lawsuit against the nursing home's corporate owner. It adds the bus manufacturer and operator, as well as several parties who designed or fixed components on the 1998 Motor Coach Industries bus, as parties to the settlement.

Those added as Defendants were MCI, the bus manufacturer; Arvin Meritor Inc., the designer of the axle and rear wheel assembly; SKF Industries, a component maker; Global Charter, the bus broker; The Bus Bank; Global Limo, the bus operator; Valley Volvo, which serviced the bus shortly before the trip to Houston; and K&S Towing, which changed a tire in the wheel area where the fire began, just hours before it erupted. The lawyers representing Plaintiffs in the case bought a similar bus for their own investigation into the fire. This allowed them - during testing - to learn that too much heat was generated in the hub assembly, which showed a design defect.

The investigation of the incident led the Plaintiffs' lawyers to conclude there was more to the cause of the fire than just insufficient lubrication of an axle. Richard Mithoff was the lead lawyer in the litigation, and he, along with Randy Sorrels, represented the families of the deceased passengers.

Source: *Houston Chronicle*

VICTIMS SUE LAWYER-DRIVER IN MOTOR VEHICLE CRASH

Paul Glad, a partner in the law firm of Sonnenschein Nath & Rosenthal, is being sued over a March motor vehicle accident in Burlingame, California, that resulted in a mother losing a leg. The suit alleges Glad was under the influence of OxyContin when he pulled into the handicapped space of a grocery store, started getting out of his car without putting it in park and rammed a group of parents and girls selling Girl Scouts cookies. One of the mothers was pinned against a wall.

The civil suit was filed against the lawyer by the victims, 49-year-old Holly Rogers, who lost one leg above the knee after both were broken, and her eight-year-old daughter, Caroline Schoustra, whose leg was also broken.

The Complaint, filed in San Mateo County Superior Court, alleges Glad had taken OxyContin earlier in the day. He has been the managing partner at Sonnenschein's San Francisco office for several years and chairs the insurance practice group. While Paul Glad is a very good lawyer, that doesn't excuse him for causing this incident. Hopefully, Glad and his insurance carrier will make sure the injured parties are fully compensated for their injuries, impairments and other damages.

Source: Law.com

XVIII. ARBITRATION UPDATE

REPORT ON THE ARBITRATION FAIRNESS ACT

We have written on several occasions about the problems experienced by Jamie Leigh Jones, an employee of KBR, a division of Halliburton, while she was working in Iraq. The woman's post-incident problems came about because of a pre-dispute mandatory binding arbitration clause in her employment contract. This young woman had a harrowing experience as a private contractor in Iraq when she was raped and beaten by several of her coworkers. When criminal charges could not be filed, Jamie sought to hold KBR / Halliburton accountable for their misconduct. But the arbitration clause buried in her employment contract was constructed to mean she could not have a jury trial. Instead, she would have to go to arbitration, on the corporation's own terms, for a secret, one-sided tribunal. Jamie's lawyer is Todd Kelly of the Kelly Law Firm, and her appellate counsel is John Vail who is with the Center for Constitutional Litigation. Hopefully, they will be successful and be able to obtain justice for Jamie.

In the meanwhile, there are two bills pending in Congress that should become law. The Arbitration Fairness Act and the Fairness in Nursing Home Arbitration Act are the names of the

bills, and each should be passed. These bills would put an end to binding mandatory arbitration clauses in certain consumer, employment, franchise, and nursing home care contracts. On Arbitration Fairness Day, over 30 victims of forced arbitration from targeted states traveled to our Nation's Capitol to lobby for the passage of the bills. The day was marked with a noon press conference at which the sponsors of the Arbitration Fairness Act, Senator Russ Feingold and Representative Hank Johnson, spoke about urgent need for the passage of legislation. Also speaking at the press conference were Jamie Leigh Jones and other individuals who have suffered terrible consequences as the result of forced arbitration. While that was back in April, so far neither of the bills have been passed. If you are against mandatory, binding arbitration and believe folks like Jamie Leigh Jones deserve to have their day in a real court, let your Senators and House members in Washington know. Unless folks back home get involved and put pressure on the lawmakers, nothing will happen. We can't afford to miss the opportunity to get something done on the arbitration issue.

Source: American Association For Justice

XIX. NURSING HOME UPDATE

WOMAN WINS SUIT AGAINST VIRGINIA ASSISTED LIVING HOME

A jury in Virginia has awarded \$750,000 in damages against an assisted living facility located in Newport News. A former staffer had been accused of sexually assaulting a mentally disabled resident. The verdict came in a lawsuit filed against Cote De Neige Home for Adults and its owner by the sister of a 55-year-old man who was a resident at the facility.

The staffer is accused of sexually assaulting the man while working at the home as a certified nursing assistant. He is charged with forcible sodomy, carnal knowledge and abuse

and neglect. According to the lawsuit, the home and owner failed to exercise "reasonable care" when they hired the staff member who had a previous criminal record.

Source: *Associated Press*

ORANGE COUNTY NURSING HOMES FINED FOR PATIENT DEATHS

State officials have fined two nursing homes in Orange County, California, for providing care so inadequate to two residents that it led to their deaths. In one case, a woman died from dehydration. In the other, staff failed to provide CPR to a man suffering a heart attack because they mistakenly believed he was under orders not to be resuscitated. In the first case, Alamos West Health Care Center in Los Alamitos was fined \$100,000. State officials levied an \$80,000 fine on the Huntington Valley Healthcare Center in Huntington Beach in the other one.

At Alamos West, the California Department of Public Health found that the nursing home failed to give an 82-year-old woman sufficient fluids, causing her to suffer dehydration and acute kidney failure. On December 19th, the woman's condition had deteriorated so much that she was transferred to a hospital. Upon admission, she was diagnosed with a urinary tract infection, dehydration and an "altered mental status." That resident died six days later, on Christmas Day.

The woman had been admitted to the nursing home in late November. A doctor ordered that the patient's fluid intake and urine output be monitored during every shift. But a registered dietitian at the nursing home could not prove to state officials that nurses had made sure that the resident was drinking enough fluids every day. In some cases, review of her intake and output of fluids was blank or illegible.

At Huntington Valley Healthcare Center, the nursing home's administrator told state officials that on March 2nd a registered nurse supervisor failed to call 911 as a patient was dying "because she thought the resident had orders" not to be resuscitated. In fact, the patient's medical record included an advance directive form from a

family member on which was marked the option, "I DO WANT CPR" in an emergency situation. Nursing personnel who were present at the time of the resident's death were no longer employed by the time state officials investigated.

In the second case, according to state officials, a licensed vocational nurse called to inform a family member that the resident had died. The nurse reportedly told the family member that the resident was dead and that paramedics were not called because the facility had orders not to resuscitate him. The family member told the nurse to hang up and call 911. By the time paramedics arrived, they found the resident in bed with no heartbeat. He was covered with a sheet with no signs that CPR had been initiated. This was a tragic occurrence that ended horribly.

Source: *Los Angeles Times*

XX. HEALTH CARE ISSUES

ZICAM NASAL SPRAY CAN CAUSE LOSS OF SMELL

The Food and Drug Administration says Zicam nasal spray can permanently damage users' sense of smell. The FDA says consumers should stop using Zicam Cold Remedy nasal gel and related products immediately. All of the over-the-counter products contain zinc. According to scientists, that ingredient may damage nerves in the nose needed for smell. The FDA says about 130 consumers have reported a loss of smell after using Zicam products since 1999. Manufacturer Matrixx Initiatives is facing lawsuits over the product, but claims "there is no known causal link between the use of Zicam Cold Remedy nasal gel and impairment of smell." This situation will be followed closely.

Source: *Associated Press*

STUDY SHOWS POSSIBLE LINK BETWEEN DEATHS AND ADHD DRUGS

A recent study involving children taking stimulant drugs such as Ritalin to treat attention-deficit hyperactivity disorder has caused a stir in the medical community. The study revealed that children are several times as likely to suffer sudden, unexplained death as children who are not taking such drugs. The study, published on June 16th, was funded by the Food and Drug Administration and the National Institute of Mental Health. It should be noted that researchers stopped short of suggesting a cause and effect. This study is the first to rigorously demonstrate a rare, but worrisome connection, between ADHD drugs and sudden death among children. The research adds to the evolving puzzle parents and doctors face in deciding whether to treat children with medication.

Doctors have speculated about such a connection in the past because stimulants increase heart rate and have other cardiovascular effects. Physicians are currently advised to evaluate patients for cardiac risks before prescribing the drugs. FDA officials said that those guidelines do not need strengthening in light of the new study. About 2.5 million children in the United States take ADHD medications such as Ritalin and Adderall.

Source: *Washington Post*

XXI. ENVIRONMENTAL CONCERNS

UPDATE ON TOXIC SEWAGE SLUDGE CONTAMINATION

Our firm continues to investigate claims on behalf of Alabama farmers and other property owners affected by contaminated sewage sludge in fertilizer in Lawrence, Morgan, and Limestone counties. Local wastewater treatment plants often provide human sewage sludge to farmers, who then utilize the sludge as a fertilizer on their properties. In the Decatur area, environmental officials recently found that

the sludge (conveniently named “biosolids”) contains high levels of perfluorochemicals (PFC) - specifically perfluorooctanoic acid (PFOA) and perfluorooctyl sulfonate (PFOS).

These chemicals are used as fire-fighting foams, grease and water repellants, and precursors to Teflon, Scotchguard, and other non-stick consumer goods. PFOA’s are considered toxicants, likely human carcinogens and are linked to birth defects, increased cancer rates, and changes to lipid levels and the immune system in high exposure cases. 3M recently halted its production of PFOS due to concerns of the chemical’s persistence in the environment and long-term health and environmental effects.

The EPA has requested information from numerous Decatur area industries that use PFC chemicals in their operations. According to a 2007 article in the *American Christian Society Journal*, “Environmental Science and Technology,” 3M produced PFC chemicals at its Decatur plant from 1999 to 2000, and until 2004 through its wholly-owned subsidiary, Dyneon LLC. Furthermore, Japanese-based chemical manufacturer Daiken and Toray Fluorofibers use PFCs in their operations in and around the Decatur area. In January 2008, a spokesman for Daiken stated the company would cease using PFOAs to manufacture water and oil repellent products by 2012.

Each of these companies reportedly discharges waste and water into the Decatur Utilities wastewater treatment plant. According to the U.S. Environmental Protection Agency, one of the manufacturers notified the EPA in 2007 that it had unknowingly discharged PFCs into the DU wastewater treatment plant. This action prompted the EPA to investigate whether biosolids originating from the treatment plant contained elevated levels of PFCs. Upon further analysis the EPA notified the DU wastewater treatment plant in November 2008 that fields where DU applied the sewage sludge from its treatment process contained alarmingly high PFCs. DU immediately stopped supplying biosolids to farms and instead diverted the sewage sludge

to landfills.

The EPA has collected and performed testing of public drinking water, private wells, ponds and soil near fields with high levels of biosolid application from November 2008 through February 2009. In 2008, results from the EPA Office of Research found relatively high levels of PFCs from two biosolid application sites as well as from the DU facility. Although Decatur drinking water PFC samples are below the EPA limit, high PFC levels were discovered in two private wells and numerous grazing ponds. Additionally, the USDA and the FDA are conducting investigations on what the contamination means for livestock and food products in the Decatur area.

In response to the contamination findings in Decatur, the EPA issued a health advisory in January 2009 that limits the amount of PFOS and PFOA in drinking water. The EPA advises people who are concerned that their wells are contaminated to use bottled water or point-of-use filters, installed at the faucet, with granulated, activated carbon. On June 2nd, 2009, the EPA hosted a public meeting in Moulton, Alabama, to inform residents about the status of the investigation. In addition to the FDA and participants at the meeting, representatives from the U.S. Department of Agriculture, the U.S. Food and Drug Administration, the Alabama Departments of Environmental Management, Agriculture and Industries, and Public Health, and Decatur Utilities were present. The parties reported at the public meeting that additional sampling results would be forthcoming.

Lawyers in our firm have successfully represented clients in PFC cases nationwide. We will continue to monitor the situation in Decatur on behalf of those affected by the contamination. If you need additional information on this subject, contact Rhon Jones or David Byrne in our firm at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or David.Byrne@beasleyallen.com.

Source: *Environmental News Source*

TEXAS SUING BP FOR POLLUTION VIOLATIONS

The Texas Attorney General has filed suit against BP Products North America Inc. and accuses the oil giant of 46 separate pollution violations at its Texas City refinery. One of the violations relates to an explosion we have written on in several prior issues that killed 15 workers and injured 170 others four years ago. The suit, filed in state court in Austin, alleges the BP Texas City refinery, about 35 miles southeast of Houston, spewed hundreds of thousands of pounds of unauthorized pollutants in a "pattern of unnecessary and unlawful emissions." The emissions, according to the suit, were the result of poor operational practices and inadequate maintenance at the refinery.

Source: *Associated Press*

UPDATE ON TVA COAL ASH SPILL

As previously reported, our firm filed a class action lawsuit on behalf of property owners damaged by the Tennessee Valley Authority coal ash spill in Kingston, Tennessee. The spill, which garnered national attention in December 2008, occurred when the TVA slurry retaining pond failed and released 5.4 million cubic yards of coal ash.

The visual devastation resulting from the coal ash spill was mindboggling. In total, nearly 300 acres were obliterated by 1 billion gallons of toxic sludge that measured nine feet deep in some areas. The Environmental Integrity Project estimated that 124 million gallons of coal ash were deposited at the TVA plant between 2000 and 2006 at 2.2 million pounds per year.

The environmental ramifications from the spill are even more disturbing. Before the spill, the Kingston plant was named to a list of the top 50 worst toxic chemical sites. Toxins within the coal ash include arsenic, lead, chromium, manganese, and barium. Associated with these toxins are the following health problems: cancer, liver damage and neurological problems among a host of other issues.

Recently, health officials warned Kingston residents that dust associated with the spill would hamper cleanup efforts as well as pose a respiratory threat to workers and residents alike. Nearly one third of residents located near the spill are already experiencing breathing issues.

On October 20, 2008, inspectors deemed the Kingston Fossil Plant's fly ash pond structurally sound. Interestingly, the inspectors were not even afforded the opportunity to finish their investigation before the pond collapsed. Based on prior annual reports, leaks, erosion, seepages, waterlogged walls and failed attempts to reconcile stability issues dot the history of the Kingston Plant's retaining pond. To put these issues in perspective, the dam was attempting to retain ash piles and sludge that towered 70 feet high alongside the Emory River. Jack Spadaro, a retired mining engineer who investigated a 1972 coal dam break in West Virginia that killed 125 people, believes TVA's inspection agency was "irresponsible" for failing to see the stability issues that plagued the dam.

While cleanup, waste disposal and costs are still speculative, TVA recently increased its estimates to range from \$675 million to \$975 million, an increase of \$150 million from previous estimates. In addition, there does not appear to be a firm estimate on how long the cleanup will take or where it will send the coal ash and other debris generated by the cleanup activities. The State of Pennsylvania has already rejected plans to deposit the coal ash in their state because the substance is too contaminated. Unfortunately, it is looking more likely that poor citizens in Alabama will bear the cost of TVA's poor judgment.

Recently, the Alabama Department of Environmental Management reported that it received notice from the TVA that 3 million cubic yards of the sludge would be deposited in a Uniontown, Perry County, Alabama landfill. The area is predominately inhabited by some of Alabama's poorest residents. If the Environmental Protection Agency agrees, TVA will begin shipping the 85

railcars loaded with toxic coal ash beginning on June 16th. As of the writing of this article, there is still no word on whether the Perry County, Alabama landfill will be a final resting place for the coal ash.

As of mid-April, TVA had paid \$20 million dollars to purchase over 220 acres of land affected by the spill. Over two-thirds of these 70 parcels have houses, trailers, or other structures on them. TVA's buyout program requires landowners to give up their right to pursue legal recourse against TVA, and it is unclear whether residents, in their desperation to leave the hazardous conditions, are getting fair deals.

In addition to the hardships that individual landowners suffer when relocating from their property, the County also is affected due to lost revenues. As property values decline due to the spill, so do the tax revenues associated with those properties. Therefore, Roane County likely will suffer from a lower tax base even though TVA has assured county officials that it will pay taxes on the property TVA purchases. As a tax-exempt entity, TVA normally is not required to pay property taxes. Diminished property values and the resulting loss in tax revenue affects all of the citizens of Roane County.

Our firm is working on behalf of individuals and a class of clients in this lawsuit to accomplish the following:

- Bring about a complete clean-up of the area;
- Ensure that our clients are fully compensated for the damage to their property (including their property values); and,
- Obtain long-term medical monitoring relief for area residents who have been exposed to the toxic contaminants in TVA's coal ash sludge.

While still in its infancy, quite a bit of work has already been accomplished in this litigation. Corporate Representative depositions have already commenced, and lawyers from our firm are assisting in the various discovery issues that a case of this magnitude

involves. If you need additional information on this subject, contact Rhon Jones or David Byrne in our firm at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or David.Byrne@beasleyallen.com.

Sources: *Knoxville News Sentinel* and *Associated Press*

NEW APPRAISAL FINDS ELEVATED HEALTH RISKS RELATED TO SOOT PARTICLES

A recent analysis of existing studies on the link between tiny soot particles and premature death due to cardiovascular problems has revealed that mortality rates are twice as high as previously believed. Health Effects Institute, a nonprofit organization created by the EPA to provide unbiased studies of the health effects of air pollution, released its findings on June 4th. Birmingham and Atlanta were among the cities included in the study. According to the new evaluation, the risk of having a condition that is a precursor to heart attacks goes up by 24% as opposed to 12% as particle concentrations increase. These particles, which have a diameter of less than a 30th of a human hair, are produced by diesel engines, automobile tires, coal-fired power plants, and oil refineries, among other things.

The link between these particles and cardiopulmonary disease has been known for twenty years. The EPA began regulating their emissions in 1997 but declined to lower chronic exposure limits in 2006 despite evidence that the particles were deadlier than once believed. The United States Court of Appeals for the District of Columbia found that decision to be inadequate. The Obama Administration is now considering what levels are appropriate. Hopefully, this study will provide the necessary stimulus to get something done.

Source: *Associated Press*

KRISPY KREME SUED FOR CLOGGING SEWER SYSTEM

Officials in Fairfax County, Virginia, have sued Krispy Kreme doughnuts for clogging its sewer system. The lawsuit

alleges that Krispy Kreme damaged its sewer system by dumping yeast and grease, specifically including "excessive quantities of highly corrosive wastes, doughnut grease and other pollutants." The damages claimed include clogged pipes which caused raw sewage leaks and required a part of the system to be shut down. Krispy Kreme reportedly refused to pay the County's repair costs of \$1.9 million one month before the suit was filed.

The allegations of this suit have created a variety of media quips remarking on what effect doughnuts must have on the human body if they can actually destroy a sewer system. That's a scary thought for fans of Krispy Kreme doughnuts. This includes my wife Sara, who can spot the blinking red light at a Krispy Kreme shop blocks away.

ASBESTOS CLEANUP EMERGENCY DECLARED IN MONTANA TOWN

Libby, a northwest Montana town where asbestos contamination has killed more than 200 people, will get more than \$130 million in cleanup and medical assistance from the Obama Administration, according to the Environmental Protection Agency. This is the first declaration issued by the agency, which has grappled with the "toxic legacy" of a mine outside Libby, Montana, since 1999. As we and many others have repeatedly reported, the town was heavily contaminated with asbestos-laced dust. Federal prosecutors have said it resulted in more than 200 deaths and 1,000 illnesses. EPA Administrator Lisa Jackson, in making the announcement, stated:

For decades, the disease and death rate from asbestosis in the Libby area was staggeringly high – much higher than the national average. Not only did dust from the mine spread all over Libby and the neighboring town of Troy for decades, but tailings from the facility also were used as fill for driveways, gardens and playgrounds. Literally no matter where these residents turned, they were being exposed yet again.

Hopefully, this declaration will be a reminder to others of the serious consequences of mismanaging hazardous material. Six million dollars from the Department of Health and Human Services will go to local health care providers to screen, diagnose and treat asbestos-related illnesses, while \$125 million will go toward cleaning up contaminated areas. The new commitment brings the total amount the EPA has designated for the Libby area to \$333 million.

In 1919, the Libby operation began producing vermiculite – a mineral often used in insulation – and dust from the plant covered patches of grass, dusted the tops of cars and drifted through the air in a hazy smoke that became a part of residents' daily lives. But the product was contaminated with tremolite asbestos, a particularly toxic substance that has been linked to mesothelioma, a cancer that can attack the lining of the lungs, abdomen, or heart.

Source: CNN

XXII. TOBACCO LITIGATION UPDATE

PENSACOLA WOMAN WINS \$30 MILLION LAWSUIT AGAINST BIG TOBACCO

A Florida jury has awarded \$30 million to a Pensacola widow in a ruling against R.J. Reynolds Tobacco. Lawyers for Benny Martin, who died of lung cancer in 1995, proved that the tobacco company conspired to make their products more addictive to customers and withheld information about the dangers of smoking. The decedent started smoking 20 years before cigarettes had warning labels. The case is one of the first to be tried after the 2006 Florida Supreme Court ruling that threw out a massive class action award to thousands of smokers and required the cases be proven individually. Matt Schultz, the lawyer who tried the case, wants the jury verdict to help "deter these kinds of corporate

activities in the future." Hopefully, it will have that effect.

Source: Associated Press

THE FEDERAL GOVERNMENT WILL REGULATE TOBACCO

A bill has now been passed in both the U.S. Senate and House of Representatives that will regulate tobacco for the first time. At press time, the bill hasn't been signed into law by the President. He is expected to sign the bill. We don't have the details of this Act and will hold off until next month to discuss it.

XXIII. THE CONSUMER CORNER

THE CPSC WORKS TO PREVENT DROWNING

June is the start of summer and that means families are headed to the pool. But all pools, everything from small backyard inflatables to commercial water parks, are dangerous and tempting to young kids. There are about 300 pool and spa related fatalities per year for children younger than five years of age. To protect your loved ones from drowning, the Consumer Product Safety Commission says keep following in mind:

- **Have Layers of Protection:** Barriers, such as a fence with self-closing, self-latching gates, completely surrounding pools prevent unsupervised access by young children. If the house forms a side of the barrier, use alarms on doors leading to the pool area and/or a power safety cover over the pool.
- **Beware of Entrapments:** Suction drains in pools and spas can cause entrapments involving hair, body parts, clothing and jewelry, which can lead to death and serious injury. The suction can be so powerful that it can hold an adult under water, but most entrapment incidents involve

children. Do not allow children to play in a pool or hot tub/spa with missing or broken drain covers.

- **Look in the Pool First:** Precious time is often wasted looking for missing children anywhere but in the pool. Since every second counts, always look for a missing child in the pool or spa first. Be prepared for an emergency by having rescue equipment and a phone near the pool. Also, parents should learn cardiopulmonary resuscitation (CPR).
 - **Drowning is Silent:** Parents may think that if their child falls in the water, they will hear lots of splashing and screaming, and that they will be able to come to the rescue. Many times, however, children slip under the water silently. Even people in the pool have reported hearing nothing out of the ordinary during drowning incidents.
 - **Never leave a child unattended** – even for a minute – with access to a pool, spa, bathtub or bucket. If you have to leave, designate a “Water Watcher,” someone who can concentrate on kids in the water without distraction.
- All of this is very good advice for parents and other adults who care for children. Let's all strive to make this summer the safest ever for children!

Source: CPSC

THE FDA MAY REVEAL MORE DATA ON ACTIONS

For years, the Food and Drug Administration has withheld information about drugs and medical devices from the public when their makers cite trade secrecy — even in cases where the agency suspects that the products are causing serious illness or death. Hopefully, the new leadership at the FDA will change that. The Obama Administration has set up a task force within the agency to recommend ways to reveal more information about FDA decisions, possibly including the disclosure of now secret data about drugs and devices under study.

The task force's work will be complicated and rather difficult. Agency confidentiality decisions are governed by several interconnected laws, including the Federal Trade Secrets Act. Making all of the needed changes – which will take legislative action – won't be easy. The goal is to open up a system in which the agency failed to inform the public about health and safety hazards. For example, the public should have been alerted that a widely-prescribed heartburn drug was especially toxic to babies; that a diabetes medicine and a painkiller increased heart attack risks; and that antidepressants increased suicidal thoughts and behavior in children and teenagers. Dr. Steven Nissen, a cardiologist at the Cleveland Clinic who has campaigned for the release of such information, had this to say:

Many people have been harmed over the last decade because the FDA has treated clinical trial results of drugs and devices as trade secrets.

In 2007, Dr. Nissen published a study showing that Avandia, a popular diabetes medicine made by GlaxoSmithKline, increased the risk of heart attack by 42%. The data Dr. Nissen used was made public, but only because of a lawsuit. The FDA had known of the possible risk for nearly two years, but had not revealed that knowledge to the medical community or the public.

Dr. Catherine DeAngelis, editor of *The Journal of the American Medical Association*, told the *New York Times* that greater disclosure would allow researchers and publications like hers to help the FDA fulfill its mission. The agency “can't possibly know of everything going on,” Dr. DeAngelis said, adding, “If they could be more transparent, we could really help them.” Dr. Hamburg and Dr. Sharfstein, in an opinion article in *The New England Journal of Medicine* signaling the new effort, wrote:

Whenever possible the FDA should provide data on which it bases its regulatory decisions.

The task force will be led by Joshua Sharfstein, the agency's principal deputy commissioner, and will include other top officials. It will seek outside comment, including the views of supporters of strong protection for trade secrets. The task force is required to submit a written report to FDA Commissioner Margaret A. Hamburg in six months. The *New York Times* reported in its article:

Trade secrets can include company plans to test experimental medicines, the complete results of most clinical trials, and even the FDA's reasons for rejecting a company's application to market a product. Researchers have long complained that keeping such information secret can harm the public. A 2008 study published in The Journal of the American Medical Association found that in the 1990s, five different companies tested similar blood substitute products that were each found to increase the risk of death. Had the findings been made public, the authors argued, some of the companies might have known sooner that their products were dangerous, sparing the lives of some patients in the studies.

Hopefully, the work of the task force will increase the availability of information that the public needs to know about. It's a worthy undertaking and one that's long overdue. The new administration is to be commended for making the people's interest a top priority.

Source: *New York Times*

EXPEDIA ORDERED TO PAY \$184 MILLION IN LAWSUIT OVER HOTEL TAXES AND FEES

A judge in the state of Washington has ordered Expedia to pay \$184 million in a four-year-old class-action lawsuit against the Internet travel agency. The lawsuit, filed in 2005 on behalf of Expedia customers, accused the company, which is based in Belle-

vue, of paying hotel taxes based on a room's lower wholesale price but collecting based on its higher retail price. Also, Expedia was accused of bundling an additional service-fee charge with taxes into a single line item on a hotel bill, making the taxes appear higher than their actual amounts.

The Plaintiffs alleged that Expedia charged service fees under false pretenses in violation of its "Terms of Use" agreement with consumers from February 2003 through December 2006. In the summary judgment ruling, the judge agreed with the Plaintiffs that Expedia charged service fees to add to its profit, as well as to defray its costs. Since a summary judgment order is not a final judgment, there will be a trial to determine damages.

Upon a final judgment being entered, the company will be ordered to post a bond or another security for the full amount. The judge denied the Plaintiffs' motion for summary judgment on claims that the company violated the Washington Consumer Protection Act. Expedia will defend those charges in a trial. The judge ruled that Expedia should return \$184 million in service fees to customers who booked a hotel stay from mid-February 2003 to mid-December 2006. Expedia says it will appeal the decision.

Source: *The Seattle Times*

GUILTY PLEAS IN TOXIC PET FOOD CASE

A Las Vegas-based company and its owners have entered guilty pleas in a case involving tainted pet food that killed thousands of dogs and cats in 2007. The co-owners of ChemNutra Inc., who are a married couple named Miller, reached a plea agreement with prosecutors and entered a guilty plea at a hearing last month. ChemNutra also pled guilty.

The Millers and ChemNutra, along with two Chinese companies, were indicted in February 2008 on charges alleging they imported wheat gluten tainted with the chemical melamine, which was then sold to pet food

makers. Thousands of cats and dogs became sick or died after eating the tainted food. ChemNutra and the Millers were charged with 13 misdemeanor counts of introduction of adulterated food into interstate commerce, 13 misdemeanor counts of introduction of misbranded food into interstate commerce and one felony count of conspiracy to commit wire fraud.

Xuzhou Anying Biologic Technology Development Co., Suzhou Textiles, Silk, and Light Industrial Products Arts and Crafts I/E Co. were also indicted. The indictments alleged that Suzhou Textiles, an export broker, mislabeled 800 metric tons of tainted wheat gluten manufactured by Xuzhou to avoid inspection in China. According to the indictment, Suzhou then did not properly declare the contaminated product it shipped to the U.S. as a material to be used in food. ChemNutra allegedly picked up the melamine-tainted product at a port of entry in Kansas City, then sold it to makers of various brands of pet foods.

The indictment states further that Xuzhou added the melamine to artificially boost the protein content of the gluten to meet the requirements specified in Suzhou's contract with ChemNutra. Prosecutors said adding the melamine, which would allow it to pass chemical inspections for protein content, was cheaper than actually adding protein to the gluten. The Millers and ChemNutra were aware that the product had been shipped into the U.S. under false pretenses and failed to notify their customers.

Source: WJLA.com

BAN ON BPA IN PLASTICS MOVES FORWARD IN CALIFORNIA LEGISLATURE

We have written on the bisphenol A (BPA) in prior issues. Last month, the California State Senate approved a proposal that would ban the use of the substance in baby bottles, toddler sippy cups and food containers. BPA is said by some independent scientists to pose a threat to childhood development. The bill prohibiting the use of

BPA next goes to the Assembly, where it is expected to face tough resistance from manufacturers of the infant products that contain the controversial chemical.

It was reported that industry leaders targeted California for an orchestrated lobbying and grassroots public relations campaign to turn back efforts by health and consumer groups to ban the use of BPA, a chemical component in the manufacture of plastic containers. Researchers from the chemical industry continue to claim the public health threat has been vastly overblown. But, as we have reported, more than 200 independent scientific studies have linked BPA to brain development and behavioral problems in young children, early puberty and the eventual onset of some types of cancer. Scientists say the chemical can leach into a liquid, particularly when a bottle or cup is heated.

The goal of the California legislation is to protect "the most vulnerable," according to Senator Fran Pavley, a Democrat, who is the bill's sponsor. She correctly says that affordable alternatives are already available to the chemical industry. In March, Connecticut Attorney General Richard Blumenthal said that six companies had stopped manufacturing baby bottles containing BPA in response to a request from his office and attorneys general from Delaware and New Jersey. Those companies are Avent America Inc., Disney First Years, Gerber, Dr. Brown's, Playtex Products Inc. and Evenflo Co.

Source: Los Angeles Times

MATTEL FINED \$2.3 MILLION FOR TOY HAZARD

Toy maker Mattel Inc. and its Fisher-Price subsidiary have agreed to pay a \$2.3 million civil penalty for importing and selling toys with excessive levels of lead. The penalty is part of a settlement the companies reached with the Consumer Product Safety Commission. It was announced last month that the toymaker had knowingly violated a 30-year-old federal ban on lead paint in

toys. The companies deny having willfully violated the ban.

The penalty stems from a series of recalls by Mattel and Fisher-Price in 2007, when the companies recalled nearly 2 million popular Big Bird, Elmo, Dora and other toys because of excessive levels of lead found in the paint on the toys. Barbie doll accessories and "Sarge" toy cars were also part of the recalls. According to the CPSC, the fine is the biggest for a lead paint violation involving children's toys. Mattel and Fisher-Price were among dozens of manufacturers that yanked millions of Chinese-made toys from store shelves in the months leading up to the 2007 holiday shopping season. The recalls made parents uneasy as they shopped for gifts for small children. Acting chairman Thomas Moore had this to say:

These highly publicized toy recalls helped spur congressional action last year to strengthen CPSC and make even stricter the ban on lead paint on toys. This penalty should serve notice to toy makers that CPSC is committed to the safety of children.

The Mattel and Fisher-Price fine is the commission's first penalty resulting from those recalls. It appears that Mattel's outstanding issues with the CPSC, involving certain matters that arose in 2007, will be resolved with this settlement. It was reported that after discovering compliance issues with some of their toys in a timely fashion Mattel took a series of steps. Mattel said in its statement:

We were able to effectively minimize any potential concerns by launching a fast-track recall of the affected product in conjunction with the CPSC and other global regulatory agencies, and by taking several steps to enhance our product compliance protocols and procedures to confirm that every Mattel toy is safe for children to enjoy.

Mattel, based in El Segundo, California, has not had any lead paint recalls since the 2007 cases, which spurred

congressional action and a new law last summer — called the Consumer Product Safety Improvement Act — that restricts the amount of lead allowed in children's products. Lead poisoning in children can cause neurological damage, delayed mental and physical development, learning deficiencies, and other problems. If Mattel acted as responsibly as it appears that it did, the company's bosses should be commended.

Source: Associated Press

LAWSUIT FILED AGAINST AETNA FOR LOSING DATA

A lawsuit has been filed against Aetna Insurance Co., alleging the insurer failed to protect personal information of employees and job applicants. The lawsuit comes after Aetna, of Hartford, Conn., was struck by computer hackers to access a company Web site holding personal data for 450,000 current and former employees, as well as job applicants.

The suit, filed by former employee Corneilus Allison, in U.S. District Court in Pennsylvania, charges the insurer with negligence, breach of implied contract, negligent misrepresentation and invasion of privacy. The Plaintiff is seeking certification of the lawsuit as a class action. An Aetna spokeswoman says the company did the right thing in notifying employees that their information had been hacked and in offering free credit monitoring for a year to about 65,000 people who had Social Security numbers on the site's database. Nevertheless, this appears to be a serious matter, and this lawsuit will be watched closely.

Source: UPI.com

MEDICAL BILLS SAID TO CAUSE MOST BANKRUPTCIES

It was reported recently that nearly two out of three bankruptcies come about as a result of medical bills. Even people with health insurance face financial disaster if they experience a serious illness, according to a new study. The study data, published online

on June 4th in *The American Journal of Medicine*, may understate the full scope of the problem because the data was collected before the current economic crisis. In 2007, medical problems contributed to 62.1% of all bankruptcies. Between 2001 and 2007, the percentage of all bankruptcies attributable to medical problems rose by about 50%. The study authors wrote:

The U.S. health care financing system is broken, and not only for the poor and uninsured. Middle-class families frequently collapse under the strain of a health care system that treats physical wounds, but often inflicts fiscal ones.

The data on medical bankruptcy, compiled by researchers at Harvard Law School, Harvard Medical School and Ohio University, is based on a survey of 2,314 randomly selected bankruptcy filers during early 2007. Among families who were bankrupted by illness, those with private insurance reported average medical bills of \$17,749 compared to those who were uninsured, who faced an average of \$26,971 in medical costs. Those who had health insurance, but lost it in the course of their illness, reported average medical bills of \$22,568.

The *Times* reports that hospital costs accounted for about half the expenses (48%), followed by prescription drugs (18.6%), doctor's bills (15.1%) and insurance premiums (4.1%). Medical equipment and nursing home care rounded out the list. Hopefully, Congress will deal with the healthcare issue and reform a broken system. Everybody in this country deserves health insurance and hopefully that will become a reality very soon.

Source: *New York Times*

INTERNET SCAM TARGETS LAWYERS

An internet scam targeting lawyers in Alabama and across the country has prompted warnings from bar associations and federal authorities. The

Alabama State Bar put members on notice to exercise extra diligence when presented with circumstances similar to those described below. According to the Bar Association, the scam works like this:

A law firm receives a referral from someone posing as an out-of-state attorney to enforce a simple contract dispute or collect a debt from a local corporation owed to a foreign company. The firm, believing it is exercising due diligence, confirms that the prospective client is a real company, then enters into a fee agreement. It sends a demand letter, and later receives a cashier's check made payable to the law firm. The client is pleased and directs the law firm to wire the money, after deducting its fees and costs. The law firm deposits the money in its client trust account, waits for the check to clear the local bank, and wires the money to the client. Things fall apart when the bank on which the check is drawn notifies everyone that the check is a counterfeit fraud - by which time it is too late to stop the wire transfer, and the law firm's client trust account is now out the proceeds, which the firm has to replace. The scam works because the law firm erroneously believes that the check is good when it clears the law firm's bank. That is not the case. The first clearance is only provisional. The bank on which the check is drawn has additional time under the law to verify the check.

All lawyers should beware of similar circumstances. The economic recession is making law firms become more susceptible to this type of fraud. It should be recognized and understood that those engaged in these schemes are devious and will use the names of actual companies, client contacts, and referring attorneys in an effort to sell the scam.

Lawyers who suspect they have encountered a similar situation should independently verify the names and contact information provided to them. Do not disburse the deposited funds

until the bank on which the cashier's check is drawn clears the check. To report a scam, contact your local FBI office.

Source: Alabama State Bar

INJURIES ON THE BASEBALL DIAMOND

While baseball is a fairly safe sport, participants can still get hurt and sometimes seriously. Over a 13-year period more than one and a half million players under 18 were injured seriously enough to be treated in emergency rooms. Estimates of the number of children involved in baseball vary, but the Consumer Product Safety Commission says there are 6 million in leagues and another 13 million playing on their own. Researchers analyzed a nationally representative sample of emergency room visits for baseball injuries from 1994 to 2006, using data gathered by the CPSC. Their study appears in the June electronic edition of *Pediatrics*.

Most of the injuries were minor, and more than 98% of patients were treated in the emergency room and released. But 24,350 required hospitalization, mostly with fractures and concussions. The number of injuries declined to 110,602 in 2006 from 147,357 in 1994; one possible reason, the authors say, is improvements in equipment. The most common injuries were caused by being hit by a ball, but softer safety baseballs now offer increased protection. Breakaway bases have lowered the number of strains, sprains and broken bones. In a separate study, the product safety commission found no facial injuries to batters wearing helmets with face guards. Dr. Gary A. Smith, the senior author and an associate professor of pediatrics at Ohio State, said mouth guards were particularly important. Dr. Smith had this observation:

They're low tech, low cost and easily available. They're used in many sports, and yet they're not part of the culture of baseball. But they should be used routinely.

I am by no means discouraging the playing of organized baseball by youngsters. But I am encouraging the use of good protective equipment and competent adult supervision of youngsters in organized baseball leagues.

Source: *New York Times*

XXIV. RECALLS UPDATE

We don't have as many recalls to report this month, which I consider to be good news. The following are those recalls that have occurred since the June issue of this Report.

HOME DEPOT RECALLS PATIO UMBRELLAS

The Home Depot, of Atlanta, Georgia, has recalled about 60 Offset Patio Umbrellas. The patio umbrella and its pole could tip over and strike consumers if the umbrella's collar or sleeve is not removed prior to closing the umbrella, posing a risk of impact injury to consumers. Home Depot has received one report of a recalled patio umbrella tipping over and breaking. No injuries have been reported. The patio umbrellas are beige with a brown offset pole. They stand 11 feet tall. The base is a brown cross about 18 inches long. The umbrellas were sold at The Home Depot stores nationwide from January 2009 through February 2009 for about \$250. For additional information, contact The Home Depot toll free at (866) 403-5504 or visit the company's Web site at www.homedepot.com.

STARBUCKS RECALLS 530,000 COFFEE GRINDERS

Starbucks Corp. is recalling about 530,000 coffee grinders because they either can turn on

unexpectedly or fail to turn off, posing a risk of injury. The Starbucks Barista Blade Grinders and Seattle's Best Coffee Blade Grinders that are being recalled were sold in Starbucks and Seattle's Best Coffee stores between March 2002 and March 2009. The Seattle-based coffee company said it had received 176 reports of the grinders malfunctioning, including three reports of hand lacerations because the grinders turned on unexpectedly during cleaning.

The coffee grinders cost about \$30 and were manufactured in China. Starbucks said customers should stop using the grinders immediately and contact Starbucks for a free replacement grinder. More information is available on the U.S. Consumer Product Safety Commission Web site, www.cpsc.gov.

KROGER RECALLS WINGS IN 2-POUND BAGS

Kroger Co. has recalled 32-ounce bags of Kroger fully cooked Buffalo-style chicken wings from stores in several states because of incorrect package labeling that could endanger people with certain allergies. The Cincinnati-based grocer says the wings may contain undeclared allergens such as wheat, soy and dairy that could cause a life-threatening allergic reaction to individuals sensitive to any of these allergens.

The recalled wings were sold at some Kroger stores in Ohio, Kentucky, Indiana, Texas, Louisiana, Tennessee, North Carolina, Virginia, West Virginia, Arkansas, Mississippi, Illinois, Missouri, Georgia, South Carolina, Alabama and Michigan. They also were sold at Food 4 Less, King Soopers, Smith's, Jay C, Fry's and Dillons stores.

CAMPBELL HAUSFELD RECALLS AIR COMPRESSORS

Campbell Hausfeld has recalled about 16,000 air compressors. The compressor's thermal overload, which shuts the unit off when it overheats, can fail. This can lead to overheating, melting of parts and a risk of fire. Thus far, no injuries have been reported. The recall involves the Campbell Hausfeld model HU200099AV air compressor with a 20-gallon tank. The recall includes date codes ranging from January 2009 through June 2009. The model number and date code can be located on the back of the tank. Consumers should immediately stop using the recalled air compressor and return it to any Wal-Mart for a full refund. For additional information, contact Campbell Hausfeld at (800) 241-0448 or visit the manufacturer's Web site at www.chpower.com.

CPSC is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. Please tell us about it by visiting <https://www.cpsc.gov/cgibin/incident.aspx>. The air compressors were sold exclusively at Wal-Mart stores.

XXV. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

Danielle Ward Mason Joins The Firm As An Associate

We are pleased to welcome a new associate, Danielle Ward Mason, who joins the firm's Mass Torts section. Danielle will work with section head Andy Birchfield in the investigation of claims involving dangerous drugs and

medical devices. She graduated cum laude from Faulkner University's Thomas Goode Jones School of Law in 2007. Danielle interned at the Federal Defender Middle District of Alabama during law school (November 2007-April 2008) and worked as a court-appointed defense lawyer for the Federal Defender Middle District of Alabama following her graduation. The Montgomery native came to the firm in June.

Danielle attended Jefferson Davis High School and graduated from Auburn Montgomery with a Bachelor's degree in Economics in 1999. In 2001, she received a Masters of Business Administration. Danielle began a career in commercial banking, but says "my heart was always calling me to the practice of law" and that being a lawyer has always been what she wanted to do. Folks who know Danielle well tell us that she has "a love for people and a genuine passion for the law." When interviewing with our firm, Danielle told Cole Portis that being in our firm would allow her to "get really invested in a cause and work and fight for that cause." That's what attracted her to the firm. As Danielle says, "our work means something" and here she could "really make a difference in the lives of people."

Danielle is married to Dwan R. Mason, and they have two sons, Jordan, 12, and Jaxon, two and a half. She is a member of the Alabama State Bar. Danielle enjoys spending time with her family in her free time. She enjoys public speaking, and while at the Federal Defender's office, Danielle spoke to a variety of groups regarding the importance of public interest law, particularly public criminal defense. She also serves as a guest judge for the Jones School of Law intra-school mock trial competitions, including the Greg Allen Mock Trial Competition that is held at the school every year. Danielle is an avid reader, writes poetry, and enjoys physical activities including

swimming, weight lifting, and aerobics. She has been a member of a local church, but she and her family are looking for a new church home at present. We are pleased to have Danielle join the Beasley Allen family.

Kimberly Youngblood

Kimberly Youngblood came to the firm in July of 2007 as the System Software Specialist. In this position, she troubleshoots issues with any of the software in the firm, researches new software and rolls out the software updates for the computers in the firm. In addition to these duties, she designs, creates, implements, and administers Microsoft Access Databases for the firm. Examples are the report database for this Report and the Vioxx information database. Kimberly also loads documents received through document productions for cases into Concordance for several of the departments within the firm, such as the case involving Medicaid fraud, Vioxx, 3M, Occidental and Hot Fuel. As a member of IT, Kimberly also assists in all other capacities needed to ensure the technical aspects of the firm are maintained.

Kimberly is married to Steve, who also works for the firm in the Information Technology Department. They have three children, two sons and one daughter. Stephen Jr. (21 years old) graduated from the Police Academy earlier this year; Christopher (19 years old) is in training for management with CVS; and April (18 years old) is working at Lowe's in Wetumpka and will be starting college in the fall.

Before coming to Beasley Allen, Kimberly worked for Regions Financial Corporation in the Technology Division for nearly ten years. She has received specialized training in several aspects of IT and business, including but not limited to Project Management, Microsoft Office Products, and recently, SQL Database and Microsoft System Center training.

Kimberly and Steve enjoy the water and they visit Lake Jordan or Lake Martin quite often to ride their jet skies. They are members of Cains Chapel United Methodist Church. We are most fortunate to have Kimberly, a very good employee, with the firm.

Ellen Royal

Ellen Royal has been with us for five years. Currently she is a Legal Secretary to Chad Cook in our Mass Torts Section. In this position, Ellen makes initial contacts with new clients, handles client and referring lawyer calls and correspondence. Because Chad is the lawyer who handles all inquiries regarding injuries related to pharmaceuticals or medical devices not currently being investigated by the firm, Ellen helps with these calls and correspondence.

Ellen was originally involved with the Welding Rod Litigation, making initial contact with new clients. In October 2004 she was moved into a staff assistant position and in May 2005 was moved to legal secretary where she currently works.

Ellen has two sons, Thomas, 21, who is serving with the 101st Airborne Air Assault as an MP in Ft. Campbell, Kentucky, and Matthew, 13, who is now in heaven with his Lord and Savior. Ellen is a member of First Presbyterian Church in Prattville where she serves as secretary of the WIC Board, on the Pastoral Search Committee, a member of The String Section (prayer shawl ministry), and a member of the Adult Choir. She enjoys going to the theater, listening to classical music, knitting, exploring antique shops and flea markets and serving in her church. Ellen is a very good employee and we are blessed to have her with the firm.

Sarah Martinez

Sarah Martinez, who has been with the firm for four years, currently serves

as Secretary to Clay Barnett in our Consumer Fraud Section. Sarah is working on the Medicaid fraud cases in several states, including in Alabama. She is married to Cutberto Martinez and they have two daughters, Esperanza (three years old) and Yolanda (seven months). Sarah enjoys spending time with her family & friends, traveling and being outdoors. Sarah is a very good employee and we are fortunate to have her with us.

Bilinda Hines

Bilinda Hines, who has been with the firm for over six years, currently works on updating and maintaining the Beasley Report mailing list. The list now consists of 54,000 people. Before taking on the mailing list project, Bilinda worked first as a secretary and then as a legal assistant in our Consumer Fraud section.

Bilinda is married to David, who works at Jack Ingram as a service advisor. They have three children: Haley (ten), William (two) and Joshua (two months). She has served as a Girl Scout Leader for the past five years. She also enjoys shopping, and enjoys weekends at Lake Martin with the family. They are members of First United Methodist Church in Prattville. Bilinda is a very good employee and performs a valuable function for the firm. We are fortunate to have her with us.

WENDI LEWIS ATTENDS MESOTHELIOMA SYMPOSIUM IN NATION'S CAPITOL

Current statistics show as many as 3,000 people are diagnosed with mesothelioma in the United States each year, and 10,000 Americans die from asbestos-related diseases. Mesothelioma is a deadly cancer that affects the lining of the lungs or, more rarely, the lining of the abdomen and/or the heart. There is only one way to develop this type of cancer - exposure to asbestos.

In February 2008, in an effort to raise awareness in the public about mesothelioma and the dangers of asbestos exposure, Beasley Allen established a web log (or "blog") at www.myMeso.org. The site provides a forum for those affected by mesothelioma, and creates a network of information and resources expanding hope for a cure.

In June, Beasley Allen's communications director and writer for www.myMeso.org, Wendi Lewis, traveled to Washington, D.C. to attend the 2009 International Symposium on Malignant Mesothelioma, presented by the Mesothelioma Applied Research Foundation (MARF), June 25-27th. The conference brings together patients, caregivers, family members, and those with mesothelioma or individuals who have lost a loved one to meso, as well as advocates, and medical and scientific experts.

The conference provided information about research and treatment, and an opportunity for networking. Highlights of the conference included a Tribute Ceremony to remember those who have lost their battle with mesothelioma, and a Celebration of Hope gala dinner to recognize the efforts of those working toward awareness and a cure.

AAJ CLASS ACTION LITIGATION GROUP MEETING TO BE HELD IN SAN FRANCISCO

Our firm is co-chairing the newly formed Class Action Litigation Group that is part of the American Association of Justice. Beasley Allen and the co-chairs of this distinguished group broke new ground by forming the organization in 2008. As co-chair, Beasley Allen will co-host the upcoming business meeting and seminar for the group in San Francisco on July 28-29, 2009. All lawyers who are members of AAJ and are interested in learning more about class action litigation are encouraged to join this litigation group. It's not too late to register

and attend the San Francisco meeting. If you have any questions or comments concerning this group or AAJ, please contact Jay Aughtman in our office at 800-898-2034.

LAWCALL

We are in our sixth month of hosting the widely popular *LawCall*, which is broadcast live at 11:00 p.m. each Sunday night on WSFA. Gibson Vance hosts the show each week, along with a guest lawyer from central or south Alabama. Kendall Dunson, from the firm, hosts the show in Gibson's absence. Each week a different topic is discussed and phone lines are opened to take questions from callers in the WSFA viewing area.

XXVI. SPECIAL RECOGNITIONS

THE MIRIAM SHEHANE AWARD

The Miriam Shehane Award is presented annually to a person whose work is outstanding and exceptional for victim's rights. Over the years, the nominees have included persons in law enforcement, prosecutors, judges, senators, and representatives. Miriam Shehane has become a strong voice for thousands of families who were too devastated and too frightened to stand alone. Victims of Crime and Leniency (VOCAL) says this year's recipient has consistently supported victims and victim's rights through advocacy by introducing and supporting passage of laws for the benefit of victims in Alabama.

VOCAL says that no person speaks for victims with greater passion and concern than this year's recipient. They say his strong sense of duty to protect the interest of victims and their families in the Alabama Legislature is shown in his voting for laws to

protect victims of crime. This year's Miriam Shehane Award recipient was none other than State Representative Billy Beasley of Clayton, who just happens to be my brother.

The selection process for this award works like this: Nominations from victims and folks who work in law enforcement from across the State of Alabama are sent to VOCAL, reviewed by the Board of Directors, and then narrowed down to three finalists, each of whom was said to be deserving of recognition. Billy was the winner and we are all very proud of him.

Source: VOCAL

MONTGOMERY LAWYER WINS A PRESTIGIOUS AWARD

Bryan Stevenson, a lawyer from Montgomery, Alabama, has been named a winner of the 2009 Gruber Justice Prize for his longtime work representing death row inmates, indigent Defendants and juveniles. The Peter and Patricia Gruber Foundation announced last month that it was awarding the prize to Bryan and to the European Roma Rights Center. The two winners will split the award's \$500,000 cash prize.

Bryan is founder of the Equal Justice Initiative in Montgomery and is mostly known for representing death row inmates, often during the final stages of their appeals. U.S. District Judge Bernice Donald of Tennessee said Bryan won the award because of his work "securing justice" for those most likely to be discriminated against. Bryan Stevenson is a very good lawyer and an even better person. He truly believes in what he is doing and that's quite evident. He is also my friend and I am proud of him!

Source: *Birmingham News*

ELDER ABUSE RALLY AT THE CAPITOL

The Alabama Civil Justice Foundation and its over 2500 participating lawyers throughout the state, including

lawyers at Beasley, Allen, have been working for the past 16 years to bring justice both inside and outside the courtroom to those in our state who need and deserve protection. ACJF was created by members of the Alabama Association for Justice - lawyers committed to protecting the powerless against the powerful. This includes supporting those organizations assisting Alabama's elderly. We know that a civil and just society protects its seniors against abuse where it occurs.

Chris Glover from our firm represented ACJF at the rally and spoke to the crowd. As a lawyer who has had the privilege of representing elderly clients who have been victims of abuse, Chris is very aware of the problems faced by our elderly. Our firm's motto is "helping those who need it most since 1979." There is no other area where we put that motto in practice more than when we have the honor and privilege of helping the elderly.

The rally wasn't the first opportunity that ACJF and Alabama lawyers have had to partner with the Department of Senior Services. We joined the Department in 2007 and 2008 in raising awareness about unscrupulous and fraudulent tactics being used by insurance agents who were selling Medicare related health insurance to the elderly. These tactics resulted in many in our state losing health coverage or paying too much for their health insurance. We were proud to again have had the opportunity to join with the Department in working with our older citizens.

ACJF and its participating lawyers appreciate the contributions of senior citizens to our state and nation in their roles as parents and grandparents. They commit to fairness, and their belief that community and family are important to our continued existence as a civil and just society serve as

examples for younger Alabama citizens to follow.

THE JIMMY HITCHCOCK AWARDS

The presentation of the Jimmy Hitchcock Awards each year in Montgomery is a highlight at the end of the school year. Three of our lawyers, Mike Crow, John Tomlinson, and Navan Ward, had the pleasure of serving on the Jimmy Hitchcock Award selection committee this year. The purpose of the Jimmy Hitchcock Award is to recognize outstanding high school senior athletes in Montgomery County, who by their actions have consistently represented the highest ideals of Christian leadership in athletics. These student athletes are nominated by their coaches and the administrators of their respective schools. There are both male and female winners each year.

This year, our three lawyers were charged with the responsibility of learning about Laura Johnson, a swimming and cross country star at Loveless Academic Magnet Program (LAMP) High School. They discovered a remarkable young woman who provides a great example of leadership, character, sportsmanship, commitment, and hard work on the athletic field as well as in the classroom. Laura is also a tremendous Christian role model for her peers and for the community.

This year the Jimmy Hitchcock committee recognized Laura as its female recipient. Laura was a four-year swim team captain, a two-time National YMCA swim champion, a five-time Alabama State High School swim champion, an Alabama State High School record holder in the 200 individual medley, and was the fifth-ranked 17-year old in the nation in the 100 and 200 breaststroke. Laura was also a four-time state cross country qualifier. Laura regularly attends Frazer Memor-

ial United Methodist Church where she participates in youth choir, group Bible study, teaches vacation Bible school, and is a youth group volunteer for various church ministries and other Christian organization activities. She has volunteered to go on a mission trip to the Dominican Republic this summer. Laura is also an outstanding student at LAMP High School where she has maintained a 4.12 GPA. Laura was awarded both swimming and academic scholarships to Auburn University where she will attend college this fall.

Roscoe Anderson, a student at Montgomery Catholic High School, was the male recipient of the Jimmy Hitchcock Award this year. Roscoe is the son of my friend, Charlie Anderson, who was also a Hitchcock Award winner along with Roscoe's uncle James Anderson. Roscoe was a starting guard, long snapper and game captain for the varsity football team and a starting outfielder for the varsity baseball team. Roscoe regularly attends Church of the Holy Spirit where he participates in numerous activities and charitable work, including the Church Life Teen Youth Group and the Archdiocesan Catholic Youth Conference.

Roscoe also served as the Coordinator for Catholic Community Service Project. At Montgomery Catholic, Roscoe displayed great leadership as Class President, School Ambassador, School Peer Leader, and as a member of several other school organizations and activities while maintaining a 3.98 GPA. Roscoe also participated in the YMCA Youth Legislature, Youth in City Government, Youth Judicial mock trial competition, and Conference on National Affairs. He received full academic scholarships to Alabama, Auburn, and St. John's University. Roscoe will attend college at Notre Dame where he has been accepted.

There are always many outstanding

young people nominated for this award and in reality, they are all winners. I am glad that the Jimmy Hitchcock Committee finds time to recognize outstanding Christian students in Montgomery County. The two young people mentioned above are worthy recipients this year and we are very proud of them. It's good to be able to report good things about good people, and Laura and Roscoe are to be commended for their past accomplishments. May God continue to bless them.

XXVII. CLOSING OBSERVATIONS

CHRISTIANS MUST STAND FIRM

Jesus' last instruction to His disciples before His ascension was to spread the Gospel to their families, their neighbors and the world. (Matt. 28:18-20) Jesus' command today - to all those who have placed their faith in His sacrifice on the cross - is the same. We are to share with all those we connect with that God loves them and that He loved them so much He sent His only Son to die for them that they might have forgiveness of sins and eternal life. (John 3:16). Unfortunately, most of us have not done a very good job of following the mandate of Matthew 28.

For example, many of us simply see Muslims as the "enemy" and not as a fertile field for evangelism. Though elements of Islam may indeed be radical and committed to violence, most Muslims are not, and regardless, all are created by God and are in need of the saving grace of Jesus. There are many other groups as well that we need to reach out to on a daily basis.

Our young people are being bombarded by so many elements that can

draw them off track - from drugs, to promiscuous sex, to violence, to the general state of apathy that prevails among many of our youth. We need to reach out to them with hope and love at every opportunity. These are just a few examples. The world is full of people with whom we need to share the love of Christ.

As I see it, there are obstacles that many of us have to sharing the Gospel. One is the breakdown in morality in the United States as a whole but also within the church. Our tolerance of sin gives those who do not know Christ tremendous ammunition to use against the cause of Christ as we seek to win the world to the beliefs of Christianity. We must commit ourselves to live lives that are in alignment with God's Word.

This is most important in our churches in the United States. There are far too many churches that are compromising Christian beliefs and principles on a daily basis in an effort to keep membership and giving up. It's possible - if not likely - to keep compromising the faith away until our churches are little more than social clubs. The simple fact is that in our churches, Jesus Christ should be exalted as Lord and as the only name by which anyone may be saved. (Acts 4:12) There is no substitute for Jesus - in our churches - or in our own lives. Jesus Christ should be honored and loved, and His Word obeyed. If our churches as a whole would do this and we would do this in our own lives, our credibility in sharing the Gospel would be greatly increased.

We should be looking for those around us that need to hear the hope of the Gospel. Worrying about being politically correct or offending folks who haven't accepted Jesus simply won't work. Christians are told to spread the Gospel message to the entire world and that should be our mission. We should do so lovingly and winsomely, but boldly. We should not

be intimidated into silence by any person or any group of folks who we think might not be receptive. We must simply share the love of Christ as He commanded and leave the results to Him:

Then Jesus came to them and said, "All authority in heaven and on earth has been given to me. Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, and teaching them to obey everything I have commanded you. And surely I am with you always, to the very end of the age."

Matthew 28:18-20

FAVORITE BIBLE VERSES

For some reason we didn't receive any Bible verses this month. Hopefully, there will be some next month. We always get lots of comments each month relating to this feature.

A COMING ATTRACTION

My longtime friend Dr. John Ed Mathison has agreed to write a piece for the August issue. As you may recall, John Ed retired as Senior Pastor of Frazer United Methodist Church in Montgomery. While he has retired from his role as pastor of a large church, John Ed hasn't retired from serving his Lord and Savior Jesus Christ. We are looking forward to hearing from John Ed next month.

XXVIII. PARTING WORDS

A VERY GOOD BOOK

My good friend Joe Turnham has written a book entitled *Leading From Our Knees*, which is now available. Joe spent several years working on this excellent book which is written in an effort to unlock the Biblical precepts of leadership. It has easy-to-read daily lesson guides for leaders of faith. I recommend this excellent work to

anybody who believes that Scripture-based daily lessons are needed as we deal with everyday life and its many opportunities for service and also with its many problem areas.

I have known Joe for many years and know first-hand that he is a Godly man who lives his faith daily and is an inspiration to all with whom he comes in contact. He and his wife Paula, and their two children, Pete Matthew and Abby, live in Auburn, Ala. Joe, who is known in Alabama as "a faith and values" political leader, is currently winding up his second term as Chairman of the Alabama Democratic Party. I hope he continues in that role because we need folks like Joe in the political arena. But Joe, who is a business man by training and profession, also has a "real job." He is currently a strategic organizational and economic development consultant.

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Beasley's law firm, established in 1979 with the mission of "helping those who need it most," now employs 44 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.

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