



THE
JERE BEASLEY REPORT

SEPTEMBER 2009

Beasley Allen

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Attorneys at law

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I. CAPITOL OBSERVATIONS

ORDINARY FOLKS NEED LOBBYISTS IN OUR NATION'S CAPITOL

As we all know, all of the major corporations have their own lobbyists in Washington, D.C. In addition, the trade associations, which represent the various segments of corporate America, have their lobbyists hard at work. Ordinary folks badly need their own lobbyists in our Nation's Capitol in order to try and level the playing field. During the eight years of the Bush Administration, the bad guys in Corporate America had an even greater advantage than ever before over consumers and those who potentially would become victims of corporate wrongdoing and abuse. Even the Nixon years—as bad as they were for ordinary American citizens—paled in comparison to the Bush years.

An example of how Washington lobbying works was recently reported by the media. It appears that two oil giants, Chevron and Exxon, spent well over \$20 million in the first half of the year lobbying the federal government on issues that affect consumers and you can guess whose side the lobbyists were on. In addition to these companies, the drug industry also spent millions during the same time period for their very special interest.

Fortunately, there are a few groups that do their best to serve as the people's voice in our Nation's Capitol. One of these is Public Citizen, which was founded in 1971, and which continues to do good work. Since its beginning, Public Citizen has worked hard on issues affecting real people and it has tried diligently to see that all citizens are represented in the halls of power in Washington. Public Citizen has championed "citizen" issues and interests before Congress, executive branch agencies and in the courts of America. They have been fighting on behalf of all Americans to make sure that their government works for them.

There are several specific areas where the hard work of Public Citizen has been most effective. Public Citizen has challenged the abusive and oftentimes hazardous practices of the pharmaceutical, oil and automobile industries, as well as many others and it is to be commended. But Public Citizen and the other groups need help in protecting the interests of ordinary citizens in Washington.

I encourage all of our readers to learn more about the work of Public Citizen by going to www.citizen.org. You can obtain a copy of the organization's annual report which is most informative. Also, you may want to email the president of Public Citizen, Chris Helfrich, at chelfrich@citizen.org and request more information about issues that Public Citizen is currently working on.

Source: Public Citizen

THE STATE ATTORNEYS GENERAL PLAY IMPORTANT ROLES

Some in Corporate America appear to be concerned about the role and power of the 50 state Attorneys General. It's said by persons in the know that in terms of cases—as well as the significance of cases—the state Attorneys General rival their colleagues at the U.S. Department of Justice. There is good reason for those who have been guilty of corporate wrongdoing and abuse to be concerned. Many cases have been brought by state Attorneys General in the civil courts against companies that have been guilty of fraudulent conduct and wrongdoing on a grand scale. Those cases have definitely gotten the attention of corporate boardrooms across the land.

In addition, there are a number of ongoing corporate investigations that are looking into a variety of subjects. Some Attorneys General have been more active than others. For example, Bill Pryor from my State of Alabama was one of the very first to file a significant civil suit when he took on the powerful oil giant ExxonMobil a few years ago. His successor Troy King

picked up where now-Judge Pryor left off by continuing with the ExxonMobil litigation and by filing Medicaid fraud lawsuits against the drug industry. There have been several others who have taken on the bad guys, including Lori Swanson of Minnesota; Andrew Coumo of New York; Jerry Brown of California; Richard Blumenthal of Connecticut; Martha Coakley of Massachusetts; Darell McGraw of West Virginia; Henry McMaster of South Carolina; Jim Hood of Mississippi; James E. Doyle of Wisconsin; Lisa Madigan of Illinois; Steve Six of Kansas; Mark L. Shurtleff of

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Utah; Mark Bennett of Hawaii; and Terry Goddard of Arizona. If any of our readers know of others, let me know.

As expected, the defenders of corporate wrongdoing and abuse have stepped up their campaigns in an effort to undermine the good work of the state Attorneys General. There will be legislation introduced in state legislative bodies designed to derail the efforts of the states. Op-ed pieces are being sent to media outlets, as well as letters to the editors of state newspapers, attacking the Attorneys General and attempting to mislead folks about what they have accomplished thus far. If you agree that state Attorneys General should go after the “bad guys” in Corporate America when they commit massive wrongs, let the Attorney General in your state know that you support him or her.

II. PURELY POLITICAL NEWS & VIEWS

RESULTS OF A RECENT POLL ARE NOT TOO SURPRISING

A recent poll reveals that 47% of Alabamians say they're worse off this year compared to last and that really shouldn't come as a big surprise. The telephone poll, conducted by Auburn University's Center for Governmental Services, also shows that many Alabamians say they are optimistic about their economic future and that's encouraging. The poll, conducted between July 6th and July 19th, found that 53% of those polled said they were “living comfortably” during the recession, with 42% saying they were “struggling to make ends meet.”

Also, 19% of homeowners in Alabama were either “very worried” or “somewhat worried” about making their mortgage payments in the next six months. More than half (52%) said they were “not worried at all.” Looking ahead to 2010, 55% of respondents said they would be better off next year.

In my opinion, if we could convince the news media to report all of the good news that develops about our nation's economy—and there is some—on a daily basis for a few months, the badly-needed economic recovery would happen much sooner. Folks need to feel good about things—for a change!

Source: *Mobile Press-Register*

ALABAMA IS SAID TO BE THE MOST CONSERVATIVE STATE IN THE NATION

Alabama is the most conservative state in the nation, according to a Gallup Poll. The poll, which was released last month, says that 49% of Alabamians polled identified themselves as being conservative. Alabama was followed by Mississippi, which ran a close second with 48% identifying themselves as conservative. In the top ten conservative list are: Utah, Louisiana, Oklahoma, South Carolina, North Dakota, South Dakota, Idaho, and Wyoming.

The District of Columbia, which had the fewest people identifying themselves as conservative, was ranked as the place where the most people identified themselves as being liberal. Massachusetts, Vermont, Oregon, Washington, New York, New Jersey, California, Hawaii, and Connecticut round out the top ten liberal states in the poll.

The poll's results were based on answers to a question asking whether people's political views are very conservative, conservative, moderate, liberal, or very liberal. The data comes from Gallup Daily tracking in the first half of 2009, with more than 160,000 adults interviewed nationwide.

It would be most interesting to take the polling a step further, however, and ask those polled for their definitions of “conservative” and “liberal.” Their answers might be quite revealing and perhaps even surprising. Had I been asked, I would have had to say that I am a conservative on fiscal and moral issues and somewhat moderate in some other areas. The bottom line is that I believe in following the “Golden Rule” in my dealings with others. So I

doubt if I could answer the pollster's question without explaining my answer in more detail.

Source: *Birmingham News*

III. UPDATE OF THE MEDICAID FRAUD LITIGATION

OVERVIEW OF THE MEDICAID FRAUD LITIGATION

In last month's issue, we reported on a number of jury verdicts that had been rendered throughout the country in the Medicaid fraud litigation. One of the cases we reported on was the Kentucky jury verdict of \$16 Million against Defendant Sandoz. But we have discovered a slight error in our reporting. In the article we stated “the jury found that punitive damages must be imposed in the form of civil damage penalties.” We should have reported that the jury returned a verdict against Sandoz for \$16 million and now it is up to the Kentucky trial judge, not the jury, to determine any additional amount of civil penalties over and above the \$16 million jury verdict for the fraudulent pricing conduct of the Defendant Sandoz.

We also reported that the “Kentucky jury found 2900 violations” of fraudulent price reporting. However, while it is unclear how many violations Sandoz may have been guilty of, the 2900 violations are what the State of Kentucky had alleged to the trial judge that the civil penalties should be based upon. While the “jury” did not make this finding, the State of Kentucky has argued to the trial court that this is the basis upon which civil penalties must be imposed.

We explained in last month's article that civil penalties are statutory, punitive in nature, and imposed by the trial judge, all of which is correct information. However, the jury did not find and the jurors do not impose punitive damages in the form of civil damages.

Instead, in Kentucky, the trial judge is charged with that duty. The State of Kentucky has a pending motion before the Kentucky trial judge to impose a \$2,000 per violation penalty for the alleged fraudulent conduct of Sandoz for false price reporting. We will keep you posted on any new developments that occur in these cases. We regret the errors made in last month's report on the Kentucky case.

MEDIATION ORDERED IN ALABAMA

The most recent development in the Alabama Medicaid Fraud litigation is that Chief Judge Charles Price has ordered the State of Alabama and 17 pharmaceutical company Defendants to a mandatory mediation proceeding to occur before December 1, 2009. The very well-respected Opelika, Alabama lawyer, Phil Adams, will serve as the court appointed mediator.

Each of the 17 Defendants are scheduled for different trial dates which are set out as follows: on December 7, 2009, *State of Alabama vs. Watson Laboratories, Watson Pharma, Inc., and Watson Pharmaceuticals, Inc.*; on January 25, 2010, *State of Alabama vs. Mylan Laboratories, Inc., Mylan Pharmaceuticals, Inc., and UDL Laboratories, Inc.*; and on April 30, 2010, *State of Alabama vs. Merck & Co., Inc., Wyeth Pharmaceuticals, Inc., Wyeth, Inc., ALZA Corporation, Janssen Pharmaceutical Products, L.P., Johnson & Johnson, McNeil-PPC, Inc., Ortho Biotech Products, L.P., Ortho-McNeil Pharmaceutical, Inc., Roche Laboratories, Inc., and Hoffman-LaRoche, Inc.*

Every jury verdict returned in the Alabama cases has been in favor of the State of Alabama. These verdicts total \$352 million to date. Also 24 drug manufacturer Defendants have settled with the State of Alabama for a total of \$135 million. All of the recent jury verdicts outside of Alabama have also been in favor of the states and against the drug manufacturers. These were in favor of the State of Kentucky for \$16 million against Defendant Sandoz; \$9 million for the State of Wisconsin against

Defendant Pharmacia; and \$7 million for the State of Missouri against Schering-Plough Warrick. Therefore, considering this track record, mediation would appear to be a logical and productive event. For the sake of the citizens of Alabama and especially those on Medicaid, we certainly hope that is the case. If the mediation process is successful, we will promptly report the results.

WATSON & MAYLEN CASES SET IN ALABAMA

The State of Alabama's next Medicaid fraud trial will occur on December 7, 2009 against Defendants Watson Laboratories, Watson Pharma, Inc. and Watson Pharmaceuticals, Inc. The Watson Defendants were previously consolidated with Defendants Abbott Laboratories, Forest Laboratories and Forest Pharmaceuticals, Inc., but these Defendants recently settled all of the claims that the State of Alabama alleged against them as part of the recently-announced \$89 million settlement this past June. The Watson Defendants were the only Defendants remaining from that consolidation after the settlement was concluded. Again, that trial will begin on December 7, 2009.

After the Watson Defendants' trial, the State's next trial will take place on January 25, 2010 against Defendants Mylan Laboratories, Mylan Pharmaceuticals, Inc., and UDL Laboratories, Inc. These generic drug companies will face their first- ever Medicaid fraud trial before a Montgomery County jury in January. This case was originally set for trial on September 22, 2009, but due to scheduling conflicts by the Mylan lawyers, the case had to be rescheduled for January, 2010.

THE WATSON TRIAL IN HAWAII

The next Medicaid fraud lawsuit trial that our firm will be involved in will be on October 26, 2009, in Honolulu, Hawaii against the Watson Defendants (Watson Pharmaceuticals, Inc., Watson Pharma, Inc., f/k/a Schein Pharmaceuti-

cal, Inc., and Watson Laboratories, Inc.). We will be trying the case with Attorney General Mark J. Bennett's office and the local Honolulu law firm of Price, Okamoto, Himeno & Lum. This case provides for a slightly different challenge than the previous cases tried by our firm. If the State of Hawaii proves that the Watson Defendants committed fraud by reporting false drug prices to the State of Hawaii, then the State will be awarded statutory civil penalties by operation of law. These penalties are mandatory under the Civil Liability Law for which Hawaii is prosecuting Watson and other Defendants.

On November 30th, the State of Hawaii will try Defendant Sandoz, Inc., for the same conduct mentioned above relating to Watson. Our firm will be involved in this trial as well with Attorney General Bennett's office, the Honolulu law firm of Price, Okamoto, and the Chicago law firm of Miner, Barnhill & Galland, P.C. This will be the third Medicaid fraud trial for Sandoz. As you may recall, we have previously reported that the State of Alabama obtained a verdict against Sandoz in February, 2009 for \$78,443,572.00 and that recently the State of Kentucky obtained a verdict against Sandoz in the amount of \$16,000,000.00. The trial judge in Kentucky may still impose additional penalties on Sandoz as a result of a civil penalty statute utilized in that case by the State of Kentucky.

The trials against the Watson Defendants and Sandoz in the State of Hawaii will be Hawaii's first two Medicaid fraud trials. The State of Hawaii previously settled cases with Defendants Dey Laboratories, Baxter Healthcare Corporation and Bristol-Myers Squibb Company.

We look forward to trying these two cases with Attorney General Bennett's office as well as the law firms of Price, Okamoto and Miner, Barnhill. As always, we will promptly report the results of these trials once the jury verdicts have been announced.

KENTUCKY MEDICAID SETTLES MEDICAID FRAUD LAWSUIT WITH BOEHRINGER INGELHEIM

On July 15, 2009, Kentucky Attorney General Jack Conway announced a \$4.5 million settlement with a pharmaceutical manufacturer accused of reporting fraudulently inflated Average Wholesale Prices, prices which caused the state's Medicaid program to unknowingly and unnecessarily spend millions of extra dollars on prescription drugs. The settlement was reached with Germany-based Boehringer Ingelheim GmbH and its subsidiaries Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim Roxane, Inc., Roxane Laboratories, Inc. and Ben Venue Laboratories, Inc. The State of Kentucky filed 47 lawsuits targeting drug manufacturers for fraudulent drug price reporting practices that have cost the state's Medicaid program millions of dollars.

State Medicaid programs rely on the prices furnished by drug manufacturers that are published to calculate Medicaid drug-reimbursement rates. The lawsuits allege the Defendants published false and inflated prices which were not reflective of the actual purchase prices pharmacies and doctors paid in the marketplace. In announcing the settlement, Kentucky Attorney General Jack Conway stated:

My office is committed to ensuring that drug companies truthfully report their prices and do not engage in false or misleading marketing of their products. Taxpayers should not be footing the bill for these inflated drug prices.

Previously, Attorney General Conway announced a \$16 million verdict in the state's case against drug maker Sandoz that we wrote about last month. Since January 2008, the State of Kentucky has recovered \$63 million from various drug manufacturers for defrauding its Medicaid program. Kentucky is one of 27 states that have filed lawsuits against drug manufacturers in the Medicaid fraud litigation which is commonly referred to as the AWP litigation.

Source: legalnewsline.com

IV. RECENT FILINGS AND SETTLEMENTS BY THE FIRM

DEATH CASE SETTLED IN TROY, ALABAMA

Our firm recently settled a wrongful death case arising out of a trucking collision which killed Deborah Ann Fields on December 19, 2007. At the time of the accident, Ms. Fields was operating an 18-wheeler truck on Highway 231 North between Grove Road and Oak Grove Road in Troy, Alabama. The collision was caused when a tractor-trailer driven by Dusty Lee Scott Conner and owned by Kathy McKenzie Trucking failed to yield the right of way leaving Mrs. Fields no time to react. Unable to stop or avoid the truck in her lane of travel, Ms. Fields' vehicle slammed into the back of the tractor trailer operated by Mr. Conner. Ms. Fields was killed when her truck exploded and burst into flames. Mr. Conner could have easily avoided this accident by turning into the unoccupied inside lane, which he admitted was possible, or he could have yielded to traffic as the law requires.

The claims were brought against the Defendants for the negligence of the driver in operating his tractor trailer. The Defendants argued that Ms. Fields was not paying attention and could have avoided the collision. These allegations were rebutted by eye witness testimony that said Ms. Fields had no time to react. We had expert testimony from an industry accident reconstructionist who supported the eye witness testimony.

At the time of the accident, Mr. Conner was pulling a load of pine lumber owned by Peacock Timber Company, Inc. We brought claims also against Peacock Timber Company alleging that Mr. Conner was an agent of that timber company while pulling that company's logs at the time of the accident.

Ms. Fields was driving a Freightliner tractor trailer at the time of the collision. There will also be product liability

claims against Freightliner because of product defects in Ms. Fields' vehicle that caused it to explode upon impact. The product liability claims allege that the magnetic starter switch was improperly placed in the cab of the vehicle. Our expert testified that the magnetic starter switch, which ignited the fire, should have been placed in a position where it was unlikely to be impacted in a vehicle collision. Freightliner denied the allegations of defect.

The case was settled with all Defendants for a confidential amount. The case was handled by Greg Allen and Chris Glover from our firm and they did a very good job for our clients.

MISSISSIPPI CASE INVOLVING MAN CRUSHED BY PIPE WON ON APPEAL

On August 6, 2009, the Supreme Court of Mississippi affirmed the jury verdict in a death case handled by our firm along with a Mississippi firm. Michael Raines was killed in 2001 when a 1,500-1,800 pound dredging pipe rolled off the top of a truck and trailer owned by Kittle Heavy Hauling and struck Mr. Raines' head. The driver of the Kittle Heavy Hauling truck pulled a load of 16 of these large pipes from Sardis, Mississippi, to Greenwood, Mississippi, when the accident happened. The pipes had shifted during transportation and fell after one of the chains was released.

After Michael Raines' death, his family filed the lawsuit against Kittle Heavy Hauling and Kittle's driver of the truck. The company and its driver acted negligently or wantonly in failing to secure the load of pipes with chocks, triangular wooden blocks, which are nailed to the end of a four-by-four timber and placed between the pipes. Had the Defendants secured the pipes with the required chocks, Michael Raines would not have been crushed to death because the pipe would not have fallen off the trailer.

The case was filed in Leflore County, Mississippi. After five years of discovery and after the trial court denied Defendants' Motion for Summary Judgment,

ment, the case was presented to a jury in Greenwood, Mississippi in February 2008. For four days, the jury heard evidence concerning the Defendants' duty to Michael Raines—how that duty was breached—and how that breach proximately caused the death. The Defendants claimed that Inland Dredging Company, Michael Raines' employer, and Inland's employees, had the sole responsibility to secure the load of pipes. The Defendants argued to the jury that Inland's employees and actually Michael Raines himself were at fault. After hearing all of the evidence presented, and after being properly instructed by the trial judge on the applicable law, the jury rendered a unanimous verdict finding that Michael Raines and his co-employees were zero percent at fault. The jury awarded \$850,000 for the death of Mr. Raines. The trial court entered an order awarding \$340,000 to Plaintiffs which represented 40% of fault the jury allocated to the Defendants.

On appeal, the Defendants did not claim error in the trial court's evidentiary rulings at trial or with the trial court's jury instructions. However, the Defendants argued that the trial court should have ruled as a matter of law that these Defendants owed no duty to safely secure the pipes. The Supreme Court of Mississippi disagreed with the Defendants and affirmed the judgment.

Interest accrued on the judgment totals approximately \$40,000. In addition to the interest accrued on the judgment, the Defendants will be required to pay an additional 15% statutory penalty for an unsuccessful appeal of a monetary amount. Since this case was filed in March of 2002 and tort reform in Mississippi was not passed until 2003, the statutory penalty still applies in this case.

The case was tried by Julia A. Beasley and Navan Ward from our firm along with Charles Swayze, Jr., and Charles Swayze, III, two very good lawyers, who are with Whittington, Brock & Swayze, in Greenwood, Mississippi. The case was sent to our firm by Randall Cheshire of Almond & Cheshire, another

very good lawyer, who is from Tuscaloosa, Alabama. This was a long, hard battle and one that finally came out right.

INTERSTATE DEATH CASE SETTLES

Our firm recently settled a very important case in Louisiana. On July 28, 2008, a four-vehicle crash on Interstate 12 in Baton Rouge claimed the lives of a young couple from Mississippi and their seven-year old daughter. Additionally, their four-year-old daughter was critically injured in the crash and is still undergoing treatment and therapy for permanent nerve damage. Along with Jim Reeves, a very good lawyer from Biloxi, Mississippi, we were fortunate to represent the estates of Phillip, Shyla and Haylie Van Alstine for their wrongful deaths and Kaytie Van Alstine for her permanent injuries. Prior to his death, Phillip was a member of the Mississippi National Guard and was a chemical engineer. His wife Shyla was a school teacher.

On July 28, 2008, the Van Alstine family was returning home from a summer afternoon at a local water park just before the new school year started. As the family traveled along Interstate 12 in their Chevrolet van, traffic became congested and slowed to a stop. Just prior to the accident, the family was sitting parked on the interstate behind a flat-bed tractor trailer. Behind them a Chevrolet Express van came to a stop. Although the drivers of the other vehicles recognized that traffic was slowing and stopped, a speeding Waste Management tractor trailer failed to stop and struck the rear of the Express van. The Waste Management truck then pushed the Express van into and through our clients' van. The force of the impact was so great that the entire body of our clients' van was separated from its frame. Although they were all properly wearing their seatbelts, Shyla and Haylie were killed at the scene and Phillip was transported to the hospital but died a short time later. Kaytie, who was properly buckled in her child seat, suffered extensive orthopedic and nerve

injuries and requires ongoing therapy.

Although we were prepared to provide extensive expert testimony, this case settled prior to trial for a confidential amount. Mike Andrews and Jim Reeves did a very good job representing this unfortunate family.

WAL-MART PARKING LOT CASE IS SETTLED

Mark Stubbs was struck by a motor vehicle in the Wal-Mart parking lot in Prattville, Alabama, on December 24, 2008. Mr. Stubbs and his teenage son were walking in the parking lot when a vehicle driven by Carol Harris caused a multi-vehicle collision with her vehicle hitting Mr. Stubbs. According to Mrs. Harris, she suffered a seizure due to improper medication given to her by her physician. Mr. Stubbs suffered severe injuries to his left knee which required a ligament reconstruction.

Mr. Stubbs also sustained a fracture to his right arm and right ankle as well as injuries to his shoulder. The surgery to repair the severe ligament damage to his left knee was not successful and Mr. Stubbs was required to undergo another surgery. He was employed as a truck driver and has been unable to return to work. It is unlikely that he will ever return to work as a truck driver. This case settled for the total amount of Mrs. Harris' liability insurance limits and Mr. Stubbs' underinsured motorist coverage. Julia A. Beasley from our firm handled this case for Mr. Stubbs and did a very good job.

COMPLAINT FILED AGAINST ALABAMA POWER AND DRUMMOND COMPANY

Our firm continues to monitor mine subsidence damages to surface properties as a result of underground mining operations. On August 3, 2009, we filed a lawsuit on behalf of Jack Rainer and Kerry Rainer against Alabama Power Company and Drummond Company. The Complaint, filed in the Circuit Court of Walker County, alleges that the Defendants failed to provide an adequate support structure to the surface

properties above their underground room and pillar mine. As a result of the Defendants' failure, the Rainers' property was damaged from a phenomenon known as mine subsidence. Mine subsidence is either the sudden or gradual sinking, cracking or settling of surface property as a result of an underground mine collapse.

Because our clients' property was above and adjacent to the Defendants' properties, the Defendants had a duty to provide a proper support structure to the Rainers' property. Otherwise, the removal of rock and coal hundreds of feet below the surface would cause rocks, minerals and actual surface property to cave into the void left from the mining operations. The Defendants also had a duty to not interfere with the use and enjoyment of the Rainers' property. Over the past year, the Rainers begin to notice the formation of large sinkholes and cracks on the surface. These symptoms are telling signs of mine subsidence and can cause significant devaluation of property and damage existing structures. Unfortunately, mine subsidence cases are not an isolated occurrence in Alabama. High extraction longwall coal mines are prevalent throughout the state and result in substantial property damage. Further, closed room and pillar mines remain as a constant threat to surface properties.

In their Complaint Jack Rainer and Kerry Rainer alleged four causes of action against the Defendants: Subsidence, Nuisance, Trespass, Negligence and Wantonness. In almost every instance of mine subsidence, our lawyers and investigators are unable to venture into the mine and physically view the support structure left behind by the Defendants. Therefore, expert testimony is critical to these cases in demonstrating that mining activities caused the damage on the surface. Rhon Jones and Parker Miller from our firm will be handling this case for the Rainers.

V. LEGISLATIVE HAPPENINGS

THE SPECIAL SESSION WAS A SUCCESS

The Alabama Legislature stepped up to the plate and passed the requested bills that hopefully will keep Jefferson County out of bankruptcy. Governor Riley and the Democratic members of the House and Senate worked in concert making the special session a success. At least one Republican also supported the needed legislation. Governor Riley and the Legislature simply couldn't afford to let Jefferson County go into bankruptcy. Had that happened, it would have been a severe blow to the entire state and one which would have had an adverse ripple effect on our governmental entities. The session—completed in five days—was a success. Now I just hope and pray that Jefferson County can get its act together and put the county's business back on a sound fiscal footing.

GOP WANTS TO TAKE OVER THE ALABAMA LEGISLATURE

A plan that was said to be "top secret" to take over the Alabama Legislature by the State Republican Party was leaked to the blog "Doc's Political Parlor" which made it public for all the world to see. The GOP has a goal of winning 17 selected seats in the House and Senate. The 88-page report was very detailed and apparently put together by professionals. Frankly, based on past performance, I don't see the GOP making any significant inroads in the House or Senate. It's my belief, however, that if Democrats running for legislative office would stress real "consumer" and "people" issues in their campaigns, the GOP candidates wouldn't stand much of a chance on Election Day.

LOOKING AHEAD TO 2010 AND BEYOND

It was reported recently that the revenues that fund state government operations and public education in Alabama saw decreases that were "steeper and longer" than anything the Legislative Fiscal Office (LFO) has ever seen. The record for decreases in the general fund taxes had been set in 1954 and the current decrease was two-and-a-half times larger than it was then. Unfortunately, the budget cuts that took place this year as a result won't be anything like what is expected in the near future.

The question looms, what is the answer—both short and long term? Without the influx of federal money from the ARRA, our state would have been in extreme difficulty this year. The LFO says \$513 million from the ARRA funds went into the general fund and about \$1 billion went to the special education trust fund. So what happens when the federal funds are no longer available?

Of the \$3 billion in ARRA funds the state expects to get, only about \$659 billion will remain in 2011 according to reports from the LFO. Education is expected to get \$511 million of that amount, leaving only \$148 million in ARRA funds to help out in the general fund. According to a number of fiscal experts, Alabama has two choices on the short term solutions:

- Borrow more money from the Alabama Trust Fund which would require a constitutional amendment.
- Make more drastic cuts in state spending which means good programs and services will be cut sharply.

The long range solution to the state's fiscal problems will be much more difficult. The following have been suggested as long-term solutions:

- Fewer earmarks of state tax revenues.
- Revise our tax code which would require some tax increases in certain areas. It would also include the cutting out of some existing tax loopholes.

- Increase taxes, such as property taxes, and keep spending levels fairly stable.

Nobody, including me, believes the Alabama Legislature will pass any tax increases in 2010. Perhaps 2011 will be a different story, but that depends on several factors. The economy may have improved to the extent that no additional revenues are needed. But, if that doesn't happen, the solution for the long term will depend on how badly the needed services—including public education—have already been cut and how the in 2011 cuts would affect Alabama citizens.

VOCAL NEEDS HELP

VOCAL is a group of dedicated individuals led by my longtime friend Miriam Shehane that serves a most important function in our state. VOCAL's goal has always been to help victims of crime and it has done a tremendous job. But VOCAL has experienced severe financial problems due to a lack of state support over the years. They need help now! The following is an editorial from the Eufaula Tribune that discusses VOCAL's needs:

It's been more than 30 years since Clio native Queenie Shehane was murdered in Birmingham. Queenie was a beautiful, bright young lady who was attending Birmingham-Southern College at the time. Her promising life was way too short. It wasn't long after Queenie's death that her mother, Miriam, went to work as an advocate for crime victims and their families. God only knows the thousands of individuals she has assisted in the past three decades. She co-founded VOCAL (Victims of Crime and Leniency) in 1982, a program that has statewide significance. We've heard Attorney General Troy King praise the program on numerous occasions.

Queenie's name lives on today in part through VOCAL. Rep. Billy Beasley hopes her name will live

on in the future. Beasley recently introduced the Quenette Shehane Act in the House. If approved by Montgomery lawmakers, it would create a victims' service fund to assist programs within the State of Alabama. As of Wednesday the bill was in the committee on government appropriations. The bill would provide a \$2 court cost on each conviction. The money would go to the victims' assistance programs. Programs that would be assisted include: the Statewide Victims Information and Notification System, the Victims Service Officers with the Office of the Attorney General, the VOCAL Angel House Crime Victims Board and the Alabama Criminal Justice Information Center.

The bill would also provide funding for two victims' service officers to work within the Attorney General's office. This is an important bill for obvious reasons. According to its Web site, Wiregrass Angel House advocates for victims' rights and services for victims of violent crime, provides direct services to victims and their families, and provides public education and awareness. "Our staff members are available to assist the family and loved ones of a homicide victim," the Web site states. "Advocates assist survivors in communicating with police, the Attorney General's office, and Governor's office and provide emotional and physical support throughout the course of your case. Advocates work closely with the staff in all phases of the criminal justice system."

What a great source of help and strength in a time of such loss. We commend Rep. Beasley for introducing this valuable piece of legislation, and hope it does not get bogged down in the current session. Our lawmakers should vote yes.

*Eufaula Tribune
August 2009*

Even though 2010 is an election year, I hope the Legislature will pass the bill mentioned above. VOCAL and victims of crime need it!

VI. COURT WATCH

SENATE CONFIRMS JUDGE SOTOMAYOR FOR SUPREME COURT

The Senate confirmed Judge Sonia Sotomayor's nomination on August 6th by a 68-31 vote, making her the first Hispanic on the U.S. Supreme Court. The confirmation also makes the 55-year-old federal appeals court judge the 111th person to sit on the Supreme Court, but only the third female justice. Nine Republicans, who should be commended, joined a unanimous Democratic caucus in supporting her nomination.

Senators spent the final morning of debate rehashing the main arguments for and against Judge Sotomayor. Democrats praised the nominee as a fair and impartial jurist, which her record bears out, and as a person with an extraordinary life story. But before her confirmation many Republicans—for selfish political purposes—continued to portray her as a judicial activist, intent on reinterpreting the law to conform with her own political beliefs. Vermont Sen. Patrick Leahy, chairman of the Senate Judiciary Committee, helped open the final day of debate by praising the nominee's lengthy judicial record. Senator Leahy had this to say about this extraordinary woman:

Judge Sotomayor is a judge of unimpeachable character and integrity. These critics have... chosen to ignore her extensive record of judicial modesty and restraint, a record made over 17 years on the federal bench. Instead they focused on and mischaracterized her rulings in just a handful of her more than 3,600 cases.

I am convinced that Justice Sotomayor will be an outstanding

member of U.S. Supreme Court. In my opinion, she will be a force for good on the High Court. President Obama made a great selection.

VII. THE NATIONAL SCENE

ATTORNEYS GENERAL CALL FOR CONSUMER AGENCY

Attorneys General from 24 states are urging Congress to create the consumer protection agency proposed by the Obama Administration. President Barack Obama proposed the Consumer Financial Protection Agency on July 17th as part of sweeping financial regulation reform. Specifically, the agency would oversee most consumer-oriented financial products, such as credit cards and mortgages, and require lenders to give customers the option of “plain vanilla” plans with straightforward terms. Iowa Attorney General Tom Miller, who has been one of the leaders in the movement, said in a statement:

Working with the states, this agency will be able to prevent and root out unfair and deceptive practices by the financial services industry.

The letter, which was sent to leaders of the Senate Banking Committee and the House Financial Services Committee, read:

The current financial crisis, caused in part by irresponsible subprime lending and inadequate oversight, has demonstrated the need for comprehensive and effective consumer protection and enforcement at the federal level.

President Obama asked lawmakers to adopt a new regulatory regime by year’s end. The letter from the Attorneys General also called for the preservation of the states’ authority and ability to fight unfair and deceptive practices. The CFPA will not preempt

state law. Instead, it will allow states to continue to experiment with different approaches. Hopefully, Congress will pass the needed legislation to create the CFPA.

Source: *Des Moines Register*

CONGRESS LISTENS ON HEALTHCARE REFORM

The efforts to reform our broken healthcare system have gotten down to one simple issue: “Who does Congress listen to?” It could also be put this way: “Who controls Congress?” Few Americans would deny that health care costs in the U.S. are out of control, folks are losing coverage, and quality and availability of care are growing concerns among citizens throughout the country. Most folks probably support reform, but only if the reform makes quality health care more affordable and more accessible. Over the years the insurance and pharmaceutical industries have literally taken over our healthcare system. The insurance companies have pushed medical professionals to the second tier of influence in most all areas in the system. We now have clerical personnel working for insurance companies deciding what level of healthcare folks get in America and that’s just unacceptable.

The town hall meetings throughout the country have developed into little more than an opportunity for folks to express their legitimate concerns over the failures of the existing system and their even greater fear of a government takeover of American healthcare. While some may question motives, I am a strong believer in the town hall meeting concept. Most of us have not read any of the versions of the reform bills being considered in Washington. Some who attended these meetings obviously have.

One thing is for certain, and that is that the members of Congress are listening more to the lobbyists for the insurance industry than to the voices of ordinary citizens. Unfortunately, much of what the public is hearing is either false or partially false—and both are

bad—and all of it is coming by and large from the insurance and pharmaceutical industries. I hope some real reform occurs, but I have real doubts that the insurance and drug bosses and their lobbyists will let up. The corporate opposition to reform has labeled the central issue as a “government takeover of healthcare,” which was described in an editorial in the *USA Today* as “rhetoric worthy of the mad hatter.” When the debate started, I thought reducing the cost of healthcare and making healthcare accessible were the major issues.

The healthcare reform issue is most complex and there is no easy solution. There is little doubt that we need meaningful reform of our healthcare system so that all Americans can have access to quality, affordable healthcare. The insurance and drug industries have had far too much control over the system. We have seen the cost of healthcare and health insurance premiums skyrocketing out of control with no end in sight. In Alabama there are over 600,000 adults who are uninsured and that is unacceptable.

As stated above, there have been so many untruths and half-truths put out that efforts by the Obama Administration and Congress have been stalled. Hopefully a good bill that is real reform will pass and become law.

TOP TARP BANKS PAID OUT \$32.6 BILLION IN BONUSES

Nearly a dozen banking giants, including Merrill Lynch & Co., Citigroup Inc. and Bank of America Corp., paid out more than \$32.6 billion in bonuses in 2008. At the same time, the banks were accepting \$175 billion in taxpayer funds through the Troubled Asset Relief Program. A report, released by New York Attorney General Andrew Cuomo, analyzed the original nine U.S. banks that received TARP funding in 2008 and concluded that even though the banks’ profits fell drastically, they continued to pay out large bonuses. I would have thought the top officials with these banks would have learned

their lesson. But apparently not, and their greed continued to override their judgment of fair play.

In the report, entitled “No Rhyme or Reason: The ‘Heads I Win, Tails You Lose’ Bank Bonus Culture,” the Attorney General’s office analyzed 2008 bonuses at nine banks that received TARP financing from the U.S. government. Citigroup and Merrill, since taken over by Bank of America Corp., received TARP funding totaling \$55 billion. Goldman Sachs Group Inc., Morgan Stanley and JPMorgan Chase & Co. paid out a total of \$18 billion in bonuses in 2008, while receiving a combined total of \$45 billion in taxpayer dollars through TARP. In 2008, the three firms earned a combined \$9.6 billion last year, according to the report.

It’s absolutely impossible to justify the TARP funds being used to pay bonuses to officers or employees of banks that recorded billions of dollars in losses. For example, Citigroup and Merrill Lynch suffered losses of more than \$27 billion at each firm, according to the report. Even so, Citigroup paid out \$5.33 billion and Merrill \$3.6 billion in bonuses.

Source: *Law 360* and *TransWorld News*

REPORT FINDS ONLY NINE PERCENT OF HOMEOWNERS ARE GETTING HELP

It was reported recently by Associated Press that the federal government’s \$50 billion program to ease the foreclosure crisis is helping only a tiny fraction of struggling homeowners. According to the report, as of July, only 9% of eligible borrowers had seen their mortgage payments reduced. A progress report on the plan in early August, showed that ten lenders had not changed a single loan. Both Bank of America Corp. and Wells Fargo & Co.—which have received billions in federal bailout money—were below average. The following was the score card:

- Bank of America had modified 4% of eligible loans;
- Wells Fargo had modified 6%;

- Wachovia Corp., which was taken over by Wells Fargo last December, had modified only 2% of eligible loans.

Foreclosures, meanwhile, continue to rise. About 1.5 million households received at least one foreclosure-related notice in the first half of this year, according to RealtyTrac Inc. It was reported that there are more foreclosures taking place in the country than there are loan modifications. Also, not all of the companies that should be in the plan are participating. There are 38 companies participating in the program, but there are holdouts that control 15% of outstanding mortgages. For example, Litton Loan Servicing, owned by Goldman Sachs, and HomEq Servicing, owned by Barclays PLC, have yet to join. American Home Mortgage Servicing and PNC Financial Services Group Inc. were among the companies that had a zero next to their names on the Administration’s recent report.

For each homeowner who makes regular payments for three months, the loan servicer collects \$1,000 from the government. The company is paid thousand of dollars more if the borrower stays current for three years. Housing advocates cite numerous cases in which companies haven’t followed the program’s rules. And when borrowers are denied, they often aren’t told why. In response to such complaints, the Treasury Department says Freddie Mac will be doing random audits to see if borrowers are being improperly rejected.

Source: Associated Press

THE GOVERNMENT’S MORTGAGE PARTNERS ARE ABUSING THE SYSTEM

With so many folks being hurt as a result of a bad economy and millions still suffering, it is sad to learn that others are making piles of money under the pretense of helping those who are suffering. An investigation conducted by the Associated Press has found that billions of dollars the government is spending to help financially-

troubled homeowners avert foreclosure are actually enriching companies that are supposed to be helping. These companies have been accused of preying on the very people they are supposed to help.

Companies, known as mortgage servicers, are middlemen which collect monthly payments from homeowners and funnel the money to the banks who made the loans or to investors who now hold the loans. The government apparently believes that—as the only link between borrowers and lenders—these mortgage servicers are in the best position to rework the terms of loans under the government’s \$50 billion mortgage-reduction program. The companies earn a fee for every successful loan modification and, according to Associated Press, apparently the amounts earned are in the billions of dollars.

The Associated Press reports that this industry has a checkered history. According to the report, at least 30 servicers have been accused in lawsuits of harassing borrowers, imposing illegal fees and charging for unnecessary insurance policies. More recently, the companies also have been criticized for not helping homeowners quickly enough. Those delays led to more fees for homeowners and more profits for the servicers.

The plan, called the Home Affordable Modification Program, was designed to help up to 4 million homeowners avoid foreclosure. But thus far only about 200,000 loan modifications are under way. That’s totally unacceptable. The biggest players in the servicing industry are Bank of America, Wells Fargo & Co., JPMorgan Chase & Co. and Citigroup Inc. It appears that the system in place is broken and in need of a quick and effective fix.

Source: Associated Press

IT’S TIME FOR CONGRESS TO PUT A STOP TO PRESCRIPTION DRUG ADS

I have never felt that prescription drug manufacturers should be allowed to advertise their products to the con-

suming public. In fact, there can be no justification for a drug company using ads to market drugs that are prescribed by a medical doctor. Medical professionals are trained to make the decisions when it comes to prescribing drugs to persons who need them. The \$4.3 billion ad sector has now come under attack from lawmakers in Washington who want to get the ads off the airwaves. In my opinion, Congress should ban direct-to-consumer advertising once and for all. While it will be hard to get this done, it's something that's badly needed.

VIII. THE CORPORATE WORLD

Pfizer Settles Claims in Nigeria Over Trovan

Pfizer has entered into a settlement which has been estimated to be worth up to \$75 million with Nigeria's Kano state arising out of a 1996 meningitis drug trial. In May 2007 the northern state of Kano sued Pfizer, the world's largest drugmaker, for \$2 billion in damages over the testing of the meningitis drug Trovan. It was contended in the lawsuit that the drug killed 11 children and left dozens disabled. Apparently, the settlement over the Trovan litigation by Pfizer and the Kano state government ends this matter.

Details of the drug trial were first made public in December 2000 in a *Washington Post* investigative series. The articles reported that the trial failed to conform to U.S. patient-protection standards and that the oral form of the drug used in the trial had not been previously tested in children. Apparently, Pfizer had no signed consent forms for the children and the company was said to have relied on a falsified ethics approval letter.

Five years later, in May 2006, the *Post* obtained and published a confidential report that concluded that Pfizer violated Nigerian and international law in

the experiment. That set in motion the criminal charges. It should be noted that Trovan was never approved for use by children in the United States. The Food and Drug Administration approved it for adults in 1998, but later severely restricted its use after reports of liver failure. The European Union banned it in 1999.

Under the agreement, the world's largest drug company agreed to pay \$30 million over two years toward health-care initiatives chosen by the Kano state government. It will reimburse the state for \$10 million in legal costs. And Pfizer agreed to create a fund that will pay up to \$35 million toward "valid claims" for financial support submitted by patients who took part in the clinical trial. A panel appointed by Pfizer and Kano state will determine eligibility and levels of support.

A lawyer for the state of Kano, where the charges were lodged, said the settlement was a long time coming but still welcome because it set the record straight about Pfizer's culpability. The lawyer, Babatunde Irukera, said:

People and entities can and must be held accountable for the consequences of their conduct. People around the world are no different and must be accorded the same levels of protections, always.

Charges filed against Pfizer by Nigeria's federal government, which is seeking about \$6 billion in damages, are unaffected by the settlement. Two lawsuits related to the Trovan experiment also remain pending in New York.

Source: Reuters

Another Medtronic Consultant Is Under Fire in the U.S. Senate

The U.S. Senate investigation of very close ties between doctors and the medical device maker Medtronic has revealed that another of the company's consultants, Dr. David W. Polly Jr., may have had a good reason to favor Medtronic. In 2006, the doctor urged members of a Senate panel to continue

paying for Defense Department medical research into combat-related injuries. But interestingly, Dr. Polly failed to disclose during his testimony that he was a "Medtronic consultant" and was billing the company \$6,000 for his appearance before the Senate panel. Instead, according to a report by the *New York Times*, the doctor told lawmakers that he was representing a professional medical association of orthopedic surgeons.

Source: *New York Times*

AstraZeneca Has Spent \$593 Million for Seroquel Defense

In its second quarter report, AstraZeneca revealed that it has already spent \$593 million defending Seroquel, its antipsychotic drug that is involved in state and federal litigation across the country. Seroquel is an atypical antipsychotic drug approved by the FDA for treating schizophrenia and bipolar disorders. There have been more than 10,000 lawsuits filed in state and federal courts in the U.S. in which Plaintiffs accuse the company of illegally marketing Seroquel for off-label uses and failing to warn users about the risks of severe weight gain, diabetes and other serious medical conditions.

The drug manufacturer says the cost of defending the litigation has already exceeded its liability insurance. The company says it will most likely face legal disputes over at least some of its insurance coverage. Currently, 10,381 cases are pending—2,556 have been dismissed. I don't believe there has been a case tried so far. The Seroquel litigation has been described as "a roller coaster ride" for both sides.

Two bellwether cases, which were set to be tried in the multi-district litigation, were dismissed by the court. While this was in a victory for the Defense, it was followed by a big win for the Plaintiffs when numerous company documents were unsealed. That revealed that AstraZeneca had "cherry picked" favorable information about the drug from medical studies and failed to make negative results

public. The next trials were scheduled to begin in May in a Delaware state court, but the named Plaintiff was dismissed in the case and replaced by a bankruptcy trustee. The trustee's ability to recover damages is capped at \$14,000 plus litigation costs. But, in another victory for the Plaintiffs, the MDL judge ruled in June that the Plaintiffs' expert epidemiologist could testify that Seroquel can cause weight gain and diabetes.

Source: *Lawyers USA Online*

BOEING TO PAY \$2 MILLION FOR FALSE BILLING

Boeing Co. is paying a \$2 million fine to settle allegations it inflated maintenance bills for a U.S. Air Force contract. A lawsuit was filed in 2006 by a whistleblower, who said he was the only person performing non-routine maintenance on the KC-135 between 2002 and 2005 at a facility in San Antonio, Texas, and it appears Boeing committed fraud. It was reported that Boeing's billing statements were manipulated to show workers performing tasks who had "never been near the plane."

The lawsuit was kept secret under Justice Department guidelines while the Department investigated the allegations. As usual—even though it paid a fine—Boeing denied it had made any false claims. Corporations being awarded government contracts of any kind—including defense contracts—and which are making big bucks, must not be allowed to cheat or defend the government. Those who do so should be punished severely.

Source: UPI.com

MERCK AND SCHERING-PLOUGH SETTLE CLASS ACTION LAWSUIT

Merck and Schering-Plough will pay \$41.5 million to settle class-action lawsuits filed by patients taking the cholesterol drugs Vytorin and Zetia. It was alleged in the lawsuits that the companies purposefully delayed the release of study results showing the cholesterol

treatments were no more effective than older, less expensive medications.

The suits claimed the drug makers violated state consumer protection laws by delaying unfavorable study results because they would hurt sales. Merck and Schering-Plough faced more than 140 class action lawsuits involving Vytorin. Marketed jointly by Merck and Schering-Plough, Vytorin is a composite of Schering-Plough's Zetia and Merck's Zocor, a statin now available as a low-priced generic.

The suits accused Merck and Schering-Plough of grossly overpricing Vytorin and covering up findings that the drug was no more effective than lower-priced generics. A study released in January 2008 by the companies showed that Vytorin is no more effective than the generic form of Zocor in reducing plaque buildup. Also, it's only slightly more effective than the generic drug alone in reducing LDL—"bad cholesterol"—levels. The settlement follows a \$5.4 million settlement last month with Attorneys General from 35 states and the District of Columbia who had made similar allegations.

The settlement came while Merck & Co. was in the process of buying Schering-Plough Corp. for \$41.1 billion. That deal has now been approved by shareholders for the two companies.

Source: *Forbes*

IX. CONGRESSIONAL UPDATE

CONSUMERS MUST BRING CLAIMS AGAINST GENERAL MOTORS AND CHRYSLER IN BANKRUPTCY COURT

Under the bankruptcy plans that were approved for Chrysler and GM, several thousand American consumers with pending claims against the companies alleging that defects in the companies' vehicles caused death or injury will be forced to bring their claims in the bankruptcy court. Under the bankruptcy plan for Chrysler, all consumers

who purchased Chrysler vehicles before New Chrysler emerged from bankruptcy will likewise be relegated to bringing claims in the bankruptcy court if a defect in one of those vehicles causes a death or injury. There are approximately 30 million Chrysler vehicles that are currently on the road that were purchased before New Chrysler was established.

New GM, on the other hand, has accepted responsibility for injuries or deaths caused by defects in Old GM vehicles as long as those claims were not pending before New GM emerged from bankruptcy. That means that Chrysler is the only car company in America that will not stand behind the safety of its vehicles. There will be virtually no money in the bankruptcy court to pay any sums to the tort Claimants who have cases against Chrysler LLC and only a small sum available to the tort Claimants with cases against General Motors Corporation.

This situation leaves these Claimants victimized twice—first, by an unsafe car that, in many cases, caused devastating injury or death; and second, by a bankruptcy they had nothing to do with. This result is unfair and unnecessary. With only a small additional investment, Chrysler and GM can afford to give every victim with a claim their day in court. Chrysler and GM have agreed to indemnify their dealers in product liability cases. While indemnification will not give all injured victims the ability to prove their case in court, it will help many victims.

For example, in testimony before the House Judiciary Committee on July 22, 2009, Kevyn Orr, a lawyer with Jones Day, appearing on behalf of Chrysler, testified as follows:

Chrysler Group has agreed to indemnify its dealers against product liability lawsuits. These dealers sold approximately 85% of the vehicles sold by Old Carco. As a result, in the vast majority of product liability cases involving Old Carco vehicles sold before the bankruptcy, Chrysler Group will

defend its dealers pursuant to its dealership agreements.

Similarly, General Motors Corporation has agreed that it will continue to honor all dealership indemnification contracts and will provide payment to Claimants who obtain a dealership network. For example, a section of the GM Dealer Sales agreement states:

General Motors will assume the defense of Dealer and indemnify Dealer against any judgment for monetary damages or rescission of contract, less any offset recovered by Dealer, in any lawsuit naming Dealer as a Defendant relating to any Product that has not been altered when the lawsuit concerns:

The Participation Agreement with GM's dealers that have been terminated states:

GM reaffirms the indemnification provisions of Article 17.4 of the Dealer Agreement and specifically agrees that such provisions apply to all new Motor Vehicles sold by Dealer.

There are, however, circumstances in which dealer indemnification will not provide redress for injured Claimants:

- In ten states, Plaintiffs may not recover from non-negligent dealers even if manufacturers become insolvent: Colorado, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, North Dakota, South Dakota and Utah.
- In many cases, non-owners of vehicles, such as passengers or pedestrians, often cannot sue the car dealer.
- It is misleading for jurors to believe that they are holding Dealers—who had nothing to do with design and manufacturing—responsible for product defects when the real party of interest is the manufacturer. In addition, jurors will naturally be more reluctant to assess liability against a local merchant who may be significantly involved in community affairs, or they may assess smaller damages than is fair to the consumer

simply to avoid burdening the local dealer.

- It will be difficult for Claimants to get discovery against the manufacturer if the Claimant can only sue the dealer. This will make it difficult, if not impossible, for the Claimants to access the information they need to prove their cases.

Congress should pass legislation that would require Chrysler and GM to accept liability for product liability claims that were pending as of the time that the companies declared bankruptcy and would require Chrysler to accept liability for product liability claims involving its vehicles that were sold pre-bankruptcy. According to the companies, this will not impose a great deal of additional costs on the companies since they are already indemnifying their dealer network, but at the same time, it will ensure that all the victims receive their day in court and not remain victims of both a defective vehicle and then of the bankruptcies of the two carmakers.

THE HEALTHCARE REFORM DEBATE

Even though we discussed the ongoing healthcare debate at length in another section, I will repeat that passage of meaningful reform of our healthcare system remains a top priority for the Obama Administration. It should be a top priority for all American Citizens. We can't let the insurance and pharmaceutical industries dictate what reform will look like.

THE FEDERAL GOVERNMENT MUST ADDRESS THE PROBLEM OF GLOBAL WARMING

Global warming is one of the most serious challenges facing our country today. To protect the health and economic well-being of current and future generations, it's essential that our emissions of global warming pollution be reduced by using the technology, know-how, and practical solutions already at our disposal. The United

States can curb climate change, break our dependence on oil, and put Americans back to work—but it will take a bi-partisan effort by all of our lawmakers to do it. In late June, the House of Representatives took an historic vote to pass comprehensive climate and energy legislation. The Senate should now strengthen and pass the House bill. President Obama must play an active role in ensuring that Congress passes a strong, comprehensive climate and energy policy this fall.

Passing strong, comprehensive climate legislation remains key to putting Americans back to work, breaking our dependence on oil, and protecting our health and environment. The American Clean Energy and Security Act must be passed, but the Senate must strengthen it. To maximize the potential health, economic, and climate benefits, this legislation should:

- Reduce U.S. global warming pollution by 35% below current levels by 2020 and at least 80% by 2050.
- Require utilities to generate at least 25% of their electricity from clean, renewable sources—such as the wind and sun—by 2025.
- Invest more money in renewable energy and energy efficiency programs that will save consumers money.
- Preserve the Environmental Protection Agency's existing authority to regulate global warming pollution under the Clean Air Act.
- Ensure policies can be rapidly adjusted in response to emerging climate science.

The Obama Administration and Congress must pass comprehensive climate and energy legislation this year. If you agree, take the time to write the President and the Senators in your state and urge them to act now and help save our planet.

Source: Democrats.com

CONGRESS SHOULD PASS THE MEDICAL DEVICE ACT

Congress should pass without delay the legislation that would restore the law on federal preemption that has existed for years prior to the U.S. Supreme Court decision that totally ignored existing law and ruled that federal preemption would bar all state common law lawsuits involving a defective medical device.

X. PRODUCT LIABILITY UPDATE

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

Several months ago, we began a series of articles discussing product liability claims that arise from single vehicle accidents. As all of our readers should know, a product liability claim focuses on whether or not a product is defective. The purpose of this series is to emphasize the many different kinds of product liability claims. In automobile cases, the defective product could be the entire vehicle, or a component part such as the seat belt or tires. Unfortunately, the average motorist has no idea how unprotected he or she will be in an accident as a driver or passenger in a defective vehicle.

Our lawyers are trained to recognize defect claims in motor vehicle accident cases. Any single vehicle accident involving death or serious injury, including paralysis, loss of limb or brain damage, should be investigated and carefully analyzed for possible product liability claims. Last month, we looked at electronic stability control systems. This month, we look at defective cab guards and the injurious consequences of those defects.

Cab guards, or what are often called “headache racks,” are required as front-end structures on 18-wheelers that pull flat beds, trailers and log trailers. The purpose of a cab guard is to prevent

shifting cargo from contacting the cab of a heavy truck. Many cab guards are made of welded heat-treated aluminum which results in a weakening of the cab guard over time. The weakening of the cab guard due to fatigue stress is relatively unknown to drivers. Many welding requirements established by national organizations are not followed by cab guard manufacturers. The failure to follow such guidelines results in poor welds, poor quality control, and poorly-designed cab guards. Those defective guards don’t work for their intended purpose of protecting truck occupants.

In August of 2003, our firm received a positive result in a case involving a defective truck cab guard. A jury in Lamar County, Alabama, awarded a \$12 million verdict to a Mississippi resident in a case involving a defective product that killed her son. The product liability lawsuit was brought on behalf of her deceased son against the manufacturer of a defective truck cab guard. The victim was driving a log truck for a trucking company when the passenger side wheels went off the side of the road. Before he could ease the truck back onto the road, the truck tipped over on the passenger side. When the vehicle turned over, part of the load slid forward, hitting the driver’s protection device—the cab guard. The protection device failed, allowing the few logs that slid forward to press against the back of his cab, causing nearly three feet of intrusion into the occupant compartment. As a result, the victim was killed.

A cab guard is installed on a truck to ensure that a truck driver’s load does not intrude into the cab. Instead of designing and manufacturing a cab guard that works, the manufacturer in the Lamar County case used poor design and fabrication and inferior welding procedures that resulted in a failure, causing the death. The manufacturer did this to save money, and put profits over the safety of its consumers. The company claimed and advertised that its cab guard met the minimum Federal standards and provided maximum protection, even though it

did not. The minimum standards require the cab guard to be able to withstand one half of the load applied uniformly across the back of the guard. In our case, the manufacturer never tested the model cab guard on the truck.

Unfortunately, this sort of thing is a common occurrence. Truck drivers make up one of the largest occupations in the United States, spending countless hours on the road. They do this while driving vehicles that are less regulated than passenger cars and small trucks. Without more regulation, these men and women will continue to risk their lives daily to keep America running—sometimes not even realizing how dangerous their jobs are.

We pursue claims against heavy truck manufacturers for defective design and manufacturing including claims for defective cab guards. If you would like more information or have a question, you can contact Ben Baker (Ben.Baker@beasleyallen.com) in our office at 800-898-2034.

MESOTHELIOMA CASE RESULTS IN \$700,000 VERDICT FOR VICTIM’S FAMILY

A South Carolina jury awarded \$700,000 to the family of a man who died from mesothelioma, following the asbestos exposure he experienced on the job in the 1950s. As our readers should know, mesothelioma is a rare asbestos-related cancer. Thomas Firth was diagnosed with mesothelioma in November 2006 and died from the cancer on July 13, 2007. Firth and his family filed a lawsuit against Garlock Sealing Technologies, a global leader in high-performance fluid sealing products for the world’s processing industries, alleging the company was responsible for his exposure to asbestos that occurred when he worked as a mechanic’s assistant at a Bethlehem Steel Corporation plant in Sparrows Point, Maryland.

Mr. Firth worked with Garlock gaskets and packing on many pumps and valves found on a variety of coke ovens, used to heat and control coal. The jury determined Garlock failed to

warn Mr. Firth, and others who used its products, of the inherent dangers associated with handling these asbestos-containing products.

Mr. Firth's only known exposure to asbestos occurred at the plant in Maryland in the 1950s. Though he worked at the plant for less than a year, the asbestos exposure Mr. Firth experienced on the job led to his mesothelioma diagnosis. Mesothelioma develops when asbestos fibers are inhaled or ingested into the body. The fibers then become lodged in organs or cavities, causing inflammation and infection. Patients with mesothelioma typically do not demonstrate symptoms of mesothelioma for 20 to 50 years after initial exposure to asbestos occurred.

If you would like more information or have any questions about asbestos exposure, you can contact Mike Andrews (Mike.Andrews@beasleyallen.com) or Ben Locklar (Ben.Locklar@beasleyallen.com) in our office at 800-898-2034.

AN UPDATE ON THE RHINO LITIGATION

CBS News reported last month that in July, 2002, test drivers gathered in Kentucky to try out the Yamaha Rhino. During the testing, Keisuke "Casey" Yoshida, President of a U.S. subsidiary of Yamaha Motor Co. Ltd., was behind the wheel of a Rhino prototype. Ike Miyachi, a company vice president in charge of Rhino development, rode beside him in the passenger seat. During the ride, the Rhino tipped over, giving Miyachi a foot injury. Yoshida raised a question a few weeks later during a Rhino meeting that now seems prophetic. "Casey wants update on instability of vehicle for future liability cases," according to Yamaha meeting minutes.

The Rhino is dangerously unstable due to its unusually narrow stance, high ground clearance and lack of a rear differential to help in turning. The Rhino's seat belts tend to unspool during rollovers, resulting in belted occupants being partially ejected. The Rhino has "significant problems," said Inez Tenenbaum, who in June became

chairman of the U.S. Consumer Product Safety Commission.

Under pressure from the agency, Yamaha announced a "free repair program" to improve the Rhino's handling and stability. Seemingly a recall in everything but name, the company agreed to install spacers on the rear axles of the vehicles to make them a few inches wider, to remove their rear anti-sway bars, and install protective half-doors. It's possible that the CPSC could still ban the Rhino. In an interview with CBS News, Commissioner Tenenbaum said the safety commission is continuing to investigate. She said that if the Rhino is found to be too dangerous even with the changes, she would be willing to seek a ban.

Serious accidents have occurred under seemingly benign conditions-at low to moderate speeds, on relatively flat ground, and without drivers knowingly doing anything adventurous or sporty. Our firm represents a number of victims of this dangerous vehicle. If you have questions about the Yamaha Rhino, please contact Chris Glover, a lawyer in our firm, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

\$1.8 MILLION JURY VERDICT AGAINST NISSAN UPHELD

Nissan Motor Co. must pay the \$1.85 million in damages a jury awarded to a woman involved in a three-vehicle collision. Rebecca Perdue filed a product liability lawsuit against Nissan in December 2007, in a Texas State Court. Ms. Perdue was driving her 1995 Nissan Pathfinder when a vehicle that had collided with another vehicle then struck her Nissan. She was properly wearing her seatbelt at the time of the accident, but was injured when the Nissan failed to protect her. Ms. Perdue alleged that the Pathfinder was "not reasonably crashworthy" and was "unreasonably dangerous and defective," as demonstrated through its "poor crash test performance, stiff crash pulse, performance in real world crashes, and high death rate."

Nissan failed to provide an adequate restraint design or an advanced restraint system necessary for vehicles with rigid and stiff structures to achieve "ride-down," which is the "reduction in restraint loading and risk of occupant injury." Nissan has been involved in the development of advanced restraints systems for decades but decided not to include an advanced restraint design in Ms. Perdue's 1995 Pathfinder.

It was alleged in the suit that "to eliminate the consequences of the dangerously stiff and rigid vehicle, an airbag and/or other advanced safety restraint must be used because the restraint system is incomplete and ineffective without such features." Nissan had investigated the use of front-end structure modification to improve the crashworthiness of its vehicles, but did not incorporate an appropriate design to the vehicle at issue. If her 1995 Nissan Pathfinder had contained a properly designed advanced restraint system including an airbag, Ms. Perdue says she would not have been injured in the three-car collision.

After a four-day trial, the jury agreed with the Plaintiff, awarded \$1.85 million in damages, and found that there were no responsible third parties. After U.S. District Judge Leonard Davis entered a final judgment on the jury verdict, Nissan filed a motion for new trial or alternatively for judgment as a matter of law. Nissan argued that the jury verdict was against the "great weight of the evidence." The Defendant also requested a new trial arguing that the court improperly commented on evidence and that the Plaintiffs' lawyers made improper jury arguments. The Court denied Nissan's requests, stating that the Defendant failed to challenge the sufficiency of evidence during the trial and failed to reference any legal authority supporting its claims.

In the denied request, Nissan argued that the jury should have apportioned a percentage of damage upon a third responsible party, the drivers of the two other vehicles involved in the collision. Judge Davis wrote that the jury

was properly asked whether Perdue's injuries were caused by the negligence of others and the jury found the actions of others did not cause the Plaintiff's injuries. Todd Tracy of the Tracy Firm in Dallas was the lead lawyer for Ms. Perdue and did a very good job.

Source: www.setexasrecord.com

\$8.3 MILLION AWARD TO WOMAN INJURED IN SUV CRASH UPHeld ON APPEAL

A state appeals court in New Jersey has upheld an \$8.3 million jury award against Ford Motor Co. and a Ford dealer in favor of a woman who lost most of the use of her right arm in a 2000 accident. Rebekah Zakrocki, who was 22 at the time, was traveling in a 1997 Ford Explorer on a public highway when its throttle became stuck, making the Explorer surge. She lost control of the SUV and it rolled over, crushing her arm, which was hanging out of the open sunroof. During the 2007 trial in a state court in New Brunswick, it was proved that sludge, which had built up on the throttle, amounted to a design defect. The jury found the plaintiff driver partially liable because she was not wearing her seat belt at the time of the accident.

The original verdict of \$10.6 million in compensatory damages was reduced because of the Plaintiff's share of the liability. The Defense lawyers claimed at trial that the Plaintiff was going 83 mph when the accident occurred. But, according to the Plaintiff, she was traveling at 73 mph. The jury rejected a related claim that the Explorer was unstable, causing it to roll over during the accident. Ford Motor Co.'s share of the compensatory damages is about \$6.5 million. The jury awarded \$42,000 in punitive damages, which the Plaintiff appealed. The three-judge panel also ruled against the Plaintiff on that issue in her appeal.

The jury's finding that a defective throttle on a 1997 Ford Explorer caused the rollover accident that left Rebekah Zakrocki with a useless right arm was upheld. The crash nearly

severed Ms. Zakrocki's right hand and tore out the nerves connecting her spinal cord to her arm. She had 21 operations, including multiple muscle, vein, nerve and skin grafts.

Source: myCentralJersey.com

NHTSA IS LOOKING AT JEEP WRANGLERS FOR FIRE RISKS

The federal government is investigating a potential fire risk in more than 200,000 Jeep Wranglers. The National Highway Traffic Safety Administration opened a preliminary investigation last month into 2007-2008 model year Wranglers with automatic transmissions. The government has received three complaints in the United States alleging overheating of the vehicle's transmission. One complaint said a fire occurred. Another said transmission fluid leaked onto the catalytic converter, leading to smoke.

Chrysler says it is aware of a small number of alleged fires in China involving the Wrangler, but is not aware of any U.S. cases. It says there have been no injuries and that the automaker is working with regulators in the U.S. and China on the issue. Vehicle investigations can lead to product recalls. So far there have been no recalls relating to this issue, but the fact that a defect investigation was opened is significant.

Source: Associated Press

XI. MASS TORTS UPDATE

MERCK FACES FIRST FOSAMAX TRIAL

By the time this issue is received, the first Fosamax trial should have begun in a New York court. The trial was scheduled to start on August 11th. Merck & Co., the drug maker, faces a tremendous number of lawsuits over claims that its osteoporosis drug Fosamax causes the death of jawbone tissue. The outcome in the New York case may affect the others. This case, filed by

Shirley Boles, 71, is being called one of three bellwether cases that is being watched closely.

As of June 30th, Merck faced about 900 Fosamax cases, including suits with multiple patients. Merck, which has bought rival Schering-Plough Corp., has set up a reserve of about \$42 million for the litigation. There are as many as 2,000 plaintiffs in the state and federal Fosamax cases.

The judge, who will preside over the Boles' case, has ruled out the possibility of punitive damages in the case, but he rejected Merck's motion to find in its favor without a trial. Last year, the Plaintiffs' request to treat the litigation as a class-action lawsuit, which would have allowed the Plaintiff to ask for court-ordered medical monitoring of all Fosamax users, was denied. The Fosamax Plaintiffs claim Merck misrepresented the drug's safety and failed to warn doctors and patients that it might hamper blood flow to the jaw, causing jawbone-tissue death and leading to partial removal in some patients. Jawbone tissue death is called osteonecrosis of the jaw, (ONJ). The Plaintiffs claim Merck didn't sufficiently warn about the drug's risks when it changed the label in 2005.

Fosamax, available in pill or liquid form, is part of a group of medicines known as bisphosphonates. The only cases of jaw necrosis have been found in the drugs' users and cancer patients receiving chemotherapy, according to Mahyar Etminan, a pharmacy expert for the Plaintiffs.

Ms. Boles used Fosamax from 1997 to 2006 and eventually developed osteonecrosis. Merck had a duty to change the Fosamax label to warn doctors about a connection to the disease as early as the mid-1990s. But, the drug manufacturer failed to do so. Merck had notice of the problems through adverse reports starting in 1996. The company has thousands of reports of jawbone loss related to Fosamax. Patients with dental problems are most vulnerable to developing ONJ by using Fosamax. Those are the people who are the most at risk.

In the Boles' case, oral maxillofacial

experts, but not an epidemiologist, will be allowed to testify that Fosamax causes osteonecrosis of the jaw. Merck's lawyers had sought to exclude testimony on general causation by four Plaintiffs' experts: three oral maxillofacial experts and an epidemiologist. The court held that the testimony of the oral maxillofacial experts was admissible, but granted Merck's motion to exclude the testimony of the epidemiologist on general causation. The judge wrote:

In forming their opinions on general causation, [the oral maxillofacial experts] rely upon their clinical experience in treating ONJ, understanding of the physiology of the jaws and the pharmacology of bisphosphonates, and review of the available scientific literature and evidence. Their theory on the mechanism of causation is generally accepted as biologically plausible. In addition, they formed their opinions independently of litigation, have published them in leading peer-reviewed journals, and frequently are cited by others in the field.

But the judge ruled that the Plaintiffs' steering committee did not show that the epidemiologist reached his general causation opinion in this case by applying the same level of intellectual rigor that characterizes his work as an epidemiologist in the field.

Federal court trials are scheduled for December and January. We have a case set for trial in Alabama state court starting on October 21st. About 700 of the lawsuits have been consolidated before one judge in a New York federal court for discovery purposes only. About 140 cases are before Judge Carol Higbee in state court in Atlantic City, New Jersey. The New York suits are combined in *In Re Fosamax Products Liability Litigation, MDL 1789, U.S. District Court, Southern District of New York (Manhattan)*. The firm of Levin Papantonio Thomas Mitchell Echsner & Proctor PA in Pensacola, Florida, represents Ms. Boles in her case.

UPDATE ON THE VIOXX SETTLEMENT PROGRAM

The Vioxx Claims Administrator continues to review claims and is on pace to complete its review of the heart attack claims by the end of September 2009. Since the Settlement Program's inception, the Claims Administrator has reviewed over 30,000 heart attack claims and, by the date of this publication, will have issued interim settlement payments to over 19,000 victims of Vioxx-related heart attacks and their families. These interim settlement payments represent over \$1.5 billion being distributed to Vioxx heart attack victims since payments began in August 2008. This remarkable feat is a testament to the efficiency of the Settlement Program.

Once the Claims Administrator finalizes its evaluations of the remaining heart attack claims, a final point value will be calculated. The Claims Administrator will then issue final settlement payments based upon the final point value. The Vioxx Claims Administrator has represented to the Court that the Settlement Program is currently on track for the final settlement payments for the heart attack claims to be calculated by September 30, 2009. We expect to issue final settlement checks in October 2009 to most of our clients who have been deemed eligible for compensation for their Vioxx-related heart attacks.

As of July 30, 2009, interim settlement payments have been issued to 2,086 stroke claims, and interim payments are expected in an additional 248 stroke claims in August 2009. This represents over \$70 million being distributed to victims of Vioxx-related strokes and their families since payments began in February 2009. The Claims Administrator will continue reviewing stroke claims until all stroke claims are evaluated. We do not expect final settlement payments for stroke claims until sometime next year.

WYETH PAID FOR GHOSTWRITTEN PREMPRO ARTICLES

Newly unsealed court documents reveal that Wyeth Pharmaceuticals paid ghostwriters to produce forty scientific papers to promote the benefits and downplay the risks of Premarin and Prempro, their hormone therapy drugs. These drugs grossed nearly \$2 billion dollars in 2001. The articles, published in medical journals between 1998 and 2005, failed to disclose Wyeth's role in initiating and paying for the work.

What seemed like a growing medical consensus started falling apart in 2002 when a large government study was halted after researchers found that menopausal women who took Prempro had an increased risk of invasive breast cancer, heart disease and stroke. Nevertheless, Wyeth Vice President, Doug Petkus now tells the news media that the ghostwritten articles were "scientifically accurate" and never "misrepresented the science." However, Ted Meadows, one of our lawyers, specifically asked Petkus in his 2005 deposition whether there was "ever any ghostwriting done with respect to hormone therapy products?" His answer: "I don't know."

Most of the ghostwriting documents were uncovered by our friend and a fine lawyer, Jim Szaller. They provide a paper trail showing how Wyeth contracted with a company to draft articles and solicit well-known physicians to sign their names, even though the doctors contributed little or no writing. Because practitioners rely on medical literature, the concern is that such subterfuge leads to changes in prescribing habits without knowing the articles were written by a drug company.

Approximately 12,000 women have sued Pfizer and/or Wyeth claiming that their hormone drugs caused serious medical conditions, including breast cancer. So far, eight of ten juries have agreed and returned large verdicts. The companies have also settled at least eight other cases on the eve of trial.

Our firm represents a number of women who have filed suit against

Wyeth and/or Pfizer. We are currently set for trial in Philadelphia, where Judge Moss has ordered that 16 cases be tried, starting in September and ending in the first half of 2010. We also hope that several other hormone therapy cases will soon be set for trial in other parts of the country during 2010. If you would like more information, you can contact Ted Meadows, Melissa Prickett or Russ Abney at 800-898-2034 or by email at Ted.Meadows@beasleyallen.com, Melissa.Prickett@beasleyallen.com, or Russ.Abney@beasleyallen.com.

Source: *Bloomberg News*

ARTHRITIS DRUGS RAISE CANCER RISK IN CHILDREN

Blockbuster prescription drugs used to treat rheumatoid arthritis and other conditions can increase the risk of potentially deadly cancer in children and teenagers, according to the Food and Drug Administration. The FDA, which urged greater caution with so-called tumor necrosis factor (TNF) blockers last September, said an analysis of 48 reported cancer cases in children using the drugs "showed an increased risk of cancer, occurring after 30 months of treatment on average." Eleven of the reported cases were fatal, according to the FDA.

Anti-TNF drugs include Johnson & Johnson's Simponi (golimumab) and its Remicade (infliximab); Abbott Laboratories' Humira (adalimumab); UCB SA's Cimzia (certolizumab pegol); and Amgen Inc. and Wyeth's Enbrel (etanercept). As many of you will know, Rheumatoid arthritis is an autoimmune disease that can strike young people, causing pain, stiffness and swelling. Reports indicate it affects about 20 million people worldwide. The referenced drugs are used to treat other inflammatory conditions, including the bowel disorder known as Crohn's disease. The drugs already carry the strongest warnings possible about the risk of possible serious infections. The FDA says a new caution about cancer in younger patients will be added to

the "black box" warning.

Source: *Reuters*

FLEET LAWSUITS MOVE FORWARD

The Fleet Phospho-soda litigation is on track. Status briefs were filed in court on August 13th. Currently, there are 550 known claims with intention to file lawsuits that have been presented to C.B. Fleet Co. Inc., the maker of the over-the-counter laxative. The claims involve severe kidney damage to patients using the laxative as a bowel cleanser before colonoscopies.

There are currently estimated to be over 100 filed cases in the U.S. Over 120 cases were settled with Fleet before the litigation was consolidated in multi-district litigation in the U.S. District Court for the Northern District of Ohio. The product was removed from the market on December 11, 2008. The withdrawal came on the same day the Food and Drug Administration issued an alert stating that products such as Phospho-soda should be available by prescription only and not sold over the counter. Most recently, four more lawsuits were filed in April 2009 alleging that patients took a double dose of Phospho-soda at the advice of their doctors. If you need more information on this subject, contact Roger Smith at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

Source: *Lawyers USA Online*

XII. BUSINESS LITIGATION

JURY VERDICT IN FLORIDA AGAINST ACCOUNTING FIRM

A Florida jury returned a verdict recently against the accounting firm BDO Seidman and awarded \$421 million in damages. The jury found that since Belgian-based BDO International didn't control member BDO Seidman, it wasn't responsible for the U.S. firm's failure to uncover fraud that cost a Por-

tuguese bank \$170 million. The Miami-Dade jury verdict means that only BDO Seidman will be responsible for the \$170 million in damages that another Miami-Dade jury awarded Banco Espirito Santo in 2007. In that trial, \$351 million of the verdict was for punitive damages. Chicago-based BDO Seidman is appealing the 2007 verdict.

In the 2007 trial, the jury found that BDO Seidman was grossly negligent in not detecting fraud while auditing the books of the Miami financial services firm, E.S. Bankest, from 1998 to 2002. Espirito Santo owned 50% of E.S. Bankest. BDO International originally was a Defendant in the 2007 trial, but was dismissed from the case after a judge found the bank didn't present any evidence establishing its claim against the Brussels firm. But the ruling was overturned by an appeals court, which ordered that a new jury should decide whether BDO International was responsible for ensuring the quality of BDO Seidman's audits.

E.S. Bankest was a factoring firm, set up to buy companies' accounts receivable at a discount. Factoring firms collect the full payments, pocketing the difference as profit. But in the case of E.S. Bankest, the bills it supposedly collected were largely fake. Several E.S. Bankest executives were sentenced to federal prison for their roles in the fraud. The firm collapsed in 2003.

Source: *Miami Herald*

JURY AWARDS \$178.7 MILLION AGAINST NL INDUSTRIES, INC.

A Texas jury awarded more than \$178 million recently to minority shareholders of a subsidiary of NL Industries, Inc. It was alleged that a pattern of misconduct deprived the shareholders of the true value of their investment. Defendants included Dallas-based NL Industries, its subsidiary NL Environmental Management Services, Inc. (NL EMS) and a Dallas businessman, Harold Simmons, who controls NL Industries.

In 1998, the Plaintiffs, Efficasey Environmental LLC, Highland Environmental Management, LLC, and Industrial

Recovery Capital Holdings Company, invested in NL EMS. For the next seven years, the minority shareholders ran the subsidiary, which was created to manage the cleanup of environmental liabilities for NL Industries across the United States. NL Industries retained a controlling position in the subsidiary. When the Plaintiffs exercised their contractual right to sell their stock back to NL Industries in 2005, NL Industries refused to pay more than a small fraction of what the stock was worth.

Plaintiffs proved during the trial that NL Industries and several of its officers had improperly drained NL EMS of assets in the months leading up to the minority shareholders' sale of their stock back to the company. The Plaintiffs also proved that the Defendants were guilty of bad faith by artificially reducing the value of the assets that they left in the company. The jury found NL Industries liable for breaching its fiduciary duty to the Plaintiffs. In addition, the jury found three executives of another Simmons-controlled company, including Simmons himself, liable for conspiring to drain assets from the company and improperly calculating the value of the Plaintiffs' stock. The jury's award includes \$33.7 million in actual damages and \$140 million in punitive damages against NL Industries. Jurors levied an additional \$5 million in punitive damages against NL Industries' general counsel.

Plaintiffs Efficasey Environmental and Industrial Recovery Capital Holdings Company were represented by Steve Susman, Katherine Treistman and Stephen Shackelford, Jr., all from Susman Godfrey. Plaintiff Highland Environmental Management was represented by Tom Melsheimer, M. Brett Johnson, Renee Skinner and Scott Thomas, all lawyers from the Dallas firm of Fish & Richardson.

Source: Findlaw.com

MEDTRONIC WINS \$57 MILLION VERDICT AGAINST AGA MEDICAL

Medtronic Inc., the biggest maker of heart-rhythm devices, was awarded

\$57 million in a patent-infringement trial against AGA Medical. At issue were the medical devices that treat holes caused by congenital heart defects. A federal jury in San Francisco found that some of AGA Medical's products infringed Minneapolis-based Medtronic's patents. AGA will have to pay \$57 million, plus a royalty of 11% of future U.S. sales. A second phase will be held to determine how much AGA Medical will have to pay.

The verdict was about half of what Medtronic had originally sought in its suit. The inventions relate to ways that doctors locate and expand devices to repair holes in the heart, treat aortic aneurysms or treat damaged heart valves. Medtronic also has a pending lawsuit against W.L. Gore & Associates Inc. over the very same patents. The trial in that case was scheduled to begin on August 31st.

Source: Bloomberg

XIII. AN UPDATE ON SECURITIES LITIGATION

THE SEC HAS BECOME MORE AGGRESSIVE

After taking a beating for its supervision of the now-defunct Bear Stearns and missing Bernard Madoff's \$65 billion fraud, the Securities and Exchange Commission has really started to crack down hard on financial fraud. Last month, the SEC filed charges against Bank of America and pursued its first naked short selling case. They also settled fraud charges with General Electric and with former AIG executive Hank Greenberg. Since Mary Schapiro took over as the boss at the SEC late in January, the agency has opened 525 investigations, a 10% rise over the same period last year.

The SEC also filed 397 enforcement actions, a 30% increase from the year-ago period. The Commission is on a record pace and that's good news for investors who have been victims of

fraud. One reason for the new aggressiveness of the SEC is Robert Khuzami, a former federal prosecutor, who now holds down the job of enforcement director. Khuzami—known as tough, organized and driven—is bringing about dramatic changes, such as taking steps to speed up investigations by giving top enforcers more subpoena power. Prior to joining the SEC, Khuzami led a securities fraud task force at the U.S. Attorney's office. It's refreshing to see the SEC doing its job and hopefully the good work will continue.

Source: Insurance Journal

FEDERAL JUDGE APPROVES \$925 MILLION UNITEDHEALTH SETTLEMENT

A federal judge has approved a settlement that will pay UnitedHealth Group shareholders more than \$900 million to resolve a class-action lawsuit over options backdating. The Minnetonka, Minn.-based managed care company will pay \$895 million toward the settlement. Former Chairman and CEO William McGuire will pay \$30 million and cancel 3.6 million stock options. The insurer's former general counsel David J. Lubben will contribute \$500,000 to the settlement.

The case centers on a scandal over the backdating of stock options that forced McGuire to step down in 2006. U.S. District Court Judge James Rosenbaum gave preliminary approval to the settlement in December. The lead Plaintiff in the case is the California Public Employees Retirement System.

A federal judge has approved a \$925.5 million settlement with UnitedHealth Group Inc. and two of its former executives over alleged stock options backdating. Judge James M. Rosenbaum of the U.S. District Court for the District of Minnesota ruled on August 10th that the settlement—which includes an \$895 million payment from UnitedHealth—was approved.

Source: Law360 and Associated Press

BANK OF AMERICA IS FINED \$33 MILLION BY THE SEC

Bank of America will pay a \$33 million fine to settle government charges that it misled investors about Merrill Lynch's plans to pay bonuses to its employees. In seeking approval to buy Merrill, Bank of America told its shareholders Merrill had agreed not to pay year-end bonuses without Bank of America's consent. But according to the Securities and Exchange Commission, Bank of America had actually authorized New York-based Merrill to pay \$5.8 billion in bonuses. The bonuses amount to nearly 12% of the \$50 billion Bank of America paid for Merrill.

Source: Associated Press

BRISTOL-MYERS SETTLES PLAVIX SECURITIES SUIT FOR \$125 MILLION

Bristol-Myers Squibb Co. has settled a securities class action suit for a \$125 million. The Plaintiffs accused the drug maker of misleading shareholders and causing a stock drop when it failed to properly disclose a patent deal for a generic version of its blood-thinning drug Plavix. The settlement, reached in May, was disclosed to the public in the company's quarterly report filed with the U.S. Securities and Exchange Commission.

Source: Law 360

XIV. EMPLOYMENT AND FLSA LITIGATION

GENERAL ELECTRIC SETTLES ERISA CLASS ACTION FOR \$40 MILLION

General Electric Co. has agreed to pay a settlement worth \$40 million to end a class action filed on behalf of 318,000 current and former employees who claimed the conglomerate imprudently invested more than two-thirds of the assets of their 401(k) retirement savings plan in company stock. GE had made the decision to put up company

stock as an investment and matching contribution to its retirement program. The Plaintiffs contended that the investment of GE stock wasn't economically prudent and that losses occurred as a result. Judge Gary L. Sharpe approved a settlement that would provide over \$10 million in cash to former plan participants and \$30 million worth of structural changes to benefit current employees.

Source: Law360

TYCO SETTLES ERISA CLASS ACTION FOR \$70.5 MILLION

Tyco International Ltd. has agreed to pay about \$70.5 million to settle a lawsuit filed by participants in Tyco retirement plans. It was alleged that the company breached its fiduciary duties to Tyco employees while a massive accounting fraud was taking place. The Plaintiffs, representing participants in seven Tyco retirement plans, have requested Judge Paul J. Barbadoro of the U.S. District Court for the District of New Hampshire, where the multidistrict litigation is pending, to approve the settlement.

Source: Law360

BANK OF AMERICA SETTLES \$55 MILLION PENSION FUND LAWSUIT

Bank of America has agreed to settle a lawsuit for \$55 million brought by Countrywide employees who contended their employer violated its duty to protect their retirement accounts, according to court documents. The employees of Countrywide contended that Countrywide Financial Corp violated the Employee Retirement Security Act by not selling the company's shares and withheld information about the company from pension participants. As previously reported, Countrywide was later taken over by Bank of America. The settlement was scheduled to go before U.S. District Court Judge John F. Walter of the Central District of California for a hearing to determine if the agreed upon settlement should be approved on August 31st.

A \$17.5 MILLION SETTLEMENT ON EARLY TERMINATION FEES

Sprint Nextel has agreed to pay \$17.5 million to settle a class-action suit over early termination fees for cell-phone contracts. The proposed settlement will bring to a close a case filed last November in federal district court in New Jersey. Sprint was accused in that suit of illegally charging \$1.2 billion in early termination fees since 1999. While Sprint denied the allegations, the carrier agreed to pay \$14 million into a fund to be distributed to members of the class action. Another \$3.5 million in non-cash benefits will be provided to the suit's participants as well.

Customers who had a wireless contract with Sprint, Nextel or Sprint Nextel from 1999 to the end of 2008 could be eligible for a settlement if they had a claim related to early termination fees. Sprint also agreed not to insert a flat fee for early termination into its personal cell-phone agreements in the U.S. until January 1, 2011. But, until then, the carrier can charge a pro-rated termination fee. Sprint received preliminary court approval to settle this case last December and a hearing for final approval is set for October 21st.

Source: Kansas City Star

COMPANY SETTLES RACIAL DISCRIMINATION SUIT

A Missouri company has agreed to pay \$57,500 to a worker who was fired for complaining about discrimination, according to the U.S. Equal Employment Opportunity Commission. Material Resources LLC, which does business as Gateway Co-Packing Co., will pay \$7,500 in back pay and \$50,000 in compensatory damages to settle a 2008 civil lawsuit filed by the EEOC.

An African-American employee, Charles Franklin, did not receive the same pay and health insurance coverage as his white colleagues, according to the EEOC. When Mr. Franklin filed a complaint with the EEOC, he was fired. Retaliation is a violation of federal law. In addition to the monetary penalties, the company promised to train supervisors

and take other steps to prevent discrimination and retaliation in the future.

Source: *St. Louis Post-Dispatch*

ILLINOIS SETTLES WORKER CLASSIFICATIONS CLAIMS

Illinois Attorney General Lisa Madigan has reached an agreement to settle claims against five Chicago-area construction firms that were falsely classifying their employees as independent contractors, rather than fully employed laborers. Under the settlement agreement, the businesses will end the practice. As we have learned in litigation, this practice is all too common. It has been used as a way for companies to skirt labor laws. The practice greatly harms the misclassified workers by limiting their legal protections, including access to workers' compensation, unemployment assistance and fair wages.

The settlement follows claims investigated by Attorney General Madigan and the resulting lawsuit alleging the five small construction companies were in the practice of misclassifying dozens of their workers as independent contractors when they were actually employees of the companies. Under Illinois law, workers must be treated as employees unless they meet specific criteria permitting them to be classified as independent contractors.

All five companies have agreed to pay more than \$79,000. The agreement also forbids the companies from participating in construction projects with public bodies for the next four years. Additionally, pursuant to the agreement, the Attorney General can inspect the businesses for compliance with Illinois labor laws at any time during the next five years. Finally, the agreement requires the Defendants to properly classify their workers as employees and pay all required contributions to the State of Illinois.

Source: Illinois Attorney General's Office

CINTAS WILL PAY \$24 MILLION TO SETTLE DRIVER OVERTIME PAY LAWSUIT

Cintas Corp. has agreed to pay about \$24 million to resolve a 2003 class action lawsuit arising when the uniform manufacturer misclassified thousands of delivery drivers as exempt employees to avoid paying overtime. Cintas reached a mediated settlement with the drivers, and at press time the settlement was awaiting approval by the U.S. District Court for the Northern District of California.

Source: *Law360*

XV. INSURANCE AND FINANCE UPDATE

MERCK AND INSURANCE PLANS SETTLE VIOXX SUITS FOR \$80 MILLION

Health insurers, unions and other private groups that paid for prescriptions for the withdrawn painkiller Vioxx have settled their claims with its maker, Merck & Co., for \$80 million. These third-party payers filed about 190 claims against the drugmaker claiming they would not have covered Vioxx had they known about its risks. As everybody now knows, Merck pulled the blockbuster painkiller from the market in 2004 because it doubled the risk of heart attacks and strokes.

Source: *Forbes*

FIFTH CIRCUIT COURT OF APPEALS UPHOLDS KATRINA DAMAGE AWARD

A federal appeals court has upheld a \$21 million jury award to the owner of a New Orleans grocery chain that sustained damage in 2005 from Hurricane Katrina. The Court of Appeals for the Fifth Circuit also ordered United Fire & Casualty Insurance Co. to pay Marc Robert II, Robert's Fresh Market's owner, an additional \$1 million in "bad faith" penalties.

The grocery chain had five stores around New Orleans and one in

Kenner that were damaged by the 2005 storm. A jury awarded money to cover building damage, business interruption, tenant improvements and loss of business personal property from wind-storm and from vandalism, theft or looting. The Kenner store reopened in November 2005. Three stores—including one closed before the hurricane, and another for which Mr. Robert lost the lease because he ran out of money to pay \$30,000 a month rent—will not reopen. Mr. Robert says he hopes to reopen the fifth store once he gets money from the judgment and an agreement on repairs with the building's owners, who were awarded \$1 million—half for lost rent and half in penalties.

Mr. Robert has a separate lawsuit against the insurer for a sixth store, which reopened in November. Philip Franco, a lawyer with the firm of Adams and Reese, who represented the Plaintiffs, had this to say:

The verdict was completely upheld and the court awarded us an additional \$900,000 to \$1 million under the penalty statutes. Basically, we won every issue on appeal.

It's good to see Katrina insurance company victims receiving justice in the court system. Phil Franco should be commended for his persistence in representing his clients.

Source: *Insurance Journal*

COURT UPHOLDS \$10.7 MILLION JUDGMENT AGAINST KEMPER AFFILIATES

An appeals court has ruled that a New York construction firm will receive \$10.7 million—plus interest—against two Kemper-affiliated insurers that failed to indemnify and defend the company when a subcontractor accidentally touched off a blaze that destroyed a Manhattan synagogue in 1998. The U.S. Court of Appeals for the Second Circuit upheld a decision by the U.S. District Court in New York. The Lower Court ruled that Turner Construction was covered by liability insur-

ance policies issued to the subcontractor, Trident Mechanical Systems, by American Manufacturers Mutual Insurance Co. (AMMIC) and Lumbermens Mutual Casualty Co. (LMCC)

The background of the original law is very interesting. A fire at Manhattan's Central Synagogue destroyed a building, which was revered as one of the city's architectural landmarks. It took three years to rebuild the synagogue, which re-opened in September 2001.

The Appeals Court decision means that LMCC—Trident's excess insurer—will pay \$9.75 million and AMMC will pay \$945,000 to resolve the case. The decision also includes pre-judgment interest of 9% per year. The court also upheld the U.S. District Court's ruling that the companies breached their duties to defend Turner in the case and that the construction company was therefore entitled to recoup reasonable attorneys' fees and legal costs.

Source: *Insurance Journal*

XVI. PREDATORY LENDING UPDATE

PAYDAY LOAN COMPANY AGREES TO SETTLEMENT

An internet payday loan company charging triple-digit interest on two-week loans has agreed to close all of its outstanding loans in Wisconsin, worth nearly \$500,000, and pay \$180,000 in restitution, fees and fines to settle a class-action lawsuit. The company was accused of numerous, blatant consumer law violations. The company, Kansas-based Arrowhead Investments, won't be able to do business in the state for five years. It will rectify credit histories of the borrowers as a part of the settlement.

Suit was filed in 2007 in the name of a Verona woman, Bonnie Bernhardt, and others. The State Department of Justice, working with the University of Wisconsin School of Law's Consumer Law Litigation Clinic and the State

Department of Financial Institutions, estimated up to 1,300 state residents could get relief, both financial as well as from collection agency calls.

Arrowhead Investments used a third party to solicit borrowers over the Internet, responding to general inquiries about loan offers. The settlement, which has been approved by the court, cancels all loans made between December 21, 2001, and December 21, 2007, totaling \$432,000 in loan, cost and fee forgiveness. All of the loans were payday loans with unregulated interest rates which reach triple digits.

The class-action Complaint accused Arrowhead Investments of numerous violations of fee, interest and other disclosure requirements in the Wisconsin Consumer Act and other consumer protection laws. The company had failed to register with the Department of Financial Institutions. Lara Sutherlin, an assistant Attorney General in Wisconsin, stated:

The bulk of this settlement's relief is in the loan forgiveness. The consumers who will get cash payments are mostly those who paid more than the loan principal.

In a similar case last August, the same Plaintiffs settled with another loan company, Tremont Financial, that included \$60,000 in restitution and a release from loan obligations for 137 borrowers. For those of our readers who don't know how a payday loan works, this is the general procedure:

- The person seeking a loan fills out an application, providing the lender with items such as paycheck stubs and a photo ID;
- A loan agreement is signed and a postdated check is written to the lender;
- Money is advanced by the lender;
- The check is held until the loan payment is due—usually two weeks;
- The lender then deposits the check—unless the loan has been repaid. Normally, another check is

written and another loan is made.

Payday lenders should be regulated in every state and state legislative bodies must make sure that the laws are strong and tough. In all too many states the laws are weak and do very little to protect folks who take out payday loans.

Source: *Wisconsin State Journal*

BANK OF AMERICA LOSES BID FOR U.S. TRIAL IN COUNTRYWIDE LAWSUIT

A lawsuit against Bank of America Corp. aimed at forcing Countrywide Financial Corp. to buy back mortgages sold to trusts will stay in state court. A federal judge has ordered the case to be tried in state court. Countrywide, the lender acquired by Bank of America, was sued last year by hedge fund Greenwich Financial Services Fund over claims the value of trusts used to package its mortgages into securities will fall if it revises 400,000 loans in an agreement with 15 state Attorneys General.

The fund contends that investors would be harmed by the settlement Bank of America reached to aid home-loan borrowers by a combined total of \$8.4 billion. The bank said two U.S. laws aimed at helping owners keep their homes gave loan servicers the right to modify any mortgage loans, without repurchasing them, if certain guidelines are maintained. Judge Richard Holwell of the Southern District of New York said in his order:

Congress passed two statutes within a year of each other to address the mortgage crisis. In neither of these statutes did Congress federalize the case before this court.

In the proposed class action the Greenwich, Connecticut-based fund demands a declaration that Countrywide must purchase modified mortgage loans for the full unpaid amount that it sold to any of the 374 securitization trusts.

Source: *Bloomberg*

XVII. PREMISES LIABILITY UPDATE

HAZING SAID TO HAVE LED TO DEATH OF COLLEGE STUDENT

A lawsuit was filed recently by the parents of a 19-year-old university student who died last year. The student was repeatedly tackled by members of a fraternity who were hazing him at an off-campus farm, according to allegations in the lawsuit. Harrison Kowiak of Tampa, Florida, died after a head injury caused a severe brain hemorrhage. The Complaint seeks damages and blames Theta Chi Fraternity, the fraternity's members and Lenoir-Rhyne University. Raleigh-based lawyer David Kirby, who represents the parents, said:

We believe Harrison's death was part of a long history of hazing at this fraternity. There is absolutely no reason for this dangerous activity to still be occurring in this day and age, and it needs to be stopped immediately.

The parents allege in the lawsuit that Kowiak and another pledge were told to walk across a field one night in November, 2008 while wearing light clothing. They said members of the fraternity wearing dark clothing repeatedly tackled the pledges during the initiation, leading to the injury.

Kowiak was a 160-pound sophomore and a member of the golf team, and according to the parents, some members of the fraternity were Lenoir-Rhyne football players who weighed more than 250 pounds. It was alleged that the student was being tackled by men who were much larger than he and who were "trained in tackling." Fraternity members eventually realized that Kowiak was badly injured, according to the Complaint, but they attempted to get Kowiak to stand up and walk until he collapsed. The fraternity brothers then drove him to a Hickory hospital. But they told hospital staff that Kowiak had been injured in an on-campus flag-foot-

ball accident, according to allegations in the lawsuit. Kowiak was airlifted to Carolina's Medical Center in Charlotte and died there the following day.

Source: *Miami Herald*

ANOTHER TRAGIC COLLEGE HAZING CASE

A hazing lawsuit has been filed against Utah State University. It's alleged in the suit that University officials had tolerated "a culture of drug and alcohol abuse" at a fraternity house for a long time where a teenage freshman pledge died of alcohol poisoning after a hazing incident last fall. The student's family filed the lawsuit in a state court, alleging that the Sigma Nu fraternity chapter had long been the scene of misconduct, including an alcohol-related suicide by hanging, underage drinking, arson, thefts, vandalism, false fire alarms and assaults.

The suit not only accuses fraternity chapters of straying from their chartering principles, but contends that universities have a legal obligation to bring student organizations into line, especially if they encourage students to join. The allegations in the lawsuit are based on police reports over the ten years before the student's death, as well as on police interviews with fraternity members after the tragedy. It's alleged in the suit that the fraternity brothers got drunk as a group, sometimes to the point of collapse, and performed "baptisms" by pouring liquor on the heads of brothers as they kneeled with their hands bound behind their backs. The family's lawyers have photographs, pulled from a Sigma Nu member's MySpace page, documenting one such beer-drenched baptism.

The suit seeks unspecified damages from the university and from the state. The victim's parents have already reached out-of-court settlements with the national organizations of Sigma Nu and the Chi Omega sorority, whose members "captured" the student, bound his hands with duct tape, and provided him with vodka at an initiation ritual the night he overdosed. The university suspended the chapters and their national

organizations soon shuttered them. The Greek societies' own rules and the University's student code strictly prohibit alcohol abuse and hazing.

Logan police concluded the student was poisoned during an illegal hazing. Prosecutors charged 12 USU students and their two Greek chapters with hazing. The hazing charges were dismissed, but five students served jail time for furnishing the vodka or hiding the bottle. The civil suit also alleges USU failed to warn incoming students of the dangerous activities at its fraternities. Instead, the university encouraged students to "think Greek" and join sororities and fraternities, which were described as once being an integral part of campus life. Interestingly, in 1941, one-fourth of USU students were Greeks, while currently just 1% belong to the eight remaining chapters. Charlie Thronson of the Salt Lake City law firm of Parsons, Behle and Latimer and David Bianchi, a Florida lawyer, are representing the student's family.

Source: *Salt Lake Tribune*

LAWSUIT FILED OVER FATAL FIRE AT BUSINESS

The family of a Wisconsin woman, who died in a building fire at Fort Smith during a fishing trip, has filed a wrongful death lawsuit against the business where she was staying. The 2006 fire destroyed the Big Horn Trout Shop, part of an adjacent lodge, and the Yellowtail Market. Three persons—all from the Milwaukee suburb of Glendale—were in their room at the lodge and died in the fire.

The lawsuit, filed in federal court, seeks damages for the death of the woman, one of the persons killed in the fire, and there likely will be other suits filed. It was alleged that Big Horn Trout Shop Inc. wasn't equipped with adequate safety equipment, including a working in-room smoke detector, and that the shop failed to keep the premises reasonably safe by maintaining an adequate fire safety system.

Source: *Associated Press*

FAMILIES FILE LAWSUIT IN CONNECTICUT POND DEATHS

Two families have filed suit in a Connecticut state court against the City of Bridgeport and the Connecticut Zoological Society over the deaths of two children who drowned when a minivan plunged into a pond in 2007. Relatives of the two children, ages six and two, allege the city and the Zoological Society were negligent for not placing barriers at a public park to prevent vehicles from rolling into a pond on or adjacent to the premises.

A third child and the van's driver also died. The minivan was parked when it began rolling down a hill toward the pond. The driver ran after it and got in the van before it went into the pond. The city later installed a rail barrier along the road above the pond.

Source: *Insurance Journal*

LAWSUIT SETTLED IN CAR WASH CRASH DEATH

A wrongful death lawsuit against a woman charged with driving a car into a woman at a Massachusetts car wash and killing her in 2007 has been settled. The suit was filed against the Defendant last year. The crash killed Robin Young, a resident of Danville, N.H., as she was wiping down her car outside a carwash in Haverhill, Mass. Terms of the settlement are confidential and can't be disclosed. Mrs. Young's daughter, Taylor, who was 12 at the time, and inside the car, will receive about \$100,000 as a part of the settlement. There was a separate claim for the children. The Defendant claimed her brakes failed. She was to go back to court August 25th to stand trial again on charges of vehicular manslaughter. An April trial in the criminal case ended in a hung jury.

Source: *Associated Press*

TOWN OF BULLS GAP SUED IN 2008 WORKER'S DEATH

A lawsuit seeking \$3 million in compensatory damages and \$1 million in

punitive damages has been filed against the Town of Bulls Gap, Tennessee. The suit by Mary Neill Carmichael alleges breach of contract that led to the July 2008 death of her husband, Ronnie Carmichael, who was the supervisor of the Mosheim sewer department. The lawsuit, filed in Greene County Circuit Court, "seeks judgment against the Defendant in an amount not to exceed \$3 million for the injuries, pain and suffering, and wrongful death of Ronnie Carmichael. The suit also seeks punitive damages not to exceed \$1 million."

The lawsuit alleges that Bulls Gap was contractually bound to treat its sewage with a chemical to reduce the amount of hydrogen sulfide and the dangers resulting from the high concentrations of hydrogen sulfide. Apparently, the town did so for a time, then stopped, creating a situation which allegedly caused Mr. Carmichael's death. The lawsuit alleges that, pursuant to the contract, Mosheim treated sewage generated by Bulls Gap at the time of Mr. Carmichael's death.

At the time of his death the decedent, who was employed by the Town of Mosheim as supervisor of the sewer department, was working on a pump station owned and operated by the Town of Mosheim. It was alleged that the decedent, while working in the pump station which was receiving sewage from Bulls Gap, was overcome by excessive concentrations of hydrogen sulfide and drowned in raw human sewage. Mr. Carmichael was overcome by the dangerous and toxic fumes emitted by the sewage transmitted to the pump station, lost consciousness, and became submerged in raw human sewage pouring into the pump station where he was working. He suffered a slow, painful and traumatic death by drowning in the sewage.

A co-worker also died while trying to bring Mr. Carmichael out of the pump station. It's alleged that Bulls Gap "had experienced odor problems" with its sewer facilities, "caused by excessive amounts of toxic gases, including but not necessarily limited to hydrogen sulfide." It should be noted that hydro-

gen sulfide is a deadly and corrosive gas, and a known by-product of sewage treatment.

Source: *The Greenville Sun*

ABUSE OF AN INFANT AT A DAY CARE CENTER RESULTS IN \$3 MILLION JURY VERDICT

A jury in Florida awarded an infant, whose leg was broken in 2006 at a day care center, \$3 million in damages, with \$2 million of the verdict being punitive. KinderCare was the owner and operator of the facility. About the time the infant's leg was broken, licensing authorities were monitoring five of KinderCare's six Pinellas County centers for serious or repeat rule violations. It appears that KinderCare has since cleaned up its violation history.

The ten-month-old boy who was injured was said to have been squirming on the day care center's diapering table. It was reported that a caregiver—frustrated that the baby wouldn't stay put—bent his tiny leg back until it broke. The caregiver, Stacey Doty, told authorities at the time that didn't mean to hurt him and that she was just trying to hold him in place. But when licensing officials and a Pinellas County jury took a closer look at the day care center, owned by KinderCare, the nation's largest child care chain, they found a disturbing pattern.

Several workers and parents said they had told the center director that Doty was mishandling children. One co-worker said Doty had dropped a clipboard on a toddler's fingers as punishment and had picked up another toddler by the wrist and moved her across the room because she wouldn't obey. On the day of the incident, in September, 2006, another caregiver on duty went on a break, leaving Doty alone with the six infants. She broke the baby's leg while changing his diaper.

When the parents' lawsuit went to trial last month, the child's leg had healed. The issue was whether he had suffered lasting brain trauma. Several witnesses said Doty sometimes dropped

infants into their cribs. One girl's head reportedly bounced against the crib's backboard. The jury awarded \$250,000 for future medical costs and \$750,000 for future pain and suffering.

The jury faulted the center director for not heeding repeated warnings that Doty was mishandling children. Kinder-Care had not installed cameras so supervisors could monitor classrooms. With 1,700 schools in 38 states, Kinder-Care grosses \$1.5 billion a year. Day care facilities have both a legal and moral duty to provide good care for children—and especially infants—in their facilities. When they fail to do so, they must face the consequences.

Source: TampaBay.com

LAWSUIT FILED AGAINST INDIANA CITY IN SWIMMING POOL MISHAP

The father of a 13-year-old boy injured last year in an eastern Indiana swimming pool has filed suit against Union City over the incident. The lawsuit alleges that negligence on the part of Union City led the boy to suffer severe injuries. The boy's swimming suit had become entangled in a grate at the bottom of the Union City Swimming Pool.

The boy was pulled from the pool by lifeguards and airlifted to a hospital in Dayton, Ohio. The boy suffered severe injuries as a result of the incident. The suit alleges that the city failed to maintain the grate, and that the pool personnel failed to properly supervise the boy.

Source: Associated Press

FAMILY OF IDAHO TRUCKER CRUSHED BY SILAGE FILES SUIT

A lawsuit has been filed by the widow and father of a trucker crushed to death when a pile of silage fell on top of him. The Idaho dairy where the accident occurred was charged with negligence. The lawsuit was filed on behalf of Chad Thompson, 30, who was killed March 7, 2008, when part of a silage pile at least 40

feet high fell on top of his truck. The lawsuit filed recently in state court contends the owners of 4-Bros Dairy, located northwest of Shoshone, Idaho, were negligent in stacking and maintaining the pile.

The Plaintiffs contended that the dairy manager told the decedent to park his truck in front of the pile. The victim, who was driving for Hermiston, Oregon,-based Medelez Trucking Company, was delivering apple silage to the dairy. It's alleged in the lawsuit that dairy officials "directed Chad Thompson to the location and failed to warn him of the dangerous/hazardous condition." The dairy was cited by the Occupational Safety and Health Administration and agreed to pay a \$1,700 fine for safety violations.

Source: Associated Press

XVIII. WORKPLACE HAZARDS

FIRST CHEMICAL TO PAY \$731,000 SETTLEMENT FOR 2002 EXPLOSION

First Chemical Corp. will pay the federal government \$731,000 in civil penalties for an October 2002 explosion at the company's Pascagoula plant on Bayou Cassotte that was caused by a dangerous chemical reaction. The company also agreed to correct violations of the Clean Air Act, according to the U.S. Department of Justice. According to the U.S. Chemical Board, the explosion occurred in a chemical distillation tower. The explosion "sent heavy debris over a wide area," and three workers in the control room were injured by shattered glass, according to the Board's report.

The explosion occurred in a distillation column that was not in use at the time. Flying debris from the column ruptured a storage tank holding a chemical used to make home laundry detergents and red printing inks, according to news reports. Government officials said that the blast

released into the air more than 1,200 pounds of the hazardous chemical mononitrotoluene, MNT, a chemical related to TNT that can be explosive when exposed to high temperatures. Operators thought the process had been shut down weeks earlier. Plant staff did not realize that valves used to shut off steam to the tower had deteriorated, the U.S. Chemical Board's investigation determined.

Source: Mobile Press Register

XIX. TRANSPORTATION

UNFORTUNATELY U-HAUL APPEARS TO BE DOING BUSINESS AS USUAL

We have written numerous articles about U-Haul tow dollies and trailers. We have attempted to relay the serious hazard created by pulling a U-Haul unit with any type of car or SUV. Over the past two weeks, we have received multiple inquiries from persons who have had serious accidents involving U-Haul towing units. Since U-Haul continues to be the only renter of tow dollies and trailers that will rent to drivers of cars and SUV's, it is not surprising that we continue to consistently receive inquiries about U-Haul-related accidents. It is also not surprising (and unfortunately, in a few cases, extremely tragic) that lives are being lost and personal property is being destroyed.

In one accident involving a U-Haul, the driver was towing his motorcycle and, as a result, the motorcycle was totaled. In another incident, most of the driver's personal belongings were destroyed. In an extremely tragic case, and one which highlights the dangers of these U-Hauls, the accident resulted in two deaths. The two individuals who lost their lives were driving other vehicles in close proximity to the U-Haul towing vehicle when the accident occurred. Given the number of incidents on the roads that involve U-Haul towing units, it is not surprising that U-Haul towing vehicles pose a serious

threat to themselves and to other drivers on the road. Again, if it becomes necessary to use a U-Haul towing unit, we suggest you only pull it with a U-Haul truck. If you are driving on the road and you notice a car or an SUV pulling a U-Haul towing unit, pay close attention while in close proximity. Since U-Haul obviously does not care about safety on our roads, look out for your own safety. If you need more information on the U-Haul issues, contact Kendall Dunson in our firm at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

UNSAFE TRUCK AND BUS OPERATORS ARE STILL ON THE ROADS

Hundreds of tractor-trailer and bus companies which had been ordered to shut down because of federal safety violations ranging from suspended licenses to possible drug use have stayed on the road. They have done this by using different names. A study by the Government Accountability Office, obtained by The Associated Press, comes a year after an unlicensed charter bus carrying a Vietnamese-American Catholic group blew a retreaded tire installed on a steering axle and skidded off a Texas highway, killing 17 people in one of the nation's deadliest bus crashes. The use of recapped tires on the steering axle is a violation of federal regulations.

The GAO report found that at least 20 of the roughly 220 commercial bus companies that had been fined and ordered out of service in 2007 and 2008 by federal regulators evaded compliance by operating under a new name. This had been done by the bus operator in the Texas crash.

The investigation by the GAO found offenders in at least nine states—Arizona, Arkansas, California, Georgia, Maryland, North Carolina, Texas, New York and Washington. It was reported that the violators owed tens of thousands of dollars in delinquent fines and a tremendous number of violations ranging from operating without the proper license to failing to test drivers

for illegal drugs and alcohol.

It's believed that another 1,073 commercial trucking firms are operating under new names after incurring fines and violations. Reportedly, they are often using the same address, owner name, employees and contact numbers—only the business name is different. In all, more than 500 of the tractor-trailer and bus companies were still operating as recently as July, according to investigators. Greg Kutz, GAO's managing director for special investigations, wrote:

These companies pose a safety threat to the motoring public. We believe that these carriers reincarnated into new companies to evade fines and avoid performing the necessary corrective actions.

There were about 300 fatalities from bus crashes last year. Kutz warned that the number of violators is likely higher, since the GAO reviews only identified companies based on exact matches of information. The Federal Motor Carrier Safety Administration says it has put in place new oversight measures after last August's crash, including a computer-matching process to compare new applicants to poor-performing motor carriers dating back to 2003. Newly-licensed carriers also must undergo a safety audit within 18 months of approval, a step that helped the agency identify several of the rogue companies cited by the GAO. But, the GAO says the federal agency did not yet have full computer capability to identify companies that had used similar addresses and names but not necessarily exact matches of each other. There appears to be uncertainty as to what level of government has the proper enforcement power. Federal law also is somewhat ambiguous about whether FMCSA or the states have that authority.

The House Transportation and Infrastructure Committee, led by Rep. James Oberstar, D-Minn., is proposing a federal standard that would give the FMCSA more power to revoke licenses and impose fines. The measure also would direct FMCSA to improve its

computer systems. The measures are included in a proposed six-year, \$500 billion highway reauthorization bill that the Obama administration wants delayed for 18 months because of questions about cost.

In the Texas crash referred to above, Iguala BusMex Inc. of Houston had received a Transportation Department number and was awaiting approval for a federal license when one of its buses crashed near Sherman, Texas. The company was run by Angel de la Torre, who operated Angel Tours Inc., which was forced to take its vehicles out of interstate service just two months earlier after an unsatisfactory review by federal regulators. Other cases cited by GAO, without identifying the companies, were:

- Inspectors examined a bus operated by a Texas bus company in October 2006, fining it \$850 after deeming the vehicle unsafe to drive. A few months later, the company was found illegally transporting 33 passengers from Mexico into the U.S. and was fined \$2,380. That same month, a new company opened with two of the same drivers, three of the same vehicles, the same last name for the company owner and virtually identical addresses. The new firm operated for 18 months before it was cited for drug testing violations in September 2008; it was ordered out of service last month.
- An Arkansas motor carrier was cited for nine safety violations in May 2007, including failing to get the proper licenses and maintaining driver qualification files, and fined \$3,050. A new company with the same business address, phone number and company officer name started in June 2007, three months before the old carrier was ordered out of service. The new carrier operated for more than a year before it was cited in November 2008 for violations including insufficient registration. A \$2,000 fine was assessed; the company was ordered out of service in March.

- A California bus company was cited for 18 safety violations in May 2007, including drivers who refused to take mandatory drug tests, and was fined \$2,200. The carrier began to correct some of its violations but failed to pay the fine. A new company with the same phone number, fax number and company officer name was formed in October 2007. FMCSA subsequently ordered the old company out of service in February; the new company was still active as of May.

This is a problem that the government regulatory agencies must fix. It's quite evident that Congress should pass legislation needed to fix the problem. Highway safety should be a top priority for the Obama Administration and Congress.

Source: *Insurance Journal*

A \$5,400,000.00 SETTLEMENT IN FLOYD COUNTY, GEORGIA

A lawsuit that arose out of a motor vehicle collision was settled recently in Floyd County, Georgia. On April 10, 2007, Amanda McAdams and her nine-year-old son, Seth, had just left his school's field trip. Instead of going home with his mother, Seth took the bus back to school so he could spend more time with his friends. Mrs. McAdams was driving to Seth's school to pick him up and take him home, but she never made it.

Vincent Sewell, working for Vend Service, Inc, was driving west on Highway 20. As Mr. Sewell came around a bend in the highway, a red car was in his lane heading towards him. Mr. Sewell swerved to the right and off of the road to avoid crashing into this red car. However, once Mr. Sewell's vehicle left the road, his tractor trailer hit a ditch and numerous trees. That forced his tractor trailer back onto the road, and across the double yellow line. It was then that he crashed into Mrs. McAdams' vehicle which was traveling in the opposite direction. Mrs. McAdams was seriously injured in the violent crash.

Mrs. McAdams was taken by helicopter to Grady Memorial Hospital in Atlanta where she underwent surgery on her pelvis. Although she had numerous injuries, her hip was by far the most significant injury sustained. Approximately six months later, her hip became dislocated and she underwent another pelvic surgery. Her surgeon noted that she was suffering from avascular necrosis and post-traumatic arthritis of her hip. Ultimately, Mrs. McAdams required a total hip replacement due to bone loss and destruction of her hip. She would require multiple additional hip surgeries over her lifetime due to her age and deterioration of her hip. She was permanently disabled.

The Defendant hired Dr. David Hungerford from Johns Hopkins whose opinion was that Mrs. McAdams would not require any additional hip surgery. But this expert said that, if she did, it would only be one surgery during her lifetime which would be fairly minor. Additionally, Dr. Hungerford believed that Mrs. McAdams would be able to resume her normal activities once she recovered.

Mr. Sewell's lawyers blamed the driver of the John Doe (red) vehicle and at trial were planning on having the jury apportion fault between Mr. Sewell and the John Doe driver who forced him off of the road. Before trial, the case was settled for \$5,400,000 during mediation. Michael Werner, a lawyer from Atlanta, Georgia, represented Mrs. McAdams and did an outstanding job. Interestingly, he graduated from Emory School of Medicine and was a practicing doctor before deciding to go to law school.

CELL PHONES AND TEXTING WHILE DRIVING ARE VERY DANGEROUS

We have written in several issues on how dangerous it is for the driver of a motor vehicle to talk on a cell phone while driving. Studies have revealed that this sort of thing is extremely dangerous and creates hazardous conditions both for the driver and for others

on the road. An example involves a recent motor vehicle accident that occurred in New York State.

In that accident, a tow truck driver was texting on one cell phone while talking on another when he slammed into a car and crashed into a swimming pool. According to sheriff's deputies, the 25-year-old truck driver admitted he was texting and talking when his flatbed truck hit the car on the morning in question. The incident occurred in Lockport, New York, which is outside Buffalo. The car that was hit by the truck then crashed through a fence and sideswiped a house before rolling into an in-ground pool.

The 68-year-old woman driving the car suffered head injuries and fortunately was in good condition. Her eight-year-old niece suffered minor injuries. The truck driver was charged with reckless driving, talking on a cell phone and following too closely. While the injuries in this incident were relatively minor—and no person was killed—it teaches a very good lesson. Do not talk on a cell phone or text while driving a motor vehicle. This should be a lesson for all of us.

Source: *Insurance Journal*

SUIT IS FILED OVER FATAL CRASH OVER A BLUFF

The family of a woman killed last year when her vehicle fell from a bluff along an Interstate highway in Missouri has filed a wrongful death lawsuit against the Missouri Highways and Transportation Commission. Andrea Whitehead was trying to change lanes when she lost control of her vehicle and fell 76 feet over the cliff on June 26, 2008. Her two children, both of whom were in the vehicle with her, survived. It's alleged in the lawsuit that the Highway Commission knew the road was dangerous, but did not provide a barrier to protect vehicles and that's a rule that should be followed by all drivers.

Source: STLtoday.com

XX. ARBITRATION UPDATE

BANK OF AMERICA DROPS ARBITRATION FOR CONSUMER DISPUTES

It's quite significant that Bank of America Corp., the third-largest credit-card issuer, has ended a requirement that consumer disputes be settled through binding arbitration. This comes after two resolution bodies, as reported last month, stopped taking new cases. Hopefully, there will be others following suit. There hasn't been a level playing field between companies like Bank of America and their customers when a dispute arose. Other companies using arbitration as a weapon against consumers should do exactly as Bank of America has done, which would be good news for consumers.

Source: *Bloomberg*

CONGRESS SHOULD ACT ON PENDING LEGISLATION

There are several important bills dealing with arbitration pending in Congress that need to be passed without delay. These bills involve arbitration in consumer transactions and also in nursing home admissions.

XXI. HEALTH CARE ISSUES

ANTIDEPRESSANT USE IN THE UNITED STATES HAS DOUBLED

A recently-released study shows that the number of Americans taking antidepressants doubled to 10.1% of the U.S. population in 2005 compared with 1996, increasing across income and age groups. An estimated 27 million people in the U.S., ages six years and older, were taking the drugs by 2005, while their use of psychotherapy was said to

have declined. Each person treated for depression in 2005 also filled more prescriptions, an average of 6.9 that year compared with 5.6 in 1996. The study by Columbia University was published in the August issue of the *Archives of General Psychiatry*.

The surge in antidepressant use resulted in that class of treatments becoming the top-selling medicines in the U.S. in 2005, surpassing blood-pressure prescriptions. Those findings highlight the need for doctors who aren't psychiatrists and who prescribe these medicines to be trained to diagnose and manage depression so patients get the most effective treatment. The author was Dr. Mark Olfson, a professor of clinical psychiatry at Columbia University and New York State Psychiatric Institute in New York.

The number of children ages six to 17 who took antidepressants jumped 78% between 1996 and 2005, according to Dr. Olfson. This was from a rate of 1.4 per 100 children to 2.6 per 100. The increase continued after the Food and Drug Administration in October 2004 issued a "black box" warning that antidepressants increase the risks of suicide in children and adolescents. The study was sponsored by the Agency for Healthcare Research and Quality and the National Alliance for Research on Schizophrenia and Depression.

Source: *Bloomberg*

TANNING BEDS ARE SAID TO BE HAZARDOUS TO HEALTH

International cancer experts have moved tanning beds and other sources of ultraviolet radiation into the top cancer risk category, comparing them to arsenic and mustard gas. For years, scientists have described tanning beds and ultraviolet radiation as "probable carcinogens." But now a new analysis of about 20 studies concludes that the risk of skin cancer increases by 75% when people start using tanning beds before age 30.

The research was published online in the medical journal *Lancet Oncology*, by experts at the International Agency

for Research on Cancer in Lyon, the cancer arm of the World Health Organization. Dr. Vincent Cogliano, one of the cancer researchers, observed:

People need to be reminded of the risks of sunbeds. We hope the prevailing culture will change so teens don't think they need to use sunbeds to get a tan.

Most lights used in tanning beds give off mainly ultraviolet radiation, which cause skin and eye cancer, according to the International Agency for Cancer Research. But, as use of tanning beds has increased among people under 30, doctors have seen a parallel rise in the numbers of young people with skin cancer. Experts found that all types of ultraviolet radiation are dangerous. Previously, it was believed only one type of ultraviolet radiation was lethal.

In Britain, melanoma, the deadliest kind of skin cancer, is now the leading cancer diagnosed in women in their 20s. Normally, skin cancer rates are highest in people over 75. Previous studies found younger people who regularly use tanning beds are eight times more likely to get melanoma than people who have never used them. In the past, the World Health Organization warned folks younger than 18 to stay away from tanning beds. Dr. Cogliano cautioned that ultraviolet radiation is not healthy, whether it comes from a tanning bed or from the sun. For those who want to keep a "good tan," the American Cancer Society advises them to try bronzing or self-tanning creams instead of tanning beds.

Source: *News4jax.com*

FDA ISSUES ALERT ON SUPPLEMENTS FOR ATHLETES

Federal regulators have warned consumers not to use body-building products that are sold as nutritional supplements, but may contain steroids or steroidlike substances. Reports of acute liver injury and kidney failure were cited. According to the Food and Drug Administration, the warning was issued because of increased reports of

medical problems in men who had used such products. But except for naming eight specific supplements sold by a single company, the FDA did not provide much clear guidance to consumers on what other products to avoid. The agency acknowledged that it did not know how many products its warning affects.

According to the FDA, buyers should beware of body-building products that claim to enhance or diminish the effects of hormones like testosterone, estrogen or progestin. In particular, the agency said consumers should not buy products labeled with code words like “anabolic” and “tren,” or phrases like “blocks estrogen,” and “minimizes gyno.” The references to estrogen and “gyno” are meant to indicate the products do not have a feminizing effect on the body, like swelling breasts or shrinking testicles, which can be unwanted side effects of steroid use in men.

The FDA cited eight popular products from American Cellular Labs, including Mass Xtreme and Tren Xtreme, that the agency found to contain hidden and potentially hazardous steroids. The agency sent a letter warning the company to make the products comply with federal regulations. The FDA’s warning follows the agency’s crackdown on more than 70 brands of weight-loss supplements that the agency found to illegally contain hidden and potentially dangerous active pharmaceutical ingredients. Federal regulations governing dietary supplements are inadequate to protect consumer health.

Unlike drug makers, which at least in theory must demonstrate that a drug is safe and effective before the agency approves it for sale to the public, dietary supplements are a largely self-regulating industry. Manufacturers of such products are themselves responsible for the safety and effectiveness and marketing claims of their products, and for voluntarily recalling them if problems arise. The FDA has authority to act only after it has received reports of serious health problems associated with products already on sale and it is

able to prove a serious health hazard. If a company refuses to voluntarily recall problem products, the FDA can then file an injunction and seize the products.

Over the last two years, the FDA has received 15 reports of serious health problems—including stroke, liver problems and pulmonary embolism—associated with body-building products from various makers. Steroids are organic compounds, like hormones or cholesterol, that naturally occur in the body. Some compounds called anabolic androgenic steroids, which affect both the metabolism and the endocrine system, are approved as drugs to treat medical problems like testosterone deficiencies.

Americans spent nearly \$24 billion on dietary supplements in 2007, according to *Nutrition Business Journal*, a market research firm. Of that total, it’s estimated that tablets or capsules that claim to build muscles or enhance athletic performance represented perhaps \$2.8 billion in sales. Consumers shouldn’t buy any body-building products with hyped-up claims.

Source: *New York Times*

FDA NOW SAYS MERCURY IN DENTAL FILLINGS IS NOT RISKY

The U.S. Food and Drug Administration has now declared that silver dental fillings contain too little mercury to harm the millions who’ve had cavities filled with them—including young children—and that only people allergic to mercury need to avoid them. This was an about-face for the FDA. The Associated Press reports that, last year, the FDA settled a lawsuit with anti-mercury activists by posting on its Web site a precaution saying questions remained about whether the small amount of mercury vapor the fillings can release were enough to harm the developing brains of fetuses or the very young. Now, the FDA says its final scientific review ends that concern. But, the agency did slightly strengthen how it regulates the fillings, urging dentists to provide their patients with a govern-

ment-written statement detailing the mercury controversy and explaining what science shows.

Too much mercury, according to studies, can harm the brain. The FDA says that available scientific evidence supports the conclusion that patients with dental amalgam fillings “are not at risk for mercury-associated adverse health effects.” Anti-mercury activists accused the agency of bowing to the dental industry and said they’d go back to court to try to force a change. Charles Brown, who is with Consumers for Dental Choice, had this to say:

FDA broke its contract and broke its word that it would put warnings for children and unborn children. This contemptuous attitude toward children and the unborn will not go unanswered.

I hope the FDA is correct on this issue. But I must confess that its record over the years doesn’t give me much comfort.

Source: Associated Press

ACCURACY OF FLU TESTS QUESTIONED

With children returning to school, many parents are concerned about their children being exposed to the strain of flu, H1N1, which is commonly referred to as the Swine Flu. Some people are predicting that the risks associated with this strain of influenza could have pandemic implications. As of August 20th, there were 190 confirmed cases in Montgomery, Alabama, where I live. Because of these concerns, well-founded or not, many companies have developed quick tests which can be used by healthcare professionals, in schools, and in other settings. The sales of these tests are soaring.

But how accurate are these tests? According to one study, they are not very accurate at all. Most alarming, the tests do not reveal false positives, but are far more likely to reveal a false negative. In other words, administering the test may actually show that the person does not have the H1N1 virus, while in fact he or she may actually have it.

According to a test conducted by Dr. Christine Ginocchio, director of microbiology, virology and molecular diagnostics of the North Shore-Long Island Jewish Health System, the tests may fail as much as half of the time. According to Dr. Ginocchio, one rapid test that she and her staff reviewed identified the Swine Flu in only one out ten cases. Other tests had accurate results in 40% to 69% of the cases studied.

Dr. Ginocchio's concerns seem to be verified. The Centers for Disease Control (CDC) has cautioned health-care professionals about relying on the quick tests. Similarly, the U.S. Navy found that one test it used identified the virus in only half of the cases reviewed.

What this means is that some people may not receive the treatment they need in a timely manner and, worse, may assume they can expose other people because they do not have the potentially deadly influenza virus. Hopefully, the threat of swine flu won't be as bad as predicted. But, if it is, then testing and vaccines developed should be accurate and should work for the intended purpose.

Sources: *The New York Times*, *Journal of Clinical Virology*, and *New England Journal of Medicine*

ALABAMA DEPARTMENT OF PUBLIC HEALTH ISSUES 2009 FISH CONSUMPTION ADVISORIES

Concern about protecting the public from possible exposure to mercury from eating fish led to the issuance of nine new fish consumption advisories by the Alabama Department of Public Health (ADPH) for bodies of water in Alabama in the following counties: Barbour, Covington, Escambia, Greene, Russell and Shelby. Advisories for three other bodies of water also were modified. All advisories previously issued using Food and Drug Administration guidelines remain in effect for 2009. The quality of water, based upon the levels of contaminants in fish from the waters in Alabama, generally continues improvements made in recent years. The advisories were issued on August 21st.

The ADPH annually updates fish consumption advisories based on data collected the preceding fall by the Alabama Department of Environmental Management. ADEM collected samples of specific fish species from various bodies of water throughout the state during the fall of 2008. ADPH assessed the analytical results to determine whether any of the tested contaminants in the fish could give rise to potential human health effects. Fish consumption advisories are issued for specific bodies of water and specific species taken from those areas. In reservoirs, advisories apply to waters as far as a boat can be taken upstream in a tributary; that is, to full pool elevations.

Source: ADPH

XXII. ENVIRONMENTAL CONCERNS

UPDATE ON THE TVA COAL ASH SPILL LITIGATION

Our firm filed a class action lawsuit in January on behalf of residents and property owners affected by the catastrophic release of over a billion gallons of coal ash sludge. As we have reported, the release occurred on December 22, 2008 when a coal ash impoundment at the Tennessee Valley Authority Kingston Fossil Plant ruptured, sending a deluge of toxic slurry onto over 300 acres and into nearby waterways.

According to a report from the Tennessee Valley Authority's internal watchdog, the utility knowingly schemed to divert an investigation into the cause of the massive coal ash spill. This appears to be an effort to protect itself from lawsuits arising out of the spill. TVA also is trying to restore its tattered public image. The report suggests the nation's largest utility tried desperately to keep the public from knowing the complete story behind the cause of the spill, which, as we have reported previously, destroyed more than two

dozen homes and created one of the nation's largest environmental disasters. As you will recall, more than a billion gallons of toxic coal ash were spilled onto the neighboring community and waterway. The author of the report, Richard Moore, the utility's Inspector General, stated:

It appears the TVA management made a conscious decision to present to the public only facts that supported an absence of liability for TVA for the Kingston spill.

According to the Inspector General's report, the real blame for the spill lies with TVA management for not taking measures to address issues regarding the structural integrity of the Kingston coal ash pond. Those issues initially were raised in a 1985 internal memo, and again in 2004 in two engineering reports. This latest released report states that, "necessary systems, controls, standards and culture were not in place" at the TVA to prevent a disaster like the one that occurred at Kingston. That is pretty much to the point and confirms what we have learned so far in the pending litigation arising out of the spill.

Meanwhile, the affected area in eastern Tennessee continues to suffer from the ramifications of the largest industrial accident in U.S. history. The volume of the TVA coal sludge spill was about 100 times greater than the volume of the Exxon Valdez oil spill. The latest estimate for cleanup costs is about \$1.2 billion.

TVA recently announced that it will incur additional expenses in converting all of its fly ash ponds to dry disposal methods over the next eight years in hopes of avoiding another spill like the 12/22 disaster in Kingston. TVA plans to capture fly ash from the plant stack using dry techniques instead of storing coal ash sludge in retention ponds. Six of TVA's 11 coal-fired power plants currently use wet storage, including the Widows Creek plant in Alabama.

Our goal, on behalf of individuals and a class of clients in this lawsuit, is to

bring about a complete clean-up of the area; ensure that people affected are fully compensated for the damage to their property, including the loss in property values; and to obtain long-term medical monitoring relief for area residents who have been exposed to the toxic contaminants in TVA's coal ash sludge. While the litigation is still in the early stages, quite a bit of work has been accomplished thus far. Corporate Representative depositions have started, and our lawyers are working with a group of lawyers on the various discovery issues that a case of this magnitude involves.

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

Sources: *Chattanooga Free Press, Knoxville News Sentinel*; Associated Press, Gannett News Service

WHAT YOU NEED TO KNOW ABOUT MINE SUBSIDENCE

While many people have heard stories of the dangers of underground mining operations, the stories that are often forgotten are the ones told by surface property owners above those mines. Every year, mining companies tear through rock and remove minerals underneath the surface for a profit. The more minerals mined underneath the soil, the more money the mining company will make as a result. Unfortunately for the surface property owner, this process can wreck havoc on the home, the surrounding property and the water supply in the form of mine subsidence damage.

In general terms, mine subsidence is the sinking, cracking or settling of surface property as a result of an underground mine collapse. There are many ways that mine subsidence damages property. In high extraction methods like longwall mining, where rooms that span several hundred feet are completely robbed of coal, subsidence can be instant and devastating. In some instances, subsidence from longwall

mining has been known to produce giant cracks several inches wide in home foundations and property, cave in portions of homes and cause giant sinkholes and troughs to form. In some of those same instances, homes are condemned and families are forced to vacate their premises.

In room and pillar mining, where rooms are mined and coal "pillars" are left behind as support, mine subsidence is unpredictable and can occur decades after the mine has closed. Subsidence from room and pillar mines usually takes the form of cracks and sinkholes on surface properties. However, if the mining company "robs" the pillars, or fails to provide pillars that are sturdy enough to support the surface over time, similar subsidence effects as are found in longwall mining can result.

Underground mining operations are also a threat to our water supply, natural streams, and lakes. Because mine subsidence can create cracks that permit water to escape into the earth's crust, a subsidence event can cause water supply and natural water resources to disappear overnight. Additionally, contaminated water that collects inside the mine can be released during a subsidence event and contaminate adjacent drinking water wells and streams with poisonous water.

Oftentimes in these cases, property owners are approached by the mining companies and are convinced to settle for amounts significantly less than they would receive with representation. It has been our experience that settlement deals should never be struck with parties that share a conflicting interest without legal representation.

We are committed to investigating and pursuing claims on behalf of property owners that have suffered significant property damage as a result of mine subsidence. Rhon Jones and Parker Miller, lawyers in the Toxic Torts Section of our firm, are investigating these claims. Should you need additional information, you can contact Rhon or Parker by calling 800-898-2034 or by email at Rhon.Jones@beasley

allen.com or Parker.Miller@beasleyallen.com.

JUDGE ORDERS CITGO TO PAY DAMAGES IN OIL SPILL

In a recent ruling by State District Judge Mike Canaday, 14 Plaintiffs were awarded more than \$500,000 in damages from a 2006 oil spill at the Citgo refinery south of Sulphur, Louisiana. Included are \$30,000 in punitive damages for each Plaintiff and \$2,500 in damages for mental stress over the Plaintiffs' fears of developing a future disease. Judge Canaday found that, not only was Citgo responsible for the spill and the injuries that resulted, but that it rose to a level high enough that he awarded punitive damages. There are 800 lawsuits arising out of the oil spill against Citgo that remain to be tried in state court. Judge Canaday's ruling is said to be the benchmark for other cases still pending. Citgo says it will appeal the ruling.

The lawsuit involves claims arising from an oil spill and air release that closed down the Calcasieu Ship Channel. The Plaintiffs in the lawsuit were involved in the cleanup operation. Citgo admitted fault and agreed to pay all compensatory damages that the Plaintiffs could prove were caused by the spill. But Citgo contended it was not liable for punitive damages. Judge Canaday said he had to determine whether Citgo's actions were the proximate cause of each Plaintiff's injury and assess the extent of those injuries.

Heavy rains and a series of equipment failures early on June 19, 2006, led to a spill of nearly 100,000 barrels of waste oil at Citgo's refinery south of Sulphur. The spill was called the largest in Southwest Louisiana's history and one of the largest ever in the state. It took months and millions of dollars to clean up. In September 2008, Citgo pleaded guilty in U.S. District Court to misdemeanor negligence and paid a \$13 million fine for the oil and chemical spill.

Richard Wilson and Wells Watson, from Lake Charles, Louisiana, repre-

sented the Plaintiffs in their lawsuit and did a very good job.

Source: Associated Press

THE TIME FOR NUCLEAR ENERGY HAS ARRIVED

In an age where energy costs continue to rise, the question must be asked if it is time for this country to become more serious about developing nuclear energy. The United States is far behind Europe and other parts of the world in terms of building nuclear plants.

In the 1950s, Lewis Strauss, who was then the head of the U.S. Atomic Energy Commission, predicted that the availability of nuclear energy in the future would become “too cheap to meter.” In other words, he envisioned a United States where the cost of nuclear energy would be so cheap that it would be essentially free to the consuming public. Despite this, the nuclear energy development programs in this country have been stalled time and time again.

To many, the word “nuclear” conjures up safety concerns. We all remember the Three Mile Island and Chernobyl incidents. But nuclear energy has proven to be efficient, safe and clean. By one report, in 2007, “nuclear power accounted for about 74% of the nation’s carbon dioxide emissions-free electric generation.” With new restrictions on gas and coal emissions, some are predicting a renewal of interest in nuclear energy sources.

The production of nuclear energy works like any other form of energy-producing plants. Water is heated, creating steam that turns a turbine, which is attached to a generator. The electricity is then transferred from the generator to our homes and businesses. With nuclear energy, the heat source comes not from burning coal or fuel but from energy stored in uranium atoms.

Today, coal produces 49% of our nation’s electricity, followed by natural gas (22%) and nuclear generation (19%). The percentage of electricity produced by nuclear energy has not

changed in this country since 1988. No new nuclear plants have been constructed “from scratch” in the United States since 1973. For proponents of nuclear energy, the good news is that plans are in the work to establish 26 new reactors in 16 different states, with most being built in the South. Presently, the plan is to have nearly half of our country’s energy produced by nuclear plants by 2050.

Source: *Alabama Living Magazine* (August 2009)—
Publication of the Alabama Electric Cooperatives

MORE ON THE DANGERS OF BPA

A team of scientists, engineers, policy experts, lawyers and computer programmers at the Environment Working Group (EWG) have gone through government data, legal documents, scientific studies and their own laboratory tests to expose threats to the health of people as well as to the environment. These folks are also working hard to find solutions. Their research has brought to light some unsettling facts that all citizens need to know.

We have written in prior issues about the dangerous chemical BPA. Now the EWG tells us there is more shocking news. In June, food and chemical lobbyists met in our Nation’s Capitol and made plans to save this toxic plastic chemical. EWG says the lobbyists and their bosses are desperate to block state and federal efforts to regulate the \$6 billion industry. Internal meeting memoranda have revealed that the industry has instituted a dangerous and unethical strategy to ensure that people keep eating and drinking from BPA-laden containers. This dangerous strategy has been formulated despite the mounting scientific evidence that exposure to even extremely low levels of BPA can have adverse health effects, particularly during infancy. Hopefully, the federal and state governments will not let these lobbyists control what happens on BPA.

Source: Environmental Working Group

RESIDENTS FILE SUIT AGAINST MISSOURI TANNERY

Residents of two Missouri towns, Cameron and Gallatin, have filed lawsuits against Prime Tanning Corp. of St. Joseph, Missouri, claiming the leather company introduced cancer-causing agents to rural farms by spreading toxic sludge as fertilizer. William Kemper, whose wife, Karen, died from complications from a brain tumor in 2008, and Janet Lasher, a Gallatin resident recently diagnosed with lung cancer, filed their lawsuit in a state court. Plaintiffs in the lawsuits allege that the hexavalent chromium, or chromium 6, caused an outbreak of brain tumors in the Cameron, Missouri area. Other similar lawsuits have also been filed against Prime Tanning Corp., including a class action lawsuit on behalf of all residents of Andrew, Buchanan, Clinton and DeKalb counties.

The lawsuits generally allege that Maine-based Prime Tanning, which is owned by National Beef Leathers, LLC, who acquired the Prime Tanning property in St. Joseph this year, spread thousands of tons of sludge containing the chemical hexavalent chromium, which causes cancer, across Missouri farms from the company’s St. Joseph operation. Hexavalent chromium was used at the plant to remove hair from leather hides during the tanning process. According to the lawsuits, the byproduct from that process was spread across farms through a spreader, much like fertilizer. Many tanneries quit using chromium 6 by the end of the 1990s because of the environmental hazards. Others have closed or moved their operations overseas, where chromium pollution has now become a big problem.

As you will most likely recall, Hexavalent chromium is the same carcinogen that prompted a \$333 million settlement in 1996 from Pacific Gas & Energy for exposing a California town to the chemical. This was the basis for the 2000 film *Erin Brockovich* starring Julia Roberts. Ms. Brockovich, who now is working for a law firm, has appeared in Cameron to talk about the dangers of hexavalent chromium.

Prime Tanning denies the sludge contained the chemical, but the lawsuit contends that they gave it to farmers to spread during a period of 1983 to early 2009 in order to avoid paying for disposing of it in a landfill. The lawsuit contends that the sludge contained high levels of hexavalent chromium even though the company told the State of Missouri that the sludge did not contain the carcinogen. New soil testing was scheduled to begin in late August on farmland where tannery sludge had been applied as fertilizer. Three agencies—Department of Natural Resources, Environmental Protection Agency and Missouri Department of Health and Senior Services—are cooperating in this project.

Source: Associated Press

DAUPHIN ISLAND EROSION LAWSUIT SETTLED IN ALABAMA

After being in litigation for almost a decade, Dauphin Island property owners and the federal government have reached a proposed final settlement over erosion. This settlement gives the island about \$1.5 million toward restoring the beaches. The Dauphin Island Property Owners Association filed the lawsuit against the federal government in 2000 blaming chronic erosion and land loss on the U.S. Army Corps of Engineers' dredging activities in the Mobile Ship Channel. The lawsuit contended that sand naturally flowing on westward currents was trapped in the channel and prevented from replenishing the island's beaches.

According to the proposed settlement, the federal government would pay \$1.44 million and the State of Alabama would pay another \$60,000. The funds—after legal fees—would have to be applied to restoring the beach. Because this is a class action lawsuit, a hearing for property owners to voice their opinions about the proposed settlement was scheduled for September 15th in federal court. A federal judge must approve the settlement.

Erosion has plagued the island and hundreds of feet of beach have been

lost in some areas on the Gulf of Mexico side. Barrier islands naturally grow, change shape and move with the currents, but the lawsuit claimed land loss was caused by the Corps' dredging practices.

Source: *Mobile Press Register*

WATER POLLUTION VIOLATIONS NEARLY TRIPLE

A review by an environmental watchdog group has found that the number of Alabama facilities violating water pollution regulations has nearly tripled since 2006. The review also shows that enforcement by the State Department of Environmental Management dropped from 1,408 in 2006 to 22 in 2008. The review was conducted by David Ludder, who was the agency's chief lawyer from 1984 to 1988. He was scheduled to present the findings last month to the Alabama Environmental Commission, which oversees ADEM.

Source: *Mobile Press-Register*

MERCURY FOUND IN ALL FISH CAUGHT IN U.S.-TESTED STREAMS

A government test of fish caught in about 300 streams in the USA found every one of them contaminated with some level of mercury. The U.S. Geological Survey's research marks its most comprehensive examination of mercury contamination in stream fish. The study found that 27% of the fish had mercury levels high enough to exceed what the Environmental Protection Agency considers safe for the average fish eater, those who eat fish twice a week.

The findings in wild-caught fish underscore how widespread mercury contamination in the nation's waterways has become. Previous research has found levels of concern in ocean and lake fish. Forty-eight states have fish consumption advisories in place for certain species. A full list of such warnings is available at www.epa.gov/waterscience/fish/advisories.

Source: *USA Today*

XXIII. THE CONSUMER CORNER

THE BIGGEST DATA BREACH OF THE YEAR

It's been widely reported that a hacker, Albert Gonzalez, recently gained access to millions of credit and debit card numbers. The hacker has now been indicted by the U.S. Department of Justice. According to the indictment, Gonzalez, 28, gained a foothold into the systems of credit card processors such as Heartland Payment Systems and retailers like OfficeMax, Barnes & Noble and TJX Cos. He used an amateur hacking technique called "wardriving," which I am told uses wireless access points to find vulnerable networks from which to launch attacks.

Once connected to those private networks, Gonzalez used a well-known technique called "SQL injection" to trick Web applications into turning over private information that gave him deeper access into networks. Even though it sounds complicated, I understand from our computer experts that it's very easy.

Source: *Forbes*

BE CAREFUL ON TWITTER®

By now most folks have heard of Twitter®. According to one definition found at Wikipedia, "Twitter" is considered a free social networking and micro-blogging service that enables its users to send and read messages known as tweets. Tweets are text-based posts of up to 140 characters displayed on an individual's profile page. The messages posted are delivered to the author's subscribers who are known as *followers*. The author can restrict delivery to those in his or her circle of friends or can allow open access. Users can send and receive tweets using:

- Twitter website,
- through text messaging, or
- via external applications.

While the service is free, using your cell phone can cause you to incur service provider fees. Twitter is not just being used by the younger generations. It is a phenomenon that has caught on with all age groups and is even being used by Corporate America to disseminate certain information.

Like all forms of communications, when using Twitter, individuals and companies should exercise caution and not just assume that all posts or use is without possible consequences. For example, using Twitter, as well as other social networking sites, can expose individuals and companies to issues of defamation, as well as intellectual property infringements. If individuals or employees post content to their own page or a corporate blog, that defames or invades the privacy of third parties, the entity responsible for the page may be legally responsible. Posts that include a third party's intellectual property, such as copyrighted material or trademarks, may expose a company or individual to liability for infringement.

The case filed recently in San Francisco, *Anthony LaRussa v. Twitter, Inc.*, illustrates the potential exposure in these areas. Tony LaRussa, the manager of the St Louis Cardinals, alleged in his lawsuit that the twitter.com/Tony-LaRussa site contains unauthorized photographs of him and written statements that imply they were made by the popular manager when in fact they were not. Based on this, LaRussa contends that Twitter is liable for trademark infringement, false designation of origin, trademark dilution, cybersquatting, misappropriation of name, misappropriation of likeness, invasion of privacy, and intentional misrepresentation.

Another area of the law that may be affected by the use of Twitter is that of addressing conduct in the work place. Companies may take discipline against or terminate employees who spend excessive work time on sites such as Twitter, or who engage in conduct that is harassing, discriminatory or potentially violent on those sites. On the other hand, companies must be very careful and not infringe on its employees' right to organize, their right to free

speech, or their right to engage in political activities. Many companies routinely monitor their employees' social networking sites for disparaging or inappropriate information. This type of oversight is not unlawful and may often serve to prevent greater harm from occurring.

As a practical matter, companies should have established (written) policies that discuss and set out clear guidelines for the use and access of these social networking sites. Those companies should then take steps to educate their employees about the possible pitfalls that may occur from use of these sites. Individuals should also be aware that whatever they post on the world-wide-web may actually get back to their employer, or to an unintended person. Just because you think you are posting something anonymously, does not mean it will stay anonymous. If you need additional information on this subject, contact Roman Shaul at 800-898-2304 or by email at Roman.Shaul@beasleyallen.com.

Source: <http://www.howardrice.com/uploads/content/Twitter-May2009.html>

CIVIL LAWSUIT FILED AGAINST FACEBOOK FOR PRIVACY VIOLATIONS

Five Facebook users have filed a civil lawsuit alleging that the social networking site is violating California's privacy laws and misleading members about how their personal information is used. The lawsuit, filed in a state court, asks for damages and attorney's fees

The Complaint alleges that Facebook violates California privacy and online privacy laws by disseminating personal information posted by users to third parties. The lawsuit also alleges that Facebook engages in data mining and harvesting without fully disclosing those practices to its members. The suit was filed on behalf of several individuals, including a professional photographer, two children under the age of 13, a user of the original Facebook, and a Los Angeles-based actress and model. Privacy concerns have become a real issue for Facebook, which has grown to more than 200 million users.

The Palo Alto, Calif.-based company announced earlier this year it was tweaking its privacy controls and giving users a hand in determining various policies after tens of thousands of members protested over who controls the information they share on the site. The social networking site said in February it would allow users to review, comment and vote on changes to privacy, ownership and sharing before they are put into place. And in late 2007, a tracking tool called "Beacon" caught Facebook users off-guard by broadcasting information about their activities at other Web sites, including their purchase of holiday gifts for those who could see the information. The company ultimately allowed users to turn Beacon off. Because of the popularity of Facebook, this lawsuit will get lots of attention.

Source: *Associated Press*

PHARMACY GIVES CHILD WRONG MEDICINE DIRECTIONS

A pharmacy in DeKalb County, Georgia gave the wrong prescription directions for a little girl, causing her to overdose and get sick. Now the parents want to make sure it doesn't happen to your child. Helen Vickers went to a CVS store to fill a prescription for antibiotics for her daughter. When Mrs. Vickers picked up the prescription from the store, she thought it seemed like a large dose of medicine for a little girl. But it was written on the prescription that it was the proper dose. So she believed the dosage was correct as described.

Mrs. Vickers realized a big mistake was made when she refilled the bottle two days later and the directions were different. The child had taken nearly five times the dose she was supposed to receive. Instead of the correct dose of three-and-a-half milliliters, the first prescription told them to give the child three teaspoons of Azithromycin. The little girl had symptoms that included itchy, watery eyes, sleepiness, and droopy eyelids.

Azithromycin overdose symptoms

may include nausea, vomiting, diarrhea, and stomach discomfort. The parents of this child say they want to see changes made in the way doctors and pharmacies handle prescriptions. They hope to save other people from the scare they had to endure.

Source: CBSAtlanta.com

GYM CLASS INJURIES SENDING MORE YOUNG PEOPLE TO EMERGENCY ROOMS

A new study out in Pediatrics indicates that children are more likely to get hurt in gym class than they were a decade ago. A lack of supervision and school nurses may be part of the reason behind a 150% jump in physical education-related injuries treated at emergency departments between 1997 and 2007, according to Dr. Lara McKenzie of National Children's Hospital in Columbus, Ohio, the lead researcher on the study. But whatever the cause behind the trend, Dr. McKenzie told Reuters Health that the benefits of participating in physical education far outweigh any risks.

Dr. McKenzie and her team looked at data from the U.S. Consumer Products Safety Commission's National Electronic Injury Surveillance System. This system tracks sports and recreation-related injuries treated at a nationally representative sample of about 100 hospital emergency departments. While the system reported an estimated 24,347 physical education-related injuries in 1997, there were 62,408 in 2007. The increase was seen for both boys and girls and across all age groups. About one in five of the injuries were strains or sprains of the legs, while about one in seven were broken arms, or arm sprains or strains. Six sports accounted for 70% of injuries: running, basketball, football, volleyball, soccer, and gymnastics.

The safety commission's data indicate that cheerleading is the leading cause of catastrophic injuries—those usually involving spinal cord damage—among high school and college athletes. High school cheerleading accounted for about 73 such injuries,

according to the report by The National Center for Catastrophic Sports Injury Research. Dr. McKenzie's study didn't look at why physical education injuries had increased. But she told Reuters Health that it may be because fewer schools have full-time nurses on staff to help injured children. Schools may also be packing more kids into gym classes, making it harder for teachers to supervise them, according to Dr. McKenzie. Just 36% of schools that require PE classes set a maximum student/teacher ratio, the report notes.

Dr. McKenzie says that instructors must get comprehensive training in injury prevention, and kids need to get safety education as well. Schools must also make sure that teachers and students use all appropriate safety equipment. But the benefits of gym class—which has become one of the main strategies for fighting obesity among young people—far exceed any risks.

Source: Reuters

GOVERNMENT SEIZES SANITIZER FOR BACTERIA PROBLEMS

Officers with the U.S. Marshals Service have seized all skin sanitizers and skin protectants, including ingredients and components, at Clarcon Biological Chemistry Laboratory's facility in Roy, Utah. The Food and Drug Administration warned the public last month not to use any Clarcon products because they contain harmful bacteria and are promoted as antimicrobial agents that claim to treat open wounds, damaged skin, and protect against various infectious diseases. Thus far, no cases have been reported to the FDA. Clarcon voluntarily recalled the affected products, marketed under several different brand names, in June 2009, following an FDA inspection that revealed high levels of potentially disease-causing bacteria in the products.

The inspection also uncovered serious deviations from the FDA's regulations, including poor practices that permitted the contamination. The seizure by the FDA of these products,

along with their ingredients, occurred after Clarcon failed to promptly destroy them. The FDA said it is protecting the public by preventing these products from entering the marketplace. Deborah M. Autor, director of the FDA's Center for Drug Evaluation and Research Office of Compliance, had this to say:

The FDA is committed to taking enforcement action against firms that do not manufacture drugs in accordance with our current good manufacturing practice requirements.

Clarcon has produced over 800,000 bottles of these products and distributed them in several regions of the country since 2007. The FDA says consumers should not use any Clarcon products and should dispose of them in their household trash. Analyses of several samples of the topical antimicrobial skin sanitizer and skin protectant products revealed high levels of various bacteria. The FDA warns that some of these bacteria can cause opportunistic infections of the skin and underlying tissues. Such infections may need medical or surgical attention and may result in permanent damage, according to the FDA.

Source: ABC News

ROSS STORE, INC.'S AGREES TO PAY \$500,000 CIVIL PENALTY

According to the U.S. Consumer Product Safety Commission, Ross Stores Inc., of Pleasanton, Calif. has agreed to pay a civil penalty of \$500,000. The penalty settlement, which was provisionally accepted by the Commission, resolves CPSC staff allegations that Ross knowingly failed to report to CPSC immediately, as required by federal law, that children's hooded sweatshirts it sold had drawstrings at the neck. Children's upper outerwear with drawstrings, including sweatshirts, pose a strangulation hazard to children which can result in serious injury or death. CPSC and the sweatshirts' importers have recalled the products.

In February 1996, CPSC issued draw-

string guidelines to help prevent children from strangling or getting entangled in the neck and waist drawstrings in upper outerwear, such as jackets and sweatshirts. In May 2006, CPSC's Office of Compliance announced that children's upper outerwear with drawstrings at the hood or neck would be regarded as defective and as creating a substantial risk of injury to young children.

Federal law requires manufacturers, distributors, and retailers to report to CPSC immediately—within 24 hours—after obtaining information reasonably supporting the conclusion that a product contains a defect which could create a substantial product hazard, creates an unreasonable risk of serious injury or death, or fails to comply with any consumer product safety rule or any other rule, regulation, standard, or ban enforced by CPSC.

Source: Consumer Product Safety Commission

CPSC TO ENFORCE NEW REQUIREMENTS FOR CHILDREN'S PRODUCTS

On August 14, 2009, new requirements of the Consumer Product Safety Improvement Act (CPSIA) took effect. These are aimed at making children's products safer and increasing consumer confidence in the marketplace. The U.S. Consumer Product Safety Commission is educating domestic and overseas manufacturers, importers, and distributors of children's products and other consumer goods of these important new safety requirements. CPSC Chairman Inez Tenenbaum, who says the CPSIA's new requirements will help protect families, had this to say:

I will ensure that these requirements are enforced vigorously and fairly. By ensuring that toys and other children's products meet strict lead limits and can be tracked in the event of a recall, I believe children will be better protected in their homes.

The requirements of the new Act, which became effective on August 14th, include:

- **Lead Content:** The limit for lead in children's products drops from 600 parts per million (ppm) to 300 ppm. After August 14th, it will be unlawful to manufacture, import, sell, or offer for sale, a children's product that has more than 300 ppm of lead in any part (except electronics) that is accessible to children.
- **Lead in Paint and Similar Surface Coating Materials:** The limit for lead in paint and similar surface-coating materials for consumer use drops from 600 ppm to 90 ppm. The lead paint limits also apply to toys and other articles intended for children as well as certain furniture products. Products subject to these limits cannot be sold, offered for sale, imported or manufactured after August 14th unless they meet the new lower lead limits.
- **Civil Penalties:** Civil penalties increase substantially to a maximum of \$100,000 per violation and up to a maximum of \$15 million for a related series of violations. Previously, civil penalties were a maximum of \$8,000 per violation and up to a maximum of \$1.825 million for a related series of violations.
- **Tracking Labels:** Manufacturers must place permanent distinguishing marks (tracking label) on any consumer product primarily intended for children aged 12 and younger made on or after August 14, 2009. The permanent marks must enable consumers to ascertain basic information, including the manufacturer or private labeler, location, the date of manufacture, and more detailed information on the manufacturing process such as a batch or run number. The permanent distinguishing marks must appear on the product itself and its packaging to the extent practicable. You can learn more about the tracking label requirement at www.cpsc.gov/about/cpsia/sect103.html#faqs
- **Catalog Advertising:** Advertising for certain toys and games intended for use by children from three to six

years old must have warnings regarding potential choking hazards to children younger than three. The requirement to include warnings in Internet advertisements went into effect on December 12, 2008. There was a grace period for the requirement for catalogues and other printed materials, but this grace period expired August 9, 2009. All catalogues and other printed materials distributed on or after August 9, 2009, regardless of when they were printed, must include the appropriate warnings.

You can visit CPSC's Web site at www.cpsc.gov/about/cpsia/cpsia.html for more information about the agency's implementation of the CPSIA.

Source: Consumer Product Safety Commission

RENTAL CAR COMPANY SOLD VEHICLES WITHOUT AIR BAGS

One of the nation's leading rental car companies recently ordered thousands of cars without side impact airbags in an attempt to save millions of dollars, then later sold the cars to buyers without the standard safety feature, according to a report from the *Kansas City Star*. It appears that Enterprise Rent-A-Car ordered a fleet of Chevy Impalas without the side impact airbags between 2006 and 2008. Although Chevy sells Impalas with that type of air bag as standard equipment, the buyer has the option to opt out of it, which Enterprise apparently did.

After renting out the vehicles, the *Star* learned that St. Louis-based Enterprise turned around and sold the used vehicles on its Web site, but failed to make clear that the Impalas were missing the air bags. Enterprise defended its decision to opt out of the air bags, stating that the needed safety feature is not yet required by the federal government. It was reported that the decision saved Enterprise \$11.5 million on the roughly 66,000 vehicles. Enterprise also said it is not the only company to buy fleets of cars without side impact air bags.

But according to the Insurance Insti-

tute for Highway Safety, studies have shown that side air bags with head protection can reduce highway deaths by up to 45%. An estimated 8,000 people were killed in side-impact collisions in 2007 alone, according to reports. Enterprise has apologized and pledged to rectify the situation, but the company blamed a software glitch for the false advertising. According to Enterprise, 745 of the Impalas were sold nationwide.

Source: Fox News

XXIV. RECALLS UPDATE

The following are recent recalls that we believe to be significant. The results are broken them down by category. Hopefully, this information will be helpful to our readers.

Motor Vehicles

Volkswagen, Audi Recall Thousands Of Vehicles

Volkswagen and Audi are recalling 16,000 new vehicles due to transmission problems causing them to lose power or completely stall. Government officials have been investigating the problem since July 17th. The affected vehicles utilize a new type of transmission called a direct shift gearbox (DSG) and, in some cases, have stranded motorists amid fast-moving traffic.

According to Clarence Ditlow of the nonprofit Center for Auto Safety, the problem is a “classic” safety hazard. “Consumers are being stranded on freeways,” Ditlow said. “It’s only a matter of time before we have consumers being killed.” Volkswagen says it has not received any reports of injuries or deaths. Volkswagen and Audi say the problem is caused by faulty temperature sensors, affecting 13,500 Volkswagen models and 2,500 Audi models.

General Motors Recalls Vehicles

GM is recalling 1,800 model year 2007 Chevrolet Kodiak, T-Series and F-Series and H-Series passenger vehicles equipped with 7.8L diesel engine. The air compressor in some of these vehicles may not build enough air pressure to support the air brake system. If this condition were to occur while the vehicle was stationary (brakes applied), the air brakes would remain applied and prevent the vehicle from moving.

If the driver were to ignore these warnings and continue to drive the vehicle, and if there was a continued loss of pressure, the rear spring parking brakes would automatically apply, preventing the truck from being driven.

Dealers will inspect the air compressor for its ability to build air pressure, and either modify the air compressor by elimination of the suppression valve or replace the air compressor assembly free of charge. The recall is expected to begin during August, 2009. Owners may contact Chevrolet at 1-800-630-2438, GMC at 1-866-996-9463, Isuzu at 1-800-255-6727 or at www.GMownercenter.com.

Honda Expands Recall Of Driver's Air Bag

A safety recall of the driver’s air bag in certain Honda vehicles is being expanded to include more vehicles. The recall now involves certain 2001-2002 Honda Accords, 2001 Civics and 2002-2003 Acura TLs. The recall is due to a potential defect in the airbag’s inflation system. Acura is Honda’s luxury brand. American Honda Motor Co. says that 440,000 additional vehicles are included in the expanded recall, which will require the replacement of the driver’s steering-wheel-mounted air bag inflator. The recall initially began in November, 2008.

In some vehicles, air bag inflators can produce over-pressurization of the driver’s front air bag inflator mechanism during air bag deployment. If an affected inflator deploys, the increased internal pressure may cause the inflator casing to rupture. According to a statement from Honda, metal fragments could pass through the cloth air bag cushion material, possibly causing an injury or fatality to vehicle occupants. Registered owners of vehicles that potentially contain affected inflators will receive a recall notice in the mail over the next few months, according to the company. Further instructions will be given to help schedule a repair to each vehicle.

BMW Recalls

BMW is recalling certain model year 2006—2008 R1200 GS motorcycles manufactured between August, 2006 and January 2008. The sealing of the fuel pump control unit housing might be insufficient and water could intrude into the control unit housing creating a humid atmosphere. Under such conditions, the fuel pump could corrode and then fail.

Failure of the fuel pump will cause inadequate fuel to reach the engine and cause the engine to stop running. A loss of engine power without warning could increase the risk of a crash. The manufacturer has not yet provided the agency with a remedy or notification schedule. Owners may contact BMW at 1-800-831-1117. Owners may also contact the National Highway Traffic Safety Administration’s vehicle safety hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to www.safercar.gov.

Products For Children

BabySwede LLC Recalls Bouncer Chairs

The U.S. Consumer Product Safety Commission has announced a voluntary recall of BabyBjörn® Babysitter Balance and BabyBjörn® Babysitter Balance Air bouncer chairs. Consumers should stop using recalled products immediately unless otherwise instructed. There are about 6,500 of the chairs which were manufactured by BabyBjörn AB of Sweden and imported by BabySwede LLC of Cleveland, OH. Small, sharp metal objects found in the padded area of the bouncer chair can protrude, posing a laceration hazard to children. Thus far no incidents or injuries have been reported. The recall involves the BabyBjörn's Babysitter Balance and Babysitter Balance Air bouncers. These bouncing chairs for babies have a red safety latch on the height adjustment mechanism and a plastic footrest with the BabyBjörn® logo.

The chairs were sold by baby product retailers and various mass merchants nationwide, online retailers and catalogs from September, 2008 through July, 2009. The Babysitter Balance sold for about \$170, and the Babysitter Balance Air sold for about \$190.

Consumers should immediately stop using both Babysitter Balance and Babysitter Balance Air bouncer chairs and contact BabySwede LLC for instructions on how to return the recalled products for inspection and relabeling. If any metal pieces are found through inspection, the consumer will be provided with a new BabyBjörn® Babysitter Balance product. For additional information, please contact BabySwede, LLC toll-free at (866) 424-0200 anytime, or visit the manufacturer's Web site at www.babyswede.com.

Little Tikes™ Recalls Clubhouse Swing Sets Due To Fall Hazard

The U.S. Consumer Product Safety Commission has announced a voluntary recall of Little Tikes Clubhouse Swing Set. There were about 1,950 units sold. They were manufactured by Little Tikes™, of Hudson, Ohio. The recalled swing sets did not come with assembly directions for the swing seat harness. The swing seat harness assembly needs to be completed by the consumer. The swing seats can detach if the harness is not assembled properly, which could result in fall and injury during use. Thus far no incidents/injuries have been reported.

The Little Tikes™ Clubhouse Swing Set is a plastic molded product that features a climbing wall, rope ladder, slide and two swings with blue and yellow seats. Only the blue seat model is being recalled. The model numbers are 400V and 612398. They were sold at various retailers including Toys R Us and Walmart from October 2008 through March 2009 for about \$450.

Consumers should stop using recalled swing sets immediately until they have obtained and carefully read the assembly instructions for the swing seat harness. Instructions can be obtained by accessing the Little Tikes™ Web site or by calling the firm's hotline. For additional information, contact Little Tikes toll free at (800) 321-0183 between 9 a.m. and 8 p.m. ET Monday through Friday, between 9 a.m. and 2 p.m. ET Saturday, or visit the firm's Web site at www.littletikes.com

Little Tikes™ Recalls 1.6 Million Toy Workshops And Trucks

Little Tikes™ is recalling 1.6 million toy workshops and trucks after a toddler choked on a plastic nail. The voluntary recall covers

five toy models sold by Little Tikes™ as far back as March, 1994, the Consumer Product Safety Commission said. The problem involves the bright red and blue plastic nails that accompanied the Hudson, Ohio-based company's Electronic Project Workshop, the Little Handiworker Workhorse, the Home Improvements Two-sided Workshop, the Swirlin' Sawdust Workshop and the Black Pickup Truck with Tools.

The toys were sold by major retailers including Toys R Us as well as online at www.littletikes.com and other websites for \$25 to \$100. Consumers should immediately take the toy nails away from young children and contact Little Tikes™ for a free replacement. Little Tikes™ said in a statement that the toys were intended for children ages two and older. The child who swallowed the toy part was an 11-month-old boy from Goose Creek, S.C. The plastic nail—about 3 ¼ inches long by 1¼ inch in diameter—“forcefully lodged” in the boy's throat. He was hospitalized and has made a full recovery.

Some of the products are no longer sold by the company. But the toys may have been handed down to new owners or sold at garage sales. Tom Richmond, general manager of Little Tikes Worldwide, said that “we realize Little Tikes™ toys are actively played with in homes where younger siblings reside and for that reason believe we must do everything possible to ensure the safety of not only the toddler or preschooler for whom the toy is intended, but also for other children who may come in contact with the toy.” The CPSC said it was also interested in “receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product.”

Spalding In-Ground Basketball Hoops Recalled

About 1,700 Spalding In-Ground Basketball Hoops have been recalled by Russell Brands LLC, of Alexander City, Alabama. The bolts at the base can fail, causing the unit to fall. This poses a risk of serious injury to consumers. Russell is the importer/distributor of the hoops.

This recall involves Spalding in-ground basketball hoops with a supporting pole and a clear backboard. The hoops were sold at MC Sports, Academy Sports, Dunham's Sports and other sporting goods stores nationwide for between \$600 and \$1,700.

Consumers should stop using the recalled basketball hoops immediately and contact Russell Brands for instructions on receiving free replacement bolts. If the product is installed in concrete, the firm will arrange for free deinstallation, repair and reinstallation of the product at the consumer's home. For additional information, contact Russell Brands at (800) 431-5827 between 9 a.m. and 5 p.m. CT Monday through Friday or visit the firm's Web site at www.spalding.com.

Target Recalls Circo Booster Seats Due To Fall Hazard

About 43,000 Circo Booster Seats have been recalled. The seats were imported by Target of Minneapolis, Minn. The booster seat restraint buckle can open unexpectedly, allowing a child to fall from the chair and be injured. Target has received eight reports of the booster seat buckles opening unexpectedly, including three reports of bruises. This recall involves Circo booster seats with manufacture date codes XJ0811, XJ0812, XJ0901, and XJ0902. The plastic booster seat is blue with green trim and has white straps. The manufacture date code is

printed on the backside of the seat next to the consumer warning information. "Circo" can be found on a label located in the front of the seat.

Target stores nationwide sold the seats from December 2008 through June 2009 for about \$13. Consumers should immediately stop using the booster seat and return the item to the nearest Target store to receive a full refund. For additional information, contact Target at (800) 440-0680, or visit the company's Web site at www.target.com.

Little Tikes™ Recalls Children's Toy Workshop Sets And Trucks Due To Choking Hazard

Little Tikes™ Workshop Sets and Trucks manufactured by Little Tikes, of Hudson, Ohio, have been recalled. The recalled workshop sets and trucks have oversized, plastic toy nails that can pose a choking hazard to young children. The firm has received one report of an 11-month old boy from Goose Creek, S.C. who choked when the toy nail became forcefully lodged in his throat. The child was hospitalized and made a full recovery.

The oversized, plastic toy nail is about 3¼ inches long by 1¼ inch in diameter and comes in red or blue colors. It has a large round head; about 1 7/8 inches below the head is a plastic ridge, slightly smaller than the nail head and about 1 inch in diameter. They were sold with a variety of Little Tikes™ children's products. The toys were sold by various web sites such as www.littletikes.com and mass merchandise retailers nationwide, including Toys "R" Us, from March 1994 through June 2009 for between \$25 and \$100. Consumers should immediately take the toy nails away from young children and contact the firm for a free replacement toy nail. For additional infor-

mation, contact Little Tikes™ at (800) 791-2737, or visit the firm's Web site at www.littletikes.com. CPSC is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. Please tell us about it by visiting <https://www.cpsc.gov/cgi-bin/incident.aspx>.

Jump 'N Jive Doorway Jumpers Recalled By Graco Due To Choking Hazard

Graco Children's Products Inc. of Atlanta, Georgia, has recalled about 2,400 Jump 'n Jive™ Doorway Jumpers. The recalled doorway jumpers include detachable toys that are attached to the jumper straps with strips of hook and loop fabric. The strips of fabric are not permanently attached to the toys and can become detached during use, posing a choking hazard. The company has received one report of a child removing the fabric strip and placing it in his/her mouth. No injuries have been reported. The recalled doorway jumper includes an interactive musical dance mat and two detachable toys. The model number, 1755544, appears on the carton UPC label and on the underside of the jumper tray.

The doorway jumpers were sold from April, 2009 through July, 2009. The jumpers were sold at Babies R Us and other children's specialty retail stores nationwide and online from Amazon.com for about \$55. Consumers should immediately stop using the recalled product and remove and discard the detachable toys and the attaching fabric strips and call the manufacturer for a replacement set of toys. After the toys and fabric strips are removed, consumers can continue to use the jumper and interactive musical dance mat. For more information, contact Graco at (800) 345-4109 or visit the company's Web site at www.gracobaby.com.

Burley Child Trailers Being Recalled

Child trailers designed to be hitched to bicycles are being recalled because a defect can cause one of the trailer's wheels to fall off. The Consumer Product Safety Commission has said that the recall covered about 2,700 trailers made by Burley Design LLC of Eugene, Ore. The recall covers 2009 d'Lite ST and Solo ST two-wheeled child trailers with serial numbers starting with D939 or D948. The serial number is located behind the seat on the lower left rear frame tube. The products have "d'Lite ST" or "Solo ST" on the cover.

The commission said a sleeve inside the axle assembly can loosen, causing one wheel to come off the trailer, risking injury to the child or bike rider. The commission said there have been no reports of incidents or injuries. The trailers were sold by bike and specialty outdoor retailers nationwide and on the Internet from November, 2008 through June, 2009 for between \$550 and \$600. They were manufactured in the Philippines. Consumers should stop using the trailers and contact Burley for a free repair kit or help in finding a retailer to assist with free repairs.

Household Products

Frigidaire Recalls Clothes Washers Due To Fire Hazard

The U.S. Consumer Product Safety Commission announced a voluntary recall of Crosley®, Frigidaire®, Kelvinator®, Kenmore®, Wascomat®, and White-Westinghouse® clothes washers. Consumers should stop using recalled products immediately unless otherwise instructed. There were about 35,000 units sold.

The distributor was Frigidaire of Cleveland, Ohio. An internal defect in the washer's drain pump can

cause heat to build up, posing a fire hazard to the consumer. Thus far no incidents or injuries have been reported. This recall involves the Crosley®, Frigidaire®, Kelvinator®, Kenmore®, Wascomat®, and White-Westinghouse® top load washers, 3.1 cubic foot front load washers and laundry centers.

Sears and other retailers nationwide sold the products from February, 2009 through May, 2009 for between \$300 and \$1100. They were manufactured in the United States. Consumers should immediately unplug and stop using these machines. Consumers should contact Frigidaire or Sears (if unit was purchased there) to schedule a free repair. For additional information, contact Frigidaire at (800) 734-4519 between 8 a.m. and 11 p.m. ET Monday through Saturday, or visit the company's Web site at www.laundrypumprecall.com. For consumers who purchased their product at Sears, call Sears toll free at (888) 549-5870 between 8 a.m. and 10 p.m. ET Monday through Saturday, or visit Sear's Web site at www.sears.com.

Sherwin-Williams Recalls Purdy Scrapers Due To Laceration Hazard

The U.S. Consumer Product Safety Commission has announced a voluntary recall of Purdy 2½" 4-Edge Scrapers. About 76,000 units were manufactured in China by Allway Tools Inc. of Bronx, New York. The recalled scraper's body can break away from the handle when struck against a hard object. This poses a laceration hazard to users. The manufacturer has received four reports of the scraper's body separating from the handle. There have been no reported injuries.

The recalled scraper is a 2½" wide steel tool with a four-sided edge. The handle has a soft black grip with "Purdy" printed in red letters on the side of the handle. The

scrapers were sold at Sherwin-Williams Paint stores, Duron Paint stores, MA Bruder Paint stores, United Paint Stores, Norfolk Paint Stores, Mercury Paint Stores, Old Quaker Paint Stores, Flex Bon Paint Stores and Columbia Paint Stores nationwide from February, 2009 through June, 2009 for about \$9.

Consumers should stop using the recalled scraper immediately and return it to any Sherwin-Williams store or the place of purchase for a free replacement. For additional information, contact Sherwin-Williams at (888) 304-3769 between 9 a.m. and 5 p.m. ET Monday through Friday or visit the company's Web site at www.sherwin-williams.com.

Ross Stores Recalls Marble Top Plant Stands

About 1,800 Marble Top Plant Stands have been recalled by the importer, Ross Stores Inc., of Pleasanton, Calif. The marble top of the plant stand can detach from the base and fall onto consumers, posing a risk of injury. Ross Stores has received two reported incidents in which the marble top fell off the plant stand's base and bruised consumers. The plant stands have gray marble tops and black wrought iron bases. They were sold in three sizes: small (24 inches tall), medium (28 inches tall), and large (32 inches tall).

The plant stands were sold exclusively at Ross Stores nationwide between March, 2009 and June, 2009 for between \$15 and \$27. Consumers should immediately stop using these plant stands and return them to any Ross Store for a full refund. For additional information, contact Ross Stores at (800) 305-0510 anytime, or visit the store's Web site at www.ross-stores.com.

Trimmer/Edgers Recalled Due To Laceration And Burn Hazards

Black & Decker (U.S.) Inc. of

Towson, Md. has recalled about 200,000 Black & Decker GH1000 Grasshog XP String Trimmer/Edgers. The trimmer/edger's spool, spool cap and pieces of trimmer string can come loose during use and become airborne projectiles, posing a serious laceration hazard to the user, as well as bystanders. The trimmer/edgers can also overheat, posing a burn hazard to consumers.

At the time of the original announcement in July 2007, Black & Decker had received more than 700 reports of incidents, including 58 reports of injuries. To date, the company has received over 100 additional injury reports, including ten that required medical attention and others in which minor injuries such as bruises and lacerations were reported. There were also reports of minor property damage, including broken windows.

The Black & Decker GH1000 Grasshog XP String Trimmer/Edgers are electric-powered. Trimmer/edgers with date codes 200546 through 200645 (representing manufacture dates of November 14, 2005 through November 6, 2006) are included in this recall. The date code is located on the underside of the trimmer/edger's handle. Only tools with black spool caps are included in the recall. Those with orange spool caps are not included in the recall.

Consumers should stop using the string trimmer/edgers immediately and contact Black & Decker for a free repair kit. For additional information, contact Black & Decker toll-free at (888) 742-9158 between 8 a.m. and 5 p.m. ET Monday through Friday or visit the company's Web site at www.blackanddecker.com.

Black & Decker Coffeemakers Recalled By Applica Consumer Products Due To Burn Hazard

About 9,800 Black & Decker® Thermal Coffeemakers have been recalled. The distributor of the coffeemakers is Applica Consumer Products Inc., of Miramar, Fla. The coffeemakers can overheat and melt, posing a burn hazard to consumers. The company has received one report of a coffeemaker melting. No injuries have been reported. This recall involves Black & Decker 8-cup programmable thermal coffeemakers. Model number TCM 1000IKT is printed on the rating plate on the bottom of the coffeemaker. Wal-Mart and small retail stores nationwide sold the coffeemakers from April, 2008 through July, 2009 for between \$50 and \$65. Consumers should immediately stop using the coffeemakers and contact Applica to receive a free replacement. For additional information, contact Applica at (866) 699-4595, or visit the company's Web site at www.acprecall.com.

DVD Players Recalled By Wal-Mart Due To Fire Hazard

About 1.5 million Durabrand DVD Players have been recalled. The players were imported by Wal-Mart Stores Inc., of Bentonville, Ark. The DVD players can overheat, posing a fire and burn hazard to consumers. Wal-Mart has received 12 reports of DVD players overheating, five of which have resulted in fires that caused property damage. No injuries have been reported. This recall involves a single DVD player with a remote control. The device is silver colored and has a U-shaped opening at the top to insert the DVD. The players were sold exclusively at Wal-Mart stores nationwide from January, 2006 through July, 2009 for about \$29. They were manufactured in China. Consumers should immediately stop using the product and return it to the nearest Wal-

Mart for a full refund. For additional information, contact Wal-Mart Stores at (800) 925-6278, or visit the company's Web site at www.walmartstores.com.

Other Products

Wii™ Battery Recharge Stations Recalled Due To Burn And Fire Hazards

About 220,000 Psyclone Essentials and React Wii™ 4-Dock Battery Recharge Stations have been recalled by distributor Griffin International Cos., Inc. of Minneapolis, Minn. The battery pack can overheat, posing a burn or fire hazard to the consumer. Six incidents of overheating have been reported to the manufacturer. Two consumers reported minor burns to the hand. The Wii 4-Dock Recharge Station includes a white docking station with four recharge stations and a four rechargeable battery pack. Brand names are on the front of the packaging and the model numbers, Psyclone (PSE6501) and React (RT530), can be found on the bottom side of the product.

The Psyclone Essentials brand was sold at Target, Toys R Us and Amazon.com nationwide; React was sold at Best Buy stores nationwide. Both were sold from January, 2008 through July, 2009 for about \$50. Consumers should immediately stop using these recharge stations and contact Griffin International to obtain information on how to return the product and receive a free replacement. For additional information, contact Griffin International toll free at 888-344-4702, email productsafety@psyclonegamer.com or visit this Web site www.psyclonegamer.com/Wii4Dock.

Homelite, Husky And Black Max Generators Recalled Due To Fire Hazard

Homelite Consumer Products Inc. of Anderson, S.C. has recalled about 51,750 Homelite, Husky and Black

Max Brand Generators. The fuel gauge can leak excessive amounts of gasoline, posing a fire hazard to consumers. This recall involves Homelite and Husky brand generators sold exclusively at Home Depot stores and Black Max brand generators sold exclusively at Sam's Club stores. Affected generators include Homelite models HG3500, HG3510, HG5700 and HG5700R, Husky models HU3650, HUCA5700 and HUCA7000, and Black Max models BM10700A, BM10700B, BM10711A, BM10700DG, BM10700R, BM10700BR & BM10722G. Generators included in this recall have manufacturing date codes between BML306-BMM151, CHL122-CHM151 and CRL153-CRM059. The model number and manufacturing date code are included on the data label located on the top or side of the generator engine. Products with a green "dot" on the outside of the package or a silver "dot" on the fuel gauge face are not included in the recall.

The generators were sold by Home Depot and Sam's Club stores nationwide from July, 2008 through May, 2009 for between \$480 and \$1,600. Consumers should immediately stop using their generators and contact Homelite Consumer Products Inc. (Homelite and Husky brands only) or Black Max (Black Max brands only) for a free repair kit. For additional information regarding Homelite or Husky brand generators, contact Homelite Consumer Products, Inc. at (800) 242-4672, or www.homelite.com. For additional information regarding Black Max brand generators, contact Black Max at (800) 726-5760 or visiting www.blackmaxtools.com.

Ridgid Table Saws Sold Exclusively At Home Depot Recalled By One World Technologies Due To Laceration Hazard

About 3,000 Ridgid 10-inch Table

Saws distributed by One World Technologies Inc. of Anderson, S.C. have been recalled. The table saw's arbor shaft can fail when used with a stacked blade set (commonly known as a "stacked dado set"), which is used to cut grooves. The stacked blade set can be ejected from the saw, posing a potential laceration hazard to consumers. One World Technologies has received three reports of shafts failing when used with a stacked dado set. No injuries have been reported.

This recall involves Ridgid 10-inch table saws, model R4511. The recalled saws have manufacturing date codes between CD0829 and CD0837. The model number and manufacturing date code are located on a metal plate on the rear of the cabinet. Products with an "Arbor Inspected" sticker directly above the plate or an orange square on the outside of the package are not included in the recall. The saws were sold exclusively at: Home Depot stores nationwide from January, 2009 through July, 2009 for about \$600. Consumers should immediately stop using the recalled table saw and contact One World Technologies to schedule a free on-site repair. For additional information, contact One World Technologies toll-free at (866) 539-1710 or visit www.ridgid.com.

XXV. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

LEIGH O'DELL

Leigh O'Dell returned to the firm in May of 2005 to work in our Mass Torts section. Leigh was a lawyer with the firm from 1994 through 1998, but she left in 1998 to take a position with Focus on the Family. Under the leadership of Dr. James C. Dobson, Leigh

served Focus on the Family as Director of Women's Ministries. In that capacity, she was responsible for Renewing the Heart, a nation-wide series of one-day arena events designed to encourage and refresh women through worship and the Word of God.

Leigh came back to the firm for a short time in 2000, before joining AnGeL Ministries, the ministry of Anne Graham Lotz, daughter of Dr. Billy Graham. As Director of Events, Leigh was responsible for the development and execution of Just Give Me Jesus, a series of free, two-day revivals. Since the year 2000, twenty-three revivals have taken place throughout the United States and the world, including South Korea, Paraguay, Puerto Rico and the United Kingdom. Just Give Me Jesus is devoted to the exaltation of Jesus Christ and is designed to draw God's people into a fresh encounter with Jesus Christ through the preaching of God's Word, prayer and worship.

Leigh served as a law clerk for the Honorable Ira DeMent, United States District Judge for the Middle District of Alabama from 1993-1994. While at the University of Alabama School of Law, Leigh served as Managing Editor of the Alabama Law Review. Leigh, originally from Prattville, Alabama, is the daughter of the late Billy O'Dell and Beverly O'Dell Malone. Leigh enjoys spending time with her large family as well as playing tennis, cycling and participating in other sporting activities. Leigh is a tremendous lawyer and we are blessed to have her back with us.

SHARLA DONOHOE

Sharla Donohoe, who has been with the firm since January 2006, works as a Legal Assistant to Jay Aughtman in our Consumer Fraud Section. In this position, she assists on discovery matters and helps with client documents. Sharla is also working on all aspects of the Morgan Keegan securities cases, which includes helping to prepare the cases for arbitration before FINRA. She also works for Scarlett Tuley, another lawyer in the section, who handles securities cases.

Sharla and Bill Donohoe were

married in July 2002 and they have a daughter, Amber Lee, who just started first grade at Prattville Primary. When Sharla is not working, she spends her time at the dance studio with Amber who is on a competition dance team. The family attends St. Joseph's Catholic Church in Prattville. They enjoy lounging around the pool, yard work and NASCAR. When the Donohoes have free time, they travel between Mississippi and Louisiana to see family. We are most fortunate to have Sharla with us. She is a very good and dedicated employee.

KATHERINE ETHEREDGE

Katherine Etheredge, who has been with the firm for three years, serves as a Staff Assistant in the Mass Torts Section. She currently works on Vioxx and Medtronic Lead Wire cases. She has worked on different parts of the Vioxx litigation from initial client profile forms to the current settlement process. In the Medtronic Lead Wire cases she keeps the clients updated on their current case status and other day-to-day staff assistant duties. Katherine is originally from Springville, Alabama, where her parents currently live. She moved to Montgomery in 2001 to attend Huntingdon College.

Katherine graduated from Huntingdon College in 2005 with a Bachelor of Arts degree in Business Administration with a concentration in Accounting and a minor in Communication Studies. She received the Montgomery Chapter of Certified Public Accountants Outstanding Achievement award while attending Huntingdon. Katherine was a member of the Omicron Delta Kappa, Lambda Pi Eta Communication Studies Fraternity, and Sigma Beta Kappa International Business Fraternity. She was also a member of Circle K International where she served in many positions throughout her four years of membership including being an International Officer. Currently, she stays active volunteering with many projects throughout her community. Katherine enjoys family time, scrapbooking, and cooking. Katherine is a very good employee and is an asset to the firm. We are fortunate to have her with us.

KATHLEEN HENRY

Kathleen Henry, who came to the firm in July of 2007, is a staff assistant for Frank Woodson in our Mass Torts Section. She is currently working on pain pump cases. Her duties include intakes, ordering records and assisting in communications with clients. The work in Mass Torts is complex, time sensitive and quite demanding.

Kathleen has a 15-year-old daughter, Keyanna, who attends G.W. Carver High School. She also has three dogs: Poppi, Alex, and Mordecai. Kathleen is proud to say her mother, Fannie Henry, is a cancer survivor with two bone marrow transplants under her belt. Kathleen is a formally educated chef, and has worked in the legal field for six years and said she loves what she does. She also likes to read novels, especially those written by Patricia Cornwell and John Grisham. Katherine is a very good employee who works hard and even listens to Frank's Crimson Tide tales. We are fortunate to have her with us.

DANA SIMON

Dana Simon, who came to work for the firm in May 2008, currently serves as a Legal Assistant and Secretary to Parker Miller in our Toxic Torts Section. Since Parker is assigned to work on the firm's "Hot Fuel" cases, along with Rhon Jones, Dana helps oversee the Offensive Committee teleconference coordination for approximately 15 other Plaintiffs' law firms located in 12 other states. Multiple lawsuits have been filed against big oil companies like Exxon-Mobil, Chevron, BP and Citgo. Dana also assists Parker in Subsidence cases against Alabama Power and a number of mining companies. She makes initial contact with new clients, assists in research, handles correspondence, calendar deadlines, document review and many other tasks.

After Dana served as an enlisted member of the United States Air Force, she was employed as a paralegal/office manager for ten years in several private practice Montgomery law firms. She has served as both an advisor and office manager trainer to several South University paralegal students, and

assisted Kay Dickey, a lawyer in the University's paralegal studies program.

Before coming with our firm, Dana worked at GKN Aerospace as a contracts administrator assisting on the Honda project. She is currently assisting Janet Little with Aart Thatt Workss, Inc., an Alabama non-profit organization, which offers a wide variety of educational and scholarship programs to assist youth in art appreciation, the building of an enrichment center, and helping those children regardless of their economic or social background.

Dana, a native of North Carolina, received a degree in Liberal Arts after attending Wingate College in North Carolina and Albuquerque Community College in New Mexico. She has two daughters: Shelby, age 15, who attends Loveless Academic Magnet Program; and Leslie, age 12, who attends Floyd Middle Magnet School. Dana is a very good employee and we are fortunate to have her with us.

GIBSON VANCE NAMED PRESIDENT-ELECT OF AAJ

As mentioned last month, Gibson Vance, one of the lawyers in our firm, has been elected President-Elect of the American Association for Justice. His selection was announced at the organization's annual convention. AAJ is dedicated to preserving the civil justice system and making sure that powerful special interests are held accountable when they engage in misconduct or wrongdoing. As an executive officer of AAJ, Gibson will serve in an important position of leadership in the organization's effort to educate the public—as well as legislators on both the state and national levels—on issues of critical importance to consumers and our nation's judicial system.

In our firm, Gibson specializes in personal injury litigation and consumer fraud cases. He has been active in the Montgomery County Bar Association, serving as its President in 2005. He also served recently as President of the Montgomery County Trial Lawyers Association and the Alabama Civil

Justice Foundation. The Pike County, Alabama native also served in 2008 as President of the Alabama Association for Justice. Gibson was recently appointed to the Alabama Judicial Compensation Committee by Alabama's Lt. Governor, Jim Folsom.

Gibson has been active in the American Association for Justice for a number of years, and has served on several key committees within the organization, including the National Finance Committee, Public Affairs Committee, Budget Committee and Membership Oversight Committee. He was recently presented the Joe Tonahill award by AAJ's New Lawyers Division for his outstanding service to the civil justice system. Gibson had this to say about his election:

It is a great honor to serve an organization of trial attorneys that represents individuals who have been injured by the misconduct and negligence of others. It's our mission to ensure that everyone can get justice in the courtroom, no matter how small their stature and how powerful the interest they may be taking on.

We are extremely pleased to have Gibson so actively involved in organizations at both the state and national levels that are dedicated to serving the needs of people. As you may know, AAJ is the world's largest trial bar. You can visit www.justice.org for more information.

A MESSAGE FROM ALABAMA STATE BAR PRESIDENT TOM METHVIN

In the next several issues we will carry a series of messages from Tom Methvin, who is currently serving as Alabama State Bar President. Tom has set priorities for what he wants to accomplish during his term in office.

Access to Justice—Now More Than Ever

It is estimated that about 25% of Alabama's population, or about 1 million people, live in poverty. In the current economic climate, it is

likely that these numbers may grow.

Research indicates low-income Alabama households experience more than 700,000 legal issues on average per year. Common civil problems include consumer issues like creditor harassment and bankruptcy, as well as issues involving family law, housing, health and unemployment. With no money for legal services, where will these people turn for help?

To address this problem, the Access to Justice Commission was established by order of the Alabama Supreme Court. Its goal is to serve as a coordinating entity for the legally underserved, the legal community, social service providers and the private and public sectors. The Alabama State Bar works in cooperation with the Commission to find solutions to meet the legal needs of Alabama's poor. Together, we are looking for creative methods to fund and deliver access to justice.

It is a priority of my term as President of the Alabama State Bar to emphasize this need, and to encourage all Alabama lawyers to participate in these efforts. There is still much to do, and Alabama is still at the bottom of the list when it comes to funding access to justice. Even if we double our current funding, we're not even close to providing true, "full access" to justice for a person living in poverty.

Our intention is not to reach the national average, or fall somewhere in the middle. Our goal is to create the best access to justice system in the country for the provision of civil legal assistance to the poor. It's going to take all of us, working together, to accomplish this. It is our opportunity, and our responsibility, to be a part of making Alabama a leader

in ensuring true access to justice for all.

Information in this article is excerpted from the "President's Message" published in the September issue of *The Alabama Lawyer*. For more information about Access to Justice, you can read the complete article online at www.alabar.org.

CHILDREN IN CARS SHOULD BE PROPERLY BUCKLED UP

It's been said by many that children are our country's most precious resource and I totally agree with that statement. We all—parents and caregivers—have a responsibility to keep America's children safe. Each year, thousands of children are tragically injured or killed in automobile crashes. For children ages three-six, and eight-14, this is the leading cause of death. It's very hard to overstate the toll this takes on families. Together, we can put an end to this suffering.

September 12th—18th is National Child Passenger Safety Week, beginning with National Seat Check Saturday on September 12th. There will be hundreds of free child seat inspection stations set up across the country. Our firm is encouraging all parents and caregivers to take advantage of this service and ensure that their children are getting the very best protection.

We at Beasley Allen are committed to working closely with our partners and safety advocates to help reduce the number of young lives lost on our roadways. Our goal is to educate parents and caregivers about how to properly install and use safety restraints. In recognition of these efforts, Montgomery Mayor Todd Strange will present a proclamation declaring Child Passenger Safety Week in Montgomery September 12th—18th, and Seat Check Saturday in Montgomery, on September 12th.

Today, all 50 states, the District of Columbia and our territories have laws requiring the use of child safety seats, booster seats and seat belts for children traveling in motor vehicles. These laws

were enacted because of the tremendous safety benefits they provide. We know that child restraints help save lives and reduce injuries. We also know that they are most effective when installed and used correctly. Sadly, three out of every four child restraints are not properly used. We must join forces with others to prevent injuries and deaths on our highways. Using seat belts and doing so properly is a step in the right direction.

BEASLEY ALLEN RECOGNIZES MESOTHELIOMA AWARENESS DAY

September 26, 2009, has been designated as Mesothelioma Awareness Day. Our firm is participating in a series of special activities in recognition of this event beginning September 21st, including a radio campaign featuring public service announcements and on-air interviews. Mesothelioma is a deadly cancer that affects the lining of the lungs or, more rarely, the lining of the abdomen and/or the heart. There is only one way to develop this type of cancer—exposure to asbestos, and that's most significant.

Our firm has a web site, www.myMeso.org, that provides a mesothelioma and asbestos awareness outreach program. Throughout the week leading up to Mesothelioma Awareness Day, the web site will feature the personal stories of those affected by mesothelioma—some of them patients, others caregivers, and some who have lost a loved one to this devastating and as-yet incurable disease.

Since 2008, myMeso.org has provided a forum to connect people affected by mesothelioma through an active blog-based web site and hands-on activities. Outreach efforts were expanded in 2009 to include contributions to help support mesothelioma research through the Mesothelioma Applied Research Foundation (Meso Foundation).

Governor Bob Riley has presented a proclamation declaring September 26th as Mesothelioma Awareness Day in Alabama, and, at the local level, Montgomery Mayor Todd Strange also pre-

sented a proclamation declaring Mesothelioma Awareness Day in Montgomery.

Current statistics show as many as 3,000 people are diagnosed with mesothelioma in the United States each year, and 10,000 Americans die from asbestos-related diseases.

XXVI. SPECIAL RECOGNITIONS

REV. JOSEPH LOWERY AWARDED THE PRESIDENTIAL MEDAL OF FREEDOM

Rev. Joseph Lowery, a true American hero, was presented the Presidential Medal of Freedom, the nation's highest civilian honor, by President Barack Obama last month. Rev. Lowery, a native of Huntsville, Alabama, co-founded the Southern Christian Leadership Conference with Dr. Martin Luther King Jr. He was an early leader of the civil rights movement and is considered to be a civil rights icon. You will recall that Rev. Lowery gave the benediction at President Obama's inauguration.

As you may know, President Harry S. Truman established the Medal of Freedom in 1945 to recognize civilians for their efforts during World War II. President John F. Kennedy reinstated the medal in 1963 to honor distinguished service. The following is the White House statement concerning Rev. Lowery:

Rev. Joseph E. Lowery has marched through life with faith and purpose, carrying with him the legacy of a movement that touched America's conscience and changed its history. At the forefront of the major civil rights events of our time—from the Montgomery bus boycott to protests against apartheid—he has served as a tireless beacon for nonviolence and social justice. As a pastor and civil rights advocate, he co-founded the Southern Christian Leadership Conference and championed the cause of peace and freedom

around the world. The United States proudly honors this outstanding leader.

We at Beasley Allen are very proud of Rev. Lowery, a great American, who has accomplished lots of good things for his fellow man. He definitely paid his dues during some trying times in our country, but this man never gave up the good fight. Rev. Lowery is a deserving recipient of this high honor. God has blessed this man!

XXVII. FAVORITE BIBLE VERSES

Linda Rush, who is the biggest Elvis Presley fan in the country, sent in her favorite Bible verse which is set out below. Linda also suggested that we should include 2 Chronicles 7:14 in each issue of the Report from now on. Linda pointed out that God wants to bless this nation, but we have to seek Him and His ways and allow Him to live through us. That is very true and I need to be reminded of that truth from time to time. Linda and her husband Jim attend St. James United Methodist Church and are my very good friends.

For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish but have everlasting life.

John 3:16

James Lee Ford, Sr., a very good lawyer from Atlanta, Georgia, sent in the following verses. Jim says he learned to trust God very early in his legal career and that is definitely a good thing.

The fear of the LORD is the beginning of wisdom; all who follow his precepts have good understanding. To him belongs eternal praise.

Psalms 111:10 (NIV)

The fear of the LORD is the beginning of knowledge, but fools despise wisdom and discipline.

Proverbs 1:7 (NIV)

James F. (Doc) Holliday, who is from Sebring, Florida, sent in his favorite verse. For those of us who sometimes are prone to be concerned and worry, this message explains very well that turning over our cares and concerns to our Heavenly Father is the only answer.

Therefore I tell you, do not worry about your life, what you will eat or drink; or about your body, what you will wear. Is not life more important than food, and the body more important than clothes? Look at the birds of the air; they do not sow or reap or store away in barns, and yet your heavenly Father feeds them. Are you not much more valuable than they? Who of you by worrying can add a single hour to his life?

Matthew 6:25-27 (NIV)

My good friend Joe Pate, who now serves as an associate Athletic Director at North Carolina State University, sent in his favorite Bible verse. Joe, who is originally from Dothan, coached football at the school before moving into administration. He is also one of the best turkey hunters in the country and a very good man.

Be not deceived; God is not mocked; for whatsoever a man soweth, that shall he also reap. For he that soweth to his flesh shall of the flesh reap corruption; but he that soweth to the Spirit shall of the Spirit reap life everlasting. And let us not be weary in well doing; for in due season we shall reap, if we faint not. As we have therefore opportunity, let us do good unto all men, especially unto them who are of the household of faith.

Galatians 6:7-10

XXVIII. CLOSING OBSERVATIONS

The second of the four-part series by Dr. John Ed Mathison is set out below. We really appreciate John Ed doing this for our readers. I have always been big on setting priorities and found very early in my legal career that it is absolutely essential. Setting priorities is also very important in our personal lives, especially when it comes to family. John Ed's second article comes at a time when many Americans are looking for answers to problem areas in their lives. Let's see what he has to say.

First Things First

The first lesson of life is to know what comes first in life. The problems of life occur when we put second things first and first things second. Misappropriated priorities create havoc with life.

A flight instructor in Colorado Springs almost lost his life when he forgot what to do first. He is a retired Air Force colonel and has decades of experience as a flight instructor. When giving a flying lesson last week he forgot about the first lesson. He didn't check the gas gauge!

There are a lot of important aspects to teaching a student to fly—the first lesson ought to be to check the gas gauge. The instructor had a student flying with him. They ran out of fuel near the end of the 45-minute lesson. He miraculously was able to bring the single engine Aviat Husky to a bumpy but safe landing in a field. You can imagine how embarrassed the instructor is. He is the instructor!

Checking the gas gauge first is very important in life. To get ready to cut the grass, it is good to know how much gas is in the lawn mower. If you run out of

gas, it's not detrimental but it is annoying. When you get in the car, check the gas gauge. If you run out of gas in a car, it probably won't be a life/death experience, but it does cause a lot of inconvenience. But when you get in an airplane—it is a matter of life and death—not inconvenience or annoyance.

Jesus said that the first life lesson is to love God with all your heart, mind, soul, and strength. The second life lesson falls in line with that as we love our neighbors as ourselves. Now missing some lessons might just be an inconvenience or annoyance. Missing the number one life lesson is a matter of life and death—now and forever.

I know the instructor was probably busy and anxious to teach the lesson. I know most of us stay very busy in today's world. We have got a lot to do. It is easy to overlook the importance of the most important thing—checking the gas gauge. In life it is easy to unintentionally sacrifice the most important thing for merely helpful and beneficial things.

I am going to check my priorities. I don't want to give primary attention to secondary priorities. I must constantly look at my life to be sure that my first priority is loving God with everything I have. Everything else comes secondary. The main thing is to keep the main thing the main thing—whether you are talking about flying or living.

If you would like to thank John Ed for contributing this timely message for our readers, you can do so by writing him at Dr. John Ed Mathison, JAM Executive Suite 4, 4131 Carmichael Road, Montgomery, AL 36106.

A LIVING LEGEND FROM GEORGIA

Last month I was with the legendary lawyer, Bobby Lee Cook of Summerville, Georgia, at a function in Tennessee. Bobby Lee, who is widely recognized as one of the truly outstanding trial lawyers in America, has been featured in almost every legal publication in the country over his distinguished career. As many of you may know, the television series *Matlock* was said to have been based on Bobby Lee Cook's colorful life and law practice. The only difference in the TV lawyer and Bobby Lee is that the Georgia

lawyer is much better than Matlock ever was. Bobby Lee is a living legend and still going strong.

XXIX. PARTING WORDS

I am going to do exactly as my good friend Linda Rush suggested and set out the specific order given by God to His chosen people. In fact, I plan on doing this at the end of each Report until such time as Christians in this country collectively obey this very spe-

cific mandate. I can think of no better ending for this part of the Report.

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 I will hear from heaven, and will forgive their sin and heal their land.

2 Chronicles 7:14

May God continue to bless you, your families, and the United States of America.

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