



THE  
**JERE BEASLEY REPORT**

MAY 2016

# Beasley Allen

BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.  
Attorneys at law

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# I. CAPITOL OBSERVATIONS

## *THE DEEPWATER HORIZON OIL SPILL LITIGATION IS IN ITS FINAL STAGES*

Six years ago this month, the American people bore witness to the most devastating environmental disaster in United States history. Just off the coast of Louisiana on the night of April 20, 2010, the Deepwater Horizon oil rig was completing drilling operations when a number of catastrophic explosions ripped through the drilling rig. Eleven people died that night. The fireballs from the explosion were so large that fishermen observed them from miles away. Two days after the explosion, the rig—a once-hailed technological marvel—sank into the depths of the Gulf of Mexico.

During the following days, attention quickly shifted to whether the rig or the well was leaking oil. Initially BP claimed there was no leak. But later BP estimates on the spillage, which initially was 1,000 gallons, ballooned to tens of thousands of barrels of oil per day. Gulf Coast residents watched helplessly as efforts during the following weeks to cap the well failed. Plumes of oil were so massive they were visible from outer space. Fishermen, hired to participate in the oil spill cleanup, were so taken aback by the miles of oil-covered ocean that some committed suicide upon returning to port.

Oil began hitting the barrier islands of Alabama in May 2010, and by around Memorial Day 2010, the oil slick came ashore—essentially ending Alabama's Gulf Coast tourism season before it ever began. Businesses and individuals were devastated. Fishermen were left to clean up oil in order to put food on the table for their families. Local and state governments lost millions in tax revenues, and precious resources from Louisiana to Florida were heavily oiled. This was a disaster I never believed I would see in my lifetime.

For those of us that experienced the oil spill in 2010, it is a time we will never forget. Our firm started receiving phone calls from fishermen and seafood processors within just a few days after the oil spill. Within a week, the demand for legal representation skyrocketed. Our Environmental / Toxic Torts Section was tasked to manage the case for the firm. Rhon Jones, John Tomlinson, Chris Bout-

well, Parker Miller and David Byrne (who now works in our Mass Torts Section) spent months away from their families helping clients hold on through the darkest days of the disaster.

Before the Multidistrict Litigation (MDL) was formed in New Orleans, Beasley Allen was one of the first firms to file a lawsuit against BP. By October of 2010, our lawyers had filed a number of lawsuits on behalf of those damaged by the oil spill. The firm was also hired to assist then Attorney General Troy King in the filing of Alabama's lawsuit. This filing turned out to be extremely important to the outcome of the entire litigation.

In looking back over these past six years, I am very proud of the work our firm did in this once-in-a-lifetime case. Rhon Jones was appointed as a member of the oil spill Plaintiffs' Steering Committee (PSC), and he tirelessly worked on almost every facet of the litigation. Parker Miller served as Rhon's second chair on the committee, and was involved in numerous PSC initiatives in New Orleans. John Tomlinson became a major contributor to the unprecedented economic assessment and was intricately involved in the negotiations that led to the landmark multi-billion dollar private economic settlement. Chris Boutwell played a key role in the PSC's environmental assessment, the vetting of environmental experts, and the property damage frameworks of the private settlement.

The work of our lawyers and support staff helped the PSC ultimately reach a settlement with BP that has paid private claimants billions of dollars. Our lawyers have represented in excess of 4,000 private claimants in the claims process, and they helped recover tens of millions of dollars in compensation for our clients.

We also were the leading private firm behind the State of Alabama's litigation with BP and others. Rhon Jones supervised that effort and led settlement negotiations for the State. Parker Miller spearheaded the day-to-day litigation efforts for Alabama against BP. Rhon and Parker, along with Beasley Allen lawyers Jenna Fulk and Rick Stratton, were deputized as Deputy Attorneys General for the State of Alabama to handle the litigation for the state. The hard-fought \$2.3 billion settlement for Alabama represents arguably the most significant settlement in Alabama's history. In addition to the Alabama case, Rhon Jones and Grant Cofer, another of our lawyers, represented numerous local governments

located across the Gulf States and they obtained very good settlements for these clients.

It is important to note that the primary lawyers involved in the BP litigation have been supported by other lawyers and staff in our firm over the course of the effort. Ryan Kral, William Sutton, Rick Stratton and Jeff Price have worked, and continue to work, many long hours in this litigation. They have played a major role in the recoveries obtained for the clients. Other lawyers have also played important roles on behalf of the firm's private clients, including Jenna Fulk, Will Fagerstrom, Evan Loftis, Bea Sellers, and Ben Gibbons. We also have talented legal assistants, secretaries, and other administrative staff who played a key

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role in our efforts and were instrumental in helping obtain justice for our clients in this important matter.

With the oil spill litigation now drawing to a close in New Orleans, I would be remiss if I did not mention the outstanding work the Judges and their staff did in this litigation. The oil spill MDL is arguably the largest, most complex MDL in United States history. Judge Carl Barbier and Judge Sally Shushan, along with their staffs, deserve tremendous credit for their hard and effective work. To reach the point where we can begin to say that major litigation is coming to an end in only six years is simply incredible. By comparison, the *Exxon Valdez* oil spill litigation took decades to resolve. Achieving a record settlement—in record time—is a tremendous accomplishment and it will be recorded historically in that manner. We are humbled and also proud to have been a part of this matter.

#### **CONSENT DECREE ORDER APPROVES ALABAMA SETTLEMENT**

As a follow-up to the above, on April 4, 2016, Judge Carl Barbier entered an order granting final approval of the consent decree lodged jointly by the Federal Government, BP and the Gulf States. As we reported previously, confirmation of BP's settlements with the Federal Government and the Gulf States was contingent on Judge Barbier granting final approval of the consent decree. With his order entered, the largest environmental settlement in U.S. history will now move forward. The consent decree had been proposed for public comment on Oct. 5, 2015.

As our readers know, the State of Alabama's oil spill settlement was a component part of the overall governmental settlements. With this new development, Alabama will begin receiving annual payments beginning 90 days from April 4, 2016, (also known as the "effective date"). From that point on, Alabama should receive its scheduled compensation every additional year.

In total, Alabama will receive \$2.3 billion in compensation, including compensation for economic losses resulting from the oil spill, natural resource damages, and an apportionment of Clean Water Act civil fines and penalties. Rhon Jones and Parker Miller led this litigation on behalf of the firm for the State of Alabama. I mentioned the other Beasley Allen lawyers who worked on the state's case above. These lawyers were instru-

mental in ensuring the State received justice in the form of damages in this matter. If you have any questions about the settlement or any aspect of State of Alabama's lawsuit, contact Parker Miller at Parker.Miller@beasleyallen.com or 800-898-2034.

## **II. MORE AUTOMOBILE NEWS OF NOTE**

#### **TENTATIVE VOLKSWAGEN EMISSIONS SETTLEMENT ANNOUNCED**

The framework has been reached for a settlement concerning 480,000 Volkswagen and Audi vehicles, according to Dee Miles, who heads up our firm's Consumer Fraud and Commercial Litigation Section. Dee is a member of the exclusive Plaintiffs' Steering Committee (PSC) selected to lead the litigation against Volkswagen, Audi and Porsche following revelations that the manufacturers cheated to pass emissions tests on many diesel vehicle models manufactured since 2009.

The tentative settlement was agreed to in principle by the U.S. Environmental Protection Agency (EPA), U.S. Federal Trade Commission (FTC), the California Air Resources Board and the Plaintiffs' Steering Committee with the Volkswagen/Audi/Porsche Defendants. It was announced by Judge Charles R. Breyer, United States District Court for the Northern District of California, at a hearing on April 21, 2016.

The tentative settlement will provide vehicle owners with the option to either participate in a buyback program, or have their vehicle modified to conform to federal and state emissions regulations. In addition, vehicle lessees will have the option to cancel their leases. Both owners and lessees will receive additional compensation in connection with the options above. Specifics as to the amount of compensation and methodology for determining compensation have not been revealed and cannot be discussed at this juncture. In addition, Volkswagen has agreed to establish an environmental remediation fund and will commit other funds to promote green automobile technology.

Judge Breyer reiterated at the hearing that it is "critically important" that the parties maintain confidentiality as they

continue to negotiate and iron out all of the details of the proposed settlement. Consumers and other interested parties will have ample opportunity to review the proposed settlement once it is made public. The court will not approve any settlement until there has been an opportunity for public review and comment.

Judge Breyer will follow-up on the progress of the settlement negotiations at the next status conference, which is scheduled for May 19. Also, Judge Breyer set a June 21 deadline for the United States and Volkswagen Defendants to file a consent decree outlining the settlement terms, and for the Plaintiffs' Steering Committee to file a motion for preliminary approval of a class-wide settlement. The hearing on class settlement approval will be held on July 26.

Judge Breyer noted outstanding issues with respect to resolution of claims that are pending related to Volkswagen/Audi/Porsche vehicles with 3.0 liter engines and with governmental fines and penalties. We expect progress toward resolution of these claims over the next several weeks. Claims of auto dealers and Volkswagen investors, and a criminal probe remain ongoing.

The Court has created an official website for the Volkswagen litigation: <http://www.cand.uscourts.gov/crb/vwmdl>. This website contains the complaint, pretrial orders, and dates for upcoming hearings. You may also contact Archie Grubb, a lawyer in our firm, at 800-898-2034, or via email at Archie.Grubb@beasleyallen.com, if you have questions regarding the Volkswagen emissions litigation.

Because of Judge Breyer's very specific order, however, neither our firm nor any other firm involved in this litigation can discuss any of the specifics of the settlement or anything about the internal matters and ongoing negotiations. This is an ironclad confidential requirement that binds all parties and their respective counsel.

#### **HONDA CONFIRMS TAKATA AIR BAG FATALITY IN TEXAS; DEATH TOLL AT 12**

The death toll for passengers in vehicles equipped with Takata air bags has now reached 12—11 in the U.S. and one overseas. Honda has confirmed that the rupture of a Takata air bag in a 2002 Honda Civic that crashed in Texas last month resulted in the driver's death. American Honda Motor Co. Inc. confirmed that the death in Fort Bend County, Texas, was caused by a Takata

Corp. air bag and said the vehicle was the subject of multiple recalls and a market campaign since 2011. Representatives from the National Highway Traffic Safety Administration, the Sheriff's Department of Fort Bend County, Texas, and Takata were all present at the inspection where Honda confirmed the cause of death.

Then, in mid-April, a Jacksonville, Fla., woman who sued Japanese auto supplier **Takata** after the **air bag in her 2001 Honda Civic exploded** with excessive force died from her injuries. Patricia Mincey, 76, was involved in a 2014 crash that should have been relatively minor with no air bag deployment. However, the crash became catastrophic when the Takata air bag erupted violently and crushed Ms. Mincey's spine, leaving her a quadriplegic. Ms. Mincey is now believed to be the 11<sup>th</sup> person in the U.S. to die from injuries caused by **defective Takata-made airbags**.

As we have previously reported, Takata air bags have been recalled worldwide because of a defect linked to the use of inexpensive, but volatile ammonium nitrate that causes the air bags to explode. Chemicals and shrapnel can be sprayed at passengers when this happens. Takata was hit with civil penalties topping out at **\$200 million** in November, the largest penalty ever imposed by NHTSA. The manufacturer has admitted that it failed to alert NHTSA of the defect despite knowing about it, and admitted further that data submitted to the agency about the defect since at least 2009 was "selective, incomplete or inaccurate," according to the agency.

NHTSA announced in January that the number of vehicles affected by defective Takata air bag inflators was expected to grow by 5 million, **up to 24 million** total. That came after NHTSA confirmed that a faulty rupture had caused a ninth U.S. fatality. The death was due to an air bag inflator in a 2006 Ford Ranger that limited previous testing had found was not at risk. Ford has since recalled additional Ford Rangers for a new total of **more than 390,000**. The latest death is the 11<sup>th</sup> fatality linked to Takata air bag inflators in the U.S. and the 12<sup>th</sup> confirmed death worldwide.

Sources: Law360.com, Los Angeles Times, The Palm Beach Post

#### **NISSAN TO FACE THREE CLASSES WITHIN ENGINE DEFECT SUIT**

A California federal judge has certified three classes of Nissan drivers, including

a separate Washington state class, within a defect suit over timing-chain tensioning systems that allegedly lead to total engine failure. U.S. District Judge Dean D. Pregerson said a class action is the best way to resolve damages and the related safety issue. The judge signed off on a California and Washington class of drivers consisting of those who have already incurred costs over the defect and another class made of up Nissan owners and lessees in California who have yet to pay for repairs. Judge Pregerson found that the groups had common claims, proof and damages stemming from the timing chain issue that would best be resolved through class-wide litigation. The judge wrote:

*The actual proof of common defect, or defendants' knowledge and subsequent actions, go to the merits of the claim, but common evidence will be used to prove the claim either way. Further, the evidence cited by plaintiffs in their moving papers is sufficient at this stage of the case to make out allegations common among the class as to the alleged vehicle defects, the effects the alleged defects could have on the vehicle in terms of safety, and Nissan's knowledge of the defect.*

The case, filed in 2012 by 2005 Nissan Pathfinder owner Kobe Falco as the named Plaintiff against Nissan and its parent Nissan Motor Co., involved claims that 2004 to 2009 Quests and 2005 to 2007 Pathfinders, Xterras and Frontiers were made with timing chain systems prone to premature failure. Falco also claimed that Nissan was well aware of the alleged defect. It's contended that even before the vehicles were made, the supplier of the parts had told the automaker the system was prone to breaking down.

Source: Law360.com

#### **CATERPILLAR AGREES TO \$60 MILLION SETTLEMENT IN BUS ENGINE DEFECT SUIT**

Caterpillar Inc. has informed a New Jersey federal judge that it agreed to pay \$60 million to end bus and trucking companies' class claims alleging that the company sold bus engines with a defective anti-pollution system. The settlement calls for a \$60 million common fund. Class members would be eligible for between \$500 and a maximum of \$10,000 per engine, or \$15,000, for losses stemming from repairs.

Plaintiffs in the five consolidated class actions have alleged that an exhaust emission control system used in Caterpillar's C13 and C15 heavy-duty on-highway diesel engines is defective. The cases claim that buses or trucks with the engines suffered repeated failures and fault warnings that resulted in time-consuming and costly repairs.

The engines contain technology, known as ACERT, that recycles exhaust back through the engine to reduce emissions, which Caterpillar developed to comply with a series of tougher emissions regulations that went into effect in 2002, according to Salud Services Inc., which does business as Endeavor Bus Lines. The bus line, which filed its suit in Florida federal court, contended that the ACERT systems are particularly vulnerable to failure, including clogging and repeated triggering of check-engine lights.

Last year, the lawsuit survived Caterpillar's dismissal motion claiming that the claims were preempted by the Clean Air Act. U.S. District Judge Jerome B. Simandle ruled in July that only one of the claims made by the bus and trucking company Plaintiffs—a federal warranty claim—is preempted by the CAA. However, the rest of the Plaintiffs' claims—for alleged violations of consumer protection laws and breach of express warranty—are not emissions control issues to be enforced by the U.S. Environmental Protection Agency and can be litigated in federal court.

Judge Simandle also allowed their express warranty claims and the majority of their consumer protection claims to stand, but dismissed the Plaintiffs' breach of implied warranty claims and certain other state law claims, finding that they had not been adequately pled.

Source: Law360.com

#### **MITSUBISHI ADMITS TO CHEATING ON FUEL ECONOMY FOR 25 YEARS**

Days after admitting it manipulated mileage test data on hundreds of thousands of cars it made in the last three years, Mitsubishi Motors Corp. made a stunning announcement that it has been overstating fuel economy in millions of its vehicles made and sold over the last 25 years. On April 26, Mitsubishi officials said the fraud goes back as far as 1991.

The scope of Mitsubishi's fuel-economy scandal is so massive that company officials said they don't know yet just how many cars and trucks with overstated mileage it has sold over the past



quarter century. The problem also potentially affects millions Nissan vehicles made by Mitsubishi in a joint venture. In fact, Nissan engineers were the first to discover the discrepancy last year when testing the performance of DayZ mini cars made by Mitsubishi for Japanese consumers.

Initially, Mitsubishi president Tetsuro Aikawa admitted Mitsubishi engineers knowingly gave its compact cars exaggerated fuel ratings by manipulating the conditions under which the vehicles were tested. The company disclosed that the fraud affected about 620,000 vehicles sold in Japan since 2013. The fraudulent mileage testing data was done for Mitsubishi's eK Wagon, eK Space, Dayz and Dayz Roox minicar models—which were marketed as getting up to 71 miles per gallon—and was handed over to Japan's regulatory body, The Ministry of Land, Infrastructure, Transport and Tourism.

The Dayz models have also been sold to Nissan Motors Corp. since 2013, according to a Mitsubishi statement. Accounting for all cars through March, the company said it's sold 157,000 of the eK Wagon and eK Space models and supplied 468,000 thousand of the Dayz and Dayz Roox to Nissan.

Mitsubishi is halting production and sales of the affected cars and says that "taking into account the seriousness of these issues," it intends to launch an investigation into products manufactured for overseas markets, including the U.S. Mitsubishi said further:

*In order to conduct an investigation into these issues objectively and thoroughly, we plan to set up a committee consisting of only external experts.*

The hit Mitsubishi has taken in its domestic market could be a potentially devastating one for the car company, which had already become a tarnished brand in Japan following previous revelations that it hid reports of dangerously defective vehicles for decades.

It's still not known how Mitsubishi's testing methods could affect its cars sold for the U.S. market. The tests Mitsubishi used are approved in the U.S. but not in Japan because they produce more flattering fuel-economy results in the lab than in actual real-world conditions.

Mitsubishi shares tumbled in value to a record low following the announcement, and the company has lost half of its market value. The scandal also prompted Mitsubishi to withhold its earnings forecast when it announced its quarterly performance. The results of the overseas

investigation will be released as soon as the probe is finished, according to the automaker. We are watching this matter closely.

Sources: CNN, *New York Times*

### **VOLVO ACCUSED OF MISREPRESENTING ELECTRIC CAR MILEAGE**

Drivers have filed a class action lawsuit in Illinois federal court alleging Volvo misled them about the range the XC90 T8 vehicle can drive using its electric charge. This is believed to be a first-of-its-kind suit challenging automakers' representations about electric battery capacities. Xavier Laurens, the Plaintiff, bought his hybrid T8 believing he could use it to commute daily in Chicago without using any gasoline, but says that the vehicle only provided eight to 10 miles on a full electric charge rather than the 25 miles that Volvo Cars of North America LLC had promised. He alleges in the complaint:

*As a result of this reduced electric battery capacity, plaintiff is unable to complete his daily commute or everyday tasks without using the gasoline engine, which prevents plaintiff from obtaining the cost saving effects of foregoing gasoline for local trips and the environmental benefits of operating solely on electricity.*

Volvo repeatedly promised in marketing materials that the T8 could achieve a range of 25 miles using just electricity, according to the complaint. In April 2015, Volvo issued a statement saying the vehicle provides 17 estimated miles based on U.S. Environmental Protection Agency criteria, but later that month the automaker reverted to its original claims. Laurens said he paid an approximately \$20,000 premium for the hybrid model of the T8, believing it offered both a smaller environmental impact and gas savings.

The Plaintiff seeks to represent a nationwide class of anyone who bought or leased a 2016 Volvo XC90 T8. The complaint seeks compensatory damages and actual damages such as disgorgement of Volvo's revenues, as well as an order enjoining Volvo from continuing its allegedly unlawful practices.

Source: Law360.com

### **MAZDA ALLEGEDLY HID FAULTY CLUTCH DEFECT**

A class action lawsuit has been filed in a California federal court against Mazda, accusing the automaker of concealing a defect in certain Mazda 3 vehicles that can ultimately cause the clutch system or transmission to fail and put drivers at risk of an accident. Eight individuals, the Plaintiffs, said Mazda Motor Corp. has known for almost a decade that the clutch release assembly is defective and prone to premature failure, but that the automaker has refused to disclose the defect to prospective customers and won't fix the defect without charge, even if the parts are covered by warranty. The Plaintiffs said:

*The defect can manifest at highway speeds or in dangerous driving conditions, subjecting the driver and occupants of class vehicles, others on the road, and pedestrians to an increased risk of accident, injury, or death.*

According to the complaint, model year 2010-2015 Mazda 3 vehicles with 5-speed and 6-speed manual transmissions are installed with defective clutch release levers, bearings and pins that can cause premature wear on the vehicle's transmission and related components. The alleged defect ultimately causes the clutch system or transmission to prematurely fail and can be expensive to replace. More than the cost, though, the Plaintiffs said the defect severely affects the driver's ability to control the vehicle and ensure no one is hurt when the defect manifests. The Plaintiffs said:

*Plaintiffs and numerous other owners and lessees of the class vehicles have experienced clutch failure during operation. Each time premature clutch failure occurred, the defect placed plaintiffs and those around them at immediate risk of serious injury.*

The Plaintiffs alleged that Mazda has known about the defect for nearly a decade and has unsuccessfully tried to redesign the clutch assembly, yet the automaker still refuses to inform prospective customers about the defect's existence. The automaker allegedly refuses to disclose the defect to drivers when they bring their vehicles in for routine maintenance and instead claims that the clutch failure is due to driver error. It's alleged further that Mazda has received numerous complaints from consumers, but refuses to repair the defect or offer customers a suitable replace-

ment. The automaker also refuses to take any action to repair the defect if it manifests shortly outside of the warranty period, according to the complaint. The Plaintiffs said:

Had plaintiffs and other class members known about the defect at the time of purchase or lease, they would not have bought or leased class vehicles, or would have paid substantially less for them. Plaintiffs and many class members also would have avoided the significant out-of-pocket costs they incurred to repair their vehicles following manifestation of the defect.

The Plaintiffs allege Mazda has violated several state consumer fraud statutes and the Magnusson-Moss Warranty Act, as well as breached its express and implied warranties. The Plaintiffs ask that the court award them all actual, statutory, punitive and consequential damages they're entitled to as well as require Mazda to recall and repair their vehicles.

Source: Law360.com

### III. DRUG MANUFACTURERS FRAUD LITIGATION

#### **THE FTC SUES ENDO OVER UNLAWFUL "PAY-FOR-DELAY" AGREEMENT**

In the past decade, the Federal Trade Commission (FTC) has been challenging a costly legal tactic that more and more brand drug companies have been using to stifle competition from lower-cost generic medicines. This area of litigation, often referred to as Pay-for-Delay litigation, has not only been a hot topic with the FTC, but it has been an emerging litigation across the country.

In these "pay-for-delay" agreements, or "reverse payment" agreements, a brand-name drug company and a generic rival locked in patent litigation reach a settlement. Historically, the brand-name drug company may offer cash or something else of value to the generic drug company and, in return, gains more time to sell its brand drug without encountering lower-cost generic competition. The generic drug maker, meanwhile, also comes away with a large payment and an agreement to sell its generic equivalent at a specified future date.

Most recently, the FTC sued Endo Pharmaceuticals, Inc. and generic phar-

maceutical companies Impax Laboratories, Inc. and Watson Laboratories, Inc. for allegedly delaying generic competition for the drugs Opana ER and Lidoderm. While the FTC has filed other "pay for delay" suits, this case is the first time the FTC has sued a drug company over what is referred to as a "no authorized generic" deal—which is an unlawful "reverse payment" agreement between the drug companies not to market an authorized generic.

An authorized generic is chemically identical to its counterpart brand-name drug, but sold by the brand company as a generic product under the same regulatory approval as the brand-name drug. A "no authorized generic" deal means that the brand drug company agrees that it will not launch its own authorized-generic when the first generic company begins to compete. When a brand company agrees to this, it significantly increases the first generic company's revenues, while at the same time causing consumers to pay substantially higher prices for the drug. FTC Chairwoman Edith Ramirez said in a statement:

*Settlements between drug firms that include 'no-AG commitments' harm consumers twice—first by delaying the entry of generic drugs and then by preventing additional generic competition in the market following generic entry. This lawsuit reflects the FTC's commitment to stopping pay-for-delay agreements that inflate the prices of prescription drugs and harm competition, regardless of the form they take.*

The FTC filed its case in the Eastern District of Pennsylvania alleging that the drug companies delayed the entry of generic drugs for Opana ER and Lidoderm. The FTC said that in 2010, Endo and Impax reached an anti-competitive "reverse payment" agreement concerning Opana ER. According to the FTC, Impax, which was the first company to file for FDA approval to market a generic version of Opana ER, agreed to delay entering the market with its cheaper generic until January 2013 in exchange for Endo's agreement not to market an authorized generic of the drug. Without the large payment, Impax would have launched its generic version of Opana ER prior to January 2013. This unlawful and anticompetitive deal guaranteed that until January of 2013 Endo would have no competition and, in exchange, by January 2013 Impax would be the only drug company selling a generic version

of Opana ER for at least 180 days. According to the FTC, Endo also allegedly entered into a second agreement to pay Impax at least \$10 million, purportedly as a separate development and co-promotion arrangement. Between the two unlawful agreements, Endo has paid Impax more than \$112 million.

Similarly, the FTC claimed that generic competition for the pain relief patch Lidoderm was delayed because of an illegal deal in 2012 involving Endo, Watson and Teikoku. Watson, which is now owned by Allergan PLC, allegedly agreed not to market its generic version of Lidoderm until September 2013. In return, Endo agreed not to introduce an authorized generic within a certain timeframe. For this particular "no authorized generic" deal, Watson received \$96 million worth of free Lidoderm from Endo and Teikoku. It's alleged in the FTC's Complaint:

*Endo knew that generic competition would decimate its sales of the corresponding branded product and that any delay in generic competition would be highly profitable for Endo, but very costly for consumers.*

These "pay-for-delay" agreements have raised antitrust concerns for years now. The FTC has estimated that these deals cost Americans \$3.5 billion annually in higher health care costs. Challenging drug makers over these anticompetitive "reverse payment" agreements is just another way Plaintiffs can positively affect the price of prescription drugs in this country. If you would like to know more about this Pay-for-Delay litigation, contact Ali Hawthorne, a lawyer in our firm's Consumer Fraud and Commercial Litigation Section, at 800-898-2034 or by email at [Alison.Hawthorne@beasley-allen.com](mailto:Alison.Hawthorne@beasley-allen.com).

Source: Law360.com

### IV. PURELY POLITICAL NEWS & VIEWS

#### **THE GENERAL ELECTION IS SHAPING UP**

The New York primary votes have virtually assured that Donald Trump and Hillary Clinton will face off in the General Election. Short of a miracle these two will get the nominations of their party. This should be a most inter-

esting contest. I don't believe that the "Stop Donald Trump" movement, which has been carried out in a most inept manner, will be a factor at the GOP convention in Cleveland. In fact, the manner in which this movement was carried out actually made Trump stronger because it angered and energized his base. The protests at his rallies were definitely a plus for Trump.

Hillary has stayed the course and run a very good campaign so far. Even though the early polls show her beating Trump handily, I believe that race will be very close. Trump is smart enough to bring in some experienced individuals who have been involved in successful campaigns. His combative style and the anti-establishment feelings that prevail around the country have gotten Trump this far and it may be a mistake to change things.

It will be very important for Hillary to bring the Sanders vote into her camp once the nomination is in the bag. In my opinion, she will be able to do that. There is little chance that Sanders' voters could vote for a Republican. The difficulty for the Clinton campaign will be to keep the huge number of new voters energized. I believe that will be a help to the outcome of the election and will likely determine who the next president is.

Perhaps the most interesting development thus far in the primary battles involves the new Trump Campaign team. The new bosses told the National Republican Committee at a meeting in Florida last month that Trump has been playing to the crowds and will change once he gets the nomination. While this normally wouldn't be newsworthy in politics, when Trump is the subject—it's news. That's because Trump has run as an outsider against the establishment and now it appears it has been a charade. It will be interesting to see how this new look works for Trump. Stay tuned!

## V. THE NATIONAL SCENE

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### *INDIVIDUALS CHARGED CRIMINALLY IN FLINT CRISIS*

There have been some criminal charges in the Flint water crisis. Two Michigan Department of Environmental Quality water officials and one from the City of Flint were charged last month

with felonies ranging from misconduct in office to tampering with evidence in relation to their roles in the city's lead-tainted drinking water crisis. The criminal charges were the first filed since Michigan Attorney General Bill Schuette started an investigation in January. Few observers believed the Republican Attorney General would aggressively pursue any wrongdoers criminally. They were wrong, and based on media reports the Republican Attorney General will have more persons charged criminally.

As has been widely reported, Flint residents have had to contend with a contaminated water supply since April 2014, when their drinking water source was switched from Lake Huron to the Flint River without proper purity controls. At press time the investigative team had not interviewed—or even investigated—the involvement of Michigan Gov. Rick Snyder. The U.S. Department of Justice, Federal Bureau of Investigation and the U.S. Environmental Protection Agency (EPA) are also investigating possible criminal and civil violations related to the Flint crisis. I would have to believe the Governor is watching the investigation with more than just casual interest.

Source: Law360.com

## VI. THE CORPORATE WORLD

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### *GOLDMAN SACHS TO PAY \$5 BILLION TO SETTLE MORTGAGE BOND FRAUD*

Goldman Sachs Group Inc. has agreed to pay \$5.06 billion to settle claims that it misled mortgage bond investors during the financial crisis. The settlement, disclosed by Goldman in January, arises from the company's conduct in packaging, securitization, marketing and sale of residential mortgage-backed securities between 2005 and 2007. Investors suffered billions of dollars in losses from the securities bought during the period, according to the Justice Department.

The settlement comprises a \$2.385 billion civil penalty and \$1.8 billion in other relief, including funds for homeowners whose mortgages exceed the value of their property, as well as distressed borrowers. The government's ability to bring criminal charges against Goldman is also preserved. The settlement agreement does not release any individuals from potential criminal or

civil liability, the Justice Department said.

In addition, Goldman will pay \$875 million to resolve claims by the New York and Illinois attorneys general, the National Credit Union Administration and the Federal Home Loan Banks of Chicago and Seattle. A state and federal working group formed to investigate wrongdoing in the pre-financial crisis mortgage-backed securities market negotiated the settlement, said New York Attorney General Eric Schneiderman. The group has reached settlements with five other major financial institutions since 2012: J.P. Morgan Chase (\$13 billion), Bank of America (\$16.6 billion), Citibank (\$7 billion) and Morgan Stanley (\$3.2 billion).

Source: Reuters

### *OCCAM NETWORKS AND WILSON SONSINI SETTLE CALIX MERGER CLASS LITIGATION*

Occam Networks Inc. and Wilson Sonsini Goodrich & Rosati PC have settled a shareholder suit accusing the company's leadership of selling Occam too cheaply in a roughly \$200 million merger in 2010 with Calix Inc. The settlement came midway through a scheduled 10-day trial in Delaware's Chancery Court. Occam Networks had filed a cross-claim against Wilson Sonsini, alleging that they aided and abetted in fiduciary breach liability. Occam Networks had previously settled with the shareholders.

The parties went to mediation during the trial and it resulted in the settlement. Vice Chancellor J. Travis Laster approved a severance and stay of shareholder claims against Wilson Sonsini on April 6, and said terms would be presented to the court and to the class in a notice.

Source: Law360.com

### *SEC ACCUSES SKI RESORT OWNER AND CEO OF \$350 MILLION EB-5 FRAUD*

The U.S. Securities and Exchange Commission (SEC) has filed a fraud lawsuit against the owner and CEO of a Vermont ski resort, accusing them of misappropriating the bulk of \$350 million in investments obtained under the EB-5 immigrant investor program. The suit had been filed in Florida federal court and unsealed on April 10. Federal securities regulators say Ariel Quiros, a Florida entrepreneur and owner of the Jay Peak Inc. ski resort, and Jay Peak CEO William Stenger engaged in an eight-year fraudu-



lent scheme that raised \$350 million from investors hoping to obtain visas through the EB-5 program. This is a program designed to reward job-creating investments in the U.S. The Defendants allegedly were to have used the funds to build and develop the resort as well as a biomedical research facility in Vermont.

The SEC said the two men, through various companies including Jay Peak and Q Resorts Inc., used \$200 million of the money in “Ponzi-like fashion” to cover losses in unrelated projects as well as \$50 million on Quiros’ personal expenses. Andrew Ceresney, director of the SEC’s Division of Enforcement, said in a statement:

*The alleged fraud ran the gamut from false statements to deceptive financial transactions to outright theft. The defendants diverted millions of EB-5 investor dollars to their own pockets, leaving little money for construction of the research facility investors were told would be built and thereby putting the investors’ funds and their immigration petitions in jeopardy.*

U.S. District Judge Darrin P. Gayles granted the SEC’s motion for a freeze of assets of Quiros, Jay Peak and various related companies. The SEC alleges that Quiros diverted the investor funds in order to buy a \$2.2 million luxury condo at Trump Place in New York, pay off his income taxes and acquire an unrelated ski resort called Q Burke. The complaint alleges:

*Quiros orchestrated and Stenger facilitated an intricate web of transfers between the various defendants and relief defendants to disguise the fact that the majority of the seven projects were either over budget or experiencing shortfalls. These shortfalls were due in large part to Quiros pilfering tens of millions of dollars of investor money for his own use.*

The SEC alleges violations of the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and seeks preliminary and permanent injunctions, financial penalties and disgorgement of ill-gotten gains, as well as injunctive relief against Quiros and Stenger. Vermont state officials have filed their own civil suit against Quiros and others that mirrors many of the SEC’s claims. Vermont Gov. Peter Shumlin said in a statement they were committed to protecting the jobs of Vermont residents

as well as the investors. Gov. Shumlin had this to say:

*This is obviously a difficult day for Vermont and for the many people, myself included, who are so invested in growing jobs and economic opportunity. Most of all, this is a difficult day for the hundreds of employees in the Northeast Kingdom who rely on Jay Peak, Q Burke, and the related projects that appeared to hold so much promise.*

The SEC is represented by Christopher E. Martin and Robert K. Levenson. The case is in the U.S. District Court for the Southern District of Florida.

Source: Law360.com

## VII. WHISTLEBLOWER LITIGATION

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### **J&J UNIT SETTLES WHISTLEBLOWER CLAIMS**

Johnson & Johnson medical device maker Ethicon Inc. has settled a whistleblower claim that it fired an executive, not over his relationship with a younger, female employee, as the company had claimed, but in retaliation after he lawfully raised product safety concerns that cost the company millions of dollars. The settlement came after almost five weeks of trial and during jury deliberations in Middlesex County Superior Court. The settlement was in litigation that had been going on for a decade and had proceeded to trial after the New Jersey Supreme Court ruled in July that “watchdog employees” are covered under the state’s whistleblower law.

Plaintiff Joel S. Lippman, 61, had joined Ethicon in 2000, after a decade as an executive at J&J subsidiary Ortho-McNeil Pharmaceutical LLC. During his time at Ethicon, his safety concerns derailed profits for a coronary artery bypass graft surgery device, a gel used to prevent post-surgery abdominal adhesions, surgical mesh and other products. After refusing an offer to resign, Lippman was fired in May 2006, five months after a recall that cost the company \$40 million.

During the trial, Lippman’s lawyers argued that his concerns had pitted him against executives who were under tremendous pressure to put new products on the market and revealed a “wide-spread” corporate culture that put profits before safety. Lippman claimed the

firing, which he testified was done via FedEx, cost him \$9.6 million in economic losses. Ethicon contended that Lippman put the company at legal risk by romantically pursuing a woman who worked in his department. Both parties testified that their courtship was consensual and consisted of emails, cards, flowers, music CDs and two overnight trips, but was never consummated. The Defense had portrayed the dynamic as one in which Lippman used his powerful position to take advantage of a young, career-minded woman.

Ethicon and J&J had won summary dismissal of Lippman’s lawsuit at the trial-court level, but that decision was overturned by the state’s Appellate Division in September 2013. The New Jersey Supreme Court agreed to take up the case in March 2014. Lippman is represented by Bruce P. McMoran, Michael O’Connor and Justin D. Burns of McMoran O’Connor & Bramley PC. They did a very good job for their client.

Source: Law360.com

### **GOVERNMENT CONTRACTOR PAYS \$5 MILLION TO SETTLE FALSE CLAIMS ACT ALLEGATIONS**

The U.S. Department of Justice (DOJ) announced recently that Hayner Hoyt Corporation has agreed to pay \$5 million to resolve False Claims Act (FCA) allegations. The government’s complaint alleged that Hayner Hoyt was exploiting contracting opportunities through a procurement program with the Department of Veterans Affairs (VA). This program was designed to aid service-disabled veteran-owned small businesses. In order for a company to qualify for one of these contracts, the company has to be owned by a service-disabled veteran, who also controls the business, including handling its strategic decisions and management.

The Government contended that Hayner Hoyt caused false claims to be made when it asserted to the Government that 229 Constructors LLC met all the requirements to be a service-disabled veteran-owned small business. However, investigations revealed that Bennett – a service-disabled veteran who Hayner Hoyt claimed served as president and in charge of a \$14.4 million government-contracts portfolio – was actually not involved in making any important business decisions for the company. In fact, Bennett was responsible for the tool inventory and plowing the snow from Hayner Hoyt’s property.

By making these assertions and continuing the scheme, Hayner Hoyt was



denying legitimate service-disabled veteran-owned small businesses the opportunity to acquire VA contracts. Richard S. Hartunian, U.S. Attorney for the Northern District of New York, stated:

*As today's settlement demonstrates, this office will vigorously pursue those individuals and entities who game programs designed to help our nation's veterans succeed in starting small businesses.*

I will once again briefly describe the role of a whistleblower. As we have previously mentioned, the FCA allows private individuals to file lawsuits on behalf of the government when those individuals have knowledge of a person or company defrauding the government. These lawsuits are filed under the qui tam provision of the FCA. Ordinary citizens become whistleblowers by reporting the fraud. The FCA provides monetary incentives and protection for these whistleblowers, which include 15 to 30 percent of the damages recovered. The whistleblower in this case will receive \$875,000 for his part in the case.

Are you aware of fraud being committed against the federal government or a state government? If so, the False Claims Act can protect and reward you for doing the right thing by reporting the fraud. If you have any questions about whether you qualify as a whistleblower, contact a lawyer at Beasley Allen for a free and confidential evaluation of your claim. There is a contact form on the firm's website, or you can contact Archie Grubb, Larry Golston, Lance Gould or Andrew Brashier, one of the lawyers on our Whistleblower Litigation Team, at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com, Larry.Golston@beasleyallen.com, Lance.Gould@beasleyallen.com or Andrew.Brashier@beasleyallen.com. They will be glad to help you.

Source: U.S. Department of Justice

#### **DEFENSE CONTRACTORS AGREE TO PAY \$8 MILLION TO SETTLE FALSE CLAIMS ACT ALLEGATIONS**

Two U.S. Defense contractors, Kilgore Flares Company and the ESM Group, Inc., have agreed to pay a total of \$8 million to settle allegations of selling defective counter-measure flares to the U.S. Army in violation of the False Claims Act (FCA). Infrared counter-measure flares are used by the military to divert enemy heat-seeking missiles away from

aircraft. Ultra-fine magnesium powder is used in the flares for high-temperature burning that mimics the heat of an aircraft's engine. Kilgore's contracts with the U.S. Army prohibited the use of magnesium powder from foreign countries, with the exception of Canada.

The government alleged that ESM knowingly misrepresented the content of magnesium powder imported from China to avoid paying anti-dumping customs duties. Antidumping duties protect against foreign companies dumping products on the U.S. market at prices below cost. The government also alleged Kilgore used the illegally imported Chinese magnesium powder it bought from ESM in the counter-measure flares it sold to the U.S. Army. Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department's Civil Division, stated:

*The Department of Justice is committed to ensuring that contractors do not cut corners in manufacturing critical items sold to the U.S. military. These settlements also show that the department will aggressively pursue those who avoid paying duties to gain an unfair business advantage over competitors who abide by the rules.*

The settlement with ESM resolved a lawsuit filed under the whistleblower provision of the False Claims Act, which allows private parties to sue on behalf of the United States those who falsely obtain federal funds. The whistleblower, Reade Manufacturing Company, received \$400,000 as part of the settlement with ESM.

Source: Department of Justice

#### **OSHA ISSUES FINAL FOOD SAFETY WHISTLEBLOWER RULE**

The U.S. Occupational Safety and Health Administration (OSHA) has issued a final rule governing its procedures for retaliation complaints under the whistleblower provision of the FDA Food Safety Modernization Act (FSMA). Workers who disclose food safety concerns in various industries, including transportation, are protected under the Act. The final rule, published in the Federal Register on April 21, outlines how the agency will handle complaints under Section 402 of the FSMA. Employees are protected against reprisals by entities engaged in the manufacture, processing, packing, transporting, distribution, reception,

holding or importation of food when they raise food safety issues to their employer or the government.

The U.S. Food and Drug Administration (FDA) is responsible for most of the regulations stemming from the sweeping food safety act that became law in January 2011. However, the Secretary of Labor is responsible for enforcing the whistleblower provision of the Act. Therefore, this portion of the law is under OSHA's domain. According to the final rule, OSHA crafted the regulatory provisions governing complaints under the law to be consistent with other whistleblower regulations issued by the agency to the extent possible within the bounds of the statutory language of the FSMA.

The rule establishes procedures and time frames for the handling of retaliation complaints under the FSMA. The rule provides that complaining employees are protected under the FSMA as long as they have a reasonable belief—defined in the regulation as a subjective, good-faith belief and an objectively reasonable belief—that the complained-of conduct violated the Federal Food, Drug and Cosmetic Act. However, the complainant need not show that the conduct complained of constituted an actual violation of law.

If you need more information relating to specifics under the new rule, contact Michelle Fulmer, the Section Head Administrator of our firm's Consumer Fraud and Commercial Litigation Section, at 800-898-2034 and she will put you in touch with one of the lawyers on the Beasley Allen Whistleblower Litigation Team.

Source: Law360.com

## **VIII. PRODUCT LIABILITY UPDATE**

#### **SUPREME COURT UPHOLDS JURY VERDICT AGAINST KEY SAFETY SYSTEMS**

The Georgia Supreme Court last month unanimously denied seatbelt manufacturer Key Safety Systems' appeal of the jury verdict that found the company liable for a defective seatbelt involved in the death of Mrs. Penny Bruner. On Nov. 26, 2013, a jury in Gwinnett County, Ga., found the seatbelt manufactured by Key Safety Systems, Inc., to be defective, leading to the death of Mrs. Bruner. The

vehicle in which Mrs. Bruner was a passenger was involved in a rollover accident.

The jury awarded Mrs. Bruner's family \$4.639 million and assessed 80 percent fault to Key Safety Systems, making the company liable for \$3,711,532.80 of the total verdict. The trial judge denied the Defendant's post-trial motions and the seatbelt manufacturer appealed to the Georgia Court of Appeals. On Nov. 19, 2015, a three-judge panel of the Court of Appeals unanimously ruled in the Bruner family's favor, refusing to disrupt the trial court result.

The seatbelt manufacturer then appealed to the Georgia Supreme Court, which unanimously denied the company's petition. To date, 12 jurors, one trial judge and 12 appellate judges have found in favor of the Bruner family. The interest accrued on the verdict was more than \$575,000 at press time. The Supreme Court has ordered that the verdict plus interest and costs be paid, which is very good news for our clients.

Mrs. Bruner was an occupant in a 2003 Jeep Wrangler with seatbelts designed and manufactured by Key Safety Systems. She was ejected from the front passenger seat during a rollover crash on Sept. 23, 2007, even though she correctly wore her seatbelt. Mrs. Bruner's ejection from the Jeep Wrangler occurred because the seatbelt failed and came unlocked during the rollover. Our lawyer proved at trial that the seatbelt system was defective and extremely dangerous. The seat belt tends to unlock during rollover crashes. This safety defect put the public at risk and would have been prevented if Key Safety Systems had installed a web sensor on the seatbelt retractor.

A web sensor is a redundant safety feature that assures the belt stays locked. Virtually every vehicle in the 2003 model year used a web sensor seatbelt. The jury was shocked to discover that even the 2003 Jeep Wrangler had a web sensor four feet away from Mrs. Bruner on the driver's seatbelt. Because of the web sensor, the driver of the Bruner vehicle survived this rollover with only minor injuries.

This was an extremely important verdict in the automotive industry because the verdict rendered was against a component level manufacturer (Key Safety Systems) rather than the automobile manufacturer. The jury's verdict sends a message to component manufacturers that they cannot hide behind the car companies and avoid their own responsibility for the defective products they design and manufacture. Beasley

Allen lawyers Chris Glover and Kendall Dunson, along with Anthony Powell and Melody Glouton, both lawyers from Lawrenceville, Ga., represented the Bruner family in this case. Also, Robin Frazer Clark, a very good lawyer from from Atlanta, Ga., assisted with the appeal and she did an outstanding job.

#### **PURSuing A CRASHWORTHINESS CLAIM IN ALABAMA**

I have found that many lawyers—even some who regularly handle litigation—know very little about product liability litigation. That is understandable because it is a totally different animal. I will discuss one area that is especially difficult for lawyers to understand unless they have handled such cases. That involves the doctrine of “crashworthiness,” and is still evolving. This very interesting area of the law has been developing over the last 30 years.

The “crashworthiness doctrine” is commonly referred to as the “second collision doctrine” or the “enhanced injury doctrine.” The doctrine developed out of cases where the defect in the product was not the cause of the accident, but was only the cause of the injuries suffered. The Alabama Supreme Court first recognized a cause of action for “crashworthiness” in *General Motors Corp. v. Edwards*, 482 So.2d 1176 (Ala. 1985).

In the *Edwards* case, a Chevrolet Chevette burst into flames after being struck from the rear by another automobile. The driver and her husband were severely burned and both of their children died in the fire. The Court in *Edwards* was persuaded by cases holding that “while a manufacturer is under no duty to design an accident-proof vehicle, the vehicle manufacturer does have a duty to design its product so as to avoid subjecting its user to an unreasonable risk of injury in the event of a collision.” *Edwards* at 1181.

Simply stated, a car should be crashworthy. The Court's reasoning in *Edwards* seemed to be that collisions “are a statistically foreseeable and inevitable risk within the intended use of an automobile” and that “while the user must accept the normal risk of driving, he should not be subjected to an unreasonable risk of injury due to a defective design.” *Id.*

The crashworthiness theory dictates that an occupant should be protected from consequences of foreseeable collisions. Lawyers in our firm have handled

a variety of cases involving crashworthiness defects over the years, including:

- fuel fed fire cases where the fuel tank is located in a place on the car that allows it to easily be penetrated upon impact;
- seat back collapse cases where the passenger seat back falls backward upon impact, which causes the passenger to come out of the seat or allows the seat to fall backwards onto someone else in the back seat;
- seatbelt failures that do not properly restrain the occupant or further injure the occupant;
- inadvertent airbag deployments that go off when they are not supposed to, which usually causes facial, spinal, and brain injuries;
- roof crush cases where the structure of the roof does not hold up in a rollover and intrudes into the passenger space, which usually causes spinal and brain injuries or death;
- door latch failures, which allow doors to fly open during a crash, ejecting parts or all of the occupant.

Many crashworthiness cases go uninvestigated because lots of lawyers simply do not understand to look for a defect even if the accident was caused by the driver. For example, in a typical single vehicle crash where the driver admits to speeding or becoming distracted and running off the road, a lawyer might not know to look for seatbelt, airbag, or other structural defects because they assume driver error was the cause. But in a crashworthiness case, it does not matter that the driver caused the accident as long as the driver did not misuse the defective component that caused his injury. The Alabama Supreme Court has consistently held that:

*A plaintiff's mere inadvertence or carelessness in causing an accident should not be available as an affirmative defense to an AEMLD [Alabama Extended Manufacturer Liability Doctrine] action. To allow a plaintiff's negligence relating to accident causation to bar recovery will go against the purpose of the AEMLD, which is to protect consumers from defective products. The defense of contributory negligence in an AEMLD action should be limited to assumption of the risk and misuse of the product. The plaintiff's negligence relating to*

*accident causation should not bar recovery. Dennis v. American Honda Motor Co., 585 So. 2d 1336, 1339 (Ala. 1991).*

The important thing to remember is that crashworthiness cases can be easily overlooked. Lawyers in our firm have successfully handled many crashworthiness cases and will look at any single vehicle accident involving catastrophic injuries. For more information, contact Cole Portis, who heads up the firm's Personal Injury/Product Liability Section, or Greg Allen, our firm's most experienced product liability lawyer, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com or Greg.Allen@beasleyallen.com

#### **TEXTRON FACES \$16 MILLION VERDICT AFTER ACCELERATION ACCIDENT**

A Texas jury awarded \$15.8 million last month to a rancher whose Textron utility cart suddenly accelerated and ran over her as she was opening a livestock gate. Plaintiffs Gini and Scott Nester and their two children run a ranch in Buda, Texas, which is located south of Austin. On a December day in 2011, Mrs. Nester was using the utility cart— part of Textron's line of golf carts—to transport feed for their livestock. She got out of the cart and opened a gate. At that time, a bag of feed that was left on the passenger floorboard fell onto the accelerator. Due to the faulty design of the cart, the bag “kicked off” the parking brake. As the woman turned back around from opening the gate, the cart ran over her, pinning her underneath the cart. Mrs. Nester became a quadriplegic as a result of her injuries.

The jury found that Mrs. Nester was 50 percent at fault for the accident. As a result, the verdict will be reduced by that percentage. The jury awarded damages to Mrs. Nester for past and future physical pain and mental anguish, medical expenses, and earning capacity, among other things. The jury also awarded damages to her children and husband. Mrs. Nester was awarded \$10.4 million and her family members a total of \$5.4 million. In response to the verdict-form question “Was there a design defect in the utility vehicle at the time it left the possession of Textron that was a producing cause of the injury in question,” the jury answered, “Yes.” However, the jury declined to award punitive damages.

Textron's design was unacceptable and should not have included the ability to so easily disable what was supposed to be a failsafe. A functioning failsafe would

have prevented the cart from spontaneously accelerating when there is no driver in the vehicle. A safer alternative design existed at the time the cart was made. It was proved at trial that the cart wasn't fit for its intended purpose.

The trial judge allowed a “day in the life” video showing how difficult daily tasks are now for Mrs. Nester. The jurors were also allowed to go outside the courtroom to see a live demonstration of the “kick-off” mechanism. The Nesters were represented by Sean Breen of Howry Breen & Herman LLP and by Craig Nevelow of Wright & Greenhill PC. These lawyers did an excellent job in this case, which was tried in the U.S. District Court for the Western District of Texas. They got a good result for their client.

Source: Law360.com

#### **REMINGTON LOSES A ROUND IN THE SANDY HOOK SHOOTING LITIGATION**

A Connecticut judge ruled on April 14 that victims of the Sandy Hook mass shooting have valid grounds to sue gun maker Remington. This ruling came about in spite of a statute that shields gun makers from liability in such cases. The ruling was in Connecticut Superior Court, where the suit— by families of nine of the 26 people killed in the December 2012 shooting at a Newtown elementary school— is pending. The suit had been remanded from federal court. The suit is against manufacturer Remington Arms Co. LLC, distributor Camfour Inc. and retailer Riverview Sales Inc. and involves the gunman's use of a Bushmaster rifle in the killing of 20 schoolchildren and six adults.

The Protection of Lawful Commerce in Arms Act, (PLCAA), prohibits lawsuits against gun makers with only limited exceptions. Superior Court Judge Barbara Bellis noted the exceptions that include against a seller for negligence and against a manufacturer or seller for violations of sale or marketing law that helped cause a harm. The families have adopted the first exception for their negligent-entrustment claim and the second for their Connecticut trade practices claim.

Under Connecticut practice, a motion to dismiss is confined to a discussion of whether a court has jurisdiction. Judge Bellis decided that the court did have jurisdiction under the PLCAA and denied the Defendants' motion. The Second Circuit had ruled “squarely” on this jurisdiction question in a 2011 suit called

Mickalis Pawn Shop, Judge Bellis said, where the court focused on the PLCAA's language, specifically the phrase ordering a suit “may not be brought” against gun makers. The Second Circuit:

*Although the phrase ‘may not be brought’ suggests absence of jurisdiction, the phrase is not equivalent to a clear statement of Congress's intent to limit the power of the courts rather than the rights of litigants. ... In the absence of such a clear statement, we must treat the PLCAA as speaking only to the rights and obligations of the litigants, not to the power of the court.*

Therefore, Judge Bellis found that the court has jurisdiction. The question of the Plaintiffs' success in bringing the claims utilizing those exceptions “will wait for another day.” The families filed their suit for wrongful death and loss of consortium in Bridgeport Superior Court over the Bushmaster AR-15 XM15-E2S rifle Adam Lanza used to kill 26 innocent people. An amended complaint was filed on Oct. 29 by the Plaintiffs. Motions to dismiss were filed by the Remington Defendants, Camfour Defendants, and Riverview Defendants in December.

The families contend that “a mass casualty event was within the scope of the risk created both by the Remington Defendants' marketing and by the Defendants' sale of the XM15-E2S to the civilian market,” Judge Bellis pointed out. The families claim that rifle, which costs about \$1,100 new, is designed for mass casualty assaults, with little civilian use for self-defense or hunting, and that the Defendants sold the rifle to the civilian market in a way that foreseeably leads to its use in mass shootings.

An AR-15 is known as an M16 in the military, and the XM15 variety is an M4. It makes a bullet travel at three times the speed of sound, according to gun historian C.J. Chivers, and weighs less than six and a half pounds without bullets. These weapons have no place in civilian hands.

The Plaintiffs include the families of nine innocent victims who were killed and one injured teacher who survived. The Plaintiffs are represented by Josh Koskoff and Alinor Sterling of Koskoff Koskoff & Bieder PC. I wish them well in their pursuit of justice. The case is in the Superior Court of Connecticut, Fairfield Judicial District. A trial date has been set by the trial judge.

Source: Law360.com

## **INTUITIVE SURGICAL SETTLES CASE BEFORE JURY CAN RETURN A VERDICT**

Intuitive Surgical Inc., a medical robotics company, reached a last-minute settlement last month in the trial over a woman's serious internal injuries arising from a robot-assisted hysterectomy. Jurors were in their third day of deliberations when the case was settled. The value and terms of the settlement are confidential. "In this case, I think a very good thing has happened: The parties have reached an out-of-court settlement," Santa Clara Superior Court Judge Mark Pierce told jurors before dismissing them.

Jurors, who had been deliberating in the case for two days, heard some disturbing facts about what happened to the Plaintiff, Michelle Zarick. She had undergone the surgery and her injuries became apparent about five weeks after the surgery. The "da Vinci" robot was used in the surgery.

After Mrs. Zarick had engaged in sexual intercourse with her husband, she sat on the toilet and her bowels literally fell out of her body through a tear in the wall of her vagina. The damages sought included more than \$43,000 in medical expenses, \$5 million to \$10 million in past pain and suffering, and \$10 million to \$20 million for future pain and suffering. The Plaintiff's lawyer had asked for \$30 million in closing argument.

Mrs. Zarick underwent her surgery in February 2009. She alleged that the gynecologist who performed her surgery did not receive "adequate training" in using the da Vinci system. Mrs. Zarick began feeling sick five weeks after the surgery. Before her husband, a member of the military, was to ship off for combat training at the time, the couple engaged in intercourse. Afterward, Mrs. Zarick bled and she called her doctor who assured her it was fine, but said to go to the hospital if the situation got worse. When Mrs. Zarick used the restroom, the evisceration occurred, and she was rushed to the hospital where she had to undergo a painful, invasive surgery. Mrs. Zarick was found to have suffered internal burn injuries from the device. She and her husband filed suit in December 2012.

The Plaintiffs in this case are represented by Francois Blaudeau of Southern Med Law, who did a very good job for them. The case was in the Superior Court of the State of California, County of Santa Clara.

Source: Law360.com

## **FLAVORING ADDITIVES CAUSE DEVASTATING BRONCHIOLITIS OBLITERANS**

Bronchiolitis obliterans is back in the news again, and this time the devastating lung condition is tied to the coffee industry. Our readers may recall the disease by its nickname, "popcorn lung," due to its association with numerous microwave popcorn plant workers who developed the devastating disease in the early 2000s. Consumers also developed the rare condition after frequently eating microwavable popcorn and coming in contact with flavoring additive fumes.

Bronchiolitis obliterans is known to be caused by two toxic flavoring additives called diacetyl and 2,3 pentanedione. These chemicals are naturally occurring volatile organic compounds but are also synthetically made as food additives to mimic the taste of butter. As a result, they are incorporated in foods we consume every day. Unfortunately, inhalation of these chemicals at high concentrations can cause quick, irreversible lung damage, although symptoms typically appear later. Bronchiolitis obliterans clogs small air pathways in the lungs and forms scar tissue that severely restricts breathing. The disease is incurable, and without a lung transplant, is oftentimes fatal.

Prompted by an investigative report by the *Milwaukee Journal Sentinel* detailing how coffee industry workers could be in danger of developing potentially deadly lung disorders, the U.S. Centers for Disease Control and Prevention (CDC) started testing the air inside a dozen coffee roasting facilities across the country. The results showed very high concentrations of the two flavoring additives in the facilities. The National Institute for Occupational Safety and Health (NIOSH) conducted its first study at Madison, Wisconsin-based Just Coffee last July, and found extremely high levels of diacetyl and 2,3 pentanedione throughout the facility. Interestingly, the facility did not use the artificial flavoring in its coffee.

Tests conducted by an industrial hygienist hired by the *Journal Sentinel* in Just Coffee and another Wisconsin coffee roaster found that diacetyl levels exceeded the government's maximum safety level by four times. Workers at Just Coffee were typically exposed to 7 parts of diacetyl per billion—surpassing the CDC's limit of 5 parts per billion. Diacetyl concentrations inside storage bins containing roasted beans contained 7,000 parts per billion, prompting the CDC to explicitly warn workers to refrain from sticking their heads inside

the containers or remaining in their presence for long periods of time.

Last year, five coffee roasters—from cafes to midsize facilities—agreed to share their medical tests with the *Journal Sentinel* and have the results reviewed by three doctors with experience in diacetyl-related illnesses. Of the five workers, four had lung tests or symptoms consistent with hazardous exposure.

Diacetyl and 2,3 pentanedione are used in a number of applications, and could be a major hazard in the manufacturing or cooking of the following: margarine, shortening, oil sprays, artificial butter substitutes, microwave popcorn, potato chips, corn chips, crackers, cookies, chocolate, cocoa-flavored products, candy, gelatin deserts, flour mixes, flavored syrups, prepackaged frosting, sauces, soft drinks, chewing gum, ice cream, starter cultures used to make butter, beer, wine, and now—in coffee.

Lawyers in our firm are actively investigating cases where a diagnosis of bronchiolitis obliterans has occurred. Oftentimes, the disease is misdiagnosed as asthma, chronic bronchitis, emphysema or pneumonia. If you have any questions about these cases, contact Parker Miller at 800-898-2034 or Parker.Miller@beasleyallen.com.

## **IX. MASS TORTS UPDATE**

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### **NEW JERSEY APPEALS PANEL AFFIRMS \$11 MILLION J&J PELVIC MESH JUDGMENT**

A state appeals court in New Jersey has upheld an \$11.1 million jury award to a woman who claims a Johnson & Johnson unit's vaginal mesh product caused debilitating nerve pain, saying ample evidence presented at trial showed that better warnings of the product's risks might have prevented her injuries. The jury heard sufficient evidence showing Linda Gross' doctor might have offered different guidance if he would have had more information about the product's risks. This might have led the woman to pursue a different course of treatment and avoided her injuries. Johnson and Johnson and its subsidiary Ethicon Inc., were Defendants in the case. A three-judge panel ruled in the bellwether case to this effect, saying in the opinion: "The evidence was suffi-



cient to allow the jury to find an adequate warning would have prevented plaintiff's injuries."

Linda Gross and her husband filed suit in 2008, alleging that Ethicon had failed to fully disclose risks associated with its Gynecare Prolift mesh product, which Mrs. Gross used to repair a pelvic floor collapse. The Gross case was the bellwether in New Jersey's multidistrict litigation (MDL) over Ethicon's vaginal mesh products, which it agreed to stop selling in June 2012, even though it claimed the products were not harmful.

The appeals panel agreed with the trial judge on all issues, noting the doctor's testimony that he would have counseled against the procedure or spent at least 45 minutes discussing its drawbacks if he had known it "should not be implanted in sexually active people." The appeals court panel wrote:

*The judge had also relied on the plaintiff's testimony that she would not have selected the Prolift option if she had known of the risks and recognized there was overwhelming evidence to show the company had information about Prolift that it chose not to provide to the physician.*

The panel's ruling follows the decision by New Jersey Superior Court Judge Carol E. Higbee who ruled on post-verdict motions and did not second-guess the jury's award in February 2013 of \$3.35 million in compensatory damages and \$7.76 million in punitive damages to Ms. Gross for injuries caused by her use of the Gynecare Prolift mesh product to repair a pelvic floor collapse.

The trial featured testimony from a number of Ethicon employees who were questioned about the design, testing and marketing of Prolift, which Ms. Gross had implanted in 2006 to repair a pelvic organ prolapse. Ms. Gross had 18 subsequent surgeries to remove the mesh after she said the product caused severe nerve pain that ended her nursing career and prevented her from enjoying time with her family or from having a normal sex life.

Because the case is the first pelvic mesh case to go to trial in New Jersey, where Johnson & Johnson is headquartered, Adam M. Slater, one of Ms. Gross' lawyers said the ruling will have a meaningful impact for more than 9,000 other women who claim injuries related to pelvic mesh use. He stated:

*I'm happy for all the other women out there who are waiting for*

*trials, because the decision gives tremendous guidance to the courts that are going to bear these cases going forward.*

Mrs. Gross is represented by Adam M. Slater and David A. Mazie of Mazie Slater Katz & Freeman LLC. They have done a very good job in this case, which is in the Superior Court of the State of New Jersey, County of Atlantic.

Source: Law360.com

#### **BOSTON SCIENTIFIC TESTING SURGICAL MESH FOR FAKE PARTS**

The U.S. Food and Drug Administration (FDA) is looking at claims that Boston Scientific's urogynecologic surgical mesh could contain counterfeit materials. The device maker has launched an investigation which is said likely to take months. In an announcement on its website, the FDA said there are allegations the mesh "may contain counterfeit raw material, and that health care professionals and their patients should be aware of this investigation."

The company will begin conducting tests that will probably take months to complete. "The additional testing should be sufficient for the FDA to determine whether or not the urogynecologic surgical mesh manufactured from the alleged counterfeit raw material are equivalent to the urogynecologic surgical mesh manufactured from the original raw material supplier," the FDA said. Surgical mesh is used to provide additional support when weakened or damaged tissue is being repaired. There have been tremendous problems caused to women by the mesh. As we have stated, there is a great deal of litigation.

Source: Law360.com

#### **FDA ADDS HEART FAILURE WARNINGS TO POPULAR TYPE-2 DIABETES MEDICATIONS**

The Food and Drug Administration (FDA) has added new warnings to popular diabetes drugs containing saxagliptin and alogliptin. This came after a safety review showed an increase in the risk of heart failure in patients who already suffer from kidney and heart disease. The drugs containing these ingredients are sold under the following brand names:

- Onglyza, Kombiglyze XR, manufactured and sold by AstraZeneca; and

- Nesina, Kazano, and Oseni, all manufactured and sold by Takeda Pharmaceuticals.

Each of the drugs are relatively new to the market and are intended to lower the blood sugar and HbA1c levels by triggering the pancreas to release more insulin after Type-2 diabetics eat their meals. Takeda—no stranger to litigation as a result of bladder cancer being caused by their diabetes drug Actos—intended Nesina to be the first DPP-4 drug to be released in the U.S. However, because the FDA issued stricter cardiovascular safety requirements, Takeda was forced to conduct new safety trials before the drug was approved in 2013.

Type-2 diabetes can be a deadly disease if untreated or inadequately treated, and it affects millions of Americans. However, in some instances, patients can reverse Type-2 diabetes by making significant lifestyle changes including a healthy diet and exercise. It is also important to remember that pharmaceutical giants like these two companies are all vying to obtain their share of the multi-billion dollar industry. As a result, rushing drugs to market by the drug companies with little safety and efficacy data is now all too common.

If you need more information on this subject, contact Matt Munson, a lawyer in our firm's Mass Torts Section, at 800-898-2034 or by email at Matt.Munson@beasleyallen.com.

#### **UPDATE ON ESSURE AND RELATED LITIGATION**

Essure is a permanent contraceptive medical device manufactured by Bayer Healthcare. The device is a flexible, nickel-based coil that is permanently placed into each of the female fallopian tubes. Thereafter, the device works to induce scar tissue formation and form a barrier that inhibits sperm from reaching an egg, thereby preventing pregnancy. The procedure usually takes less than 15 minutes, and over the course of approximately three months, scar tissue forms around the coil inserts, effectively blocking the fallopian tubes and thereby keeping pregnancy from occurring.

Essure was first approved by the FDA in 2002, and was designed as a less-invasive alternative to tubal ligation, a standard procedure for surgical sterilization. Essure has remained the only FDA-approved non-surgical, permanent birth control method. However, women implanted with Essure have experienced some of the following:

perforation of the fallopian tube or uterine wall; migration of Essure inserts through the fallopian tubes or uterus into the lower abdomen and pelvis; pelvic pain; infection; miscarriages; allergic reactions; abnormal bleeding; joint or muscle pain; muscle weakness; excessive fatigue; hair loss; weight changes; mood changes; and persistent fever.

In some cases, women have had to undergo surgical procedures to remove the device, including hysterectomies. After years of receiving thousands of injury complaints, the FDA finally responded. The FDA, based on concerns for serious risks associated with Essure, has mandated that a special "Black Box" warning should be added to packaging for Essure. As we have previously mentioned, a "Black Box" warning is the most serious warning required by the FDA.

Additionally, the FDA now requires a new, extensive "patient checklist" discussing the risks associated with Essure that women must sign prior to undergoing an Essure implant procedure. The FDA's response further mandates that Bayer must conduct a new study following at least 2,000 women for a minimum of three years, which is designed to evaluate Essure's risks "in a real-world environment." Even though the FDA recently responded strongly to concerns regarding risks associated with Essure, the device remains on the market today.

As we mentioned in another section of this issue, a number of lawsuits have been filed against Bayer for injuries related to Essure following the FDA's "Black Box" warning announcement and more are expected to be filed. However, hurdles have been and continue to be experienced by claimants. Federal preemption continues to be the primary obstacle in the newly filed cases. Although the Medical Device Act (MDA) contains a preemption provision, the clause does not expressly prohibit lawsuits that hinge on state tort law claims, such as general negligence, products liability or fraud. That should allow the claimants to avoid preemption.

Additional complexities for Essure claimants stem from allegations that Bayer failed to report known complications from implantation of the device and that the company actively concealed perforations. As a result, claimants have encountered challenges tiptoeing around federal preemption while still specifically pleading state law causes of action. Pleading around preemption and alleging non-preempted versions of state law

claims requires careful consideration and deliberation, as three categories of preemption (express, field, and conflict) necessitate the framing of complex issues by courts with the MDA.

Nevertheless, Essure lawsuits continue to be filed with increasing hope and potential for sustainability. In April 2016, complaints filed by Essure claimants in Alameda County Superior Court (California) received complex case designation. In the Court's discretionary ruling, complex designation assures that Essure claims will receive exceptional judicial management due to the difficult or novel legal issues inherent in the claims as well as expedition of the litigation overall.

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

Sources: *Washington Post* and FDA

#### **TRIAL JUDGE REDUCES JURY VERDICT IN FIRST HIP IMPLANT MDL TRIAL**

A Georgia federal judge has reduced by \$9 million the damage award granted by an Atlanta jury last year against Wright Medical Technology. This was the first bellwether trial in multidistrict litigation over the allegedly defective metal hip implant. The company's bid for a new trial was rejected by U.S. District Judge William S. Duffey. The judge left intact the \$1 million in compensatory damages the jury awarded to Robyn Christiansen for complications arising from her Wright Conserve Hip Implant System. However, the punitive damages award was reduced from \$10 million down to \$1.1 million.

Source: Law360.com

#### **AN MDL IS FORMED IN CALIFORNIA FOR VIAGRA SUITS**

Two years ago a 10-year study was released on men taking Viagra, the highly marketed erectile dysfunction medication. The purpose of the study was to determine if those men had an increased risk of three types of cancer. No increased risk was seen for two types, but the study showed an 86 percent increased risk of melanoma for those who had taken Viagra. It is interesting to note the drug works along the same metabolic pathway in the body that melanoma does. Since the release of the study, some men have filed lawsuits

alleging Viagra caused or contributed to cause their cancer.

Plaintiffs in seven suits in December 2015 sought to centralize litigation over the erectile dysfunction drug in the Northern District of California. The U.S. Judicial Panel on Multidistrict Litigation noted that district has the unanimous support of all responding Plaintiffs and manufacturer Pfizer, Inc. and that the court provides a convenient and easily accessible location for the geographically dispersed litigation.

The proceedings were assigned to Judge Richard Seeborg. This multidistrict litigation (MDL) will be watched closely to see how things work out for the plaintiffs. If you need more information, contact Frank Woodson, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

Source: Bloomberg BNA Product Safety & Liability Reporter

#### **JURY VERDICT IN BENZENE EXPOSURE CASE**

On Feb. 24, 2016, a Jury in Philadelphia County Court, Penn., found that a Defendant corporation's benzene was defective and that the Plaintiff's exposure to the benzene materially contributed to his development of acute myelogenous leukemia (AML), which is a cancer of the blood and bone marrow.

From 1973 to 2006, Plaintiff Louis DeSorba worked with printing solvents and inks containing Benzene. The Plaintiff routinely cleaned various parts and areas of presses and tools on a frequent basis. On Jan. 21, 2013, in his mid-50s, the Plaintiff was diagnosed with AML. He sued U.S. Steel on claims under theories of products liability and strict liability, including design defect and failure to warn, and claims of fraudulent concealment and recklessness. A number of other companies had been named as Defendants. The claims against those entities either were dismissed, or concluded, with the terms undisclosed, prior to this trial.

The Plaintiff's lawyers contended at trial that U.S. Steel, with actual knowledge of benzene's ability to cause leukemia and fatal blood diseases, intentionally withheld the information. Internal memoranda from 1952 to 1953 discussing U.S. Steel's concern about cancer-causing risks in the area of its Pittsburgh-based plant that made benzene and questioned the requirement of putting warning labels on its benzene products, were presented to the jury.

The Plaintiff's expert in industrial hygiene and engineering testified about the worker's exposure to benzene, which occurred by way of inhalation and skin absorption. According to the expert, U.S. Steel failed to provide warnings that benzene caused cancers and fatal blood diseases; failed to advise users to use personal safety equipment like respirators; and in many cases, did not warn users that Benzene was in the product.

The Plaintiff's expert in epidemiology discussed the history surrounding benzene's health risks. As early as 1897, it had been known that benzene caused aplastic anemia, and by the 1920s, reports began to emerge about benzene being associated with leukemia, according to the expert. U.S. Steel denied that it withheld information on the alleged health effects related to benzene exposure and its experts in medicine/epidemiology maintained that the Plaintiff's U.S. Steel Benzene exposure did not cause his leukemia.

In addition to finding that U.S. Steel's benzene was defective, and materially contributed to DeSorbo's disease, jurors determined that U.S. Steel acted with reckless indifference to the rights and/or safety of others and fraudulently concealed material information about its benzene. The jury awarded DeSorbo \$824,000, including amounts for past medical cost, future medical cost, past pain and suffering, future pain and suffering, and lost wages and benefits.

John Tomlinson, a lawyer in our firm's Toxic Torts Section, is handling the Benzene exposure cases for the firm. If you need more information on this subject, contact John at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com.

Source: Verdict Search Products Liability/April 2016

### **THE ROUNDUP LITIGATION IS HEATING UP**

In addition to diacetyl cases, lawyers in our firm are actively investigating cases where workers developed Non-Hodgkin's Lymphoma (NHL) as a result of working daily with the herbicide Glyphosate. As you may know, Glyphosate is the active ingredient in Monsanto's Roundup formulation. A broad-spectrum systemic herbicide, glyphosate is used to kill weeds, especially annual broadleaf weeds and grasses that compete with crops. While row crop farmers are known to work with Roundup or other herbicides containing glyphosate as a means to improve their crops, the chemical is also heavily

used by professional gardeners, greenhouse workers, and lawn and road maintenance crews. Overall, glyphosate represents more than 83 percent of the chemical pesticides used annually in the United States.

Glyphosate is at the center of Monsanto's business model. Monsanto chemist John Franz originally discovered the compound as an effective herbicide in 1970 and Monsanto brought it to market in 1974 under the trade name Roundup. Since that time, Monsanto has developed genetically modified crops that are resistant to glyphosate's herbicide properties, thereby allowing the crops to grow after application while killing weeds. Each year, approximately 250 million pounds of glyphosate are sprayed on crops, commercial nurseries, suburban lawns, parks and golf courses.

Last year, the International Agency for Research on Cancer (IARC) designated glyphosate as probably carcinogenic to humans with the most likely linked cancer being NHL. NHL is a broad classification of malignancies that include multiple subtypes with varied characteristics and possibly diverse etiologies. As a result, further studies are currently being conducted to identify which specific subtypes of NHL are linked with exposure to glyphosate. Thus far, the strongest association proven has been with B cell lymphomas. We expect additional studies to shed much-needed light on the full range of NHL-related diseases linked to glyphosate.

Shortly after the link was made, a number of lawsuits were filed against Monsanto, many of them by Plaintiffs that used Roundup on a consistent basis and developed the dreadful cancer. Monsanto quickly moved to dismiss the lawsuits as preempted under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). This past month, U.S. District Judge Vince Chhabria of the Northern District of California rejected the motions, and found that "[t]he mere fact that the EPA has approved a product label does not prevent a jury from finding that that same label violates FIFRA." The Plaintiff's strict liability claims were also spared. Similar motions are pending before a district court in Hawaii.

The recent order was a major victory in the Roundup litigation, and it confirms that Monsanto will not be able to hide behind FIFRA and the secrecy of its internal testing practices. For years, scientists and environmentalists have raised concerns over the safety of glyphosate.

Considering glyphosate and the product Roundup is critical to Monsan-

to's business model, the company has aggressively defended the product as safe and has gone so far as to sue governments that have considered adjusting the designated toxicity of the substance. Those efforts have come under fire on numerous occasions.

Two labs conducting glyphosate safety studies for Monsanto were cited for "routine falsification of data" and other offenses. In 1996, New York Attorney General Dennis Vacco ordered Monsanto to pull ads that said Roundup was "safer than table salt" and "practically non-toxic" to animals, birds and fish. To date, Monsanto has refused to pull the ads from any other states besides New York.

In 2007, a French court convicted Monsanto of false advertising when the company advertised glyphosate as biodegradable and leaving the soil clean for use even though it was previously designated as "dangerous for the environment" and "toxic for aquatic organisms" by the European Union. If you need more information, contact Parker Miller or Ryan Kral, who are lawyers in our firm's Toxic Torts Section, at 800-898-2034 or by email at Parker.Miller@beasleyallen.com or Ryan.Kryal@beasleyallen.com. They will be glad to talk with you.

Sources: International Agency for Research on Cancer; National Center for Biotechnology Information.

### **YOUNG CHILDREN ARE ESPECIALLY AT RISK FROM LEAD POISONING**

Long term exposure to lead can cause serious health problems. Lead is toxic to everyone, but unborn babies and young children—especially those younger than 3—are at the greatest risk because their smaller, growing bodies make them more susceptible to absorbing and retaining lead. Lead is a naturally occurring metal that is used in many products from construction materials to batteries. Many toys and other products manufactured outside the United States have been found to contain lead.

Although there are numerous ways a child can be exposed to lead, children who live in older homes are at a greater risk for lead poisoning. Most commonly, children get lead poisoning from lead-based paint, which was used in many U.S. homes until the late 1970s, when the government banned the manufacture of paint containing lead. Another common route of exposure is drinking water that flows through old lead pipes or faucets.

Each year in the United States, 310,000 children between the ages of 1 and 5 are found to have unsafe levels of lead in their blood. Once lead gets into a person's system it is distributed throughout the body just like helpful minerals such as iron and calcium. Some of the damaging effects of long-term lead poisoning include: decreased bone and muscle growth; poor muscle coordination; damage to the nervous system, kidneys, and/or hearing; speech and language problems; developmental delay; and seizures.

High levels of lead can cause a wide range of symptoms including headaches; stomach pain; difficulty concentrating; loss of appetite; anemia; sluggishness or fatigue; muscle and joint weakness or pain; and/or seizures. However, many children with lead poisoning show only mild symptoms or no symptoms at all. It is important to eliminate the risk of lead exposure at home and to have young children tested for lead exposure.

Lawyers in the Toxic Torts Section at Beasley Allen are currently investigating potential claims on behalf of children who suffer adverse health effects from prolonged exposure to high levels of lead. If you would like more information or have questions you can contact Chris Boutwell, a lawyer in the Section, at 800-898-2034 or by email at [Chris.Boutwell@beasleyallen.com](mailto:Chris.Boutwell@beasleyallen.com).

Source: Kids Health

## X. BUSINESS LITIGATION

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### ***NEW DOL RULES REQUIRE BROKERS TO CONSIDER INVESTORS' BEST INTEREST INSTEAD OF THEIR OWN***

The U.S. Department of Labor (DOL) has issued new fiduciary rules regarding investment decisions, giving more power to retirement savers. Considered the biggest change in retirement planning services since Congress passed the Employee Retirement Income Security Act of 1974 (ERISA), the rule released in early April was six years in the making. It was crafted in response to major changes in retirement financial services during the decades since ERISA was enacted, when pensions increasingly gave way to 401(k)s and assets held in IRAs and annuities.

The rule updates loopholes in the law that have allowed certain financial advisers to avoid liability for losses their imprudent advice caused their clients by requiring that companies either change their compensation models or enter into a contract with investors affirmatively acknowledging their fiduciary status. While these contracts may still contain forced arbitration provision and/or a waiver of punitive damages and rescission as a remedy for breach (but only as permitted by applicable laws), contracts may not contain any provisions disclaiming or otherwise limiting liability, including any waiver of an investor's right to participate in a class action or any pre-dispute agreement to an amount of liquidated damages or other damages cap.

One of the most controversial changes to the rule is the definition of fiduciary, and a fiduciary's requirements, under ERISA. Paul Borden, a lawyer with Morrison & Foerster, says some firms that sell securities to individual retirement accounts or pension plans will become fiduciaries under ERISA under the new rules. He said this opens up another avenue for litigation, adding: "Becoming a fiduciary under ERISA will expose them to the fiduciary breach and self-dealing prohibited transaction provisions of ERISA."

The rule will require those financial professionals who provide investment advice to plans, plan sponsors, fiduciaries, plan participants, beneficiaries, IRAs, and IRA owners to do so without regard to their own interests, or the interests of anyone else other than the customer. This includes a requirement that they charge only reasonable compensation, make no misrepresentations to their customers regarding recommended investments, and assume a fiduciary responsibility for which they will be legally accountable upon the provision of conflicted or biased advice that is not in the investor's best interest.

Experts have said the rules provide investors and their attorneys an important new tool to bring claims when they suspect their broker-dealer doesn't have their best interests at heart. Not only does the regulation provide some protection to investors on the front-end—when the investments are made—it provides an extra avenue for enforcing proper investment procedures on the back-end.

The regulation's requirement that brokers enter a contract with clients affirming they will uphold the client's best interest— or disclose when they can't— has provided a new and definite avenue for investors to bring claims over bad advice. Barbara Roper, the Director

of Investor Protection at the Consumer Federation of America, said: "That enforceable contract provides a hook for litigation."

It's expected that there will be more litigation because of the new rules. Ms. Roper added that the so-called best interest contract exemption (sometimes simply called BICE), which allows brokers to continue to collect commissions from sales as long as they acknowledge their fiduciary duty to clients, and disclose conflicts of interest, will eliminate ambiguity over whether fiduciary standards apply to brokers that give advice to retirement accounts. The contract rule was developed in order to provide investors with a legal basis to bring a claim if brokers and broker-dealer firms breach their fiduciary duty commitments. This allows for claims that weren't previously available under the Employee Retirement Income Security Act.

A major benefit to the changes in the definition of a fiduciary is that it allows claims for breach of fiduciary duty against parties that previously disclaimed any fiduciary relationship. For example, "[t]he primary claim brought against broker-dealers in FINRA arbitration is violation of fiduciary duty, even though they don't legally have a fiduciary duty," Ms. Roper said. A 2015 report from the Public Investors Arbitration Bar Association found that many brokers advertise that they act in customers' best interests, but deny that they have any fiduciary duty behind the closed doors of arbitration fights. In that kind of case, Roper said, the new rules will make it easier for investors to prevail by eliminating the need to prove that a broker-dealer had a fiduciary duty or claimed that it was acting with the investor's best interests.

There is already opposition to the new rules. In fact, three Republican senators have banded together to try to kill the Labor Department's new fiduciary rule. Senators Johnny Isakson of Georgia, Lamar Alexander of Tennessee and Mike Enzi of Wyoming have introduced a resolution to stop implementation of the new regulation that was released April 6. If the Senators can manage to get the resolution passed, which is very doubtful, President Obama will certainly veto it. Investors and consumer advocates alike have lauded the new rules for the protections and enforcement provisions they create. The ability to claim breach of fiduciary duty against investment advisors that previously disclaimed a fidu-



ciary relationship is good news for investors.

Sources: Law 360.com; www.investmentnews.com and www.accountingweb.com

## XI. AN UPDATE ON SECURITIES LITIGATION

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### **SECURITIES CLASS-ACTION LAWSUITS REACH HIGHEST LEVEL SINCE 2010**

Securities class-action lawsuits, including claims against auditing firms, have reached a five-year high, according to a new report by Cornerstone Research titled “Securities Class Action Settlements—2015 Review and Analysis.” A total of 80 securities class-action settlements gained approval in 2015, the highest number since 2010. Total settlement dollars also rose to more than \$3 billion last year, an increase of 184 percent over the historic low in 2014. The report found that total settlement dollars in 2015 were 9 percent higher than the average for the prior five years. The average settlement size increased from \$17 million in 2014 to \$37.9 million in 2015 (an increase of 123 percent), while the median settlement amount (representing the typical case) remained relatively flat (\$6.0 million in 2014 and \$6.1 million in 2015).

In 2015, 35 percent of accounting-related cases had a named auditor Defendant, representing a 50 percent increase over the previous 10-year average. That same report noted that underwriter Defendants were named in 76 percent of cases with Section 11 claims. Laura Simmons, a senior advisor of Cornerstone Research and a co-author of the report, stated:

*The surge in securities class-action settlements in 2015 can be attributed in part to three consecutive year-over-year increases in the number of case filings. The increases in case filings may suggest that higher numbers of settlements will persist in the near future. While settlement volume fluctuates from year to year, the size of the typical settlement tends to remain fairly consistent.*

There were eight mega settlements (\$100 million or greater) last year, com-

pared to only one in 2014. The increase was probably due to a corresponding rise in cases with very high “estimated damages,” a simplified calculation representing a proxy for damages. The median “estimated damages” for mega settlements in 2015 was the second highest in the past 10 years. Average “estimated damages” increased 151 percent from 2014. Since “estimated damages” is the most important factor in predicting settlement amounts, this increase contributed to the substantially higher average settlement amounts in 2015. Median settlements as a percentage of “estimated damages” decreased to historically low levels last year.

Class-action litigation—and especially cases involving securities’ issues—are always difficult and require both experience, ability and a good work ethic. Professor Joseph A. Grundfest, Director of the Stanford Law School Securities Class Action Clearinghouse, stated:

*Settlements in class-action securities litigation can be viewed as rather predictable phenomena. You can only get a high settlement value for a strong case that alleges substantial damages, and those factors can often be assessed relatively early in the litigation process. When the number of mega filings is up, you can expect an increase in mega settlements three or more years down the road, with the larger settlements taking longer to reach, and that’s the process that seems to be at work in the 2015 settlement data.*

While larger damages appear to have driven up settlement values for some cases in 2015, other factors associated with higher settlements were less prevalent. For example, the proportion of settlements of \$50 million or greater involving financial statement restatements, public pension plan lead Plaintiffs, and/or SEC actions was lower than most years since the passage of the Private Securities Litigation Reform Act of 1995.

While the proportion of securities class-action settlements involving financial sector firms was lower in 2014 and 2015 compared to prior years, these cases continue to be some of the largest when measured by “estimated damages.” In 2015, 55 percent of financial sector cases had “estimated damages” greater than \$1 billion. The Second and Ninth Circuits continued to lead all circuits in the number of settlements of securities class-action lawsuits.

The study indicates, overall, an increase in successful resolutions benefiting consumers. Consumer advocates and investors alike should be pleased with the progress of these claims. Because of the typically low individual damages, class actions in the financial sector are the best and most efficient means of correcting corporate misconduct and fraud. The upswing in settlements is considered to be a boon to investors.

Source: Accountingtoday.com

## XII. INSURANCE AND FINANCE UPDATE

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### **BANNER LIFE LAWSUIT FILED BY BEASLEY ALLEN LAWYERS**

Lawyers at Beasley Allen have recently filed a class action lawsuit in the District of Maryland against Banner Life Insurance Company for its unfounded cost of insurance increases. The complaint alleges that these increases are being implemented ultimately to benefit shareholders and rid Banner of near-term liabilities it has accrued due to its wrongful use of captive reinsurance companies.

Banner Life, and its parent corporations, Legal and General America, Inc. (LGA) and Legal and General Group PLC (L&G), have devised a scheme to take funds set aside to pay policyholders’ death claims, and convert them into investors’ and executives’ benefits. This scheme revolves around the use of wholly owned captive reinsurance companies. For more than a decade, Banner Life, under the direction of its parent companies, has pretended to offload billions of dollars of liabilities to its wholly owned captives and other affiliates.

Because this created a false surplus on the balance sheet, L&G was able to pay more than \$800 million in extraordinary stockholder dividends. In reality, Banner Life was merely dumping billions of dollars of liabilities into wholly owned captive reinsurance companies that are incapable of satisfying their assumed obligations, thereby freeing up hundreds of millions of dollars Banner Life would otherwise be legally required to hold as reserves. These captive companies are strategically domiciled in jurisdictions that allow the “reinsurers” not to file any public financials, hiding the true nature and details of these transactions.

In order to find new cash with which to fund future dividends, and delay the inevitable financial disaster that could occur because of its near-term liabilities, Banner Life has told policyholders that dramatic cost of insurance increases are necessary because the company “did not adequately account for future experience,” i.e. the number and timing of death claims, how long people would keep their policies, how well the company’s investments would perform, and the cost to administer policies.

At no point in time before its August 2015 letter did Banner Life ever indicate that the profitability of the policies was being severely eroded. Instead, policyholders were lulled into a false belief that their policies were performing adequately and building cash value.

Banner Life’s willful decision to allow the policyholders’ damages to escalate to a point where many policyholders would have no choice but to forfeit their policies or allow their cash value to be taken is tantamount to an attempt to cancel the policies and/or raid the policies of accumulated policyholder savings. Because of these actions, Plaintiffs and Class Members are seeking relief under breach of contract, unjust enrichment, conversion, and fraud theories.

Banner Life is not the only insurance company raising premiums and cost of insurance in order to account for its wrongful use of captive reinsurance schemes. Multiple other life insurers have sent their universal life and/or flexible premium policyholders letters informing them of an upcoming raise in costs—usually claiming these increases are due to “an increase in mortality rates.” In order to avoid a loss of coverage, consumers are paying these increases—oftentimes tripling or quadrupling the policyholders’ original costs.

Lawyers at Beasley Allen are getting ready to file complaints against other companies alleging similar wrongful activity. If you have seen this practice by any life insurance company, there may be a claim that our firm would be willing to investigate. You can contact Andrew Brashier or Rachel Boyd, lawyers in our Consumer Fraud and Commercial Litigation Section, at [Andrew.Brashier@beasleyallen.com](mailto:Andrew.Brashier@beasleyallen.com) or [Rachel.Boyd@beasleyallen.com](mailto:Rachel.Boyd@beasleyallen.com), or call us at 800-898-2034 to discuss further.

#### ***AN UPDATE ON PAYDAY LENDING IN ALABAMA***

For those who don’t know about payday loans I will try and give a brief explanation. Payday loans allow individuals to borrow money by using a post-dated check as collateral for a cash loan. Unlike most other forms of credit, to qualify for a payday loan a borrower need only provide proof of income (such as a paystub or verification of government benefits) and a bank account. Payday lending is a huge business in Alabama, with around 4 million transactions occurring annually at storefront locations and more than 300,000 Alabamians taking out loans. Indeed, there are four times as many payday lending storefront locations throughout the state as there are McDonald’s restaurants. On the whole, Alabamians take out an average of \$15 million in payday loans each week.

You may be shocked to learn that current Alabama law allows payday lenders to charge up to 456 percent interest, in addition to a \$17.50 service charge per \$100 borrowed, for a two-week period. The law prohibits people from taking out a total of more than \$500 in loans at one time, regardless of the number of loans used to reach that debt limit. In theory, these types of loans are designed to help people meet a small, one-time expense, yet in practice most payday loans are taken out to pay for previous loans. More than three quarters of all payday loans are given to borrowers who are renewing a loan or who have had another payday loan within their previous pay period. Among all borrowers, more than 80 percent conduct multiple transactions each year, and 60 percent of all payday loans go to borrowers with 12 or more payday lending transactions each year.

According to the Consumer Federation of America, the use of payday loans doubles the risk that a borrower will declare bankruptcy within two years, doubles the risk of being delinquent on credit cards, and tends to trap consumers in a perpetual cycle of debt. The average payday loan borrower in Alabama is trapped in debt for five to seven months of the year due to the high cost of these loans. If a borrower takes out \$300 and the interest is due biweekly, the loan would cost between \$575 to \$785 in interest payments alone. It is not surprising that payday lenders tend to set up shop in low-income areas, where they will have the greatest chance of issuing loans to borrowers who cannot immediately pay off their loans and will incur sky high interest fees.

The problem represented by predatory payday lending practices has been nationally recognized. Many other states have banned payday lenders from charging these types of triple-digit interest rates, and 16 states and the District of Columbia have essentially banned payday lending altogether. In 2006, Congress enacted the Military Lending Act, which caps interest rates to service members and their dependents at 36 percent and prohibits loans based on the holding of postdated checks or future debit authorization. While Alabama is arguably behind the curve, the state is starting to reel in industry excesses.

In August 2015, the Alabama State Banking Department began keeping track of all payday loans in a centralized database. The purpose of this database is to enforce the existing law prohibiting borrowers from taking out more than \$500 in payday loans at one time. Prior to the creation of this database, the \$500 limit was essentially unenforceable because borrowers could take out loans from multiple different lenders simultaneously. While borrowers are still allowed to obtain loans from multiple lenders, the new database ensures that the cumulative value of these loans does not exceed \$500. Not surprisingly, payday lenders sued Alabama’s Banking Department in 2013 to block the utilization of this system, but the Alabama Supreme Court ruled in favor of the state early last year. Since its creation, the database has blocked several thousand loans because they would have put borrowers over the \$500 cumulative limit. If you need more information on this subject, contact Grant Cofer, a lawyer in our firm’s Consumer Fraud and Commercial Litigation Section, at 800-898-2034 or by email at [Grant.Cofer@beasleyallen.com](mailto:Grant.Cofer@beasleyallen.com).

#### ***AN UPDATE ON TRUST AND ESTATE LITIGATION***

Trust and estate litigation involves numerous scenarios from celebrity disputes, to charitable contributions, to family feuds in your own backyard. In one of the larger estate disputes, parties have recently progressed settlement discussions in the latest litigation concerning A.I. duPont’s \$56 million estate. In his 1932 will, financier and philanthropist A.I. duPont left the bulk of his \$56 million estate to charity. The will established the Nemours Foundation, a charitable organization, which now operates 50 facilities in five states, including the A.I. duPont Hospital for Children in

Rockland, Del. Specifically stated in his will, DuPont intended for “first consideration” to be given to “beneficiaries who are residents of Delaware.” This provision ultimately sparked lengthy litigation beginning nearly 50 years ago.

The latest round of litigation began in 2012 under Delaware’s then Attorney General Beau Biden, who alleged that Delaware was no longer the primary beneficiary of the trust. Lawyers for the State argue that rather than following duPont’s intentions to first provide for Delaware, Nemours is distributing those funds elsewhere. The litigation further claims that Nemours failed to spend at least half of the \$1.3 billion in duPont trust distributions received over the last decade in Delaware. That requirement was part of a 1980 settlement agreement among the trust, Nemours and the State. Settlement discussions are still in the early stages, but if a settlement is reached, Delaware stands to gain millions of dollars to support children’s health care.

Lawyers at Beasley Allen are currently involved in litigating probate disputes concerning wills, trusts, and estates. This litigation covers a multitude of situations like the one above, cases involving undue influence and lack of capacity, as well as cases involving financial elder abuse. If you have a possible probate litigation issue, contact Beasley Allen lawyers Lance Gould or Leslie Pescia at 800-898-2034 or by email at Lance.Gould@beasleyallen.com or Leslie.Pescia@beasleyallen.com. They will be glad to be of assistance.

Source: *The News Journal*

## XIII. EMPLOYMENT AND FLSA LITIGATION

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### **U.S. SUPREME COURT DECLINES REVIEW OF WAL-MART’S \$188 MILLION DOLLAR BREAK LAWSUIT**

The U.S. Supreme Court has refused to review a \$188 million award obtained by a class of Wal-Mart workers who were denied rest breaks and meal breaks. Wal-Mart’s appeal to the Supreme Court follows a December 2014 ruling from the Pennsylvania Supreme Court that affirmed a trial court award in favor of nearly 200,000 workers who were allegedly forced to work off the clock and skip rest and meal breaks.

The retail giant argued that during the trial the Plaintiffs used an unconstitutional “trial by formula.” According to Wal-Mart, the trial by formula used by the Plaintiffs was expressly bared by the Supreme Court in its 2011 *Dukes v. Wal-Mart* decision. At trial, only six Plaintiffs testified on behalf of the class and the class’ experts used extrapolated evidence to calculate the total amount of damages suffered.

In its appeal to the U.S. Supreme Court, Wal-Mart argued that the high court needed to take up the case to prevent state courts from hamstringing corporations’ ability to defend themselves from class actions. The Plaintiffs, and ultimately the Pennsylvania Supreme Court, reasoned that individual examinations of all 187,000 class members weren’t necessary to determine whether employees were forced to work through their breaks.

The Supreme Court did not elaborate on why it declined to review the appeal. Nonetheless, the Supreme Court’s decision to not hear the appeal leaves in place the lower court ruling and the \$188 million jury award. Michael D. Donovan, a lawyer with the Donovan Litigation Group, located in Berwyn, Penn., represented the workers and he did an outstanding job for them.

Source: Law360.com

## XIV. PREMISES LIABILITY UPDATE

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### **\$18.1 MILLION SETTLEMENT FOR FERNLEY FLOOD VICTIMS**

More than 200 northern Nevada flood victims will now be paid for damages suffered when a century-old irrigation canal burst and sent a wall of water into their homes in 2008. Fortunately, no one was killed or seriously injured, but 590 homes in Fernley were flooded when water burst through a 50-foot breach in the canal’s earthen embankment in January of 2008. A 2-foot-tall wave swamped the neighborhood and water collected eight feet deep in some parts of the rural town, which is located 30 miles east of Reno. It was reported that more than a dozen residents were rescued from rooftops by helicopter, while others were taken to safety by boats.

Judy Kroshus, the director of a tribal health service resource center in Fernley,

is the lead Plaintiff in the class-action lawsuit. The local irrigation district has agreed to settle all claims for \$18.1 million. The aging, 31-mile canal is a key component of the nation’s first federal reclamation project, started in 1903. It’s owned by the U.S. Bureau of Reclamation, but managed by the Truckee-Carson Irrigation District. The bureau concluded within two months of the breach that burrowing rodents had weakened the canal, causing it to fail.

In July 2012, a federal jury returned a verdict during the liability phase of the trial finding the district’s history of negligence in maintaining the canal was primarily to blame. Soon thereafter, the district agreed to a \$10-million settlement, but then backed out. The damages phase of the trial was scheduled to resume two months ago, but the district agreed to the new settlement terms after its members voted in February to raise money to finance the damage award by selling off some water rights to the Truckee Meadows Water Authority.

Judge Lloyd George approved the settlement on March 31. A similar rupture in the same vicinity had flooded 60 homes in December 1996. The \$18.1 million settlement includes about \$7.8 million in attorney fees and expenses. Nobody in the class objected to that part of the settlement.

Source: *Las Vegas Sun*

## XV. WORKPLACE HAZARDS

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### **JURY VERDICT AGAINST DOLLAR GENERAL IN NORTH ALABAMA**

A jury in Lauderdale County returned one of the largest personal injury verdicts in the county’s history last month, finding Dollar General at fault for injuries suffered by a delivery driver. The jury awarded Howard Luttrell compensatory damages in the amount of \$925,000. The lawsuit was filed in 2013 against the company. Luttrell transported a delivery from the Dollar General distribution center in Scottsville, Ky., to a store in Florence, Ala.

Upon arriving at the store, the driver opened the back door of his truck to unload the cargo. Part of the cargo came crashing down on him. He suffered injuries to his head, neck, back, shoulder and other parts of his body. The injuries

resulted in Luttrell undergoing extensive medical treatment and incurring medical expenses.

Dollar General was responsible for packing the cargo into the delivery truck. It was proved that Dollar General loaded and prepared the trailer in a dangerous and unsafe manner, loaded it in such a way that the heavy totes caused injuries to Luttrell. The Plaintiff was represented by Huntsville lawyers Joe King and Joey Aiello, along with Albert Trousdale of Florence. These lawyers did a very good job in the case.

#### **OSHA AND ANHEUSER-BUSCH'S NEW JERSEY SUBSIDIARY RESOLVE SAFETY VIOLATIONS**

Federal labor officials have reached a settlement with a New Jersey-based subsidiary of the world's largest beer maker to settle claims of safety violations at a distribution warehouse. The Occupational Safety and Health Administration (OSHA) reached the agreement with Anheuser-Busch Sales of New Jersey. OSHA says the company has corrected the violations at the Jersey City site and has paid a \$150,000 fine.

The company was cited by OSHA in December 2014 for what it called numerous safety violations at the warehouse. The alleged hazards included untrained forklift operators, obstructed exit routes and inadequate chemical hazard communication training. The company contested the citations late last year. That led to the settlement in which the company will implement and maintain enhanced safety measures for workers at its distributorships in Jersey City and in the Bronx, New York.

#### **\$17 MILLION VERDICT RETURNED IN WORKER DEATH CASE**

A Texas state court jury has returned a \$17.7 million verdict against Texas bridge-building contractor Austin Bridge & Road. The case was brought by the family of a worker who drowned while working on a pedestrian bridge for Baylor University's football stadium. The jury in its verdict assigned 100 percent of the blame for ironworker Jose Dario Suarez's death to Austin Bridge & Road LP, one of several Defendants in the case.

Suarez's wife, two daughters and son filed suit in March 2014, alleging Baylor University, Austin Commercial LP, Austin Bridge & Road, Derr & Isbell Construction LLC, Genie Industries Inc., Terex Corp., Flinto LLC, Robishaw Engineering

and Core Safety were responsible for the 55-year-old worker's death in January 2014. While working on a pedestrian bridge for Baylor's football stadium, Suarez was tied off in a boom lift on the corner of a barge on the Brazo River to work on the bridge. The lift fell off the barge and Suarez was unable to free himself and he drowned. It was contended that safety rules were not followed on the worksite, including the fact that the lift was not chained to the barge and that safety personnel were not on-site.

Core Safety and Robishaw were dismissed from the case prior to trial. The trial court found there was no evidence these Defendants contributed to the safety lapses involved in the worker's death. During the trial, the other Defendants argued that sole responsibility for the safety lapses lay with Austin Bridge & Road, and that the company had failed to follow safety rules it had known about for years. The jury agreed, holding Austin Bridge & Road solely responsible for the death. The Suarez family is represented by Vuk S. Vujasinovic, Brian Beckcom and Kenneth B. Fenelon Jr. of VB Attorneys PLLC. They did a good job for their clients.

Source: Law360.com

#### **U.S. STEEL CORP. IS SUED OVER INJURY REPORTING PRACTICES**

The U.S. Department of Labor has sued U.S. Steel Corp. for allegedly retaliating against two Pennsylvania-based employees who violated the company's immediate reporting policy for workplace injuries. The Department of Labor said on Feb. 22 that in 2014 two U.S. Steel Corp. employees reported injuries that may have resulted from worksite incidents occurring a few days earlier. At the time of the incidents, the employees were unaware they had suffered injuries, as symptoms did not develop until later. When the workers realized and reported their injuries, U.S. Steel suspended both workers without pay for violating the company's immediate reporting policy.

The lawsuit against U.S. Steel seeks to reverse the disciplinary action taken against these employees and amend the company's immediate reporting policy. Richard Mendelson, Occupational Safety & Health Administration (OSHA) regional administrator in Philadelphia, said U.S. Steel's policy discourages employees from reporting injuries for fear of retaliation. Mendelson said:

*Because workers don't always recognize injuries at the time they occur, the policy provides an incentive for employees to not report injuries once they realize they should, since they are concerned that the timing of their report would violate the company's policy and result in some kind of reprimand.*

Both of the workers mentioned above suffered injuries in February 2014. In one case that occurred on Feb. 12, 2014, a full-time utility technician at U.S. Steel's Clairton Plant, in Clairton, Penn., found a small splinter lodged in his thumb and extracted it himself. He completed his shift without further incident. But two days later, his thumb and hand were swollen noticeably, and he received medical treatment for an infection. When he reported the incident to his supervisor, the company imposed a five-day suspension without pay for his violating the company's policy. U.S. Steel later reduced the suspension to two days.

In the other case that took place on Feb. 15, 2014, a full-time laborer at the Irvin Plant in West Mifflin, Penn., bumped his head on a low beam. That employee was wearing a hardhat and didn't feel any pain or any discomfort at the time. However, several days later, he experienced stiffness in his right shoulder and sought medical treatment, which his representative reported to U.S. Steel as a possible worksite injury. When he met with U.S. Steel's representative to discuss the issue, the company suspended him for five days without pay.

Both workers filed complaints with OSHA, alleging that U.S. Steel had suspended them in retaliation for reporting workplace injuries. The agency found that in both cases the company had violated the anti-discrimination provision of the Occupational Safety and Health Act, or Section 11(c), when the company used its immediate reporting policy as a basis for sanctioning employees who reported injuries "late." Filed in the U.S. District Court for the District of Delaware, the lawsuit seeks the following:

- Enjoining U.S. Steel from violating Section 11(c)(1) of the Act;
- Directing the company to rescind and nullify its immediate reporting policy;
- Permanently enjoining the company from enforcing an injury or illness reporting policy that requires employees to report their workplace injuries or illnesses earlier than seven calendar days after the injured or ill employee



becomes aware of his or her injury or illness;

- Rescinding the discipline and sanction of the two employees;
- Directing the company to compensate the complainants for any, and all lost wages and benefits including interest, as well as compensatory damages; and
- Directing the company to post notices at all of its work sites for 60 days stating that it will not discriminate or retaliate against employees involved in activities protected by Section 11 (c) of the Act.

This is a very important case and it will be watched closely.

Source: The U.S. Department of Labor

## XVI. TRANSPORTATION

### **LAWYERS AT BEASLEY ALLEN FILE LAWSUIT FOR FAMILY OF MARINE KILLED IN OSPREY HELICOPTER CRASH**

Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., has filed a wrongful death lawsuit on behalf of the family of a Marine killed in a helicopter training mission in Hawaii. The V22 Osprey helicopter in which Matthew J. Determan died crashed and burned during a landing attempt. The complaint alleges the engine air filtration system in the V22 Osprey is defective and cannot properly filter particulates from entering the engines. As a result, the subject Osprey suffered an engine failure and crashed.

Defendants are The Boeing Company, Bell Helicopter Textron Inc., and Eaton Aerospace, LLC. Lawyers in our firm have successfully handled cases involving the Osprey before and are very familiar with its history of crashes. Lance Cpl. Determan intended to be a career marine and was looking forward to a life of service. Instead he was killed as a result of a dangerous and defective aircraft, which has killed many other young Marines.

The accident occurred on May 17, 2015, when the Marines were launching the Marine MV-22 Osprey helicopter from the Navy assault ship *USS Essex* for practiced landing, unloading, reloading and turning to ship. The subject Osprey was descending to the landing zone at Bellows Air Force Base in Waimanalo (Oahu) Hawaii when it crashed. The

complaint is filed in the United States District Court for the District of Hawaii. Mike Andrews and Cole Portis from our firm, along with Melvin Y. Agena, a lawyer based in Honolulu, Hawaii, are representing the family in this lawsuit.

### **BEASLEY ALLEN FILES LAWSUIT ON BEHALF OF PILOT KILLED DURING FLIGHT TRAINING**

Lawyers in our firm have filed a wrongful death lawsuit on behalf of the family of Adam Christopher Griffis, who was killed March 24, 2014, when the PIPER PA-44-180 aircraft he was co-piloting as a flight student crashed near Brunswick, Ga., after departing from North Carolina, with the intended destination of Jacksonville, Fla. The plane was not airworthy, and a mechanical failure resulted in the crash, killing Griffis and the Pilot in Command during the flight, Andres Santiago Lopez.

The plane was owned, leased and maintained and/or operated by the Defendants, Airline Transport Professionals Holdings Inc., ATP USA Inc., ATP Flight Academy LLC, ATP Flight Academy of Arizona LLC, and ATP Aircraft 2 LLC. Mr. Lopez also was a student pilot at ATP Flight Academy in Jacksonville, Fla., at the time of the crash, and his estate also is named as a defendant in the lawsuit.

Mike Andrews and Chris Glover are representing Barbara Griffis Prince and Guy R. Willis, co-administrators of the Estate of Adam Christopher Griffis. The flight school should have known the aircraft wasn't properly maintained and posed an unreasonable risk to all persons operating, flying and being flown on board. But they did not warn the pilots about possible problems with the aircraft, and they should have known that, as students, Mr. Griffis and Mr. Lopez did not have the training or experience to operate the plane under conditions they knew to be unsafe. As a result, our client lost his life.

The subject aircraft was a complex twin engine aircraft, having no de-icing capability on its wings and tail surfaces. Radar indicated that the subject aircraft was at an altitude of 8,000 feet at 5:40 p.m. when it began a rapid descent reaching an altitude of 300 feet at 5:44 p.m., and crashing following an in-flight break-up near Brunswick, Ga., causing severe injuries and death to Mr. Lopez, the Pilot in Command and Mr. Griffis.

The right vacuum pump on the subject aircraft was inoperative prior to and at the time the subject aircraft departed North Carolina. The ATP Defendants

knew or should have known of this fact. The left vacuum pump on the subject aircraft failed during the flight at some point prior to the subject aircraft's rapid descent. The lawsuit alleges negligence, gross negligence and vicarious liability. The lawsuit is filed in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Fla.

### **JURY AWARDS \$14.9 MILLION TO CRASH VICTIM**

A jury has awarded \$14.9 million to Marcia Gray in a lawsuit arising out of a 2012 motor vehicle crash in Oakland, Calif. The seat in her 1995 Mazda Protege collapsed in the crash, causing Ms. Gray to suffer severe permanent injuries. Responsibility was assigned by the jury to both Mazda and the driver who crashed into Ms. Gray.

Ms. Gray was driving alone on an Interstate highway when she braked suddenly to avoid a wreck in front of her. A Chevrolet pickup truck then rear-ended her, and her seat flew backward. The truck that hit her car crushed the seat back as it went back. This caused Ms. Gray to fold over. She had 13 crushed ribs, a fractured vertebra that left her partially paraplegic, and a brain injury. Ms. Gray now has limited movement and walks with the aid of a cane.

A gear mechanism on the left of the driver's side was designed to collapse the seat backward in a wreck in order to absorb the energy from a crash. Ms. Gray was put in more danger during the crash because it was the seat back that caused most of her injuries. Mazda knew about seat problems through crash testing in 1995, according to testimony during the trial, but the company continued with the same design through 1998. There were never any recalls of the design. However, Mazda claimed it changed its designs many times since 1995.

The jury in the verdict found Mazda 55 percent responsible and the driver who rear-ended Ms. Gray 45 percent responsible. Ms. Gray is represented by David L. Winnett, a lawyer with the Veen Firm, located in San Francisco, Calif. He did a very good job for Ms. Gray.

Source: Bayareanewsgroup.com

### **SETTLEMENT ENDS LAWSUIT IN THE DEATH OF A NEW YORK STATE TROOPER**

The widow of a state trooper killed in a 2013 highway crash has agreed to a settlement in U.S. District Court to resolve her wrongful death lawsuit. Amy

Cunniff, the widow of Trooper David Cunniff, had filed suit against the Canadian truck driver who crashed into her husband's police cruiser. The truck driver, Gary Blakley, and his employer, GW McPherson Trucking, were sued in September 2014. It was alleged Blakley "negligently, carelessly and recklessly" failed to stay in his lane on Dec. 16, 2013, when he unintentionally crashed his tractor-trailer into Trooper Cunniff's marked car as the officer stopped a driver speeding on the shoulder of the highway.

The truck driver, 67, had been working 16 minutes beyond the 14-hour limit for truck drivers when he hit the cruiser. Cunniff, 35, had been a trooper for nine years. He died from his injuries in the crash, leaving behind his wife and their two young sons.

Blakley pleaded guilty last year to criminally negligent homicide and is serving a 3 1/2-year prison sentence. The trial judge ordered the record sealed. There is a second lawsuit against Blakley and GW McPherson Trucking brought by Eric Heller, the driver who had been pulled over, for his injuries in the crash. Heller is represented by Joseph Brennan, a Queensbury lawyer. Thomas DiNovo and Scott Iseman, who are from Albany, represented the Plaintiff in this lawsuit.

Source: Timesunion.com

#### **MANDATORY MINIMUM TRAINING STANDARDS FOR NEW TRUCK DRIVERS**

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) recently proposed a set of national prerequisite training standards for entry-level commercial truck and bus operators seeking to obtain a commercial driver's license (CDL). A negotiated rulemaking committee comprised of FMCSA representatives and a number of stakeholders responded to a Congressional mandate with their recommendations in the Notice of Proposed Rulemaking (NPRM). The next phase of the rulemaking will be to seek public comment.

Under this proposal, applicants seeking a "Class A" CDL (for the operation of a combination tractor-trailer type vehicle weighting 26,001 lbs. or more) would be required to obtain a minimum of 30 hours of behind-the-wheel training from an instructional program that meets FMCSA standards, including a minimum of 10 hours of operating the vehicle on a practice driving range.

Applicants seeking a "Class B" CDL (for the operation of a heavy straight truck such as a dump truck; or a school bus, city transit bus or motorcoach) would be required to obtain a minimum of 15 hours of behind-the-wheel training, including a minimum of seven hours of practice range training. There is no proposed minimum number of hours that driver trainees must spend on the classroom portions of any of the individual curricula.

Also under this proposal, mandatory, comprehensive training would apply to current CDL holders seeking a license upgrade or an additional endorsement; and a previously disqualified CDL holder seeking to reacquire a license. These individuals would be subject to the proposed entry-level driver training requirements and must complete a course of instruction provided by an entity that meets the minimum qualifications for training providers, covers the curriculum, is listed on FMCSA's proposed Training Provider Registry, and submits electronically to FMCSA the training certificate for each individual who completes the training.

It is vital that commercial vehicle drivers receive the necessary training required to safely operate large vehicles. Safer drivers ensure greater safety on our highways and roads. Our firm applauds any efforts to require entry-level truck drivers to receive the training necessary to safely operate these commercial vehicles on our nation's roadways. Unfortunately, our lawyers are concerned that the proposed rulemaking doesn't go far enough and that it could be even further watered down during the rulemaking process.

Our firm's lawyers are experienced in handling tractor trailer and commercial vehicle wreck cases. If you would like more information about trucking cases or the issue presented above, contact Chris Glover at 800-898-2034 or by email at Chris.Glover@beasleyallen.com. Chris is our firm's lead lawyer in commercial truck litigation.

#### **INSURANCE SAFETY INSTITUTE FINDS MOST HEADLIGHTS NOT BRIGHT ENOUGH**

The Toyota Prius v is the only midsize car out of 31 evaluated to earn a good rating in the Insurance Institute for Highway Safety's (IIHS) first-ever headlight ratings. The best available headlights on 11 cars earn an acceptable rating, while nine only reach a marginal rating. Ten of the vehicles can't be pur-

chased with anything other than poor-rated headlights. A vehicle's price tag is no guarantee of decent headlights. IIHS found that many of the poor-rated headlights belong to luxury vehicles. David Zuby, IIHS executive vice president and chief research officer, said:

*If you're having trouble seeing behind the wheel at night, it could very well be your headlights and not your eyes that are to blame.*

Government standards for headlights, based on laboratory tests, allow huge variation in the amount of illumination that headlights provide in actual on-road driving. With about half of traffic deaths occurring either in the dark or in dawn or dusk conditions, improved headlights have the potential to bring about substantial reductions in fatalities, according to the IIHS.

The Institute said recent advances in headlight technology make it a good time to focus on the issue as high-intensity discharge (HID) or LED lamps have replaced halogen ones in many vehicles and curve-adaptive headlights, which swivel according to steering input, are also becoming more common. IIHS research has shown the new headlight types have advantages, but they don't guarantee good performance. The Institute's headlight rating system doesn't favor one lighting technology over the other, but simply rewards systems that produce ample illumination without excessive glare for drivers of oncoming vehicles.

Vehicles can be equipped with different headlights, so there are a total of 82 headlight ratings for 2016 models even though there are only 31 vehicles. The Institute said it is rating every possible headlight combination as it becomes available from dealers. The Prius v earns a good rating when equipped with LED lights and high-beam assist. To get those headlights, consumers must purchase the advanced technology package, which is only available on the highest trim level. When equipped with regular halogen lights and without high-beam assist, the Prius v earns a poor rating. Matthew Brumbelow, an IIHS senior research engineer, said:

*The Prius v's LED low beams should give a driver traveling straight at 70 mph enough time to identify an obstacle on the right side of the road, where the light is best, and brake to a stop. In contrast, someone with the halogen*

*lights would need to drive 20 mph slower in order to avoid a crash.*

Among the 44 headlight systems earning a poor rating, the halogen lights on the BMW 3 series are the worst. A driver with those headlights would have to be going 35 mph or slower to stop in time for an obstacle in the travel lane. A better choice for the same car is an LED curve-adaptive system with high-beam assist, a combination that rates marginal. Curve-adaptive systems don't always lead to better ratings. The Cadillac ATS, Kia Optima and Mercedes-Benz C-Class all earn poor ratings even when equipped with adaptive low and high beams. In the case of the Optima, a big problem is glare. Its curve-adaptive system provides better visibility than its non-adaptive lights, but produces excessive glare for oncoming vehicles on all five low beam approaches.

One of the best headlight systems evaluated has none of the new technology. The basic halogen lights on the Honda Accord 4-door earn an acceptable rating, while an LED system with high-beam assist available on the Accord earns only a marginal. IIHS tests headlights after dark on a track at the IIHS Vehicle Research Center. Researchers use a special device that measures the light from both low beams and high beams as the vehicle is driven on five different approaches: traveling straight, a sharp left curve, a sharp right curve, a gradual left curve and a gradual right curve. It also measures glare for oncoming vehicles from low beams in each scenario to make sure it isn't excessive. The following will set out IIHS Headlights Rating for 2016 midsize cars and will list the best available headlight system for each model:

#### **Good**

Toyota Prius v

#### **Acceptable**

Audi A3

Honda Accord 4-door

Infiniti Q50

Lexus ES

Lexus IS

Mazda 6

Nissan Maxima

Subaru Outback

(built after Nov. 2015)

Volkswagen CC

Volkswagen Jetta

Volvo S60

#### **Marginal**

Acura TLX

Audi A4

BMW 2 series

BMW 3 series  
Chrysler 200  
Ford Fusion  
Lincoln MKZ  
Subaru Legacy  
Toyota Camry

#### **Poor**

Buick Verano  
Cadillac ATS  
Chevrolet Malibu  
Chevrolet Malibu Limited  
(fleet model)  
Hyundai Sonata  
Kia Optima  
Mercedes-Benz C-Class  
Mercedes-Benz CLA  
Nissan Altima  
Volkswagen Passat

Hopefully this information will prove to be helpful. IIHS does a very good job and provides extremely valuable information to consumers.

Source: IIHS

#### **APPEALS COURT RULES THAT AVIATION ACT DOESN'T PREEMPT STATE LIABILITY LAW**

The Third Circuit Court of Appeals ruled last month that the Federal Aviation Act does not preempt state law product liability claims, reversing a lower court's decision in favor of aircraft engine manufacturers. The ruling came in a widow's suit alleging that defects in a single-engine plane's design caused her husband's fatal crash. In a precedential decision, a three-judge panel said that the text and history of the law show no evidence that Congress intended the FAA to preempt state law product liability claims. The panel said that the Pennsylvania district court faulted in concluding that an "aircraft type certificate" issued by the U.S. Federal Aviation Administration for the aircraft engine meant that the federal standard of care had been satisfied as a matter of law. The panel said:

*In light of the presumption against preemption, absent clear evidence that Congress intended the mere issuance of a type certificate to foreclose all design defect claims, state tort suits using state standards of care may proceed subject only to traditional conflict preemption principles.*

The lower court had apparently wrestled with the Third Circuit's 1999 decision in *Abdullah v. American Airlines*, in which the panel held that state law negligence claims for injuries sustained

during a flight were preempted by federal law. In that case, it ruled in the aircraft engine makers' favor. The panel said in the case:

*Recognizing that its grant of partial summary judgment raised novel and complex questions concerning the reach of Abdullah and the scope of preemption in the airlines industry, the district court certified the order for immediate appeal, and we granted interlocutory review.*

A decade after the Abdullah decision, the Third Circuit clarified in another ruling that the field of airline safety preempted by federal law is limited to "in air" operations, according to the opinion. The suit stems from a 2005 crash of a Textron Lycoming engine made in 1969 and installed in a Cessna 172N that crashed and killed David Sikkelee shortly after he took off from a small North Carolina airport, according to the panel. His widow, Jill Sikkelee, claims that his plane lost power and crashed as a result of a malfunction or defect in the engine's carburetor. Specifically, the defect caused raw fuel to leak out of the carburetor into the engine.

Jill Sikkelee first filed suit in 2007 in Pennsylvania federal court against 17 companies, asserting state law claims including strict liability, breach of warranty and negligence. In 2010, the lower court dismissed the suit, ruling that Sikkelee's state law claims, premised on state law standards of care, fell within the preempted field of airline safety outlined in *Abdullah*. The widow then filed an amended complaint, but this time she also incorporated allegations of violations of numerous FAA regulations. The Plaintiff's claims against Lycoming Engines, a division of Avco Corp., were eventually narrowed to defective design and failure to warn, according to the panel.

Source: Law360.com

## **XVII. ENVIRONMENTAL CONCERNS**

### **\$49 MILLION NATIONAL GRID GAS PLANT CLEANUP SETTLEMENT**

British energy giant National Grid and insurer ACE Ltd. have settled their \$49 million dispute over pollution cleanup at



three former gas plants on Long Island, N.Y., on the third day of what was to be a lengthy trial. National Grid unit KeySpan Gas East and ACE unit Century Indemnity Co. settled the dispute over a \$31 million pollution cleanup in Sag Harbor, a \$7.4 million cleanup in Glen Cove, and a \$10.3 million cleanup in Halesite. The terms of the settlement are confidential.

With the settlement, ACE is now finished with fights over five of seven sites originally at issue. Two were dealt with in a 2014 trial, which KeySpan won, three have now settled, with two more, Hempstead and Bay Shore, still pending. The cleanups were scars of a gaslight era in which many towns made their own gas from coal. KeySpan was formerly Long Island Lighting Co., once the owner of many gasworks on the bedroom-community island. LILCO has insisted through almost two decades of litigation that inactive “runoff” liability holding insurer Century should help pay for the three cleanups under excess liability policies issued by forerunner Cigna in the 1950s and 1960s.

LILCO says that for 18 policy years, from 1953 to 1969, the three long-shuttered plants were quietly leaching tar into the groundwater. Those count as harms and give rise to coverage, the company says. It was contended that “Century promised to protect KeySpan against a legal claim that KeySpan caused damage to property belonging to someone else.” Although the coal tar sat on LILCO property, the groundwater it polluted was New York state’s. The damage occurred during the policy years, as the water leached, Smith said—even into the 1990s. Century says LILCO documents reveal inklings of trouble related to the sites as early as 1992, but that LILCO didn’t report the matter to Century immediately. Century says this negates any coverage.

Source: Law360.com

#### **EXXONMOBIL AGREES TO \$10.8 MILLION OIL SPILL SETTLEMENT IN NEW YORK**

Exxon Mobil Corp. has agreed to pay \$10.75 million to cover the cost of eight oil spill cleanups in New York, state Attorney General Eric Schneiderman announced. Schneiderman, along with State Comptroller Thomas P. DiNapoli, said that the settlement with Exxon Mobil Corp. and ExxonMobil Oil Corp. will reimburse the New York Environmental Protection and Spill Compensation Fund—with interest—for oil spill cleanup and petroleum pollution remedi-

ation costs at eight locations in the state. Schneiderman said in a statement:

*Oil spills are costly and dangerous to our communities. This settlement ensures that the state will not be forced to foot the bill to clean up hazardous oil spills that must be cleaned up to keep our families safe.*

Under the agreement, ExxonMobil will take over all future remediation activities at four of the eight sites where the cleanup efforts are ongoing or reimburse the oil spill fund for any additional remediation expenses that are incurred. The spill sites were operated as gas stations, some of which dated back to the 1930s, Schneiderman’s office said in a statement. The spill fund is used to help clean up petroleum spills, compensate spill victims for financial losses in case the responsible party won’t, and to seek reimbursement from polluters for cleanup costs.

The fund was set up in 1978 and is financed mainly by fees levied on barrels of oil imported into the state, as well as amounts collected in cost recovery actions. The fund began paying for remediation of the oldest of the spill locations in 1989. DiNapoli said in a statement:

*This settlement transfers the responsibility of eight oil spill cleanups from taxpayers to the spiller, where it belongs. The oil spill fund is designed to help protect our families and our communities from the consequences of oil spills, because New Yorkers shouldn’t have to bear the burden of these costs.*

In August, a New Jersey state court judge approved the state’s \$225 million settlement with ExxonMobil for the cleanup of pollution from oil refineries in that state. Separately, New Hampshire is asking the U.S. Supreme Court to preserve a \$236 million trial judgment against ExxonMobil in the state’s long-running case accusing it of groundwater contamination. New Hampshire won the judgment in 2013 against ExxonMobil over its use of the gasoline additive methyl tertiary butyl ether, or MTBE. Around \$195 million of the judgment meant for future cleanups was locked in a trust, but the New Hampshire Supreme Court reversed that ruling on Oct. 2, ordering the funds be released to the state.

Source: Law360.com

## **XVIII. UPDATE ON NURSING HOME LITIGATION**

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### **THE ROLE OF THE MDS IN NURSING HOMES**

Nursing homes that receive Medicare or Medicaid are required to perform a comprehensive assessment of new residents and then to perform routine or follow up assessments at set times. These assessments are referred to as Minimum Data Set (MDS) reviews. The Centers for Medicare and Medicaid describe an MDS in this fashion:

*The MDS is a powerful tool for implementing standardized assessment and for facilitating care management in nursing homes (NHs) and non-critical access hospital swing beds (SBs). Its content has implications for residents, families, providers, researchers, and policymakers ....*

A number of different people from varying disciplines may be involved in MDS reviews. These individuals can include staff members from the administration, nursing, therapy (physical, occupational and speech), nutrition, psycho-social, psychiatry, respiratory, and other departments, depending upon the reason, length, and purpose of an admission to the nursing home. Most nursing homes will designate an MDS coordinator, and that person is most often a registered nurse. The MDS coordinator is responsible for ensuring that the necessary evaluation is done on each resident and that follow-up evaluations are properly and timely performed.

An MDS covers a variety of areas of potential concern, including: cognitive patterns; communication and hearing patterns; vision patterns; physical functioning and structural problems; continence levels; psychosocial well-being; activity pursuit patterns; disease diagnoses; other health conditions; oral/nutritional status; oral/dental status; skin condition; medication use; and treatments and procedures.

Among these designated items, the staff should evaluate things such as the medications received and their potential effects on the patient, fall risks, mood and depression levels, and family dynamics and support. From this information, nursing homes will utilize the MDS evaluations to form care plans and to set



forth a plan to treat and monitor a patient/resident's well-being and course of care and treatment while at the nursing home.

The MDS reviews occur at least quarterly and are a tool used by the nursing homes to ensure that a patient's status has not materially changed or that additional needs are not required for proper care and treatment. This information is compiled in a national database and is relied upon to determine the levels of care needed by residents and patients in nursing homes. It is also used for other purposes, such as to monitor the rate of bedsores developments or other complications among nursing homes. The MDS review is a compiled form.

The MDS coordinator, and those on the MDS review team, must follow the form and complete the applicable sections. Most of the sections do not call for narratives but literally marking the blanks or spaces that apply, compiling scores, and recording the information. Each person involved in the MDS review is required to sign and print their name to the form indicating which section of the report they addressed. Over time, the MDS review process has evolved somewhat. The prior form was MDS 2.0; the current form used is MDS 3.0. The primary difference between the two is that the resident is now more involved in the process.

From a practical standpoint, the amount of Medicare or Medicaid benefits a nursing home may receive is dependent upon the MDS outcome, scores and codes that are assigned to the patient. This is referred to as the "daily rate," which is based upon the coding and the "amount of resources used by residents." In other words, the more needs the resident has, the more the daily rate should be.

For example, if a resident was admitted for physical strengthening, the resident will certainly need physical therapy. If the resident is having difficult eating, getting in and out of bed, gathering her thoughts, etc., then she may also need speech therapy (which performs choke/swallow assessments), occupational therapies (for assistance with activities of daily living, or ADLs), additional nutritional support (for diet modification and nutrition), psychosocial assessments (such as a social worker following up to ensure the patient's needs are being adequately met and that those needs are being relayed to the nursing staff), or others. As you might guess, the more needs of the resident, the greater the daily rate, which means that the nursing

home is paid more for that resident's care.

The lawyers in our firm have found the MDS forms to be important in the litigation process. That's because they identify certain key persons involved in the care of a patient; establish important matters such as cognitive abilities of the resident; determine the course of treatment and any meaningful change in treatment over time; and indicate whether the MDS review is consistent with reports by nursing and other medical staff.

By the nature of the MDS—that it is government-mandated and created—one would believe that the nursing home staff would strive to adequately report patient/resident conditions, changes in conditions, and issues that arise. If the facility is accurately reporting this information, CMS and State Health Departments should be better able to identify problem areas in different facilities by comparing problem rates between the facilities. Unfortunately, the facilities don't always report adequately.

For example, a facility that is over-reporting medication problems should be investigated to determine if the facility is giving its residents too much medications or the medications are too strong. If you need more information, contact Ben Locklar, a lawyer who handles Nursing Home Litigation for our firm, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com.

Sources: [www.CMS.gov](http://www.CMS.gov) and <http://assistedliving.about.com/od/nursinghomes/a/Mds-3-0-What-You-Need-To-Know.htm>

## XIX. AN UPDATE ON CLASS ACTION LITIGATION

### **\$1.86 BILLION SETTLEMENT ENDS CDS ACTION**

U.S. District Judge Denise Cote gave final approval recently to a \$1.86 billion settlement in a case that alleged Citigroup Inc. and others conspired to keep new participants from entering the credit default swaps market (the instruments in question are used as a hedge against the possibility of borrower default), keeping the price for trading in the swaps artificially high and costing potential class members tens of billions of dollars.

Though no class members objected to the fees and costs, several complained that the settlement's distribution plan is unfair and inadequate, that it disproportionately awards damages to certain types of trades, and that it uses flawed definitions, among other allegations. More than 1,300 class members will get payments of more than \$100,000 each and more than 230 will receive over \$1 million apiece. The judge disagreed with the objectors, determining:

*The allocation formula has a reasonable, rational basis, was recommended by experienced and competent class counsel and does not provide impermissibly favorable treatment to any segment of the settlement class.*

The settlement covers anyone who bought credit default swaps from or sold them to the Defendants or any alleged co-conspirator in any transaction covered by the settlement between Jan. 1, 2008, and Sept. 25, 2015, and was litigated largely by hedge funds, pension funds, university endowments, small banks, and other investors who sued as a group—around 13,000 investors.

Sources: [Law360.com](http://Law360.com), [Washington Post](http://Washington Post) and [Bloomberg](http://Bloomberg)

### **LIFE PARTNERS TO PAY MORE THAN \$1 BILLION TO SETTLE INVESTOR SUITS**

Life Partners Holdings court-appointed bankruptcy trustee, H. Thomas Moran II, has agreed to resolve for more than \$1 billion class action litigation brought on behalf of thousands of investors who claim they were duped into purchasing bad life insurance settlements with promises of big returns. The settlement, which must be approved by the court, covers legal claims brought on behalf of more than 20,000 investors and resolves a major hurdle in Life Partners' quest to restructure after filing for bankruptcy early last year. The settlement papers, filed last month in Texas bankruptcy court, come weeks after Chapter 11 trustee Moran said in a report that Life Partners and its former CEO Brian Pardo engaged in one of the largest frauds in Texas history.

The trustee claims that under Pardo's direction, Life Partners solicited investors to purchase a stake in life insurance policies the company acquired. Life Partners, according to the trustee, acquired the policies for less than the total value of the policies, which mature when a person dies. It will take decades for all of

the policies in Life Partners' portfolio to mature.

According to Moran, Pardo and Life Partners trumpeted these investments utilizing life expectancy figures that were far shorter than they actually were, deceiving investors, many of them elderly, who were led to believe they would receive double-digit returns. The agreement submitted to the court would provide for the certification of a settlement class in Life Partners' bankruptcy cases for purposes of voting on a Chapter 11 plan. The settlements would be broken into various subclasses, the largest of which includes 11,322 investors.

The total value of the settlement for class members is currently estimated at \$1,078,582,000. The settlement would also cap fees for Plaintiffs' lawyers at \$33 million. The present value of the fees, which would be paid out over time, is \$5,219,043 and must be approved by the bankruptcy court.

Life Partners filed for bankruptcy in 2015, after a \$47 million jury verdict obtained by the SEC. At the time of Life Partners' bankruptcy, \$1.4 billion in investor funds were at risk, according to the trustee. In September, Moran sued Pardo for more than \$40 million in damages over money he transferred to himself and his family. Pardo served as Life Partners' CEO and chairman until early 2015.

Source: Law360.com

#### **DOW TO PAY \$400 MILLION TO SETTLE OPT-OUT URETHANE PRICE-FIX CLAIMS**

Dow Chemical Co. has agreed to pay \$400 million to settle antitrust claims by customers who opted out of a class action accusing the company of fixing the price of urethanes. This settlement came a month after the company agreed to drop its U.S. Supreme Court appeal and pay class members \$835 million. The settlement was reached during a jury trial that began on March 8 in a New Jersey federal court. As a result of the settlement, District Judge William J. Martini agreed to dismiss the suit with prejudice. The settlement will result in net cash payments of \$250 million to the Plaintiffs.

The company had agreed in February to the \$835 million class settlement instead of continuing to seek U.S. Supreme Court review of a \$1 billion judgment against it for price-fixing of urethanes. Like the Plaintiffs in the class action, the opt-out plaintiffs allege Dow

colluded with other businesses to artificially inflate the prices of urethane chemicals, in violation of antitrust laws.

After the judge presiding over multidistrict litigation (MDL) in Kansas certified the class of buyers who purchased Dow and other Defendants' products from 1999 to 2004, a number of the customers, including Sherwin-Williams Co. and Leggett & Platt Inc., opted out of the class action, alleging that the price-fixing activity took place from at least 1994 to 2004. Leggett & Platt reached a \$38 million settlement with Dow, according to documents filed with the U.S. Securities and Exchange Commission.

Source: Law360.com

## **XX. THE CONSUMER CORNER**

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#### **MITSUBISHI TO PAY \$84 MILLION IN PARTS ANTITRUST MDL**

Mitsubishi Electric Corp. will pay \$84.4 million to settle claims by car buyers and auto dealers in multidistrict litigation (MDL) accusing the company of conspiring with others to fix prices on auto parts. Mitsubishi will pay \$64.23 million to the end payors and \$20.2 million to the auto dealers to resolve their claims that it conspired to allocate the supply of auto parts and sell them at noncompetitive prices in the U.S. and elsewhere, according to motions for preliminary approval of the proposed settlements.

The MDL against manufacturers, marketers and sellers had been split into separate proceedings for different automotive parts. The parts at issue in the instant suits include alternators, starters, ignition coils, fuel injection systems, valve timing control devices, wire harness systems, hid ballasts and electronic powered steering assemblies. Total payments in the case are now more than \$288 million. The litigation will continue against the remaining nonsettling Defendants. The cases are part of a sprawling MDL that followed the U.S. Department of Justice's expensive, ongoing investigation into the auto parts industry that has yielded more than \$2 billion in fines.

In April of last year, Hitachi Automotive Systems Ltd. had agreed to pay \$46.7 million to settle claims that it fixed prices on auto parts in the MDL. In Sep-

tember, when announcing a \$50 million settlement with Japanese manufacturer Sumitomo Electric Industries Ltd., lawyers for the end payors said total settlements for the Plaintiffs' group had surpassed \$200 million.

A Michigan federal judge has approved a settlement between Mitsubishi, Takata Corp. and a number of other auto companies, dismissing three individual consumers from the multidistrict litigation without prejudice. The terms of the agreement were not disclosed.

Subsequently, a Toyota Camry owner objected to multimillion-dollar settlements that auto parts companies had agreed to with end payors in multidistrict litigation of an alleged price-fixing scheme. The owner claimed the settlements invite "minitrials" and fraudulent claims.

Last month's filings by the end payors and the auto dealers said Mitsubishi's alleged cooperation under the terms of the proposed settlement will help them litigate their claims against the remaining Defendants. It was stated in the filing with the court:

*The [end payors and auto dealers] believe that this cooperation will show that one of the nonsettling defendants—the largest conspirator in these cases—withheld critical evidence from the DOJ [Department of Justice], this court and the [plaintiffs] in this litigation.*

The automobile dealer Plaintiffs are represented by interim liaison counsel Gerard V. Mantese of Mantese Honigman PC and interim co-lead counsel Jonathan W. Cuneo, Joel Davidow and Victoria Romanenko of Cuneo Gilbert & Laduca LLP, Don Barrett and David McMullan of Barrett Law Group PA, and Shawn M. Raiter of Larson King LLP. The end-payor Plaintiffs are represented by E. Powell Miller and Devon P. Allard of The Miller Law Firm PC, Steven N. Williams, Adam J. Zapala and Elizabeth Tran of Cotchett Pitre McCarthy LLP, Hollis Salzman, Bernard Persky and William V. Reiss of Robins Kaplan LLP, and Marc M. Seltzer, Steven G. Sklaver, Terrell W. Oxford and Omar Ochoa of Susman Godfrey LLP. The MDL is in the U.S. District Court for the Eastern District of Michigan.

Source: Law360.com

## **SONY TO PAY \$19.5 MILLION TO SETTLE BATTERY ANTITRUST CLAIMS**

Sony Corp. will pay indirect buyers of lithium ion batteries \$19.5 million to settle multidistrict litigation (MDL) accusing the electronics giant and others of fixing battery prices. In a filed motion in California federal court seeking preliminary approval of the settlement, Sony said it will pay \$19.5 million to consumers who indirectly purchased the batteries from January 2000 to May 2011. The parties also asked U.S. District Judge Yvonne Gonzalez Rogers to certify a nationwide class of buyers for purposes of the settlement, and also certify a separate class of governmental entities in California that indirectly bought the batteries.

The proposed settlement follows Sony's deal announced in February to pay \$19 million to direct purchasers such as the defunct retailer Circuit City. That settlement was approved by Judge Rogers in March. The MDL alleges that both direct purchasers and indirect purchasers—consumers and resellers—paid higher prices as a result of an alleged price-fixing conspiracy involving Sony, LG Chem America, Toshiba Corp., NEC Corp. and other makers of rechargeable lithium ion batteries, which are widely used in laptop computers and other electronic devices. Under terms of the new settlement, Sony is required to cooperate in the case against the remaining Defendants. If approved, Sony will become the first of the Defendants to settle out of the case, which was centralized in California in 2014.

A hearing on the motion for preliminary approval of the settlement is scheduled for May 24. In January, the indirect and direct purchasers urged Judge Rogers to grant class certification, arguing that the battery manufacturers' alleged conspiracy became a "way of life" as they continued to collude on prices and production. The separate motions for class certification noted that Sanyo and LG had both pled guilty to criminal price-fixing allegations over lithium ion batteries brought by the U.S. Department of Justice (DOJ) and said there is ample evidence of nationwide price fixing that supports class certifications. Sanyo and LG reached plea agreements with the government in 2013. In March, Judge Rogers denied Toshiba's request to be removed from the MDL, saying Toshiba may have had a role in the alleged conspiracy despite no longer

controlling a lithium manufacturing business.

Source: Law360.com

## **NFL CONCUSSION DEAL AFFIRMED BY THIRD CIRCUIT COURT OF APPEALS**

The Third Circuit Court of Appeals last month approved an uncapped settlement between the National Football League (NFL) and several former players over head injuries. The court rejected a challenge from objectors who argued the settlement was lacking for those who suffered from the degenerative brain condition known as CTE (chronic traumatic encephalopathy) and finding that the uncapped settlement is fair for the class of retired players.

In a unanimous three-judge decision, written by Circuit Judge Thomas L. Ambro, the Third Circuit affirmed both the class certification for the former players suffering from various ailments tied to repeated head injuries and concussions and affirmed the uncapped settlement reached between the league and class representatives Kevin Turner and Shawn Wooden. The decision comes after several groups of players and individuals opposed the agreement, arguing that the settlement erred by extinguishing potential claims from players diagnosed with chronic traumatic encephalopathy, a degenerative brain disease linked to symptoms ranging from memory loss and confusion to progressive dementia and that right now can only be diagnosed posthumously.

Under the concussion settlement, former players diagnosed with Parkinson's disease or Alzheimer's disease could receive as much as \$3.5 million each, while players with amyotrophic lateral sclerosis could receive as much as \$5 million each. However, while former players who already have died of CTE will receive \$4 million each, the deal excludes those who pass away after a cutoff date, leaving those with no other qualifying conditions nothing.

The Third Circuit said that though some will be dissatisfied with the result, that is the nature of such settlement appeals, noting that the deal will likely provide more than \$1 billion to the class of over 20,000 retired players. The court said:

*[W]e do not doubt that objectors are well-intentioned in making thoughtful arguments against certification of the class and approval of this settlement. They aim to*

*ensure that the claims of retired players are not given up in exchange for anything less than a generous settlement agreement negotiated by very able representatives. ... It is a testament to the players, researchers, and advocates who have worked to expose the true human costs of a sport so many love. Though not perfect, it is fair.*

To say this is an imperfect settlement that most likely should have been approved is a pretty good assessment. This litigation was extremely complicated and challenging. The lawyers for the plaintiffs—led by Chris Segers—did a very good job.

## **WALGREENS FINED FOR MISLEADING ADS IN NEW YORK**

Walgreens Co. has agreed to a \$500,000 fine and advertising practices "reforms" as part of a settlement with the New York Attorney General's office. The Attorney General found the national drugstore chain and subsidiary Duane Reade Inc. had regularly overcharged customers through misleading advertising. In a statement, New York Attorney General Eric T. Schneiderman said an undercover investigation by his office showed Walgreens and Duane Reade, which together operate about 500 stores in the state, would "deceptively induce" customers to purchase products through a number of misleading practices.

In addition to publishing print advertisements that would not be honored in-store, Walgreens and Duane Reade would leave incorrect price tags on shelves to make customers think an item was being sold for one price, only to be charged differently at the register, according to the Attorney General. Michael Zucker, a researcher at union strategizing firm Change to Win, said in a statement:

*Walgreens has failed to provide the staffing and systems needed to accurately price its products. We've seen these deceptive practices in a number of other states, costing consumers and violating the public trust.*

The drugstores also presented items in other misleading ways, as a "smart buy" or a "last chance" purchase for example, "thus implying that the product is available at a reduced price only for a limited time," according to the Attorney Gener-

al's office. However, these products were often available at the reduced price for a "significant period of time" and sometimes for nearly a year. Another deceptive practice the stores used was to imply customers would be receiving an immediate cash discount on a purchase, with advertisements saying the cost was "like paying" or "like buying" even though the advertised discount would be applied only to a future purchase.

Walgreens has agreed to change its advertising practices throughout New York, in addition to the \$500,000 fine. The drugstores will no longer promote any product as a "last chance" or "clearance" item if it will remain in-store for an extended time, will remove all shelf tags with expired offers or pricing within 36 hours of their expiration, will limit the stores' use of "like buying" shelf tags, and will regularly conduct internal and external price check audits throughout all the stores. For every store that fails two consecutive external audits, Walgreens will have to pay a \$2,500 penalty to the state.

Source: Law360.com

#### **UBER SETTLES TWO CLASS ACTIONS WITH DRIVERS FOR UP TO \$100 MILLION**

Uber Technologies Inc. has settled two closely watched class actions with its drivers in California and Massachusetts for as much as \$100 million. The company agreed that the drivers will remain classified as independent contractors rather than employees. The "ride-hailing giant" has faced hurdles as the number of lawsuits challenging its business model and employment practices has grown. The mounting legal challenges have attacked a business model that's given Uber the flexibility it's needed to thrive, while allowing the company to dodge paying set wages and employee benefits since it exploded onto the scene in 2009 and quickly dominated the on-demand economy, experts have said.

Source: Law360.com

#### **A LOOK AT THE ROLE OF THE CPSC**

The U.S. Consumer Product Safety Commission (CPSC), an independent agency of the U.S. government, is charged with protecting the public from unreasonable risks of injury or death associated with the use of thousands of types of consumer products under the agency's jurisdiction. According to the

CPSC, deaths, injuries, and property damage from consumer product incidents cost the nation more than \$1 trillion annually. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical or mechanical hazard.

The Commission's work is to help ensure the safety of consumer products such as toys, cribs, power tools, cigarette lighters and household chemicals. According to the CPSC, its work contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 40 years. If you need more information on the CPSC, and how it operates, you can go to [www.cpsc.gov](http://www.cpsc.gov).

## **XXI. 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 April. 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. If so, contact Shanna at [Shanna.Malone@beasleyallen.com](mailto:Shanna.Malone@beasleyallen.com).

#### **FIAT CHRYSLER RECALLS 1.1 MILLION VEHICLES OVER ROLLAWAY ISSUE**

Fiat Chrysler Automobiles US LLC (FCA US) has recalled approximately 1.1 million mid-size SUVs and full-size cars worldwide over an issue in which vehicles may roll away after the driver has exited without fully engaging the "park" function, even though they may believe they have done so. The issue—which has led to 41 potentially related injuries to date—includes 811,586 vehicles in the United States, plus about 52,000 vehicles in Canada, 16,000 vehicles in Mexico and nearly 250,000 vehicles outside North America, affecting certain model-year 2012 to 2014 Dodge Charger and Chrysler 300 sedans and model year 2014 to 2015 Grand Cheep Cherokee SUVs, FCA US said in a statement.

The potential rollaways can occur when a driver leaves a vehicle without first selecting "park" and the engine is still running, according to an investigation by the automaker and the National

Highway Traffic Safety Administration (NHTSA). A driver may mistakenly believe a car is in the "park" position because the affected models contain electronic shift levers that return to the same position after each gear adjustment, the statement said.

FCA US, which hadn't provided a date of service availability at press time, said it will enhance warnings and "transmission shift strategy" on these models to "automatically prevent a vehicle from moving, under certain circumstances, even if the driver fails to select the park setting." No known evidence of equipment failure was detected in the cases that led to the 41 injuries, according to the automaker.

This recall announcement comes on the heels of various other recalls issued in recent months by the automaker, including one in February to supply vehicle owners with tire chocks for about 441,000 Dodge sedans, which reportedly caused several injuries when the jack wasn't placed in a specific position during tire changes; and a recall in October of 180,000 vehicles due to a potential fire hazard in Jeep Cherokees and a problem with the rear axle of Ram 1500 pickups.

The automaker has also been levied with huge fines in the past year, including a \$70 million penalty in December by NHTSA for its admission that it underreported key warning data to auto regulators, such as reports of deaths and injuries related to its vehicles. Last July, additionally, Fiat Chrysler US was hit with a \$105 million civil penalty by NHTSA, the largest fine ever issued by the regulator, for failing to complete 23 recalls covering more than 11 million vehicles—a penalty that included agreeing to oversight by federal monitor for three years.

#### **HYUNDAI RECALLS 173,000 SONATAS TO FIX POWER STEERING**

Hyundai has recalled most 2011 Sonatas, its midsize sedan, to fix a glitch that could cause loss of power steering, potentially leading to a crash. Some 173,000 cars made from Dec. 11, 2009, to Oct. 31, 2010 are covered under the recall. Hyundai told the National Highway Traffic Safety Administration (NHTSA) that an electronic power steering circuit board can become damaged, resulting in loss of power steering. If that happens, the steering wheel can still be turned, but it will take a lot more effort, and could result in a crash. The problem



will be fixed by replacing the circuit board, the automaker told NHTSA in a filing.

#### **TESLA RECALLS 2,700 SUVs OVER SAFETY CONCERN**

Tesla Motors recalled 2,700 of its new Model X SUVs to fix a latch it said may allow the third row of seats to snap forward during collisions. The automaker said it knows of no accidents where the latch malfunctioned, but tests showed the possibility of failure. Until repairs are made, the company asked drivers to avoid carrying passengers in the third row. The all-electric, falcon-winged Model X, which costs \$81,200, is Tesla's latest vehicle. It debuted last fall after delays. At the time, CEO Elon Musk proclaimed it "the safest SUV ever." The recall is the first for the Model X. Futuris supplies seat backs to Tesla and will cover the cost of replacing the defective parts, according to Tesla. The automaker discovered the fault before its planned launch of the Model X in Europe. Seating was an obstacle in getting the Model X to market, but it was the second row that posed a design problem, according to Musk. Tesla's delivery of SUVs has been behind schedule, which Musk has blamed on a parts shortage.

#### **GM RECALLS ONE MILLION PICKUPS OVER SEAT BELT PROBLEM**

General Motors Co. has recalled more than one million Chevrolet Silverado and GMC Sierra 1500 pickups worldwide over concerns about their seat belts, the automaker announced Friday. GM said that it discovered through warranty data that the steel cable that connects the seat belt to the vehicle can separate over time as a result of it being repeatedly bent whenever the driver sits. The automaker noted that no crashes, injuries or fatalities connected to the issue have been reported. To fix the issue, GM said that dealerships will "enlarge the side shield opening, install a pusher bracket on the tensioner and if necessary, replace the tensioner assembly." Approximately 3,000 new vehicles in the U.S. that are still in the possession of dealerships will be repaired before being delivered to customers.

Approximately 900,000 vehicles are affected in the United States, although GM said that it is also recalling vehicles in other countries, including Canada and

Mexico as well as several countries in Latin America and the Middle East, for an approximate total of 1.04 million. "The cost of the recall is not expected to be significant and is covered within normal and customary warranty reserves," GM said.

#### **GM EXPANDS HEADLIGHT RECALL TO 180,504 MORE VEHICLES**

General Motors (GM) is expanding a recall of Buicks and Pontiacs with defective low-beam headlights to include 180,504 more vehicles, the automaker said today. The recall now covers 493,265 vehicles total. Of the additional vehicles, 159,584 are being recalled in the U.S. Those are the 2005 Buick LaCrosse and the 2007 Pontiac Grand Prix. The other 20,920 vehicles are being recalled in Canada. Those vehicles include the 2005 Buick Allure—the Canadian iteration of the LaCrosse. Overheating in the electrical center in affected vehicles causes intermittent or permanent failure of the low-beam headlights. The lights can either stop working as the vehicle is moving or fail to turn on altogether, GM spokesman Alan Adler said in an email. There are no injuries or crashes linked to this issue so far, he said. The automaker is working on a permanent solution, but customers can have the part replaced as a temporary solution at any GM dealership. The Detroit News reported on the recall.

#### **POLARIS RECALLS RZR RECREATIONAL OFF-HIGHWAY VEHICLES DUE TO FIRE HAZARD**

The U.S. Consumer Product Safety Commission (CPSC) in cooperation with Polaris Industries Inc., of Medina, Minn., announced a recall last month for about 133,000 Polaris Model Year 2013-2016 RZR 900 and RZR 1000 recreational off-highway vehicles (ROVs). The recalled ROVs can catch fire while consumers are driving, posing fire and burn hazards to drivers and passengers. Consumers were warned to stop using these recreational vehicles immediately and contact their Polaris dealer for a free repair. Polaris agreed to voluntarily suspend sale of all recalled vehicles until they are repaired.

Polaris has received more than 160 reports of fires with the recalled RZR ROVs, resulting in one death of a 15-year-old passenger from a rollover that resulted in a fire and 19 reports of injuries, including first-, second- and third-degree burns. You can visit [www.polaris.com](http://www.polaris.com)

to determine if your RZR ROVs VIN number is included in this recall.

The VIN is normally located on the driver's side rear frame rail, above the PVT cover. Check your Owner's Manual if you have any difficulty locating the VIN. VINs are not sequential and not all VINs in the ranges above are included in this recall. To determine if a specific ROV is included in this recall visit [www.polaris.com](http://www.polaris.com) and click on "Off-Road Safety Recalls" under the "Rider Community" heading on the main page of the Polaris website. The ROVs were sold at Polaris dealers nationwide from July 2012 through April 2016 for between \$16,000 and \$26,000.

The ROVs were manufactured in the United States and Mexico and imported and distributed by Polaris. Due to the serious risk of injury, owners and riders should stop using these recalled vehicles immediately. Repairs will start on April 22. To schedule a free repair, consumers should call their local Polaris dealer. Contact Polaris at 800-POLARIS or 800-765-2747 from 8 a.m. to 9 p.m. CT Monday through Friday and 9 a.m. to 5 p.m. CT Saturday and Sunday or online at [www.polaris.com](http://www.polaris.com) and click on "Off-Road Safety Recalls" on the main page of the Polaris website.

Source: CPSC

#### **YTL INTERNATIONAL RECALLS DRYWALL LIFTS DUE TO INJURY HAZARD**

YTL International, of Cerritos, Calif., has recalled about 17,000 Drywall lifts. The drywall lifts can fail during use causing the load of drywall to fall onto the lift operator, posing an injury hazard. This recall involves YTL drywall lifts used for lifting sheets of drywall. The metal lifts are red, have three 30 inch legs with casters at the base, horizontal bars at the top to hold the drywall and a telescoping post that can extend vertically to a height of 11 feet using the manual crank. The recalled drywall lifts have a label on the vertical mast stating "PERFORMANCE BUILT," "MUD BOSS" OR "150 LB. DRYWALL PANEL HOIST." The company has received two reports of the drywall lifts failing and dropping their load. No injuries have been reported.

The lifts were sold at Lowe's, Menards and Orgill Inc. stores nationwide from January 2013 through January 2016 for about \$250. Consumers should immediately stop using the recalled drywall lifts and contact YTL for a postage paid shipping label to ship them to YTL for a full

refund. Contact YTL International toll-free at 888-723-6534 from 9 a.m. to 4:30 p.m. PT Monday through Friday, or online at [www.ytlinternational.com](http://www.ytlinternational.com) and click on RECALL for more information. Photos available at <http://www.cpsc.gov/en/Recalls/2016/YTL-International-Recalls-Drywall-Lifts/>

#### **BLACK DIAMOND RECALLS TO INSPECT CARABINERS DUE TO FALL HAZARD**

About 1.6 million Black Diamond Carabiners for Climbing have been recalled by Black Diamond Equipment Ltd., of Salt Lake City, Utah. The carabiner can unexpectedly open and allow the rope to become detached, posing a risk of injury or death to climbers from a fall. This recall involves 16 models of Black Diamond brand carabiners with manufacturing date codes between 4350 and 6018. "Black Diamond" or the Black Diamond logo is printed on the front of the carabiners. The manufacturing date code is printed on the side of the carabiners. All carabiner colors are included in the recall. They were sold individually or as part of a climbing gear set.

The carabiners were sold by Eastern Mountain Sports, The Gear Coop, Hansen Mountaineering, REI and other specialty outdoor stores nationwide and online at [Backcountry.com](http://Backcountry.com), [BlackDiamond.com](http://BlackDiamond.com) and [Bouldering.com](http://Bouldering.com) from December 2014 to January 2016 for between \$6 and \$15. Consumers should immediately stop using the recalled carabiners and contact Black Diamond for instructions on inspecting and returning the product for a free replacement. Instructions are also available on the firm's website. Contact Black Diamond at 800-755-5552 from 8 a.m. to 5 p.m. MT Monday through Friday or online at <http://blackdiamondequipment.com> and click on "Recall for Inspection: Carabiner & Quickdraws" for more information on inspecting the product. Consumers can also email the company at [warranty@bdel.com](mailto:warranty@bdel.com). Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Black-Diamond-Recalls-to-Inspect-Carabiners/>.

#### **FISHER-PRICE RECALLS INFANT CRADLE SWINGS DUE TO FALL HAZARD**

About 34,000 Cradle 'n Swings have been recalled. When the seat peg is not fully engaged the seat can fall unexpectedly, posing a risk of injury to the child. This recall includes three models of the Fisher-Price cradle swings: CHM84

Soothing Savanna Cradle 'n Swing, CMR40 Sweet Surroundings Cradle 'n Swing, and CMR43 Sweet Surroundings Butterfly Friends Cradle 'n Swing. The swings have two different swinging motions—rocking side-to-side, or swinging head-to-toe, and six different swing speeds from low to high. The product number is located on the seat under the pad. Fisher-Price has received two reports of a seat peg coming out from the seat, causing the seat to fall. No injuries have been reported.

The swings were sold at buybuyBaby, Target and other stores nationwide and online at [Amazon.com](http://Amazon.com) and other websites from November 2015 through March 2016 for about \$170. Consumers should immediately stop using the recalled cradle swing and contact Fisher-Price for revised assembly instructions. Contact Fisher-Price at 800-432-5437 from 9 a.m. to 6 p.m. ET Monday through Friday, or online at [www.service.mattel.com](http://www.service.mattel.com) and click on Recalls & Safety Alerts for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Fisher-Price-Recalls-Infant-Cradle-Swings/>

#### **STAPLES RECALLS BACK IN MOTION OFFICE CHAIRS DUE TO FALL HAZARD**

Staples the Office Superstore LLC, of Framingham, Mass., has recalled about 2,000 "Back in Motion" Office Chairs. The chair can tip over when leaning back, posing a fall hazard. This recall involves Staples and Quill brand "Back in Motion" office chairs. The black, bonded leather chair has a tilt function and a base with wheels. The chairs have SKU # 203439 and item number SBG 24422 printed on the white label on the underside of the seat cushion. A second label, also located on the underside of the seat cushion, states "Reg. No. CA31704 (CN)" and "Made by LF Products PTE LTD."

The chairs were sold at Staples stores nationwide and online at [Staples.com](http://Staples.com) and [Quill.com](http://Quill.com) from January 2014 through January 2016 for about \$215. Consumers should immediately stop using the recalled office chair and contact Staples for a free replacement base. Contact Staples toll-free at 844-442-6980 from 8 a.m. to 5 p.m. PT Monday through Friday or online at [www.staples.com](http://www.staples.com) and click on the Warranty & Recall link under the Customer Service tab at the bottom of the page for more information. Consumers can also register for the recall at [www.officechairrecall.com](http://www.officechairrecall.com). Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Staples-Recalls-Back-in-Motion-Office-Chairs/>

[gov/en/Recalls/2016/Staples-Recalls-Back-in-Motion-Office-Chairs/](http://www.cpsc.gov/en/Recalls/2016/Staples-Recalls-Back-in-Motion-Office-Chairs/)

#### **BLACK DIAMOND RECALLS NYLON RUNNERS DUE TO FALL HAZARD**

Black Diamond Ltd., of Salt Lake City, Utah, has recalled its Nylon Runners. A nylon runner with a tape splice (two cut ends joined by masking tape) will fail in normal use, posing a risk of death or injury due to a fall. This recall involves Black Diamond 18 mm wide nylon runners that are 60 cm/24 inch or 120 cm/48 inches long that have a tape splice (two cut ends joined by masking tape). The nylon runners were sold in red, blue, gold, green, gray and purple. "CE 0333" and 2014 or 2015 are printed on the sewn-in label.

The runners were sold at Eastern Mountain Sports, Hansen Mountaineering, The Gear Coop, Peak Experiences Inc., REI and other specialty outdoor stores nationwide and online at [Backcountry.com](http://Backcountry.com) and [BlackDiamond.com](http://BlackDiamond.com) from January 2014 through February 2016 for between \$5 and \$9. Consumers should immediately stop using the recalled nylon runners, inspect for the presence of a tape splice and contact Black Diamond for instructions on obtaining a free replacement nylon runner. Contact Black Diamond at 800-775-5552 from 8 a.m. to 5 p.m. MT Monday through Friday or online at <http://blackdiamondequipment.com> and click on "Recall for Inspection: Nylon Runners" for more information. Consumers can also email the firm at [warranty@bdel.com](mailto:warranty@bdel.com). Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Black-Diamond-Recalls-Nylon-Runners/>

#### **BRUNTON OUTDOORS RECALLS BATTERY PACKS DUE TO FIRE HAZARD**

Brunton Outdoor Inc., of Louisville, Colo., has recalled about 1,050 rechargeable battery packs in the U.S. and 40 that were sold in Canada. The power packs' lithium ion polymer batteries can overheat and catch on fire during charging, posing a fire hazard. This recall involves Brunton's Impel and Impel 2 rechargeable, portable battery packs that are used to charge cell phones, tablets, laptops and other devices. The Impel battery came in a rubberized shell in dark gray with orange or blue and the Impel 2 in light gray with black trim. The battery packs can be plugged into an A/C wall outlet, a 12-volt car charger or an attach-

able solar panel for recharging. They measure about 7.5 inches long by 7 inches wide by 1 inch thick. The lithium polymer battery packs have 16, and 19 volt outputs and a USB port. The Impel model also has a 12-volt output. Brunton is embossed on the top of the battery pack, along with the power button and five LED lights. The company has received two reports of battery packs overheating and catching on fire; with one incident resulting in about \$25,000 of property damage and another one in a garage burning down with property and smoke damage to the adjacent residence. No injuries have been reported.

The lights were sold by Adorama, Austin Canoe & Kayak, Moontrail, REI, The Clymb and other outdoor equipment retailers nationwide and online at [www.amazon.com](http://www.amazon.com), [www.backcountry.com](http://www.backcountry.com), [www.bhphotovideo.com](http://www.bhphotovideo.com), [www.forestry-suppliers.com](http://www.forestry-suppliers.com), and [www.opticsplanet.com](http://www.opticsplanet.com) from February 2011 through May 2015 for about \$300. Consumers should immediately stop using the recalled power packs and contact Brunton for instructions on how to return the product for a full refund. Contact Brunton Outdoor at 800-443-4871 from 10 a.m. to 7 p.m. ET Monday through Friday or online at [www.brunton.com](http://www.brunton.com) and click on Impel Charger Product Recall the top or bottom of the page for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Brunton-Outdoors-Recalls-Battery-Packs/>

#### **TOSHIBA RECALLS LAPTOP COMPUTER BATTERY PACKS DUE TO BURN AND FIRE HAZARDS**

About 91,000 Panasonic battery packs used in Toshiba laptop computers have been recalled by Toshiba America Information Systems Inc., of Irvine, Calif. The lithium-ion battery packs can overheat, posing burn and fire hazards to consumers. This recall involves Panasonic lithium-ion battery packs installed in 39 models of Toshiba Portege, Satellite, and Tecra laptops. The battery packs were also sold separately and also installed by Toshiba as part of a repair. Battery packs included in this recall have part numbers that begin with G71C (G71C\*\*\*\*\*). Part numbers are printed on the battery pack. A complete list of battery pack part numbers included in this recall can be found on the company's website at <http://go.toshiba.com/battery>. The company has received four reports of the battery packs overheating and melting. No injuries have been reported.

The batteries were sold at Office Depot, Staples and other electronics stores nationwide, and online at [Toshiba-direct.com](http://Toshiba-direct.com) and other websites from June 2011 through January 2016 for between \$500 and \$1,000 for the laptop and between \$70 and \$130 for the battery pack. Consumers should immediately go to the company's website and click on the battery pack utility link in the first shadowed box on the page. Consumers can also perform a manual check using the laptop and battery pack's model, part and serial numbers. If it is part of the recall, consumers should power off the laptop, remove the battery and follow the instructions to obtain a free replacement battery pack. Until a replacement battery pack is received, consumers should use the laptop by plugging into AC power only. Toshiba America Information Systems Inc. toll-free at 866-224-1346 any day between 5 a.m. and 11 p.m. PT, online at <http://go.toshiba.com/battery> or at [www.us.toshiba.com](http://www.us.toshiba.com) and click on "Consumer Notices" under the Support heading at the bottom of the page. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Toshiba-Recalls-Laptop-Computer-Battery-Packs/>

#### **CE NORTH AMERICA EXPANDS RECALL OF FAN HEATERS DUE TO FIRE HAZARD**

CE North America LLC, of Miami, Fla., has recalled about 8k,500 KUL fan heaters. This is in addition to about 28,000 that were recalled in February 2016. The fan heaters can overheat, posing a fire hazard. This recall involves KUL small, white portable fan heaters. The KUL logo is printed on the front bottom of the heaters next to the power dial. The fan heater measures about 9 inches long by 5 inches wide by 10.5 inches tall. The fans weigh about two pounds. An adhesive label is on the bottom of the heater with model number "KU39221" and "Date: 0715" in the lower right-hand corner. KUL black units were involved in the previous recall. CE North America has received one consumer report of the fan heaters overheating and catching on fire. No injuries or property damage have been reported.

The heaters were sold exclusively at H-E-B grocery stores in Texas from September 2015 through December 2015 for about \$15. Consumers should immediately stop using the recalled fan heaters and contact CE North America for instructions on returning the recalled heaters with a prepaid shipping label. The company will issue a refund check

upon receipt of the returned fan heaters. Contact CE North America toll-free at 844-645-3208 from 8:30 a.m. to 5:30 p.m. ET Monday through Friday, email at [productrecall@cemglobal.com](mailto:productrecall@cemglobal.com) or online at [www.cemglobal.com](http://www.cemglobal.com) and click on the "Product Recall" link at the bottom of the page for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/CE-North-America-Expands-Recall-of-Fan-Heaters/>

#### **COLEMAN RECALLS FLASHLIGHTS DUE TO FIRE HAZARD**

About 8,500 Coleman® CTAC Lithium-Ion Flashlights have been recalled by Kaper Industrial LTD, of Hong Kong, China. The lithium-ion batteries can overheat, posing a fire hazard to consumers. The recall involves three models of Coleman® CTAC Lithium-Ion Flashlights. Models include CTAC20 (model 2000013874), CTAC40 (model 2000013873) and CTAC60 (model 2000013872). The flashlights are black, with "Coleman" printed in white along the handle and have the model number in white print on the upper portion of the handle next to the light. The flashlights are 6.5 inches long. The lithium-ion batteries inside the flashlights are red with the Coleman logo printed in white on the battery. Coleman has received two reports of the flashlight batteries overheating, catching fire and causing minor property damage. No injuries have been reported.

The flashlights were sold at Academy Sports + Outdoors, Green Supply, Sportsman's Supply Company and sporting goods stores nationwide and online at [www.coleman.com](http://www.coleman.com) and [www.amazon.com](http://www.amazon.com) from January 2014 through August 2015 for between \$65 and \$75. Consumers should immediately stop using the recalled flashlights and contact Coleman for instructions on returning the flashlights for a full refund. Contact Coleman at 800-835-3278 from 7 a.m. to 5 p.m. CT Monday through Friday, email at [consumerservice@coleman.com](mailto:consumerservice@coleman.com) or online at [www.coleman.com](http://www.coleman.com) and click on "Safety Information" under the "Customer Support" tab at the bottom of the page and then click on "CTAC Lithium-Ion Flashlight Recall" for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Coleman-Recalls-Flashlights/>

**GOLFBUDDY GPS BANDS RECALLED BY DECA INTERNATIONAL DUE TO BURN HAZARD**

About 3,000 GolfBuddy golf GPS bands have been recalled by Deca International Corp., dba GolfBuddy, of La Palma, Calif. The band charging ports can produce an electrical charge to exposed skin, posing a burn hazard to consumers. This recall involves GolfBuddy BB5 golf GPS LED bands. The band is a wearable GPS unit that operates as a pedometer, distance monitor and watch and comes preloaded with golf course information. It is made of plastic with a stainless steel casing, has a LED display screen and a two-pronged connector at the end for closure. The display screen is flush with the top side of the band and has four buttons on the perimeter of the band. The wristband is about one inch wide and comes in black with interchangeable wristbands in large and small sizes and in the colors lime, navy and orange. GolfBuddy is molded on the outer part of the band. The model BB5 is on the back of the recalled unit below the charging port. Recalled units do not have a yellow round sticker on the front and on the packaging. The firm has received two reports of consumers being burned.

The bands were sold at PGA Tour Superstore, The Golfer's Warehouse, Worldwide Golf Shops and other authorized golf dealers nationwide and online at [www.amazon.com](http://www.amazon.com) and [www.golfbuddyglobal.com](http://www.golfbuddyglobal.com) from April 2015 through January 2016 for about \$250. Consumers should immediately stop using the recalled golf wristbands and contact GolfBuddy for instructions on how to update the unit with the latest firmware, also available in the company's website. Contact GolfBuddy toll-free at 888-251-6058 from 8:30 a.m. to 5:30 p.m. PT Monday through Friday or online at [www.golfbuddyglobal.com](http://www.golfbuddyglobal.com) and click on Recall Information link at the bottom of the homepage for more information. Photos Available at <http://www.cpsc.gov/en/Recalls/2016/GolfBuddy-GPS-Bands-Recalled-by-Deca-International/>

**GAMEWELL-FCI RECALLS FIRE ALARM PANELS**

About 1,000 Gamewell-FCI fire alarm panels (ILI-MB-E3 and ILI-S-E3) have been recalled by Gamewell-FCI of Northford, Conn. When configured in a certain way, the panels can become non-responsive and connected detectors in the area can fail to detect and respond to an alarm. This recall is for the ILI-MB-E3

and ILI-S-E3 Gamewell-FCI fire alarm panels in commercial buildings. This issue is limited to a specific configuration of Signaling Line Circuit (SLC) devices. To occur, the SLC must include at least two of the following detectors in any combination: Acclimate, 4-Warn, Photo/CO and iFAAST. The issue would occur only if the detectors are addressed within the same FlashScan polling group. Detectors installed in a different combination are not affected. No incidents or injuries have been reported.

The panels were sold at Authorized distributors from May 2015 through August 2015 for about \$800. Consumers should immediately contact the distributor to obtain the free repair, a firmware upgrade. Contact Gamewell-FCI at 800-274-4324 from 7 a.m. to 7 p.m. ET Monday through Friday or online at [www.gamewell-fci.com](http://www.gamewell-fci.com) and click on "Safety Recall" for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Gamewell-FCI-Recalls-Fire-Alarm-Panels/>

**IVANKA TRUMP SCARVES RECALLED BY GBG ACCESSORIES GROUP DUE TO VIOLATION OF FEDERAL FLAMMABILITY STANDARD**

About 20,000 Women's Scarves have been recalled by GBG Accessories Group (formerly LF Accessories Group, LLC), of New York. The scarves do not meet the federal flammability standards for clothing textiles, posing a burn risk. This recall involves two styles of Ivanka Trump-branded scarves, Beach Wave, in blue, coral and yellow; and Brushstroke Oblong, in blue, red, neutral and green. Both scarves are 76 inches long by 24 inches wide. Scarves are 100 percent rayon with a machine-rolled hem. A black label with "IVANKA TRUMP" embroidered in silver is sewn on the edge of the scarves.

The scarves were sold at Century 21, Lord & Taylor, Marshalls, TJ Maxx and Stein Mart retail stores nationwide, and online at [amazon.com](http://amazon.com) and [loehmanns.com](http://loehmanns.com) from October 2014 through January 2016 for between \$12 and \$68. Consumers should immediately stop using the recalled scarves and return them to the place where purchased for a full refund. Consumers who purchased the scarves online will be contacted directly by online retailers with return instructions. Contact GBG Accessories Group toll-free at 888-771-9047 between 9 a.m. and 5 p.m. ET Monday through Friday or via email at [IvankaTrumpRecall@globalbrandsgroup.com](mailto:IvankaTrumpRecall@globalbrandsgroup.com) for more information.

Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Ivanka-Trump-Scarves-Recalled-by-GBG-Accessories-Group/>

**RAINBOW PLAY SYSTEMS REANNOUNCES RECALL OF PLASTIC YELLOW TRAPEZE RINGS**

Nylacarb Corporation, of Vero Beach, Fla. and Child Works, of Carrollton, Ga. have recalled about 121,000 Plastic Trapeze rings. The rings can unexpectedly crack or break during use, posing a fall hazard to children. This recall involves only the yellow plastic trapeze rings. They are triangular in shape with rounded sides and have a loop at the top. They measure about 8½ inches high by 6½ inches wide. The yellow rings come as a pair and were connected to a trapeze bar. They were sold either as a separate component or as an attachment on the following Rainbow®-branded residential wooden playsets: All-American, Backyard Circus, Carnival, Fiesta, King Kong, Monster, Sunray, Sunshine and Rainbow. All of these playsets have an aluminum plate located on the front of the wooden swing beam with the following name stamped on it, "Playgrounds America," "Rainbow Play Systems Inc.," or "Sunray Premium Playgrounds." Rainbow has received more than 100 reports of the rings cracking or breaking, including 15 with reports of injuries consisting of bumps, bruises, lacerations, concussion and one broken finger.

The rings were Sold at Rainbow dealers nationwide from January 2007 through December 2011 and at several mass merchandisers including Sam's Club, Toys R Us and Walmart from January 2009 through December 2009. The playsets retailed for between \$900 and \$10,000. Consumers should immediately stop children from using the recalled rings, contact Rainbow for ring removal instructions, then remove the rings from the playset and receive a \$10 gift card. Contact Rainbow Play Systems toll-free at 888-201-1570 from 8 a.m. to 5 p.m. CT Monday through Friday or online at [www.rainbowplay.com](http://www.rainbowplay.com) and click on the Recall tab located on the top menu bar for more information. Photos Available at <http://www.cpsc.gov/en/Recalls/2016/Rainbow-Play-Systems-Recalls-Plastic-Yellow-Trapeze-Rings/>



**BOSTON SCIENTIFIC RECALLS DEVICE AFTER  
PIECES BROKE OFF IN PATIENTS**

Boston Scientific, the state's largest medical device company, has launched a product recall following reports that parts of its medical device broke off and lodged within some patients. Marlborough-based Boston Scientific said the recall of the Chariot Guiding Sheath is voluntary and was enacted three weeks ago, on Nov. 19. The Food and Drug Administration (FDA) has classified the move as a Class 1 recall, the most serious type which can lead to death or serious injury. The device is a long, hollow catheter through which even thinner devices can be inserted in medical procedures to diagnose or treat blockages of the blood vessels or other conditions.

The company says it has received 14 complaints in which the catheter's shaft separated from the insertion device. Four of those separations occurred on the end that's inserted into the patient's body. No permanent injuries or patient deaths have been reported, the company said.

To date, there have been 21 reports regarding the company's Chariot device on the FDA's website concerning adverse events related to medical devices. Those results span from June 15 (shortly after the product was approved for use by the FDA on June 9) through Nov. 24. The company said in the statement:

*The most severe outcome of this failure is embolism of device fragments, which could lead to obstruction of blood flow or additional intervention to remove a device fragment. Obstruction of blood flow can result in injuries such as stroke, kidney damage or damage to the intestines or limbs.*

The recall appears to be the second this year for the company, after none for all of last year, according to the FDA's list of recalls. The company recalled its RotaWire Elite Guidewire device in March. It's used to open narrowed arteries. Parts of the wire can break off inside the patient. That recall was also classified at Class 1, and resulted in one patient death following a medical intervention to remove the broken wire, according to the FDA.

**REANNOUNCEMENT OF FISKARS RECALL OF  
BYPASS LOPPER SHEARS**

About 277,000 Fiskars® 32-Inch Bypass Lopper Shears have been recalled by

Fiskars Brands Inc., of Madison, Wis. The lopper handles can break when attempting to cut branches, posing a risk of serious injury and laceration. This recall involves Fiskars Titanium Bypass Lopper shears with model number 6954. The lopper shears have 32-inch dark orange steel handles and black rubber grips with a gray strip. Plastic gears connected to the pruning blades allow the consumers to open and close the pruning blades by moving the handles. "FISKARS" is printed on one handle and product identification information, including model number 6954, is printed on a label on the opposite handle above the barcode. The company has received a total of 33 reports of incidents, of which 10 occurred after the October 2014 recall announcement. The reports include pinched fingers, bruising and injuries to the head and face, some required stitches.

They were sold exclusively at Home Depot stores nationwide and online at HomeDepot.com from May 2011 through June 2014 for about \$40. Consumers should immediately stop using the recalled lopper shears and contact Fiskars to receive a free replacement lopper. Contact Fiskars toll-free at 855-544-0151 anytime or visit Fiskars' website at [www2.fiskars.com](http://www2.fiskars.com) and click on "Product Notifications" for more information.

**ACADEMY SPORTS + OUTDOORS RECALLS  
MARINADE INJECTORS DUE TO INGESTION HAZARD**

Academy, Ltd. d/b/a Academy Sports + Outdoors, of Katy, Texas, has recalled about 3,500 Outdoor Gourmet® marinade injectors. The injectors can have small metal shavings left inside during the manufacturing process. The metal shavings can be deposited into the marinade during use and ingested by consumers. This recall involves Outdoor Gourmet® marinade injectors. They are stainless steel, measure about six inches in length and have three metal rings at the top. "Outdoor Gourmet," "6-inch stainless steel injector," style number BGOG0047, UPC 400216227091 and the following date codes are printed on the product packaging.

| Date Codes for Marinade Injectors |               |               |
|-----------------------------------|---------------|---------------|
| 06/15-2549000                     | 06/15-2549319 | 06/15-2549203 |

Academy Sports + Outdoors has received one report of small metal shavings coming out of the product on first use. No injuries have been reported. The injectors were sold exclusively at: Academy Sports + Outdoors stores nationwide and online at [www.academy.com](http://www.academy.com) from September 2015 through December 2015 for about \$20. Consumers should immediately stop using the recalled marinade injectors and return them to any Academy Sports + Outdoors store for a full refund or a free replacement marinade injector. Contact Academy Sports + Outdoors toll-free at 888-922-2336 from 7 a.m. to 12 a.m. CT, [customerservice@academy.com](mailto:customerservice@academy.com), or online at [www.academy.com](http://www.academy.com) and click on the "Product Recall Info" link under "Stores + Services" for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Academy-Sports-Outdoors-Recalls-Marinade-Injectors/>

**ROLLERBLADE USA RECALLS HELMETS DUE TO  
HEAD INJURY HAZARD**

Rollerblade USA, of West Lebanon, N.H., has recalled about 500 Rollerblade inline skating helmets. The helmet's plastic shell can crack where the straps attach, causing the helmet to shift and move on the wearer's head. This can result in a head injury hazard to the user in the event of a fall. This recall involves black Rollerblade brand Maxxum helmets. "Rollerblade" is printed on the side of the helmet, a white inline skate logo is printed on the back of the helmet and a label on the inside of the helmet contains the model number "YJ-219" and production date of October 2014 or earlier. The SKU number 06520210100 is printed on the helmet's box.

The helmets were sold at Inline Warehouse, Paragon Athletic Goods, Summit Sports and other sporting goods stores and Rollerblade helmet dealers nationwide and online at [www.amazon.com](http://www.amazon.com), [www.inlineskates.com](http://www.inlineskates.com), [www.inlinewarehouse.com](http://www.inlinewarehouse.com) and [www.rollerblade.com](http://www.rollerblade.com) from November 2014 through January 2016 for about \$60. Consumers should immediately stop using the recalled helmets and contact the company for instructions on receiving a full refund. Contact Rollerblade USA at 800-232-7655 from 8:30 a.m. to 5 p.m. ET Monday through Friday, email at [RCS@Rollerblade.com](mailto:RCS@Rollerblade.com) or online at [www.rollerblade.com](http://www.rollerblade.com) and click on Product Recall for more information. Photos Available At <http://www.cpsc.gov/en/>

**FETCH™ 2 ASPIRATION CATHETER RECALLED**

Boston Scientific has initiated a global, voluntary recall of all models of its Fetch™ 2 Aspiration Catheter, a thrombectomy catheter used during procedures to remove small blood clots from coronary arteries. The Fetch 2 catheters were recalled on March 22, 2016, due to complaints of shaft breakage. The U.S. Food and Drug Administration (FDA) classified the action as a Class 1 recall. This recall designation means that the use of the device exposes the patient to a reasonable chance of a serious adverse health consequence or death. There have been no reports of patient injury or death, and there is no risk to patients who previously underwent a thrombectomy procedure with the Fetch 2 catheter. All reports of shaft breakage happened during the procedure, and the broken section was either removed while still partially attached to the catheter shaft or retrieved with a snare, without further patient complications. While unreported, the most severe potential outcome of this breakage is embolism of device fragments, which could lead to obstruction of blood flow or additional intervention to remove a device fragment surgically.

As part of the recall, all affected health care facilities were advised to discontinue use of all Fetch 2 catheters immediately and return unused product to Boston Scientific. Because Boston Scientific acquired the Fetch 2 catheter product line from Bayer Medical Care Inc., all recalled inventory is packaged and labeled as Bayer product. This device was manufactured between June 11, 2014, and Feb. 19, 2016. There are currently 21,155 devices on the market subject to this recall.

|                          |
|--------------------------|
| Fetch 2 Catheter UPNs    |
| FETCH2 US 109400-001     |
| FETCH2 OUS 109400-002    |
| FETCH2 Canada 109400-003 |
| FETCH2 Japan 109400-004  |
| FETCH2 EU 109400-005     |

Physicians and health care facilities can direct questions to their Boston Scientific representative or call 1-800-811-3211. Adverse reactions or quality problems experienced with the use of this product may be reported to the FDA

MedWatch Adverse Event Reporting program either online, by regular mail or by fax. Complete and submit the report Online: [www.fda.gov/medwatch/report.htm](http://www.fda.gov/medwatch/report.htm) Regular Mail or Fax: Download form [www.fda.gov/MedWatch/getforms.htm](http://www.fda.gov/MedWatch/getforms.htm) or call 800-332-1088 to request a reporting form, then complete and return to the address on the pre-addressed form, or submit by fax to 800-FDA-0178. Health care professionals and consumers may report serious adverse events or product quality problems with the use of this product to Boston Scientific by calling 800-811-3211 and to the FDA's MedWatch Adverse Event Reporting program either online, by regular mail, fax or phone.

**IKEA RECALLS CHILDREN'S BAT CAPE COSTUMES DUE TO STRANGULATION HAZARD**

About 11,000 Children's LATTJO Bat Cape Costumes have been recalled by IKEA North America Services LLC, of Conshohocken, Pa. The fabric hook and loop fastener at the neck of the bat cape can fail to detach readily during use, posing a strangulation hazard to children. This recall involves IKEA children's bat cape costumes. The capes are black with gray stripes, 100 percent polyester, measure 30 inches long by 57 inches wide and have a fabric hook and loop fastener closure at the neck. IKEA, LATTJO and numbers 60311650 and 18937 are printed on a white label sewn into the seam of the cape. IKEA has received three reports outside of the United States of the fabric hook and loop fastener at the neck of the costume failing to detach readily and scratching children's necks.

The capes were sold exclusively at: IKEA stores nationwide and online at [www.ikea-usa.com](http://www.ikea-usa.com) from November 2015 through February 2016 for about \$13. Consumers should immediately take the recalled bat capes away from children and return the capes to any IKEA store for a full refund. Contact IKEA toll-free at 888-966-4532 anytime or online at [www.ikea-usa.com](http://www.ikea-usa.com) and click on Press Room at the bottom of the page, then Product Recalls for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/IKEA-Recalls-Childrens-Bat-Cape-Costumes/>

**MANHATTAN TOY RECALLS TABLE TOP TOYS DUE TO CHOKING HAZARD**

About 2,100 Busy Loops table top toys have been recalled by The Manhattan

Toy Company of Minneapolis. The round plastic beads can break, posing a choking hazard. Busy Loops table top toys have orange, green, blue and purple plastic tubing with plastic beads threaded on the tubing that can slide up and down. The tubes sit on a blue plastic base with an orange plastic suction cup. The toy is about 4.5" W x 4.5" L x 7" H. The model number 700470 and lot code FH are printed on the bottom of the blue base. The firm has received two reports of beads breaking off the toy. No injuries have been reported.

The toys were sold at BuyBuy Baby and other toy stores nationwide, and online at Amazon.com and Kohls.com from September 2015 through January 2016 for about \$15. Consumers should immediately stop using the recalled toy and return it to the store where it was purchased or contact Manhattan Toy for a full refund. Contact Manhattan Toy Company at 800-541-1345 from 9 a.m. to 5 p.m. CT Monday through Friday or online at [www.manhattantoy.com](http://www.manhattantoy.com) and click on Recalls for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Manhattan-Toy-Recalls-Table-Top-Toys/>

**MINILAND EDUCATIONAL RECALLS MOOGY PLUSH TOY DUE TO CHOKING HAZARD**

About 2,000 Moogy plush toys have been recalled by Miniland Educational Corp., of Miami, Fla. The red button on the Moogy plush toy's left pocket can detach, posing a choking hazard to young children. This recall involves Moogy plush fastening toys for toddlers between 12 and 36 months of age. The toy has zippers, buttons, buckles and laces. The Moogy toy has a blue and green face, red ears, a blue jacket with a red zipper, pink/red striped pants and pink and orange shoes with polka dots. Moogy measures about 18 ½ inches tall. "Miniland," item number R.96295 and lot number 0115 1402813 085 are printed on a white tag sewn into the toy's pants. Miniland has received one report of the button on the pocket falling off when a baby was playing with the toy.

The toys were sold at specialty toy stores nationwide and online at Amazon.com, Gilt.com, HighlightsforChildren.com, ToysRUs.com and Zulily.com from July 2015 through February 2016 for about \$33. Consumers should immediately take the recall toy away from children and contact Miniland Educational for instructions on cutting off the button to remove the hazard in order to receive

a full refund. Contact Miniland Educational toll-free at 866-201-9069 from 8 a.m. to 5 p.m. ET Monday through Friday, or online at [www.minilandeducation-alusa.com](http://www.minilandeducation-alusa.com) and click on "Products," then on "Safety Information" in the dropdown menu for more information. Photos Available At <http://www.cpsc.gov/en/Recalls/2016/Miniland-Educational-Recalls-Moogy-Plush-Toys/>

#### **FLYING TIGER COPENHAGEN RECALLS WOODEN TOYS DUE TO CHOKING HAZARD**

About 1,000 Wooden Toy Blocks and Giraffes have been recalled by Flying Tiger Copenhagen of New York. Parts of the wooden toys can become detached, resulting in small pieces that can pose a choking hazard to young children. This recall involves Flying Tiger Copenhagen wooden blocks and wooden giraffe toys. The Twist & Lock blocks were sold in a combination of blue, green and yellow and red, pink and yellow. Item number 1701354 is printed on the packaging for the blocks. The Twist & Lock giraffe toys were sold in pink and red combination and a yellow and orange combination. Item number 1701493 is printed on the packaging for the giraffe.

The toy blocks were sold exclusively at Flying Tiger Copenhagen in New York from November 2015 through December 2015 for about \$3. Consumers should immediately take the recalled toys from young children and return the products to Flying Tiger Copenhagen for a full refund. Contact Flying Tiger Copenhagen toll-free at 844-350-0560 from 7:30 a.m. to 5 p.m. ET Monday through Friday or online at [www.flyingtiger.com](http://www.flyingtiger.com) and click on "Product Recalls" at the bottom of the page. Photos Available at <http://www.cpsc.gov/en/Recalls/2016/Flying-Tiger-Copenhagen-Recalls-Wooden-Toys/>

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 we believe to be 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.Beasley-Allen.com](http://www.Beasley-Allen.com) or [www.RightingInjustice.com](http://www.RightingInjustice.com). As stated at the outset, 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, you can contact Shanna Malone at [Shanna.Malone@beasleyallen.com](mailto:Shanna.Malone@beasleyallen.com) for more recall information or to supply us with information on recalls.

## **XXII. FIRM ACTIVITIES**

### **LABARRON N. BOONE**

LaBarron Boone, who joined the firm in 1995, has successfully handled a tremendous number of individual cases involving defective products. His work in the Personal Injury/Products Liability Section has been primarily dealing with automobile cases involving defective products. LaBarron handled a wide variety of cases involving crashworthiness, seatbelt restraint systems, inadvertent airbag deployments, tractor rollover litigation, and tire tread separation. One of LaBarron's most notable verdicts was a multi-million-dollar verdict in the case of *Carolynne Thorne v. Wal-Mart Stores* tried in Montgomery Co. This trial extensive coverage in the *Wall Street Journal* and other national media outlets.

LaBarron received the 2003 University of Alabama Black Law Student Association Alumni Honoree Award. He was the recipient of the "Chairman's Award of Excellence" presented by Montgomery County Democratic Committee. On Sept. 22, 2005, LaBarron was the first ever recipient of the "Hands for Children" Award, presented to him at the Children's Advocacy Center in Montgomery, Ala.

LaBarron serves on the Central Alabama Community Foundation Board of Trustees (CACF), which is one of the largest charitable foundations in the state of Alabama, with assets exceeding \$27 million. In 2007 LaBarron received Beasley Allen's Litigator of the Year Award. In 2009 he was given the Resurrection Catholic Mission's "Truth & Charity Award" for his exemplary and extraordinary support of the Mission Center.

Prior to deciding on a career in law, LaBarron graduated from Auburn University in Industrial Engineering. That has served him well in Product Litigation. He is involved in many community and social activities. He serves on the Cleveland Avenue YMCA Board of Management, the Resurrection Catholic Church Board of Trustees, Child Protect Board of Trustees, the Dexter Avenue King Memorial Foundation, and on the board of Medical Outreach Ministries. LaBarron was selected to serve in 2011 on the Alabama State University Presidential Search Committee, and he must recently served on the Alabama State University 2013 Presidential Search Committee.

LaBarron is married to the former Lori David and they have two children, Micah

and Logan. They are members of Christ Community Church. LaBarron is a talented lawyer who has been responsible for helping lots of folks who badly needed help. He is extremely compassionate about his clients and their cases. LaBarron has been a very important part of our firm's success. We are blessed to have him in our firm.

### **LARRY A. GOLSTON**

Larry Golston, a lawyer in the firm's Consumer Fraud and Commercial Litigation Section, is a native of Birmingham, Ala. 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. Larry is a graduate of the University of Alabama School of Law. He served as a judicial law clerk for the Circuit Judge James P. Smith of the 23<sup>rd</sup> Judicial Circuit in Madison County, Ala. Larry also served as a law clerk for the Sue Bell Cobb, when she was on the Alabama Court of Criminal Appeals.

Larry joined Beasley Allen in 2000 and primarily handles litigation cases involving fraud, employment law, and business litigation. Currently, his practice is focused on whistleblower litigation, retaliation, wage & hour litigation, sexual harassment, employment discrimination, business fraud and class actions.

Recently, Larry helped, in cooperation with the U.S. Department of Justice (DOJ), to secure a \$30 million settlement agreement to resolve whistleblower allegations that private contractor U.S. Investigations Services, Inc. (USIS), formerly the Federal Government's largest provider of security background checks, violated the False Claims Act (FCA). This was in a most important and highly significant case.

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

Larry serves on the Board of Directors for the Montgomery YMCA-Bell Road Branch and regularly serves as a volunteer head coach for youth football and youth basketball with the YMCA. When not engaged in the busy practice of law, Larry also volunteers his time to speak to high school and grade school students about the law, the importance of getting a good post-secondary education, and the importance of the judicial branch of government.

Larry is married to Danielle Golston and they have a daughter Lauren and a son Kyle. The Golston family attends Northview Christian Church-Safe Harbor in Montgomery, Ala. Larry is a very good, hard-working lawyer who is dedicated to helping getting his clients obtain justice. We are blessed to have Larry with the firm.

#### **LISA HARRIS**

Lisa Harris has been with Beasley Allen for 25 years. She has been Executive Director for the Firm since 1998. She is responsible for the daily operations of the firm, including firm management, firm events, benefits, and human resources. Prior to that, she worked as a legal assistant to Tom Methvin, before he became Managing Attorney for the firm. Lisa worked with Tom for eight years and they tried a good number of Fraud cases together.

Lisa attended Auburn University Montgomery, where she earned a degree in Business Administration. One of Lisa's favorite activities is spending time with her daughter, Haley Henderson, her son-in-law, Jordan Henderson, and their daughter, Lillian. Her granddaughter is the apple of Lisa's eye I am told. Lisa also enjoys traveling, especially to the beach, any water activity, and bowling. Lisa has a tremendous job at Beasley Allen, one she handles extremely well. She keeps a huge operation going and has things in good order. To say that Lisa does an excellent job is an understatement. We are extremely blessed to have Lisa in this very important position with the firm.

#### **RACHEL ANDRESS**

Rachel Andress has been with the firm for a little over four years. She serves as a Staff Assistant to Navan Ward in our Mass Torts Section. In this position, she assists Navan and the legal assistants in ordering medical records, talking with clients, meeting case deadlines, reviewing case files, and working on numerous matters relating to the pending cases.

Rachel has a Bachelor's Degree in Marketing from Troy University Montgomery. She has a son Clay, who will be 8 years old on June 27. Rachel says Clay calls himself "The Lego Expert" and that he loves bike riding and playing video games. Rachel enjoys spending time with family, bike riding, crocheting, knitting and baking. Rachel is a very good employee who works hard and we are fortunate to have her with us.

#### **CHASE BARBER**

Chase Barber came to the firm in August 2015 as a Law clerk in our Con-

sumer Fraud and Commercial Litigation Section. His duties include document review, writing investigatory memoranda for lawyers, contacting clients, and helping draft complaints, motions, and other necessary legal documents.

Chase received his Bachelors in Science and Education from Delta State University. While at Delta State, he was on the Student Government Association as the Governmental Affairs Chairman, and was the bridge between the students and the congressional body of Mississippi. While there Chase was also inducted into both the Pi Gamma Mu International Honor Society for excellence in social sciences, as well as Phi Alpha Theta National Honor Society for excellence in history.

Currently, Chris is attending Thomas Goode Jones School of Law, and will graduate this May. Chase is a senior editor on the Faulkner Law Review, a senior member of the Board of Advocates, Secretary for the Federalist Society, 3L Justice for the Student Honor Court, Faulkner Law Academic Success Dean Fellow, a member of Phi Alpha Delta Legal Fraternity, and Dean's List recipient from 2014-2015 (2L year and 3L fall semester, spring is still pending).

While in law school Chase has had numerous clerkships and jobs that have helped him further his legal career. Chase started his current position with Beasley Allen in August of 2015 and he is still with us.

Chase and his wife, Sarah, were married on May 16, 2015. Sarah is a research director for WSFA News in Montgomery. She recently finished her business degree at Huntingdon College. Chase and Sarah are expecting their first child, "Charlie," on May 17. They also have Orvis, a 3-year-old Brittany Spaniel. Chase enjoys hunting, fishing, camping, hiking, kayaking, and playing various sports. He also enjoys woodworking.

Chase also enjoys hands-on history, and has camped at numerous battlefields such as Shiloh, Fort Morgan, Fort Gains, Blakely Park, and Fort Toulouse. Chase is an Ole Miss fan, and Sarah is an LSU fan—a most interesting mix—which has to be quite interesting during football season. When the Rebels and the Tigers play each other, that game will determine who does the deep spring cleaning at the Barber house that year. Chase is a hard worker and an asset to the firm. We are fortunate to have him with us.

#### **WENDI LOHR LEWIS**

Wendi Lewis joined the firm in 2008 as a "conversation architect," writing a blog about mesothelioma to raise aware-

ness of the occupational disease. She currently serves as Communications Director, overseeing copywriting and content management for the firm's main website, [beasleyallen.com](http://beasleyallen.com); the main blog, [RightingInjustice.com](http://RightingInjustice.com), and several case-specific and lawyer websites. Wendi also manages the firm's social media presence, sharing our case news as well as lawyer news through channels such as Facebook, Google+, YouTube and Twitter. She helps to direct other print communications efforts for the firm, such as marketing letters and emails, news releases, brochures and advertisements.

Wendi grew up in Montgomery and graduated from Auburn University Montgomery, where she earned a Bachelor of Arts degree, with a major in English. She has a background in newspaper, having worked at the *Montgomery Advertiser* and the *Montgomery Independent*; and book publishing. Among her proudest professional achievements was authoring the coffee-table book *Montgomery: At the Forefront of a New Century*, in 1996. Wendi is a talented writer.

Wendi is married to Eric Lewis, a local veterinarian. The couple have three cats, Ico, Tito and Groucho; and one dog, Reef, and would likely have a larger menagerie if their house could hold them all. In her spare time, Wendi enjoys reading and traveling.

The work Wendi does for our firm is extremely important. She does excellent work and her attitude daily is a breath of fresh air to all around her. We are fortunate to have Wendi with us.

#### **JASE SAYRE**

Jase Sayre, a Law Clerk in the Firm's Consumer Fraud and Commercial Litigation Section, has been working with Beasley Allen since Sept. 11, 2015. He will graduate in May 2016 from Thomas Goode Jones School of Law at Faulkner University with his J.D. and LL.M in Advocacy and Dispute Resolution. Jase was elected to Faulkner Law's Student Bar Association for the 2015-2016 academic year, and previously served as the treasurer and class senator. He is a Junior Editor on Law Review, a Dean Fellow in the admissions, and competed in the Greg Allen Trial Competition. Jase also serves as the student representative on the Faculty Pro Bono, Clinic, and Externship Committee.

During his law school career, in addition to clerking for Beasley Allen, Jase also clerked for Ashley Hamlett, an Alabama Administrative Law Judge. Jase currently works as an extern in Faulkner Law's Elder Law Clinic, where he is



working on a guardian/conservator transfer case. Jase has also worked as an extern in fall of 2015 in the Mediation Clinic, where he mediated in Montgomery's small claims court; clerked at the Alabama Law Institute, and interned for the Elmore County Probate Judge John Enslin.

Jase comes from a long line of farmers, dating back to 1902 in Fayette, Ala. Although the family no longer farms, they still own land that holds the heritage of generations, including hand-dug wells and terraces, and trees that his family planted more than 100 years ago. Jase credits his family for his work ethic, and is proud to be a first-generation college graduate and soon first-generation lawyer.

Jase says he was inspired to become a lawyer watching his dad and uncle go through the litigation process after being hurt on different on-the-job accidents, and by watching his family refuse to seek recovery after a neighbor cut over onto their land, out of fear of litigation cost. Jase says, "Collectively, after these three incidents, I knew that I wanted to become a lawyer to protect my family and help others in similar situations." I believe he made a good decision. In his free time, Jase enjoys spending time with his family, traveling, fishing, reading, playing chess, politics, attending church and relaxing with his Siberian Husky, Malley. Jase is a hard worker who does good work for us. We are fortunate to have him with the firm.

#### **HELEN TAYLOR**

Helen Taylor has been the Public Relations Coordinator for Beasley Allen for seven years. She focuses on media and community relations. Helen works closely with local, legal and national media to coordinate interviews as well as to provide background information on cases that the firm has handled. She is contacted regularly from the media to get information on pending cases.

Helen also coordinates the staff and lawyer's involvement with many area agencies that help improve the lives of those in the River Region and elsewhere. In addition, Helen has served on the Montgomery Area Chamber of Commerce Total Resource Campaign for nine years and the River Region United Way Marketing and Communications Committee for three years.

Helen grew up in Montgomery. She earned her Bachelor of Science degree from Auburn University Montgomery, majoring in Business Administration with an emphasis in Marketing. She has

been married for 10 years to Jason, and together they have two children. Her stepdaughter, Catie, is 17 years old and enjoys her time in the high school band and reading. The couple's son, Sam, is 8 and he enjoys basketball, soccer, hanging out with his dad, and riding his bike ... in that order. Helen enjoys working in the yard, reading, riding bikes with Sam, and spending time with her family. Helen is a most valuable employee and she does excellent work for the firm. We are fortunate to have her with us.

#### **KIMBERLY YOUNGBLOOD**

Kimberly Youngblood serves as the firm's System Software Specialist. She performs duties including adding, removing, and modifying Users on service accounts, downloading invoices and any related invoice data, analyzing invoices where deemed appropriate, maintaining the various servers for Microsoft Updates and System Software, develops and creates databases upon request within Microsoft Access or Concordance\Concordance Evolution, consistently administers these databases for data validation and improvements, mass updates and imports data per request from appropriate users, completes various Management Reports and maintains items like the Seating Assignments and Employee Directory for the firm. Also, Kimberly handles the Technology Tips sent to the Employees on a periodic basis. She also works on our E-Discovery and Production Document Processing and software updates on all our computers.

Before coming to Beasley Allen, Kimberly worked for Regions Financial Corporation in the Technology Division for nine and a half years. She has received specialized training in several aspects of IT and business. Kimberly is a certified Concordance Evolution Administrator. She continuously researches and reviews new software products and keeps abreast on trends in E-Discovery and Document Reviews to be able to assist our Users in the best capacity. Kimberly says she has been around computers for more than 30 years due to her father's extensive computer background for the United States Air Force.

Kimberly and Steve, who have been married 11 years, live in the Holtville\Slapout community. Kimberly says they really enjoy the serenity of country life. Steve also works for Beasley Allen in the IT department. The Youngbloods have two dogs, both Rottweilers. Their oldest son, Stephen Jr., is a Police Officer with the City of Millbrook and their youngest son, Christopher, is a Firefighter for the

City of Montgomery. Kimberly says she and Steve just enjoy spending time together. Their current hobbies include their grandchildren and all the activities associated with seeing them grow. Kimberly is a very good employee and her work is extremely valuable to the firm. We are fortunate to have her with us.

## **XXIII. SPECIAL RECOGNITIONS**

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#### ***PARKER MILLER AND DANIELLE MASON NAMED TO LAW360 RISING STARS LIST***

For the second time, J. Parker Miller, a Principal with Beasley Allen, was named to the Law 360 Rising Stars list. Joining Parker this year is Danielle Ward Mason, who also is a Principal with the firm. Law360's Rising Stars profiles the top legal talent younger than 40. The winners are comprised of top litigators and dealmakers practicing at a level usually seen from veteran attorneys.

Danielle has been with the firm in our Mass Torts section since 2009. She is currently working on the talcum powder trial team that secured a \$72 million verdict for the family of our client, Jacqueline Fox. The talcum powder litigation consists of thousands of clients who claim that Johnson & Johnson knowingly promoted a carcinogenic product, baby powder and Shower to Shower, to women resulting in 1,400 deaths per year from ovarian cancer. Danielle is also the lead attorney for Reglan litigation, which involves claims that the drug Reglan is associated with the development of uncontrolled muscle movements, a permanent and incurable condition known as Tardive Dyskinesia.

Parker joined Beasley Allen in 2008 and currently works in our Toxic Torts section. Parker was a part of the Deepwater Horizon oil spill litigation, where he represented the State of Alabama against BP, Halliburton and Transocean. Parker served as co-counsel to Alabama Governor Robert Bentley, was deputized a Deputy Attorney General of the State of Alabama by Alabama Attorney General Luther Strange, and served as the lead Beasley Allen day-to-day litigator for the State of Alabama. Parker was a point person for Alabama before the Court, coordinated all discovery matters, was Alabama's architect for the State's economic and property damage models, and

served as a member of Alabama's settlement negotiation team. After months of intense litigation, BP agreed to pay the State of Alabama \$2.3 billion in what is considered to be one of the most significant settlements in Alabama's history. In addition, Transocean agreed to pay the State of Alabama \$20 million.

We are pleased to have excellent lawyers like Parker and Danielle working at Beasley Allen. I'm sure we're going to continue to see great things from both of them in the future.

#### BEASLEY ALLEN'S GRANT COFER INCLUDED ON "THE LIST"

Grant Cofer, an Associate at Beasley Allen, was recently featured in RSVP magazine on "The List," which profiles young professionals and business leaders who bring culture and energy to Montgomery, Ala., and the surrounding River Region. RSVP is a community publication with insight into the current social scene as well as the up-and-coming business leaders.

Grant joined Beasley Allen in 2010 after graduating from Harvard Law School. He practices in our Toxic Torts section and has spent most of his time for the past several years working on the Deepwater Horizon BP oil spill litigation. Grant does a very good job for the firm and we are fortunate to have him with us.

## XXIV. FAVORITE BIBLE VERSES

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Ginger Avery Buckner, the Executive Director of the Alabama Association for Justice, sent in a verse last month.

*Then He who sat on the throne said, "Behold, I make all things new." And He said to me, "Write, for these words are true and faithful." Rev. 21:5*

Willia Carpenter, our Human Resources Liaison, sent one of her favorite verses for this issue.

*Now by this we know that we know Him, if we keep His commandments. But whoever keeps His word, truly the love of God is perfected in him. By this we know that we are in Him. He who says he abides in Him ought himself also to*

*walk just as He walked. 1 John 2: 3-5 and 6*

Jill Crawly, the secretary for our firm's team of investigators, sent in a verse this month.

*Peace I leave with you; My peace I give to you; not as the world gives do I give to you. Do not let your heart be troubled, nor let it be fearful. John 14:27*

Jessica Peek, a student at Troy University, sent in a verse for this issue. Jessica, a future nurse, is in Professor John Kline's Leadership Class at Troy.

*"The Lord will fight for you, and you shall hold your peace." Exodus 14:14*

Rebecca Morris, who works at the United Methodist Children's Home, also supplied a verse this month.

*"But whoever drinks of the water that I shall give him will never thirst. But the water that I shall give him will become in him a fountain of water springing up into everlasting life." John 4:14*

## XXV. CLOSING OBSERVATIONS

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As most folks know I am a very big sports fan. Having played all sports in high school and football and baseball for one year in college, I have always been involved in sports in some manner. I now follow several teams now including the Boston Red Sox, the Auburn Tigers, the Montgomery Biscuits, the Carolina Panthers and the Green Bay Packers. I also pull for the Tampa Bay Rays when they aren't playing the Red Sox because of the former Biscuits with the Rays.

Coach Vince Lombardi was one of my favorite coaches. For that reason, combined with my admiration for QB Bart Starr, I became a fan of the Green Bay Packers and I still pull for them. I got to know Bart through his parents Ben and Lula Starr who were longtime members of St. James UMC where Sara and I attend. Ben would travel around the state to watch my daughter Julie play tennis in high school and later in college. He was retired after a career in the U.S. Air Force as a "Top Sergeant." Ben also was a championship boxer while in the service and he was tough as nails. I had the honor of

being a pallbearer at Ben's funeral. I always figured that Bart got his toughness from Ben and his compassionate spirit from his mother—a very good combination—and one that has served him well.

A reader of the *Report* sent me a mission statement by Coach Lombardi, which is a reflection of how the coach lived his life and it also indicates what he demanded from his players. It reads: "Live a life of integrity and make a difference in the lives of others." That is powerful and can you imagine if each of us lived our life using that statement as a guideline, how things would be in this country.

Coach Lombardi was a great coach and a good man. He was definitely a winner and set high standards for his players and also for other coaches in the NFL. There are lots of very good and inspirational messages from Coach Lombardi that you can get very easily by way of the internet. He definitely was a good role model. We badly need role models today for young people and more persons like Coach Lombardi to fill that need.

#### 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.*

2 Chron 7:14

*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

*Live a life of integrity and make a  
difference in the lives of others.*

Vincent Lombardi

## XXVI. PARTING WORDS

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I was going to write this month on the things that are considered valuable by most of us. I had intended to discuss what really is valuable in life. But when I received my friend John Ed Mathison's blog, I changed course. John Ed wrote what I had intended to do, but did it much better. So here it is from John Ed.

### **What Is Really Valuable?**

One of the most difficult things in life is determining the value of any item. When you go into a store, price tags indicate how much a certain item is worth. Sometimes a store's price tags get mixed up. In life sometimes the price tags on values get mixed up.

How much is something worth? Recently an antique photograph collector went into a flea market in

Fresno, California and purchased a photograph for \$2. When he looked at it more closely he discovered that it was a rare picture of the legendary Billy the Kid. The photo has been called "the Holy Grail of Western Americana," and it is currently valued at \$5 million. A \$5 million item was purchased for \$2!

David Gonzales bought a dilapidated house in the town of Elbow Lake, Minn., for \$10,000. He was going to fix it up. As he was removing some of the newspapers used to insulate a wall, he found an old comic book tucked in with those newspapers. He looked at it and thought it might be worth something.

He was amazed to discover that it was one of the rarest comic books of all time—the 1938 Action Comics No. 1 that introduced the world to Superman. The comic book will be auctioned for about \$200,000. How much was that \$10,000 house really worth?

In January 2014, 26-year old Ken Hoang was visiting Chicago and using his cell phone to take photographs of the icy Chicago River when he dropped his cell phone on the ice. When he tried to retrieve the cell phone, he fell into the water. Lauren Li, one of his friends, then dropped down to help him, but she slipped into the river. They began to yell for help and another friend came and stepped on the ice and fell into the water.

Ken Hoang was pronounced dead at Northwestern Memorial Hospital. Lauren Li was missing for a couple of days before her body was pulled from the water. The third friend was found alive, hospitalized, and released.

Cell phones are important. People get attached to cell phones, but are you willing to swap your life to try to retrieve a cell phone? Are you willing to follow a friend into icy water to help them retrieve what they think is valuable?

Jesus was always encountering people who were asking questions about life. One day some people confronted Him and asked Him about the values of life. Jesus said, "What does it profit a man if he gains the whole world and loses his own soul? What will a man give in exchange for his soul?" (Mark 8:36).

Every day we are exchanging precious time for something we consider to be valuable. The question is—is it worth \$2 or \$5 million? Is it a \$200,000 treasure or just a \$10,000 dilapidated house? Are we so attached to some things that we swap our lives for something that is not worth giving a second thought?

There were some missionaries who had to be evacuated from a country recently. They had to flee for their lives. They were not allowed to take any of their possessions. All they could do was get out themselves. When they were interviewed and asked how tough it was to leave all their possessions behind them, they commented, "We carry our possessions in our mind and heart, not our hands."

What is really valuable? What are you spending your life for? Check out Jesus' answer in Mark 8:34-35.

John Ed Mathison  
[www.johnedmathison.org](http://www.johnedmathison.org)

I totally agree with all that John Ed had to say. As they say in Clayton, "he hit the nail squarely on the head." You can listen to John Ed Mathison's one-minute daily devotional on Facebook. You can also go directly to his personal page at <https://www.facebook.com/johned.mathison/> and click "PLAY" on the audio YouTube in order to listen. Or you can go to his ministry page at <https://www.facebook.com/JohnEdMathisonLeadershipMinistries/>

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