



THE
JERE BEASLEY REPORT

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Beasley Allen

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I. CAPITOL OBSERVATIONS

“TALES FROM GOAT HILL” EVENT SET FOR AUGUST 6

Former Alabama Attorney General Bill Baxley and I have been invited to do a joint presentation at the Capital City Club in Montgomery. The event will be in August and the topic assigned to us is “Tales from Goat Hill.” The moderator will be Alva Lambert and I have no doubt that he alone could make the event a success. Alva, who is known as a master political impersonator, does Governor George Wallace and Senator Howell Heflin to perfection.

For those of our readers who aren’t from Alabama, Bill Baxley was a tremendously talented politician. He also was an outstanding Attorney General, serving two terms from 1971 to 1979. At the age of 28, he was at that time the youngest person in U.S. history to hold a state attorney general position. Bill had a special gift of being able to communicate with the masses. The Dothan native also would tell it straight and there was never any doubt as to where Bill stood on an issue.

Bill also was able to attract good young people to come to work in the Attorney General’s office. I was not surprised that all of them went on to be good citizens and were successful in their respective careers. You will recognize names like Judge Myron Thompson, Judge Charles Price, Judge Sally Greenhaw and U.S. Attorney George Beck, each of whom went to work for Baxley in the 1970s.

I guess the reason Bill and I were selected for the Capitol City event was that we were in office at a young age and at the time we were viewed as being political enemies. Actually, for eight years, we were on the opposite side on only a very few political issues. But that wasn’t the way we were portrayed by the media and perceived by the public. The truth is we were two young men—in office at the same time—each with the ambition to be governor. Obviously, neither of us made it.

Many political experts believe that we may have killed each other off politically. If nothing else, we gave the reporters in those days a lot to write about. In the 1978 Governor’s race, Fob James lumped Bill, Albert Brewer and me together and labeled us “The 3 Bees.” I can see Fob now in his

first news conference swatting the “Bees” with a flyswatter. The reporters all loved it.

The public could never figure out which office I was in and that was frustrating. I was constantly either being called “Bill” or folks thought I was the Attorney General. That went on for the entire 8 years I was in office.

Politics aside, I really liked Bill. But I must admit that I didn’t do a very good job of showing it while we were both in the office. Good relationships are very important in life. The political arena is not exactly the real world. It’s really more fantasy than reality in lots of ways. It’s difficult for persons on opposing sides in politics to develop real and lasting relationships.

Sadly, things are much worse today. The political climate is such that the divisions are much more hostile and mean-spirited than ever. There is a “hate” factor that makes it extremely difficult for opposing sides to get along. There is too much “hating somebody” or “hating something” and that needs to be changed and very soon. Hopefully, we can find a way to work ourselves out of that situation.

“Tales from Goat Hill” is scheduled for Thursday, Aug. 6, at 11:30 a.m. at the Capital City Club in downtown Montgomery. Cost to attend is \$20 per person and includes lunch. For your information, the speakers aren’t getting paid. If anybody is interested in attending, call 334-834-8920 for reservations.

II. MORE AUTOMOBILE NEWS OF NOTE

NHTSA FAILED ITS MISSION IN GM PROBES

The National Highway Traffic Safety Administration (NHTSA) has finally admitted that it missed vital clues in its investigation of fatal crashes linked to the now infamous General Motors Co. ignition switch defect. To its credit, from all appearances, NHTSA is trying to do a better job of regulating the powerful automobile industry. The report, entitled “NHTSA’s Path Forward,” is the culmination of the agency’s internal review of why the ignition switch defect—now linked to more than 100 deaths from crashes involving GM vehicles including Chevrolet Cobalts and Saturn

Ions—took more than a decade to be discovered.

NHTSA claims not to have known about the defect until February 2014. The agency acknowledged that despite having investigated crashes as far back as 2005 involving air bag non-deployment in GM vehicles, it never connected faulty ignition switches to the air bags. Quite frankly—even with limited resources, I find that impossible to justify.

NHTSA also admitted that it hadn’t recognized the ignition switch problem as a potential safety issue, believing that vehicles with stalled engines could still be steered, and that the vehicles’ air bags could be deployed using reserve power. Again, for anybody with even limited

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expertise in auto safety, to not recognize that a defective ignition switch is a serious safety issue is beyond me. The agency said that it did not push GM hard enough to answer its questions about serious crashes, accepting incomplete responses by the automaker, which the agency said had invoked legal privilege. NHTSA said in its report:

Rather than push back and request more information, NHTSA analyzed the incomplete responses, preventing NHTSA from having a complete understanding of all the incidents in question.

NHTSA said that its Office of Defects Investigation, which has the responsibility to identify defects and analyze accident data, will now be required to “study and understand how vehicle systems interact.” NHTSA says a team—called the Safety Systems Team, comprising outside experts—will help the agency implement changes to the way it operates. The agency is also establishing a new internal risk control program. Staff across the agency will be required to communicate about vehicle risk issues throughout its “enforcement, vehicle safety and behavioral safety efforts.” U.S. Transportation Secretary Anthony Foxx said in the statement:

NHTSA has identified improvements, some already in progress and some we plan to make, to better investigate, identify and remedy defects that threaten public safety. With the [Safety Systems Team], we are enlisting three of the most experienced and knowledgeable safety professionals in the world to help us implement these changes. And with the Risk Control Innovations Program, we are breaking down stovepipes and reaching into offices from across NHTSA to address safety risks.

David Friedman, the acting NHTSA administrator at the time, was the person at the agency who defended the agency’s approach last year to lawmakers. He was questioned by several senators on why the agency didn’t recognize stalling as a serious safety problem. In a September hearing before a panel of the Senate Committee on Commerce, Science and Transportation, Friedman claimed that GM had thwarted the agency’s efforts. He said the automaker had “firewalls” in place to block its employees from providing the agency with information. If his assessment of the situation is true, the problems at NHTSA are much deeper than even I thought they were.

NHTSA’s report hit hard on GM’s role in the defect’s belated revelation. It was stated that the automaker’s engineers knew about the faulty part since 2001 and that its lawyers knew at least since April 2013 that the defective part had been changed in a “surreptitious manner” that broke the automaker’s protocol. NHTSA said in the report:

Evidence showed that in-house and outside legal counsel for GM believed a defect preventing air bag deployment existed—ultimately warning that plaintiffs’ counsel would very likely convince jurors that the low-torque switch was defective. This information was not shared with NHTSA until after the announcement of the recall in 2014.

Much of Friedman’s defense of his agency’s reviews of GM car crashes to lawmakers simply doesn’t hold water. He said the link between ignition switches and air-bag failures was more remote than other possible explanations, making it difficult for the agency to have made that connection without GM’s input. I question that assessment because NHTSA definitely had information in its possession that was ignored.

GM is currently settling claims arising from deaths and injuries from ignition switch-related accidents. The compensation fund, administered by Kenneth Feinberg, has done a credible job in reviewing and paying claims. The fund was developed as part of GM’s response to the problem that prompted the recall of some 2.6 million ignition switches last year. We have been generally well satisfied with the amounts awarded to our clients by the Fund.

The report on NHTSA from the Department of Transportation’s Office of Inspector General, released last month, was hard-hitting and quite factual. It’s evident that NHTSA must be properly funded and adequately staffed and this must happen without delay. Our government is currently trying to regulate the powerful automobile industry in a manner that is grossly inadequate. It’s sort of like trying to control an angry elephant with a small switch.

Hopefully both Congress and NHTSA learned lessons—although very painful ones—that will make our highways safer in the near future. Congress must properly fund NHTSA and also make sure the agency has the statutory authority to do its job.

Source: Law360.com

TAKATA AIRBAG RECALLS CONTINUE

The Takata airbag saga continues as the recall expands to include an astounding 34 million cars and trucks. That’s about one in seven vehicles on U.S. highways. As we have previously reported, these vehicles were recalled because Takata air bags can blast shrapnel when deployed and have led to more than 100 injuries and at least eight known deaths. Unfortunately for consumers, Takata has been slow to implement the recalls and release details about the problem, but very quick to shift blame.

Toyota has said that it is recalling an additional 1.37 million vehicles in the U.S. that contain Takata-made front passenger air bag inflators. This brings the total number of Toyota vehicles recalled in the U.S. due to problems with the Takata air bags to 2.9 million. A day earlier, Honda Motor Co. Ltd. said that it was recalling 1 million additional Civics and Accords equipped with the air bags, bringing the number of vehicles in Honda’s recalls of Takata air bag inflators in the U.S. to about 2.3 million. Mazda North America Operations had announced on June 5 that it was adding 540,000 cars and trucks in the U.S. and Canada to the millions of vehicles recalled over the air bag defect.

Then on June 25 Toyota Motor Corp. and Nissan Motor Co. Ltd. announced that they will recall 3 million more vehicles made with the air bag maker’s inflators globally. Toyota will expand its recalls, previously limited to North America, to include the rest of the world. This means the defective passenger side air bag inflators made by Takata are in another 23 models, or 2.86 million vehicles, in China, Japan and Europe.

Nissan is recalling another 198,131 vehicles globally after its May 20 recall of cars equipped with the inflator in North America. Both automakers said that they will replace the impacted vehicles’ air bag inflators. The total number of automobiles in the recall, now at 34 million as of the end of May, makes this the largest recall of its kind, and that number continues to rise.

A Takata executive told the U.S. Committee on Commerce, Science and Transportation last month that the company still hasn’t nailed down a definitive cause for the explosive air bag defect, even though it has been blamed for eight deaths and the largest automotive recall in history, and that is hard to understand. An insult to the American public came about during the Congressional hearing. A comment by one Congressman is particularly enlightening as to Takata’s approach to solving this

deadly problem, “We’ve got a young lady sitting over your shoulder bearing the scars of a mistake that was made, and we’re still not getting the answers,” said Rep. Markwayne Mullin (R-Okla.), pointing to an audience member injured by a defective air bag. “We’re doing a recall and replacing parts with parts that are still faulty. There’s no excuse for that,” he added.

Despite their engineers acknowledging that the cheap propellant was certainly a part of the problem, Takata has not stopped using the propellant ammonium nitrate in airbags. Ammonium nitrate is known to be susceptible to becoming unstable when exposed to heat and humidity. Takata engineers even admit that this characteristic of ammonium nitrate should have prevented it from ever being used in cars. Fortunately, the company has agreed to transition away from the dangerous propellant in favor of guanidine nitrate, which is less susceptible to environmental factors.

Transitioning away from something that could take the life of an unassuming consumer simply isn’t enough. Use of this dangerous chemical propellant should be halted. “I couldn’t believe what they were telling me. They were still making an airbag with ammonium nitrate as a propellant and without a desiccant,” said Rep. Michael Burgess, R-Texas, who chaired the Commerce, Manufacturing and Trade subcommittee hearing on the Takata recalls.

Takata appeared before a Senate committee on June 23 and much of what was said during the hearing appeared to be just more of the same. Kevin Kennedy, a Takata executive, admitted that the company still doesn’t have a definitive cause for the airbag defect. Senators accused Takata of actively concealing the defect that affects 11 car manufacturers’ vehicles. The internal emails that were uncovered and made public appear to badly hurt Takata’s already damaged image and its credibility. The emails indicate the air bag supplier had paused global safety audits from 2009-11 for “financial reasons” even though its manufacturing plants faced quality control problems for more than a decade.

A Takata senior vice president said in a 2011 email that “Global safety audits had stopped for financial reasons for last 2 years,” according to findings by the Democratic minority of the Senate Committee on Commerce, Science and Transportation, which issued its report on June 22.

The congressional report detailed a timeline of Takata air bag inflators rupturing, starting from a 2003 incident in Switzerland that involved a BMW, which the auto parts company characterized as an isolated

case. There was an accident the following year in Alabama that involved a 2002 Honda Accord, and three more that Honda alerted Takata to in 2007, after which Takata found that the rupture could have been caused by a manufacturing process that increased moisture in the propellant, which can make it more dangerous during combustion.

We call on Takata to do right by the American people who expect these dangerous airbags to protect them and their families. If you would like more information about the Takata recalls or anything relating to the air-bag problems, contact Chris Glover, a lawyer in our firm’s Personal Injury/Product Liability Section, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

ANOTHER TAKATA AIRBAG FATALITY REPORTED IN LOUISIANA

As we have stated above another Takata airbag-related death has been reported. This one was in Louisiana. A young woman bled to death after a Takata Corp. air bag in her Honda Motor Co. Ltd. vehicle deployed during a vehicle crash. Shrapnel was fired into her neck, severing an artery. This is the seventh known fatality in the U.S. attributed to defective air bags supplied by Takata. A lawsuit over the death was filed by the victim’s mother in a Louisiana federal court.

Kylan Langlinais, who was 22 years old, was driving her 2005 Honda Civic when it crashed into a utility pole. The driver’s-side air bag shot pieces of metal and other material throughout the car’s interior, severing her carotid artery and ultimately causing her death more than four days later. The complaint alleges:

The Honda defendants and Takata defendants are all directly responsible for plaintiff’s damages, which were caused by the defective air bag safety system in the subject vehicle and which caused Kylan Langlinais’ fatal injuries.

Crystal Lynn Langlinais said that the car was among the millions of Honda vehicles recalled by NHTSA. But she says her daughter only received notice of the recall on April 7, 2015, two days after the accident and two days before her death. The passenger-side air bag did deploy, but the driver was killed by shrapnel from the air bag.

Source: Law360.com

TECHNOLOGY UPDATE: CAN YOUR CAR BE HACKED?

Increasingly, computers control almost every function of newer model cars. Computer chips control braking, acceleration, airbags and can even detect oncoming dangers and maneuver to avoid them. Few folks have a clue about how much they depend on the computers to control almost every aspect of their vehicles. Stephan A. Tarnutzer, chief operating officer for DGE Inc., which provides electronic designs and consulting for auto manufacturers and suppliers, had this to say:

Because they are hidden, people don’t often understand that there can be anywhere from 30 to 40 microprocessors in most cars and even up to 100 different ones running different functions in some vehicles.

But could a hacker compromise the computers in your car? Several months ago, CBS News’ “60 Minutes” aired a segment showing how vehicles can be subject to remote hacking. The “60 Minutes” report came just before a Congressional report was published on the vulnerability of cars to hacking through the wireless networks that could jeopardize driver safety and privacy.

We have come to depend on computers in almost every conceivable manner possible. As vehicles grow increasingly connected through wireless networks and become more dependent on sophisticated electronic systems, Congress and federal regulators are concerned about the potential for hackers to interfere with vehicle functions.

The report overseen by Sen. Ed Markey, D-Massachusetts, says vehicles are vulnerable to hacking through wireless networks, smartphones, infotainment systems like OnStar even a malicious CD popped into a car stereo. Sen. Markey cited studies showing hackers can get into the controls of some popular vehicles. He stated:

This caused cars to suddenly accelerate, turn, kill the brakes, activate the horn, control the headlights, and modify the speedometer and gas gauge readings. Additional concerns came from the rise of navigation and other features that record and send location or driving history information.

Drivers have come to rely on these new technologies, but unfortunately the automakers haven’t done their part to protect

us from cyber attacks or privacy invasions. The technology systems and data security in our cars and trucks remain largely unprotected, according to the reports. The following are two examples of how hacking is a big-time problem:

One example of concerns of potential hacking, BMW AG said it had fixed a security flaw that could have allowed up to 2.2 million vehicles to have their doors remotely opened by hackers. The automaker now encrypts transmissions between cell-phones and cars; the update was completed last month. In another instance, a disgruntled former employee took over a Web-based vehicle-immobilization system at an Austin, Texas, car sales center, and suddenly more than 100 drivers found their vehicles had been disabled or their horns were honking out of control.

Researchers from the University of South Carolina and Rutgers University were able to hack into tire pressure monitoring systems. Using readily available equipment and free software, the researchers triggered warning lights and remotely tracked a vehicle through its unique monitoring system. Researchers at the University of Washington and University of San Diego created a program that would hack into onboard computers to disable brakes and stop the engine. The researchers connected to onboard computers through ports for the cars' diagnostic system.

All of the above is very scary. As usual, automobile manufacturers are woefully behind in implementing failsafes to prevent hacking. Sean Kane, President of Massachusetts-based Safety Research and Strategies, said there has been a "stunning lack of foresight" by regulators to ensure that cars are safe and secure. Mr. Kane added:

Look how many of the last year's recalls related to electronic issues ... it's not going to be that far along whole generations of vehicles that could be vulnerable ... it's not sci-fi. Some 2014 models use 2G technology, he said, that could be a wide open door to hackers.

The issue could be even more important as future vehicles communicate with one another through "vehicle to vehicle" technology to prevent crashes, but could also be at risk of hacking. Markey said govern-

ment and automotive industry officials need to work with cyber-security experts "to establish clear rules of the road, not voluntary agreements" to ensure the safety and privacy of 21st-century American drivers."

Sen. Markey cited a 2013 study funded by the Defense Advanced Research Projects Agency. It found researchers could tap into vehicles' electronic systems through a laptop computer connected by a cable. In initial tests on two 2010 vehicles from different automakers, they were able to do everything from cause the cars to accelerate and turn, to disable brakes and blow the horn. Sen. Markey said some security measures used by automakers, ID numbers and radio frequencies, can be identified and rewritten or bypassed.

The "60 Minutes" segment showed a researcher with a laptop hacking into a new car, turning on windshield wipers, sounding the horn, deactivating brakes, as correspondent Lesley Stahl was unable to stop in a parking lot. In response to these reports, Wade Newton, a spokesman for the Alliance of Automobile Manufacturers, the trade group representing Detroit's Big Three automakers, Toyota Motor Corp., Volkswagen AG and others, said automakers believe strong consumer data privacy protections and strong vehicle security are essential. He added:

Auto engineers incorporate security solutions into vehicles from the very first stages of design and production and security testing never stops. The industry is in the early stages of establishing a voluntary automobile industry sector information sharing and analysis center or other comparable program for collecting and sharing information about existing or potential cyber-related threats.

Automakers noted that the Society of Automotive Engineers has created a Vehicle Electrical System Security Committee to draft standards that help ensure electronic control system safety. In November, two major auto trade associations representing nearly all automakers unveiled a set of principles to protect driver privacy and security.

Sen. Markey wants the National Highway Traffic Safety Administration (NHTSA), working with the Federal Trade Commission, to set standards to protect the data, security and privacy of drivers. NHTSA spokesman Gordon Trowbridge said that the agency is "engaged in an intensive effort to determine potential security vulnerabilities related to new technologies

and will work to ensure that manufacturers cooperate and address issues in order to keep motorists safe." Let's hope that NHTSA and the automobile manufacturers are sincere in their efforts to urgently address these security concerns.

Source: *The Detroit News*- "Report: Cars are vulnerable to wireless hacking" by Shepardson (Feb. 8, 2015).

AN UPDATE ON ELECTRONIC DATA RECORDS

Much has changed in just two years since we first wrote an article about Electronic Data Recorders (EDRs). Most likely the average person still doesn't know their car is recording many of their actions as well as the car's functions as they are driving. Nearly 96 percent of the automobiles manufactured in 2013 included EDRs. Beginning in September 2014, nearly all new passenger vehicles were mandated to have the technology. EDRs function much the same way as a "black box" on an airplane. This is not new technology, and has been used to monitor air bags for nearly two decades in passenger automobiles. Although the device is constantly recording data, it does not transmit the data, and only saves a segment of data preceding a crash.

The EDR is constantly recording inputs from the vehicle that are recorded until an accident occurs. EDRs in personal vehicles do not record an audio or video segment from a wreck; instead the device records important data just before, during, and after the crash pulse. Until last year the installation of these devices was voluntary by car manufacturers and the types of data being recorded varied greatly.

However, in the past year, the National Highway Traffic Safety Administration (NHTSA) mandated that nearly all new passenger vehicles must be equipped with EDRs. This mandate came after NHTSA initiated Final Ruling 49 CFR Part 563 in 2012, which set minimum standards as to the data that must be recorded if auto manufacturers choose to include an EDR in their vehicles. Prior to these standardized rules, automakers were left to determine what data was collected, how they collected it, and how it was transferred off the EDR. With no standardization, quite often the data was difficult to retrieve and, once downloaded, difficult to interpret.

Many believe NHTSA was prompted to standardize the retrieval method and data format following the Toyota unintended acceleration crisis. Our firm was heavily involved in the litigation that arose as a result of the defective computer system

that controlled accelerators. Congressional hearings revealed that Toyota only had one computer in the United States that could read certain data from the EDRs in its own vehicles.

Final Ruling 49 CFR Part 563 set a minimum requirement for crash data that must be recorded by an EDR. Some of the minimum requirements are that the EDR record the vehicle's speed just prior to impact, throttle and brake application, seat belt use, and airbag deployment. Also included in the new standards is a requirement that, if auto manufacturers choose to place an EDR in a vehicle, they must disclose this fact in the vehicles owner's manual. With all auto manufacturers required to collect the same set of data and standardized methods for downloading the data, much of the uncertainty surrounding EDR downloads should be resolved.

Although the new standards address many of the issues regarding what EDRs must record, many questions remain as to what the data can be used for, and who is entitled to collect the data. To date, there is not a national standard as to who the data belongs to and what a permissible use of the data is. It is NHTSA's position that the data belongs to the owner of the vehicle. However, in January 2014, the Senate Commerce Committee held an executive meeting approving the "Driver Privacy Act," which allows courts and administrative authorities to authorize access to data stored on EDRs.

It is still somewhat unclear exactly who is entitled to the data on a given EDR under Federal law. For that reason, many states are taking matters into their own hands and passing laws to clarify who is entitled to retrieve the data. Fourteen states have passed laws that deem the EDR data to be the vehicle owner's property. However, law enforcement officers and those involved in civil litigation can petition a court for an order granting them access to the data. In other states, there is no requirement for a court order for third parties to access the EDR data. However, written consent to download the EDR from the vehicle's owner seems to be universally recognized as a proper means to access the EDR data.

One of the greatest unanswered questions surrounding the rise in EDR prevalence is, what can the data be used for? As one can imagine, automakers, law enforcement agencies, insurance companies, and individuals involved in civil litigation all could need this valuable crash data for various reasons. Lawyers in our firm have been downloading and using EDR data for years. The snapshot of the crash sequence

often tells the story of not only how the vehicle performed in the crash, but the driver's response as well. This information is invaluable when reconstructing an accident sequence. Following an accident, it is very important to secure the vehicle and the EDR and get the owner's consent to download the data if litigation is anticipated. The data it contains may be vital in building a case.

We will write next month on some of the problems lawyers in our firm who handle product liability cases face relating to the use of EDRs. If you need more information on the use of EDR data or anything relating to the EDRs generally, contact Evan Allen, a lawyer in our firm's Personal Injury and Product Liability Section, at Evan.Allen@beasleyallen.com, or at 800-898-2034 or 334-269-2343.

Sources: www.techlawjournal.com and www.consumerreports.org

GM'S TAHOE SUV IS BEING INVESTIGATED AFTER ROLLOVER EJECTION DEATH

U.S. auto safety regulators are evaluating allegations that the Chevrolet Tahoe's side-curtain air bags may not properly protect back-seat passengers in a rollover crash of the sport-utility vehicle. The National Highway Traffic Safety Administration (NHTSA) is considering a petition filed by an engineer who investigated an August 2011 crash in which three children riding in the second and third rows of the Tahoe were ejected, and one died.

U.S. automakers, led by General Motors, recalled a record 64 million cars and trucks in 2014. General Motors' recall of 2.59 million small cars to fix a faulty ignition switch led to congressional hearings, a legal agreement with unprecedented regulatory oversight and a criminal investigation. GM says it's cooperating with NHTSA as the agency weighs opening a formal defect investigation. The automaker said it has investigated the complaint that is the basis of the petition and found "no defect trend." Hopefully, GM is being truthful.

The petition relating to the Tahoe was filed in August by Donald Friedman, who is with Xprts LLC, a Santa Barbara, Calif., engineering consulting firm. He said the Tahoe's air bags are untethered, unlike in some comparable SUVs, and its roof isn't as sturdy, making it more likely that windows will shatter during a rollover. NHTSA said a preliminary check didn't find any similar reports of occupant ejection in other Tahoes, or the GMC Yukon that has a

similar design, from the 2007 to 2015 model years.

Nevertheless, NHTSA has decided to evaluate the issue to decide whether to grant the petition and open a formal investigation. The investigation covers the Tahoe from the 2010 model year, or about 58,000 vehicles.

Source: BNA.com

NHTSA IS INVESTIGATING 630,000 JEEP WRANGLERS OVER AIR BAG PROBLEM

The National Highway Traffic Safety Administration (NHTSA) is investigating 630,000 Jeep Wranglers after receiving complaints that an electrical wiring issue might block the driver side air bags from deploying. The preliminary investigation into the issue with model year 2007 to 2012 vehicles was launched on June 12 by the agency's Office of Defects Investigations. The agency said it received 221 complaints, though no reports of accidents or injuries, stemming from an air bag light illumination, which may potentially indicate a defective clockspring assembly in the driver side air bag's electrical circuit. An open clockspring circuit would prevent deployment of the driver air bag.

The agency also investigated similar issues with the airbag warning light in the right-hand drive model year 2008 to 2012 vehicles in the past, which led to an earlier recall. The investigation covers left-hand drive Wrangler models.

In April, Fiat Chrysler Automobiles issued two recalls covering approximately 59,000 older sport-utility vehicles, cars and vans over concerns that their switch wires might break and cause the vehicles not to start, or that their airbags might not deploy properly. The recall included 43,874 model-year 2006 Jeep Liberty and Wrangler SUVs and Dodge Viper cars equipped with manual transmissions in the U.S. that were produced between Feb. 15, 2005, and Sept. 14, 2006.

Additionally, Fiat Chrysler is recalling an estimated 2,944 vehicles in Canada, 706 in Mexico and 11,309 in other countries. In June 2013, the automaker—then known as Chrysler Group LLC—recalled about 180,000 Wranglers because they may experience a condition where the power steering return line contacts and wears a hole in the aluminum transmission oil cooler line.

Source: Law360.com

DODGE DART CLUTCH DEFECT CLASS ACTION GOES FORWARD

A California federal judge has rejected Chrysler Group LLC's bid to escape a putative class action accusing it of selling 2013 and 2014 Dodge Darts with defective clutches. U.S. District Judge S. James Otero found that the Plaintiffs adequately described the alleged defect in their complaint. The judge limited the class action, but refused to dismiss it in its entirety. The Plaintiffs said that Chrysler knew that the vehicles equipped with manual transmissions feature a defective hydraulic clutch system that does not function as expected and is instead plagued by numerous problems and safety concerns.

Source: Law360.com

FIAT CHRYSLER MUST FACE NHTSA HEARING ON RECALL DELAYS

The National Highway Traffic Safety Administration (NHTSA) is proceeding with a public hearing scheduled for this month over the handling of 22 recalls by Fiat Chrysler Automobiles US LLC. The automaker said the hearing was unnecessary because it's already cooperating with the hearing, scheduled for July 2. Fiat Chrysler's handling of 22 recalls between 2013 and 2015 will be the subject of the hearing. The recalls involved some 11 million vehicles, according to NHTSA.

Fiat Chrysler acknowledged in its letter that it faces challenges in achieving the industry average recall rate on some of its vehicles. According to the automaker, the industry average is 75 percent overall but only 44 percent for vehicles between five to 10 years old, and lower still at 15 percent for vehicles more than 10 years old. For seven of the recall campaigns at issue, all of which involve vehicles in use for at least nine years, the automaker said there are "some challenges" that may prevent the company from achieving the average recall rate. It said also that for two other campaigns it faces "significant challenges" to reaching that threshold.

It was reported that the 22 recall campaigns in question involve a wide range of defects, including air bag ruptures, fuel leaks near an ignition source, door latch failures, tie rod problems leading to a loss of steering control, sudden alternator failures, and other potential problems such as shorts in vanity lamp wiring that lead to fires. At the July hearing, witnesses from the NHTSA, the automaker and the public are expected to present evidence on Fiat

Chrysler's performance in the recalls at issue. If the agency ultimately determines that the company has not complied with the applicable laws, it could order the automaker to take various steps to improve, which could include buying back or replacing affected vehicles.

Source: Law360.com

ACURA RECALL SHOWS PROBLEMS IN AUTOMATIC BRAKING SYSTEM

Acura has recalled two models because the automatic emergency braking systems can malfunction and put the vehicles at risk of a collision. The recall involves just fewer than 48,000 MDX SUVs and RLX sedans worldwide from the 2014 and 2015 model years. This shows how even sophisticated safety technology can be prone to real-world glitches. Acura's "Collision Mitigation Braking System" uses radar to scan conditions in front of the vehicle. If the system determines the vehicle might hit an object, it automatically applies the brakes, slowing the vehicle to reduce damage and injuries.

In the recalled vehicles, the system can become confused and step on the brakes when it detects another vehicle accelerating in front while simultaneously driving along an iron fence or metal guardrail, according to Honda, the maker of Acura. The problem first surfaced in Japan in November of 2013 when an SUV braked for no reason and caused a rear-end collision. A second incident happened in June of last year.

Later versions of the system actually stop the vehicles before a crash, but those versions aren't affected by the recall. Michelle Krebs, senior analyst for Autotrader, says that like any new technology, autonomous braking will develop problems in real-world driving that can't be found in testing by automakers. Ms. Krebs indicates that it will require "real-world settings with real people behind the wheel," to get a true reading on the safety of the system. I believe there will be many problems that the automaker will have to deal with simply because there are too many uncertainties involved.

The jury is still out on this subject and there will be much more to cover I suspect in future issues. If you need more information, contact Dana Taunton, a lawyer in our firm's Personal Injury/Products Liability at 800-898-2034 or by email at Dana.Taunton@beasleyallen.com.

Source: Tom Krishner, Associated Press

JEEP GRAND CHEROKEES CAN BRAKE FOR NO REASON

The recent Honda recall isn't the only problem to surface with autonomous braking systems. The National Highway Traffic Safety Administration (NHTSA) has started investigating complaints that the systems on 2014 Jeep Grand Cherokees can brake for no reason. The feature is an option on many high-end and even mainstream cars, and is standard equipment on only a few vehicles. There is definitely a move toward self-driving vehicles. Hopefully, this technology will result in reducing crashes and highway deaths. Clearly, the system can react faster than humans. The systems clearly have promise. The National Transportation Safety Board is urging that automatic warning and braking systems be made standard on all new cars and commercial trucks.

FORD AGREES TO SETTLE CLASS CLAIMS OVER SPARK PLUG DEFECT

Ford Motor Co. has agreed to settle a class action covering some 2.2 million consumers' claims that its vehicles had defective spark plugs that were difficult and expensive to replace. Pursuant to the settlement agreement, the automaker will reimburse a portion of customers' replacement costs. Plaintiffs in the multidistrict litigation, which includes six separate lawsuits on behalf of Plaintiffs in two dozen states, have requested an Ohio federal court to approve the settlement. Under the terms of the settlement, Ford would reimburse a percentage of costs incurred by customers who paid at least \$37.50 to replace each plug.

The settlement provides for Ford to reimburse a higher percentage of out-of-pocket costs borne by customers who spent even more in replacing the plugs. Ford will also pay some \$5.2 million in Plaintiffs' attorney's fees. The settlement would cover customers who have bought or leased Fords in model years 2004-08 in the U.S. that had a 5.4-liter three-valve engine. The cases were consolidated in Ohio federal court in 2012. Ford had objected to the consolidations claiming that centralizing the cases would only delay their resolution.

The Plaintiffs claimed that the spark plugs, which were the subject of a Ford technical bulletin, accumulate hydrocarbon residue that cements them to the engine and make them prone to breaking during removal. They said that left part of the plug attached to the cylinder head and

added time and expense to routine maintenance work. In a July decision that partially granted Ford's summary judgment motion, U.S. District Judge Benita Pearson found that Ford knew about the defect as far back as 1997 when the vehicles were being developed, and that the problems remained after the vehicles were launched. Ford had challenged that finding as well as others. The case is in the U.S. District Court for the Northern District of Ohio.

Source: Law360.com

HONDA CIVIC DRIVERS GET BRAKE REPAIRS COVERED IN SETTLEMENT

A California federal judge has approved a settlement in a class action that accused American Honda Motor Co. Inc. of refusing to cover the cost of repairs for defective brake pads in certain Civic vehicles. The automaker agreed to reimburse out-of-pocket expenses incurred during the necessary repairs. In an order on June 8, U.S. District Judge Kimberly J. Mueller gave final approval to the settlement. It was alleged that Honda Civic vehicles manufactured between 2006 and 2011 have front brake pads that can wear out prematurely and require replacement every 7,500 to 15,000 miles, as opposed to the average 30,000 mile life expectancy of a brake pad.

Under the settlement, Honda has agreed to reimburse the out-of-pocket expenses incurred by the 1,688,886 class members to repair their vehicles. The agreement covers 100 percent of the average \$115 brake pad replacement costs up to 7,500 miles, 50 percent up to 15,000 miles and 25 percent up to 20,000 miles, according to the order. The automaker will pay more than \$850,000 in attorneys' fees and expenses under the settlement. The three lead Plaintiffs will also receive awards of \$2,500 each.

Lead Plaintiffs Stacie Zaskorn and Rachelle Schreiber filed suit in October 2011, claiming that the automaker knew its Civic vehicles contained the defective brake system, but refused to cover the costs of repair, even though the parts were covered by the vehicles' limited warranty. The complaint said that Honda didn't inform consumers about the faulty brake system — purportedly creating a safety hazard, since the defective parts can lead to auto accidents.

It was alleged that as a result of Honda's failure to pay for repair costs, consumers were forced to spend hundreds of their own dollars to remedy the issue. A second suit against Honda, filed in November 2011, alleging the same claims was consolidated by the court.

The suits include claims for violations of California's consumer protection and unfair business practices laws, as well as breach of implied warranty under the Song-Beverly Consumer Warranty Act and breach of written warranty under the Magnuson-Moss Warranty Act. Judge Mueller granted preliminary approval to the settlement in May in an order that also preliminarily certified the class of all residents of the U.S., Puerto Rico, U.S. Virgin Islands and Guam who own or lease a 2006-2011 Honda Civic with rear drum brakes.

Source: Law360.com

CHRYSLER RECALL ENDS DEFECTIVE POWER SYSTEM LITIGATION

A California federal judge was urged last month to approve a settlement in a suit accusing Chrysler Group LLC of tricking consumers into purchasing vehicles that have defective power systems. The putative class contended that the automaker has already recalled the vehicles and has agreed to cover repairs.

The suit alleges that the automaker intentionally concealed a defective power system in its 2011-12 Jeep Grand Cherokee, Dodge Durango and Dodge Grand Caravan vehicles. The putative class told the court that Chrysler, which now operates as FCA US, had already previously initiated a recall of the 2011 models, and that the automaker agreed to expand the recall to the 2012 and 2013 cars before the settlement was reached. It was stated in a court filing:

In addition, FCA US will reimburse vehicle owners and lessees for any related repair and rental car expenses, and will extend its standard warranty from 3 years/36,000 miles to 7 years/70,000 miles for [totally integrated power module] repairs conducted through the recall.

The suit was filed in November 2013 on behalf of eight named Plaintiffs in six different states, claiming Chrysler concealed a known safety defect from customers and didn't help with subsequent repairs. The Plaintiffs allege the defective power module caused a variety of problems, from vehicles not starting and stalling in traffic to headlights suddenly shutting off and windshield wipers activating on their own.

Judge Pregerson in November partially granted Chrysler's request, dismissing warranty claims but refusing to dismiss the claims of California, Maryland, Massachusetts, Florida and Missouri. According to the putative class, the settlement was con-

tingent on Chrysler's agreement to expand its safety recall over the affected cars. With both the recall and the automaker's reimbursement of repair costs, the settlement will affect approximately 525,000 class vehicles.

Source: Law360.com

III. A REPORT ON THE GULF COAST DISASTER

STATE OF ALABAMA MAKING PROGRESS IN CASE AGAINST BP

The State of Alabama has made good progress in deposition discovery in its case against BP. Reports from the depositions have been very positive, and lawyers from our firm and the Office of the Attorney General have done a very good job keeping this case organized and on track under very difficult circumstances. To date, numerous employees have been deposed from both the State and BP. Fact deposition discovery is set to conclude in July with expert discovery beginning in August 2015. Expert discovery will conclude in December 2015.

This case may undoubtedly be one of the most significant high-stakes cases that the State has ever faced. Oftentimes, cases of this magnitude are spread over numerous individual plaintiffs, but in this case, there is only one plaintiff and one shot. In addition, BP has invested an enormous amount of money in their legal resources. This investment means that BP will scour every possible avenue of the case for ways to hurt the State's case, or to simply throw the State off course. This case is extremely complex. The case calls for answers to important questions on a variety of fields, including governmental process, economics, accounting, property-related environmental analysis, and response operations.

Lawyers in our firm have a unique understanding of the demands and requirements necessary to weather a skilled legal defense under these circumstances. For instances, in other cases, it is not so much an accomplishment to get to the deposition stage, but in this case, it most certainly was. BP expended an enormous amount of resources analyzing every possible weakness in the State's production on a level typically unseen in other cases—even high-stakes cases.

But the bottom line is that the State of Alabama has made tremendous progress in deposition discovery in its case against BP. The depositions have gone extremely well and we are well pleased. All who have been involved on behalf of the State have done a very good job keeping this case organized and on track under very difficult circumstances. Thus far, a large number of employees from both the State and BP have been deposed. Fact deposition discovery will conclude this month. Expert discovery is to begin in August and that discovery will conclude in December 2015. We believe the state's case is in excellent shape. BP should recognize that to be an accurate appraisal. I really don't believe BP can afford to try the case based on all that we have learned during discovery. In any event, we look forward to trying Alabama's case if it doesn't settle.

Our team is committed to making the State of Alabama whole for its losses. We are going to bring all of the resources of our firm to bear to assist Gov. Robert Bentley and the Attorney General's Office in order to accomplish that goal. If you would like more information about the State of Alabama vs. BP case, contact Parker Miller, a lawyer in our firm who is on the trial team, at Parker.Miller@beasleyallen.com, or 800-898-2034.

CLAIMANTS ARGUE CURRENT POLICY INTERPRETATION OF BP SETTLEMENT INVALIDATES THEIR CLAIMS

Several business owners have filed a motion in the Eastern District of Louisiana arguing that a recent policy issued by Claims Administrator Patrick Juneau effectively destroys their claims because much of their sales were in cash. Version 3 of Policy 345 requires certain claimants to submit "documentation to establish the addresses/locations of their customers" which, admittedly, "is particularly problematic for businesses that deal primarily in cash." This policy only applies to a subset of claimants who do not automatically qualify under the objective revenue test requirements of the settlement. As a result, the claimants must prove they suffered a drop in revenue from non-local customers over an identical three month period in 2010 as compared to 2009.

The business owners argued this policy is "neither consistent with the terms of the agreement nor beneficial to the economic class." They stated that the policy changed how supporting documentation is treated and how the calculation is performed,

resulting in "the most disadvantageous interpretation possible to claimants" which is contrary to what is supposed to be a claimant-friendly settlement. The Claims Administrator specifically recognized these documentation requirements are mandatory and cannot be waived. Very likely this will result in the denial of many primarily cash-based businesses who must meet the customer mix requirements to establish their eligibility.

The claimants in their motion also argue the shifting nature of the policy has denied them their due process rights as the latest change came after the deadline for claimants to opt out of the settlement. The policy, issued on April 21, 2014, came well after the Nov. 1, 2012, opt-out deadline wherein claimants had to inform the Claims Administrator they did not want to pursue a claim in the settlement. The motion requests that Mr. Juneau rescind the latest version of Policy 345 and revert to his initial interpretation of it which, according to the claimants, does not discriminate against cash business.

Source: Law360.com

BP REACHES SETTLEMENTS WITH HALLIBURTON AND TRANSOCEAN

BP, Halliburton and Transocean recently announced a series of tentative settlements related to the 2010 *Deepwater Horizon* oil spill, with BP resolving claims against the oil services providers and Transocean agreeing to pay \$212 million to individuals and businesses harmed in the disaster. The deals effectively resolve all claims against the owner and operator of the offshore oil rig, Transocean, and Halliburton, the cement contractor for the blown-out Macondo well owned by BP.

Halliburton, which previously agreed to a \$1 billion settlement to resolve private Plaintiffs' claims against the company in connection with the oil spill, said that it reached an agreement with BP that requires the two companies to dismiss all claims against each other. Transocean has also reached a settlement with BP in which both companies would mutually release all claims made against the other. The company has agreed to dismiss all its personal injury claims on behalf of its employees and claims relating to future cleanup, in exchange for BP's withdrawal of compensatory damages claims and attempts to recover damages under Transocean's insurance policy, along with a payment of \$125 million for legal fees incurred by Transocean.

Separately, Transocean has agreed to pay \$212 million to resolve Plaintiffs' claims against the company. Transocean said that under terms of the tentative settlement, it would pay two classes of Plaintiffs:

- the first is made up of class members in the pending litigation known as BP *Deepwater Horizon* Economic and Property Damages Settlement; and
- the second is made up of a new class of parties who could potentially bring claims for punitive damages under maritime law.

Jeremy Thigpen, who serves as Transocean President and CEO, in a statement relating to the settlements, stated:

These settlements provide substantial closure to five years of litigation and we are confident that this agreement can be a significant step forward in our efforts to renew our partnership with BP.

BP and the U.S. Department of Justice are currently battling over how much BP will have to pay for the environmental cost of the spill. Judge Carl Barbier had already ruled that BP could be held liable for the disaster and in January capped any potential fine at \$13.7 billion. The government is appealing that cap, arguing that its original request for an \$18 billion maximum should be honored because Judge Barbier was wrong in determining that only 3.19 million barrels of oil were released into the Gulf of Mexico. The government estimates that 4.19 million barrels were released.

While those settlements mentioned above require court approval, they should help to assure that individuals and entities harmed by BP, Halliburton and Transocean are fully compensated for their losses caused by this disaster.

Source: Law360.com

IV. LEGISLATIVE HAPPENINGS

A REVIEW OF THE REGULAR SESSION

Due to the failure of the Legislators to deal with the State of Alabama's general fund budget problems, the good things that happened during the Regular Session of the Alabama Legislature have been largely ignored. It's difficult to understand how

the legislative leadership could afford to take the old “ostrich approach” when it comes to the current condition of state finances. The State badly needs additional revenues, and I find it difficult to comprehend how there could be any legitimate dispute over the state’s financial needs.

In the past decade, state government has patched holes in the general fund budget using Katrina funds, stimulus funds from the federal government, and lastly borrowing heavily from state trust funds. Alabama has reached the end of this fiscal rope and it’s now time for our legislators to face reality and deal with the problem.

Gov. Robert Bentley has shown real leadership and it’s time for the members of both the House and Senate to join him and do their duty to stop the ship of state from sinking.

SOME OF THE NON-BUDGET BILLS THAT PASSED DURING THE SESSION

A number of bills were passed during the Regular Session, which have now been signed into law by Gov. Bentley, and some of them are referred to by the media as “major” bills. Despite failing to come up with a solution to the state’s General Fund budget crisis, the Legislature did manage to pass a number of good bills during the session. A key issue for lawmakers this year was passing prison reform legislation that will reduce overcrowding in Alabama prisons. Unfortunately, the new law wasn’t funded, which is hard to understand. The following is list of some other bills that won approval from the Legislature:

- **Open Meetings Act**—Tightened the law that requires boards and commissions to conduct their business in public by banning “serial meetings” by members of a board to circumvent the law.
- **Increased economic incentives for industry**—The Alabama Jobs Act gives eligible companies that create at least 50 new jobs a 3 percent jobs credit for up to 10 years. Additional incentives include those given to industry that hires large numbers of veterans or locates in a more rural or low income part of the state.
- **Medicaid reform**—The new plan will deliver long-term services such as nursing home care through integrated care networks, which is expected to help control costs and could give people more options, such as in-home care.

- **Charter Schools**—Legislation allowing the formation of charter schools in Alabama, another priority for Republican lawmakers, received approval. Charter schools are publicly funded, but can be granted autonomy on hiring, curriculum, scheduling and in other areas. The legislation allows local school systems to convert traditional public schools to charters. I have serious doubts about charter schools and have difficulty understanding how this concept can be good for all of the students in our public schools.

- **Revisions to Alabama Accountability Act**—This legislation expands the program that helps families put their children in private school with scholarships funded by tax credits. I am totally opposed to this concept, which leaves students behind whose schools are already severely underfunded.

- **Formation of two-year college board**—The legislation removes the power of overseeing the two-year state colleges from the state Board of Education and creates the Alabama Community College Board of Trustees. The members will be appointed by the governor and subject to confirmation by the state Senate.

- **Virtual schools**—Under the passed legislation, Alabama school systems are required to establish a policy to offer some level of virtual school for high school students by the 2016-2017 academic year.

- **Motorcycle license endorsement**—Alabama was the only state that didn’t require motorcycle operators to have a Class M endorsement on their driver’s license. The bill requires new motorcyclists to take rider safety course or written test for the endorsement.

- **Creation of Hiawayi Robinson State-wide Emergency Missing and Exploited Children Alert System**—The bill creates the new missing child alert system named after 8-year-old Hiawayi, of Prichard, who went missing and was later found dead. It allows law enforcement to issue an alert for missing children who don’t fit the criteria for an Amber Alert.

- **Gabe Griffin Right To Try Act**—The bill—named after a 10-year-old from Shelby County with the rare genetic disorder—gives patients with terminal ill-

nesses access to experimental treatments.

- **Strengthening domestic violence laws**—Backed by First Lady Dianne Bentley, the legislation increases marriage license fee to pay for capital improvements at women’s shelters state-wide. It requires courts to enter restraining orders into a digital database among other measures.

- **Erin’s Law**—The legislation—named after sexual abuse survivor Erin Merryn—requires child sexual abuse education curriculum be taught in kindergarten through 12th grade. It creates a governor’s task force, which will make recommendations for age-appropriate curriculum.

- **Theft of valor**—This bill makes it illegal to fraudulently claim to have received military honors in order to receive financial gain. This is already against federal law. Violators could face misdemeanor or felony charges.

- **Powdered alcohol ban**—The Legislature banned powdered alcohol—condensed spirits in a pouch—before the product even reached the market. Lawmakers say the ban will save countless lives.

SOME OF THE BILLS THAT DID NOT PASS IN THE SESSION

Legislation that dealt with a number of so-called hot-button issues got lots of media attention at the start of the 2015 Alabama legislative session. But along the way, many of the bills died a slow “legislative death,” which can result from a number of causes. I will mention some of the bills that failed to pass this legislative session. Some of them were not in the best interest of the people of Alabama and it’s good that those failed. Others appeared to be good legislation.

- Legislation that would have given payday loan borrowers six months to pay off their debt rather than the current 14 days received approval from a Alabama House committee. The bill never made it to the House floor. It’s obvious that the lobbyists for the payday lenders have tremendous clout and were able to derail this badly needed legislation. In fact, there is much more that needs to be done in this area of concern.

- Legislation that would have allowed gun owners to carry and transport loaded handguns in their vehicle without a concealed carry permit passed in the Senate but failed to get consideration on the House floor. I believe the bill needed to die and it did.
- Bill giving judges, ministers and other officiants the right to refuse to perform marriage ceremonies failed to pass in the Senate after passing in the House in March.
- A bill that would have placed sex offender-type restrictions on abortion clinics in an attempt to close the Huntsville facility failed after passing the House. The bill prohibits abortion clinics from operating within 2,000 feet of a public school.
- Legislation to authorize up to \$50 million in bonds to help build a 350-room lodge and conference center and other improvements at Gulf State Park passed in the House but died in the Senate. This bill would have been a tremendous boost to our state's tourist trade. Hopefully, it will be in Gov. Bentley's call for the special session.
- Bill that would have done away with the state issuing marriage licenses failed after passing in the Senate. It would have allowed couples wishing to marry to enter into a marriage contract that would be filed in the probate office.
- Proposal to close or privatize Alabama's state liquor stores and phase out the Alcoholic Beverage Control Board's retail operations by Oct. 1, 2016, failed in its house of origin. The House of Representatives passed a resolution to form a task force to study the issue but the Senate had already gone home. The resolution died. The legislators had better take a long look at our current system before it's turned over to the private sector. Why fix something that isn't broken?
- Medical marijuana legislation passed in a Senate committee for the first time, but it didn't get a debate by the full body. The bill would have allowed patients with one of 25 different chronic conditions to purchase up to 10 ounces of medical marijuana a month and opened of a limited number of dispensaries.
- The "Uber" bill allowing Transportation Network companies to conduct business with very little regulation never came up for vote after several municipalities

objected. This is another bill that I believe should have been killed.

Source: AL.com Erin Edgemon

V. COURT WATCH

THE JUDICIAL SYSTEM IN ALABAMA MUST BE ADEQUATELY FUNDED

I have written about the funding crisis facing Alabama's court system in past issues of The Report, but it bears repeating. Budget cuts proposed by the state legislature are simply untenable for the court system. It cannot be overemphasized that these cuts will cut off access to justice for our state's citizens. The court system in Alabama is already hamstrung from past budget cuts and there just isn't any more blood left to take.

The deal on the table would cut 15 percent of the appropriation designated for Alabama courts from the General Fund, which works out to \$13.9 million. A budget cut of this severity would cripple the state courts, which are already operating on a shoestring and badly understaffed. The cuts will hurt badly and would cause an additional 530 layoffs. If this happens, the court system would be unable to carry out its constitutional duties and responsibilities.

Alabama Supreme Court Chief Justice Roy Moore recently visited our Beasley Allen Report program on WSFA. The Chief Justice told host Gibson Vance, who is a lawyer at our firm, that the court system cannot sustain the type of budget cuts that are currently being proposed by the legislature. He is concerned that the judicial branch is essentially being "defunded out of existence."

Faced with such dire circumstances, legislators are scrambling to find new revenue streams. Gov. Robert Bentley proposed \$541 million in tax increases, but lawmakers largely ignored those bills. Rep. Patricia Todd, D-Birmingham, sponsored a bill to raise the cigarette tax by 25 cents a pack, which was part of a tax increase package totaling about \$150 million proposed by the House Republican Caucus. After receiving no support from the Senate caucus, the bill floundered. However, Rep. Steve Clouse, R-Ozark, told al.com he felt there was still some support for the proposal. Rep. Clouse also said there is positive talk about increasing the maximum business privilege tax.

Other lawmakers are turning to their old "enemy," gambling, as a potential source of new revenue for the state. Results of a recent poll revealed 61 percent of Republican voters would favor a lottery; 57 percent would allow gambling like blackjack, poker and slots; and 55 percent favor legalizing gambling. The poll was commissioned by Sen. Del Marsh, R-Anniston, leader of the state Senate. The poll surveyed 500 likely GOP voters. Sen. Marsh has gone on record as saying he favors raising money by legalizing gambling, including introduction of a lottery. I am not sure there are enough Senators who agree with him on this issue for the package to pass.

The poll also showed that 72 percent of voters who say they are Republicans think the budget can be balanced without raising taxes, and opposed Gov. Bentley's proposed \$541 million tax increase. But despite their opposition to his plan, the governor's base of support among his party remains high, with 68 percent of those polled saying they have a positive view of the job he's doing.

Meanwhile, the clock is ticking. Gov. Bentley is expected to call legislators into a special session later this summer to try to fill the \$200 million 2016 General Fund budget hole and address the long-term deficit, which is estimated to be somewhere in the neighborhood of \$700 million.

Alabama's Unified Judicial System is one of the oldest and best in the nation. It is inconceivable that it should now be allowed to fail. How can a state and its people survive without access to justice?

Source: AL.com

VI. THE CORPORATE WORLD

INTERESTING RULING IN SUIT INVOLVING AIG BAILOUT

You may recall that the federal government demanded American International Group Inc. stock in return for an \$85 billion bailout during the financial crisis that the Obama Administration inherited. Starr International Co. filed suit against the Federal government claiming that illegal terms were set by the government. During an eight-week trial, Starr's lead lawyer, David Boies, seemed to be having a field day questioning Ben Bernanke, Hank

Paulson and Timothy Geithner. Reports indicate that U.S. Court of Claims Judge Thomas Wheeler repeatedly ruled in the Plaintiff's favor. In his final order, however, the judge didn't award damages in the case. In short, he found no legal basis for a claim. Judge Wheeler said in his order:

The government's unduly harsh treatment of AIG in comparison to other institutions seemingly was misguided and had no legitimate purpose. The question is not whether this treatment was inequitable or unfair, but whether the government's actions created a legal right of recovery for AIG's shareholders.

Hank Greenberg—who had sought at least \$25 billion in damages for shareholders—got nothing for them under the court's ruling. It's not clear what effect the judge's ruling will have. Considering the harsh rebuke of the government's handling of the bailout by Judge Wheeler, the ruling may limit the Federal Reserve's ability to deal with the next crisis. In the suit, filed by Starr in November 2011, it was claimed that the government broke the law by insisting on 80 percent of AIG stock and imposing a 14 percent interest rate on the \$85 billion loan.

The government defended, saying these demands were justified because the loan was high-risk. It should be noted that even though the bailout ballooned to \$182 billion, AIG became profitable, returned to the black and repaid the assistance in 2012. This gave the government a \$22.7 billion profit. Judge Wheeler, explaining his ruling further, said in his order:

In the end, the Achilles' heel of Starr's case is that, if not for the government's intervention, AIG would have filed for bankruptcy. In a bankruptcy proceeding, AIG's shareholders would most likely have lost 100 percent of their stock value.

Greenberg says the Judge's ruling will be appealed by Starr. It will be interesting to see if the appeals court will differ with Judge Wheeler's logic and reasoning. The case is in the Court of Federal Claims (Washington).

Source: InsuranceJournal.com

VII. WHISTLEBLOWER LITIGATION

OUTSOURCING COMPANIES INVESTIGATED FOR FOREIGN WORKER VISA FRAUD

Tata Consultancy Services and Infosys, both Indian corporations that specialize in providing outsourcing services, are reportedly under a Department of Labor investigation. The announcement came from Senator Jeff Sessions and Senator Richard Durbin. Infosys is no stranger to scrutiny, having settled the largest civil visa fraud case in October 2013 for \$34 million, after allegedly circumventing federal visa laws and regulations in its efforts to bring foreign workers into the U.S. to work. The latest Department of Labor investigation apparently focuses on news that Southern California Edison, an electric power utility company, laid off more than 500 technology workers and required the terminated employees to train their foreign replacements.

Similarly, Disney has come under fire due to allegations it terminated 250 employees in October 2014, and also had them train their foreign replacements. Both Southern California Edison and Disney face claims that they hired Indian corporations Tata Consultancy Services, Infosys, and HCL America to hire foreign workers to replace American labor. These Indian firms are reportedly using the H-1B visa program in order to bring foreign workers to America. The program has created a highly lucrative business model of bringing in cheaper H-1B workers to substitute for Americans.

Many large corporations, such as Microsoft, Facebook, and Google lobby Congress to increase the annual cap on visas in order to obtain cheaper foreign employees. Meanwhile, Americans lose jobs to these foreign workers and often are not able to secure new employment. That was the case with many of the Disney employees who were laid off in October. Florida Senator Bill Nelson requested in early June that the Department of Homeland Security open an investigation into the "potential misuse" of visas. Sen. Nelson stated "This program was created to help fill jobs when there were labor shortages, not to take jobs away from anyone."

Employees or former employees who are aware of fraud on the U.S. visa programs can seek relief through the False Claims Act. This Act allows persons with knowl-

edge about how the federal government has been defrauded to file a case on behalf of the federal government. Whistleblowers are protected if retaliation occurs. They also can receive an award varying from 15 percent to 30 percent if their case is successful. Lawyers at Beasley Allen represent whistleblowers in cases nationwide. If you are aware of fraud on the U.S. visa program, or fraud against the federal government in general, then you may have a case under the False Claims Act.

Lawyers at Beasley Allen continue to investigate fraud claims against both the federal and state governments and encourage any person who knows of fraudulent activities to step forward and report the fraud. Potential whistleblowers have the right to not be retaliated against for doing the right thing and reporting the fraud they have witnessed. Persons considering doing the right thing and blowing the whistle are strongly urged to seek legal advice before doing so. That is in their best interest and for their protection. Lawyers in our firm's Consumer Fraud and Consumer Litigation Section are very familiar with the federal False Claims Act and its state counterparts and can guide whistleblowers through the process. If you have any information and would like to speak with a lawyer, contact Andrew Brashier at Andrew.Brashier@beasleyallen.com, or Archie Grubb at Archie.Grubb@beasleyallen.com, or at 800-898-2034 or 334-269-2343.

Sources: www.nytimes.com

A \$663 MILLION JUDGMENT ENTERED AGAINST TRINITY INDUSTRIES

A Texas federal judge tripled a \$175 million False Claims Act verdict against Trinity Industries Inc. on June 9 and assessed more than \$138 million in penalties. This comes after a jury verdict in October finding that the company defrauded the U.S. government by selling it defective guardrails. U.S. District Judge Rodney Gilstrap entered final judgment of \$663.4 million against Trinity, including a \$199 million to whistleblower Joshua Harman. Since the U.S. did not participate in the trial and left the defense solely to the whistleblower, he was awarded the 30 percent commission along with more than \$16 million in attorneys' fees, \$2.3 million in expenses and \$177,830 in taxable costs, for a total award of \$218 million. The government was awarded \$464.4 million.

George F. Carpinello of Boies Schiller & Flexner LLP, who represented Harman in this case, said the judgment against Trinity

was achieved without backing from the government. He said the government was totally unhelpful throughout the process. Carpinello told Law360:

We've been perplexed by the government's position from day one in this case. We pursued this case without any help from the government. In fact, we pursued this case in the face of the government's hostility.

The judgment stems from an October verdict finding Trinity liable for changing the design of the guardrails without getting approval from the U.S. Federal Highway Administration (FHWA), then misrepresenting them as the earlier, approved version even though they were more dangerous. Harman filed his original False Claims Act (FCA) complaint in 2012, alleging that Trinity falsely claimed its modified ET-Plus guardrail was properly crash-tested.

Trinity contended that the government cannot be defrauded because it was fully aware of the facts at the time the representations in question were made. But Harman argued that Trinity intentionally withheld information about the modifications from the government. Trinity says the FHWA has confirmed that the ET-Plus is fully compliant with federal safety regulations, and has always been eligible for reimbursement under the federal aid highway program. It's certain that, after post-judgment motions, Trinity will appeal to the Fifth Circuit.

Agents from the U.S. Department of Transportation Inspector General's office and from the FBI's Boston office have opened a criminal investigation into Trinity and its relationship with the FHWA, according to Bloomberg and ABC News. The original ET-Plus was designed to absorb and dissipate a collision's impact by flattening the guardrail and pushing it out into a ribbon that is deflected away from the collision, reducing the impact force felt inside a crashing vehicle.

The FHWA approved that device in 2000. But Harman claimed the company changed that design sometime between 2002 and 2005 and that the new design locks up, folds over and protrudes into the crashing vehicle. He says Trinity never disclosed those changes to the FHWA, nor did it test the units according to FHWA protocols. The FHWA partially approved the guardrails after a 2005 crash test, but it's unclear whether Trinity used the new ET-Plus for the test.

Harman is represented by Thomas John Ward of Ward & Smith Law Firm, Nicholas A. Gravante Jr., Karen Dyer, George F. Carpinello and Jeffrey S. Shelly of Boies Schil-

ler & Flexner LLP, Wyatt B. Durette Jr. of DuretteCrump PLC and Samuel F. Baxter of McKool Smith PC, among others. The case is in the U.S. District Court for the Eastern District of Texas.

I have always believed that Trinity was a company that was run in a very good and efficient manner and that safety was a high priority with them. It will be interesting to see how the case fares on appeal. It's quite obvious that this matter is far from over.

Source: Law360.com

BAYER MUST FACE FCA CLAIMS OVER OFF-LABEL TRASYLOL MARKETING

A federal judge in New Jersey has refused to reconsider his order allowing two False Claims Act (FCA) claims in a whistleblower's long-running suit against Bayer Corp. for allegedly pushing off-label uses of heart surgery drug Trasyolol. U.S. District Judge Jose L. Linares ruled that Bayer did not meet the "high standard" required for the court to reconsider its March order allowing two claims to survive the company's motion to dismiss. Bayer had argued that the court "inadvertently missed" the company's arguments that relator Laurie Simpson failed to show Bayer's alleged misrepresentations concerning Trasyolol constituted claims for government payment, and that the claims concerning the drug did not identify any false certification of compliance.

Bayer's lawyers didn't get very far with that type argument. The court's opinion said that simply because the March ruling did not specifically address the arguments did not mean they were overlooked. I doubt that Judge Linares appreciated the argument. He said in his order:

To the contrary, this court carefully reviewed and considered each and every point in defendants' submissions and ultimately decided that plaintiff had met its burden to survive defendants' motion to dismiss.

Bayer had some success in its efforts to dismiss claims from the ninth amended complaint, filed by Ms. Simpson, but did not convince Judge Linares to drop two claims related to Trasyolol. That has to be considered a victory for Simpson.

The U.S. Food and Drug Administration (FDA) had approved Trasyolol for use in patients undergoing coronary artery bypass graft surgery using a cardiopulmonary bypass pump to prevent excess bleeding. Ms. Simpson, a former Bayer marketing

employee, claimed the company misbranded Trasyolol by promoting off-label uses of the drug, including use in valve replacement surgeries, surgeries involving pediatric patients, liver transplants and other medical scenarios. She also claims Bayer failed to update Trasyolol's label to provide safety information concerning off-label uses.

The claims that survived the motion to dismiss allege that Bayer's conduct led to the submission of claims involving Trasyolol uses that were not "reasonable and necessary" and therefore not covered under Medicare. Bayer argued that Ms. Simpson did not show that any use of Trasyolol was material in claims for reimbursement and that she did not allege a false certification of compliance.

Judge Linares ruled in March that Ms. Simpson alleged facts "plausibly suggesting" that the uses were not medically accepted, and said it was "inappropriate" at that stage in litigation to dismiss the claims. A 10th amended complaint was filed in April. Judge Linares previously dismissed much of the Plaintiff's case against Bayer last year, saying that violations of federal misbranding law alone are insufficient to trigger FCA liability. The case is in the U.S. District Court for the District of New Jersey.

Source: Law360.com

VIII. CONGRESSIONAL UPDATE

LAWMAKERS REINTRODUCE ARBITRATION FAIRNESS ACT

In April, lawmakers led by Sen. Al Franken (D-Minn.) and Rep. Hank Johnson (D-Ga.) reintroduced the Arbitration Fairness Act (AFA) of 2015. If passed, the legislation would eliminate mandatory arbitration clauses in employment, consumer, civil rights and antitrust cases.

The AFA was introduced before both houses of congress, and initially sought to cover arbitration agreements between companies that generally are on even footing as far as bargaining leverage. However, the U.S. Supreme Court expanded the scope of the Act to also apply to claims involving consumers and workers, who lack the same kind of power as corporations in contract negotiations.

Forced arbitration clauses that are mandatory are quite often found in the fine print of a document. Corporations use this tactic to shut Americans out of the court system. Instead, folks are funneled into what consumer advocacy groups consider to be a rigged forum decided by an arbitration company chosen by the very corporation that broke the law.

These restrictive clauses can be found in all sorts of consumer contracts and documents, from cell phone contracts and credit card agreements to college enrollment forms and nursing home admissions documents, and the list goes on. In a statement, Sen. Franken said:

For years, I've been fighting to reopen the courtroom doors to consumers, workers and small businesses in Minnesota. The proposal is a common-sense reform. It's clear that we're at a point where big corporations can write their own rules and insulate themselves from liability for wrongdoing—this can't continue.

The bill's co-sponsor in the House, Rep. Johnson, noted that mandatory arbitration essentially "immunizes corporations from accountability." He had this to say:

The practice often takes place behind closed doors, shrouding corporate misconduct in secrecy away from public scrutiny. Furthermore, courts have limited authority to vacate an arbitrator's decision, which typically is final and binding, while arbitrators are not even required to have legal training or faithfully apply the law.

In May, a coalition of 58 lawmakers, including Sen. Franken and Rep. Johnson, and backed by consumer advocacy organizations such as Public Citizen, National Association of Consumer Advocates, Americans for Financial Reform, and the National Consumer Law Center, suggested the legislation should include steps to protect consumers from forced arbitration clauses in financial services contracts as well. In a letter sent to the Consumer Financial Protection Bureau (CFPB), Sen. Franken said:

These clauses force individuals into private binding arbitration as a condition of buying a product or service, and are designed to stack the deck against consumers and ensure that the final outcome of forced arbitration is unreviewable by courts. Forced arbitration clauses—often buried deep within the fine print of

financial products and service contracts—harm American consumers by depriving them of their day in court even when companies have violated the law.

This legislation is badly needed and hopefully the public will find out about it and help out. If enacted, the AFA would:

- Eliminate forced arbitration in employment, consumer, civil rights and anti-trust cases;
- Ensure that the decision to arbitrate is truly voluntary; and
- Restore fundamental rights created by state and federal laws that are currently at risk of being wiped out by forced arbitration.

Forced arbitration is particularly ubiquitous among predatory, for-profit colleges, leaving their victims unable to hold the schools accountable in court, and drowning in student loan debt. As you may recall, U.S. Sen. Dick Durbin (D-Ill.) and Rep. Maxine Waters (D-Calif.) introduced in May the Court Legal Access & Student Support (CLASS) Act of 2015, which will prohibit any school that receives student aid funding from the Department of Education from using forced arbitration against students. This legislation will protect students who have fallen victim to predatory, for-profit college scams, as well as the American taxpayers who are left footing the bill.

Forced arbitration is a widespread, abusive practice used by corporations to ensure that Americans can never hold them accountable in court when they break laws designed to protect consumers, employees and students, and it can only be stopped if Congress acts. Linda Lipsen, CEO of the American Association for Justice (AAJ), had this to say:

For too long, forced arbitration has denied Americans their right to hold corporations accountable when they are cheated, injured, or discriminated against. AAJ applauds Sen. Franken and Rep. Johnson for leading the charge to ensure access to justice for everybody—not just powerful corporations.

Since becoming a member of the Senate, Sen. Franken has repeatedly pushed for legislation to clamp down on mandatory arbitration. He has been a constant critic of forcing mandatory arbitration on consumers. Sen. Franken has stated that the justices' 5-4 decisions in *AT&T v. Conception* and *American Express v. Italian Colors*

were "activist decisions" that placed the interests of corporations over those of consumers. It will be interesting to see how many members of Congress agree with him. Hopefully there will be a majority in both the House and Senate who do agree and will also vote with Sen. Franken.

Sources: Law 360, Consumerist, Govtrack.us

LEGISLATION INTRODUCED TO CONTROL INCREASING GENERIC DRUG PRICES

Within the past few years, the cost for generic prescription drugs has skyrocketed with prices increasing more than 1,000 percent in some cases. Nearly 10 percent of generic drugs more than doubled in price between July 2013 and July 2014 alone, according to data from the US Centers for Medicare and Medicaid Services. During the same time period, the price of more than 1200 generic drugs increased by an average of 448 percent. For example, Albuterol Sulfate, used to treat asthma, increased from approximately \$11 to nearly \$434 during that time period, and doxycycline, an antibiotic, increased from \$20 to \$1,849 for a bottle of 500 tablets. Not only do increased costs place a financial burden on citizens and the government agencies paying for the drugs, in some instances patients may be completely prevented from obtaining the drugs they need.

Sen. Bernie Sanders and Rep. Elijah Cummings began investigating these rising costs last year. They recently introduced the Medicaid Generic Drug Price Fairness Act of 2015 to combat the rising costs of generics. The Act would require manufacturers of generic drugs to pay state Medicaid rebates if generic-drug price growth outpaces inflation. Makers of brand-name drugs are already subject to inflationary rebates, while makers of generics pay a flat rate of 13 percent. The change could save the federal government \$1 billion and state programs \$750 million over a decade, according to a Sanders aide.

Source: FDA News

IX. PRODUCT LIABILITY UPDATE

WITH CHINESE TIRES—BUYER BEWARE

Lawyers in our firm are handling an increasing number of tire cases involving

the failure of Chinese made tires. American consumers have faced numerous issues with Chinese products including lead-laced toys, tainted toothpaste and pet food recalls. However, the problems with Chinese products are emerging with greater frequency and they involve one of a vehicles' most important safety features, its tires.

Currently, China is exporting nearly 65 million tires a year. Recently, many Chinese tire manufacturers have come under attack for making substandard and unsafe tires available for sale in the United States. Furthermore, some Chinese manufacturers have been the subject of "recalls" by many state attorneys general and the Federal Trade Commission (FTC).

While there have been numerous Chinese tire brands that have been scrutinized, some of the brand tires that have been recalled for safety defects are Westlake Tires, AKS Tires, Telluride tires and Compass Tires. All of these tires are made by the China-based Hangzhou Zhongce Rubber Company. All of the tires lacked the most basic of tire safety features such as bead wedges and cap plies, which are state of the art in the tire industry today.

In addition to design issues, another basic problem that our lawyers are seeing with Chinese made tires are quality and control measures. In most of the cases our firm has prosecuted against Chinese tire makers, the lawyers involved have discovered that these manufacturers have very little to no measures in place to assure quality control. Some of the manufacturers use manufacturing processes that were abandoned by domestic tire makers in the 1980s. That's inexcusable and puts consumers at risk when using their tires.

While several of these Chinese tires are less expensive, their reduced price is proving to be at the cost of reduced safety and it has resulted in the loss of lives. You might want to think twice before buying a less-expensive Chinese tire. If you need more information, contact Rick Morrison, a lawyer in our firm's Personal Injury/Product Liability Section. Rick is our lead lawyer in tire-related litigation.

APPEALS COURT REVERSES CHRYSLER WIN IN "FALSE PARK" DEATH SUIT

The Ninth Circuit Court of Appeals has reversed an order granting summary judgment to Chrysler Group LLC in a suit alleging that a "false park" defect allowed a minivan to roll backward and kill two people. The appeals court found that there

was adequate evidence of the defect and that the suit should be allowed to proceed. The appellate court said questions remain as to whether a defect in the 2008 Grand Caravan caused the vehicle to slip into reverse after the driver had shifted its transmission into park and exited the vehicle. In the incident, Roy and Rose Coats were killed in the garage of their Menifee, Calif., home.

U.S. District Judge R. Gary Klausner ruled in Chrysler's favor in January 2013, saying that the Plaintiffs' claims were "speculative." The judge said that the couple could have been killed due to Mrs. Coats' carelessness, suggesting that she may have accidentally put the car into reverse, causing it to roll into her husband and then into her when she rushed from the vehicle to assist him. The Ninth Circuit stated that Judge Klausner had misapplied state law, noting that manufacturers can be held strictly liable for a defective product if an injury results from that product's reasonably foreseeable use.

The appeals court said that a report from an expert for the Plaintiffs, combined with documentation of a false park defect in Grand Caravans documented by NHTSA, presented a material issue of fact on the issue of whether Mr. and Mrs. Coats were killed because of that defect.

According to the Plaintiffs the couple's minivan's defective transmission made it look and feel as though the vehicle was parked, catching both of them unaware when it rolled backward. Mrs. Coats, a 75-year-old woman, was pinned between the open driver's side door and the wall of the couple's garage, causing her to suffocate. Roy Coats, who was 83, suffered a fatal heart attack after his ankle was broken and his leg trapped under a wheel of the van, according to the Plaintiffs. Police discovered the couple's bodies in their garage in February 2011.

I was not at all surprised to see this case reinstated. In my opinion, the appellate court got it right. It will be interesting to see how this case progresses now that it's back on track.

Source: Law360.com

X. MASS TORTS UPDATE

TRANSVAGINAL MESH LITIGATION UPDATE

On June 2, 2015, Judge Joseph Goodwin, who is handling the transvaginal mesh multidistrict litigation (MDL), held a status conference attended by lead counsel for Plaintiffs, as well as counsel representing each of the defendant-manufacturers. The purpose of the status conference was to discuss the approximately 70,000 individual transvaginal mesh cases consolidated before Judge Goodwin in the United States District Court for the Southern District of West Virginia. The cases are part of multidistrict litigation as ordered by the Judicial Panel on Multidistrict Litigation.

For the uninformed, multidistrict litigation is a consolidation of civil cases transferred from different jurisdictions around the country to a single United States District Court to achieve certain pre-trial efficiencies. The aim of this consolidation is to preserve judicial resources, eliminate duplicities in the fact-finding process, and prevent inconsistencies in pre-trial rulings. Judge Goodwin currently presides over seven MDLs against various transvaginal mesh manufacturers.

To date, only one defendant-manufacturer, American Medical Systems (AMS), has settled the majority of its outstanding claims. In late 2014, AMS agreed to settle most of the approximately 20,000 lawsuits against it for around \$1.6 billion. Firms across the country, including Beasley Allen, continue to press forward in an effort to resolve cases against the other defendant-manufacturers.

On May 28, 2015, a Delaware jury awarded Plaintiff Deborah Barba \$100 million following a trial against defendant-manufacturer Boston Scientific. The verdict consisted of \$25 million in compensatory damages and \$75 million in punitive damages. Ms. Barba was implanted with Boston Scientific's Pinnacle and Advantage Fit mesh products in 2009 to treat pelvic organ prolapse and stress urinary incontinence. Despite undergoing two corrective surgeries due to complications caused by the products, Ms. Barba continues to experience severe pelvic pain and other gynecological symptoms.

Following a two-week trial, jurors found Boston Scientific to have been negligent in designing and manufacturing the products and that it had failed to warn patients and

doctors about potential risks associated with the products. This latest jury verdict is the sixth Plaintiffs' victory against Boston Scientific, which include a \$73.4 million verdict (subsequently reduced to comply with Texas damage caps) from a Texas court, a \$26.7 million verdict to four women in Florida, and an \$18.5 million verdict to a group of women in West Virginia.

Johnson & Johnson's Ethicon division is the largest defendant-manufacturer involved in the transvaginal mesh litigation. It's believed that Ethicon faces approximately 30,000 mesh claims—more than two-thirds of which are pending before Judge Goodwin. Recently, the Plaintiffs' Steering Committee (PSC), a group of lawyers appointed by the court to represent the common interests of all MDL Plaintiffs, filed a motion requesting a plan involving multiple, consolidated trials.

Specifically, the PSC is asking Judge Goodwin to enter a Case Management Order providing for bellwether consolidations of cases that apply a single state's substantive law, involve a single product, and reflect a representative range of injuries, to be tried before Judge Goodwin and other district courts across the country. "Bellwether trials" have long been seen as a useful tool to assist the parties in evaluating the strengths and weaknesses of their respective cases as they consider the prospects of resolution.

In its motion, the PSC argues that the traditional bellwether approach of establishing claim values through a small number of individual trials would be impractical due to the volume of cases pending against Ethicon as well as Ethicon's present lack of interest in a broad settlement. The PSC argues that by prioritizing consolidated trials involving products that have not yet been tried, and by beginning the process in jurisdictions whose laws and processes have already been addressed, the parties can more efficiently evaluate fair settlement values for the full range of cases involving Ethicon pelvic mesh products.

On June 12, Judge Goodwin, who oversees 70,000 mesh implant cases in seven MDLs, said 26 of the roughly 23,000 suits against Ethicon should go to trial in November. Those suits involve West Virginia Plaintiffs who had surgery in the state to implant Ethicon's TVT product used to treat stress urinary incontinence, according to the ruling.

After he had consolidated the cases, Judge Goodwin denied Plaintiffs' bid to systematically consolidate cases by state and device. The ruling consolidated the 26

cases for trial on negligent and strict liability claims for alleged design defects in the product. By consolidating the suits on those limited claims, Judge Goodwin said the parties would be spared extra expense and any potential juror confusion could be easily managed. Judge Goodwin said in the consolidation order:

Indeed, this consolidation—on the discrete issues noted above—will save the parties the substantial cost of litigating multiple separate trials on these issues and, potentially, all remaining issues.

The judge found the fact that Plaintiffs' surgeries to implant the TVT device involved different doctors over the course of 13 years was irrelevant to the design defect claims. Because the surgeries all occurred within West Virginia, the suits are subject to the state's relevant laws, the judge said.

In addition to the numerous claims before Judge Goodwin in the MDL, Ethicon also faces consolidated claims pending in New Jersey state court. Recently, Judge Brian Martinotti ordered that a number of cases involving Ethicon's TVT Obturator product move forward with case-specific discovery. Groups of cases such as this are often referred to as "discovery pool cases" and serve to provide applicable information about each parties' claims and defenses with the ultimate goal of selecting appropriate cases for bellwether trials.

To date, Ethicon has faced only two trials involving its TVT Obturator product, both of which resulted in victories for the Plaintiffs. In September 2014, a federal jury in West Virginia awarded \$3.27 million against Ethicon in a case involving the TVT Obturator product. In April 2014, a Texas state court jury awarded \$1.2 million to a woman who suffered severe and debilitating injuries after being implanted with Ethicon's TVT Obturator product.

Ethicon has also faced several trials related to its other products. In 2013, an Atlantic County, N.J., jury awarded \$11.1 million in damages against Ethicon, including punitive damages as a result of Ethicon's actions surrounding the manufacture and sale of the Prolift product, a product used in the treatment of pelvic organ prolapse.

If you need more information on the mesh litigation, contact Leigh O'Dell, Chad Cook, or Andy Birchfield, all lawyers in our firm's Mass Torts Section, at 1-800-898-2034 or 334-269-2343 or by email at Leigh.Odell@beasleyallen.com, Chad.Cook@

beasleyallen.com and Andy.Birchfield@beasleyallen.com.

Sources: Injury Lawyer News; Plaintiff's Steering Committee's Motion for a Case Management Order Regarding the Consolidation of Cases for Trial, *In re: Ethicon, Inc. Pelvic Repair System Prods. Liab. Litig.*, MDL No. 2327 (S.D.W.Va. June 4, 2015); and Pretrial Order #182 (Order Consolidating Above Cases for Trial on Issue of Design Defect), *In re: Ethicon, Inc. Pelvic Repair System Prods. Liab. Litig.*, MDL No. 2327.

U.S. SUPREME COURT DENIES PREEMPTION PETITION IN REGLAN CASES

The U.S. Supreme Court has denied the last of three petitions seeking review of a Pennsylvania ruling that thousands of generic Reglan users' state court product liability claims weren't necessarily preempted by federal law. The decision keeps 2,300 coordinated suits alive in Philadelphia County Court of Common Pleas that claim generic versions of the digestion drug caused neurological damage. Teva Pharmaceuticals USA Inc., Pliva Inc., Morton Grove Pharmaceuticals Inc. and Wockhardt USA LLC all had their appeals denied.

The appeals were from a three-judge Pennsylvania Superior Court panel's split decision from July 2013, finding that most of the Reglan-related design defect, negligence, false advertising, breach of warranty and other claims in the cases, which are pending as part of Philadelphia's mass tort program, were not preempted by federal law under the Supreme Court's landmark decision in the *Pliva v. Mensing* case.

The *Mensing* decision found that state law failure-to-warn claims against generics manufacturers were preempted because generic manufacturers are required to use the same warning label as brand-name companies. The Superior Court's decision found, however, that *Mensing* addressed only failure-to-warn claims on product labels and did not preempt the defective design claims made in the cases pending in Philadelphia.

This is a huge win for the victims who suffered injury from Reglan and it further clarifies the preemption issue on generic drugs. Our firm has been heavily involved in this litigation and our lawyers agree with this settlement. If you need more information on Reglan, contact Danielle Ward Mason or Melissa Prickett, lawyers in our firm's Mass Torts Section, at 800-898-2034 or by contacting them at Danielle.Mason@beasleyallen.com and Melissa.Prickett@beasleyallen.com.

Source: Law360.com

PUNITIVE DAMAGES WILL BE THE STANDARD IN FIRST TYLENOL BELLWEATHER TRIAL

The first bellwether trial in the Tylenol litigation is scheduled to begin on October 26, 2015. The Plaintiff, Rana Terry, who is suing on behalf of her sister, Denise Hayes, alleges in the case that the decedent took Tylenol Extra Strength in August 2010 according to the label's instructions. It's alleged further that Ms. Hayes went to the emergency room later that month with catastrophic liver damage and died a week later.

As Alabama lawyers know, only punitive damages are available for wrongful death claims under Alabama law. The Defendant asked the Court to apply New Jersey wrongful death law to the case. In May 2015, a Pennsylvania federal judge ruled that Plaintiffs can seek unlimited punitive damages under Alabama law. It's alleged that acetaminophen in various Tylenol products from a Johnson & Johnson unit was responsible for users' severe liver damage.

U.S. District Judge Lawrence F. Stengel said in his opinion that the decedent lived in Alabama, bought the medicine in Alabama and died in Alabama. The judge found that those facts outweigh the fact that Johnson & Johnson and its Tylenol-manufacturing subsidiary McNeil-PPC Inc. are New Jersey corporations. The decision is seen as a severe blow to Johnson & Johnson.

The company sought to apply New Jersey law, which is seen as more drug-maker-friendly, and clearly Alabama law applied. New Jersey law precludes punitive damages in drugs product liability cases in which the drug at issue has been generally recognized as safe and effective by the U.S. Food and Drug Administration (FDA). Judge Stengel wrote in his opinion:

In short, the plaintiff could gain maximum punitive damages under Alabama law and minimal, if any, punitive damages under New Jersey law.

Judge Stengel said in his opinion that a "true conflict" exists between Alabama's law and that of New Jersey. Alabama law is clearly intended to protect the lives of its citizens by imposing unlimited damages on tortfeasors causing death, whereas New Jersey law is designed to protect drugmakers from excessive damages in product liability cases, he said.

The Court appears to have weighed the options carefully. There are approximately 200 cases pending in the MDL. It will be

most interesting to see what happens when these cases are tried in federal court.

Source: Law360.com

\$4.5 MILLION VERDICT AWARDED IN FIRST WRIGHT HIP IMPLANT TRIAL

A California jury has ordered Wright Medical Technology Inc. to pay \$4.5 million to Alan Warner, a metal hip implant patient, and his wife after finding that his implant was defective and caused him harm. This was the first trial among 1,200 cases claiming Wright's hip implants are defective. The jury agreed with the patient's allegation that the hip implant he received contained a manufacturing defect, and that the implant's failure injured both him and his wife. Interestingly, the jurors didn't find that Wright was negligent in designing the Profemur R implant.

The jury didn't award Mr. Warner any damages for his medical expenses. But they did award him \$4 million for his past and future pain and mental suffering. His wife was awarded \$500,000 for the losses she's suffered as the result of his defective hip implant.

The suit was filed in December 2011, alleging that on Oct. 27, 2010, Mr. Warner's implant failed while he went to the kitchen to get a cup of coffee, throwing him into extreme agony and forcing him to undergo extensive surgery to fix it. Laser guidance marks etched too deeply on the implant allegedly weakened the implant and caused it to fail, according to Mr. Warner. His case is a bit different than most of the others, in that the implant appeared to break in the stem of the implant. Most others appear to have broken in the neck or leached chromium and cobalt into the bloodstream and hip capsule.

Steven R. Vartazarian, a lawyer for Mr. Warner, told jurors during the trial that the hip implant was supposed to last 15 to 20 years, but that this one failed after less than three years. This case is the first of more than 600 lawsuits in coordinated litigation in California state court and about 600 more in federal multidistrict litigation based in Georgia to go before jurors. All of the cases focus on the alleged metal-on-metal failure of Wright's Profemur hip implants, though the specific types of failure vary. Wright took the position during the trial that the device failed because it was not installed correctly. It was contended by Wright that this allowed slight movements that eventually caused the fracture.

Source: Law360.com

ALZHEIMER DRUG CAUSES SKIN REACTIONS

On Nov. 18, 2014, Health Canada, which is the equivalent of the Food & Drug Administration (FDA) in the United States, issued a warning that the Alzheimer's disease drug galantamine (Razadyne or Razadyne ER) has been associated with rare, but serious and potentially fatal skin reactions. These skin reactions may include:

- severe rash with blisters and peeling skin;
- red rash covered with small pus-filled bumps that can spread over the body, sometimes with fever; and
- rash that may blister spots that look like a target.

The most dangerous of these reactions is the blistering rash with peeling skin, which may indicate Stevens Johnson Syndrome (SJS), which is a medical emergency. It causes skin damage similar to that caused by severe burns and usually requires hospitalization. Thus far, the FDA has not recommended a similar warning be issued in the United States. Our firm has handled a number of cases involving Stevens Johnson Syndrome. If you have questions about this condition, contact Frank Woodson, a lawyer in our Mass Torts Section, at 800-898-2034 or by email Frank.Woodson@beasleyallen.com. Frank has handled a number of Stevens Johnson Syndrome claims.

Source: Public Citizen

XI. AN UPDATE ON SECURITIES LITIGATION

DEPARTMENT OF JUSTICE SHREDS 2012 UBS SETTLEMENT

In December 2012, UBS AG entered into a settlement agreement with the U.S. Department of Justice (DOJ), in which the U.S. agreed not to prosecute the bank on the condition that it "commit no United States crime whatsoever" for the two-year term of the agreement. Prosecutors later extended that agreement by a year. After UBS self-reported new infractions regarding interest-rate rigging and provided evidence that will culminate in settlements

with five of the world's largest banks for allegedly manipulating foreign currency rates, UBS had been optimistic that the DOJ would ignore that pesky little "commit no crime" clause.

DOJ, however, took an unprecedented move, voiding the 2012 settlement after more than a year of discussions with the bank. Some people familiar with the negotiations say that UBS officials are surprised that DOJ voided the 2012 settlement. UBS believes its early cooperation helped prosecutors break open the foreign exchange investigations and that the antitrust division's grant of immunity should have insulated the bank. In September 2013, when the bank first reported the potential foreign-currency rigging violations, UBS was given a leniency marker for antitrust immunity with the DOJ, which holds an immunity applicant's place at the front of the line while the U.S. investigates further. Prosecutors in a different division, the Criminal Fraud Section, disagreed: the earlier settlement clearly only protected UBS from prosecution if it did not break the law and UBS broke the agreement when its traders violated the law and engaged in currency-market misconduct after the 2012 agreement. Additionally, UBS was viewed as a repeat offender having reached previous settlements including one in 2011 related to anti-trust violations in the municipal-bond investments market. "UBS has a 'rap sheet' that cannot be ignored," Leslie Caldwell, the head of the Justice Department's criminal division, told reporters. "Within the past six years, the department has resolved criminal investigations of UBS three times."

The negotiations resulting from this second wave of LIBOR-related allegations mean an extra \$203 million to the DOJ and a guilty plea to some criminal charges—wire fraud, for example. But, because UBS was the first company to self-report the violations, it has immunity from criminal prosecution for the antitrust charges the other banks that recently settled LIBOR allegations faced. That brings UBS' total payments for this round of negotiations to \$545 million and is in addition to the \$1.7 billion in the LIBOR case and the \$800 million UBS paid last year to U.S., U.K. and Swiss regulators over its role in rigging foreign exchange rates.

The bigger problem for UBS, though, is the criminal plea. The bank will have to seek permission from U.S. regulators to keep operating in certain lines of business after the guilty plea, including managing mutual funds and pensions for Americans. It will need a waiver from the U.S. Department of Labor.

The DOJ said it would support a request by UBS to adjourn sentencing to give the bank time to obtain the exemption. The Securities and Exchange Commission already granted the necessary waivers for the five guilty banks to continue doing business. If you need additional information, contact Rebecca Gilliland, a lawyer in our firm's Consumer Fraud and Commercial Litigation Section, at 800-898-2034 or 334-269-2343, or by email at Rebecca.Gilliland@beasleyallen.com.

Sources: Bloomberg.com and *Wall Street Journal*

XII. INSURANCE AND FINANCE UPDATE

OIL GIANTS CANNOT AVOID MTBE INSURANCE DOUBLE-DIPPING SUIT

A New York federal judge has ruled that BP PLC, Chevron Corp. and other oil giants can't avoid facing Pennsylvania's suit alleging they hid oil spill-related insurance proceeds to double-dip in a government-run pollution indemnification fund. U.S. District Judge Shira A. Scheindlin issued a mixed ruling allowing Pennsylvania to continue the suit alleging that refiners owe millions of dollars that the State has paid out to indemnify cleanup efforts related to leaks of underground storage tanks containing gasoline tainted with methyl tertiary-butyl ether (MTBE), a controversial additive that was phased out in the commonwealth in 2005.

Though Judge Scheindlin granted the dozens of companies—also including Kinder Morgan Inc., Phillips 66 Co., Texaco and others—their motions to dismiss Pennsylvania's subrogation claims and Storage Tank and Spill Protection Act claims, she allowed the state's unjust enrichment claims to stay in the case. She said in her order:

The commonwealth has alleged—consistent with Pennsylvania law—that the insurance defendants obtained a double-recovery by receiving money from both the [Underground Storage Tank Indemnification Fund] fund and their insurance companies covering the same releases....If true, this would be a textbook example of unjust enrichment.

The suit, originally filed in the Philadelphia County Common Pleas Court by State Attorney General Kathleen Kane and Gov. Tom Corbett's general counsel James Schultz, is an attempt to claw back payments disbursed by Pennsylvania's Underground Storage Tank Indemnification Fund (USTIF)—the commonwealth's MTBE insurer of last resort—to dozens of companies that used the funds to clean up spills of both regular and MTBE-tainted gasoline.

According to the complaint, all of the defendants were previously liable to third parties for releases of oil-related chemicals and turned to the USTIF for relief. But it appears that the companies were covered by commercial, captive and mutual insurance policies for those same corrective actions. If so, they were clearly prohibited from "double-dipping" into the fund.

More than 20 companies filed the motion in December to sever, remand or dismiss several of the insurance-related claims in the suit. The claims included subrogation, unjust enrichment and claims under the Storage Tank and Spill Protection Act. In her opinion, Judge Scheindlin said that Pennsylvania had not adequately pled the first and last of those claims, but that she would allow the state to pursue claims of unjust enrichment. She wrote:

The anti-subrogation rule prohibits an insurer from bringing a subrogation claim against its own insureds....Here, the commonwealth is the insurer, and the insurance defendants are the insured.

Similarly, Judge Scheindlin said in the opinion that the claims under the storage tank act were not adequately pled. Under the law, the state must show that the insureds—in this case, the oil refiners—purposefully hid information that was requested by the state. In that regard the Judge said:

Nothing in the complaint supports the notion that it is plausible that the insurance defendants concealed the existence of additional insurance in response to a request by the fund.

A number of other state and municipal governments across the country—most recently Vermont—have sued energy companies to cover environmental testing and cleanup costs stemming from MTBE contamination. MTBE was used in U.S. gasoline at low levels since 1979 to replace lead as an octane enhancer, which helps prevent the engine from "knocking," according to the Environmental Protection Agency (EPA). Since 1992, it has been used at

higher concentrations in some gasoline to fulfill the oxygenate requirements set by Congress in the 1990 Clean Air Act Amendments.

Source: Law360.com

XIII. EMPLOYMENT AND FLSA LITIGATION

ARE CLASS ACTIONS THAT ARE DESIGNED TO PROTECT WORKERS ABOUT TO GO THE WAY OF DINOSAURS?

The last several years, class action cases designed to protect workers have become harder and harder to win. The biggest obstacle for employee class actions has not been the actual erosion of workplace rights but procedural barriers designed to stop employees from joining their claims together. Under Rule 23 of the Federal Rules of Civil Procedure, a court can let a class action lawsuit go forward if “there are questions of law or fact common to the class,” and those common questions “predominate over any questions affecting only individual members.”

Basically, if everyone in the class had their rights violated in a similar manner and suffered the same type injury, then a class action is appropriate. Importantly, each employee doesn’t have to have suffered identically, but only in similar ways. For example, if two people were discriminated against for promotions, the exact amount of money they lost doesn’t have to be identical.

Class actions have long been used to save the court system time and money. It is much easier, cheaper and more efficient to resolve several claims in one case, than to do it in a number of separate lawsuits over a number of years. Corporations typically don’t like class action lawsuits because they are efficient and save money for those injured. In many cases, if employees could not bind their claims together in a class action, it would not make financial sense for an employee to bring a lawsuit. For example, if you were denied overtime pay for your job, you may spend more money on a lawsuit to get those wages back than you could ever recover. However, if you joined your claim with other workers, then you and the others can share costs and expenses.

The last several years, courts have been focusing on Rule 23’s “common questions”

standard and making it harder to show that each employee is, in fact, similar. In *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), the United States Supreme Court held that, in order to satisfy the common questions requirement, Plaintiffs must “demonstrate that the class members ‘have suffered the same injury’” by proving that their claims “depend upon a common contention” that is “capable of class wide resolution ... in one stroke.” The Court also disapproved of “trials by formula,” in which liability is determined for a “sample set” of class members and then “applied to the entire remaining class.” This was a major step back for those trying to protect workers.

The Supreme Court has recently decided to look at another employment class action—*Tyson Foods, Inc. v. Bouaphakeo*. Will the High Court continue to make it harder on workers or will the justices offer some help? That’s the question to be answered by the court. In *Tyson*, the employees are hourly workers at a pork-processing facility and allege that Tyson failed to pay them fully for time spent donning and doffing protective equipment and walking to and from their work stations. The trial court certified the class even though there were differences in the amount of time that each employee actually spent putting on the safety equipment and walking to his or her work location in the plant.

At trial, the jury returned a verdict for the class, and the district court entered a \$5.8 million judgment for the employees. The part of the case that the US Supreme Court has agreed to review is limited to questions about whether the case should have been allowed to go forward as a class. Although no one knows how the Court will rule, it is a very important case that could affect millions of workers going forward.

Source: Class Defense Blog, June 8 2015.

FedEx Will Pay \$228 Million To Settle Driver Wage Lawsuit

FedEx Corp. will pay \$228 million to resolve a class action brought by FedEx Ground drivers in California. It was alleged that the company misclassified them as independent contractors instead of employees, shorting their wages and benefits. The tentative settlement, which requires the approval of a California federal judge, will resolve claims brought against FedEx Ground Package System Inc. by 2,300 California truck drivers who worked for the company from 2000 to 2007 and claimed

that they should have been considered employees.

FedEx said in a U.S. Securities and Exchange Commission filing that it will take a fourth-quarter charge of \$197 million, or 48 cents per diluted share, in order to increase legal reserves in connection with the settlement. The settlement is said to be one of the largest employment settlements in recent years.

The settlement follows the Ninth Circuit’s August 2014 ruling that overturned a lower court’s summary judgment in favor of FedEx. The Ninth Circuit found that under the provisions laid out in FedEx’s operating agreement, the company had broad authority to dictate the way drivers carry out their jobs. Taking that authority into account and weighing it against other facts, the appeals court said the level of control FedEx exercised over its drivers made them employees.

The following factors were considered by the Ninth Circuit in reaching its decision that the drivers were employees.

- While the operating agreement allowed drivers to supply their own trucks and to pay for their own uniforms, the agreement also included specifications for the size and maintenance of those trucks and the condition of the uniforms.
- FedEx also required drivers to pick up and deliver packages within a certain geographic area and time window, and
- FedEx provided training for drivers on job performance and interacting with customers.

U.S. Circuit Judge William A. Fletcher, writing for the Court, said in his opinion:

The [operating agreement] grants FedEx a broad right to control the manner in which its drivers perform their work. Other factors do not strongly favor either employee status or independent contractor status. Accordingly, we hold that plaintiffs are employees as a matter of law.

The case was part of a number of lawsuits filed by FedEx drivers in about 40 states across the U.S. The suits, which were eventually consolidated in multidistrict litigation (MDL) and certified as class actions, included similar allegations that FedEx improperly classified its drivers as independent contractors, depriving them of benefits that employees would normally receive and forcing them to cover business expenses.

The Ninth Circuit appeals were filed after the Indiana federal district court handling the MDL granted summary judgment to FedEx on the question of whether the drivers were employees.

Source: Law360.com

XIV. WORKPLACE HAZARDS

OUR FIRM SETTLES AN IMPORTANT MARITIME CASE IN MOBILE

Kendall Dunson and Cole Portis, lawyers in our firm, settled a very important Maritime law case last month involving one death and one personal injury. The incident giving rise to the case filed in Mobile County, Ala., occurred in the Mobile Bay. On June 18, 2008, Edward Purdue and Carl Williams were line handlers employed with Mo-Bay. Line handlers operate small boats to assist large vessels with docking and tying their anchorage lines to bollards or dauphins.

When conducted properly, line handlers move their boat into position adjacent to the docking vessel and give hand signals to the docking vessel's crew to slack the docking lines down. The docking line is then tied to the line handling boat and pulled to shore to be tied off. Before the line handling boat can move toward shore, the docking vessel's crew has to introduce more slack using a winch and winch controls. The process continues until all docking lines are secured.

On the day of this incident, Mr. Purdue and Mr. Williams had successfully taken five lines to shore to be tied off and were on their last line of the day. After tying the last line to their boat, they called for slack, but instead of getting slack, the winch controls were operated in the wrong direction causing the winch on the docking vessel, the Glenross, to pull the line handling boat out of the water 20 to 30 feet up the side of the Glenross. Both Mr. Purdue and Mr. Williams realized what was occurring and began to yell and scream for slack. Both men held on to the console of their boat as they were being pulled out of the water by the subject winch. They then fell back into the water followed by their boat.

The evidence at trial revealed that the subject boat hit Mr. Purdue on his shoulder when the winch released the boat. Fortunately for him, while in the water he felt

and grabbed the winch line as the winch continued to reverse. Mr. Purdue was pulled out of the water by the winch line to safety.

Mr. Williams was not as fortunate and was sucked down by the current created by the tug boats guiding the vessel into place to dock. He drowned and his body was not found until the Glenross was moved two days later. Five minutes after the Glenross completed offloading its cargo and was moved, the body floated to the surface.

Because of the incident, the U.S. Coast Guard was notified and boarded the Glenross hours after the incident to inspect the winch and the controls. The crew of the Glenross including its Captain, the Third Mate in control of the process, and others assisting, informed the Coast Guard investigators that the subject winch reversed without any person on the Glenross touching the controls. The Coast Guard inspector, along with two independent entities, tested the winch and the winch controls. It was determined that the subject winch and controls were in proper working condition and no one, including the Glenross's own Chief Engineer, could duplicate the controls reversing or even operating without human intervention.

The independent inspections along with the opinions of all experts in the case, including the Defendants' expert, concluded that the winch control must be activated before the winch can move in any direction. Furthermore, in order for the winch line to continue to heave in or pay out, the control must be held in that position. The control lever is spring-activated; thus, if the control lever is released, it will automatically revert to neutral, engaging a brake and stopping the winch.

With this evidence, we were able to prove and argue to the jury that the statements made by the crew of the Glenross were fabricated. Kendall and Cole contended that the Third Mate either:

- held the control in the heave in position while hearing Mr. Purdue and Mr. Williams screaming for slack, or
- he rigged the control and walked away to perform other tasks.

The evidence established that if someone had been monitoring the line handling boat and/or the winch, they would have easily heard the screams and could have stopped the winch before the line handling boat was pulled from the water.

The case was into the third week of trial when the parties agreed to a very good settlement for our clients. The case had been

bifurcated. The first phase of the trial was to determine the status of Mr. Williams and Mr. Purdue as longshoremen or seaman. The jury ruled in the Plaintiffs' favor, finding that the two men were longshoreman. This ruling affected the damages that were available to Mr. Purdue and to the three surviving children of Mr. Williams. The settlement for both Plaintiffs was reached a day before the jury was to deliberate liability and damages.

Kendall and Cole were assisted by David Bagwell, a talented lawyer, from Fairhope, Ala. David handled all Maritime law issues for us. His participation was instrumental in our firm being able to obtain the favorable settlement for our clients. The Defendants were represented by Tom Rue, Walton Jackson and Ben Segarra from Maynard, Cooper & Gale's Mobile office. They put up a good fight, but had to know that the jury, after hearing the testimony, were going to return a very large verdict in the case.

This was a very good settlement for our clients and we were able to help them, which was our goal. This was a good result for them and there will be no appeal to be concerned with. Kendall and Cole did an outstanding job in the case.

\$53.8 MILLION SETTLEMENTS FOR 82 WORLD TRADE CENTER CLEANUP WORKERS APPROVED

A federal judge has approved \$53.8 million in settlements for 82 unionized cleanup workers who were made ill by exposure to toxic dust near the World Trade Center site. The workers were among about 1,000 who sought compensation in federal court in Manhattan for injuries related to their cleanup work at more than 100 privately owned buildings in downtown Manhattan. While a few hundred other workers have also settled, the settlements approved on June 9 by U.S. District Judge Alvin Hellerstein in Manhattan offers a new window into the payouts, which typically have not been made public.

Payouts to the 82 workers will average \$656,119, and range from \$25,000 to \$1.45 million. They reflect such factors as injury severity, lost earnings, age and smoking history. One worker still has claims against two related Defendants. Most litigation stemming from the Sept. 11, 2001, attacks has been completed. Judge Hellerstein has handled much of that litigation. The latest settlement covers members of Laborers International Union of North America Local 78, which represents asbestos, lead and

hazardous waste handlers in New York City, Long Island and New Jersey.

The workers claimed to suffer respiratory and digestive diseases, psychological injuries and cancer after the Defendant building owners and contractors failed to provide equipment to keep them from inhaling toxic dust in about 71 buildings near Ground Zero. The Defendants, which also include managing agents, subcontractors and consultants, disputed that the dust was toxic or caused injuries.

Judge Hellerstein said the latest settlements compared “favorably” with the \$716 million accord he approved in 2010 to cover more than 10,000 people who worked at the World Trade Center site and brought claims against the city and contractors. The judge also said the payouts were “well within the range of reasonableness.” He approved a 25 percent legal fee for the Plaintiffs’ lawyers, Gregory J. Cannata & Associates and Robert Grochow. The case is in the U.S. District Court, Southern District of New York.

Source: *InsuranceJournal.com*

XV. TRANSPORTATION

FATIGUE NOT A NEW ISSUE TO TRUCKING INDUSTRY

The connection between over the road trucking and driver fatigue is not a new topic. For as long as drivers have had to make certain delivery times and shippers have paid to have their products delivered by truck, drivers have on occasion been falling asleep at the wheel. As early as 1935, the National Safety Council issued its report on the problem, titled, “Too Long at the Wheel.” Since then, our society has developed into a 24-hour society and fatigue, in general, has become a broad societal problem.

The National Sleep Foundation reports that 37 percent of American adults are so sleepy during the day that it interferes with daytime activities. Given the demands of the job, this has to be worse for truck drivers. The “just in time” delivery and “rolling warehouse logistics” have made trucking a truly around-the-clock endeavor. Yet today, certain trucking groups downplay driver fatigue and portray it as a relatively minor problem. Even the Federal Motor Carrier Safety Administration (FMCSA), which is supposed to be protecting the public from dangerous trucking

activities, underreports fatal truck crashes related to fatigue.

Most leading sleep experts agree that driver fatigue is an underestimated problem in the industry. In 1995 the FMCSA, then under Director Frederico Pena, called for the first national truck and bus safety summit. At this summit there were meetings, sessions, workshops, and speeches to develop a list of 17 safety issues facing the trucking industry and ranked them in priority order. Number one on the list was driver fatigue. In the years following, more emphasis has been put on the fatigue issue, with fatigue training videos being offered by all major industry training suppliers. The trainer sessions have been developed along with other methods to alert the industry to the serious problem.

In spite of the additional focus and attention on the issue, and in spite of the Department of Transportation’s announced 1999 goal of reducing truck crash fatalities by 50 percent in 10 years, we still do not have a litmus test to determine whether a driver is fatigued when he or she is involved in a crash. It should be noted that there are more than 5,000 fatalities annually in truck crashes in the U.S. Even results from the long awaited large truck crash causation study will not be able to accurately portray the true extent of the problem. That’s because the study included no acceptable protocol to identify fatigue-related crashes. The fact of the matter is that driver fatigue is a significant cause of loss in the trucking industry and should be investigated as a possible factor in catastrophic truck crashes.

When what we know about fatigue is superimposed over what we know about the economics of the trucking industry since it was deregulated in 1980, it becomes clear that our highways are literally full of “accidents waiting to happen.” Accordingly, an evaluation of a crash requires an understanding of the interplay among some or all the following: economics of the industry, how the crash occurred, the driver’s sleep/wake pattern in the days preceding the crash, time on task, time of day, driver’s training, driver’s health, company policies, and the fundamentals of the science of sleep.

Most of what we know about the science of sleep has been developed in the last 50 years. What we have learned so far indicates that a person’s need for sleep grows in direct proportion to the person’s lack of sleep (sleep debit) and that ultimately sleep is the only safe counter-measure for fatigue.

The regularity of a truck driver’s schedule frequently presents a danger for causing fatigue. Drivers frequently change schedules and may have very irregular sleep patterns. On average, a human adult physiologically requires about eight hours of sleep. However, there is a range of sleep need from about six to 10 hours of sleep.

The number of authorized motor carriers in the United States exploded after deregulation from less than 30,000 to more than 500,000 by the turn of the century. The resulting unfettered competition has been affective in keeping rates of drivers pay low. Throughout the long haul industry the most common method of pay is still “by the mile.” This means that the longer and farther a driver travels the more pay he or she can make.

Because the per mile rate has been kept relatively stagnant, drivers feel a great deal of pressure to continue driving when they know they should stop and rest. The industry refers to the present situation as a “driver shortage.” The reality, however is there is no shortage of workers in this country as is proven by national unemployment statistics. The fact is there is a shortage of people who want to work 70-100 hours per week, be gone from their families for extended periods of time, and make an average hourly wage that would be approximately equivalent to a senior fast food service job. Truck drivers are not protected by the overtime provisions of the Fair Labor Standards Act.

The result is that well-run, safe companies have been challenged by companies willing to cut corners to obtain and keep business. As carriers compete for the shrinking profit margin, working conditions for many drivers are worsened, leading to higher attrition rates and attracting more poorly qualified drivers.

Safety directors can no longer claim that they did not realize fatigue is a problem. Although the official industry line is that fatigue causes a low percentage of fatal truck crashes, the world’s foremost experts who have honestly looked at the fatigue problem have formulated a condensed statement and have concluded that fatigue is the largest identifiable and preventable cause of accidents in the transportation operation.

Although a wide variety of fatigue training materials are available from trucking industry companies, most trucking companies do not screen their drivers for sleep disorders and do not provide training to their drivers without problems associated with fatigue. Only recently have regulators provided specifically any driver training

related to fatigue countermeasures and this only applies to entry level drivers.

Unless a company has someone sitting in the seat next to the driver, monitoring the driver's alertness and telling him to pull over, the motor carrier must have in place a training system that complies with the Federal Motor Carrier Safety Regulations. A motor carrier must also have in place a management system that effectively prevents a driver from continuing to drive when that driver is too fatigued to do so.

The safety department of a trucking company is interchangeably called the compliance department. A focus on safety, however, involves an assessment of the risks of the particular operation and implementation of the measures to reduce the risk. Since 1995, the industry has literally been flooded with information about the dangers of driver fatigue, educational and training materials for the drivers, and more information for their management. A company that does not provide a driver with adequate information, training and supervision to ensure that the driver does not drive while he is fatigued is closing its eyes to the greatest risk for the public that their operation presents.

If you need more information on this subject, including details from the status on "sleep," statistics and reports, contact Mike Crow, a lawyer in our Personal Injury and Product Liability Section, at 800-898-2034 or 334-269-2343, or by email at Mike.Crow@beasleyallen.com.

Sources: National Sleep Foundation website; Federal Motor Carrier Safety Administration website; and National Safety Council website

18-WHEELER ACCIDENTS ON THE RISE

Lawyers in our firm handle a large number of areas arising out of crashes involving large trucks. They have learned a great deal over the years. It's estimated that there are currently more than 2 million 18-wheelers on U.S. highways. Each rig can weigh from 10,000 to 80,000 pounds. Unfortunately, the presence of those large trucks on the roads can pose serious risks to the safety of motorists. According to the National Highway Traffic Safety Administration (NHTSA), large trucks accounted for 3,964 fatalities in 2013. That marked the fourth straight jump in annual large truck-involved fatalities, dating back to 2009.

Based on our firm's experience in handling cases involving 18-wheeler accidents, we realize there are few "accidents" in that litigation. In the overwhelming majority of those type incidents, somebody is at fault

and caused the incident. The Federal Motor Carrier Safety Administration (FMCSA) reports that the top 10 most common factors causing these accidents are fatigue, brake problems, distractions, traffic flow interruption, prescription drug use, drunk driving, traveling too fast for conditions, unfamiliarity with roadway, over-the-counter drug use, and inadequate surveillance.

While many of the factors set out above are attributed to the fault of the driver, there can be others who share in the blame. The trucking company, the manufacturer of the trucks, and the supplier of parts also can be at fault. Also, there can be a third party who is responsible for maintaining the truck involved in a crash.

In handling litigation involving 18 wheeler accidents, it's very important to do a thorough initial investigation. That includes getting to the scene as soon as possible after being hired to represent a victim, locating witnesses, and surveying the area. Also, a good search of records is an absolute necessity. If you need more information relating to 18 wheeler litigation, contact Julia A. Beasley or Chris Glover, lawyers in our firm's Personal Injury and Product Liability Section, at 800-898-2034 or by email at Julia.Beasley@beasleyallen.com and Chris.Glover@beasleyallen.com.

TRUCK MAKERS ORDERED TO ADD ANTI-ROLLOVER TECHNOLOGY

In two years, all makers of heavy-duty trucks will be required to add electronic stability-control (ESC) systems to new vehicles. This is an effort by the U.S. government to prevent rollover crashes that kill about 300 drivers a year and injure 3,000 others. The technology uses engine torque and computer-controlled braking to help truckers maintain control in emergencies by keeping the wheels on the ground and the trailers from swinging. The regulatory requirement, proposed in 2012, is estimated to cost \$585 per truck, the National Highway Traffic Safety Administration (NHTSA) said in a statement on Wednesday.

The final regulation mostly targets rollover crashes caused by driver error in steering large trucks, particularly on sharp curves and exit ramps. Though they accounted for 3.3 percent of all large-truck crashes, rollovers were responsible for more than half the deaths of drivers and occupants in 2012, according to the latest available data. Some buses also are affected by the rule. NHTSA Administrator Mark Rosekind said:

Reducing crashes through ESC in these trucks and buses will save lives. It will move goods and people more efficiently and reduce the toll crashes take on our economy through traffic delays and property damage.

NHTSA said that installing ESC on new trucks will prevent as many as 1,759 crashes and 49 fatalities a year. The new rules have been recommended by the National Transportation Safety Board (NTSB) since 2011. The rules will apply to new trucks made after Aug. 1, 2017, that weigh more than 26,000 pounds. An extra year is being given for passenger buses weighing more than 33,000 pounds.

Not all in the trucking industry disagreed with the mandate. For example, The American Trucking Association, representing most of the largest U.S. freight carriers, said the action would reduce "one of the greatest threats to driver safety." Dave Osiecki, the Arlington, Va.-based group's executive vice president, had this to say: "Many fleets have already begun voluntarily utilizing this technology, and this new requirement will only speed that process."

Taking a different view, The Owner-Operator Independent Drivers Association, which represents 150,000 small-business truckers, said NHTSA's action was another sign the government is relying on equipment rather than experienced drivers to improve safety. Todd Spencer, the Grain Valley, Mo.-based group's executive vice president, said:

Too many have become addicted to technology. If any of this really improves safety, that should be evident where the rubber meets the road. We simply don't see it in the vast majority of instances.

NHTSA estimates the industry will need to spend \$45.6 million to comply with the regulations. The agency estimated the benefits—through fewer crashes, injuries and fatalities—to be far larger, from \$312 million to \$525 million. The agency estimates that electronic stability control, marketed by companies such as Bendix, a unit of German parts maker Knorr-Bremse AG, will prevent about 56 percent of untripped rollover crashes.

Some companies were pushing the agency to permit a less expensive technology known as roll stability control instead of ESC. Regulators looked at the costs and benefits of requiring roll stability control, which has been sold by Meritor Wabco, a

joint venture between Meritor Inc. and Wabco Holdings Inc.

NHTSA said that while the technology would cost, on average, about \$194 less per truck, the benefits through avoided crashes would be far lower because the systems don't prevent nearly as many rollover crashes. Truck manufacturers will have to demonstrate compliance with the new rules through a road test known as a J-turn, which involves accelerating at a constant speed before maintaining a lane on a curve with a 150-foot radius. It will be most interesting to see how this mandate for the trucking industry to use ESC will affect highway safety. Hopefully, it will save lives and make our highways safer.

Source: *Claims Journal*

AN UPDATE ON THE AMTRAK TRAIN CRASH IN PHILADELPHIA

A new hurdle to Amtrak's automated solution to prevent high-speed train derailments like the fatal accident in Philadelphia emerged at a Congressional hearing last month. The Federal Communications Commission (FCC) says the system that commands trains to slow down to avert emergencies may not work properly in some locations because it relies on airwaves that can be blocked by signals from equipment on adjacent freight railroad tracks.

Freight railroads operating from New Haven, Conn., to Boston plan to use the same radio frequencies as Amtrak for their separate train-safety system and that may cause interference. Charles Mathias, Associate Chief of the FCC's Wireless Telecommunications Bureau, said at a hearing of the Senate Commerce, Science and Transportation Committee in Washington:

This could degrade or disable communications on both systems, causing either or both to function improperly or stop functioning altogether. We understand the criticality of this and the FCC is working with railroads to resolve the issue.

Amtrak, according to its five-year budget plan, has invested at least \$76.9 million on the Positive Train Control (PTC) program, which is supposed to be fully up and running by the end of the year on Amtrak-owned rails along its popular Northeast Corridor route that runs from Washington to Boston.

Installation was slowed because it took five years to purchase access to the radio frequencies it needed, DJ Stadler, Amtrak's

vice president of operations, told the committee. He said it didn't receive permission until May 29 to begin testing the system south of New York—where the recent derailment occurred. While Amtrak has sorted out all those issues, it must now consider the possibility that the system won't operate as planned once freight railroads install their train-control technologies.

Stadler said that because freight railroads aren't ready to complete their system immediately, interference issues shouldn't prevent Amtrak's passenger rail service from completing its version this year. Senate Commerce Committee Chairman John Thune said most railroads won't finish installing the system by Dec. 31 and for that reason Congress needs to set a "thoughtful" revised schedule.

The train-control system, which has been in the works for years, was thrust back into the spotlight in May after an Amtrak train going through Philadelphia entered a curve running at as much as 106 miles per hour. That was more than twice the speed limit. The train derailed and eight of the 238 passengers were killed. Investigators are still searching for answers to why the train was traveling so far over the speed limit and why the engineer didn't apply the emergency brakes sooner than he did.

In a report released just before the hearing, the National Transportation Safety Board (NTSB) said there was no evidence so far to show that the engineer, Brian Bostian, was on his mobile phone or that he violated Amtrak policy prohibiting distractions from calls and texts. He also didn't access the train's Wi-Fi system while operating the locomotive, the NTSB said. The investigators determined that there was "no talking or texting or data use involved." NTSB Vice Chairwoman T. Bella Dinh-Zarr confirmed that to the Senate committee, but also said that investigators haven't yet ruled out whether the phone may have been used in other ways.

The NTSB is attempting to determine whether the device was in "airplane mode" or was switched off during the trip. They have been examining the phone's operating system, which contains more than 400,000 files, according to the NTSB's statement. The engineer, who suffered a head injury, told investigators he doesn't recall what happened prior to the crash. He gave investigators his phone's password, which allowed them to access data on the device without having to seek a subpoena. The investigation will continue into the crash, which Amtrak estimates cost more

than \$9.2 million, according to a preliminary NTSB report released June 2.

Source: *Claims Journal*

QUEBEC OIL TRAIN DERAILMENT SETTLEMENT HAS GROWN TO \$345 MILLION

The settlement fund for victims of a fiery oil train derailment that killed 47 people in a small Quebec town has grown to \$345 million with a contribution from the company that owned the oil on the doomed train. World Fuel Services Corp. announced June 8 that it will pay \$110 million to the Trustee for the U.S. bankruptcy estate of Montreal, Maine and Atlantic Railway Ltd., as well as the railroad's Canadian Trustee, to resolve claims related to the July 2013 derailment in Lac-Mégantic, a town about 10 miles from Maine's northwestern border. The company expects the full settlement amount will be covered by insurance.

The railway was sued a few weeks after the crash in an Illinois state court by the estate administrator for one of the victims, who claimed that the train was inadequately staffed and negligently operated. The accident occurred after midnight on July 6, when an unattended parked freight train hauling 72 tankers of crude oil rolled downhill for more than seven miles before derailling in the town. Several tankers ruptured, leading to an explosion and fire that killed and injured many and destroyed many buildings.

Nineteen wrongful death suits over the fatal crash were moved from Chicago to Maine in March 2014, when a Maine federal judge found that they belonged in the same venue as the railroad's already underway bankruptcy proceedings. Two months later, World Fuel Services sued Markel Corp. in North Dakota federal court, claiming the insurer improperly denied coverage for lawsuits over the catastrophe.

World Fuel Services claimed that an excess commercial liability policy a Markel unit sold to one of its joint ventures, Dakota Petroleum Transport Solutions LLC, covered the company and several affiliates for personal injury, negligence and property damage suits arising from the accident, the complaint said.

The U.S. Trustee objected to sealing the proposed settlement that will be paid to the victims, arguing that the information should remain public. Robert J. Keach, the Chapter 11 trustee for Montreal, Maine & Atlantic Railway Ltd., had moved in April to file the settlement under seal, saying he wanted to keep specific settlement

amounts confidential. He said that the dollar amounts, which will be paid to the railroad's estate by 24 groups of entities involved in the disaster, constitute "commercial information" and are protected by U.S. bankruptcy code. The attempt to seal the settlement was unsuccessful.

The settlement fund has been unanimously approved by families of the victims, according to Keach. It was to have gone to a Canadian court last month. It will go before a U.S. court in August and could be distributed in September if all goes well.

As we were getting this issue ready to go to the printer, we learned that seven people and two companies had been charged in connection with the 2013 derailment mentioned above. The persons charged are Robert C. Grindrod, CEO and president of the now-bankrupt Montreal, Maine & Atlantic Railway Ltd.; Lynne Labonte, the company's general manager of transportation; Kenneth Strout, its director of operating practices; Mike Horan, its assistant director; Jean Demaitre, its manager of train operations; and train engineer Thomas Harding. They all face two charges each of failing to ensure the train was properly braked before it was left unattended for the night. Montreal, Maine & Atlantic Canada Co. and MMAR (the railroad company) face the same charges.

The charges stem from breaches of the Railway Safety Act (RSA) and the Fisheries Act, the Canadian government said in a statement. Transport Canada's investigation under the RSA found that an insufficient number of handbrakes had been applied to the train and that they weren't tested properly. The Environment Canada's Fisheries Act investigation dealt with the release of crude oil into the town of Lac-Megantic and the Chaudiere River.

Source: Law360.com

U-HAUL FACES WRONGFUL DEATH SUIT OVER FOOD TRUCK BLAST

A lawsuit was filed last month against U-Haul International Inc., its affiliates and the general managers of the agency's Philadelphia retail stores. The wrongful death suit, filed in a Pennsylvania state court, seeks to hold the Defendants liable for a July 2014 food truck explosion in Philadelphia that killed two people and hurt 11 bystanders.

Plaintiff Uliser Galdamez filed the wrongful death and negligence suit against U-Haul, U-Haul Co. of Philadelphia, U-Haul's parent company Amerco, and the general managers of its retail stores in Phil-

adelphia, alleging they are liable for the fatal injuries that his mother and sister, Olga and Jaylin Galdamez, sustained in the July 1, 2014, explosion of the Galdamez family's La Parrillada Chapina food truck when it was parked in Philadelphia's Feltonville neighborhood.

It's alleged in the complaint that a deteriorating propane tank installed in the La Parrillada Chapina food truck ruptured and triggered an explosion and fire that left Olga and Jaylin Galdamez, both of whom were working in the truck at the time, badly burned. They died from their injuries weeks later, according to the complaint. The suit says:

The catastrophic injuries to and the deaths of plaintiff's decedents Olga Galdamez and Jaylin Galdamez were caused by the negligence, carelessness and/or reckless conduct of all defendants.

The propane tank that ruptured was one of two tanks that were installed in the food truck, and they had been regularly taken to U-Haul's retail stores on West Allegheny Avenue and West Hunting Park Avenue in Philadelphia to be refilled with propane in the weeks preceding the July 1, 2014, explosion, according to the complaint. Even though the tanks were old, deteriorating and in damaged condition, employees at both of those U-Haul stores consistently refilled the propane tanks for them to be used on the food truck, the suit says.

Eri Vending Cart Inc. is the company that allegedly was responsible for designing and installing the food truck kitchen. Alan M. Feldman of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig, one of the lawyers for the Plaintiff, said in a statement:

Companies like U-Haul that fill propane tanks are obligated by federal law to inspect the tanks and make certain they are safe for use. The catastrophic explosion that occurred here is what happens when those requirements are ignored.

The complaint asserts claims for negligence and recklessness and an unspecified amount in damages for the wrongful death of Olga Galdamez and Jaylin Galdamez. The Plaintiff is represented by Alan M. Feldman, Daniel J. Mann and Edward S. Goldis of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig LLP. The case is in the Court of Common Pleas of Philadelphia County.

Source: Law360.com

PENNSYLVANIA SUPREME COURT ALLOWS \$16 MILLION VERDICT TO STAND IN TOYOTA CASE

The Pennsylvania Supreme Court has declined to hear an appeal of a \$15.7 million verdict against a Philadelphia Toyota dealership over debilitating injuries that a physician and her family sustained in a car crash because the company negligently maintained the rental car involved in the incident. In a *per curiam* order, the court refused to review an appeal submitted in January by M&B Paul Inc., which does business as Ardmore Toyota, and Central City Toyota. The order further upholds a 2013 trial court ruling for Dr. Noreen Lewis and five other passengers hurt in her rented Toyota Sienna minivan when it crashed in 2008.

Dr. Lewis received \$11.4 million, and the passengers received a combined \$4.3 million after jurors found that Central City Toyota, which maintained the vehicle, was fully at fault for the crash. Dr. Lewis was left with virtually no use of her left arm. She had reserved the Sienna for a family trip to New York to attend her daughter's school play. When Dr. Lewis picked up the vehicle, she noticed that the exterior was dented and the interior was dirty. But when she asked rental company PhillyCarShare for a different vehicle, the company assured her that the minivan was safe to operate and said the company did not have any similarly sized vehicles available.

As she drove the minivan, Dr. Lewis felt the steering wheel "shimmy," and the vehicle's check engine light came on. She then contacted PhillyCarShare. A representative told her that if she took the car to a service station, the company would pay for the service. But on their way to a service center, the minivan's wheels locked and the vehicle started skidding. Dr. Lewis tried to steer the vehicle, but the wheel was difficult to move, and the car skidded across the road, struck the barrier and rolled into a ditch, flipping over three times. In the incident, Dr. Lewis suffered serious injuries, including lacerations to her ear, face, head and thighs, a severe cardiac contusion, spine fracture and intestinal injuries. She is now permanently disabled and no longer can work as a physician or in any other capacity.

At the time of the accident, Central City Toyota was the sole maintenance provider for the Sienna, since PhillyCarShare outsources its maintenance. And between October 2006 and December 2007, the dealership serviced the Sienna eight times. The crash was caused by a worn and deteriorated ball joint in the Sienna's front pas-

senger side, according to an expert retained by Dr. Lewis and PhillyCarShare. The expert opined that the damage to the ball joint was long-standing. A Toyota engineer testified that ball-joint deterioration takes “quite a long time ... over a long period of time.”

The company appealed the lower court’s ruling in 2014, arguing to a Superior Court panel that the trial court made prejudicial errors during the pretrial, trial and post-trial proceedings. The dealership argued that the court erred by limiting the testimony of the Defendants’ automotive mechanic expert, precluding testimony from the Defendants’ accident reconstruction expert, precluding portions of testimony from a trooper who arrived to the crash site after the accident, denying a mistrial motion in light of missing evidence from co-defendant Toyota Inc., and denying Defendants post-discovery inspection of the vehicle.

In October 2014, the appellate court affirmed the lower court’s findings, ruling that the lower court made only one small error by limiting the testimony of the accident reconstruction expert, but found it to be a harmless error because the jury still heard the evidence the expert would have provided.

Source: Law360.com

A JURY VERDICT IN A GEORGIA FEDERAL COURT

A jury in a federal court in Georgia recently returned a \$2,225,000 verdict in a lawsuit involving an intersection collision. On May 28, 2013, Plaintiff Jeffrey Waldrop, a commercial electrician, was involved in a motor vehicle collision with a tractor-trailer unit at the intersection. Manuel Ponce, the driver of the tractor-trailer, failed to yield the right of way and failed to keep a proper lookout for the Waldrop vehicle, causing the collision. The trucking company was operating under the trade name Golden Coastline Logistics.

Mr. Waldrop was badly injured in the collision. As a result of the collision, Mr. Waldrop tore two of four ligaments in his knee, tore his meniscus, fractured his left tibia, and fractured/dislocated his thumb/phalanx. In 2013, Mr. Waldrop’s physicians surgically reconstructed his posterior cruciate ligament and medial collateral ligament. He lost wages and suffered a diminished capacity to labor. Mr. Waldrop originally tried to return to work as an electrician, but was unable to return to that line of work. He will require additional surgeries.

The jury returned a verdict in favor of the plaintiff in the amount of \$2,225,000.00. The jury apportioned 5 percent of the fault to Plaintiff and 95 percent of the fault to the Defendants. The case was in the U.S. District Court, Northern District of Georgia. The Plaintiff was represented by Pete Law, Mike Moran, Ed Piasta and Michael Walker, all with the firm of Law & Moran, located in Atlanta. They did a very good job in this case.

XVI. ENVIRONMENTAL CONCERNS

COMPANY ORDERED TO CONTINUE OIL SPILL CLEANUP EFFORTS IN CALIFORNIA

The Environmental Protection Agency (EPA) and U.S. Coast Guard issued a joint order under the Clean Water Act to ensure that Plains All American Pipeline LP (Plains) continued its cleanup efforts of an oil spill that occurred west of Santa Barbara, Calif., on May 19, 2015. The spill leaked an estimated 105,000 gallons of heavy crude, which is the largest coastal spill in California in the past 25 years. About one-fifth of the amount spilled seeped into the Pacific Ocean from the pipeline transporting oil to refineries in Southern California.

The Clean Water Act order requires the company, as pipeline owner and operator, to continue its cleanup work inland, beach-side, and in the ocean and also sets cleanup timelines. Plains was to have submitted a written plan for its cleanup activities by June 6.

The EPA and US Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) are investigating the cause of the spill. Patrick Hodgins, Plain’s Senior Direct of Safety and Security, says that the disrupted section of pipe was removed to assist in the investigation. PHMSA ordered Plains to suspend operations and make safety improvements before reopening the pipeline.

Sources: Law360.com and EPA.gov

XVII. UPDATE ON NURSING HOME LITIGATION

RISKS OF INJURIES IN NURSING HOMES

In 2014, the Department of Health and Human Services (DHH) released a 69-page report titled: “Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries.” The DHHS noted that the Medicare expenditures for skilled nursing facilities is the second highest cost to the program, eclipsed only by hospital inpatient costs. To reduce costs, the DHHS hoped to identify issues with skilled nursing facilities, as it had previously done with hospitals. It’s recognized that injuries and illnesses lengthen the stays of patients in all health care facilities, including hospitals and nursing homes. The DHHS found:

An estimated 22 percent of Medicare beneficiaries experienced adverse events during the [skilled nursing facility] stays. An additional 11 percent of Medicare beneficiaries experienced temporary harm events during their [skilled nursing facility] stays. Physician reviewers determined that 59 percent of these adverse events and temporary harm events were clearly or likely preventable. They attributed much of the preventable harm to substandard treatment, inadequate resident monitoring, and failure or delay of necessary care...

The DHHS found that the adverse events identified resulted in 79 percent more patients having longer stays or transfers to more acute facilities, 14 percent of those patients required some sort of intervention to save their lives, and 6 percent of those patients lost their lives as a result of an unintended adverse event.

The preventable harm caused to patients of nursing home and related facilities likely increased costs to Medicare by as much as \$2.8 billion for hospital readmissions and treatment for fiscal year 2011 alone! Put in further context, in 2000, Medicare paid \$12 billion toward patient care in skilled nursing facilities. By 2010, that number had increased to \$26 billion. In 2011, Medicare paid \$28.4 billion for 1.8 million Medicare recipients.

The study focused on the largest group of nursing home admissions—those who were admitted to a nursing home for 35 days or less, which constitutes 70 percent of all “Medicare beneficiary stays in skilled nursing facilities.” The DHHS took a random sampling of these patients to compile the information in its detailed report.

What this means, logically, is that the numbers referenced above are probably significantly higher than what the DHHS determined. As staggering as that seems, we have to remember that we are talking here more about people than dollars. Nevertheless, the costs to Medicare cannot be ignored.

The DHHS reviewed a number of potential “adverse events.” Some of the more common issues include medication errors, injuries during transfers from the hospitals to the skilled nursing facilities, falls, bedsores, and the like. The large categories of adverse events were further broken down by medication events (37 percent), events related to ongoing resident care (37 percent), and events related to infections (26 percent).

The DHHS recommended a variety of potential ways to identify and remedy the large number of patient care injuries. Nursing homes are already required to self-report, but the accuracy of this process is not known. Hopefully, one measure that will be implemented will be some sort of punishment mechanism, much like that which is already being done for overmedicating patients. However, according to an investigation conducted by the National Public Radio (NPR), few nursing homes are punished even where this practice exists.

The good news is that at least issues are being identified. Hopefully, as the American population grows, these measures by the DHHS and others will help to educate, train, and adequately staff nursing and medical personnel at nursing homes. As the old saying goes, “Prevention is worth a pound of cure.”

If you need more information on this subject, contact Ben Locklar, a lawyer in our firm who handles Nursing Home litigation, at 800-898-2034 or 334-269-2343, or by email at Ben.Locklar@beasleyallen.com. Ben is our firm’s lead lawyer in nursing home litigation.

Sources: <http://oig.hhs.gov/oei/reports/oei-06-11-00370.pdf> <http://www.npr.org/sections/health-shots/2014/12/09/368538773/nursing-homes-rarely-penalized-for-oversedating-patients>

SELECTING THE RIGHT NURSING HOME IS VERY IMPORTANT

In many cases, people are placed in nursing homes with little or no input by the patient or their family members. These situations are most often driven by finances, meaning those who have to rely upon government assistance have very little choice in many cases where their loved one is admitted. In those instances, a doctor will write an order, directing that the patient be transferred to a specific nursing home.

On occasion, people are limited geographically, meaning there may only be one or two choices in a geographical area. In these cases, choosing the best one may be further limited by available beds and space. Needless to say, the better facility is more likely to have a waiting list for an available room or bed.

However, in those instances where there is the option of choice, it is imperative that you become educated on the various facilities. Consider the facility or facilities that might be available, visit that facility, and tour the facility. Ask the administration whether they require the signing of an arbitration agreement or whether that can be waived by the patient or by the sponsor or family member who is admitting the patient.

Another suggestion is to find out how long the facility administrator has been with the facility, how long the facility’s head nurse has been there, and how long the facility has been owned by the company that operates it at that time. We see a large turnover of staff and administrative persons at nursing homes in the cases we review. And we also see nursing homes changing ownership quite often. The more turnover and the more recent the change of ownership, the more cautious people need to be.

Further, it’s advisable to do research online about the facility or facilities. One excellent source is Medicare.gov. Facilities that admit patients who receive benefits from Medicare and Medicaid are inspected and reports are kept by Medicare. The website requires the input of a ZIP code or the city and state where the nursing home is located. You can use this tool to search all nursing homes in that area or you can input the name of the specific nursing home and receive information about that facility.

A search by city will give you the names and addresses of the various facilities, and you can see how those facilities compare to each other per the rating system. Medicare rates the facilities by overall rating, health

inspections, staffing and quality measures. If the user clicks on the facility name, substantial additional information can be obtained on that facility by following the links. Information that might be available includes the number of beds, who owns the facility, details of the health inspection, details of staffing, and details of quality measures. The health inspection link will also provide information about the type of complaints investigated in a given time-frame, along with the results of routine inspections.

Each state also has information available on its long-term care facilities. The amount and quality of information that is reported varies from state to state. For Alabama, nursing homes are monitored and inspected by the Alabama Department of Public Health (ADPH). That website is adph.org. By following the “health care facilities” link, important information can be ascertained in addition to that information mentioned above. One item that is available is “Tips for Selecting a Nursing Home.”

In addition to general information about nursing homes in Alabama, the user can also review the facility’s latest deficiencies as found in surveys (or inspections) done by the ADPH. Upon selecting the appropriate link, a list of every long-term care facility in Alabama can be found. By either searching for or scrolling down to the selected facility and then following the appropriate links, the deficiency reports are available to review.

In this information age, you may also do a general online search for a facility. There are other reporting agencies that compare nursing homes. There may also be message boards where others can report their experiences with the various facilities. The validity and reliability of the information will depend largely on the credibility of the source.

Lawyers in our firm continue to investigate cases of neglect and abuse by nursing homes. Hopefully, researching information on a potential long-term care facility will increase the odds that a loved one will receive the care and treatment that he and she deserve. As stated above, if you want more information on Nursing Home Litigation, contact Ben Locklar at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com.

XVIII. AN UPDATE ON CLASS ACTION LITIGATION

CRT PRICE-FIXING CLAIMS SETTLED FOR \$528 MILLION

Five electronics makers have agreed to pay \$528 million to settle class action claims that the companies fixed cathode ray tube prices. The Plaintiffs—customers who indirectly purchased CRTs—have requested a California federal court to approve five settlements with Philips Electronics North America Corp., Panasonic Corp., Samsung SDI Co. Ltd., Hitachi Ltd. and Toshiba Corp. totaling \$528 million in the long-running antitrust multidistrict litigation (MDL).

Samsung SDI and Philips agreed to the two largest settlements with the indirect purchasers, for \$225 million and \$175 million, respectively. Panasonic will pay \$70 million, Toshiba \$30 million and Hitachi \$28 million. Combined with \$35 million the indirect purchasers have already received by way of earlier settlements with Chunghwa Picture Tubes Ltd. and LG Electronics Inc., the latest settlements will bring the indirect purchasers' total recovery to \$563 million. The settlements came as the two sides were preparing for a trial that was originally set to begin in March, with the parties reaching agreements starting in late January and concluding with the Samsung settlement in April.

The settlements cover both a nationwide class and buyers from 21 states who purchased products containing CRTs, such as televisions and computer monitors. The nationwide class does not, however, include residents of Illinois, Oregon and Washington. That's because the attorneys general in those states are suing to recover separately on behalf of their citizens. In addition to the cash settlements, all of the Defendants have agreed to cooperate with the Plaintiffs as they continue to pursue the case.

Reportedly, the \$563 million total for indirect purchasers is second only to the settlements in similar price-fixing litigation against liquid crystal display panel makers. In that litigation, however, most of the Defendants pled guilty, whereas in the CRT case, the U.S. Department of Justice only fined one company \$32 million in a plea deal.

The MDL, consolidated in 2008, also included a group of direct purchasers and a large number of suits brought by individual retailers seeking damages from the electronics companies. The Plaintiffs claimed the companies had divided up the market and cut down on supply to boost prices of CRTs used in TVs and computer monitors from early 1995 through late 2007. The case is in the U.S. District Court for the Northern District of California.

Source: Law360.com

FOAM COMPANIES PAY \$128.5 MILLION TO SETTLE ANTITRUST CLASS ACTION

Carpenter Co., Leggett & Platt Inc. and four other foam makers have agreed to pay a combined \$128.5 million to settle with indirect purchasers and exit multidistrict litigation (MDL) accusing the companies of plotting to fix prices. Indirect purchasers filed a motion asking the Ohio federal court overseeing the dispute to preliminarily approve each of six settlement agreements, calling the financial windfall a "substantial" recovery for the class. The settlement covers indirect purchaser claims against Carpenter, Leggett & Platt, Hickory Spring Manufacturing Co. and Mohawk Industries Inc. Vitafoam Inc., Woodbridge Foam Corp. and various affiliates are also included in the deal.

The indirect purchasers told the court the settlement would strengthen their bargaining position with respect to the remaining Defendants and streamline an upcoming trial, which has been scheduled for October. "The settlement agreements between [indirect purchasers] and the settling Defendants are in the best interests of the classes and merit this court's preliminary approvals," they wrote. The motion noted that the settlement doesn't change the remaining Defendants' liability for damages caused by the alleged conspiracy, including all sales made by the settling Defendants.

The Plaintiffs have accused Carpenter and other foam makers of conspiring since at least 1999 to fix the price of the polyurethane foam, which is widely used as cushioning and insulation in products such as bedding, packaging, flooring and cars. The case involved both the indirect purchaser Plaintiffs and direct purchasers. The direct purchasers—which include a variety of foam, packaging and carpet companies—were set to go to trial against the six foam companies that remained in the case in April, but on the eve of trial, the Defendants agreed to pay \$275 million to settle

the case. That settlement brought the direct purchasers' settlement total to \$433.1 million.

Nearly half the amount of the settlement comes from Carpenter, which agreed to pay \$63.5 million to resolve the suit. Leggett & Platt will pay \$26.5 million, while Mohawk will pay \$16 million, according to their individual agreements. Hickory Springs, Woodbridge and Vitafoam will pay \$10.25 million, \$9.5 million and \$2.75 million, respectively.

Source: Law360.com

HP REACHES \$100 MILLION SECURITIES SETTLEMENT OVER AUTONOMY PURCHASE

Hewlett-Packard Co. (HP) has agreed to pay \$100 million to settle a proposed securities class action over its disastrous \$11 billion acquisition of British software company Autonomy Corp. PLC. The lead Plaintiff reported the settlement to U.S. District Judge Charles R. Breyer, a California federal judge on June 9. Dutch pension fund manager and lead Plaintiff PGGM Vermogensbeheer BV said that the putative class of HP shareholders, which is seeking certification for purposes of the settlement, will drop claims that the company misled investors about the value of Autonomy after the August 2011 announcement of the acquisition. PGGM told Judge Breyer:

The settlement represents one of the top 15 securities fraud recoveries in the history of this district. It also represents the only monetary recovery for HP shareholders arising from HP's acquisition of Autonomy Corporation PLC, despite years of government investigations.

The proposed settlement with PGGM comes after Judge Breyer gave preliminary approval in March to a separate settlement that promises corporate governance reforms to settle HP shareholders' derivative claims over the Autonomy acquisition. The latest proposed settlement calls for Judge Breyer to certify a class of investors that bought HP stock between the company's August 2011 announcement of the Autonomy deal and its November 2012 disclosure of an \$8.8 billion write-down.

The litigation stems from HP's acquisition of Autonomy and the \$8.8 billion write-down. Shortly after that disclosure, HP shareholder Allan J. Nicolow filed the first of several securities class actions over the loss, alleging that HP executives concealed information showing that Autonomy's acquisition price was partially based

on misleading financial statements and falsified accounting.

Judge Breyer consolidated the securities suits over the Autonomy debacle in March 2013, naming PGGM as the lead Plaintiff and Kessler Topaz Melter & Check as lead counsel. The judge partially dismissed the litigation in November 2013, releasing several HP executives, but the Plaintiffs were allowed to proceed with some claims against the company and CEO Meg Whitman. Neither Ms. Whitman nor any other individual will contribute to the \$100 million settlement fund, which will be paid by HP's insurance, the company said in a statement.

In addition to the securities class actions, HP faced numerous derivative suits over the failed acquisition. Judge Breyer's March order in the derivative cases gave tentative approval to the third amended settlement, which differed from previous versions he had rejected by narrowing the release of claims to HP's conduct relating only to the Autonomy acquisition.

HP has blamed the ill-fated deal on misrepresentations by Autonomy executives. In March, the technology giant filed a \$5 billion suit in a United Kingdom court, accusing two of Autonomy's former officers of artificially inflating revenues for two years ahead of the acquisition. The U.K.'s Serious Fraud Office said on Jan. 19 that it had closed a two-year investigation into whether Autonomy made misrepresentations to HP before the deal, finding "insufficient evidence for a realistic prospect of conviction" with respect to some of HP's allegations against Autonomy.

Source: Law360.com

TEVA'S \$24 MILLION NEXIUM PAY-FOR-DELAY SETTLEMENT IS APPROVED

A Massachusetts federal judge has given tentative approval to a \$24 million settlement between Teva Pharmaceutical Industries Ltd. and class action Plaintiffs in a pay-for-delay case over generic versions of AstraZeneca PLC's heartburn drug Nexium. U.S. District Judge William G. Young, in separate orders, preliminarily approved settlements Teva reached with end-payers and direct purchasers of Nexium. If approved, these would end all claims against the drugmaker.

The Plaintiffs have said AstraZeneca essentially paid off Teva to keep the company from bringing a generic version of the heartburn treatment to market and that Ranbaxy Inc. was part of a broader conspiracy to delay generic entry. Accord-

ing to the settlement agreement, which was first revealed in April, Teva would put \$24 million in a fund, where it will be dispersed between the two Plaintiff groups and individual retailers.

The settlement is contingent on a final approval hearing, which was set for Sept. 29. Meanwhile, the judge ordered litigation against Teva brought by end-payers and direct purchasers that was not related to the settlement be put on hold.

The settlement agreed to between Teva and buyers follows a settlement Plaintiffs reached last October with Dr. Reddy's Laboratories Ltd. Dr. Reddy's did not pay the Plaintiffs anything and did not admit any wrongdoing, but agreed to offer support at their trial with AstraZeneca and Ranbaxy. At that trial, the first in a pay-for-delay suit since a 2013 U.S. Supreme Court ruling that patent settlements could face antitrust scrutiny, a jury rejected claims that a settlement between AstraZeneca and Ranbaxy harmed competition.

Because it was the first to begin seeking U.S. Food and Drug Administration (FDA) approval for its generic, Ranbaxy and its settlement with AstraZeneca are at the case's core. The Plaintiffs have since asked the court to allow them to file a submission to advise of developments they say further justify the grant of a new trial in that case.

They have also pushed for an injunction to stop AstraZeneca from following through on its promise not to launch a competing authorized generic version of the drug when or if Ranbaxy enters the market. The injunction would also keep the drugmakers from entering any other such agreements over the next decade. According to motions submitted in connection with the Teva settlement, up to \$2 million of the settlement would be put toward costs in the continuing litigation against AstraZeneca and Ranbaxy.

After the various litigation costs and taxes, \$1 million of the remaining settlement would go to the indirect purchasers, likely as a cy pres award if they wind up getting nothing from the other defendants. Sixty-one percent of what's left would go to the direct purchasers and 39 percent is allocated for the individual retailer Plaintiffs. In motions seeking approval of the settlement, lawyers for the Plaintiffs said that they would only get reimbursed for expenses from the settlement and would not receive any attorneys' fees.

Source: Law360.com

US BANK SETTLES PEREGRINE CLASS ACTION LITIGATION

U.S. District Judge Sara L. Ellis, an Illinois federal judge, has given preliminary approval to a \$44.5 million settlement to resolve a class action accusing U.S. Bank NA of facilitating the \$215 million theft of customer funds at now-bankrupt futures merchant Peregrine Financial Group Inc. U.S. District Judge Ellis gave preliminary approval to the settlement and also approved certification of the class for purposes of the settlement.

The settlement resolves claims brought by futures account holders and customers of Peregrine. U.S. Bank was charged with a breach of fiduciary duty and fraud by omission surrounding the activities of former depositor Peregrine and its now-imprisoned CEO Russell Wasendorf. A fairness hearing is set for Oct. 13.

Peregrine's public problems began in July 2012, when the National Futures Association took action against the company, and Wasendorf was found unconscious in a car outside the company's offices in Cedar Falls, Iowa, in what was reported as an apparent suicide attempt. According to Wasendorf's statement, he was the only person in the company with access to Peregrine's U.S. Bank accounts and that he consistently gave the accounting department counterfeit statements he often made within hours of receiving the original versions.

Peregrine filed for Chapter 7 bankruptcy, just hours after the U.S. Commodity Futures Trading Commission sued it for fraud. Criminal charges against Wasendorf followed, and in September 2013 he pled guilty to embezzling at least \$100 million in investor funds and overstating the amount of customer funds by at least \$210 million.

The futures-account class action claimed that it was "commercially unjustifiable" not to investigate Wasendorf's use of a segregated account to determine whether Wasendorf was improperly moving customer money around, citing numerous suspicious circumstances surrounding the maintenance of the account. The suit had also targeted JPMorgan Chase Bank NA, which reached a \$15 million settlement in March 2014 with Peregrine's bankruptcy trustee. U.S. Bank objected to the settlement, but said if the current settlement is approved, it would drop its appeal. In April, U.S. Bank settled a similar class action brought by Fintec Group Inc. on

behalf of commodities brokers who did business with Peregrine.

Source: Law360.com

LUMBER LIQUIDATORS CLASS ACTION UPDATE

Lumber Liquidators, stung by lower sales after discovery that its laminate flooring made in China contains toxic levels of formaldehyde, has suspended sales of the Chinese products. The move is a shift for North America's largest specialty flooring retailer company, which continued to sell Chinese laminate flooring for two months after a March *60 Minutes* segment made public that the products contained formaldehyde, a carcinogen, at levels that exceeded California state guidelines.

The *60 Minutes* report prompted more than 100 class-action suits against the company as well as a Consumer Product Safety Commission (CPSC) probe. Our firm has a class action complaint filed in the Middle District of Florida. Since the report, the company has shipped thousands of air testing kits to customers. The company made the dubious claim that nearly all tests reported formaldehyde air concentrations that fell within World Health Organization (WHO) guidelines. However, feeling pressure from all sides the former company CEO stated:

Despite the initial positive air-quality testing results we have received, we believe it is the right decision to suspend the sale of these product. We will work diligently to meet the needs of our customers and to ensure their satisfaction.

Not long after suspending sales of the contaminated Chinese products CEO Robert Lynch "unexpectedly" resigned. Company founder Thomas Sullivan serves as acting CEO. The company has also recently revealed that it faces criminal federal charges over imported bamboo illegally sourced from protected animal habitats. Specifically, the company disclosed that the Justice Department is seeking criminal charges under the Lacey Act for alleged illegal importation of oak flooring from protected Russian forests. This illegal activity sparked separate lawsuits from environment activist groups.

Clay Barnett, Archie Grubb and Andrew Brashier, from our firm, have joined with Anthony Garcia, a Tampa lawyer, to file a class action in Florida against Lumber Liquidators for unlawfully selling the contaminated wood to unsuspecting purchasers. The Alonso and Guinane families from

Tampa, Fla., serve as the class action's named Plaintiffs. On June 12, 2015, the Judicial Panel on Multidistrict Litigation (JPML) transferred the case to the Eastern District of Virginia and assigned Judge Anthony J. Trenga to handle the consolidated class action cases through trial. If you need more information on this litigation, contact Clay Barnett, a lawyer in our firm's Consumer Fraud and Commercial Litigation Section at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

TOP 5 CLASS ACTION LAWSUIT SETTLEMENTS OF 2014

Earlier this year, Top Class Actions, a class action lawsuit news source, announced the biggest class action settlement payments awarded to consumers in 2014. It should be noted that this report deals with amounts actually paid out during the years.

\$1.1 BILLION LCD PANEL SETTLEMENT

Payments from this historic settlement were mailed to Class Members in October. The settlement resolved multiple class action lawsuits filed in 2006 accusing 10 manufacturers of conspiring to fix and raise the prices of flat-panel monitors and televisions since 1999. The settlement included consumers in 24 states who purchased electronics with LCD screens from 2007-2008. Some claimants reported receiving more than \$500.

\$53 MILLION APPLE IPHONE/IPOD WARRANTY SETTLEMENT

Apple iPhone and iPod owners received checks in September between \$122 and \$250 from a 2013 settlement with Apple. Plaintiffs accused the company of refusing to honor warranties for devices based on assessments that they made contact with water. The lawsuit was filed after the manufacturer of the Liquid Contact Indicators used in these devices admitted that humidity could cause malfunction.

HONDA ENGINE MISFIRE SETTLEMENT

For years Honda Accord, Odyssey, Pilot and Crosstour owners complained that their vehicles excessively burned oil. Honda Motor Co. denied the problem, but agreed in November 2013 to a settlement to resolve the liti-

gation. Thousands of Honda owners filed claims and received free warranty extensions and refunds for repairs. Average payouts between \$235 and \$294 were mailed to claimants in July. The total class action settlement was undisclosed.

GERBER CHILDRENSWEAR SETTLEMENT

This summer, hundreds of parents received checks up to \$200 from a settlement involving Gerber Childrenswear. Plaintiffs claimed that Gerber apparel manufactured by Jay Jay Mills and Kitex from 2005 to 2009 contained chemicals that caused skin irritation. Gerber denied allegations but agreed to provide consumers reimbursement for related out-of-pocket costs. The total class action settlement amount was undisclosed.

\$18.6 MILLION INTELICORP BACKGROUND CHECK SETTLEMENT

Job seekers who had their criminal background report submitted to a potential employer by Intellicorp Records Inc. or Insurance Information Exchange (IIX) were eligible to claim between \$50 and \$2,000 from a settlement over allegations the reports violated the Fair Credit Reporting Act. Payments varied depending upon inaccuracies in the reports.

Source: *Claims Journal*

XIX. THE CONSUMER CORNER

AT&T FINED \$100 MILLION FOR MISLEADING "UNLIMITED" DATA PLANS

AT&T Mobility LLC has been fined \$100 million by the Federal Communications Commission (FCC). The fine was for offering consumers "unlimited" data, but then slowing their Internet speeds after they hit a certain amount. The FCC said that the company misled consumers into buying plans they believed would give them unlimited ability to send and receive data, including Web browsing, GPS navigation and streaming videos. But, the FCC said, once the consumer reached a certain level, that data would be slowed down significantly, at speeds lower than advertised.

The FCC fine comes after a federal lawsuit was filed against the company last fall. The Federal Trade Commission (FTC), which enforces rules against deceptive advertising, said it wants to refund customers who were offered the unlimited data packages, only to be given slower data speeds than advertised. That lawsuit is still pending in a federal court in California. Earlier this year, the FTC accused TracFone Wireless of similar tactics. TracFone agreed to settle the case for \$40 million.

Source: AL.com

7TH CIRCUIT COURT OF APPEALS ASKED TO APPROVE \$75 MILLION TCPA SETTLEMENT

Capital One Financial Corp. and three collections agencies, along with consumers who settled a landmark Telephone Consumer Protection Act (TCPA) case against the companies, have asked the Seventh Circuit Court of Appeals to approve the record-breaking \$75 million settlement over objections of a small fraction of claimants.

Parties on both sides of the historic settlement—which accused Capital One and the others of using an automated dialer to call customers’ cell phones without consent—want to see it consummated. An agreement for Capital One to cease all auto-dialing is an important part of this settlement. It appears that only 14 out of more than 16 million class members objected to the settlement. Only 462 persons timely opted out of the settlement.

U.S. District Judge James F. Holderman in February approved the settlement under which the bank and Leading Edge Recovery Solutions LLC, Capital Management Services LP and AllianceOne Receivables Management Inc. will collectively pay \$75,455,098.74 into a settlement fund and change their practice of cold-calling customers’ cellphones.

Capital One agreed to pay \$73 million into the fund, Leading Edge agreed to almost \$1 million, AllianceOne \$1.4 million, and CMS more than \$24,000, the settlement agreement said. The Defendants contacted nearly 16 million class members, of whom 1.4 million filed claims.

Source: Law360.com

SPIN MASTER ORDERED TO PAY \$435,000 IN FIRST TRIAL OVER TOY BEAD DRUG POISONING

Spin Master Ltd. was ordered by a jury to pay \$435,000 to the family of a child who was poisoned after swallowing toy beads

coated with a material that dissolves into the same chemical as a date-rape drug. In the first verdict over the recalled Aqua Dots game, a federal court jury in Phoenix found that Toronto-based Spin Master and Moose Enterprise Pty Ltd were responsible for Ryan Monje’s poisoning.

The 16-month-old toddler was rushed to the hospital in July 2007 after swallowing candy-colored Aqua Dots beads and lapsing into a coma. Moose, an Australian company, designed the toy, which includes arts-and-crafts beads covered with a substance that transforms into GHB, a date-rape drug, when ingested. Jurors concluded that firm and Spin Master, which distributed the product, must pay most of the damages awarded to Monje’s family. The panel cleared U.S. toy seller Toys ‘R’ US Inc. of financial responsibility for the boy’s injuries.

The companies may still face other lawsuits over the game, which was pulled from the market in the U.S. after a string of poisoning reports prompted the U.S. Consumer Product Safety Commission (CPSC) to order a 2007 recall. About a dozen Aqua Dots suits were consolidated before a federal judge in Chicago in 2008 for pre-trial information exchanges. Those cases settled in 2012 for an undisclosed amount. Spin Master and Moose’s lawyers blamed a Chinese company that made the toy on an outsource basis for secretly spraying the beads with a chemical that metabolizes into GHB. That Hong Kong-based manufacturer wasn’t named as a Defendant in the case because it doesn’t do business in the U.S.

Even though the jury found in their favor, Monje’s parents will appeal the judge’s decision to bar them from seeking punitive damages against the toy companies. Mark Monje, the boy’s father, said the award won’t cover ongoing medical costs of treating his son’s injuries. Moose will be responsible for paying more than 50 percent of the total damages assessed, according to court filings.

Monje’s parents alleged exposure to the tainted beads left their son with brain damage and potentially millions of dollars in lifetime medical bills. They argued the chemical sprayed on the beads converts to gamma-hydroxy butyrate, commonly known as GHB. The companies had a duty to properly warn parents about Aqua Dots’s risks. But, the firms shipped the toy without any cautions, saying on the game’s box that the beads were non-toxic and sugar based.

Spin Master officials agreed to pay a \$1.3 million fine in 2011 for failing to alert regu-

lators about reports children were hospitalized after swallowing Aqua Dots beads. The company also recalled 4.2 million units of the toy. The Aqua Dots game, sold under the name Bindeez in Australia, was named that country’s toy of the year in 2007 by the Australian Toy Council and made Wal-Mart Stores Inc.’s list of the 12 best-selling toys.

Source: *Claims Journal*

BLUE BELL REACHES PRODUCT CONTAMINATION AGREEMENT WITH ALABAMA HEALTH OFFICIALS

Blue Bell Creameries has entered an agreement with the Alabama Department of Public Health (ADPH). Under the agreement, the company will be required to inform the state whenever there is a positive test result for listeria in its products or ingredients. The Alabama agreement is similar to those the company reached last month with regulatory agencies in Texas and Oklahoma. Blue Bell has plants in the three states. The agreements follow the Brenham, Texas-based company’s failure to tell federal or state health officials of repeated findings of listeria at its Oklahoma plant dating back to 2013.

All Blue Bell products were recalled and production at the company’s plants was suspended in April. Along with more general requirements, the agreement includes specific provisions to address listeria, including:

- Conducting analyses to identify potential or actual sources.
- Hiring an independent microbiology expert to help establish and review controls to prevent future listeria contamination.
- Promptly notifying the Alabama Department of Public Health of any presumptive positive test result found in ingredients or finished product samples and giving state agencies full access to all testing.
- Ensuring that the company’s pathogen monitoring program outlines how it will respond presumptive positive tests for listeria species.
- Instituting a “test and hold” program to assure that products are safe before they are shipped or sold.

Hopefully, the problems at all of the Blue Bell plants will be corrected. This agree-

ment—along with the others—is a step in the right direction.

Source: *Insurance Journal*

XX. RECALLS UPDATE

We are again reporting a large number of safety-related recalls. We have included some of the more significant recalls that were issued in June. If more information is needed on any of the recalls, 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.

THE TAKATA RELATED RECALLS

We wrote about a number of new recalls by Toyota, Honda and Mazda in the automobile section of this issue that involve the Takata airbags. The total number of Takata related recalls now is at 34 million, which is a new record I am told.

MITSUBISHI RECALLS 450,000 VEHICLES OVER DEFECTIVE SUN VISORS

Mitsubishi Motors North America Inc. is recalling more than 450,000 cars because the passenger-side sun visor can detach and injure passengers if it's folded down during an accident, the National Highway Traffic Safety Administration (NHTSA) announced Thursday. The NHTSA initiated the recall campaign on June 2 after Mitsubishi informed the administration of its plans to recall certain 2001 to 2005 Eclipses, Eclipse Spydors, Chrysler Sebrings and Dodge Stratuses because its investigation into complaints of passengers receiving facial injuries from the visor revealed a potential defect.

"As a result of this testing, Mitsubishi confirmed that the sun visor for the Eclipse had a higher possibility of detachment due to interference with the deployed airbag than the other tested models," Mitsubishi said in a document filed with the recall.

Because of the potential detachment of the visor, Mitsubishi decided to recall 2000 to 2005 Mitsubishi Eclipses and Mitsubishi Eclipse Spydors and 2001 to 2005 Dodge Stra-

tuses and Chrysler Sebrings manufactured by Mitsubishi for Chrysler, although Mitsubishi notes Chrysler hasn't reported any similar injuries.

According to the recall, Mitsubishi and Chrysler will notify car owners about the defect and that dealers will install a tether strap for free so the passenger sun visor stays attached, although the recall didn't yet have a notification schedule. The company estimates 459,618 cars will be affected by the recall. Mitsubishi first heard of the potential defect in 2006 when a passenger reported receiving facial injuries and being blinded in one eye. Mitsubishi settled the claim and decided to monitor for similar incidents. Since the first accident in 2006, Mitsubishi has received four other reports of accidents caused by the passenger-side sun visor, including another where the passenger was blinded in one eye. The company began investigating the potential of a defect in the design in 2013 and initially determined the passenger side airbag deployed normally relative to the visor in comparison to other Mitsubishi cars.

After receiving another claim in April 2014, Mitsubishi renewed its investigation and later revised its findings, recognizing that the sun visor has the potential to detach during accidents, according to recall documents.

BRP RECALLS YOUTH MODEL CAN-AM ALL-TERRAIN VEHICLES DUE TO VIOLATION OF THE FEDERAL ATV STANDARD

About 12,500 All-terrain vehicles (ATVs) have been recalled by Bombardier Recreational Products, of Canada. The youth ATVs fail to meet performance requirements of the federal ATV standard for maximum unrestricted speed and parking brakes, posing a crash hazard. This recall is for model year 2008 through 2015 Can-Am Mini DS ATVs. The recalled vehicles are youth model ATVs and have engine sizes of 70 cubic centimeters and 90 cubic centimeters. They were sold in the colors black and yellow. "Can-Am DS" and the engine size is on both sides of the vehicle's fairing. "Can-Am" appears in white letters on both sides of the seat. Model year 2008 through 2014 DS 70 ATVs fail to meet requirements pertaining to the unrestricted maximum speed of

the vehicle. Model year 2008 through 2015 DS 70 and DS 90 ATVs fail to meet requirements pertaining to parking brakes.

The ATVs were recalled by Can-Am dealers nationwide from July 2007 through January 2015 for between \$1,800 and \$2,800. Consumers should immediately stop using the recalled ATVs and contact a BRP dealer to schedule a free repair. BRP is notifying registered consumers directly. BRP toll-free at 888-272-9222 from 9 a.m. to 9 p.m. ET Monday through Friday, or online at www.can-am.brp.com/off-road and click on Owners, then "View Details" for Safety, then "View Notices" for Safety Recalls.

COLNAGO RECALLS BICYCLES AND FRAME KITS DUE TO CRASH HAZARD

Colnago America Inc., of Chicago has recalled bicycles and bicycle frame kits. The front brakes can detach from the fork during use, posing a crash hazard. This includes about 400 in the United States and 34 in Canada. This recall involves all Colnago CF10 and Colnago V1-r racing bicycles and bicycle frame kits that fit 28-inch wheels. "Colnago for Ferrari" is on the downtube and the Ferrari logo is on the seat tube of the CF10. "Colnago" is on the downtube and the Ferrari logo is on the crossbar of the V1-r. Model numbers CF10 or V1-r are on both sides of the front fork. Model CF10 frames come in the colors black with white letters and red trim, and black with white letters and yellow trim. Model V1-r frames come in the colors black with white letters and red trim, gray with black letters and black trim, gray with white letters and white trim, and white with silver letters and silver trim.

The bicycles were sold at authorized Colnago dealers from August 2014 to April 2015 for between \$4,800 and \$12,000. Consumers should stop using the recalled bicycles and bicycle frame kits and contact Colnago America for a free inspection. If the hole in the front fork for the brake mounting bolt is not at least 12 mm in depth, the front fork will be replaced free of charge. Contact Colnago America Inc. toll-free at 844-265-6246 from 9 a.m. to 5 p.m. CT, Monday through Friday or online at www.colnago-america.com and

click on “Colnago recalls bikes and frame kits” for more information.

BICYCLES WITH SR SUNTOUR BICYCLE FORKS RECALLED BY SR SUNTOUR

Bicycles with SR Suntour bicycle forks have been recalled by SR Suntour North America, of Vancouver, Wash. The bolt that attaches the upper part of the bicycle’s fork to the lower part of the fork can break or separate and cause the front wheel to come off the bicycle. This is a crash hazard for riders. This includes about 68,000 bicycles in the United States and 33,600 in Canada. This recall involves Cannondale, Diamondback, Giant, GT, INA International, Schwinn, Scott and Trek brand bicycles with SR Suntour bicycle forks models M3010, M3020, M3030, NEX and XCT.

The recalled forks have serial numbers in the top row beginning with “K” and ending with a number between 141101 and 150127. The fork model and serial numbers are located on the back of the fork’s crown. The serial number is the first row. The model number is in the second row. “SR Suntour” is printed on stickers on both sides of the fork legs. A detailed list of the specific model numbers included in the recall is on the firm’s website. There have been 15 reports of the bolts breaking or separating from the bicycles, including two reports of minor injuries, including abrasions, cuts and bruises.

The bicycles were sold at bicycle stores, sports stores and mass merchandisers from November 2014 through May 2015 for between \$300 and \$400 for the bicycles. Consumers should immediately stop using bicycles with the recalled SR Suntour bicycle forks and return the bicycle to the place of purchase for a free inspection and repair. Contact SR Suntour toll-free at 888-820-8458 from 9 a.m. to 4 p.m. CT Monday through Friday or online at www.srsuntour-cycling.com and click on Safety Recall Notice for more information.

A.O. SMITH RECALLS JOHN WOOD BRAND OIL-FIRED WATER HEATERS

About 250 John Wood oil-fired water heaters have been recalled by A.O. Smith Corp., of Milwaukee, Wis. The water heater’s combustion chamber

can be misaligned and heat the exterior walls of the water heater instead of the water. Combustible material near the outside of the water heater can catch fire, posing fire and burn hazards. This recall involves John Wood brand 50 and 70-gallon oil-fired water heaters. The 50-gallon water heaters have model number JW517 and serial numbers from 1349A021678 through 1503A016643. The 70-gallon water heaters have model number JW717 and serial numbers from 1421M001517 through 436M000040. The water heaters are gray with “John Wood” printed in blue and white near the top. The model number, size and serial numbers are printed on the rating plate near the top of the tank. Only oil-fired water heaters are included in this recall.

The heaters were sold by John Wood sales representatives to plumbers and consumers from January 2014 through March 2015 for about \$1,500 to \$2,500. Consumers should immediately turn off and stop using the recalled water heaters and contact A.O. Smith for a free inspection and free replacement of misaligned water heaters. Contact A.O. Smith toll free at 866-880-4661 between 8 a.m. and 4:30 p.m. ET Monday through Friday, or online at www.johnwoodwaterheaters.com and click on Recall Notices for more information.

APPLE RECALLS BEATS PILL XL PORTABLE WIRELESS SPEAKERS

Beats Electronics LLC, of Culver City, Calif., and Apple Inc., of Cupertino, Calif., have recalled their Beats Pill XL speaker. The battery can overheat, posing a fire hazard. This recall involves all Beats Pill XL portable, wireless speakers. The recalled products are plastic, capsule-shaped speakers about 4 inches tall by 13 inches wide by 4 inches deep with a plastic mesh grille on the front and a built-in carrying handle to the rear. The small “b” Beats logo is on the grille and “beatspillXL” is on the handle. The speakers come in five colors black, white, pink, metallic sky and titanium. Apple has received eight reports of incidents of the speakers overheating, including one with a burn to a consumer’s finger and one with damage to a consumer’s desk.

The speakers were sold at Apple Retail Stores and major retail stores nationwide and online at Apple.com and Beatsbydre.com from January 2014 through June 2015 for about \$300. Consumers should immediately stop using the recalled product and contact Apple for a \$325 Apple Store credit or electronic payment. Apple will provide a postage paid box for consumers to send their Pill XL speaker to Apple. Contact Apple Inc. online at www.apple.com or www.beatsbydre.com or www.apple.com/support/beats-pillxl-recall or contact Apple Support toll-free at 800-275-2273 anytime for more information.

CREE RECALLS LED T8 LAMPS DUE TO BURN HAZARD

Cree Inc., of Durham, N.C., has recalled its Cree® LED T8 replacement lamps. Electrical arcing may cause the lamp to overheat and melt, posing a burn hazard. This recall involves Cree LED T8 lamps used indoors to replace traditional two pin T8 fluorescent tubes. The white lamps have a cylindrical shape and measure 48 inches long. The affected units are marked as “BT848 Series Lamp” with the product part number on the lamp itself or printed on a white label affixed to the lamp. A four-digit date code is printed on the lamp under a statement that reads “Compatible with Instant Start, Rapid Start and Dimmable Electronic Ballasts.” Product numbers and UPC codes printed on the product packaging included in the recall can be viewed here: <http://www.cpsc.gov/en/Recalls/2015/Cree-Recalls-LED-Lamps/>. Cree has received four reports of the lamps overheating and melting. No injuries have been reported.

The lamps were sold at The Home Depot® nationwide and to commercial lighting customers through electrical distributors from August 2014 through April 2015 for about \$22 per tube. Consumers should immediately stop using, disconnect or switch off the fixture, remove the recalled T8 LED lamp, put it in a safe place and contact the firm to receive a full refund or replacement lamp. Contact Cree customer service toll-free at 888-338-7883 from 8 a.m. to 5 p.m. CT Monday through Friday, email at T8LED@cree.com or online at www.cree.com and click on “Recalls” or go

to www.cree.com/recall for more information.

MONOGRAM BEVERAGE MUGS RECALLED BY TRI-VISTA DESIGNS

About 10,000 Metallic Monogram Beverage Mugs have been recalled by Tri-Vista Designs Inc., of Deer, Ark. If used in the microwave, the metallic mugs can spark, posing a fire hazard. This recall involves 16-ounce white ceramic beverage mugs with metallic gold accents. A monogram letter A, B, C, D, E, G, H, J, K, L, M, R, S or T is printed in gold on the mug. A sticker on the bottom of the mug has "UPC# 698617673962," "SKU# 138837" and "Retail: \$6.99." The firm has received one report of a mug that began to spark while in the microwave. No injuries have been reported.

The mugs were sold exclusively at Kirkland's stores nationwide from March 2015 to May 2015 for about \$7. Consumers should immediately stop using the recalled mugs in the microwave, and return them to any Kirkland's store for a full refund. Contact Tri-Vista Designs toll-free at 870-446-5126 from 9 a.m. to 4 p.m. ET, Monday through Friday, or visit the company's website at www.trivistadesigns.com click on "Recall Notice" for more information.

TOP FIN PLASTIC AQUARIUM HEATERS RECALLED BY PETSMART

PetSmart Inc., of Phoenix, Ariz., has recalled its Top Fin Plastic Aquarium Heaters. An electrical problem with the aquarium heaters, poses a risk of fire or electrical shock to the consumer. This includes about 112,200 (33,000 heaters were recalled in August 2014), About 4,800 in Canada. This recall involves all 50-, 100-, 150-, 200- and 250-watt Top Fin brand plastic aquarium heaters sold between August 2014 and April 2015 with model numbers: HT50, HT100, HT150, HT200 or HT250. The black cylindrical-shaped heaters are about 1.5 inches in diameter and about 13 inches tall. "Top Fin Premium Aquarium Heater," the model number and the heater's wattage are printed on the side of the heater near the top. The lot number is printed beneath the words "Made in China." All lot numbers are included in this recall. The firm has received 13 reports of incidents, including four

reports of minor shock, seven reports of the water tanks overheating and one report of property damage from an electrical shortage resulting in fire.

The heaters were sold exclusively at PetSmart stores nationwide from August 2014 to April 2015 for between \$25 and \$40. Consumers should immediately stop using the recalled heaters and return them to any PetSmart store for a full refund. Contact PetSmart toll-free at 888-839-9638 from 8 a.m. to 5 p.m. MT Monday through Friday, or visit the company's website at www.petsmart.com and click on "Product Recalls" listed under "Shop With Us" category for more information.

PALI DESIGN RECALLS CHILDREN'S FURNITURE

Children's furniture has been recalled by Pali Design Inc., of Canada. The plastic restraint strap used to attach armoires, combos, dressers and hutches to a wall can break and allow the unit to tip over. Falling furniture can result in a wide range of injuries to young children, from soft tissue bruising to broken bones, head injuries and death by suffocation when a child is pinned under a heavy piece of furniture. This recall involves Pali Design armoires, combos, dressers and hutches sold separately or in the following collections: Karla Collection, Mantova Collection, Milano Collection, Salerno Collection, Volterra Collection, Wendy Collection and West Point Collection. The recall also includes a separate bookcase/hutch available in finishes to match the collections.

The recalled furniture was manufactured from January 2006 to September 2010. Combos combine drawers and a cabinet in one unit. The model number, product name and manufacture date are printed on a white sticker on the back of the units. The manufacture date is in the YYYY-MM-DD format. To view a full list of model numbers and product names from collections of units being recalled, visit <http://www.cpsc.gov/en/Recalls/2015/Pali-Design-Recalls-Childrens-Furniture/>. The firm has received one report of a restraint strap on a Wendy Double Dresser breaking and allowing the unit to tip over. No injuries have been reported.

The furniture was sold at independent specialty stores nationwide, at Pequeno Angelito in San Juan, Puerto Rico and online from January 2006 to September 2010 for between \$420 and \$750. The Karla collection was sold exclusively in Babies R Us stores. Consumers should immediately place the recalled armoires, combos, dressers or hutches out of the reach of young children and contact Pali Design for a free retrofit kit that contains newly designed restraint straps, mounting hardware and installation instructions. Contact Pali Design toll free at 866-840-4140 between 9 a.m. and 5 p.m. ET Monday through Friday, email customerservice@pali-design.com, or online at www.pali-design.com and click on "Safety Notice for more information."

RAMART RECALLS SWING CHAIRS DUE TO FALL HAZARD

About 250 Swing chairs were recalled by Ramart LLC, of Tulsa, Okla. The swing chairs can tip over, posing a fall hazard to consumers. This recall involves green, apple-shaped swing chairs and brown, teardrop-shaped swing chairs. They hang from a chain connected to a metal stand with a circle-shaped base. The chairs are made from plastic rattan and have red cushions. The chairs measure about 42 inches in diameter and 43 inches tall with a 48 inch wide seat cushion. The stand measures about 77 inches tall. HomeGoods has received 11 reports of the swing chairs tipping over with consumers in them, including four reports of injuries to adults and a baby.

The chairs were sold exclusively at HomeGoods stores nationwide from March 2015 through May 2015 for about \$400. Consumers should immediately stop using the recalled swing chairs and return them to a HomeGoods store for a full refund. Contact HomeGoods at 800-888-0776 between 9 a.m. and 6 p.m. ET Monday through Friday, or online at www.homegoods.com and click on Product Info/Recalls at the bottom of the page for more information.

POSITEC TOOL RECALLS WORX BRAND BLOWER/VACS DUE TO SHOCK HAZARD

Positec Tool Corp., of Charlotte, N.C., has recalled its Worx electric blower/vacs. The grounded and ungrounded

wiring in the electric blower/vacs could be reversed, posing a shock hazard to consumers. This includes about 24,300 and 370 in Canada. This recall involves Worx brand electric blower/vacs. The blower/vacs are black, measure 11 inches high by 19.5 inches long and have the “Worx” logo printed on the side of the motor housing. The model and serial numbers are printed on the opposite side of the motor housing. To view a range of serial numbers for model numbers included in this recall, visit them online at <http://www.cpsc.gov/en/Recalls/2015/Positec-Tool-Recalls-Worx-Brand-Blower-Vacs/>.

The vacs were sold at Menards and Walmart stores nationwide from January 2015 through May 2015 for about \$40. Consumers should immediately stop using the recalled blower/vacs and return them to the place of purchase for a replacement or full refund. Contact Positec toll-free at 866-955-4579 between 9 a.m. and 6 p.m. ET Monday through Friday, email blower@positecgroup.com or online at <http://www.worx.com> and click on Product Recall Information in the News and Press section at the bottom of the page for more information.

WALGREENS VITAMINS RECALLED BY INTERNATIONAL VITAMIN

About 17,000 Multivitamin Women 50+ tablets were recalled by International Vitamin Corporation (IVC), of Freehold, N.J. The packaging is not child-resistant and senior friendly as required by the Poison Prevention Packaging Act. The multivitamin supplement tablets inside the bottle contain iron, which can cause serious injury or death to young children if multiple tablets are ingested at once. This recall involves “Well at Walgreens” Multivitamin Women 50+ tablets. The white plastic bottles contain 200 multivitamin tablets. “Well at Walgreens Multivitamin Women 50+” is printed on the bottle’s white and silver label. A yellow band at the top of the label states “Value Size.” UPC number 3-11917-17262-0 and one of the following lot numbers 000001 (EXP 9/2016), 000002 (EXP 12/2016) or 000003 (EXP 11/2016) are printed on the back of the bottles on a white label.

The vitamins were sold exclusively at Walgreens drug stores nationwide from January 2015 through March 2015 for about \$16. Consumers should immediately place recalled bottles out of the reach of children and contact International Vitamin Corp. for a free replacement child-resistant cap. Contact International Vitamin Corp. toll-free at 866-927-5470 between 9 a.m. and 5 p.m. ET Monday through Friday, or visit www.ivcinc.com and click on Safety Recall Notice at the bottom for more information.

BUNNIES BY THE BAY RECALLS PULL TOYS DUE TO CHOKING HAZARD

Bud and Skipit Wheely Cute Pull Toys have been recalled by Bunnies by the Bay of east Windsor, N.J. The recall involved about 800 units in the United States and 10 in Canada. The toys were sold at gift and specialty stores nationwide and online at Bunniesbythebay.com and amazon.com from February 2015 through April 2015 for about \$30. Hub caps on the wheels can break or come off the wheel, posing a choking hazard for young children. The toys were made in China.

Consumers should take the toys away from young children immediately and return the item to where it was purchased for a full refund. Contact Bunnies by the Bay toll-free at 866-763-8869 between 8:30 a.m. and 5 p.m. ET Monday through Friday, email customerservice@kidspreferred.com or online at www.kidspreferred.com and click on “Contact Us” at the bottom of the homepage for more information.

Bud, an 8-inch high soft brown puppy with a blue and white pull cord, stands on red wooden wheels with blue hub caps. There is a red, blue and white soft ball at the end of the pull cord. Skipit, an 8-inch high cream-colored bunny with an orange and white pull cord, stands on blue wheels with orange hub caps. There is a soft cloth carrot at the end of the pull cord. Lot code YM5/14 is on the label sewn on the back leg of each toy. The item number for Bud Wheely Cute Toy, found on the lower right-hand corner of the original packing, is #401101. The item number for Skipit Wheely Cute Toy is #401103. No incidents have been reported.

Once again there have been a large number of recalls since the last issue. While we weren’t able to include all of them in this issue, we included 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.

XXI. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

DANA TAUNTON

Dana Taunton joined Beasley Allen in 1998. She says that when the opportunity to work at the firm was presented, it was something she couldn’t pass up. Dana had this to say:

I saw the passion and commitment of the lawyers in the firm to their clients and the good they were doing and wanted to be a part of it. From the beginning, the firm encouraged that the focus of my life and career to always be on relationship building. First, and foremost, my relationship with God and my husband and kids and then on building relationships with our clients who come to us during some of the most difficult and tragic times in their lives.

Dana received her law degree in 1993 from the University of Alabama, but she never intended to become a lawyer. Instead, she wanted to join the FBI or another federal law enforcement agency. However, God had other plans for her. While attending law school, Dana recalls a hiring freeze at the agencies, but it was then that God started opening up doors for her. As a second-year law student, Dana had the opportunity to work the summer as a law clerk for the Honorable Ira DeMent at the United States District Court for the Middle District of Alabama.

Judge DeMent hired Dana as his full-time law clerk after she graduated from law school. Following her clerkship, she worked briefly at the Alabama Attorney

General's Office before God opened yet another door—a job opportunity at a prominent defense firm, where she was mentored under a very good lawyer, Charles “Chuck” Stewart.

Since joining Beasley Allen, Dana has handled complex business and commercial litigation, products liability and personal injury litigation. Currently, she focuses her practice in the areas of product liability and personal injury. Many of her product liability cases have resulted in multi-million dollar settlements for her clients. She further acts as the Lead Appellant Attorney for the firm's Product Liability/Personal Injury Section.

Dana has lectured on a variety of legal topics for several organizations including the Montgomery County Bar Association, the National Business Institute, the Alabama Trial Lawyers Associations, and the Alabama Bar Institute for Continuing Legal Education (ABICLE). She is also a member of the Alabama Association for Justice, American Association for Justice; Montgomery County Bar Association, Montgomery County Association for Justice and Alabama State Bar. She is Past Chairperson of the Alabama State Bar Women's Section.

Dana was born and raised in Butler, Ala. She is married to Derrick Taunton and they have two daughters, Betsie and Abigail. She attends Frazer Memorial Methodist Church in Montgomery. We are blessed to have Dana with the firm.

LARRY GOLSTON

Larry Golston, a native of Birmingham, joined Beasley Allen in 2000. Prior to his working in the Fraud section, Larry worked in both the firm's Business Litigation section and the Environmental & Toxic Torts section. While working in Environmental & Toxic Torts, Larry was a part of the legal team that obtained a settlement of the largest toxic exposure claims in U.S. history. Larry's practice is now focused on whistleblower litigation, retaliation, wage & hour litigation, sexual harassment, employment discrimination, business fraud and class actions.

Larry graduated from the University of Alabama in 1995 where he obtained his Bachelor of Arts degree in Criminal Justice. While attending college, Larry was initiated into Alpha Phi Alpha Fraternity, Inc. and was a member of the University of Alabama Residential Life Judicial Council. His natural passion for storytelling through personal life experiences and interest in social justice would eventually lead him to

use his God-given abilities to become a lawyer.

A recipient of the Trial Advocacy and Law School Foundation Scholarship, Larry would go on to graduate from the University Of Alabama School Of Law. Larry served as a judicial law clerk for the Honorable James P. Smith of the 23rd Judicial Circuit in Madison County, Ala., and he served as a law clerk for the Honorable Sue Bell Cobb on the Alabama Court of Criminal Appeals prior to entering private practice at Beasley Allen.

Larry was the lead lawyer on the trial team that obtained a \$1.7 million verdict for a small business client involving business fraud in an Alabama court. Larry has been involved in other notable cases that settled for substantial amounts. Those include a contractual dispute and business fraud case involving a consulting firm and Toyota; a whistleblower case involving a former defense contractor employee who informed the U.S. Government that it was being defrauded; and a case on behalf of police officers to recover unpaid overtime compensation.

Larry attributes his success to being relentless and having the right perspective and work habits. He says that like many others at the firm, by keeping his priorities as God first, family second and the practice of law third, he is able to achieve good results for his clients.

Larry currently serves on the Board of Directors for the Montgomery County Bar Association. He has served as president of both the Alabama Lawyers Association and the Capital City Bar Association. He is also the former Chairman of the Adams-Shores Caucus of the Alabama Association for Justice. Larry is a member of the Federal Bar Association.

Larry has been a lecturer on whistleblower litigation, employment law and trial strategies for various legal organizations, including CLE Alabama, the Alabama Lawyers Association and the Alabama Association for Justice. Larry is also frequently a guest on WSFA-TV's “The Beasley Allen Report” program and on the WVAS 90.7 FM radio show “The Law & You,” where he has spoken extensively on whistleblower litigation and employment law issues such as sexual harassment, wage & hour litigation, discrimination and retaliation.

Larry is married to Danielle Golston. They have two children, a 13-year-old daughter Lauren, and an 11-year old son Larry Kyle. The Golston family attends Northview Christian Church-Safe Harbor in Montgomery, Ala. In his free time, Larry enjoys reading, playing basketball and golf,

chess and coaching youth basketball and football. Larry is a very good, hard-working lawyer, who is dedicated to serving his clients. He is a definite asset and we are blessed to have Larry with the firm.

MARY SMITHERMAN

Mary Smitherman has been with the firm since January of 2010 where she currently works as a clerical assistant in our Personal Injury/Products Liability Section. She has also worked as a relief receptionist and clerical assistant in the Mass Torts Section. Mary graduated from Jeff Davis High School and attended a Travel School in Miami. She has a 21-year-old son, who attends Auburn University majoring in Geology. Mary says her best accomplishment was raising her son to be a kind and considerate young man. She enjoys reading and watching television in her spare time. Mary is a hard worker and is very much interested in helping to achieve good results for the section's clients. We are fortunate to have her with the firm.

BEASLEY ALLEN LAWYER ALI HAWTHORNE TALKS TO WAKA TV ABOUT TIRE SAFETY

Ali Hawthorne, a lawyer in our firm's Consumer Fraud and Commercial Litigation Section, recently visited the news department of WAKA to talk about a tire safety event that was sponsored by the firm in cooperation with the Millbrook Police Department last month. Ali shared important and needed information about tire age, noting that tires have an “expiration date” of six years, after which manufacturers recommend tires be replaced. Even tires that have not been used may degrade over time due to factors like heat, so even if they look brand new, they may be unsafe.

There is a code on the tire that consumers can check to find out how old the tire is, but most people don't know where it is or how to read it. The event was held on Saturday, June 13 in Millbrook. Sgt. Mike Speigner, a trained police officer, and Helen Taylor from our firm were on site to help educate folks on this important safety topic.

XXII. SPECIAL RECOGNITIONS

PUBLIC CITIZEN WORKS FOR PEOPLE

Anybody who has been a regular reader of the Report knows my friend Dr. Sidney M. Wolfe at Public Citizen. He writes in *Worst Pills, Best Pills News* that each year more than 100,000 people die from adverse drug reactions, and another 2,000,000 people are seriously injured. Public Citizen, a consumer advocacy group, works hard to educate consumers about the dangers of some prescription drugs. It has also worked extremely hard to educate the U.S. Food and Drug Administration (FDA) about dangerous drugs.

Most of you, having read our monthly report, have heard of the diabetes drug Rezulin. This drug was approved in 1997 by the FDA and then banned by the agency three years later. By that time, it had already caused hundreds of cases of liver damage, including 63 reported deaths. Dr. Wolfe, through the publication *Worst Pills, Best Pills News*, warned of Rezulin's potential danger a year and half earlier, when Public Citizen petitioned the FDA to ban the medication in 1998.

In fact, the Health Research Group at Public Citizen, the publisher of *Worst Pills, Best Pills News*, has helped to remove 25 other dangerous drugs from the market. That's why Dr. Wolfe started the newsletter in an effort to warn consumers about dangerous prescription drugs. Many times his warnings were years before the drugs were pulled from pharmacy shelves. The following are some of the projects Public Citizen has worked or is working on:

- In 2012, the FDA dropped the ball on regulating a large compounding pharmacy company, allowing it to continue manufacturing numerous drugs without following proper safety procedures for ensuring that they were free of contamination. As a result, at least 751 people in 20 states became ill, and 64 people have died after being treated with steroid injections that were contaminated by fungus. 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.
- Since the 2012 outbreak began, Public Citizen issued several letters to the Secre-

tary of Health and Human Services, the FDA and Congress, criticizing the FDA and the Centers for Medicare & Medicaid Services for years of oversight failures that led to this public health catastrophe and calling for an independent investigation.

- Public Citizen's work in this regard has been widely covered by numerous media outlets including *The New York Times*, *The Washington Post*, *USA Today*, *CNN*, National Public Radio's "The Diane Rehm Show" and "NBC Nightly News."

In December 2014, Dr. Michael Carome, Director of Public Citizen's Health Research Group, was appointed to serve on the FDA's Pharmacy Compounding Advisory Committee. As the consumer representative on the committee, Dr. Carome will aggressively advocate for rigorous FDA safety standards for all compound medications to protect patients from serious harm.

Unfortunately, as Dr. Wolfe points out, the FDA is not the gold-standard agency it once was. For this reason, Public Citizen has had to step up its efforts to keep people safe. In addition to keeping folks informed, Public Citizen also does the following on behalf of the American people.

- Public Citizen formally petitions the FDA for stronger drug-safety standards. For example, in 2013, the FDA granted Public Citizen petition calling for the agency to propose new regulations to allow generic drug manufacturers to promptly update their product labeling to include newly acquired safety information. If finalized, the rule will provide added protection to the tens of millions of people who regularly use generic drugs, which make's up 86 percent of all dispensed prescription drugs. However, the pharmaceutical industry is aggressively lobbying Congress to block FDA issuing the final rule. Public Citizen is working hard to counter these efforts by the drug industry to undermine drug safety.
- 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 had to be removed from the market or receive a black box warning after FDA approval. *One in five!*
- Public Citizen carefully scrutinizes FDA proposals regarding the drug industry's

promotion of its products. In 2014, we initiated a campaign against a dangerous FDA proposal that would permit Big Pharma to give doctors information that contradicts FDA-approved labeling about the risks of prescription medications. Such a proposal poses a grave threat to patient safety.

- Public Citizen testifies regularly as medical experts at FDA advisory committee meetings about the safety drugs, trying to stop dangerous drugs from being approved or arguing for them to be banned.
- Public Citizen has taken an active role in stopping Congress from destroying Medicare.

I would encourage any person who wants to learn more about the dangers of prescription drugs to subscribe to *Worst Pills, Best Pills News*. These critical, life-saving activities mentioned above are expensive, and the subscription fee for *Worst Pills, Best Pills News* doesn't begin to cover their cost. Public Citizen needs help to pay for the research behind its newsletter and its continuing efforts to force unsafe drugs off the market. Unlike most other publications or websites, Public Citizen does not accept money or advertisements from drug companies. Public Citizen doesn't accept money from the government or corporations and that's very important. This ensures that Public Citizen can remain independent—its judgment won't be clouded by commercial interests—which makes Public Citizen only obligated to people.

I hope you will help Public Citizen continue to help folks by making a generous contribution to the organization. You can get more information on the work of Public Citizen and the newsletter by going to Citizen.org. You can make your contribution to Public Citizen, publisher of *Worst Pills, Best Pills News*, by sending a check to Public Citizen at 1600 20th Street NW, Washington, D.C. 20009.

Source: Public Citizen

SEAN KANE KEEPS A WATCHFUL EYE ON HAZARDOUS PRODUCTS

A source of great information about product safety is a watchdog organization called Safety Research & Strategies, Inc., or SRS. Combining research, investigation, analysis, strategy and advocacy, SRS provides important consumer information about injuries associated with product

hazards. SRS has been in the news a lot lately for its work on issues surrounding motor vehicles, but it also examines dangerous consumer and industrial products, and medical devices.

Founder and President of SRS, Sean Kane, began his work as a consumer advocate in 1991, at the Center for Auto Safety (CAS) in Washington, D.C. CAS was established in 1970 by Ralph Nader, in cooperation with the Consumers Union, as a voice for auto safety and quality. SRS has also been a key player in issues of auto safety.

In particular, Mr. Kane's research into Toyota Sudden Unintended Acceleration provided a wealth of valuable information that became a cornerstone in Congressional investigations into the automaker's conduct surrounding the deadly defect. He provided testimony to the U.S. House Committee on Energy and Commerce and the U.S. Academy of Sciences regarding the problem. Mr. Kane provided additional testimony and data to the National Highway Traffic Safety Administration (NHTSA). His research helped expose Toyota's failure to comply with federal regulations regarding timely reporting of automotive defects and failure to recall affected vehicles, which may have prevented many senseless deaths.

Our firm was eventually able to prove to a jury in Oklahoma City in the *Bookout v. Toyota* litigation that the sudden unintended acceleration defect was tied to an electrical problem in the vehicles, rather than due to floor mats or sticky accelerator pedals as the automaker long claimed.

Other groundbreaking work done by Mr. Kane and SRS includes a 2000 investigation into the dangers of Ford Explorers equipped with Firestone tires, and their propensity to roll over in the event of a crash. His research led to a Congressional inquiry into the matter, and an overhaul in the way automobile recalls are supposed to be handled. Mr. Kane work was used in the establishment of the Transportation Recall Enhancement, Accuracy and Documentation (TREAD) Act, which was enacted on Nov. 1, 2000.

SRS is based in Rehoboth, Mass., and has staff in Washington, D.C., and Chicago. They have contract partners in Detroit, Europe, Australia and Asia. Mr. Kane regularly provides comments, testimony and data to NHTSA and the U.S. Consumer Product Safety Commission (CPSC), and speaks to public safety issues in the media. He also is editor of *The Safety Report*, a publication and blog that covers topics of motor vehicle and product safety.

Kane is on the advisory and editorial boards for SafetyBeltSafe U.S.A., a non-

profit committed to child passenger safety; founded and is on the board of The Safety Institute, which examines areas of injury prevention and product safety; and is a member of the Society of Automotive Engineers and International Motor Press Association. He also is active in his local community, as the co-chairman of the Massachusetts multi-disciplinary injury prevention network, Mass PINN, sponsored by the Centers for Disease Control / Massachusetts Department of Public Health, which works at the state and federal level to advocate for public health and safety. Mr. Kane also serves on the board of Safe Kids Massachusetts, which is part of the Safe Kids USA network that strives to prevent unintentional childhood injury.

For more information about SRS, visit them online at www.safetyresearch.net or contact the organization at 340 Anawan St., Ste. 200, Rehoboth, MA 02769.

Sources: SRS, The Center for Auto Safety, NHTSA

XXIII. FAVORITE BIBLE VERSES

Greg Allen, our Senior Product Liability lawyer, provided some Bible verses that are important to him. The background for Greg's selection of these verses is most interesting. One of his clients miraculously survived a devastating automobile crash in which the man's car rolled over numerous times. When the car was rolling over, the roof of the vehicle pinched and bent the client's Bible and held it open. When the vehicle stopped, it was sitting on its wheels. The Bible was hanging in one of the back side windows open to the Book of John, Chapter 20, where Jesus was talking to Thomas.

Then saith he to Thomas, Reach hither thy finger, and behold my hands; and reach hither thy hand, and thrust it into my side: and be not faithless, but believing. And Thomas answered, and said unto Him, My Lord and my God. Jesus saith unto him, Thomas, because thou hast seen Me, thou hast believed: blessed are they that have not seen, and yet have believed. And many other signs truly did Jesus in the presence of His disciples, which are not written in this book: But these are written, that ye might believe that Jesus is the Christ, the Son of God; and that believing ye

might have life through His name. John 20:27-31

Kay Cox, who works as a Legal Secretary in our Personal Injury/Products Liability Section, gave two verses this month. Kay says the first is the "go to" verse for her. When she starts to question herself, thinking she can't do a certain thing, or deal with a certain matter in life or may just be down and out from all the stresses in life, Kay says this verse out loud and it really does give her strength. She says that God "has my back" in every situation and that she should have no fear!

I can do all things through Christ who strengthens me. Philippians 4:13

Kay's second verse is also important to her. She says she knows Jesus suffered and endured so much so that we might live eternally. This verse is especially important to Kay because she knows God has healing powers and she knows he can perform miracles.

But he was wounded for our transgressions, he was bruised for our iniquities; the chastisement for our peace was upon him; and by his stripes we are healed. Isaiah 53:5

Chris Glover, a lawyer in our Personal Injury and Product Liability Section, also furnished two verses for this issue. Chris says the consequence of sin impacts sinners at present, and, if we are never born again, for eternity. Chris says that Jesus can set us free from sin and he says that freedom sure does feel good.

Jesus replied, "Very truly I tell you, everyone who sins is a slave to sin. Now a slave has no permanent place in the family, but a son belongs to it forever. So if the Son sets you free, you will be free indeed." John 8:34-36

Chris says his favorite verse in the Bible is found in Ephesians. He says that Paul explains things to him about living a worthy life in a manner that he can understand.

As a prisoner for the Lord, then, I urge you to live a life worthy of the calling you have received. Ephesians 4:1

Rhon Jones, who heads up our firm's Toxic Torts Section, furnished three verses this month. He says his life verse is found in Romans. Rhon says this verse is the foundation of his existence.

And we know that in all things God works for the good of those who love him, who have been called according to his purpose. Romans 8:28

Rhon furnished another verse, saying that Hebrews 12:1-2 is a verse that he never grows tired of reading.

Therefore, since we are surrounded by such a great cloud of witnesses, let us throw off everything that hinders and the sin that so easily entangles. And let us run with perseverance the race marked out for us, fixing our eyes on Jesus, the pioneer and perfecter of faith. For the joy set before him he endured the cross, scorning its shame, and sat down at the right hand of the throne of God. Hebrews 12:1-2

Rhon says he also loves James 1:22. While reading God's word is important, Rhon says we must do and not just hear. I totally agree with him and it's a definite requirement.

Do not merely listen to the word, and so deceive yourselves. Do what it says. James 1:22

XXIV. CLOSING OBSERVATIONS

THE COUNTRY LOST A TRUE PUBLIC SERVANT WHEN BEAU BIDEN DIED AT AGE 46

Our country lost a real public servant when Beau Biden died at age 46. Vice President Joe Biden was joined in mourning by heads of state including President Obama when his son Beau passed away May 30 after battling brain cancer. A service held June 6 at St. Anthony of Padua Roman Catholic Church in Wilmington, Del., was attended by an estimated 1,000 people. Others lined the roads leading to the church to pay their respects. I don't believe I can recall any public figure receiving more good things said about a life than were said about Beau Biden.

Joseph Robinette "Beau" Biden, III, was Vice President Biden's oldest son, a former Delaware attorney general and an Iraq War veteran. He leaves behind a wife, Hallie, and two children, Hunter and Natalie, in addition to his parents, Joe and Jill, and his siblings Hunter and Ashley. He also is

remembered by many extended family members, friends and colleagues.

Beau was born in Wilmington, Del., Feb. 3, 1969. In 1972, his mother, Neilia Hunter Biden, and younger sister, Naomi Christina Biden, were killed in an auto accident that also injured him and his brother Hunter, who was 3 at the time. His father, Joe Biden, who at the time was a U.S. Senator, traveled back and forth to Washington, D.C., each day while caring for his sons. He raised them as a single father until he remarried in 1977.

Beau graduated from the University of Pennsylvania in Syracuse University College of Law. He worked at the U.S. Department of Justice from 1995-2004, eventually becoming a Federal prosecutor in the U.S. Attorney's office. He became a partner in the firm of Bifferato, Getilotti Biden & Balick in 2004.

He joined the military in 2003 as a member of the Delaware Army National Guard and was a Major in the Judge Advocate General (JAG) Corps. He was elected to serve as Delaware Attorney General in 2006. In 2008, his Guard unit was deployed to serve in Iraq for one year. He was awarded the Bronze Star for his service.

In May 2010, Beau suffered a stroke, but recovered and went on to win a second term as Delaware Attorney General. In 2013, he was diagnosed with brain cancer. He had a lesion removed and underwent radiation and chemotherapy. Sadly, he succumbed to his illness in May 2015.

Among the dignitaries who attended Beau's funeral were President Barack Obama and First Lady Michelle Obama, with their children; Sens. Mitch McConnell and Harry Reid, former President Bill Clinton and Hillary Clinton; and Gen. Raymond Odierno, Chief of Staff of the U.S. Army, who awarded Beau Biden the Legion of Merit "for his lifetime of service as a soldier, an advocate and an American Patriot." In a eulogy, President Obama said of Beau:

He was a good man. A man of character. A man who loved deeply and was loved in return. Beau's grandfather, Joe's father, believed that the most egregious sin was to abuse your power to inflict pain on another. So, Beau squared his broad shoulders to protect people from that kind of abuse. He fought for homeowners who were cheated, seniors who were scammed. He even went after bullying itself.

In his memory, Beau's family has established the Beau Biden Foundation for the

Protection of Children, which "will honor Beau's life of service, and continue his mission of standing up for those members of our society most in need of a voice." The Beau Biden Foundation will operate as part of the Delaware Community Foundation. More information may be found on the website, www.beaubidenfoundation.org, and donations can be made in Beau's memory.

Sources: NPR and the Delaware Community Foundation

OUR MONTHLY REMINDERS

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

I am still determined to be cheerful and happy, in whatever situation I may be; for I have also learned from experience that the greater part of our happiness or misery depends upon our dispositions, and not upon our circumstances.

Martha Washington (1732—1802)

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

The dictionary is the only place that success comes before work. Hard work is the price we must pay for success. I think you can accomplish

anything if you're willing to pay the price.

Vincent Lombardi

XXV. PARTING WORDS

The senseless killings in Charleston, S.C., by a 21-year-old man have once again put the American people in a state of mind that can best be described as painful, sorrowful, angry and even confused. Nine innocent lives were lost and they died at a place of worship while actually worshiping their God. I have been greatly moved by the outpouring of love and support by people across the country for the families of the victims. That speaks well for the American people.

Unfortunately mass murders have become almost to be expected in our country and that is a sad commentary on our times. The murderer in this instance was filled with hate. His hate was aimed at American citizens and specifically at all black folks in our country. Without any doubt, his hate was for all black Americans.

The obvious question is why? I wish there was an easy answer. We must all support the families with our prayers and with whatever else is needed to get them through this tragic time in their lives. But we must move forward and do more than just support the families. We must fix our most serious racial problems in America.

Hopefully, this tragic incident will be a real wakeup call for all of America. The families of the victims have shown Christian love even though their losses are as

bad as one could imagine and that speaks volumes for their character and their devotion to God. No person can understand their feelings and emotions unless they have experienced similar losses and very few of us have. We must not let the deaths of these innocent persons and their respective families just remain in the headlines for a few weeks and then be largely forgotten with the passage of time. That has been the history of most mass murders in the past. Hopefully, this time things will be quite different.

This tragic event was pure racism at its very worst. There have been other incidents over the years that shocked and saddened the overwhelming majority of the American people. As a result of some of those incidents, constructive changes in how we think and act and live came about. In others, however, time passed and little, if anything, really changed. We as a people can't let that happen this time. We must change our culture when it comes to race relations in America.

The government certainly has a role in bringing about the needed change, but the real change must come from the American people who must demand real changes and then see that it comes about. I sincerely believe the churches must be the place where the movement for change starts and continues until we really fix our problems. Anybody who has watched the news over the past few days has to feel a real spirit of brotherhood and love for each other, something that is so badly needed today in our country. We must make sure that this spirit continues and grows. None of us can afford to sit out this battle. Each of us must be actively involved.

My prayers today are for the families of the victims, for the City of Charleston and for the United States of America and all of

our people. We must cast out the spirit of hate and division in the name of Jesus and replace that spirit with the spirit of love and respect for one another. Until we face reality and realize that our nation can't continue on its current course, our racial problems won't be solved. God expects us to deal with this problem in love and our obligation is to listen to God and obey His commands. The verses set out below will help us to not only understand our mission, but will help us heal the wounds that have been inflicted on our nation.

A new command I give you: Love one another. As I have loved you, so you must love one another. By this everyone will know that you are my disciples, if you love one another. John 13:34-35

My command is this: Love each other as I have loved you. Greater love has no one than this: to lay down one's life for one's friends. John 15:12-13

Keep on loving one another as brothers and sisters. Hebrews 13:1

Hatred stirs up conflict, but love covers over all wrongs. Proverbs 10:12

And he has given us this command: Anyone who loves God must also love their brother and sister. 1 John 4:21

I hope all of you and your families enjoy the July 4th holiday. It's a great time to assess where we are as a nation and to pray for a healing of our land. May God bless and protect each of us as we celebrate our nation's independence.

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