THE JERE BEASLEY REPORT

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Beasley Allen

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I. CAPITOL OBSERVATIONS

PUBLIC CITIZEN DOES GOOD WORK

We have written in previous issues about the good work Public Citizen does and how important what they do is for the American people. For more than 40 years, Public Citizen has led the fight against unfettered corporate power and for justice, fairness and a healthier, more equitable state of affairs in the U.S. The organization fights hard to protect consumers and preserve their rights. For example, Public Citizen has worked continuously to:

- Preserve access to the courts;
- Eliminate forced arbitration;
- Ensure safe products in workplaces;
- Protect the public interest before the U.S. Supreme Court; and
- Defend victims of corporate abuse and wrongdoing.

Public Citizen's longstanding, fearless work on drug and medical device safety, pressing for the removal of unsafe drugs and devices from the market and pushing for improvements in U.S. Food and Drug Administration (FDA) operations, may have been its best work. The FDA has failed to carry out its responsibilities on numerous occasions. Each year more than 100,000 people die from adverse drug reactions and another 2 million people are seriously injured. Unfortunately, the FDA has approved some drugs and medical devices that never should have been put on the market.

For example, the FDA dropped the ball on regulating a large compounding pharmacy, allowing it to continue to manufacture fungus-contaminated steroid injections that so far have sickened at least 620 people in 19 states, resulting in 39 deaths. What is particularly tragic for those who have been sickened or killed by the tainted drug and for their loved ones is that this situation was completely avoidable. Dr. Sidney Wolf, the Medical Director at Public Citizen, warned readers about compounding pharmacies in Worst Pills, Best Pills News back in 2001. He even had subsequent articles on the subject in 2006 and 2007. Even earlier, Dr. Wolf tried to get the FDA to act, but the agency never did.

Another example involves the drug Rezulin, which was approved by the FDA and later had to be pulled from the market. By the time the FDA banned Rezulin, it had caused hundreds of cases of liver damage, including 63 reported deaths. *Worst Pills, Best Pills News* warned of the potential danger a year and half before the FDA finally took Rezulin off the market. Unfortunately, the FDA is not the gold standard agency it once was. For that reason, Public Citizen has had to step up its efforts to keep the public informed. The following are some things Public Citizen has done:

- Public Citizen closely monitored the FDA where the drug review process is heavily dependent on industry financing. In fiscal year 2011, total drug industry user fees to the FDA central drug office—where drugs are reviewed—were $619 million. This means that approximately 60 percent of the total budget for reviewing drugs came directly from "regulated" companies. Because of this unhealthy financial relationship, Public Citizen has had to further increase the speed and intensity of its challenges to the safety of many drugs by petitioning the FDA to ban or relabel them. This responds to the urgent need to supplement the inadequate FDA (and Congressional) oversight of the drug industry.
- Public Citizen has had medical experts testify regularly at FDA advisory committee meetings about the safety of drugs, trying to stop dangerous drugs from being approved or arguing for them to be banned.
- Public Citizen formally petitions the FDA to remove unsafe drugs from the market or issue black box warnings. For drugs approved between 1975 and 2000, partly because the FDA sped up the approval process to accommodate the demands of the drug industry, one in five new drugs has to be removed from the market or receive a black box warning after FDA approval.

I encourage all of our readers to consider membership in Public Citizen. You can get more information on this organization at citizen.org. By joining, you can stand with Public Citizen, an organization that has the capabilities, experience and determination to lead the fight for more democracy, transparency, accountability and justice.

THE NRA WINS AND THE AMERICAN PEOPLE LOSE

I was saddened over the recent vote in the U.S. Senate on the universal background check bill. Regardless of what those who voted against the legislation claim, the NRA is directly responsible for the defeat of a measure that almost 90 percent of the American people favor. Not surprisingly, the NRA also lied continuously about what the bill would do if passed. For example, there was nothing in the bill that would have prohibited a family member from selling a gun to another family member. Neither did the bill authorize a national gun registry. Instead, the legislation specifically made it a felony for anyone to try to do that with a 15 year

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prison sentence. There were other deliberate NRA lies about the bill and apparently some of our Senators believed them to be true. Others just were plain scared to oppose the NRA on anything, even legislation that the NRA once supported, and that's a sad commentary on how Congress operates.

I am convinced that the NRA does not represent the interests of gun owners. I am equally convinced that it does work for gun manufacturers and their economic interests. I have owned pistols, shotguns and rifles since I was a teenager. I have used those shotguns and rifles as a hunter for years. Having said this, I have no problem with universal background checks. Neither can I see a valid reason for any person to own an assault rifle that is designed for one purpose and that is to kill folks. Assault rifles aren't used for hunting animals and should not be available for sale in the U.S. But that ban was not even in the bill that was defeated in the Senate. Neither was there a ban in the bill on the sale of high volume magazines that would hold 30, 50, 100 rounds.

My prayers go out to the Newtown, Conn., families who fought so hard to get the Senators to resist the threats of the NRA lobbyists and to do the right thing on the Senate bill. Hopefully those families won't quit this fight, and I don't believe they will. It's one that I believe can still be won. We have too much to lose as a nation to let this battle end now. If you agree that common sense gun safety legislation is needed, contact your members of Congress and let them know. You should start with your Senators.

Connecticut Governor Signs Sweeping Gun Measure

While the U.S. Senate failed miserably, Connecticut Gov. Dannel Malloy has signed what advocacy groups call the strongest and most comprehensive gun legislation in the nation. The new law bans some weapons as well as the sale or purchase of high-capacity magazines like those used in the Newtown shooting in December that left 20 children and six adults dead. It also requires background checks for all gun purchases. Gov. Malloy had this to say at the signing ceremony:

> *This is a profoundly emotional day, I think, for everyone in this room. We have come together in a way that relatively few places in our nation have demonstrated an ability to do. Today does not mark the end of our efforts to combat gun violence.*

With the governor's signature, Connecticut became the third state to pass such tough measures since the December rampage in Newtown. New York and Colorado passed gun-control legislation limiting magazine capacity, among other provisions. Unfortunately, as we all know, things are bogged down in Congress. This is hard to justify considering the overwhelming public support for background checks and strong support for other major gun restrictions in the wake of the Newtown killings. Democrats and Republicans in Connecticut were able to come to an agreement on a strong, comprehensive bill despite strong opposition from the NRA. That took political courage, something that is badly needed in Congress.

The legislation also does a number of other things such as:

- Creates the nation's first statewide registry of people convicted of crimes involving the use or threat of dangerous weapons. The registry will be available only to law enforcement agencies.
- Requires eligibility certificates for the purchase of any rifle, shotgun or ammunition, and significantly increases penalties for illegal possession and trafficking of guns.
- Requires background checks for all firearms sales, including at gun shows, and creates safety standards for school buildings.

Lawmakers in 36 states also have proposed legislation that would negate federal gun control initiatives, according to the non-profit Sunlight Foundation Reporting Group.

Source: CNN.com

II. A REPORT ON THE GULF COAST DISASTER

An Update On The Phase One Trial

As this month's Report was going to print, testimony had ended in the First Phase of the liability trial before Judge Barbier in New Orleans. The nearly two-month proceeding focused primarily on whether the actions of BP and its partners leading up to the blowout and explosion aboard the Deepwater Horizon drilling rig constituted gross negligence. BP was the last defendant to present evidence in the case, and it rested its case April 17. That concludes this initial phase, which began February 25.

To this point, there have been virtually no real surprises in the trial. While BP tried its best to portray itself in a positive light, there is no denying that its conduct leading up to the blowout was atrocious—and the testimony revealed every detail. Perhaps one minor surprise in the case was how poorly Halliburton faired. Testimony regarding Halliburton's cementing job was very damaging to the company. There should be real concern by Halliburton that it will face a gross negligence finding along with BP and Transocean. The testimony presented conduct and omissions by each of these three companies that reaches and even exceeds the level of gross negligence.

The parties will have 60 days to file written briefs detailing their conclusions. The trial's second phase will kick off September 16. That phase will focus on efforts that BP and its partners undertook to stop the release of oil and gas. Allegations that BP and Transocean were not prepared to manage a blowout or uncontrolled oil release will be heard by Judge Barbier. From a monetary perspective, all eyes will be focused on the determination of the total amount of oil released. That's because the federal government's Clean Water Act fines—which are estimated to be in the tens of billions—are based on the total volume of oil released.

As expected, the Plaintiffs' Steering Committee has done an outstanding job thus far trying the oil spill case. Predictably in cases of this magnitude, there will be Monday morning quarterbacking from lawyers who were not involved and from some in the media, but there is no denying that the PSC has performed at an elite level. If you would like more information on the trial thus far—or on the second phase—contact either Rhon Jones, John Tomlinson, Parker Miller or Chris Boutwell, lawyers in our firm, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, John.Tomlinson@beasleyallen.com, Parker.Miller@beasleyallen.com and Chris.Boutwell@beasleyallen.com. As you may recall, Rhon Jones serves on the PSC. He and a number of our lawyers have spent much of the past several months in New Orleans.

BP Appeals Damage Settlement Order

BP has appealed Judge Carl Barbier's March 5 ruling against the company to the 5th Circuit Court of Appeals. The appeal came on April 4, the day before BP's lawyers were scheduled to make the same arguments in a hearing before the judge. The appeal is from an order by Judge Barbier on the multi-billion-dollar oil spill damage settlement. BP first complained in January that claims administrator Patrick Juneau was misinterpreting the settlement BP negotiated last year with lawyers representing more than 150,000 private claimants. But Juneau, and then Judge Barbier, rejected BP's arguments, saying that those were the terms BP agreed to after painstaking negotiations that led to the settlement agreement.

The lawyers on the PSC who negotiated the agreement, including lawyers from our firm, all say that BP's lawyers understood fully what they agreed to after months of tough and very intense negotiations. When you get down to it, its hard to fathom how the company can say now it didn't understand fully. The PSC, along with Administrator Juneau, has filed its response briefs in support of the settlement agreement. We are confident that BP's efforts to rewrite the agreed-upon settlement will fail in the 5th Circuit.

The State Of Alabama Is Well-Positioned In The Oil Spill Litigation

The State of Alabama was in a great position as the first phase of the Limitation trial concluded. Attorney General Luther Strange and Corey Maze, a lawyer in the Alabama Attorney General's office, have done a good job in Louisiana on behalf of the State. Rhon Jones, Parker Miller and Rick Stratton from our firm have also worked extremely hard for the State of Alabama and its taxpayers representing Gov. Robert Bentley. While other states are now getting involved in the case, the State of Alabama got in early and has been a leader—both in discovery and at trial—since the early days of the multidistrict litigation (MDL).

The State of Florida filed suit against BP last month in the Panama City Division of the Northern District of Florida. The lawsuit includes numerous federal, state and maritime counts. Two years ago, in what may have been a missed opportunity for positioning in the MDL, the State of Florida rejected a chance to join the ongoing federal lawsuit in New Orleans. Fortunately, Alabama filed suit in 2010. The State's aggressive involvement at the very beginning was the right thing to do. Those who opposed Alabama filing suit, including then Gov. Bob Riley, were proved to be wrong. Our state's early filing has worked to the benefit of the people of Alabama and certainly it has been good for Attorney General Luther Strange. Gov. Bentley has been a very strong supporter of Alabama's efforts in New Orleans.

Judge Says Transocean Must Honor Deepwater Investigation Subpoenas

U.S. District Judge Lee Rosenthal, based in Texas, has refused to block several subpoenas issued to Transocean Ltd. by the U.S. Chemical Safety and Hazard Investigation Board (CSB) in its probe of toxic chemical releases during the Deepwater Horizon oil spill, ruling the agency has the authority to investigate the incident. Judge Rosenthal found that the CSB is statutorily authorized to investigate the Deepwater Horizon incident based on the release of gases from the well blowout and subsequent explosion, despite Transocean's claims that the agency should be prohibited from investigating the incident. Judge Rosenthal stated in his order:

> *The CSB has shown that it has jurisdiction to investigate the Macondo incident. The subpoenas the CSB issued are within its authority. Because Transocean raised no challenge to the subpoenas other than the argument that the CSB exceeded its statutory authority, the motion to dismiss or to quash the subpoenas must be denied.*

Transocean, owner of the rig, had argued that the CSB, created by 1990 amendments to the Clean Air Act (CAA), lacked authority under the CAA to investigate the incident as a "marine oil spill," which it claimed is under the exclusive bailiwick of the National Transportation Safety Board (NTSB). Judge Rosenthal stated the NTSB only has exclusive authority over "transportation-related" marine oil spills. It was pointed out that the incident first involved a blowout, explosion and fire, followed by a drilling riser collapse, and then the oil spill. The incident also involved the release of airborne gases. For these reasons, the judge said the incident can't be considered solely as an oil spill.

According to the CSB's petition, filed in October 2011, Transocean had either failed to respond, or had inadequately responded, to more than three dozen document requests. The CSB served Transocean with two subpoenas in November 2010, followed by another subpoena in March 2011 and two more in April that year, asking for information on the rig, its staff and related policies, as well as documents from an internal investigation provided to the federal Deepwater Joint Investigation Team. But Transocean had yet to fully satisfy any of the requests, the CSB claimed. The case is *U.S. v. Transocean Deepwater Drilling Inc.*, in the U.S. District Court for the Southern District of Texas. This case is not part of the massive litigation in New Orleans before Judge Carl Barbier.

Source: Law360.com

III. THE NATIONAL SCENE

Medicare Has Been Overpaying For Medical Equipment

A report by the Office of Inspector General (OIG) at the U.S. Health and Human Services Department relating to Medicare overpayments isn't good news for U.S. taxpayers. The report says Medicare has recovered just a small portion of as much as $70 million in overpayments to suppliers of durable medical equipment. A mandate exists that requires such companies to obtain bonds to guarantee taxpayers can recoup excessive reimbursement. As of July, less than $265,000 had been "clawed back" from suppliers in the Durable Medical Equipment (DME) industry. It was said that the industry has been a source of rampant fraud.

The report found that of the $70 million in overpayments, $50 million could be attributed to companies that acquired a surety bond in which a third party agrees to compensate the federal government if an overpayment isn't returned by the company. The remaining $20 million came from businesses that didn't comply with a 2009 regulatory mandate that suppliers obtain a $50,000 bond for each of their locations.

The Centers for Medicare and Medicaid Services (CMS) disputed OIG's $50 million figure. It said that bonded suppliers were liable for only $32 million in overpayments. But even if the lower figure is accurate, it's "cold comfort," the report suggested. "While the OIG and CMS total debt calculations differ, it is clear that tens of millions of dollars in debt remain uncollected from suppliers," the report said. It's not clear why CMS has been slow to make claims on surety bonds, which are triggered if a supplier fails to return money within 101 days after an overpayment notice goes out. But even if the agency were more diligent, the bonds would provide only modest relief because of the $50,000 cap.

As much as $42 million of the $50 million owed by bonded suppliers would remain uncollected, according to the OIG report. As a result, CMS could take advantage of a provision in the Affordable Care Act, allowing the agency to require suppliers with larger billing volumes to obtain bonds of greater value. CMS, in a written response to the report, said it concurred with the recommendation. The agency also said that it is exploring the idea of requiring home health agencies and "certain other provider and supplier types" to acquire bonds.

The OIG report also criticizes the quality of CMS' data, saying the agency initially handed over information on about 55,000 suppliers, and that when OIG questioned whether it was comprehensive, CMS realized it had omitted nearly 28,000 additional companies. Also, while suppliers with multiple locations can acquire a single bond with $50,000 in coverage for each site, the report found that CMS' data is so spotty that it's not always clear what money could be recovered from each company. It should be noted that according to the nonprofit National Insurance Crime Bureau, annual spending on DME approached $40 billion in 2010, with anywhere from 3 percent to 10 percent representing fraudulent billing. The overpayments went to about 1,400 suppliers, of which about 300 lacked bonds, according to the report. Lawyers at Beasley Allen handle cases related to Medicare and Medicaid fraud. To discuss a potential case, contact Archie Grubb or Andrew Brashier at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com or Andrew.Brashier@beasleyallen.com. For more information, please visit our website at http://www.beasleyallen.com/practice/employment-law/whistleblower-claims/health-care-medicaid-and-medicare-fraud/.

Source: Law360.com

$41.5 Million Awarded To Student Stricken By Encephalitis

A federal court jury in Bridgeport, Conn., last month awarded $41.5 million to a student in a lawsuit against a prestigious Connecticut boarding school. It was alleged in the suit that the Hotchkiss School located in Lakeville, Conn., failed to protect a student from insect-borne viral encephalitis during a 2007 trip to China.

In the Spring of 2007, Cara Munn was ending her freshman year at the college preparatory school. The then 15-year-old signed up for a Hotchkiss-sponsored trip to China in June and July. School officials failed to inform students of the health risks they would face on the trip. While the trip itinerary indicated that the group would be staying in big cities in northeastern China, where there was little risk of insect-borne disease, the teacher in charge had planned a hiking trip to the forests around Mount Panshan. This was a critical omission because the Centers for Disease Control and Prevention (CDC) had posted traveler warnings on its website about the risk of tick-borne encephalitis and other dangerous insect-borne diseases in the mountainous regions of northeastern China.

Ten days after the hiking trip to Mount Panshan, the student came down with a raging fever of 104 and an acute headache. She was hospitalized in China after suffering seizures and paralysis. Doctors ultimately diagnosed her with tick-born encephalitis. As a result of the illness, the student suffered permanent neurological damage that has severely limited her motor skills. She is also no longer able to talk, and instead communicates through a computer-assisted typing program.

Two claims based on negligence were submitted to the jury. The first was that The Hotchkiss School failed to inform the students of the risk of insect-borne disease in the places in China where they would be bringing her. The second was that the school failed to ensure that the student took insect-protection precautions, such as using insect repellant, wearing proper clothing, checking herself for ticks and staying out of underbrush. The jury awarded the student $31.5 million in noneconomic damages, $9.8 million in future economic damages and $450,000 for past economic damages.

Two liability experts were used by the plaintiffs' lawyers. Stuart Rose, a travel medicine specialist from Massachusetts, and Peter Tarlow, a consultant on tourism safety from College Station, Texas, provided expert testimony on the school's standard of care. The Hotchkiss School's own expert on travel medicine admitted on cross-examination that the school was on actual notice that there was a risk of tick-borne encephalitis in the region where the student and her Hotchkiss classmates had gone hiking. The trial judge refused to let the school's standard-of-care expert testify at trial. The Hotchkiss School has said it will appeal the verdict.

Antonio Ponvert III, a lawyer with the Bridgeport firm of Koskoff, Koskoff & Bieder, represented the student in the case and did a very good job. He had this to say about the verdict.

> *The jury sent the message to schools and any other organizations that take children on overseas trips that they have a duty to bring those children home safely.*

The case is Munn v. Hotchkiss School, which was filed in the U.S. District Court for the District of Connecticut.

Source: LawyersUSAOnline.com

IV. THE CORPORATE WORLD

Federal Appeals Court Rules Against Pfizer In 3 RICO Suits

On April 3, 2013, the First Circuit Court of Appeals ruled that drug manufacturer Pfizer, Inc.'s fraudulent marketing of the drug Neurontin directly caused plaintiffs Kaiser Foundation Health Plan Inc., Harden Manufacturing Corporation and Aetna Inc. to suffer financially. The three plaintiffs brought suit against Pfizer in a Massachusetts federal court, alleging that Pfizer violated federal racketeering laws by fraudulently marketing the epilepsy drug Neurontin as having collateral, off-label benefits. The plaintiffs contended this caused health care providers to pay for prescriptions that were essentially ineffective at treating the health conditions at issue. Pfizer argued that there was no causal chain between the drug manufacturer and the injury allegedly suffered by the Plaintiffs. However, the three-judge panel disagreed with Pfizer and ruled against the company in all three cases. A brief summary of each ruling follows:

> The First Circuit affirmed the $142 million jury verdict in favor of HMO operator Kaiser. In that case, Pfizer was accused of marketing Neurontin as effective in the treatment of several disorders, including neuropathic pain and migraines, even though such claims were unsupported by scientific evidence. Kaiser officials claimed they were duped into believing that migraines and bipolar disorder could be treated effectively with Neurontin. Pfizer argued that Kaiser physicians used their own judgment to prescribe Neurontin and, therefore, no causal chain existed between the company and patients prescribed the drug for off-label purposes. However, the appeals court found that Pfizer directly influenced the doctors into prescribing the drug for off label purposes. The court noted that the fraudulent marketing by Pfizer included paying Kaiser doctors to write medical articles with false infor-

mation about the drug's supposed off label benefits.

In the Harden case, the First Circuit ruled against Pfizer, finding that the lower court erred in ruling that the plaintiffs—including Blue Cross Blue Shield of Louisiana—failed to show direct causation between Pfizer's fraudulent marketing of Neurontin to treat bipolar disorder and the alleged financial injury. The appeals court reversed the lower court's granting of summary judgment, vacated its class certification denial and remanded it for further proceedings.

In the third case, the Aetna case, the First Circuit reversed the lower court, ruling that the HMO provided enough evidence of causation and damages to survive summary judgment on its RICO claims.

The First Circuit's rulings against Pfizer last month changed the landscape for third-party payor cases involving defective pharmaceuticals. In terms of how a plaintiff must prove its case from a causation and damages perspective, the appeals court materially softened the "individual proof" rule, allowing instead for "aggregate proof" in these off label marketing cases. According to the Court, "Once a plaintiff presents evidence that he suffered the sort of injury that would be the expected consequence of the defendant's wrongful conduct," the burden shifts to the defendant to rebut this causal inference. Although Pfizer presented testimony from doctors who stated that they prescribed Neurontin for off-label uses without relying on Pfizer's misrepresentations, the existence of these individual doctors did not defeat the implication that Pfizer's misinformation had a significant influence on thousands of other prescribing decisions.

In addition to the aggregate statistical evidence, the plaintiffs offered documents showing that psychiatrists almost never prescribed Neurontin for bipolar disorder until after Pfizer began its off-label marketing. Significantly, at that point prescriptions jumped by 1700 percent in two years. Ultimately, the Court found that it is a jury's responsibility to weigh the individual testimony presented by Pfizer against the aggregate and circumstantial evidence presented by the plaintiffs.

The Warner-Lambert Company developed and marketed Neurontin for several years before Pfizer acquired the drug maker in 2000. Four years later, Warner-Lambert pleaded guilty and agreed to pay $430 million to resolve off-label marketing allegations by the Justice Department. If you need more information on these cases, contact Ali Hawthorne, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com.

Sources: Law360.com and *Civil Justice Magazine*

$139 Million Settlement Of Suit Against New Corp. Board

A shareholders' lawsuit filed against Rupert Murdoch and other board members of News Corp. has been settled for $139 million. The suit alleged lax oversight and misdeeds of a most serious nature by the defendants. But because of the type suit, News Corp. and not the shareholders will collect the total amount of the settlement. Insurance companies that represent News Corp.'s board will pay for the settlement on behalf of Murdoch and others on News Corp.'s board. A Delaware judge overseeing the case must still approve the settlement.

The reason News Corp. is receiving the settlement, rather than the shareholders who filed the suit, is because the case is what is known as a derivatives lawsuit. In such cases, a shareholder sues in the name of the corporation in an attempt to remedy a wrong inflicted on the corporation itself. In this case, shareholders sued in 2011, alleging that Murdoch and other board members had abandoned their fiduciary duty to shareholders. There were some very serious allegations in the suit against Murdoch and his "hand-picked board." Hopefully, News Corp. and its bosses will "straighten up and fly right" from this point forward.

Source: *Los Angeles Times*

Judge Approves $115 Million AIG Shareholder Settlement

A federal judge has approved a $115 million settlement between American International Group Inc. (AIG) shareholders and former CEO Hank Greenberg and other Defendants over alleged improper accounting at the insurance giant. This is the latest in a series of settlements coming out of class-action securities fraud litigation linked to practices at the insurer dating to 1999. So far, more than $900 million in settlements has been approved with defendants including AIG. U.S. District Judge Deborah Batts in Manhattan gave final approval to the latest settlement act at a court hearing, calling it "fair, reasonable and adequate."

Judge Batts approved a $725 million settlement with AIG in February 2012. She earlier approved a $97.5 million settlement with accounting firm PricewaterhouseCoopers. The settlement resolves a 2004 lawsuit accusing the Defendants of misleading investors in connection with an alleged illegal bid-rigging scheme in the insurance industry. The lawsuit also accused Greenberg and others of making false and misleading statements about an alleged accounting fraud that resulted in a $3.9 billion restatement by AIG in 2005. The alleged activities took place well before AIG accepted $182 billion of taxpayer bailouts during the financial crisis in 2008 and 2009. Among those participating in the settlement are Greenberg, former chief financial officer Howard Smith, two other executives and two of Greenberg's companies, C.V. Starr & Co. and Starr International Co.

Two Ohio state pension funds acted as lead Plaintiffs for the class, which covers AIG shareholders who bought stock from October 1999 to April 2005. An AIG spokesman declined to comment on the settlement. The case is In re American International Group Inc. Securities Litigation, in the U.S. District Court, Southern District of New York, No. 04-08141.

Source: *Insurance Journal*

Judge Conditions $602 Million SAC Settlement On Appeals Court Decision

District Judge Victor Marrero in Manhattan has signed off on a $602 million insider-trading settlement between a unit of SAC Capital Advisors and U.S. securities regulators. But the judge said final approval rests on the outcome of another high-profile case now on appeal. Judge Marrero called the settlement amount "significant and proportional to the sums allegedly at issue." However, the judge conditioned his approval on the impending ruling by a federal appeals court in the case we have discussed involving Citigroup Inc. In that case, a judge rejected Citigroup's $285 million settlement with the U.S. Securities and Exchange Commission (SEC) over the bank's mortgage-linked securities dealings, taking issue with the agency's longstanding policy of allowing defendants to neither admit nor deny allegations as part of a settlement.

Like the Citigroup case, the SAC settlement did not require the hedge fund run by money manager Steven A. Cohen to admit or deny the regulator's insider-trading allegations. The settlement would resolve SEC civil charges against SAC subsidiary CR Intrinsic. Judge Marrero wrote in a 34-page opinion that it was "incongruous" for the hedge fund to admit no wrongdoing while agreeing to such a high settlement when it would cost "a fraction of that amount," about $1 million, to litigate.

The 2nd U.S. Circuit Court of Appeals is expected to soon issue an opinion in the Citigroup case. The appeal stems from the 2011 rejection of the bank's settlement with the SEC by Judge Marrero's colleague, U.S. District Judge Jed Rakoff. In that case Judge Rakoff has contended that public interest is not served by settlements in which there is no admission of what happened. I tend to agree with his assessment. But others say that such settlements can often be the only way to get companies to settle fraud cases. That, in my opinion, is a lame excuse.

The CR Intrinsic case relates to the conduct of former portfolio manager Mathew Martoma, who was criminally charged late last year with insider trading in two drug stocks, Elan Corp Plc and Wyeth (now owned by Pfizer Inc.). Another federal judge has already approved a $14 million settlement between the SEC and another SAC Capital unit, Sigma Capital Management.

Judge Marrero wrote that his approval of the CR Intrinsic pact would be final if the appeals court determines that district courts lack the authority to reject such settlements on the basis of reservations about these "neither admit nor deny provisions." But the judge made it very clear that he would have serious reservations about such deals if the appeals court left him room to do so. He wrote:

> *Instances can and do arise in which courts should properly raise the level of scrutiny they accord to particular settlement agreements in particular situations.*

The hedge fund, based in Stamford, Conn., previously has called the agreements "a substantial step" toward resolving all outstanding regulatory matters. The case is SEC v. CR Intrinsic Investors, which is in the U.S. District Court, Southern District of New York.

Source: *Yahoo News*

FSA Fines Prudential $45 Million

The Financial Services Authority (FSA) has fined companies in the Prudential Group (Prudential) a total of $45 million for breaching FSA Principles and UKLA Listing Principles. The fines relate to Prudential's failure to inform the FSA at the appropriate time that it was seeking to acquire AIA, the Asian subsidiary of AIG, in early 2010. Prudential PLC was fined $21 million and Prudential Assurance Company Ltd. was fined $24 million. The FSA has also censured Tidjane Thiam, Prudential's Group Chief Executive. Tracey McDermott, Director of Enforcement and Financial Crime at FSA, had this to say:

> *The FSA expects to have an open and frank relationship with the firms it supervises and with listed companies. It is essential that firms give due consideration to their regulatory obligations at all times. In particular, timely and proactive communication with the FSA is of fundamental importance to the functioning of the regulatory system and the integrity of the market. Prudential, led by Thiam as CEO, failed to give due consideration to its obligation to inform the FSA of this transaction, which would have had a huge impact on the group had it gone through.*
>
> *That was a serious error of judgment for which Prudential is paying the price. Firms should be in no doubt as to the importance of early communication with the regulator in respect of transformational transactions to avoid market and investor disruption. Thiam has also been censured in relation to his role in this matter. This case should send a clear message to all board members of their collective and individual responsibility for the decisions they make on behalf of their companies.*

The FSA charged that Prudential failed to deal with the FSA in an "open and cooperative manner" when it was seeking to acquire AIA in early 2010, because it did not inform the FSA of the proposed acquisition until after it had been leaked to the media February 27, 2010. The FSA said that Prudential should have informed the FSA at the earliest opportunity to allow the FSA to decide whether to approve or reject the deal on regulatory grounds. It failed to disclose the proposed transaction even when, at a meeting between the FSA and Prudential executives February 12, 2010, the FSA asked detailed questions about Prudential's strategy for growth in the Asian market and its plans for raising equity and debt capital.

The proposed transaction's size and scale would have transformed the Group's financial position, strategy and risk profile and involved a planned rights issue of $22 billion—which would have been the biggest ever in the UK. The transaction had the potential to impact upon the stability and confidence of the financial system in the UK and abroad. Given those circumstances, the FSA said it had a regulatory responsibility to conduct an intensive, detailed and thorough scrutiny of the proposed transaction.

The failure to inform the FSA was significant because it "resulted in the FSA having to consider highly complex issues within a compressed timescale before making a decision as to whether to suspend Prudential's shares." It narrowed the FSA's options in scrutinizing the transaction, risked delaying the publication of Prudential's subsequent rights issue prospectus and hampered the FSA's ability to assist overseas regulators with their enquiries in relation to the transaction.

Source: *Corporate Crime Reporter*

Mortgage Insurers Settle For $15 Million Over Alleged Kickbacks To Lenders

Four mortgage insurers have agreed to pay about $15 million to settle claims that they paid kickbacks to mortgage lenders in exchange for business. The Consumer Financial Protection Bureau (CFPB) alleged that the kickbacks took place over more than a decade leading up to the U.S. financial crisis. This increased mortgage insurance costs for consumers. Genworth Financial unit Mortgage Insurance Corp., American International Group Inc.'s United Guaranty Corp., Radian Group Inc.'s Radian Guaranty Inc., and MGIC Investment Corp.'s Mortgage Guaranty Insurance Corp. were the insurers involved in the settlement. CFPB Director Richard Cordray had this to say:

> *Homeownership is difficult and expensive enough for most people without extra costs imposed by financial kickbacks that are kept hidden from them.*

Bureau officials said the CFPB is continuing to investigate lenders who may have received kickbacks. U.S. regulators have been cracking down on practices believed to have harmed borrowers in the years leading up to the 2007-2009 financial crisis. The consumer bureau, which was created in 2010 by the Dodd-Frank law, oversees mortgages, credit cards, student loans and other products.

The mortgage scheme at issue in the settlement, which according to CFPB officials began in the mid-1990s, involved home buyers who made down payments of less than 20 percent. Because those were seen as riskier loans, lenders often required the borrowers to buy mortgage insurance. Lenders generally choose the company that will provide mortgage insurance. Those insurers then may obtain their own insurance, known as "reinsurance," to guard against losses.

The four mortgage insurers involved in the settlement purchased reinsurance from subsidiaries of the lenders, an arrangement known as "captive reinsurance," and paid higher prices for it than they should have. In effect, this meant insurers paid mortgage lenders to steer business their way in violation of the Real Estate Settlement Procedures Act (RESPA), which prevents kickbacks in real estate transactions. Dodd-Frank gave the CFPB the authority to enforce the 40-year-old law. These mortgage insurance companies "funneled millions of dollars to mortgage lenders for well over a decade," according to Cordrey. Interestingly, several of the insurers in the settlement said they developed their captive reinsurance arrangements with guidance from U.S. regulators.

Source: *Insurance Journal*

Amgen Settles Kickbacks Lawsuit For $25 Million

The U.S. Department of Justice has reached a settlement with Amgen over alleged kickback payments tied to its anemia drug. It was reported that the biotech drug maker will pay $24.9 million to settle the charges. Reuters had previously reported that Amgen had been accused of paying fees to long-term care providers to promote the use of Aranesp over competing treatments. Amgen allegedly paid kickbacks to Omnicare, PharMerica and Kindred Healthcare to push Medicare and Medicaid patients to use Aranesp, according to the government. Payments of that sort would violate the False Claims Act.

The federal suit was one of five whistleblower lawsuits filed against Amgen involving alleged kickbacks. It appears that two of those suits were dismissed and another settled. According to federal prosecutors, they will purse pharmaceutical makers who pay long-term care providers to improperly influence medical choices for patients. In February, Merck agreed to settle shareholder lawsuits relating to disclosures about its cholesterol drug Vytorin for $688 million.

Sources: Investorsplace.com and *Reuters*

CareFusion Settles Federal Marketing Probe For $41 Million

CareFusion has agreed to pay $41 million to settle a 2-year federal probe into the sales and marketing of its ChloraPrep line of antiseptic wipes. The settlement will allow the San Diego, Calif.-based medical device company to avoid prosecution and will bring the investigation to an end. The probe was started in 2011 and involved questions on how CareFusion marketed the ChloraPrep skin preparation products to physicians and other healthcare workers.

The investigation began when CareFusion received a U.S. Justice Department subpoena in April 2011, seeking information on the company's "relationships with healthcare professionals," according to regulatory filings. Last month, the FDA classified the recall of CareFusion's Alaris PC software as Class I, the most serious recall level, denoting the risk of serious injury or death. This is the latest in a series of regulatory warnings and recalls for some of the Alaris infusion pump line, designed to electronically control drug and fluid delivery to patients.

Source: Associated Press

V. CONGRESSIONAL UPDATE

Congress Fails To Deal With Important Issues

Congress has been largely a do-nothing branch of the federal government since passing the health care legislation (labeled "Obamacare"). Very little has been accomplished since the passage of that historic legislation. The failures to act on important issues such as immigration reform, gun control, sequestration and reform of the federal tax code top the list. Powerful special interests and their well-paid and highly influential lobbyists pretty well call the shots and run the show in Congress. Hopefully, that will change one of these days. But until members of Congress pass some strong campaign finance reform, which is so badly needed, getting that change is highly unlikely. Since it will take Congress acting for that to happen, therein lies the problem.

A Look At The Top 25 Spenders

If there is any doubt that Corporate America controls things in Washington, perhaps a look at who is spending the money and how much they spend will be helpful in figuring things out. The ranking of the top 25 organizations' spending on federal lobbying during the first quarter of 2013 is set out below.

The Top 25:

- Chamber of Commerce of the U.S.A. $10,140,000;
- National Association of Realtors $8,500,000;
- U.S. Chamber Institute for Legal Reform $6,430,000; which is money spent to destroy the civil justice system;
- Northrop Grumman Corporation $5,820,000;
- Pharmaceutical Research and Manufacturers $5,270,000;
- General Electric Company $5,190,000;
- American Medical Association $4,910,000;
- Exxon Mobil Corporation $4,840,000;
- United Technologies Corporation $4,630,000;
- Comcast Corporation $4,480,000;
- AT&T Services Inc. $4,260,000;
- National Association of Broadcasters $4,200,000;
- Merck & Company $4,190,000;
- National Cable and Telecommunications Association $4,170,000;
- American Hospital Association $3,810,000;
- Southern Company $3,760,000;
- Lockheed Martin Corporation $3,710,000;
- Verizon Communications $3,670,000;
- Chevron USA Inc. $3,660,000;
- Boeing Company $3,580,000;
- Google Inc. $3,350,000;
- CVS Caremark Inc. $3,338,680;
- Novartis $3,290,000;
- General Motors Company $3,220,000; and
- Edison Electric Institute $3,160,000.

Some of our readers may be asking: how much of this money was spent to "help protect consumers?" Looking at the 25 names on the list, I believe most will know the answer. Remember, this spending was just for three months. Significantly, the pharmaceutical companies and their associations spent a huge amount on their lobbying efforts during the first quarter of this year. The Pharmaceutical Research and Manufacturers spent $5,270,000 during those three months. The individual companies spent collectively more than $31 million, according to reports. If anybody is wondering who in Washington works for working men and women, the poor, seniors, and other ordinary folks, I don't believe they will find their names on the list of 25 set out above.

Source: blogs.rollcall.com

New Bill Takes Aim At Usurious Interest Rates On Consumer Loans

Several U.S. Senators are looking to eliminate the usurious interest rates often charged for various consumer loans. A recently introduced bill would cap the interest rate and fees charged for consumer credit transactions—which includes mortgages, car loans, credit cards, overdraft loans, car title loans, refund anticipation loans and payday loans—at 36 percent. This same cap already exists for military personnel and their families, and many states have put a similar cap in place.

Similar attempts to ban unconscionable interest rates that often reach as much as 463 percent have failed in the past, at least in part because of the difficulty in defining predatory lending. The bill seeks to avoid this problem by applying to a broad range of consumer credit transactions. The bill runs in tandem with other legislation aimed at protecting consumers. But the reality is that the predatory lending industry will spend whatever it takes to kill this consumer-friendly legislation.

Source: www.thehill.com

VI. PRODUCT LIABILITY UPDATE

Court Upholds $33 Million Verdict In Fatal Van Rollover Against Cooper Tire

An Iowa appeals court has upheld a $32.8 million verdict that had been returned in a tread separation lawsuit against Cooper Tire Company. A jury had found the tire separation to have been the cause of a 2007 van rollover that killed one person and injured five others. In preserving the award, the Iowa Court of Appeals rejected Cooper's contention that the jury should not have heard evidence of tread separations in Cooper tires other than the specific tire model involved in the rollover.

On Sept. 17, 2007, a 1997 Plymouth Voyager van rolled over. The van's tires were all replacement tires. The left rear and right front tires were model GTS 2846 tires manufactured by Cooper. The tread of the left rear Cooper tire separated, causing the vehicle to pull to the left. The driver attempted to compensate by steering sharply to the right, but he lost control and the van crossed the right lane, veered onto the right shoulder and rolled several times. The driver was uninjured, but one passenger was killed. The remaining passengers sustained varying degrees of injuries, one being paralyzed from the neck down.

It was proved at trial that the GTS 2846 was defectively designed and manufactured. The skim stock rubber used to coat the steel belts in the GTS 2846 was defective, making the tire prone to tread separation. The plaintiffs introduced Cooper records showing that the company had knowledge of the tread separation problem as early as 1996 when the GTS 2846 first went into production. But Cooper failed to mandate a change in skim stock until 2000. Unfortunately, the tire that failed in the van was manufactured in 2000 at a Texarkana, Ark. plant that was said to be slow in switching away from the problem skim stock rubber. The appeals court found that there was ample evidence that Cooper had engaged in willful and wanton conduct,

Source: LawyersUSAOnline.com

Ford Ordered To Pay Driver $3 Million For Injuries In 2009 Crash

A Colorado jury recently awarded a Boulder man almost $3 million in damages in his lawsuit against the Ford Motor Company. The jury found that a defective seat in the Plaintiff's 1998 SUV caused him serious injury during a 2009 collision. Forrest Walker, the former co-owner of a physical therapy facility, was awarded $2.9 million for economic losses, non-economic losses and permanent physical impairment. Ford says it will appeal the verdict.

The Plaintiff was driving his 1998 Ford Explorer Sept. 20, 2009, at an intersection in Boulder when his vehicle was rear-ended. The lever-activated recliner in the seat disengaged, causing the seat to drop into a fully reclined position. The Plaintiff was thrown headfirst into the backseat of the vehicle and suffered severe upper neck injuries as well as head trauma. The collision was not violent enough to even break the back windows of the SUV and yet the seat failed. The Plaintiff still has visual problems and some cognitive and speaking deficiencies as a result of the crash and he was forced to give up his job as a physical therapist. Mike Thomson, a lawyer with Purvis Gray LLP, a Boulder, Colorado, firm, represented the Plaintiff. He did a very good job for him in the case.

Source: *Boulder Daily Camera*

Submersion Lawsuit Highlights Escape Design Gaps

I doubt seriously that many folks worry very much about what would happen if their car accidentally drove into a body of water or they tried to drive through a stream that was deeper than believed. But these events do happen and there is information that acknowledges the seriousness of the problem for occupants in a vehicle that is sinking in a body of water. The concept, known as "escapeworthiness," should be known to the automobile industry. It raises the point that if an occupant of a vehicle that is submerged in a body of water is unhurt, that person should have a chance to escape from the vehicle before drowning.

Available data reveals that motor vehicle submersions account for about 7 to 11.6 percent of all accidental drowning deaths. Vehicle submersions caused by flooding account for more than 60 percent of flooding deaths in the United States. This sort of thing occurs when people attempt to drive across flooded roadways in their cars or trucks. Despite the high fatality rates, there has been too little attention paid to the concept of escapeworthiness.

On August 11, 2011, a mother and her two daughters drowned after being trapped in their minivan when a Pittsburgh thoroughfare built over a stream bed suddenly filled with 9 feet of water. The occupants were unable to open the power windows and the outside pressure made it impossible to open the doors. The family of the victims filed a lawsuit against Chrysler for failing to warn consumers about the hazards of vehicle submersion and for a failure to implement escape technology such as the following:

- a waterproof power window switch;
- a remote power source to provide power to the windows;
- a submersion sensor to reverse windows upon submersion;

- a manual window operation; or
- a device designed to break the glass in the event of a power window failure.

The best escape route when a vehicle is sinking is through the side windows, while the vehicle is still floating. The flotation of the vehicle lasts for about one minute, and many people waste the minute or so until the vehicle is submerged calling 911 or a loved one. Until "escapeworthiness" finally becomes standard in the automobile industry, there will continue to be safety issues. Experts at Safety Research make this point: "You have one minute. Don't touch your cell phone. Seatbelts off. Window out." This is very good advice.

Source: safetyresearch.net

Remington Model 700 Misfires

Lawyers in our firm are currently handling and investigating claims involving the misfiring of Remington 700 rifles. This weapon at one time was the world's top selling bolt-action sports rifle. The issues with this weapon are not new. The Model 700 rifle comes in numerous calibers. More than 3 million of these guns have been sold. The guns have two identifiable defects that contribute to the misfiring of the guns. The defects are associated with an aspect of the trigger mechanism, referred to by the company as the Walker Fire Control System.

The first defect involves a part called the trigger connector, which is found between the trigger and the sear. This part is supposed to provide support to the sear and restrain the firing pin. For many years, Remington has received an untold number of complaints about its guns firing when the safety is released, the bolt is moved, or the gun is jarred. The Model 700's second identifiable defect exists on pre-February 1982 models of the gun. The older models required the user to move the safety to the off position in order to unload rounds of ammunition from the weapon. This process, along with a jar to the weapon, or in some instances, no interference at all, caused the gun to fire on its own.

These two defects have resulted in the deaths and serious injuries of hundreds of people. Remington, one of the world's leading gun manufacturers, has known of the problems with the firing mechanism used in these weapons for decades. It took litigation to eventually cause Remington to institute a recall of the weapons. Years before the recall, Remington's own engineer indicated that the problem could be fixed for as little as $0.32.

These weapons have been known to discharge in countless ways, including during the unloading process, during the loading process, while riding with the weapon in a vehicle, while climbing into or out of a tree stand, or while simply setting the gun down on the ground by the butt of the gun. Our firm will continue to investigate these claims and, in appropriate cases, file suit on behalf of injured persons and their families. If you need more information on this subject, contact Ben Locklar, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com.

Colorado Jury Finds Helmet Maker Riddell At Fault

A Colorado jury, in a lawsuit brought by the family of a severely injured high school football player, has found helmet maker Riddell negligent in failing to warn players about concussion dangers. The ruling comes as the company faces a similar lawsuit in Los Angeles. There are also thousands of former NFL players suing the league and Riddell. The jury awarded $11.5 million to the family of the player, Rhett Ridolfi, who suffered a concussion during practice at Trinidad High School in 2008. Ridolfi, now 22, wasn't immediately taken to the hospital and now has severe brain damage, as well as paralysis on his left side.

The lawsuit was originally filed against Riddell and several high school administrators and football coaches in Las Animas County. The jury assessed 27 percent of the fault for the former player's injuries to Riddell, making the company responsible for paying $3.1 million of the damages. Three Defendants reached confidential settlements before the verdict, but two coaches were still Defendants at the trial. The trial judge will be asked to find Riddell responsible for paying all $11.5 million of the damages.

Riddell plans to appeal the verdict, but said it was pleased that jurors rejected allegations regarding helmet design defects. Riddell contends that the court erroneously excluded testimony from its warnings expert. Frank D. Azar, a lawyer from Denver, represented the Plaintiff in this case and he did a very good job. Frank also represents several former NFL players with complaints against Riddell.

Source: AL.com

Kentucky Jury Awards Significant Damages In Defective Cochlear Implant Case

A federal court jury in Kentucky has awarded 11-year-old Breanna Sadler and her parents $7.24 million in damages after an improperly manufactured cochlear implant—a surgically implanted medical device that allows profoundly deaf individuals to hear sounds—severely shocked her and caused her to have violent convulsions. The verdict included $994,000.00 in compensatory damages and $6.2 million in punitive damages. The jury found that Advanced Bionics knowingly sold the defective cochlear implant to be used in Breanna's surgery when she was only 4 years old.

After the child was shocked two more times, the device had to be removed from her skull and replaced with a competitor's model in an open-head surgery that took more than seven hours. Breanna's parents sued the manufacturer, Advance Bionics of Valencia, Calif., accusing the company of continuing to sell the device after executives knew it was defective. About 4,000 of the devices have been implanted worldwide, and about 1,000 have failed.

Evidence at trial showed that the company was aware as early as 2004 that moisture was accumulating in the devices at an alarming rate, yet they took very few meaningful steps toward resolving the problems and warning the public of the potential dangers. Dr. Mark Severtson, the Louisville surgeon who implanted the device in Breanna, testified that he never would have done so if he had known about the defect.

The company announced a voluntary recall of its HiRes 90K device in February 2006, about six weeks after Breanna got her implant. In 2008 it paid a $1.1 million civil penalty to the U.S. Food and Drug Administration to settle allegations it failed to notify the agency that it was using a new supplier for one of the implant's components, which the FDA said exposed patients to "unnecessary health risks." The company's then-CEO, Jeffrey Greiner, agreed to pay an additional $75,000.

The device used in Breanna's surgery was later tested and found to have moisture levels 60 times greater than the acceptable limits. The company was also cited by the FDA for using unapproved component suppliers for the implants and was fined $1.8 million as a result in 2008.

Ron Johnson of Schachter, Hendy & Johnson in Covington, Ky. and Tim Edwards and Ed Wallis from Glassman, Edwards, Wyatt, Tuttle & Cox, located in Memphis, Tenn., were the lawyers representing the plaintiffs. They did a very good job for the Sadler family.

Source: *Courier-Journal News*

VII. MASS TORTS UPDATE

$6.5 Million Verdict in First Actos Bladder Cancer Trial

In the first of more than 3,000 Actos bladder cancer lawsuits to go trial, a jury returned a $6.5 million verdict last month against Takeda Pharmaceuticals American Inc. in favor of Jack Cooper who developed bladder cancer after being prescribed Actos for his diabetes. The jury found that Takeda failed to adequately warn patients and doctors of the risks of Actos and that Actos was the cause of Mr. Cooper's bladder cancer. The jury awarded $5 million to Mr. Cooper and $1.5 million to his wife for loss of consortium.

Mr. Cooper was prescribed Actos for his diabetes by his family physician and took it for over four years before developing bladder cancer in 2011. The judge ordered that the Cooper case be the first to go to trial after Mr. Cooper's doctors indicated that he is gravely ill and not likely to survive another year. The trial, which started on February 19th, lasted nearly two months.

During the trial, the jury heard evidence that Takeda knew of links between Actos and bladder cancer as early as 2004, but failed to disclose that risk to the FDA for seven years. The jury also saw internal emails from Takeda executives which showed that they were aware that Actos caused an increased risk of bladder cancer and yet chose to downplay those dangers to avoid hurting sales of Actos, which was Takeda's most profitable product. One executive wrote:

> *Actos is the most important product for Takeda and therefore we need to manage this issue very carefully and successfully not to cause any damage for this product globally.*

Takeda says that an appeal is likely if its post-verdict motions are denied. More than 3,000 lawsuits have been filed against Takeda by people who developed bladder cancer after taking Actos. The lawsuits are pending in California, Illinois and in federal court in Louisiana, where more than 1,200 lawsuits have been consolidated into federal multidistrict litigation. The lawsuit was filed in Los Angeles, California Superior Court. Mike Miller and Nancy Miller from Orange, Virginia, represented the plaintiffs in the case and they did a very good job.

Source: hmrjr.com

$5 Million Verdict In The First Gadolinium Injury Trial

A federal jury in Ohio has awarded $5 million in the first case to go to trial in the multidistrict litigation involving patients who claim injury from the body scan contrast agent gadolinium. The jury found that GE Healthcare failed to provide adequate warnings of the health risk posed to those with impaired kidney function from Omniscan. As we have reported, the GE product is a gadolinium-based contrast dye used in MRIs and other imaging scans. The plaintiff in the case, Paul Decker, contracted a debilitating skin disease—nephrogenic systemic fibrosis (NSF)—as a result of being injected with Omniscan for a magnetic resonance angiogram in 2005. At the time, Decker was also undergoing dialysis for end-stage kidney disease.

Drug makers GE Healthcare, Bayer and Covidien have faced hundreds of lawsuits claiming injuries from gadolinium-based contrast agent products. In June 2006, the FDA issued its first warning about the risk of NSF as a result of gadolinium exposure. The risk is unique to people already suffering from renal failure.

Nephrogenic systemic fibrosis is a progressive, sometimes fatal, disease that involves the hardening of the skin and tissue growth along joints, eyes and internal organs. Sadly, there is no treatment for NSF. Mr. Decker experienced the locking of his arms at the elbow joints, and the contraction of his hands, wrists and fingers. His lower extremities became basically like stone or wood and he now requires 24-hour care.

In February 2012, this product liability lawsuit against GE Healthcare became one of the nearly 1,000 federal cases consolidated in multidistrict litigation before Judge Evan Polster in the U.S. District Court for the Northern District of Ohio in Cleveland. At one time, there were almost 1,000 cases in the gadolinium MDL, but the vast majority of the cases have been settled, including each of the cases set for bellwether trials. There were only about 10 unresolved cases left in the MDL. But GE Healthcare was unable to settle Mr. Decker's case, making it the first to go to trial.

The jury found GE Healthcare liable for providing inadequate warnings, but rejected design defect and misrepresentation claims. The jury awarded Mr. Decker $1 million for economic losses and $3.5 million for non-economic losses. His wife received $500,000 for loss of consortium.

GE Healthcare understood the risk back in 2005. GE clearly had studies that let them know that this was a toxin, that once it entered the body and stayed there, it would cause these unimaginable effects. Unfortunately, they chose not to share that information with physicians.

The Plaintiffs were represented by Christopher V. Tisi, Michelle A. Parfitt and Brianne Rideout of Ashcraft & Gerel LLP in Washington and William Hawal and Peter J. Brodhead of Spangenberg Shibley & Liber LLP in Cleveland, Ohio. These lawyes did a very good job in the case. The case is Decker v. GE Healthcare in the U.S. District Court for the Northern District of Ohio.

Source: LawyersUSAOnline.com

Result In Gross Case Is A Beacon Of Hope For TV Mesh Sufferers

The recent jury award totaling $11.1 million for Linda Gross, a transvaginal mesh Plaintiff, gives hope to the hundreds of Plaintiffs with Avaulta lawsuits. It also will have an effect on the women who have sued more than 30 other manufacturers of the faulty product. As we reported in the last issue, the jury in New Jersey awarded Ms. Gross $7.76 million in punitive damages, which was in addition to the $3.35 million compensatory damages previously awarded. Both awards are being appealed by pharmaceutical giant Johnson & Johnson, the Defendant in the case.

The win in the Gross case serves as a beacon of hope for other transvaginal mesh sufferers, including those women experiencing problems with Avaulta mesh. At last count there are well over a thousand reports of major problems with the Bard Avaulta mesh implant since 2005. Hundreds of victims are participating in the C.R. Bard multidistrict litigation (MDL) in the U.S. District Court for the Southern District of West Virginia under Chief Judge Joseph R. Goodwin. As previously reported, those trials are just getting underway.

While Bard mesh is only one of several similar products on the market, the complications suffered by women are also similar across the entire product spectrum. Ms. Gross, who did not have the Bard Avaulta, insisted she had a competing product manufactured by J&J. Nonetheless, Ms. Gross experienced horrific adverse events related to her mesh implant. Further, she was required to undergo no fewer than 18 subsequent surgical procedures in an effort to address the problems caused by her transvaginal mesh.

This past July, a Kern County Superior Court jury awarded Christine Scott, an Avaulta pelvic mesh Plaintiff, and her spouse, $5.5 million. The former runner was the picture of good health until she received the Bard mesh product and her health has deteriorated ever since. Mrs. Scott received the Avaulta mesh system in order to treat Stress Urinary Incontinence (SUI)—a common complaint among middle-aged women who have borne children. In her case, the problematic mesh migrated toward her colon, cutting her colon in the process and allowing tissue to grow through the tiny holes in the mesh. As of July 2012, Mrs. Scott had already undergone eight surgical procedures in an attempt to correct the problems allegedly fostered by the Bard Avaulta mesh.

The FDA determined that pelvic mesh, including Bard Avaulta, should be considered high risk for the treatment of SUI and Pelvic Organ Prolapse (POP). More than 30 manufacturers of transvaginal mesh, including Bard, have been ordered by the FDA to continue studying their product post-market. The Scott case is in the Superior Court for Kern County, Calif. (Bakersfield).

Source: Lawyersandsettlements.com

GranuFlo MDL Established In Massachusetts

The Judicial Panel on Multidistrict Litigation recently announced that GranuFlo and NaturaLyte claims will be centralized in Massachusetts federal court under the leadership of Judge Douglas P. Woodlock. While there was no dispute over the need for an MDL for this litigation, there was a dispute over where the MDL should be located. Several jurisdictions were considered, including the Southern District of Mississippi, the District of New Jersey, and the Eastern District of New York to name a few. Ultimately, the panel determined that Massachusetts would serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. The manufacturer of GranuFlo, Fresenius, is headquartered in Waltham, Mass., and given that there were already multiple GranuFlo cases pending in Massachusetts state court, it was presumed that locating the MDL in the state's federal court system would help facilitate coordination with the pending state litigation.

GranuFlo and NaturaLyte are products used in the dialysis process. These products were recalled by the FDA on June 17, 2012. The use of these products is linked to metabolic alkalosis, a condition in which the body's pH levels are elevated beyond the normal range. As a result, serious injury can occur, including cardiopulmonary arrest and sudden cardiac death. For more information about GranuFlo, please contact Frank Woodson or Matt Munson, lawyers in our firm's Mass Torts Section, at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com or Matt.Munson@beasleyallen.com.

Source: JPML filing

FDA Says Mirena Claims Misleading

It's been reported that women looking for a method of birth control often rely on marketing material to help make their decision. Women who chose to use Mirena birth control were likely no different. Unfortunately, the marketing material has since been found to have minimized the Mirena side effects, which include a risk of uterine perforation.

Mirena is an intrauterine device, meaning it is implanted in the uterus to prevent pregnancy. It can be implanted for up to five years and works by releasing the hormone levonorgestrel, a synthetic hormone also used in the "Plan B" or "morning after" pill. It was approved by the U.S. Food and Drug Administration (FDA) for use as birth control in 2002, and in 2009 was given approval for use in regulating heavy menstrual bleeding. At one point when Bayer was marketing Mirena, it claimed the IUD could improve a woman's sex life and help her with "looking and feeling great." Bayer received a warning letter about these claims from the FDA, admonishing that Bayer was overstating Mirena's efficacy. In fact, the FDA wrote:

> *We note that, according to the Mirena PI, at least 5% of clinical trial patients reported decreased libido as a side effect of Mirena use. Patients also experienced abdominal/pelvic pain, nausea, headache, nervousness, and depressed mood, which could adversely affect a woman's feelings relating to romance or intimacy.*

Furthermore, the FDA noted that the marketing material minimized the risks associated with Mirena by using the phrase "looking and feeling great." The FDA wrote:

> *As stated in the Background section above, the Pl [product labeling] for Mirena includes 'very common' (experienced by >10% of clinical trial patients) adverse reactions, in addition to other serious warnings, precautions, and safety issues associated with the use of Mirena.*

As many as 2 million women in the U.S. have had the device implanted since it was approved for use. One of the reported issues with the Mirena IUD is that it can migrate from the implantation site and move into the abdominal cavity, causing severe pain and other health issues for women. In other situations, it can perforate the uterine wall. Furthermore, if either of these situations occurs, the woman is at risk of becoming pregnant and suffering an ectopic or intrauterine pregnancy. For some women, embedment of the intrauterine device means they must have surgery to remove it.

A number of lawsuits have been filed against Bayer, alleging the company did not adequately warn patients about potential risks associated with Mirena, specifically the risk of spontaneous migration of the device. Those lawsuits have been filed both nationally and in New Jersey. On April 8, 2013, a federal multidistrict litigation (MDL) was established for all Mirena IUD lawsuits filed in U.S. District Courts throughout the country. All Mirena IUD perforation cases filed in federal court will be transferred to U.S. District Judge Cathy Seibel in the Southern District of New York for coordinated proceedings.

If you need additional information on this matter, contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

Source: lawyersandsettlements.com

Topamax Use Poses A Potential Risk For Children And Infants

It has been more than 18 months since the U.S. Food and Drug Administration (FDA) convened a pediatric advisory committee meeting to discuss Topamax side effects in pediatric patients. Information provided prior to the panel discussion showed that Topamax side effects in children, while not fully studied, had the potential to be quite serious, including reports of death in the briefing information. Because the panel was only discussing the use of Topamax in pediatric patients, it wasn't focusing on the risk of Topamax side effects in infants exposed to the medication prior to birth.

Topamax, made by Ortho McNeil Janssen (now Janssen Pharmaceuticals, a division of Johnson & Johnson), is an anti-epileptic medication that was originally approved for use in December 1996. It is used in children to treat seizures, but in children aged 1 to 24 months, its usefulness at the time of the briefing was not established. You can get the briefing online at www.fda.gov.

A Risk Evaluation and Mitigation Strategy (REMS) was approved in April 2009 and updated in March 2011 to warn about suicidal ideation in some patients who used Topamax, known generically as topiramate. A warning was added about the risk of cleft lip and/or cleft palate when pregnant women used Topamax in March 2011. The warning stated:

> *The benefits and the risks of topiramate should be carefully weighed when prescribing this drug to women of childbearing age, particularly for conditions not usually associated with permanent injury or death.*

Topiramate is in FDA pregnancy category D because of evidence of human fetal risk based on human studies. It has not been removed from the market because some women may find the risks acceptable in certain circumstances. According to the briefing information, children aged 0 to 16 years accounted for 7 percent of total Topamax use from April 2007 through March 2011, with approximately 2.1 million prescriptions written for 315,000 patients. Of those, almost 9,000 patients were less than 1 year old, more than 65,000 patients were between the ages of 2 and 9, and 255,000 patients were aged 10 to 16. The majority of pediatric uses for Topamax were epilepsy, migraines, headaches and convulsions, although Topamax is not approved to treat headache and migraine in children.

Of the 1,124 reports of adverse events worldwide involving Topamax in pediatric patients from 1996 to March 2011, 83 reports involved death, with 30 of those being in the U.S. There were also 581 reports of serious adverse events worldwide, with 245 of those in the U.S. It seems pretty clear that Topamax use for children needs further scrutiny.

Source: lawyersandsettlements.com

Adderall Use Carries With It Serious Risks

Adderall is being widely prescribed for children in the U.S. Parents should be made aware that there are a number of adverse reactions and side effects associated with Adderall, a popular treatment for attention deficit hyperactivity disorder (ADHD) and bipolar disorder, and some of them are quite serious. It should be noted that heart attack has been identified as one of those risks. Even though the drug has the capacity to treat ADHD, it has been reported that Adderall can trigger bizarre behavior. The various side effects of Adderall also can include a warped sense of reality.

But since the drug has been implicated with other side effects such as heart problems and incidents of stroke, critics of Adderall have come down hard on the drug. They are also critical of doctors who prescribe Adderall too readily for children whose real need for the stimulant is suspect. Many parents, who are seeking improved marks and increased levels of concentration on the part of their children in the classroom, also have to share some of the blame.

The reality is that not enough people are articulating the risk for Adderall death from heart attack, stroke or behavior stemming from potential Adderall psychosis. Incidents of psychosis, as well as physiological health issues, have been cited in many of the Adderall lawsuits cases.

Source: lawyersandsettlements.com

VIII. AN UPDATE ON SECURITIES LITIGATION

SEC Whistleblower Program Helps Keep Wall Street in Check

Recently an independent study found that more than one-third of hedge fund professionals have personally been pressured to break the law. Nearly half of those polled believe their competitors commit illegal acts and almost one-third have personally observed misconduct at their current place of employment. Fortunately, the SEC Whistleblower Program provides an incentive for those who witness financial corruption to do the right thing and inform the Securities and Exchange Commission (SEC). Almost nine out of 10 of those surveyed agreed they would report wrongdoing due to the protections afforded whistleblowers through the SEC's program.

The incoming SEC Chairwoman, Mary Jo White, is expected to keep a focus on enforcing SEC rules through the tips and information provided by corporate whistleblowers. Approximately 143 enforcement actions from last year may be eligible for payouts to whistleblowers. The message to corporate wrongdoers is clear: breaking the law is not as easy as it was before the 2008 recession. When whistleblowers are incentivized to report corporate wrongdoing it also incentivizes corporate executives to abide by the law and not risk an SEC enforcement action.

The SEC Whistleblower Program requires a person with knowledge about securities fraud to report their knowledge and evidence to the SEC. Whistleblowers are eligible to receive between 10-30 percent of any monetary relief the SEC or related government agencies recover. Additionally, whistleblowers are statutorily protected from retaliation by their employers for informing the SEC.

Eligibility requires original information of an SEC violation that has occurred, is ongoing, or is about to occur. Original information is defined as deriving one's information from sources that are not public, such as the news, court cases, government reports, government audits, etc. The quality and amount of information provided will influence what percentage of the monetary award the whistleblower will receive. The whistleblower does not need to be a corporate insider or employee, but he or she does have to be a United States citizen. Finally, the whistleblower's information must result in an SEC action that results in more than $1 million in monetary sanctions.

Additionally, if a whistleblower knows of fraudulent activity that is resulting in the federal or state government making payments, they may have a claim under the False Claims Act. Essentially, the False Claims Act forbids corporations and persons from making a false claim for government payment. Many states have state versions of the False Claims Act. Currently, our firm is investigating cases of fraud against the federal and state government related to Medicare/Medicaid fraud, Title IV/federal student aid fraud, and government contracting fraud.

The False Claims Act protects whistleblowers from discrimination, harassment, threatening acts, demotion and termination. In the event an employer retaliates against a whistleblower for standing up for the truth, the False Claims Act requires that a whistleblower be reinstated to his or her previous job grade and receive double back pay. Additionally, if a whistleblower files a suit on behalf of the federal government, he is entitled to receive at least 15 percent and potentially 30 percent of the government funds recovered. This is a hefty incentive for employees everywhere to stand up for the truth and tell their employers to stop defrauding the American taxpayer.

Lawyers in our firm have prosecuted this type of corporate fraud for more than 30 years and would welcome the opportunity to assist any person who is aware of any such fraud. We will be glad to help and look at any potential cases. If you need more information on this subject, contact Andrew Brashier, Chad Stewart or Archie Grubb, lawyers in our Consumer Fraud Section. You can call 800-898-2034 or email Andrew.Brashier@beasleyallen.com, Chad.Stewart@beasleyallen.com or Archie.Grubb@beasleyallen.com.

Sources: Taxpayers Against Fraud Education Fund, HedgeCo.net, Main Justice

Judge Weighs Fairness Of Citigroup's $590 Million Investor Settlement

A federal judge questioned lawyers for Citigroup Inc. and shareholders at length at a hearing last month regarding the proposed $590 million settlement of the investor lawsuit involving its exposure to toxic mortgage assets. U.S. District Judge Sidney Stein in Manhattan asked if the settlement was fair considering that none of the bank executives named as defendants would contribute money to it. Judge Stein said that Citigroup's current shareholders have been left to pay for the settlement under the current terms of the agreement. He was concerned about the impact on future bank conduct, citing the lack of any planned payments by individual defendants including former Chief Executive Charles Prince. Judge Stein asked this key question: "Should the Plaintiffs not also be concerned with deterrence as an issue in the settlement?"

At the hearing, Judge Stein also asked questions related to the settlement's allocation plan and whether he should award Plaintiffs' lawyers around $100 million in fees and expenses. The judge held off on ruling on the settlement or fee request. The hearing marked the latest instance of a judge questioning the fairness of litigation settlements with large financial companies. These are examples:

- Citigroup is separately waiting for an appeals court to decide whether U.S. District Judge Jed Rakoff properly rejected a $285 million settlement with the U.S. Securities and Exchange Commission.

- In March, U.S. District Judge Victor Marrero in Manhattan cited the SEC's pending Citigroup appeal in holding off on approving the commission's $602 million insider trading settlement with a unit of Steven Cohen's hedge fund SAC Capital Advisors LP.

If approved, the class action settlement with Citigroup would resolve claims by shareholders from February 2007 to April 2008 that the bank misrepresented its exposure to securities known as collateralized debt obligations that were tied to mortgage investments. The settlement was announced last August. The New York-based bank lost $27.68 billion in 2008. The company's stock price plunged from $47.89 at the start of the fourth quarter of 2007 to $2.80 by January 2009, the complaint said.

Under the settlement, Citigroup is paying the full $590 million. In an April 1 order, Judge Stein asked whether the absence of any payments from Prince and other individual defendants makes the settlement "unfair." The case is In re: Citigroup Inc. Securities Litigation, which is on the U.S. District Court, Southern District of New York, No. 07-09901.

Source: *Reuters*

Pfizer Fails To End Lawsuit Over Bextra And Celebrex Safety

Pfizer Inc. has failed to persuade a federal judge to dismiss a shareholder lawsuit accusing the company of fraudulently misrepresenting the safety of its Celebrex and Bextra pain-relieving drugs. While dismissing some of the claims, U.S. District Judge Laura Taylor Swain in Manhattan said a reasonable jury could find that Pfizer and several top executives intended to mislead shareholders about the drugs' cardiovascular risks. Judge Swain wrote in her order:

> *The record is replete with evidence that defendants recognized that Celebrex and Bextra had associated cardiovascular risks, that such risks would be considered material by investors, and that defendants nonetheless misrepresented and actively concealed these risks.*

The Plaintiffs are led by the Teachers' Retirement System of Louisiana and a class was certified July 5, 2012. Judge Swain scheduled a final pre-trial conference for July 12. She also directed both sides to meet with a federal magistrate judge or an outside mediator to work on a settlement before then.

As we reported on numerous occasions, concerns about the safety of Celebrex and Bextra began to mount following the release of medical studies in late 2004, when rival Merck & Co. withdrew its own Vioxx drug from the market because of associated cardiovascular risks. Celebrex sales totaled $3.3 billion and Bextra sales totaled $1.29 billion in 2004. But Pfizer finally pulled Bextra from the U.S. market in April 2005 at the recommendation of the U.S. Food and Drug Administration (FDA). Sales of Celebrex fell by nearly half that year. Then in 2009, Pfizer agreed to pay $2.3 billion to settle a U.S. Department of Justice investigation into the marketing of Bextra and other drugs.

The New York-based company still sells Celebrex, which is intended to treat arthritis pain and inflammation, as well as acute pain, and whose sales totaled $2.72 billion last year. Pfizer won a patent extension in March giving it marketing exclusivity over the drug, whose chemical name is celecoxib, until December 2015. The lawsuit covers investors who bought Pfizer stock between October 31, 2000, and October 19, 2005, a period in which the company's share price fell by roughly half and its market value fell by well over $100 billion.

Several big investors, including the California pension funds CalPERS and Calstrs, "opted out" of the class last year, enabling them to sue on their own. Pfizer bought Pharmacia Corp, which originally developed Celebrex and Bextra, in April 2003. The Plaintiffs are represented by Jay W. Eisenhofer, Richard S. Schiffrin, James J. Sabella, Mary S. Thomas, Charles T. Caliendo, Brenda F. Szydlo and Ned C. Weinberger at Grant & Eisenhofer P.A.; Andrew L. Zivitz, Benjamin J. Sweet, Karen E. Reilly and Michaelle M. Newcomer at Kessler Topaz Meltzer & Check LLP; and Chris Seeger and David Buchanan at Seeger Weiss LLP. The case is In re: Pfizer Inc Securities Litigation, which is in the U.S. District Court, Southern District of New York, No. 05-md-01688.

Source: *Reuters*

New York City Sues BP For Pension Losses Over 2010 Gulf Oil Spill

New York City has sued BP Plc for more than $39 million of losses it claims beneficiaries of the city's pension funds sustained due to BP's "misconduct and fraudulent behavior" linked to the 2010 Deepwater Horizon oil spill. The city's comptroller John Liu said:

> *BP failed to disclose to shareowners the serious risks involved in its offshore drilling operation. After the spill began, it misleadingly attempted to minimize the extent of the damage and the cost to shareowners. The estimated transactional investment losses to City pension beneficiaries caused by BP's misconduct and fraudulent behavior exceed $39 million*

The lawsuit, filed in the Southern District of New York, alleges BP failed to disclose facts about the dangers involved in offshore drilling operations, the extent of the leak and the estimated cost of the cleanup costs.

Source: *Insurance Journal*

IX. INSURANCE AND FINANCE UPDATE

National Union Wins Battle In $49 Million Carbon Black Lawsuit

Our law firm tried a lawsuit in 2001 in an Alabama federal court that resulted in a $20.7 million verdict against Continental Carbon Co. The plaintiffs in the case, a number of businesses located in Columbus, Ga., and the City of Columbus, sued Continental Carbon for damages. Their damages were caused by the spewing of carbon black, a petroleum-based material used to reinforce tires and other rubber products, into the air by Continental Carbon from its Phenix City, Ala., plant. The carbon black emissions damaged the plaintiffs' property in Columbus, which is across the Chattahoochee River from the plant.

This verdict led to the filing of five more suits against Continental Carbon, alleging similar damages. A federal appeals court upheld the verdict in our case, and the U.S. Supreme Court refused to grant Continental Carbon's petition for certiorari. The company subsequently paid the full amount of the verdict plus interest. David Byrne, a lawyer in our firm, along with Jeff Friedman from Birmingham and Eddie Jackson from Jasper, tried the case for the Plaintiffs. They did an outstanding job in a very complex and difficult case.

Continental Carbon tried to force its liability insurance carrier to cover the claims and pay the judgment and filed suit. A federal appeals court has now affirmed a Texas district court's ruling that Continental Carbon's insurer is not obligated to cover $28 million in legal fees and the $20.7 million judgment stemming from the pollution suits over the company's carbon black plant. In its order, the Fifth Circuit upheld a January 2012 decision by U.S. District Judge Kenneth M. Hoyt that National Union Fire Insurance Co. of Pittsburgh, Pa., owes neither defense nor indemnity to Continental based on a provision in the policies excluding coverage for pollution claims. The court's order reads:

> ***After hearing the parties' arguments on appeal, and after reviewing the briefs, the record, the insurance policies at issue, the applicable statutory and case law, and the district court's summary judgment and reasoning, we affirm the district court's judgment and adopt its analysis in full.***

The decision is just the latest victory for National Union in the long-running litigation that has spanned several jurisdictions. An arbitration panel, an Oklahoma federal court and Texas state and appellate courts have also sided with the insurer. In granting National Union's motions for summary judgment last year, Judge Hoyt found that nothing in the underlying complaints or the nine insurance policies at issue—the umbrella policies and four primary policies—showed an obligation to Continental Carbon under the circumstances. He also agreed to strike outside evidence Continental had been offered coverage, finding that Texas law's eight corners rule barred any evidence outside the "four corners" of the complaint and the policy.

National Union had refused to cover Continental Carbon for the $20.7 million verdict and for some $28 million in other legal fees. The dispute reached arbitration in 2010, and in June of that year a panel of insurance experts ruled in National Union's favor on the core issues in the dispute. But Continental Carbon sued National Union in Oklahoma federal court shortly thereafter, seeking to vacate the arbitration award. That court dismissed the company's suit, and, in January 2011, a Texas state court affirmed the arbitration award. In April 2012, a Texas state appeals court also declined to toss the arbitration award.

Since our clients in the underlying case collected the full amount of the jury verdict plus interest, our lawyers weren't involved in any of the insurance coverage issues between Continental Carbon and National Union. The insurance coverage case is National Union Fire Insurance Co. of Pittsburgh, Pa. v. Continental Carbon Co., which is in the U.S. Court of Appeals for the Fifth Circuit.

Source: Law360.com

Insurer's Obligation To Notify The Insured Of The Need For Allocation

Lawyers in our firm have been involved in a number of cases in which some of the claims were covered by the defendant's liability insurance policy with other claims either not being covered or being specifically excluded. In most every one of our cases, the insurer provided a defense for its insured for all of the claims. The insurer would defend the case under a reservation of rights as to the claims it contended were not covered.

A majority of courts in the U.S. have found that if a claimant files a lawsuit containing both covered and uncovered claims, the insurance company is generally obligated to defend all claims against the insured. This is notwithstanding the fact that the complaint contains allegations clearly outside the policy's coverage. We are currently involved in a case where the insurance company failed to even offer a defense even though claims in our complaint were obviously covered. The insurer finally came into the case and is now defending under a reservation of rights.

Typically, a reservation of rights letter is sent to the insured. The standard letter refers to the applicable policy language that it contends supports the insurer's claim of no coverage. A timely and properly detailed Reservation of Rights letter will usually insulate the insurer from arguments of waiver or estoppel against its no-coverage position. The insured bears the burden of proof in establishing that a covered loss has taken place. But just because the insured has the burden of proving coverage, the insured doesn't necessarily have to prove what part of a stipulated settlement or judgment involves covered claims. If the insured fails in proving the allocation, the insurer typically asserts that because the insured has not met the burden of proving the amount of the covered loss, the insured has failed the meet the burden of proof in establishing coverage.

But the problem in dealing with "mixed lawsuits" is not always a simple matter. That's why insurance companies have to be very careful in reserving rights in a mixed lawsuit. The insured in these cases usually has to hire a personal lawyer to protect its interest against the insurer.

Source: *Claims Journal*

John Hancock Life Insurance Faces Class Action Over Death Benefits

A bad faith insurance class action lawsuit has been filed against John Hancock Life Insurance Company involving allegations that the insurer failed to settle death benefits. The lawsuit was filed by Richard Feingold in the U.S. District Court Massachusetts, Boston. It is alleged that John Hancock only paid Feingold as a beneficiary of his late mother's life insurance policy, four years after her death in 2006. That was when Feingold discovered that the policy existed. Feingold alleges he found information on the Illinois treasurer's website, which showed he had unclaimed property owed to him from John Hancock through his late mother's policy. Up until that point, Feingold says he was unaware that his mother had a life insurance policy, or that he was owed death benefits. He subsequently contacted the insurer and was paid. But John Hancock refused to provide him with a copy of his late mother's policy, or any explanation about the benefits he received, according to the complaint.

The potential class action claims that John Hancock routinely checks the Social Security Administration's master death list so it can halt payments to annuity holders who have become deceased. But the insurer fails to check the same database to see if a life insurance policy holder has died so the company can promptly pay beneficiaries. The lawsuit alleges that the insurer uses the information solely for its own benefit.

The John Hancock Life Insurance Company recently paid $13 million to settle allegations brought by six states that it didn't work hard enough to pay life insurance benefits. Brian J. Wanca, of Anderson & Wanca, a firm located in Rolling Meadows, Ill., is representing the Plaintiff in this lawsuit. It will be most interesting to see how it turns out. We will monitor this case as it proceeds through the system. The Plaintiff in the case says he isn't sure whether or not he has been paid all the money owed to him under the terms of the policy. There is also concern that this case isn't the only one of its kind and that there may well be others. It was reported that this case could be "the tip of the iceberg."

Source: *The Boston Globe*

Jury Finds State Farm Defrauded Flood Insurance Program

A federal court jury in Mississippi has found that State Farm Fire and Casualty Co. avoided covering a policyholder's wind losses by blaming the damage on storm surge, which is covered by federal flood insurance. The verdict came in a whistleblower lawsuit filed against the insurer over its handling of Hurricane Katrina claims. State Farm has indicated that it will appeal. The lawsuit was filed by Cori and Kerri Rigsby of Ocean Springs, Miss. They once worked for Alabama-based E.A. Renfroe, a company State Farm contracted to provide damages assessments after the hurricane.

This verdict could open the gate for examination of thousands of post-Katrina flood claims State Farm adjusted and paid before reimbursement by the National Flood Insurance Program (NFIP). While the sisters had pursued cases for a number of policyholders, a federal judge in Mississippi limited the initial phase of the case to one State Farm claim—that of Thomas and Pamela McIntosh, whose Biloxi home was lost to the storm—because the sisters have firsthand knowledge of how it was adjusted. The Justice Department was not involved in the case.

Evidence at the trial was that State Farm paid policy limits of $250,000 for flood damage to the house, even though wind covered under the insurance company's policy was responsible for the loss. The jury decided State Farm overcharged NFIP the full $250,000. The verdict means State Farm will repay the $250,000, and also must pay additional damages to be determined. The Rigsbys, as whistleblowers, are entitled to a share of any recovered money. They filed the lawsuit under the federal False Claims Act on the government's behalf because they discovered the fraud. By charging the National Flood Insurance Program for the loss, State Farm minimized what it owed for wind damage. The company initially paid $36,000 for wind damage on a policy that provided more than $500,000 in coverage. The Rigsbys are represented by August Matties, who did a very good job in the case.

Source: *The Sun Herald*

X. EMPLOYMENT AND FLSA LITIGATION

Former Montana Power Workers Settle Lawsuit

A class action lawsuit brought by former workers at Montana Power Co. and the defunct utility has been settled for $1.2 million. Montana Power, through a liability insurer, agreed to pay the money to 141 former employees who sued over unpaid workers' claims. The agreement has received court approval.

In February 2012, a Butte District Court jury ruled in favor of Montana Power, but the trial judge threw out the verdict three months later, citing jury misconduct and ordered a new trial. Montana Power appealed the decision to the Montana Supreme Court. But while the appeal was pending, the two sides continued mediation and reached a settlement. Lon Dale, a lawyer with the Missoula, Mont., firm of Milstead Govich, Dale and Steinbrenner, represents the employees in the lawsuit that has been going on for about 15 years. He did a good job for them. Many of the employees are in their 80s and wanted the case to end, according to Lon.

Source: *Insurance Journal*

XI. PREDATORY LENDING

Bank Of America's Countrywide Agrees To $500 Million Settlement

Bank of America Corp.'s Countrywide unit has agreed to pay $500 million to settle a lawsuit over billions of dollars in residential mortgage-backed securities that were downgraded to junk. The settlement will end a class action lawsuit filed by the Iowa Public Retirement System as the lead Plaintiff. The settlement will require court approval. The lawsuit filed in 2010 sought damages for $351 billion in downgraded Countrywide mortgage-backed securities after the 2007 subprime collapse.

The lawsuit was the largest in terms of securities at stake among dozens of cases brought against lenders and underwriters. U.S. District Judge Mariana Pfaelzer in Los Angeles had narrowed the case to $2.6 billion in bonds and dismissed Bank of America as a defendant. It should be noted that this case isn't covered by the $8.5 billion settlement between Bank of America and 22 institutional investors in Countrywide mortgage-backed securities. Investors' rights to receive trust distributions upon final approval of that settlement won't be affected by the Los Angeles settlement.

A state pension fund in Oregon lost $29 million on its $200 million investment in the mortgage-backed securities, Oregon Treasurer Ted Wheeler and Attorney General Ellen Rosenblum said in a joint statement. The state hopes to get back more than 10 cents on the dollar, which the two state officials said is the typical recovery in security class-action cases.

Pools of home loans securitized into bonds were a central part of the housing bubble that helped send the U.S. into the biggest recession since the 1930s. After the market for the securities evaporated, bankers and underwriters being sued argued that offering documents for those bonds adequately warned of risks. They claimed the securities performed as intended and investors were paid what they were owed from underlying mortgages. But investors in the Los Angeles case against Countrywide alleged that offering documents for the mortgage-backed bonds didn't disclose that the company was disregarding its own guidelines for originating home loans.

The value of the securities plunged when they were downgraded to junk in 2008 and 2009. Countrywide was once the biggest U.S. residential home lender, originating or purchasing about $1.4 trillion in mortgages from 2005 to 2007. The company sold the bulk of those loans to investors as mortgage-backed securities. Bank of America acquired Countrywide in 2008.

This settlement is expected to resolve about 80 percent of the unpaid principal balance of Countrywide-issued mortgage-backed securities over which claims have been filed or threatened, according to Bank of America. The Bank said it will resolve about 70 percent of the unpaid principal balance of all such securities over which claims have been filed or threatened against all Bank of America-related entities. As of February, the unpaid balance of these securities, excluding those that are the subject of individual claims or threatened litigation, was $95 billion, according to Bank of America.

The Los Angeles case is *Maine State Retirement System v. Countrywide Financial Corp.,* in the U.S. District Court, Central District of California (Los Angeles). Steven Toll, a lawyer with Cohen Milstein Sellers & Toll in Washington, D.C., represented the Iowa Public Retirement System (the lead Plaintiff); Spencer Burkholz, a partner at Robbins Geller Rudman & Dowd LLP, represented the Maine State Retirement System. From all accounts, these lawyers did a very good job in this case.

Source: *Bloomberg*

XII. PREMISES LIABILITY UPDATE

Safety Rules Limited For Small Fertilizer Plants

The tragic explosion last month at a fertilizer plant in West, Texas, resulting in the loss of 15 lives, with 200 folks injured and more than $100 million in property losses, has brought into focus how important good regulation is. It could be put another way; this tragic event is the result of poor or inadequate regulation. There were no sprinklers, no firewalls, no water deluge systems, and almost no safety inspections at the plant. Unfortunately, this is not unusual. Small fertilizer plants nationwide fall under the purview of several government agencies, each with a specific concern and none required to coordinate with others on what they find.

The plant in West had ammonium nitrate, a chemical that can be used to make bombs, and that was not unusual. According to a document filed in 2012 with the Texas Department of State Health Services, the maximum amount of this "extremely hazardous substance" the plant could store in one container was 90 tons, and the most it could have on site was 270 tons. It is unknown how much was onsite at the time of the explosion.

The West plant was also authorized to handle up to 54,000 pounds of anhydrous ammonia, a substance the Texas environmental agency considers flammable and potentially toxic. Ramiro Garcia, the head of enforcement and compliance at the Texas Commission on Environmental Quality, told The Associated Press:

> *This type of facility is a minor source of air emissions. So the inspections are complaint driven. We usually look at more of the major facilities.*

No federal agency determines how close a facility handling potentially dangerous substances can be to population centers, and in many states, including Texas, many of these decisions are left up to local zoning authorities. These plants can be very close to schools, houses and other populated areas. That was the case in West. The damage from the blast destroyed an apartment complex, nursing home and houses in a four-block area. The explosion that followed could be heard miles away and was so powerful it registered as a small earthquake. At press time state and federal investigators have not yet determined the cause of the disaster.

The West plant had what appears to be a rather bad safety record. Over the years, the fertilizer company was fined and cited for violations by federal and state agencies. Last summer, the U.S. Pipeline and Hazardous Materials Safety Administration assessed a $10,000 fine against West Fertilizer for improperly labeling storage tanks and preparing to transfer chemicals without a security plan. The company paid $5,250 after reporting it had corrected the problems. Interestingly, the last time the plant was inspected by OSHA was in 1985.

The U.S. Environmental Protection Agency (EPA) also cited the plant for not having an up-to-date risk management plan. That problem was also resolved, and the company submitted a new plan in 2011. That plan, however, said the company did not believe it was storing or handling any flammable substances and didn't list fire or an explosion as a danger. According to David Gray, an EPA spokesman in Dallas, the company's plan identified a worst-case scenario as an accidental release of all 54,000 pounds of anhydrous ammonia, which at room temperature is a gas. Gray had this to say:

> *This scenario is a plausible worse-case scenario as gaseous anhydrous ammonia can be lethal. We do not yet know what happened at this facility. The ongoing investigation will inform us on the plan's adequacy.*

The risk management plan also did not cite a possible explosion of ammonium nitrate, the solid granular fertilizer stored at the site. But that would not be unusual, according to Gray, because ammonium nitrate is not regulated under the Clean Air Act. The plant's plan said there was no risk of fire or explosion and noted they had no sprinklers, water deluge or other safety mechanisms installed.

It was reported that the Texas Commission on Environmental Quality (TCEQ) also dealt with the company and issued a permit for handling anhydrous ammonia, which requires safety equipment the company told the EPA it didn't have. But TCEQ acknowledged it may never have checked to confirm the equipment was there. The company's last contact with regulation may have come as recently as April 5, when the Texas Office of the State Chemist, which focuses mostly on ensuring that commercial fertilizers are properly labeled and blended, inspected the plant. The inspectors found no problems, but they would not have checked for safety systems such as sprinklers. That office also provided the company with the required license to store and handle ammonia nitrate and renewed it in September after a summer inspection.

There have already been six civil lawsuits filed against West Fertilizer Co. and Adair Grain, Inc., its parent company, and there will certainly be more. In the meanwhile, a Texas community is hurting badly and trying very hard to put things back together.

Sources: *Insurance Journal* and Associated Press

Disabled Man Settles His Lawsuit For $12 Million

A $12 million settlement has been reached in a case brought by a disabled man against Spectrum Community Services of Indiana, LLC, a Crown Point home health care agency. James Kosinski, the Plaintiff, suffered third degree burns and permanent brain damage in 2009. His case was settled a week before a trial was to start in Superior Court. It was contended that the home care agency failed to follow safety rules and hired an employee who was neither qualified nor competent. The Plaintiff had been receiving 24-hour supervision and assistance because of his severe disabilities that include autism, cerebral palsy and a seizure disorder.

The facts of the case, according to the lawsuit filed on January 19, 2009, set out a sad story. The Plaintiff's bathtub was filled with scalding hot water by a new employee who had no medical training. The Plaintiff was then put in the tub, but since he was unable to speak or scream out for help, he could only struggle in an attempt to get out of the tub. The employee said he believed the Plaintiff was having a seizure so he held him down in the water. The Plaintiff's skin began to blister and peel away when he was finally removed from the tub.

The Plaintiff was taken by helicopter to the University of Chicago burn unit, suffering from second and third degree burns on his feet, legs, buttocks and back. As a result of the burns, the Plaintiff suffered respiratory failure, pulmonary edema and sepsis. His seizures increased and he needed a feeding tube and a ventilator. Reportedly, the Spectrum worker was fired.

The proceeds from the settlement will be placed into a restrictive trust for the Plaintiff, who now lives in a nursing home. His family hopes to be able to bring the Plaintiff back home for care and treatment. Timothy S. Schafer, a lawyer with Schafer & Schafer, a firm located in Merrillville, Ind., represents the Plaintiff and his family. He did a very good job in this case.

Source: Post-trib.com

XIII. WORKPLACE HAZARDS

Jury Awards $20 Million To Bulldozer Accident Victim

A Philadelphia jury recently awarded more than $20 million to a Pennsylvania man who lost his left leg when he was run over by the 10-year-old son of a landscape company owner. The child had been allowed to operate a five-ton bulldozer at a worksite. The trial was held in the Philadelphia County Court of Common Pleas. The jury awarded $18 million to Ruick Rolland and $2 million to his wife in the case. The bulldozer was operated by the son of Steven Senn, the owner of Senn Landscaping Inc. Mr. Rolland was working as a carpenter at a suburban Philadelphia home in 2009 when the incident occurred.

The homeowner, Bruce Irrgang, was also a defendant in the case. The homeowner had hired Senn Landscaping to construct a replica of Augusta National Golf Course's iconic Hogan Bridge over a pond on his property. The company was provided with a bulldozer to help complete the work through an account the homeowner had with Modern Equipment Sales and Rental Co. An employee of Modern Equipment brought the bulldozer to the property and left it. While there, the employee saw the 10-year-old climb into the cab and reported the incident to his supervisor. But the company elected not to ask any questions despite a responsibility to ensure that only competent individuals were using the bulldozer.

The trial court judge granted partial summary judgment in Rolland's favor in April 2012, after finding it was undisputed that Senn negligently entrusted the bulldozer to his son, an act that proximately caused Rolland's injuries. The judge also found that Modern Equipment was aware the boy was allowed to operate the machine. The trial was limited by the judge to a determination of the liability of the homeowner and the amount of damages due to the plaintiffs as a result of the incident. The defense argued that Rolland was contributorily negligent because he knew that the 10-year-old was operating the machinery and did nothing to try and prevent it from happening. But the jury found Rolland to be free of negligence.

Under the applicable Pennsylvania law, Senn and his company are responsible for 47 percent of the damages with the homeowner and United Construction being responsible for 32 percent. Modern Equipment is responsible to pay 21 percent of the damages. Mr. Rolland is represented by Paul Lauricella and Slade McLaughlin of the firm McLaughlin & Lauricella, which has offices in Philadelphia and New Jersey. They did a very good job for the Plaintiff in this case.

Source: Law360.com

Woman Sues Over Son's Death At Omega Protein

The mother of a 24-year-old man who died last year during a machinery incident at Omega Protein has filed a wrongful death lawsuit against the company. The suit was filed by Cynthia Hebert, the mother of Christopher Allen Hebert, in U.S. District Court in Gulfport. The worker was dragged into a conveyor as he did maintenance work on April 9, 2012, and died from blood loss related to his injuries.

Herbert had worked at Omega Protein in Moss Point for three years. It's alleged in the lawsuit that on the day he was killed, Hebert's safety monitor left while he was inside the conveyor and that another worker turned on the machinery, dragging him to his death. The company operates a menhaden, or pogy, fishing fleet and processing facility in Moss Point. It produces fish oils and fish meal for human consumption and for use in aquaculture, agriculture and industrial applications.

Also named as defendants in the suit are ACE American Insurance Co. and ESIS Inc. a risk management service provider. It's alleged that because the company did not have safety lock features on the conveyor and left Hebert alone to work on it, "Omega Protein, by and through its employees, engaged in intentional conduct designed to bring about injury, or death" to the worker. In September 2012, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) cited Omega Protein with 25 safety and health violations based on an inspection prompted by the worker's death. The EEOC proposed a fine of $79,200.

Source: *The Denver Post*

Jury Awards $2.2 Million For Injuries In Work-Related Lawsuit

A truck driver has been awarded $2.2 million for injuries he sustained while unloading Dollar General merchandise at a store in Troy, Mo. A federal court jury in St. Louis made the award to Gregory Baird, the Plaintiff in the case. He was unloading merchandise in the dark at the store on "Black Friday" in 2007, when an improperly loaded 38-pound box fell on his head. Baird was knocked unconscious and suffered injuries to his neck and back. Dollar General contended that Baird could have waited to unload until the next day. But the Plaintiff said he would have been fired by his employer, Hogan Trucking, if he had waited. John Anderson, a lawyer with Anderson and Associates, a St. Louis firm, represented the Plaintiff in this case. He did a very good job for him.

Source: *The St. Louis Post-Dispatch*

Hotel And Contractor Fined Over Elevator Death

Texas regulators have fined a hotel and a contractor nearly $86,000 over the 2011 death of a housekeeper who fell six stories down a service elevator shaft at the Crockett Hotel in San Antonio. Emergency responders recovered the body of 65-year-old Gloria Rodriguez on Dec. 28, 2011. Other workers at the hotel had reported hearing a noise and then the basement elevator doors were jammed. Otis Elevator Co. is the company involved.

The Texas Department of Licensing and Regulation last month announced that the hotel was fined $25,800 for failing to schedule state-mandated inspections and maintenance. The agency also fined Otis $60,000 for performing work in a negligent or incompetent manner related to brakes. A civil lawsuit filed by the Rodriguez family is pending.

Source: *Claims Journal*

XIV. TRANSPORTATION

Major Bus Crashes Occur Amid Federal Crackdown On Unsafe Motor Coach Operators

Two major bus crashes that left two people dead and dozens more injured recently occurred despite a nationwide crackdown on unsafe motor coach operators. On April 11, 2013, a bus operated by Cardinal Coach Line crashed near the Dallas-Fort Worth International Airport while it was taking passengers to Choctaw Casino Resort in Durant, Okla. According to authorities investigating the crash, the bus veered off the right side of President George Bush Turnpike in Irving, struck a barrier, and swerved left across lanes of traffic before hitting a concrete median and overturning. The crash killed two passengers and injured three dozen others.

Federal Motor Carrier Safety Administration (FMCSA) records show that Cardinal Coach Line was most recently given a safety rating of "satisfactory" in 2009. Since then, none of the company's five buses have been involved in a crash, but two inspections during that period found safety violations serious enough to pull buses and drivers off the road. Loyd Rieve, the driver of the Cardinal Coach Line bus that crashed in Texas, was investigated in another fatal bus accident in 1998. In that incident, the 65-year-old Rieve was driving a bus that struck a person on the side of the road who had stopped to help at an accident scene.

In the second incident, on the night of April 14, 2013, 16 people were injured when a tour bus carrying visitors from Yosemite National Park crashed after the driver lost control of the bus. The vehicle, operated by Seven Happiness Tour & Charter, swerved off of Highway 41, a winding mountain road. The bus came to a stop after striking a tree. It was reported that the tree was the only thing that kept the bus from tumbling down a ravine. Authorities determined that the bus was traveling at an unsafe speed when the driver lost control.

According to The Trucker News Services, Seven Happiness Tour & Charter was the subject of a March 6 federal compliance review—its third FMCSA compliance review since May 2010. The Trucker News Service also reports that "the carrier's CSA scores in Unsafe driving and Hours of Service Compliance both exceed the threshold for intervention," which is likely why the company was subject to a recent review.

Federal transportation safety regulators have increased efforts recently to pull unsafe bus operators off the nation's highways, a move that followed a number of deadly crashes in recent years involving motor coach and charter bus companies. In February, a bus carrying tourists from Tijuana, Mexico, crashed while coming down a mountain road after a day trip to Big Bear in Southern California. The crash killed eight passengers and injured more than 30 others.

In December 2012, a tour bus operated by Mi Joo Tour & Travel of Vancouver, British Columbia, crashed in Oregon killing nine and injuring dozens more. The bus had been returning to Canada from a nine-day tour of the American Southwest. Investigations after the crash found the company had a history of operating with little regard for U.S. federal safety regulations. Authorities determined the driver of the bus was "driving at speeds too fast for the conditions and driving in a manner unsafe to existing road conditions." Both the driver and Mi Joo were banned from operating in the U.S.

The California and Oregon crashes were two of the high-profile bus crashes in recent months. Numerous other fatal crashes have occurred across the country in the same period of time, prompting federal regulators to become more aggressive in dealing with motor coach operators deemed to be "imminent hazards." FMCSA regulators have said that they will dispatch more than 50 safety investigators throughout the country to inspect "high risk" carriers, most of them small charter operators. The federal agency asked state regulators and local law enforcement agencies to help widen the crackdown, which launched on April 1. The first round of inspections targeted 250 charter and tour bus operators with poor safety records pertaining to vehicle maintenance. FMCSA head Anne Ferro said in a letter to bus companies that despite a number of safety initiatives introduced to improve safety, her agency was unhappy with the results. In that regard, she wrote:

> *We continue to see an unacceptable number of bus companies and drivers operating unsafely, resulting in far too many crashes with devastating impacts.*

According to federal safety records, there were 221 bus crashes resulting in 254 deaths in 2009. That number moved up in 2010 after 245 crashes killed 276 people. Federal safety inspectors and other authorities find that small charter bus companies account for most of the deadly crashes because they often operate on the fringe and evade thorough inspections.

Source: Kurt Niland, RightingInjustice.com

Study Says Driver Fatigue Causes 20 Percent Of Motor Vehicle Crashes

A 100-car "naturalistic" driving study conducted by the Virginia Tech Transportation Institute found that fatigue is a cause of 20 percent of motor vehicle crashes, rather than the two or three percent previously estimated based on surveys, simulator studies and test tracks. Also, the study found that 18- to 20-year-olds account for significantly more fatigue-related crashes than any other age group. While adolescents' sleep patterns shift to later hours, school for students still tends to start early, resulting in daytime sleepiness. Older drivers can face similar issues with late nights and early work times, but have more experience coping with moderate fatigue in most cases, the researchers say. Charlie Klauer, group leader for teen risk and injury prevention at the transportation institute's Center for Vulnerable Road User Safety, had this to say:

> *A finding that surprised people is the prevalence of fatigue during the day. We found significantly more crashes/near crashes due to fatigue during the day than at night. The study allowed us, for the first time, to observe driver behavior just prior to a crash. In 20 percent of all crashes and 16 percent of all near crashes, the driver was showing fatigue. We saw eye-lid*

closure, head bobbing, severe loss of facial musculature, micro-sleep—which is when your eyes drift shut and then pop up. This was not just yawning. The drivers were asleep.

Naturalist research involves observing behavior as it takes place in its natural setting with very limited or no interference with the subjects. One hundred drivers who commute into or out of the Northern Virginia/Washington, D.C., metropolitan area were initially recruited as primary drivers to have their vehicles instrumented or receive a leased vehicle instrumented for the study. Since other family members and friends would occasionally drive the instrumented vehicles, data were collected on 132 additional drivers. Researchers selected a larger sample of drivers younger than 25, compared with the total population of drivers, and a sample that drove more than the average number of miles.

The data acquisition system used for the 100-car study was developed by engineers at the Virginia Tech Transportation Institute. Sensors included five video channels, forward and rearward Vorad radar units, accelerometers, lane-tracking software and an in-vehicle network sensor. The cameras were mounted unobtrusively in order to facilitate naturalistic driving behavior.

Researchers viewed more than 110,000 events in order to validate 10,548 events—specifically, 82 crashes, including 13 where the data was incomplete; 761 near crashes; 8,295 incidents, such as braking hard for slowing or stopped traffic; and 1,423 nonconflict events, such as running a stop light with no traffic present. In addition, 20,000 randomly selected 6-second segments of video were viewed. Incidents of moderate to severe driver fatigue were noted, providing an estimate of the amount of time drivers were fatigued but were not involved in a crash or near-crash. The total number of subjects who were involved in fatigue-related crashes and near-crashes was 38, with 11 drivers accounting for 58 percent of all the fatigue-related crashes and near-crashes. Tom Dingus, director of the Virginia Tech Transportation Institute, stated:

Applying the findings to the population at-large, these results suggest that drivers are at a four times greater risk of a crash or near-crash if they choose to drive while fatigued. That suggests that about 12 percent of all crashes and near-crashes in the population are attributable to fatigue.

Analyses with the 100-car study database will continue, plus data from a new U.S. study, the Strategic Highway Research Program, with 2,000 cars, will provide greater statistical power. In addition, new naturalistic driving studies focused on 16- to 18-year-old drivers are now under way. A Naturalistic Teenage Driving Study, sponsored by the National Institute of Child Health and Human Development, seeks to determine the effects of experience on driving performance, and the extent of variability in driving performance under specific driving conditions, such as at night. The National Highway Traffic Safety Administration provided additional funds to analyze the data from the teen driving study to help determine which driving performance parameters and situations should be used to provide feedback about unsafe driving performance to newly licensed teens.

The 100-Car Naturalistic Driving data set was collected in 2003 and 2004 and has been mined numerous times since. Databases from the 100-car study are available for public use on the Virginia Tech Transportation Institute website. Several publications resulting from analysis of the data are reported by the National Highway Traffic Safety Administration.

Source: *The Insurance Journal*

Another Needed Highway Safety Study Done

There was another recent study, done by Dr. Karen Heaton, a University of Alabama at Birmingham (UAB) Assistant Professor, which deserves mention. Dr. Heaton conducted a study of the sleep habits of long-haul truckers. She describes the 1.5 million long-haul truckers crisscrossing America's highways as the "most visible non-visible workers in the U.S." She says that "we see the vehicle, but we never see the person behind the wheel." Dr. Heaton has a two-year grant for $380,900 from the Centers for Disease Control and Prevention (CDC)/National Institutes of Occupational Safety and Health (NIOSH) to study the sleep health of long-haul truckers. She says this about the truckers:

They're salt-of-the-earth people who work hard to make a living under difficult circumstances, and they have significant risk for work-related injuries.

The study involves development of a web-based health intervention that translates a lecture-based sleep, alertness, and fatigue management program into a distance-accessible format. Its success could have an impact on public health and safety, as well as the health and safety of the truckers. Dr. Heaton explained:

There's an existing program which was created in the nineties, and it's still very good. But it's presented live in classrooms, which are difficult for truckers to access. However, many drivers now travel with laptops so they can communicate with employers and family members or play games and watch movies during down time. Most large truck stop chains offer WiFi. So I thought that might be a good venue for delivering health information.

Dr. Heaton is working with 80 truckers to determine whether they like the distance-based program and find it helpful. She also wants to find out whether the program components motivate them to make healthy changes in their sleep practices. Dr. Heaton explained further:

The safest amount of sleep for driving is seven to eight hours a night and truckers tend not to get that for all sorts of reasons. Usually, when a crash involves a commercial vehicle and a passenger vehicle, the driver of the passenger vehicle is at fault. Still, truckers have the highest rates of work-related motor vehicle crashes and the highest number of days missed because of injury.

Interestingly, Dr. Heaton said that drivers sometimes sleep even more erratically at home. She said that's because they are trying to make up for lost time with their families. Dr. Heaton hopes to continue her work and explore that issue. The ultimate goal of her study is to create much-needed health and safety interventions for these drivers and for their families.

Lawyers in our firm who have been heavily involved with litigation involving large truck crashes understand full well how driver fatigue affects highway safety. Long-haul drivers who are sleep-deprived or too tired to be driving are a definite safety hazard on our nation's highways. Dr. Heaton's study should prove helpful in this area of concern.

Sources: *The Birmingham News* and *Claims Journal*

$58 Million Jury Award In Lawsuit Involving A Tired Truck Driver

A prime example of what can happen when tired truck drivers are on our nation's highways occurred in New Mexico. A New

Mexico jury awarded $58.5 million to the family of a man killed in a highway crash caused by a tired trucker. After a 13-hour shift, a new driver hired to haul water used in the oil industry steered his 18-wheeler to the left without yielding and crashed into Kevin Udy, an engineer on his way home from his job at a nearby mine. The trucking company and its management company had chronic safety violations, lax training of drivers and pay structures that encouraged workers to rush to finish their work. The company also had twice the number of citations as the national average. In pre-trial proceedings, the judge stripped the Defendants of their main defense after he found they had intentionally destroyed evidence. The jurors made a statement on the record about trucking safety after they awarded the verdict that included $47 million in punitive damages.

Monte Lyons, the driver, was finishing up his last trip hauling water from oil wells in southeastern New Mexico when he dropped off his final load of the night and headed back to the yard of his employer, trucking company Standard E&S. Udy, who was getting off work at a potash mine where he worked as a mechanical engineer, was headed home in his pickup truck. The 18-wheel tanker driven by Lyons, traveling in the opposite direction, suddenly pulled in front of Udy to make a left turn.

Susan Udy, the widow, and her five children filed suit against Lyons and three closely related corporate Defendants: Standard E&S; its management company Bergstein Enterprises, which oversaw safety; and Zia Transport, the owner of the truck. The Plaintiffs' claims were for gross negligence and recklessness, which were quite appropriate considering the evidence of a history of Standard E&S trucks being taken off the road for safety violations.

Lyons, who had been on the job for six months when the crash happened, did not receive certified instruction on what to expect when driving a big rig, such as safe stopping distances, reaction times and night driving. The industry standard under federal Department of Transportation guidelines is to provide a 12-week training program to a new driver who had never driven a 18-wheeler before. On the day of the crash, the truck's registration had expired and it had a bald tire that should have been red tagged.

Standard E&S paid its employees by the job, not by the hour, and that was another factor in the incident. That was a system that gave drivers an incentive to be in a hurry. This is evidenced by the numerous speeding tickets Standard's drivers had received. Lyons admitted in his testimony at trial that he was probably fatigued after going back and forth from the wells for 13 hours.

The Defendants claimed that Udy was also at fault for not stopping, but the judge took away that defense after ruling the defendants intentionally destroyed log records that may have shown Lyons, the 18-wheeler driver, was chronically overworked. At trial, the defense lawyers argued that even though the company's safety violations were worse than the national average, they were no worse than the average in the oil and gas industry. It appears that their defense was that the oil and gas industry operates at lower standards of safety.

The jury awarded $11.5 million in compensatory damages and a little over four times that amount in punitive damages, or $47.5 million. After voting unanimously to award the largest verdict in state history, jurors asked the judge if they could add a statement to the verdict form, which was allowed. The jury foreman read this statement:

> *This is from all of us. Our hope is that our judgment will clearly communicate that we expect a much higher standard of safety and training in the trucking industry.*

William Robins of Heard & Robins in Santa Fe, N.M., along with George T. Waddoups and J. Bradford DeBry of Robert J. DeBry & Associates in Salt Lake City, Utah, represented the Udy family. They did a very good job for them in the case. The case is Udy v. Standard E&S LLC in New Mexico District Court, Santa Fe County.

Source: Lawyers USA Online

Federal Government Probes Case Of Texting Helicopter Pilot

It is widely recognized that distracted driving on our nation's highways is a serious problem. A great deal of attention, as noted above, is being paid to the problem. But distracted driving can also be a problem in the air. Evidence gathered in an investigation of a fatal medical helicopter crash in 2011 has raised questions about whether the pilot was distracted by personal text messages when he failed to refuel the helicopter before taking off and misjudged how far the aircraft could fly without more fuel.

The case, considered at a meeting of the National Transportation Safety Board (NTSB) last month, underscores concerns the board has already expressed that use of cellphones and other distracting electronic devices has increasingly become a factor in accidents and incidents across all modes of transportation—planes, trains, cars, trucks and even ships. From all accounts, the August 26, 2011, helicopter crash near Mosby, Mo., which killed four people, is the first fatal commercial aircraft accident investigated by the board in which texting has been implicated.

Documents made public by the NTSB show that the 34-year-old pilot, James Freudenbert, exchanged 20 text messages with an acquaintance over a span of less than two hours before the helicopter crashed into a farm field a little over a mile (1.6 kilometers) from where he hoped to refuel. At least three of the messages were sent and five received while the helicopter was in flight, although not in the final 11 minutes of the last leg of the flight, according to a timeline prepared by investigators. The timeline indicates the pilot also exchanged text messages at the same time he was reporting by radio to a company communications center that the helicopter was low on fuel. The helicopter was on the ground at the time waiting for the patient, who was being transferred from one hospital to another, and a nurse and a paramedic to board.

Although the pilot wasn't texting at the time of the crash, it's very likely if not probable that the messaging took his mind off his duties, interrupted his chain of thought and caused him to skip safety steps he might have otherwise performed. According to experts on human performance and cognitive distractions, folks can't concentrate on two things at once. Common sense also allows us to reach the very same conclusion. Folks can only shift their attention rapidly back and forth. But as they do that, the sharpness of their focus begins to erode. Dr. David Strayer, a professor of cognitive and neural science at the University of Utah, describes it this way:

> *People just have a limited ability to pay attention. It's one of the characteristics of how we are wired. If we have two things demanding attention, one will take attention away from other. If it happens while sitting behind a desk, it's not that big of a problem. But if you are sitting behind the wheel of a car or in the cockpit of an airplane, you start to get serious compromises in safety.*

In October 2010, two Northwest Airlines pilots overflew their destination of Minneapolis-St. Paul International Airport by 100 miles while they were engrossed in working on flight schedules on their laptops. Dr. Christopher Wickens, a University of Illinois professor emeritus of engineering and aviation psychology said that a text message—especially one accompanied by an audible alert like a buzz or bell—interrupts a person's thoughts and can be hard to ignore. If the subject of the email is especially engaging, or especially emotional, that also makes it hard to ignore, he added.

The helicopter was operated by a subsidiary of Air Methods Corp. of Englewood, Colo., the largest provider of air medical emergency transport services in the country. The company's policies prohibit the use of electronic devices by pilots during flight. Apparently the pilot in the crash didn't check the amount of fuel on board the helicopter before taking off from the company's base in St. Joseph, Mo., even though he had been briefed that the aircraft would be low on fuel because it had been used the night before for training exercises. He radioed that he had two hours of fuel shortly after the helicopter was airborne.

But when the helicopter landed less than 10 minutes later in Bethany, Mo., to pick up the patient, the pilot radioed the communications center again to report that the 'copter was lower on fuel than he had initially thought. He estimated he had about 45 minutes worth of fuel, and said he didn't want to use any of the 20 minutes of reserve fuel federal regulations require be maintained. It was reported that investigators calculate the pilot actually had 33 minutes worth of fuel left at that point.

The pilot opted to continue the patient transfer to a hospital in Liberty, Mo., changing plans only enough for a stop at an airfield a few miles closer than the Liberty hospital. The helicopter stalled and crashed at 6:41 p.m. CDT on a clear summer evening before reaching the airfield. A low fuel warning light might have alerted the pilot to his true situation, but the light was set on "dim" for nighttime use and may not have been visible. A pre-flight check by the pilot, if it had been conducted, should have revealed the light was set in the wrong position, investigators were told.

Source: *Claims Journal*

Washington Jury Awards $26 Million In Plane Crash Deaths

A jury has awarded $26 million to the families of three people killed when a small plane crashed near Arlington, Wash., in 2008. The single-engine Cessna went down en route from San Juan Island to Auburn when its engine failed. The pilot, Brenda Houston, her 10-year-old daughter, and another passenger, Dr. Tory Becker, an Auburn spine surgeon, were killed.

A state court jury awarded $20 million in compensatory damages and $6 million in punitive damages against the company that made the engine. It was contended that the plane's carburetor was defective, and that even though the manufacturer, Avco Corp., had fixed the problem on new engines two years earlier, it had failed to fix the problem on thousands of planes already in service and flying. James T. Anderson, a lawyer with the Aviation Law Group, located in Seattle, Wash., represents Becker's family. He did a very good job in the case.

Source: *Insurance Journal*

Estate Of Woman Killed At Yale-Harvard Game Files Suit

The estate of a Massachusetts woman struck and killed by a rental truck in a tailgating area at a Yale-Harvard football game has filed a lawsuit against U-Haul company, Brendan Ross (the driver), Yale University, the City of New Haven, Sigma Phi Epsilon, and several others. The estate of Nancy Barry alleged in the lawsuit, filed in New Haven Superior Court, that negligence on the part of the Defendants contributed to Ms. Barry's 2011 death. Ross, a student, was driving the rental truck carrying beer kegs through a popular tailgating area before the game. He turned a corner and sped up, striking Ms. Barry and two other women. Ross pleaded guilty to traveling too fast and unsafe starting.

At the time Yale allowed student organizations to rent large trucks for tailgating parties. Ross' fraternity, Sigma Phi Epsilon, rented the truck. When you consider that a college student was trying to maneuver a large truck through tight spaces in streets and parking lots covered with pedestrians, party-goers and other traffic, this was trouble waiting to happen.

It should be noted that Yale has tightened its tailgating rules since the incident. The school now bans kegs at university athletic events and other functions. Also, oversized vehicles, such as box trucks and large commercial vehicles, are barred from university lots at athletic events unless they are driven by a preapproved authorized vendor.

The lawsuit also names Contemporary Services Corp., a security and management company, as a Defendant. It was alleged that the company's staff was late and the company set up an identification checkpoint too close to passing vehicles. Paul T. Edwards, a lawyer with Deskin, Edwards, and Clark, located in Woodbridge, Conn., represents Ms. Barry's estate in the lawsuit.

Source: *Claims Journal*

Jury Returns $90 Million In Case Against School Board In Death Case

A Prince George's County, Md., jury has awarded more than $90 million to a family whose 13-year-old daughter was struck and killed four years ago while crossing the street as she was trying to reach a school-bus stop. The parents of Ashley Davis, who was a high school freshman in Temple Hills, Md., sued the Prince George's County Board of Education after the teenager died from injuries she sustained in 2009.

It was alleged and proved that the school system failed to provide secure and sufficient transportation. The Board of Education had a policy in place that requires that all children be picked up on their own side of the street only so that they don't have to cross. But that did not happen in this case. The bus that had been assigned to pick up Ashley Davis did not show up as scheduled. Evidence was presented that overcrowding on buses and changes to bus stop locations were causing unsafe conditions for children. It was alleged:

> *The Board of Education…negligently failed to provide a safe bus stop for students who resided on the north side of Brinkley Road including the Plaintiff. The board knew or should have known that it was dangerous for students…to have to cross Brinkley Road" to be picked up by the school bus assigned to take to Crossland High School.*

It was proved that from 11,000 to 18,000 cars drive down Brinkley Road every day. The school system is expected to appeal and to ask the trial judge to cap or reduce the damages. Under Maryland law, the liability of state and local government employees, acting without gross negligence or malice, may not exceed $200,000 per an individual claim and $500,000 per total claims. The jury found the school system was negligent and rejected the defenses of contributory negligence and assumption of risk.

The jurors awarded $13,000 to Ashley Davis' estate for her funeral expenses and her own pain and suffering. They also awarded about $50.3 million to her mother, including $50 million in non-economic damages; and $40 million to her father, all for non-economic damages, on the wrongful death claim.

Source: Associated Press

Connecticut Jury Awards $15.7 Million In Fatal Crash Lawsuit

A Connecticut Superior Court jury has awarded $15.7 million to survivors and family members of three people killed in a 2007 crash on an Interstate highway. The jury found that Northeast Carriers, the owner of a tanker truck that jumped the median near an interchange, was negligent and reckless, and caused the crash. The tanker, which was carrying nearly 7,000 gallons of heating fuel, went out of control and crashed head-on into southbound traffic on Nov. 2, 2007. Witnesses testified that the driver, who was killed in the accident, appeared to be racing with another truck driver. Lawyers for Northeast Carriers argued that the second driver deserved some blame for the crash.

Source: The Day of New London

XV. ENVIRONMENTAL CONCERNS

Arkansas Attorney General Investigates The Exxon Mobil Pipeline Rupture

Arkansas Attorney General Dustin McDaniel has started an investigation into the March 30 Exxon Mobil Corp. oil pipeline accident that has caused tens of thousands of gallons of oil to spread in the area around Mayflower, Ark. The Attorney General's office demanded the giant oil company preserve all the documents relating to the spill. In a letter to ExxonMobil officials, the Attorney General said his office will investigate the cause and impact of Exxon's Pegasus pipeline rupture. Thousands of gallons of crude oil leaked into a residential neighborhood in Mayflower near Lake Conway. The spill is leaving significant damage affecting the state's environment and property in the surrounding area. Attorney General McDaniel said in a statement:

> *This incident has damaged private property and Arkansas' natural resources. Homeowners have been forced from their homes as a result of this spill. Requesting that Exxon secure these documents and data is the first step in determining what happened and preserving evidence for any future litigation.*

Exxon says it will cooperate in any investigations. The company, in a statement on its website, said emergency response personnel were on the ground within 30 minutes after the leak was detected and that the pipeline has been shut in and crews are working to contain the spill. The company said that "fifteen vacuum trucks and 33 storage tanks have been deployed to the site to clean up and temporarily store the oil. Approximately 12,000 barrels of oil and water have been recovered." Cleanup crews deployed 3,600 feet of boom around nearby Lake Conway as a precaution. ExxonMobil said no oil has reached the lake. The U.S. Environmental Protection Agency (EPA) categorizes this incident as a "major spill."

McDaniel said his letter asks the oil company to require any affected employees and affiliated organizations to preserve all "documents, data compilations (including electronically recorded and stored data), tangible objects or other information" relevant to the pipeline rupture, spill and cleanup. He requested that ExxonMobil take all necessary measures to prevent destruction or modification of those records.

The Pegasus pipeline is a 20-inch pipeline that originates in Patoka, Ill., and carries Canadian crude oil to the Texas Gulf Coast. Opponents of TransCanada Corp.'s controversial Keystone XL pipeline, which would also carry Canadian oil to the Gulf Coast, have pointed to the Pegasus spill as an example of the kinds of dangers they fear. Anthony Swift, a lawyer at the Natural Resources Defense Council, had this to say in a written statement:

> *At about a tenth of the full capacity of the Keystone XL tar sands pipelines, the Pegasus pipeline rupture offers us a small sample of the risk that tar sands pipelines pose to American communities. The Arkansas tar sands spill is a tragic warning of the danger of industry's reckless plan to expand the transport of tar sands across American communities and sensitive water resources.*

The pipeline was originally built in 1947 and 1948, according to federal pipeline safety officials. It is currently out of service. For that to change, ExxonMobil would need written approval from a federal pipeline safety official, according to the order from the Pipeline and Hazardous Materials Safety Administration.

U.S. Rep. Ed Markey, D-Mass., calls the spill "a troubling reminder that oil companies still have not proven that they can safely transport Canadian tar sands oil across the United States without creating risks to our citizens and our environment." While there is a definite need for energy independence in this country, there must be strong regulation of the oil companies. Factors such as safety and protecting the environment can't be ignored. There must be a balance between the push for drilling and pipelines and the need for strong regulation. Attorney General McDaniel should be commended for his actions on behalf of the taxpayers in his state in this case.

In a related matter, two women who live near the pipeline have filed a civil class action lawsuit against the company in federal court. The Plaintiffs, Kimla Greene and Kathryn Jane Roachell, are seeking money damages to make up for "a permanent diminishment in property value." Their complaint says the women are bringing their lawsuit on their own behalf and for other people who live near the pipeline in Arkansas.

Source: *The Christian Science Monitor*

Jury Awards $236 Million Against Exxon Mobil In New Hampshire

A jury has awarded the State of New Hampshire $236 million in damages against Exxon Mobil Corp. for groundwater contamination. While this was by far the largest verdict in the state's history, it represents only about two days' worth of profit for the energy company, according to an industry analyst. According to Fadel Gheit, managing director of oil and gas research and a senior analyst at Oppenheimer & Co., the verdict won't put a dent in Exxon Mobil's bottom line. He pointed out that "Exxon will probably make close to a $40 billion profit this year," adding, "that's two days' work."

The Jurors awarded the state the entire $236 million it was seeking from Exxon Mobil to monitor and remediate groundwater contaminated by MTBE, a chemical added to gasoline to reduce smog, but found to travel farther and faster in groundwater than gasoline without the additive. Experts testified that a teaspoon can cause widespread contamination. This verdict is more than twice the $105 million jurors awarded the New York City Water District in 2009 in its case against Exxon Mobil over MTBE contamination. That case is on appeal.

Jurors found that Exxon Mobil was negligent in adding MTBE to its gasoline and that MTBE was a defective product. They also found Exxon Mobil liable for failing to warn distributors and consumers about its contaminating characteristics. The jury found damages in the amount of $816 million, but that award was reduced to 28.9 percent of the total, reflecting Exxon's market share of gasoline sold in the state between 1988 and

2005. Lawyers for Exxon Mobil argued the company used MTBE to meet federal Clean Air Act mandates to reduce air pollution and that the company should not be held liable for sites contaminated by other retail businesses.

Exxon Mobil was the sole remaining defendant of the 26 the state sued in 2003. Citgo was a co-defendant when the trial began in January, but it began settlement negotiations with the state and withdrew from the trial. Citgo ultimately settled for $16 million, bringing the total the State of New Hampshire has collected in MTBE settlement money to $136 million.

Sher Leff, the California law firm that successfully handled the New York City case, was hired by New Hampshire Attorney General Michael Delaney to try his state's case against Exxon Mobil. Matt Pawa, a lawyer with the Pawa Law Group in Boston, was also brought in by the Sher Leff firm and was involved in the case from the start. Jurors had more than 400 exhibits to go through, including memos and reports dating back decades. Those memos included some in which Exxon Mobil researchers warned against using MTBE gasoline because of the extensive harm it can do to groundwater.

Source: WSFA.com

XVI. THE CONSUMER CORNER

Court Grants Class Status In Volvo Sunroof Defect Suit

A New Jersey federal judge has certified six statewide classes of car buyers in a lawsuit against Volvo Cars of North America. The automaker is accused of selling vehicles with defective sunroof drainage systems. But the judge declined to certify a nationwide class under a New Jersey statute, explaining that the state law couldn't be applied nationally. U.S. District Judge Dennis M. Cavanaugh granted the Plaintiffs' motion for certification of six proposed state subclasses, ruling that the Plaintiffs' class definitions were proper. When certifying the six subclasses, Judge Cavanaugh said in his order:

> *While plaintiffs' proposed nationwide class cannot be certified, for the reasons that follow, the court finds that plaintiffs' proposed state subclasses should be certified at this time and that the law of the state of each subclass should be applied to the subclass' claims.*

The suit was filed by a group of consumers who allege that Volvo knowingly sold vehicles with defective sunroof drains from 2000 to the present, including the S40, S60, S70, S80, V50, V70 and XC90 models. The plaintiffs contend that the defect impacted hundreds of thousands of Volvo customers. It was alleged that the sunroof drain systems easily clog with debris, allowing water to leak into the vehicles' interior, causing extensive damage. It's further alleged that Volvo technicians who handled the Plaintiffs' repairs told them it was a common issue.

The class action accuses Volvo of longstanding knowledge of the alleged design defect and alleges that the carmaker issued several technical service bulletins to address the problems. According to the complaint, the defect manifests shortly after the limited warranty expires. The plaintiffs sought certification of either a nationwide class of all persons or entities in the U.S. who are current or former owners or lessees of a class vehicle, or of six statewide classes consisting of all persons or entities in California, Florida, Hawaii, Maryland, Massachusetts and New Jersey who are current or former owners or lessees of a class vehicle.

Volvo challenged the certification bids, contending that the definitions for both the nationwide and statewide classes were too broad because they contain plaintiffs who didn't notice a defect and that New Jersey law can't be applied nationally. But Judge Cavanaugh disagreed and denied Volvo's challenge, saying:

> *As plaintiffs properly argue, a class need not be limited to consumers who have actually experienced the defect where the product at issue suffers from a uniform design defect.*

The judge went a step further, finding that the plaintiffs' class definitions were adequate because they include former owners. Judge Cavanaugh said in his order:

> *A reading of the amended complaint reveals that plaintiffs seek relief due to the fact that they would not have purchased the class vehicles or would have paid less for them, and the 'substantial loss in value and resale value of the vehicles, and other related damage. These injuries apply to both current and former vehicle owners.*

In explaining the rationale for his rejection of the bid for nationwide certification under the New Jersey Consumer Fraud Act, because the law couldn't be applied nationally, Judge Cavanaugh stated in his order:

Plaintiffs' proposed nationwide class here ignores the state in which the transaction occurred, the state where the purchasers of the vehicles live, and the interests of the states in which the transactions took place.

In granting statewide certification, Judge Cavanaugh denied Volvo's motion for summary judgment, holding that triable issues of fact exist, such as whether the design of the sunroofs' drainage systems were defective and whether Volvo knew they were defective but declined to tell consumers, among other things. The Plaintiffs are represented by the law firms of Chimicles & Tikellis in Haverford, Penn., and Mazie Slater Katz & Freeman in Roseland, N.J. The case is *Neale v. Volvo Cars of North America LLC*, which is in the U.S. District Court for the District of New Jersey.

Source: Law360.com

Probe Of Suspension And Corrosion Problems On Hyundai Sonata

The National Highway Traffic Safety Administration (NHTSA) has opened an investigation into possible suspension failures on the Hyundai Sonata sedan, a model that is built in Montgomery, the automaker's Alabama factory. NHTSA says it has received six complaints of rear suspension control arm failure due to corrosion in model year 2006 Sonatas. An estimated 393,000 Sonatas, model years 2006 to 2008, are involved in the investigation. The concern is that rust in the frame can cause control arm failure, which affects the wheel hubs.

While no crashes or injuries have been reported, there have been two instances of the problem triggering the electronic control system. The investigation will determine whether a recall is warranted. The Montgomery plant, which produces the Sonata and Elantra compact, opened in 2005. Hyundai, in a statement, said that it is cooperating with the investigation. The statement said that "It is too early in the process to draw any conclusions about the allegations, and no safety-related defect has been identified."

Source: *Reuters*

Lawsuit Filed Against Ford Over Fuel Efficiency Estimates In Hybrids

A class action lawsuit has been filed against Ford Motor Co., alleging that Ford has overstated the fuel efficiency of its 2013 Fusion and C-Max Hybrid vehicles by as much as 10 miles per gallon. It was contended that Ford breached its contract with consumers who relied on the estimates. The lawsuit, which has been removed to a Florida federal court, contends that Ford failed to follow fuel efficiency testing standards created by the U.S. Environmental Protection Agency (EPA) when determining the vehicles' estimated gas mileage. It was alleged further that Ford posted the allegedly inflated estimates on the vehicles' window stickers, which induced customers to buy the cars. The complaint states:

> *The EPA numbers provide a necessary tool for vehicle comparison for consumers when evaluating vehicles to lease or purchase. Because the window stickers' representations were grossly inaccurate, many consumers who purchased or leased the vehicles based on deceptive fuel economy claims have suffered injury.*

James Oldcorn, the named Plaintiff, purchased a 2013 C-Max Hybrid, which at the time of his purchase was marketed as attaining 47 miles per gallon. He says the vehicle's fuel economy and gas mileage estimates were an important factor in his decision to buy the car. The lawsuit alleged:

- A *Consumer Reports* article in December revealed that the C-Max Hybrid and the Fusion Hybrid weren't as efficient as Ford advertised.
- *Consumer Reports'* investigation determined that the overall mpg estimate for the C-Max Hybrid should be reduced from 47 mpg to 37 mpg, and that the Fusion's mpg estimate should be decreased from 47 mpg to 39 mpg.
- Although the EPA determines the methodology for fuel economy tests, individual car manufacturers conduct the tests and send the results to the EPA.
- The agency only tests about 15 percent of all vehicles to ensure that their performance matches their reported results.
- According to the EPA, Ford failed to comply with the agency's testing procedures.
- Ford has sold or leased hundreds and potentially thousands of Fusion and C-Max Hybrids with incorrect fuel estimates on their window stickers.

The complaint contains a breach of contract claim and a claim under the Florida Deceptive and Unfair Trade Practices Act. The proposed class action is brought on behalf of a proposed class of Florida residents who bought or leased a 2013 Ford Fusion Hybrid or C-Max Hybrid.

Ford is not the only automaker to face litigation over allegedly inflated fuel efficiency estimates. In February, the U.S. Judicial Panel on Multidistrict Litigation grouped 12 putative class actions levying similar claims against Hyundai Motor America and Kia Motors America Inc. into a new MDL in the Central District of California.

The named Plaintiff in the Ford case is represented by Chris Polaszek, John Yanchunis Sr. and Rachel Soffin of Morgan & Morgan, a Tampa, Fla., firm. The case is Oldcorn v. Ford Motor Co. and is in the U.S. District Court for the Southern District of Florida.

Source: Associated Press

Class Action Lawsuits Filed Over GranuFlo And NaturaLyte Side Effects

Four class action lawsuits have been filed against DaVita Healthcare, a national dialysis treatment provider that uses GranuFlo and NaturaLyte during hemodialysis. The personal injury lawsuits allege the clinics should have known of the risks for serious adverse health effects associated with GranuFlo and NaturaLyte and should have acted accordingly to reduce those risks to patients. The serious health issues include cardiac arrest and sudden death.

GranuFlo and NaturaLyte are dialysis products made by Fresenius Medical Care. In March 2012, prompted by reports of adverse events, the U.S. Food and Drug Administration (FDA) issued a Class I recall of both NaturaLyte and GranuFlo. The four class action lawsuits were filed in the U.S. District Court for the District of Colorado. The lawsuits seek to represent any person treated at a Da Vita Healthcare clinic with GranuFlo or NaturaLyte products.

Source: bigclassaction.com

$40 Million Settlement Proposed In Skechers Toning Shoes Class Action Lawsuit

It was reported last month that a $40 million settlement has been reached in a consumer fraud class action lawsuit pending against toning shoe manufacturer Skechers U.S.A. The lawsuit, *Grabowski v. Skechers U.S.A., Inc.*, involves claims that Skechers violated certain state laws and consumer protection statutes in connection with the marketing and sale of its toning shoes.

Potential class members include persons who purchased eligible Skechers toning shoes from August 1, 2008, until and including August 13, 2012, in the United States. It was reported that upon preliminary review, the Court found that the proposed settlement agreement was fair, reasonable and adequate. Claims will not be paid, however, until the settlement is given final approval by the Court. A fairness hearing will determine that.

Source: Bigclassaction.com

EPA Will Review Flame Retardants But Lacks Power To Ban

The U.S. Environmental Protection Agency (EPA) will review the safety of 23 chemicals, including 20 of the flame retardants found in furniture, electronics and other products that members of Congress have identified as particularly risky. New Jersey Senator Frank Lautenberg and 22 other lawmakers called on the EPA to evaluate whether flame retardants threaten the health of American citizens. The reviews will be conducted as part of a Toxic Substances Control Act plan. James Jones, acting assistant administrator for the Office of Chemical Safety and Pollution Prevention, had this to say in a statement:

> *EPA is committed to more fully understanding the potential risks of flame retardant chemicals, taking action if warranted, and identifying safer substitutes when possible.*

The lawmakers claimed that studies linked flame retardants to cancer and neurological and developmental diseases. The U.S. Consumer Product Safety Commission (CPSC), according to the Senators, has found the chemicals do not even adequately protect against fires. The State of California proposed new flammability standards in February that would lessen the need for flame retardants.

The American Chemistry Council, a trade group for chemicals makers, expressed support for the EPA reviews in a statement. However, it maintained that the flame retardants under review "provide significant benefits and many have been subjected to reviews by national and international government bodies." The group said further in a statement:

> *We encourage EPA to work with stakeholders to fully understand what information is already available to the agency on these chemicals, to see what further information may be needed for these assessments and to assure there is sufficient time to*

provide that information to the agency.

The chemicals under review include trisphosphate (TCEP), as well as hexabromocyclododecane and related congeners. The EPA says it will perform full risk assessments for four of the flame retardants. The agency is grouping similar flame retardants together with the chemicals under full-risk review.

The EPA has identified about 50 flame retardants unlikely to harm human health, making them possible substitutes for flame retardants found to be dangerous. Jones said that, even though the reviews represented "a significant step forward on chemical safety," TSCA "remains in dire need of reform in order to ensure that all Americans are protected from toxic chemicals in their environment."

A Senate committee advanced a TSCA reform bill, the Safe Chemicals Act, last summer, but the legislation failed to garner support from Republicans. Sen. Lautenberg, who for years has led the effort to update the TSCA, plans to introduce a new reform bill. Hopefully, he will be successful.

Source: *Chicago Tribune*

Charles Schwab If Successful Will Take Investors' Rights

Charles Schwab & Co., Inc.—the well-known investment advisor holding more than $2 trillion in assets for millions of investors—is trying in a "sneaky manner" to eviscerate its customers' rights. In the fine print of Schwab's terms of service, there is a forced arbitration clause and a ban on consumers joining together in class actions—a serious blow for small investors. Corporations are increasingly using these terms to deny consumers their constitutional rights. The forced arbitration clause means that if you ever have a dispute with the company, you can't take your dispute to a public court. Instead, you have to go to a private, secretive tribunal chosen by Charles Schwab.

As we have reported in previous issues, class-action bans prevent you from banding together with other customers to hold firms accountable for deceptive, fraudulent and illegal practices. In the event Schwab misled investors and caused them to lose their hard-earned savings, only those with the time and resources to seek justice individually—in costly and secret arbitration that is stacked against them—stand a chance to recover their losses. Meanwhile, Schwab can escape real accountability for its wrongdoing, if that happened to be the case. Schwab's decision to include arbitration is particularly egregious because it is the first of the brokerage firms to prohibit investors from participating in class actions. Now that Schwab has done it, others will likely follow.

The Financial Industry Regulatory Authority (FINRA), the banking industry self-regulatory body, already has rules to prevent brokerage firms like Schwab from banning class actions. By inserting a class-action ban into its terms, Schwab violated those rules. FINRA filed a complaint against Schwab to order it to remove the class-action ban. That's very significant. Even a corporate self-regulatory body that's packed with bankers appears to recognize that it's wrong to deny an individual's constitutional rights.

Unfortunately, FINRA lost the dispute against Schwab, but the fight is far from over. An appeal is pending on the case. But, the Securities and Exchange Commission (SEC) could step in and require Schwab and other brokerage firms to drop the predatory language from their terms. In the meantime, Public Citizen continues its work for U.S. consumers. They should be commended for leading this fight against Schwab in the effort to restore its customers' rights.

Source: Public Citizen

Zoloft Birth Defects Will Be All The More Tragic If The Drug Is Proven Ineffective

We have written on numerous occasions about the ongoing Zoloft litigation. There are hundreds of individual cases that have been filed alleging safety-related issue. If allegations in a class action lawsuit prove true that Zoloft, an SSRI antidepressant, is of little value for the treatment of depression over and above a sugar pill, then the tragedy of SSRI birth defects takes on added significance. The class-action lawsuit, attacking the effectiveness and efficacy of Zoloft, alleges that benefits to the intended patients are far less than a basket of SSRI side effects, some of which carry dire consequences. Zoloft, approved by the U.S. Food and Drug Administration (FDA) and a major source of revenue for pharmaceutical giant Pfizer since 1991, is in a class of antidepressants known as selective serotonin reuptake inhibitors (SSRI). As a class, the drugs have been touted as being more effective at treating depression than their various predecessors.

However, the Zoloft consumer fraud class-action lawsuit, recently filed in the United States District Court for the Northern District of California, San Jose Division, alleges that Zoloft is not much more effective than a simple placebo (sugar pill), and that defendant Pfizer went to great lengths to minimize negative or failed drug trials and expand any positive outcomes, however insignificant, on the way to building a sizable market for a product that allegedly carries few benefits. Chris Coffin, a New Orleans lawyer with Pendley, Baudin & Coffin, said in an interview with Brenda Craig:

> *In promoting the drug, they did not adequately represent all the facts. Pfizer has not given the full picture of the drug to consumers or to health-care providers.*

Pendley, Baudin & Coffin is one of two law firms representing Laura A. Plumlee, the lead Plaintiff in the lawsuit in the class. It's alleged in the complaint that Ms. Plumlee was prescribed Zoloft for depression beginning in 2005. However, she says when Zoloft proved ineffective at relieving the symptoms of her depression, her dosage was repeatedly increased. It would follow that such an increase would also increase the propensity for SSRI side effects while having little impact on a person's depression.

Ms. Craig points out that as part of the original approval process for Zoloft, Pfizer produced two studies that demonstrated, according to Pfizer, "a statistically significant effect" for patients suffering from depression. The FDA, however, was concerned about the presence of other studies that showed only marginal benefit. In some efficacy studies, according to the lawsuit, Zoloft was actually outperformed by the placebo.

Nonetheless, Zoloft was issued an FDA approval in 1991 and Pfizer launched an intense campaign to market the new drug to consumers as the best response to depression. Until the patent for Zoloft expired in 2007, sales of the selective serotonin reuptake inhibitor reached $3 billion annually, with total sales of Zoloft in excess of $30 billion for Pfizer. Since 2007, Zoloft continues to generate sales of $500 million dollars each year due to Pfizer's continued claims, or so it's alleged, that Zoloft is far more effective for treating depression than it really is.

Meanwhile, as we have repeatedly reported, Zoloft side effects can be serious for a pregnant woman and her unborn child, given various studies linking antidepressants such as Zoloft to SSRI birth defects. PPHN, or Persistent Pulmonary Hypertension of the Newborn, is one of the side effects linked to drugs such as Zoloft. At least 250 Zoloft birth defect lawsuits have been consolidated in the multidistrict litigation (MDL) in the United States District Court for the Eastern District of Pennsylvania. About 70 additional Zoloft Birth Defects lawsuits have been filed in the courts. As previously reported, according to a recent pre-trial order, the first trial for a Zoloft SSRI lawsuit will be heard in September 2014.

Source: Lawyersandsettlements.com

A Report Of Accounting Class Action Lawsuits

After an increase in new filings of accounting class actions in 2011, according to a new report by Cornerstone Research, "Accounting Class Action Filings and Settlements—2012 Review and Analysis," filings fell sharply in 2012. However, accounting case settlements continued to represent a high percentage of total settlement dollars for all cases settled in 2012. The report said that "new accounting case filings decreased from 78 in 2011 to 45 in 2012, the lowest number in recent years."

A reduction of filings against Chinese issuers listed on U.S. exchanges through reverse mergers (Chinese reverse mergers) and a considerable slowdown in filing activity in the second half of the year contributed to the sharp decline in class action filing activity overall. This also affected the share of filings that include accounting allegations. It was reported that the decrease in Chinese reverse merger cases alone accounted for approximately two-thirds of the drop in new accounting cases from 2011 to 2012. For the third consecutive year, the majority of new accounting cases that were filed included allegations of internal control weaknesses. Approximately one in three new cases involved the restatement of a financial statement.

Despite the decline in new case filings, accounting case settlement dollars represented more than 90 percent of all settlement dollars for securities class actions in 2012. The average and median settlements for accounting cases were higher than for non-accounting cases. For cases with General Accepted Accounting Practices (GAAP) allegations, settlements in relation to shareholder losses were highest for those that involved a financial statement restatement and/or accounting irregularity. Cases involving company announcements of internal control weaknesses increased to almost 45 percent of all settled cases in 2012 from 34 percent in 2011, and were associated with higher settlements. The report named a number of factors as "watch areas" for future accounting-related litigation. One area that definitely should be watched involves the Dodd-Frank whistleblower program.

Source: *Claims Journal*

24 E. Coli Illnesses Linked To Frozen Foods

Health officials reported last month that at least 24 people have become sick from an outbreak of E. coli infections linked to frozen snack foods marketed to children. Fortunately, there have been no reports of deaths. At press time eight people, mostly children or teens, had been hospitalized. An investigation detected E. coli in an open package of Farm Rich brand frozen chicken quesadillas at an ill person's home.

The Centers for Disease Control and Prevention (CDC) reported illnesses in Alabama, Arkansas, Illinois, Indiana, Michigan, Mississippi, New York, Ohio, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington and Wisconsin. Rich Products Corp., based in Buffalo, N.Y., has recalled quesadillas, mozzarella bites and other frozen products made in November.

Source: *Claims Journal*

Pfizer Settles Suit Over Dog's Death Caused By Rimadyl

Pfizer Inc. has settled a lawsuit filed by the owners of a golden retriever. It was contended that the manufacturer failed to adequately warn pet owners of the potential dangers of Rimadyl, its canine anti-inflammatory medication. Owners said the drug caused the death of their pet. The confidential settlement resolves allegations of negligence and misrepresentation in the lawsuit brought by the owners against Pfizer in July 2011. The golden retriever died after being given Rimadyl. The owners, in a statement, said:

> *This victory underscores what has been known for some time now. While this drug can be beneficial for certain dogs, for many it has been a deadly prescription. More research on Rimadyl is needed to prevent animals from needlessly dying.*

The settlement funds will be used to "launch an education campaign that will inform pet owners about the risks associated with this medication." The campaign will include distributing pamphlets and other educational materials to veterinary clinics.

The dispute arose from the owners' May 2009 visit to a Colorado veterinary specialist after their golden retriever suffered a knee injury. Prior to surgery, the dog was given a drug cocktail that included Rimadyl, which Pfizer markets as the leading nonsteroidal anti-inflammatory drug for pain relief in dogs. Following the surgery, the golden retriever became ill and the owners were ordered to discontinue medication. Subsequent testing revealed that the dog was potentially suffering from Rimadyl toxicity. A specialist consulted by the owners noted that approximately one in 1,000 dogs experience adverse Rimadyl reactions, with a 95 percent survival rate given sufficient treatment. The pet was hospitalized for liver failure and, after weeks of fluctuating health, ultimately, in July 2009, succumbed to Rimadyl poisoning.

The owners filed their suit in Boulder County District Court in July 2011, seeking damages for negligence, strict product liability, breach of express and implied warranty, deceptive trade practices and misrepresentation. One of the owners said, in their statement, that:

> *Many animals do well on this drug, but you don't know how your pet will react until it dies. We want Pfizer to conduct more research on this drug to determine its wide-ranging effects on all breeds.*

The owners are represented by Jennifer Edwards of the Animal Law Center, located in Denver. Jennifer founded the center and is dedicated to protecting animals and the rights of their owners. She has been instrumental in the evolution of "animal law." She did a very good job in this case. It wouldn't be asking too much for the drug company to simply provide adequate warnings of all known risks associated with use of Rimadyl.

Source: Law360.com

The FTC's Top 10 Consumer Complaint Categories

The Federal Trade Commission (FTC) has released its top 10 consumer complaint categories for 2012. For the first time ever, the agency received more than two million complaints last year. Of these two million complaints, interestingly, 18 percent were related to identity theft. Of those 18 percent, almost half were related to tax or wage fraud. The FTC says the top 10 complaint categories are as follows:

- Identity Theft—369,132 complaints
- Debt collection—199,721 complaints
- Banks and Lenders—132,340 complaints
- Shop-at-Home and Catalog Sales—115,184 complaints
- Prizes, Sweepstakes and Lotteries—98,479 complaints
- Impostor Scams—98,479 complaints

- Internet Services—81,438 complaints
- Auto-Related Complaints—78,062 complaints
- Telephone and Mobile Services—76,783 complaints
- Credit Cards—51,550 complaints

The FTC uses the Consumer Sentinel Network to record complaints throughout the year. The database is available to more than 2,000 civil and criminal law enforcement agencies across the country. It helps agencies research cases and track targets. Among the federal and state law enforcement agencies contributing to Consumer Sentinel are the Consumer Financial Protection Bureau, the U.S. Postal Inspection Service, the Federal Bureau of Investigation's Internet Crime Complaint Center and the offices of 14 state attorneys general.

Private-sector organizations contributing data include all Better Business Bureaus in the U.S. and Canada, PrivacyStar, Publishers Clearing House and several others. State regulators handle most insurance complaints and the FTC report does not track insurance as a category. In the identity theft statistics, however, 0.3 percent of complaints involved misuse of information for insurance purposes.

Significantly, more than 1 million complaints were fraud-related. Consumers reported paying in excess of $1.4 billion in those fraud complaints, with the median amount paid being $535. Fifty-nine percent of the consumers who reported a fraud-related complaint also reported an amount paid. Fifty-seven percent of all fraud-related complaints reported the method of initial contact. Of those complaints, 38 percent involved email, while in another 34 percent the method was by telephone. Only 9 percent of those consumers reported mail as the initial point of contact. Florida is the state with the highest per capita rate of reported fraud and other types of complaints, followed by Georgia and Maryland.

Government documents/benefits fraud (46 percent) was the most common form of reported identity theft, followed by credit card fraud (13 percent), phone or utilities fraud (10 percent), and bank fraud (6 percent). Other significant categories of identity theft reported by victims were employment-related fraud (5 percent) and loan fraud (2 percent). Complaints about government documents/benefits fraud increased 27 percentage points since calendar year 2010. Tax or wage-related fraud accounted for the growth in this area, with 43.4 percent of identity theft victims reporting this problem in 2012. Employment-related fraud complaints, in contrast, have declined 6 percentage points since calendar year 2010.

Forty-two percent of identity theft complainants reported whether they contacted law enforcement. Of those victims, 68 percent notified a police department. Fifty-four percent of these indicated a report was taken. Florida is the state with the highest per capita rate of reported identity theft complaints, followed by Georgia and California.

Sources: The FTC Report and *The Insurance Journal*

XVII. RECALLS UPDATE

We again are reporting a very large number of safety-related recalls in this issue. Serious safety-related recalls have become rather commonplace. The following are some of the more significant recalls since those reported in the April issue. If more information is needed on any of the recalls mentioned below, readers are encouraged to contact Shanna Malone, the Executive Editor of the *Report*. We would also like to know if we have missed any safety recalls that should have been included in this issue.

Toyota, Honda And Nissan Announce Air Bag-Related Recall

Toyota, Honda and Nissan are recalling more than 3 million vehicles globally for an identical problem with air bags on the passenger side whose inflator may burst, sending plastic pieces flying. The companies say no injuries have been reported related to the problem. The recall for air bags made by Japan's Takata Corp. affects other automakers including non-Japanese manufacturers, according to a Takata spokeswoman.

Toyota Motor Corp. is recalling 1.7 million vehicles, with some 580,000 in North America, another 490,000 in Europe and 320,000 in Japan. Affected models include the Corolla, Tundra and Lexus SC produced between November 2000 and March 2004. Toyota said it had received five reports of air bag problems, three in the U.S. and two in Japan, but said there have been no injuries. The automaker suffered a blow to its reputation from a series of massive recalls in 2009 and 2010 partly a reflection of how various models used the same parts to save costs. But the latest recall is affecting other major automakers as well.

Honda Motor Co. is recalling 1.1 million vehicles. About 680,000 are in North America, 270,000 in Japan and 64,000 in Europe. The models include the Civic, CR-V and Odyssey. The automakers have reported the problem to the Transport Ministry in Japan, and will be reporting other recalls in other regions. The recall extends to Latin America, China, other Asian nations, the Middle East and Africa.

Nissan Motor Co. recalled 480,000 vehicles globally, with some 137,000 of them in being Japan, for the air bag problem. The Yokohama-based automaker said vehicles in North America and Europe are affected, but at press time had not released other details on its 343,000 overseas recalls. Recalled models in Japan include the Cube, X-Trail, Maxima and Teana, made from August 2000 to January 2004. The problem arose because of human errors during production. Reportedly, a worker forgot to turn on the switch for a system weeding out defective products and parts were improperly stored, which exposed them to humidity

Honda said it was aware of one crash in which a passenger front airbag casing had ruptured after being deployed with too much pressure. The automaker said it was not aware of any injuries or deaths that may have resulted from the defect. Toyota said it had reports of five airbag malfunctions, but no injuries.

The recall, while large, is not without precedent. The United States alone has had 13 recalls of more than three million units, according to a list maintained by the D.C.-based Center for Auto Safety. The air bag inflators were made by Takata, a Japan-based supplier, for all three automakers in the recalls. The Japanese safety-gear producer made the products from 2000 to 2002. Japan's Transport Ministry said the recall affects nearly 732,000 vehicles in Japan.

Mazda Also Has Recalls

Also affected under the same recall referred to above are the RX-8 and Mazda 6. Mazda Motor Corp., the Hiroshima-based automaker, said 45,000 vehicles were recalled, including 4,000 in Japan. At press time Mazda hadn't given numbers for other regions, but it said recalls will be announced in North

America, Europe, China and other nations.

Chrysler Recalls 200,000 Ram Trucks, Jeep SUVs And Dodge Cars

The Chrysler Group has recalled more than 200,000 of its vehicles, including its Ram pickup truck, Dodge Challengers and Chargers and Jeep Liberty and Patriots for a variety of problems. In the biggest recall, the automaker will inspect and fix about 120,000 Chrysler 300s and Dodge Challenger and Chargers sedans from the 2011 and 2012 model years because of an airbag problem. The wrong-sized crimps were used in building the airbag wiring harness, and that can cause the airbag warning light to illuminate.

Chrysler also will recall 61,409 Dodge Nitro and Jeep Liberty sport-utility vehicles from the 2008 model year, and in the case of the Nitro, some 2007s because a part in the vehicles can drop onto the drive shaft, causing it to break. If this happens, the vehicle will lose power suddenly, and it is possible that the side airbags will deploy. That force of the drive shaft breaking can trick the computer module that controls the airbags into thinking that the vehicle is in a "severe" crash, according to Chrysler. The automaker said it is not aware of any accidents or injuries being caused by the problem.

In another recall, Chrysler will bring back 20,532 Jeep Patriot and Compass SUVs from the 2012 model year because of a fuel tank problem that can interrupt the flow of gasoline and cause the SUVs to stall. The problem was caused when improperly formed nylon tubes that route fuel within the tank were used in the assembly of the vehicles. If the vehicles run out of gas, the engines can stall. Chrysler says it's aware of one crash, but no injuries or fires due to the problem. The SUVs have saddle-style gas tanks that go around the rear drive shaft. Fuel is pumped from one side of the tank to the other through a hose. But Chrysler says some of the hoses weren't formed right in manufacturing, and they can stop the flow of gas. The problem stems from a worldwide shortage of a nylon resin called PA-12.

It was reported that the shortage sent automakers scrambling for substitutes, one of which was used in the Compass and Patriot fuel tank hoses. Chrysler says the hoses were made with a new material, which required a higher manufacturing temperature than PA-12. Some malformed tubes were shipped to the tank maker before the problem was found by Chrysler engineers. Chrysler says the manufacturing process was changed and the tubes now work properly. The recall affects about 20,500 SUVs in the U.S. and 2,300 in Canada. The rest are in Mexico and outside North America. They were made from Oct. 18, 2011 to May 7, 2012. Dealers will replace the hoses free of charge.

The automaker is recalling about 6,500 Dodge Ram pickup trucks from the 2013 model year because of a parking brake problem. A cable in the parking brake system was not set properly and won't hold the truck on a 20 percent grade, which is required by safety regulations. The problem was discovered by an accountant auditing production at Chrysler's truck factory. The company said it is unaware of any accidents or injuries resulting from the brake failing in that situation.

Chrysler also is recalling a small but yet-to-be-determined number of 2013 Dodge Darts because they were built with the wrong rear brake calipers and that could prevent the parking brake from working. It appears that the wrong part was installed on just one day in November. The factory discovered the problem, but not before about 50 vehicles were shipped.

Hyundai And Kia Recall 1.9 Million Vehicles

Hyundai and Kia have recalled almost 1.9 million vehicles to fix problems with air bags and brake light switches. The switch recall covers almost 1.7 million vehicles—most of the automakers' lineups from the 2007 through 2011 model years. In addition, Hyundai is recalling about 194,000 Elantra compacts from 2011 to 2013 to fix an air bag problem. Hyundai models affected by the brake light switch recall include the 2007 to 2009 Accent and Tucson, the 2007 to 2010 Elantra, the 2011 Sonata, the 2007 to 2011 Santa Fe, the 2008 to 2009 Veracruz and the 2010 to 2011 Genesis Coupe. Kia models include the 2007 to 2010 Rondo and Sportage, the 2011 Optima, the 2007 to 2011 Sorento, the 2010 to 2011 Soul and the 2007 Sedona.

Ford Recalls Vehicles For Fuel Tank Leaks

Ford has recalled some 2013 Ford Explorers, as well as some 2012 models of the Ford Taurus and Lincoln MKS because of concerns that leaks in the fuel tank pose a fire risk. The action involves about 3,037 cars and utility vehicles that were manufactured from July 19, 2011, to March 15, 2012. All the vehicles are made at the Chicago auto plant.

Ford notified owners by letter starting on April 22. Owners are to take their vehicle to a dealer to have the fuel tank inspected. If the seal is not adequate to provide the strength needed in the case of an impact the fuel talk should be replaced. No accidents, injuries or fires have been reported. Ford has had warranty claims for some fuel tanks that had either odor or fuel leaks, both in the U.S. and Saudi Arabia.

Subaru Recalling Vehicles To Fix Brake Problem

Subaru has recalled thousands of Legacy and Outback all-wheel-drive vehicles in the U.S. because the brake lines can rust and leak fluid. The recall affects cars from the 2005 through 2009 model years sold in states where salt is used to clear roads in the winter. Subaru says in documents filed with the National Highway Traffic Safety Administration (NHTSA) that salt can cause the brake lines to rust and leak. If fluid leaks, it could cause longer stopping distances, increasing the risk of a crash. The documents didn't say if the problem has caused any crashes. At press time Subaru was still totaling the number of vehicles affected. The company sold more than 316,000 Legacys and Outbacks from 2006 through 2009, according to Autodata Corp. Subaru will check the cars for leaks and replace brake lines if necessary.

GM Recalls Some 2013 Buick Encores For Loose Steering Wheel

General Motors Co has recalled a small number of 2013 Buick Encores because the steering wheel could come loose or separate from the steering column. The recall affects 144 Encores equipped with heated steering wheels and built between Dec. 9 and Dec. 28, GM said in a filing with the National Highway

Traffic Safety Administration (NHTSA). The Encore, a new compact crossover vehicle introduced in January by Buick, is built by GM Korea. A companion model is sold by GM in Europe as the Opel Mokka.

In its filing, GM said a steering wheel fastener on the Encore may not have been properly installed. In a statement, GM said "there are no known injuries or crashes related to the issue." The company said it had contacted 59 customers who had taken delivery of Encores with heated steering wheels "and their vehicles are being inspected." GM said the other 85 unsold vehicles were being inspected at Buick dealerships "and none have been found to have the issue."

Honda Recalls Odyssey And Acura Models

Honda has recalled certain model year 2012-2013 CR-V, Odyssey, and model year 2013 Acura RDX vehicles. During sub-freezing temperatures, the brake-shift interlock blocking mechanism may become slow and allow the gear selector to be moved from the Park position without pressing the brake pedal. These vehicles fail to conform to the requirements of Federal Motor Vehicle Safety Standard 114, "Theft Protection and Rollaway Prevention." If the gear selector is moved from the park position without pressing the brake pedal it can allow the vehicle to roll away, increasing the risk of a crash.

Honda will notify owners and instruct them to take their vehicle to a Honda or Acura dealer. The dealer will install an updated brake shift interlock blocking mechanism free of charge. The recall is expected to begin May 13, 2013. Owners may contact Honda at 1-800-999-1009. Honda's campaign recall numbers are S96, S97, and S98.

Honda Recalls Nearly 46,000 Fit Small Cars

More than 45,000 of the company's Fit sport cars have been recalled by Honda Motor Co. The company's small car can tilt too far in a sharp turn. The problem is in the electronic stability control system software, according to the company, and affects the 2012 and 2013 Fits. According to NHTSA, the cars may tilt too far during sharp turns, possibly leading to loss of tire traction and increasing the risk of a crash. No accidents or injuries have been reported, according to Honda. Owners will be notified by mail this month.

More Than 10,000 Subaru Foresters For Curling Floor Mats

Subaru is recalling 10,137 Foresters to fix floor mats that can curl and block the driver's pedals, according to filings with the National Highway Traffic Safety Administration. Floor mats on certain 2014 Forester crossovers can curl "when exposed to heat," Subaru said, which could mean anything from engine and transmission heat radiated through the driver's footwell to ducted hot air from the climate-control system. On April 1, the automaker found 21 Forester models at a Washington state port with curled floor mats and later instructed dealers to remove floor mats after finding that the resin used on the mat's backing was defective. Subaru dealers will begin replacing all four carpeted floor mats by the end of April. Owners can call Subaru at 1-800-782-2783 for more information.

Source: NHTSA

Seat Wiring Harness May Short Circuit

Explorer Van Company, Inc. has recalled certain model year 2013 Explorer and Explorer Limited SE vehicles built on GMC Savana and Chevrolet Express chassis, manufactured August 1, 2012, through April 9, 2013. The wiring harness that powers the seat adjuster and the seat heating circuit may not be properly secured. As a result, the harness may become lodged in the seat riser mechanism. If the wires become lodged in the seat riser mechanism, they may become severed and potentially short circuit. A short circuit may result in a fire.

Explorer Van Company will notify owners, and dealers will secure the seat wiring harness. Any damaged seat wiring harnesses will be replaced. These services will be completed free of charge. The recall is expected to begin May 17, 2013. Customers may contact Explorer Van Company at 1-574-267-7666. Explorer's number for this campaign is 2013-1.

Tire Tread Shoulder Chunking

Federal Corporation has recalled certain Couragia A/T tires, size P265/75R16 116S, DOT Serial Numbers UX77 3210-UX770813. In the affected tires, excessive heat causes tread shoulder chunking. As a result, these tires fail to conform to the durability test requirements of Federal Motor Vehicle Safety Standard No. 139, "New Pneumatic Radial Tires for Light Vehicles." Tire shoulder tread chunking could cause a tire failure and increase the risk of a crash. Federal Corporation is notifying owners and will replace the tires, free of charge. The recall was expected to begin at the end of April 2013. Owners may contact Federal Corporation through its consumer hotline at 1-855-444-8250.

Bell Sports Recalls BMX Bike Helmets

Approximately 2,500 Bell Full Throttle Bike Helmets have been recalled by Bell Sports Inc. of Scotts Valley, Calif. The buckle on the helmet's safety strap can release in an accident and allow the helmet to fall off the rider, posing a risk of head injury. This recall involves Bell Full Throttle, full coverage bicycle motocross (BMX) helmets with a chin bar. The all-black helmets have UPC code 035011 937052 and part number 1009159 printed on a label on the side of the helmet shell. The Bell logo is affixed to the front and lower side of the helmet.

The helmets were sold exclusively by Toys R Us stores nationwide and online at ToysRUs.com between July 2012 and January 2013 for about $60. Consumers should immediately stop using the recalled helmets and contact Bell Sports for instructions on receiving a full refund. Consumers can contact Bell Sports Inc. toll-free at 1-866-892-6059 from 8 a.m. to 5 p.m. CT Monday through Friday, or visit Bell's website at www.bellbikestuff.com and click on "Recall Notice" for more information.

Huffy Recalls Slider Tricycles

About 5,040 2012 Huffy® 20-inch Slider Tricycles have been recalled by Huffy Corp. of Centerville, Ohio. The handlebar can unexpectedly loosen while in use, causing the rider to lose control. This poses crash and fall hazards for the rider. The recalled product is the 2012 model year 20-inch, three-wheeled Slider. The tricycle has a white frame with a black seat and black handlebars. "Huffy" is printed on the front of the frame; "Slider" is printed on the frame's side. The model number, 98682, is located on the frame under the seat.

The tricycles were sold exclusively at Toys R Us nationwide from January 2013 through February 2013 for about $100.Consumers should immediately stop using the tricycle and contact Huffy for instructions on how to obtain a refund. Contact Huffy toll-free at 1-888-366-3828 from 8 a.m. to 8 p.m. ET Monday through Friday or online at www.huffybikes.com and click on "Product Recall" on the bottom of the page.

Dynacraft Recalls Urban Shredder Ride-On Toys

About 8,900 Urban Shredder Ride-On Toys have been recalled by the distributor Dynacraft BSC Inc., of American Canyon, Calif. and the manufacturer Heshan Congtin Technological Development Co. Ltd., of China. The Urban Shredder ride-on toys can unexpectedly accelerate and cause the rider to lose control, posing a fall hazard. This recall involves battery-operated Hot Wheels branded Urban Shredder ride-on toys. The toys were sold in green and black (Model Nos. 8801-05 and 8801-05com) or red and black (Model No. 8801-15) and have Hot Wheels graphics. Recalled models were manufactured September 15, 2012, October 15, 2012, or December 1, 2012. Model number 8801-15 or 8801-05 or 8801-05com and the date of manufacture, formatted as "YYYY/MM/DD," are printed on a data label on the underside of the Urban Shredder. The serial number can be found etched or printed on the underside of the Urban Shredder near the data label. Serial numbers included in the recall have:

- letters "CT-EEI" followed by a six-digit number in the range of 000001 through 003075 and 010759 through 011075;
- or the letters "CT-EEJ" followed by a six digit number in the range of 003076 through 010758;
- or the letters "CT-CEJ" followed by a six digit number in the range of 003000 through 005000.

Dynacraft has received 17 reports of the Urban Shredder toys accelerating. No injuries have been reported. The toys were sold at Target, Toys R Us and Walmart stores and online at Amazon.com, Target.com, ToysRUs.com and Walmart.com from November 2012 to February 2013 for between $270 and $350. Consumers should immediately stop using the recalled toy, disconnect the battery and return the shredder to the store where purchased for a refund or store credit. Contact Dynacraft at 1-800-551-0032 from 7 a.m. to 4 p.m. PT Monday through Friday or online at www.dynacraftbike.com, and click on "Owners," then select "Warnings/Recalls." Photos are available at http://www.cpsc.gov/en/Recalls/2013/Dynacraft-Recalls-Urban-Shredder-Ride-On-Toys.

Bugaboo Strollers With Handle Problem Recalled

Bugaboo Cameleon 3 Strollers have been recalled because the stroller's carrying handle can break and detach, posing a fall hazard. The removable carry handle is used to transport the bassinet or seat separately from the chassis. Though the company has received 16 reports of carry handles breaking, no injuries have been reported. The strollers were manufactured in China by Bugaboo International B.V. of Amsterdam, The Netherlands, and imported by Bugaboo Americas of El Segundo, Calif.

The stroller has an aluminum and plastic frame with rubberized wheels, a removable seat and bassinet, a removable "U"-shaped carry handle, an under-the-seat storage bag and a sun canopy. Strollers included in the recall have serial numbers from 19010 11153 00001 to 19010 51248 00215. They were sold by Buy Buy Baby, Toys R Us and other baby product stores nationwide, Neiman Marcus, Nordstrom, online at Bugaboo.com and other online retailers from September 2012 to March 2013 for between $889 and $1,600.

Consumers should immediately remove the carry handle from the stroller's bassinet or seat and contact Bugaboo for a free replacement handle. While awaiting the replacement handle, consumers can continue to use the seat or bassinet when attached to the chassis but should not attempt to use the seat or bassinet separate from the chassis. Consumers can contact Bugaboo Americas, at 1-800-460-2922, from 7 a.m. to 4 p.m. PT Monday through Friday, at e-mail serviceus@bugaboo.com or online at www.bugaboo.com, and click on "Important Safety Announcements" at the bottom left of the page for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Bugaboo-Recalls-Cameleon3-Strollers.

iCandy World Recalls Cherry Strollers Due to Strangulation Hazard

About 830 Cherry model strollers have been recalled by iCandy America Inc., of Brooklyn, N.Y. The opening between the bumper bar and seat bottom of the stroller can allow an infant's body to pass through and become entrapped at the neck, posing a strangulation hazard to young children when a child is not harnessed. This recall includes the iCandy Cherry stroller only in the colors Fudge (light-medium brown) and Liquorice (red and black). The iCandy Cherry stroller system has a telescopic folding frame where a seat, bassinet or infant carrier car seat can be placed. The seat unit features three recline positions, adjustable footrest, 5-point safety harness, removable canopy and removable bumper bar. There is a printed white cherry logo on the rear of the seat unit.

The strollers were sold at Buy Buy Baby and other juvenile product stores nationwide and online at www.buybuybaby.com and other online retailers from October 2009 through December 2012 for about $400. Consumers should immediately remove the bumper bar from the strollers and contact iCandy America Inc. to receive a free replacement bumper bar. Consumers can continue to use the strollers while awaiting the replacement bumper bar. Consumers may contact iCandy America toll-free at 1-877-484-4179 anytime, e-mail info@icandyamerica.com or visit iCandy's website at www.icandyworld.com and click "United States of America" and "Important Safety Information—iCandy Cherry."

BabyHome USA Recalls High Chairs

About 1,100 baby high chairs have been recalled by BabyHome USA, Inc., of Chester, N.J. The front opening between the tray and seat bottom of the high chair can allow a child's body to pass through and become entrapped at the neck. This poses a strangulation hazard to young children when the child is not harnessed. This recall includes Eat model high chairs in red, black, green, purple, navy, orange, and brown. The model number BH2104 is located on a label on the back of the high chair. The word "babyhome" is printed on one leg of the chair and the word "eat" is printed on the opposite leg of the chair. The high chairs have a nylon fabric seat with a plastic tray and metal frame. The high chairs measure about 36 inches high and 24 inches wide. There is a printed white "babyhome" logo shaped like a backward letter "h" on the seatback. The recalled high chairs have lot numbers: BH00301/01-2012, BH00303/07-2012, BH00304/09-2012 and BH00304/09-2012. The lot numbers are located on a sticker affixed to the bottom of the footrest.

The high chairs were sold at Juvenile product stores nationwide including USA Baby, Magic Beans and RC Willey and online at Amazon.com, Babiesrus.com and Diapers.com from March 2012 through February 2013 for about $150. Consumers should stop using the high chairs immediately and contact BabyHome USA to receive a free crotch restraint repair kit. Consumers can contact BabyHome USA Inc. toll-free at 1-888-758-5712 from 9 a.m. to 5 p.m. ET Monday through Friday, or online at www.babyhome.es and click on "Eat Recall" for more information.

PT Domusindo Perdana Recalls Drop-Side Cribs

About 73,000 PT Domusindo Perdana drop-side cribs have been recalled by JC Penney Corp., of Plano, Texas. The cribs' drop sides can malfunction, detach or otherwise fail, causing part of the drop side to fall out of position, creating a space into which an infant or toddler can roll and become wedged or entrapped, which can lead to strangulation or suffocation. A child can also fall out of the crib. Drop-side incidents can also occur due to incorrect assembly and with age-related wear and tear.

This recall includes 14 models of PT Domusindo Perdana wooden drop-side cribs. The name, model number and date codes are printed on the plywood mattress board.

343-1509 – Jenny Lind Crib – 01/1991-12/1997

343-3810 – Christopher Crib – 2001

343-5500 – Early American Crib – 01/1998-12/1999

343-6771 – Scottsdale Crib – 01/1998/12/1999

343-7100 – Sleigh Crib without Rosette – 01/2004-12/2006

343-7134 – Sleigh Crib – 01/2001-2/2004

343-7144 – Anniversary Sleigh Crib – 01/2002-12/2004

343-7753 – Kristin Crib – 01/1998-12/1999

343-8249 – Cameron Crib – 01/1998/12/1999

343-8020 – Solid Panel Sleigh Crib – 01/2001-12/2002

343-8070 – Roll Bar Convertible Crib – 01/2004-12/2005

343-8155 – Anniversary Convertible Sleigh Crib – 01/2002-12/2006

343-8200 – Spindle Convertible Crib – 01/2001-12/2005

343-8913 – Bella 3-in-1 Crib – 01/2005-12/2008

CPSC and JCPenney say they are aware of three incidents involving drop side rails that malfunctioned or detached. No injuries were reported. The cribs were sold at JCPenney.com and in the JCPenney catalog from January 1998 through December 2008 for between $200 and $400.

Consumers should immediately stop using the recalled cribs and contact customer service at Modus Furniture International to get a free immobilizer kit that will immobilize the drop side. The immobilizer kits will be available in May 2013. In the meantime, parents are encouraged to find an alternate, safe sleep environment for the child, such as a bassinet, play yard or toddler bed depending on the child's age. Consumers can contact Modus Furniture International at 1-800-827-2129 from 8 a.m. to 5 p.m. PT Monday through Friday, or visit the Modus website at www.savannababy.com and click on the Recall tab for more information. To see photos of the recalled products, go to http://www.cpsc.gov/en/Recalls/2013/PT-Domusindo-Perdana-Recalls-Drop-Side-Cribs/.

Manchester Tank & Equipment Company Recalls Propane Cylinders

About 7,500 100-pound Propane Cylinders has been recalled by Manchester Tank & Equipment Company of Elkhart, Ind. Fuel can leak from the thread connection between the cylinder and valve, posing a fire hazard if exposed to an ignition source. The recalled Manchester Tank & Equipment Company cylinders included in the recall were manufactured January through September 2012. The date of manufacture is printed on the collar by month and year, so "6 * 12" represents June 2012. The name Manchester and the water capacity "WC238#" are also pressed into the collar. These gray 100-pound DOT propane cylinders measure about 41" high and about 15" in diameter. Manchester 100-pound propane cylinders with a green dot on the handwheel on the top of the cylinder are not included in the recall.

Consumers should stop using the propane cylinders and call Manchester or go to the company's website for instructions on having their gas cylinder inspected by a qualified propane equipment dealer and repaired if needed. A list of propane equipment distributors, RV distributors and retail distributors are listed on the Manchester's website at www.mantank.com on the "Distributors" page. Consumer may contact Manchester Tank & Equipment Co. at 1-800-640-6327 from 8 a.m. to 5 p.m. ET Monday through Friday or visit the Manchester website at www.mantank.com and click on the "News" page for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Manchester-Tank-And-Equipment-Company-Recalls-Propane-Cylinders.

3M Recalls Filtrete Room Air Purifiers Due To Fire Hazard

About 10,000 Filtrete™ room air purifiers have been recalled by 3M Company of St. Paul, Minn. The ion generator in the air purifiers can overheat, posing a fire hazard. This recall involves 3M air purifiers branded Filtrete. The air purifiers are white, made of plastic and plug into the wall. They measure about 19 inches tall by 8 inches wide with a 13 inch tall by 4.5 inch wide air filter. They have a two-speed fan knob with Filtrete embossed on the top. The two recalled models are Ultra Quiet, number FAP00-

RS, and Maximum Allergen, number FAP00-L, which was sold only at Lowe's stores. The products serial numbers begin with E, F, G, H, I or J and the model and serial numbers are located on the bottom of the product.

3M has received two incident reports: one of an air purifier overheating and another of an internal room air purifier filter catching fire. No injuries or property damage have been reported. The air purifiers were sold at Ultra Quiet at Ace Hardware, Bi-Mart, Do It Best, Fred Meyer , Handy Hardware Wholesale, Nuthouse, Orchard Supply, Orgill Bros ., Petco, Rite Aid, Strosniders, Theisen Farm & Home and True Value Hardware stores nationwide, and online at Amazon.com and others. Maximum Allergen was sold only at Lowe's stores. The FAP00-RS model was sold from November 2008 through January 2013, and the FAP00-L model was sold from October 2012 through January 2013, both for about $60.

Consumers should immediately unplug the recalled air purifier and contact 3M to obtain a prepaid shipping box to return the product for a free replacement. Consumers can contact 3M Company at 1-800-388-3458 from 7 a.m. to 6 p.m. CT Monday through Friday, or online at www.filtrete.com/roomairpurifiers and click on the link FAP00-RS recall for more information.

Home Depot Recalls CE Tech Riser Cable

About 11,300 CE Tech 1,000 ft. Riser Cable have been recalled by Home Depot U.S.A. Inc., of Atlanta, Ga. The riser cable does not meet fire resistance standards for riser cable, posing a fire hazard. This recall involves 1,000 ft. CE Tech riser cable sold in boxes of 1,000 ft. lengths. It is intended to run between floors of a building as data cable. This type of cable must self-extinguish in a fire. The cable is gray and marked (UL) E316395. The cable's box is blue and black and is marked CE Tech 1,000 ft. riser cable, Cat 6 23-4.

The cables were sold exclusively at Home Depot stores nationwide from January 2013 through February 2013 for about $100. Consumers should remove the recalled cable and return it to Home Depot for a full refund. Consumers may contact Home Depot at 1-800-394-7519 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.homedepot.com and click on Product Recalls for more information.

West Elm Recalls Floor Lamps Due To Injury And Shock Hazards

About 900 Floor Lamps have been recalled by West Elm, a division of Williams-Sonoma, Inc., of San Francisco. A failure of the lamp's joint locking mechanisms can cause the lamp to collapse and the electrical cord to spark, posing injury and shock hazards to consumers. This recall involves Industrial Overarching model floor lamps with an iron base and arm in an antique bronze finish, one light socket and a round natural linen shade. They are approximately 78 inches tall and have a swiveling triple-jointed adjustable arm and an ON/OFF foot switch at the base. The lamp's shade is about 12.5 inches high, 18.5 inches in diameter at the top, and 21 inches in diameter at the bottom.

Model number 192799, 192856, 465906 or 465922 and "Industrial Overarching Floor Lamp" appear on the on the lamp's packaging. The model name and the date of manufacture in MM/YYYY format are printed on a sticker affixed to the underside of the base. Dates of manufacture included in the recall are between 08/2012 (Aug. 2012) and 02/2013 (Feb. 2013). West Elm has received 24 reports of product failures, including 10 incidents of lamps collapsing and three incidents of the cord sparking There have been no reports of injuries.

The floor lamps were sold at West Elm stores, in its catalog and online nationwide from December 2012 through February 2013 for about $380 with the shade and $300 without the shade. Consumers should immediately unplug the recalled lamp and return it to West Elm for a full refund, including return shipping. Consumers may contact West Elm toll-free at 1-855-776-6953, from 7 a.m. to midnight ET every day, or online at www.westelm.com. Click on Safety Recalls at the bottom of the page for more information. Photos available at http://www.cpsc.gov/en/Recalls/2013/West-Elm-Recalls-Floor-Lamps.

Trident Diving Equipment Recalls High-Pressure Scuba Diving Air Hoses

About 200 High-Pressure Scuba Diving Air Hoses have been recalled by Trident Diving Equipment of Chatsworth, Calif. The diving hose that connects the regulator to the tank's pressure gauge can leak, posing a drowning hazard to the user. The recalled air hoses are high-pressure scuba air hoses with a black, smooth rubber outer covering. They are about five millimeters in diameter and 32 or 36 inches long. These hoses connect the regulator to the tank pressure gauge. The phrase "Scuba Diving High Pressure hose I.D. 3/16 (4.76 mm) W.P. 5000 PSI Exceeds SAE 100RT braid with Kevlar fiber from Dupont" is printed in white lettering on the hose's outer covering. The hoses have metal fittings on each end—one female fitting and one male fitting. "CE EN 250 230" is stamped on the female fitting and one of the following production date codes is on the male hex head fitting: T1011, T1111 or T0312. Trident has received one report of a hose leaking. No injuries have been reported.

The hoses were sold at scuba diving retailers nationwide from November 2011 through June 2012 for about $35. Consumers should immediately stop using the hoses and contact Trident Diving Equipment for a free replacement hose at 1-800-234-3483, from 9 a.m. to 4 p.m. PT Monday through Friday, or e-mail TridentDive@aol.com or online at www.TridentDive.com. Click on "Smooth High Pressure Hose Safety Recall" for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Trident-Diving-Equipment-Recalls-High-Pressure-Scuba-Diving-Air-Hoses/

J&J Recalls 1.9 Million Blood Glucose Meters

Johnson & Johnson's LifeScan Inc. unit has recalled nearly 2 million blood glucose meters across the globe after discovering that the meters malfunction when they register extremely high readings. According to the company, three brands of its blood glucose meters shut off when they encounter blood glucose levels of 1024 milligrams per deciliter and higher, rather than display a warning to users that they should seek immediate medical attention. The meters should display the warning for glucose readings of more than 600 mg/dL. Without the warning, patients may not receive the treatment necessary for extreme hyperglycemia, which could result in a serious health risk or fatality, LifeScan said.

While LifeScan is only recalling approximately 90,000 OneTouch Verio IQ meters in the U.S., it's calling back nearly 1.9 million meters under the OneTouch Verio IQ, OneTouch Verio Pro and OneTouch Verio Pro+ brands in other markets worldwide for the similar faulty reading issues. So far, there have been no patient injury reports within the U.S. and one serious adverse event report outside the country.

LifeScan noted that patients could continue to use the faulty blood glucose meters while awaiting their replacements, but said they should contact a physician if their meter unexpectedly shuts off during testing. It advised health care professionals to stop distributing the meters. "The likelihood of experiencing an extremely high blood glucose level of 1024 mg/dL or higher is remote; however, when such a blood glucose level occurs, it is a serious health risk requiring immediate medical attention," the company said in a statement.

LifeScan had issued another recall in March of this year for five faulty lots of its OneTouch Ultra Control Solution, which is used to verify meters and test strips work together correctly. According to the company, the solution lots at issue may say the blood glucose meters are malfunctioning when they work properly, which could prompt users to delay blood sugar testing until the issue is resolved.

Green Valley Drugs Has Recalled Sterile Products Due To Quality Control Concerns

Green Valley Drugs has recalled all lots of all sterile products compounded, repackaged, and distributed by the pharmacy due to lack of sterility assurance and concerns associated with the quality control processes. A full list of the recalled products can be accessed at greenvalleymed.com. The recall of sterile products is conducted based on observations of clean room personnel and certain aseptic techniques.

Green Valley says it has received no reports of injury or illness associated with the use of its sterile products. In addition, the company says it has received no indications of endotoxins or sterility issues from independent outside testing laboratories associated with any of the products subject to this recall. In the event a sterile product is compromised patients are at risk for serious and possible life threatening infections.

Green Valley Drugs sterile products covered under this recall were distributed nationwide. Until further notice, health care providers should stop using all lots of sterile products and return them to the company. Consumers or Health Care providers with questions regarding this recall may contact Green Valley Drugs by phone at 1-702-564-2079 Monday through Friday between the hours of 9 a.m. to 5 p.m. PDT, or e-mail pharmacy@greenvalleymed.com. Patients who have received any product distributed by Green Valley Drugs and have concerns should contact their health care provider.

Adverse reactions or quality problems experienced with the use of this product may be reported to the FDA's MedWatch Adverse Event Reporting program either online, by regular mail, FAX or online. Go to www.fda.gov/medwatch/report.htm. When using regular mail use the postage-paid, pre-addressed Form FDA 3500 available at www.fda.gov/MedWatch/getforms.htm and mail to the address on the pre-addressed form.

Six Retailers Announce Recall Of Buckyballs And Buckycubes High-Powered Magnet Sets

The U.S. Consumer Product Safety Commission (CPSC), in cooperation with six retailers, has announced the voluntary recall of all Buckyballs and Buckycubes high-powered magnet sets sold by these companies. CPSC continues to warn that these products contain defects in the design, warnings and instructions, which pose a substantial risk of injury and death to children and teenagers.

Imported by Maxfield & Oberton LLC, of New York, N.Y., Buckyballs and Buckycubes consist of sets of numerous, small, high-powered magnets. These sets vary in the number of magnets included and come in a variety of colors. Individual magnets in the set are about 5 millimeters in diameter. Individual magnets in Buckyballs are spherical and individual magnets in Buckycubes are cube-shaped. About three million sets of Buckyballs and Buckycubes have been sold in U.S. retail stores nationwide and online since 2010 for between $5 and $100.

Consumers should take the high-powered magnet sets and all associated individual magnets away from children and teenagers and contact the retailer from which they purchased the product to obtain instructions for their remedy:

- Barnes & Noble, toll-free at 1-855-592-2993 or online at www.barnesandnoble.com and click on "Product Recalls;"
- Bed Bath & Beyond, toll-free at 1-800-462-3966 or online at www.bedbathandbeyond.com and select "Safety and Recalls" under Customer Service, then click on Recall Information;
- Brookstone, toll-free at 1-866-576-7337 or online at www.brookstone.com and click on "Recall Information" under Shop Brookstone;
- Participating Hallmark retailers, toll-free at 1-800-425-5627 or online at http://www.hallmark.com/recall-product/;
- Marbles the Brain Store, toll-free at 1-877-527-2460 or online at www.marblesthebrainstore.com
- ThinkGeek, toll-free at 1-888-433-5788 or online at www.thinkgeek.com/buckyballs/index.shtml.

These retailers have agreed to participate because Maxfield & Oberton, the company that imported the products, has refused to participate in the recall of all Buckyballs and Buckycubes. In July 2012, CPSC staff filed an administrative complaint against Maxfield & Oberton Holdings LLC, of New York, N.Y., after discussions with the company and its representatives failed to result in a voluntary recall plan that CPSC staff considered to be adequate to address the very serious hazard posed by these products. This type of legal action against a company was said to be rare. The CPSC has filed only four administrative complaints in the past 11 years. The CPSC has received 54 reports of children and teens ingesting this product, with 53 of these requiring medical interventions.

Baby Socks Recalled By Trumpette Due To Choking Hazard

About 33,000 pairs of "Aubree's" and "Hearts" baby socks have been recalled by Asia Socks of China. The flowers and the bows on the baby socks can detach, posing a choking hazard to young children. This recall involves "Aubree's" and "Hearts" baby socks sold in sizes 0 to 12 months. "Aubree's" socks have flowers attached to the toes. "Hearts" socks have bows attached to the toes of the heart-patterned socks. "TRUMPETTE" is printed on the soles. They were sold in packages of six pairs of socks in multiple colors. The firm has received eight reports of the flowers or bows detaching from the socks. The company also says no injuries have been reported. The socks were sold at Buy Buy Baby, Right Start and Trumpette stores nationwide and online at buybuybaby.com, rightstart.com and trumpette.com for about $15.

Consumers should immediately take the recalled socks away from babies and remove the flowers or bows to eliminate the hazard, or return the socks to the place of purchase or Trumpette for a full refund or store credit. Contact Trumpette Inc. toll-free at 1-877-938-7265, from 7:30 a.m. to 3:30 p.m. PT Monday through Friday, or online at www.trumpette.com and click on Recall for more information.

Infant Froggy Socks Sold At Cracker Barrel Recalled

About 5,000 pairs of Infant Froggy Socks have been recalled. The stitched knit frog face and feet on the socks can detach, posing a choking hazard to infants and young children. Consumers should immediately take the recalled froggy socks away from infants and young children, return the socks to any Cracker Barrel Old Country Store for a full refund or send the socks to Classic Characters for a full refund plus shipping. Send to Classic Characters, 1320 Route 9, Champlain, N.Y. 12919 via UPS ground or US Postal Service. The knit ankle infant socks have a red ankle border with a lime green sock that has four fabric feet and a dark green frog head with black and white eyes and a red tongue stitched to the top of the toe of the socks. The socks were sold with a Cracker Barrel price tag printed with SKU number 417662, S110, size 6-18M, fiber content and care instructions on the back of the tag.

The socks were sold exclusively at: Cracker Barrel Old Country Store® locations from January 2013 to March 2013 for about $7. Consumers can contact Classic Characters toll-free at 1-877-298-9620 from 9 a.m. to 5 p.m. ET Monday through Friday or online at www.classiccharacters.com and click on safety notice for more information. Photos are available at http://www.cpsc.gov/en/Recalls/2013/Classic-Characters-Recalls-Infant-Socks.

Small World Toys Recalls Spin-A-Mals Farm And Safari Puzzles

About 4,000 Children's Wooden Puzzles have been recalled. Small pegs on the puzzle boards can loosen and separate from the boards, posing a choking hazard to children. The recalled products are Ryan's Room brand Spin-A-Mals Farm and Spin-A-Mals Safari puzzles intended for children older than 12 months of age. Both toys are made of wood. The puzzles consist of a painted, rectangular board with pegs mounted to it and removable gear and animal-shaped pieces. The farm puzzle has 14 puzzle pieces including three animal pieces: a cow, a dog and a sheep. The safari puzzle has 11 puzzle pieces. Children place the pieces onto the pegs and use the knob on one of the pieces or insert an animal figure into other pieces to rotate all of the gears. The puzzle boards have "2012 Small World Toys" on the bottom right.

Small World Toys says it has received four reports of pegs separating from puzzle boards. No injuries have been reported. The puzzles were sold at toy stores nationwide and in catalogs from May 2012 through October 2012 for about $25. Consumers should immediately take the puzzles away from children and contact Small World Toys for a free replacement toy. After contacting Small World Toys, the recalled toys should be destroyed and disposed of in a manner to prevent future use. Contact Small World Toys at 1-800-421-4153 from 7 a.m. to 4 p.m. PT Monday through Friday, e-mail recall@smallworldtoys.com, or go online at www.smallworldtoys.com, then click on "Recall" for more information.

Carter's Recalls Infant Clothing With Zippers Due To Choking Hazard

About 218,000 pieces of one-piece footed infant clothing with a zipper have been recalled by The William Carter Company, of Atlanta, Ga. The zipper pull can detach, posing a choking hazard to young children. This recall involves eight styles of one-piece, footed cotton clothing for infants made by Carter's. They have a zipper from the foot to the neck and were sold in sizes newborn, 3, 6 and 9 months. Baby B'gosh®, Child of Mine® made by Carter's or Just One You® made by Carter's is printed on the fabric inside the neck area. The style number is printed on a side seam label.

The clothing was sold at OshKosh B'gosh, Walmart and Target nationwide from December 2012 through January 2013 for between $7 and $20. Baby B'gosh sleepwear was also sold online at www.oshkoshbgosh.com. Consumers should immediately take the recalled clothing away from infants and return it to Carter's for a full refund. Contact Carter's, Inc. toll-free at 1-888-282-4674 from 8 a.m. to 4:30 p.m. CT Monday through Friday, or online at www.Carters.com and click on Product Recalls.

Manda Packing Recalling 468,000 Pounds Of Meat

A Louisiana-based meat packing company has expanded a recall of meat products because of possible Listeria contamination. The Manda Packing Company is recalling 468,000 pounds of roast beef, ham, turkey breast, tasso pork, ham shanks, hog headcheese, corned beef, and pastrami. The products were shipped to retailers in Alabama, Arkansas, Florida, Georgia, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Carolina, Tennessee and Texas. There are eight types of meat sold under 41 different names with various "sell by" dates being recalled. Some of the products may have been sliced at retail delis and if so will not bear packaging information.

Winn-Dixie Recalls Organic Apple Juice On Mold Fears

Winn-Dixie has recalled the 64 oz size of Winn-Dixie Organic 100% Apple Juice. The juice is being recalled because it could have higher than acceptable levels of "patulin," a by-product of some molds that can grow on fruits and vegetables. No reports of illness have been reported. The recall is company-wide for Winn-Dixie stores in Florida, Georgia, Alabama, Mississippi and Louisiana. The UPC number for the product is 2114021626; expiration dates are between 1/15/2014 and 3/25/2014.

To receive a full refund for the juice, customers may present proof of purchase through a receipt or the product packaging label. Consumers with questions about the recalled products can call the Winn-Dixie Customer Service Center toll free at 1-866-WINN-DIXIE (866-946-6349) Monday-Friday, 8 a.m. to 8 p.m. EST; and Saturday 9 a.m. to 4 p.m. EST.

Natura Pet Expands Recall Of Dry Pet Foods

Natura Pet Products is expanding its March 29, 2013 recall of dry pet foods because they have the potential to be contaminated with Salmonella. The expanded recall now includes all dry pet food products and treats with expiration dates prior to and including March 24, 2014. Salmonella can affect animals eating the products and there is risk to humans from handling contaminated pet products, especially if they have not thoroughly washed their hands after having contact with the products or any surfaces exposed to these products.

Healthy people infected with Salmonella should monitor themselves for some or all of the following symptoms: nausea, vomiting, diarrhea or bloody diarrhea, abdominal cramping and fever. Rarely, Salmonella can result in more serious ailments, including arterial infections, endocarditis, arthritis, muscle pain, eye irritation, and urinary tract symptoms. Consumers exhibiting these signs after having contact with this product should contact their health care providers.

Pets with Salmonella infections may be lethargic and have diarrhea or bloody diarrhea, fever, and vomiting. Some pets will have only decreased appetite, fever and abdominal pain. Infected but otherwise healthy pets can be carriers and infect other animals or humans. If your pet has consumed the recalled product and has these symptoms, contact your veterinarian.

Sampling conducted by the Michigan Department of Agriculture and the Georgia Department of Agriculture confirmed the presence of Salmonella in additional dry pet food and a cat pet treat. Natura is also recalling product made in the surrounding timeframe. This action affects dry pet foods and treats only. No canned wet food or biscuits are affected by the recall. The affected products are sold through veterinary clinics and select pet specialty retailers nationwide and in Canada, Hong Kong, Korea, Japan, Malaysia, Singapore, Australia, and Costa Rica, as well as online.

Consumers who have purchased these pet foods should discard them. For additional information, consumers may visit www.naturapet.com. For a product replacement or refund call Natura toll-free at 1-800-224-6123 Monday-Friday, 8 a.m. to 5:30 p.m. CST.

Once again, there have been an extremely large number of recalls. As a result, we weren't able to include all of them in this issue. We tried to include those of the highest importance and urgency. If you need more information on any of the recalls listed above, visit our firm's web site at www.BeasleyAllen.com/recalls. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

XVIII. FIRM ACTIVITIES

Employee Spotlights

BRUCE HUGGINS

Bruce Huggins, who heads up our firm's Investigative Section, is an extremely valuable employee. He has been with the firm for 25 years, reaching that milestone last month. Only Greg Allen, Mike Crow and this writer have been with the firm for a longer time. We learned very early in our firm's existence that having in-house investigators is a definite advantage for the firm and the clients we represent. This Section of the firm employs six full-time investigators, all of whom are professionally trained former law enforcement officers. Bruce, as Chief Investigator, sets a very good example for his team. He has provided excellent leadership in his Section.

Bruce came on board with the firm in April of 1988 from the Montgomery County Sheriff's Office. During his tenure with the Sheriff's office, Bruce won numerous awards, including Officer of the Year. He was the first person from the Sheriff's Office to attend and graduate from the prestigious FBI National Academy in Quantico, Va.

Bruce and Cindy, his wife of 36 years, have two children. Their daughter Amanda followed in her mother's footsteps and became a registered nurse. She has recently returned to the University of Alabama to pursue a writing degree, but still does contract Travel Nursing in California during the summer months to pay tuition and expenses during the school year. Their son Daniel, a graduate of Birmingham Southern, is the Products Manager/Lead Software Developer for Ingenuity, Inc., a Birmingham based company. Daniel and his wife Maridi, who is an Attorney, currently reside in Birmingham. We are most fortunate to have a person with Bruce's ability, background and character heading up an important section of our firm.

KELLI FLANAGAN

Kelli Flanagan, who has been with the firm for 13 years, currently works as a Legal Secretary to Chris Boutwell in our Toxic Torts Section. Kelli graduated with an Associates Degree in Legal Studies from Faulkner University. She has been married to Stephen Flanagan for 14 years and they have three beautiful and very busy young ladies. Alissa (13) is a competitive cheerleader for two squads for the Armory Athletics All-Stars and the treasurer for her school's 4H Club. Eleven-year-old twins Emilee and Bailee are very active as well. Emilee is a jazz dancer while Bailee is a gymnast. The twins are in their school's art club. When not at the Armory for cheer, dance or gymnastics, Kelli says the girls keep her running—but she says she wouldn't trade the opportunity to watch her girls cheer, dance or flip for anything.

Kelli loves to spend time with friends and family, cooking out or just relaxing. She also loves to read. Kelli is a very good, hard-working employee. The role of a Legal Secretary in our firm, because of the complex litigation we handle, is very important. We are fortunate to have Kelli with us.

GWYN HARRIS

Gwyn Harris, who has been with the firm since January of 2001, is a Legal Assistant working on the hormone therapy cases in our Mass Torts Section. Those cases require a great deal of time and attention. Currently, Gwyn is working on the death cases, helping clients get estates set up and substituting parties into the complaints. Gwyn received her BS degree from Auburn University Montgomery (AUM) in Justice and Public Safety with emphasis on Legal Assistant Studies.

Gwyn is married to Heath Harris, who is employed by the Montgomery Water Works. They have a daughter, Adalyn Ruth, who just turned 5 years old. Two dogs named Gator and Daisy also reside at the Harris household. Gwyn loves reading, going to church, spending time with her family, and working with plants or anything outside. Legal Assistants in our firm work closely with our lawyers and are an essential part of each litigation team. Gwyn is a very good employee and we are fortunate to have her with the firm.

LINDA REYNOLDS

Linda Reynolds, who has been with the firm since November of 2000, is currently a Legal Assistant working with Roger Smith in our Mass Torts Section. At present, Linda is helping to finalize the firm's Kugel cases. She is managing the Yaz, Yasmin, and Ocella cases and working to help finalize the settlement in that litigation. She is also working on the Pradaxa, Keppra, and SSRI cases. So you can see Linda has been very busy. These cases are very complicated and required a tremendous amount of time and effort over the time involved from start to finish.

Linda and her husband, Denver, have been married for 30 years. They have two children, one girl and one boy. Her daughter, Mandy, is currently a sophomore at The University of Alabama and attending the Nursing Program. She is also very involved in Panama Missions and travels abroad yearly on Medical Mission trips. Linda's son, Terry, is a Junior in high school and has excelled in working on small motors and especially, Linda says, four-wheelers. Terry's dream is to attend Universal Technical Institute (UTI) in Miami and become a mechanic and either work on automobiles or small motors.

Linda has a Paralegal degree and is two classes away from having a Bachelor's degree in Justice and Public Safety with emphasis in PreLaw. She and her family love to ride trails on their four-wheelers and will ride for hours enjoying God's beautiful outdoor creations. They also enjoy taking their boat to the lake and camping. Linda is a very good, hard-working employee who is dedicated to the clients and their cases. We are most fortunate to have her with us.

XIX. SPECIAL RECOGNITIONS

SPLC Looks At How Payday And Title Loans Prey On Alabama's Poorest

The Southern Poverty Law Center (SPLC) has produced a new booklet titled *Easy Money, Impossible Debt: How Predatory Lending Traps Alabama's Poor*. This publication does an excellent job of explaining how lenders who offer so called "payday loans" and "title loans" take advantage of weak regulations surrounding small-dollar loans. Some folks feel that these lenders are operating a business, like any other, and that the people who take out loans with them are doing so by their own choice. So what is the problem? Isn't it the goal of a business to make money?

The problem is that these businesses are actually designed to trap low-income borrowers into a cycle of debt. Everything about the way the predatory lenders are structured is designed to lend more money than a person can afford, encourage them or trick them into paying only on the interest—thereby never actually reducing the principal or paying off the loan—and force them into rolling the loan over again and again.

These predatory lenders are able to take advantage of the folks taking out these loans who are either desperate or who simply don't understand how the loans work, or both. Some customers diligently make payments on a small loan over time, only to find out they have spent hundreds or even thousands of dollars without making a dent in the principal they owe. A man who operates a payday and title loan business even admits in the booklet, "To be honest, it's an entrapment—it's to trap you."

A payday lender can approve someone to borrow up to 30 percent of his or her paycheck. The money must be repaid to the lender—plus 17.5 percent interest—in two weeks, or basically when the person receives his next paycheck. It must be paid in full. For a title loan or title pawn, as it also is called, a lender and borrower agree on a loan amount based on the value of the borrower's car. The borrower provides the lender with his car title as collateral, but keeps driving his car, for the time being. This loan must be paid in full, plus 25 percent interest, in 30 days. The loan must be paid in full.

Unfortunately, most of these borrowers are in dire straits in the first place. Pew Charitable Trust research shows 69 percent of these clients borrow the money to pay everyday expenses. If they have to borrow money to buy things like groceries, or pay a medical bill, or pay their rent, where is the money going to come from to pay back a loan with interest? Well, the answer is, they usually can't. This is exactly what the lender is counting on.

People with payday loans snowball into multiple rollovers and multiple loans, with ever-increasing payments that will never go toward paying down the actual principal. People with title loans find their cars are repossessed by the lender, who often resells the vehicle at a price greater than the value of the loan and pockets the difference.

The SPLC reports low-income families and individuals end up paying effective annual interest rates of 456 percent for payday loans and 300 percent for title loans. Borrowers are lured in by the promise of a quick solution to their immediate financial problem, but they end up taking the first step into an avalanche of greater debt. They put their trust in these lenders, and believe there must be rules and regulations in place to protect them as consumers. But predatory lenders have no incentives to act as a responsible lender would. They actually benefit from taking advantage of their clients.

The SPLC outlines a number of safeguards lawmakers must put into place in order to prevent predatory lending. These include placing limits on the annual interest rates that can be charged, allowing a minimum repayment period of 90 days, requiring lenders to return surplus money obtained in the sale of repossessed vehicles to the borrower, and creating incentives for savings and small-loan products, among other measures.

History shows that in states that have cracked down on this type of predatory lending, predatory lenders leave the market and borrowers find other, safer avenues for paying their debts. Responsible lending grows up in its place. Our readers are encouraged to get a copy of this eye-opening publication and learn more about payday and title loans, and how they damage communities and families. Talking to legislators about how to change the climate for predatory lenders in Alabama is also needed. We can make this a place where these loan sharks can't operate as they currently do.

The booklets are being distributed free of charge to individuals, legislators, consumer groups, community organizations, and government agencies such as the Consumer Financial Protection Bureau. For more information or to get a copy of the report, contact the SPLC at 334-956-8200 or visit them online at www. splcenter.org.

Source: SPLC

Beasley Allen Hosts The Child Safety Helmet Giveaway

On May 4 our firm will host a Child Safety Helmet Giveaway at Ida Belle Young Park in Montgomery. The safety event is part of our commitment to help educate the public about brain injury. Many people are not aware that each year about 300,000 children go to the emergency room because of injuries received in bicycle accidents. Data show that non-helmeted riders are 14 times more likely to be involved in a fatal crash than helmeted riders. We have enlisted the trained technicians who are with the Think First Alabama initiative and Children's Alabama to properly fit and distribute the helmets at the events the firm sponsors.

The helmets are free to those who register in advance and while supplies last. We believe that these events help educate the public on safety issues. They make sure that folks know not only to use helmets, but also how to use them and what types to use. If you want more information on these events contact Helen Taylor, our public relations coordinator, or Wendi Lewis, the firm's communications director, at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com or Wendi.Lewis@beasleyallen.com.

WSFA News Defenders Interviews

Starting in late April, WSFA-TV in Montgomery, Alabama, started to air special educational segments featuring four of our Personal Injury Section lawyers: Mike Andrews, Ben Baker, Chris Glover, and Rick Morrison. The segment is being promoted as "the 12 News Defenders." The ongoing features were developed to educate viewers on things from online scams to vehicle safety issues. In each of the features, our lawyers will discuss the importance of vehicle crashworthiness, how serious or even fatal brain injuries can be sustained, pointers on maintaining safe tires for your vehicle, and swimming pool safety—all very important issues.

While folks in our area can watch WSFA-TV, everybody can find the segments online at www.wsfa.com. If you have any questions about these programs, contact Helen Taylor, our public relations coordinator, or Wendi Lewis, the firm's communications director, at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com or Wendi.Lewis@beasleyallen.com.

XX. FAVORITE BIBLE VERSES

Kwanzaa White, a receptionist with our firm, furnished two verses for this issue. She says the verse found in Isaiah gives her confirmation that as God's children we are taught about His peace and how we can receive this peace in the midst of whatever is around us. Kwanzaa also says it is great to declare the verse over her children.

All your children will be taught by the Lord, and great will be their peace.

Isaiah 54:13

Kwanzaa says a verse in Colossians reminds her of how much more we have in Jesus Christ. She says that it helps her to get her eyes off current circumstances and helps her to focus back on Him.

Since, then you have been raised with Christ, set your hearts on things above, where Christ is seated at the right hand of God.

Colossians 3:1

Susan Harding, a Legal Assistant in our firm's Mass Torts Section, furnished a verse for this issue.

Trust in the LORD with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge him, and he shall direct thy paths.

Proverbs 3: 5-6

Cristy Herndon, who is from Montgomery, along with her request to stay on the Report list, sent in this timely verse

For the poor will never cease from the land; therefore I command you, saying, 'You shall open your hand wide to your brother, to your poor and your needy, in your land.'

Deut. 15:11

Rev. Andrew E. Dawkins, who is from Prattville, also sent in a favorite verse for this issue. It's one that we should all take to heart:

Consider what I say, and may the Lord give you understanding in all things.

II Tim. 2:7

Pastor Vince Rosato, the Executive Director of Friendship Mission in Montgomery, also sent in several verses this month. We selected two of his for this issue.

Therefore, if anyone is in Christ, he is a new creation; old things have passed away; behold, all things have become new.

Second Corinthians 5:17

He who has pity on the poor lends to the Lord, And He will pay back what he has given.

Proverbs 19:17

Kathy Gunn, who is another of our firm's receptionists, sent in the following verse. With all the disturbance going on in the world today, Kathy says she is thankful for God's promises of protection for his children. Kathy says when we make Him our refuge we are kept safe.

You who sit down in the High God's presence, spend the night in Shaddai's shadow, say this: God you're my refuge. I trust in you and I'm safe!" That's right—he rescues you from hidden traps, shields you from deadly hazards. His huge outstretched arms protect you—under them you're perfectly safe; his arms fend off all harm.

Psalm 91:1-3 (MSG)

XXI. CLOSING OBSERVATIONS

I sincerely hope that recent events in our nation's capitol will wake up the American people. Most folks don't realize how highly paid lobbyists for huge corporations control what happens in Congress. The defeat in the U.S. Senate of a reasonable gun safety bill, one that was backed by almost 90 percent of the American people, tells the story and is Exhibit "A" of how things work in Congress. The National Rifle Association (NRA), the powerful gun lobby, was able to kill this reasonable and badly needed legislation. It was reported that the NRA lobbyists kept "a scorecard" on how the senators voted. That's a sad commentary on how weak some members of Congress truly are. Apparently, they would rather face the voters back home and try to explain their actions to them, rather than incur the wrath of the NRA.

A Monthly Reminder

If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then will I hear from heaven and will forgive their sin and will heal their land.

2Chron7:14

All that is necessary for the triumph of evil is that good men do nothing.

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortune, Which they have prescribed. To rob the needy of justice, And to take what is right from the poor of My people, That widows may be their prey, And that they may rob the fatherless.

Isaiah 10:1-2

The only title in our Democracy superior to that of President is the title of Citizen.

Louis Brandeis, 1937
U.S. Supreme Court Justice

Excellence is in the details. Give attention to the details and excellence will come.

Perry Paxson

XXII. PARTING WORDS

It's a given that Christians have the reality of God's spirit in their lives. Considering that fact, it's very important to understand the effect that this has for each individual person and also how it affects others. Lots of believers are hesitant to discuss the Holy Spirit openly and that's most unfortunate. Jesus promised that the Holy Spirit would come after his death and resurrection and it happened during the Feast of Pentecost just as He promised. From that day forward, over the span of years, the Holy Spirit has been with all Christians. God's gift of the Holy Spirit is still with us—will never leave us—and that's great news!

We must seek for a new and deeper reality of God's spirit in our lives rather than settling just for personal blessings. We are given the opportunity to affect and influence others on a daily basis. How we handle these opportunities is very important. God's spirit is the Holy Spirit and this spirit allows us to become more profoundly holy persons. We can all see how badly we need true holiness in our world today. We should always encourage others by living faithful, holy lives. While I realize that quite often that's a very hard thing to do, we must still strive to do so. I have also learned that it's a goal impossible to accomplish without the Holy Spirit's involvement in our lives on a daily basis.

The Bible is very clear on our duty as Christians. We are to encourage one another to live faithful, holy lives as we await Jesus' return. That is our obligation and it must be our mission. The Holy Spirit helps us to meet this obligation. Jesus will return in glory—it will be a triumphant return—much different than when He first came. Our very existence—as well as our future—is established in the grace and goodness of God in Jesus Christ. My prayer is:

> *Christ who died, Christ who was raised, and Christ who is coming again, help us to be your faithful light until you return. In Jesus name—we pray. Amen.*

May God bless each of you, your families, co-workers and friends in a very Special way. Remember, He loves you!

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