I.
CAPITOL
OBSERVATIONS

U.S. SUPREME COURT OPENS THE FLOOD GATES FOR CORPORATE AMERICA

The U.S. Supreme Court ruled last month that corporations may spend as freely as they like to support or oppose candidates for President and Congress. This ruling takes away decades-old limits on business efforts to influence federal election campaigns. By a 5-4 vote, the Court overturned a 20-year-old ruling that said companies can be prohibited from using money from their general treasuries to produce and run their own campaign ads. The Court has literally opened the floodgates for corporations to pour their money into political campaigns. In my opinion, the laws struck down by the five Republican appointees to the High Court were critical to maintaining a true democracy.

Justice Anthony Kennedy wrote the majority opinion, joined by his four of his colleagues. Strongly disagreeing, Justice John Paul Stevens said in his dissent, “The Court’s ruling threatens to undermine the integrity of elected institutions around the nation.” Justices Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor joined Stevens’ dissent, parts of which the Justice read aloud in the courtroom for all to hear.

When the Court made its ruling, one of my friends in Washington said he thought it was gunfire when he heard a “pop-pop-pop-sounding.” But he later found out it was just the corporate lobbyists and some of the GOP members of Congress “popping the champagne corks and dancing on what is left of our Constitution.” While that may be a stretch, it’s not far off the mark when you consider exactly what the High Court did. It’s certainly no exaggeration to say the very foundation of our democracy will be under attack once the tidal wave of corporate dollars floods into GOP campaigns in the upcoming Congressional elections. At a time when the American people badly need campaign finance reform, instead of reform they get the shaft from five Supreme Court Justices.

The Justices also struck down part of the landmark McCain-Feingold campaign finance bill that barred issue ads in the closing days of election campaigns paid for by unions and corporations. Advocates of strong campaign finance regulations have to be greatly disappointed with this ruling. Their worst fears have come to pass and it’s clear their fears were well-founded.

The Court has given corporations greater influence in elections and public policy and has dealt a blow to ordinary citizens. Corporations are already running roughshod over our “democracy” and now things will get much worse. I wonder how many people agree that the First Amendment, which was adopted to protect real people, was never intended to protect a corporation. Congress should act now to make sure people—not corporations—have control of our elections.

Source: Associated Press

George Beck Recommended For US Attorney Slot

It appears that George Beck is now on his way to become the chief federal prosecutor in the middle district of Alabama. The veteran Montgomery lawyer is a very good choice. George, who is one of the best lawyers in the state, should win Senate confirmation with little if any difficulty. In my opinion, George will do an outstanding job in this most important position. Rep. Artur Davis recommended him and George will surely have been nominated by the time this issue is received. Hopefully, his confirmation will be put on the fast track in the Senate.

The Aftermath Of A Train Wreck In Massachusetts

The election of a little-known Republican to fill the remainder of Ted Kennedy’s seat in the U.S. Senate should serve as a wake up call for the National Democratic Party. But I believe it’s also a stern warning for all incumbents—both Democrats and Republicans—in Congress. Folks have been upset for years over how things have been done in Washington and now they are mad as all get-out.

The American people are especially sick and tired of the partisan bickering that has tied the collective hands of Congress for months. In my opinion, it’s time for both Democrats and Republicans to put the people’s interest first and get down to work for them and not the special interests. If that doesn’t happen soon, there could well be lots of new faces in Congress on both sides of the political aisle. I really don’t believe anybody in Washington is immune at this juncture. While the results in Massachusetts may have been a shock to the political experts, I really wasn’t that surprised. Both parties had better learn from what happened there!

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HEALTH CARE FRAUD COSTS ARE HUGE

Health care fraud costs American taxpayers tremendous sums of money each year. Some experts say health care fraud is about 3% of all health care expenditures. If it is only 3%, it would amount to $60 billion, based on total expenditures of $2 trillion. But Malcolm Sparrow, a professor of public management at Harvard’s John F Kennedy School of Government, believes the number is probably much higher. He says the number could be as high as 20%, which if true, would make the number be more like $400 billion. Professor Sparrow says the government knows how to measure health care fraud, but refuses to do so. Why? He says “the news would be too bad.”

Lewis Morris, the chief counsel at the Office of Inspector General at the Department of Health and Human Services, is at the center of the fight against health care fraud. He told Corporate Crime Reporter the federal government “does not have a valid way of measuring the true, precise level of health care fraud.” Mr. Morris, who says the real problem is proving the fraud, had this to say:

It is a big jump to move from a billing error to a fraud. Fraud is an intent based act. In order to establish it, you need someone to admit it, or you need sufficient evidence to prove it. And you would need to build that circumstantial evidence in each one of the cases that you counted toward your fraud statistic. It may be doable, but with the resources we have now, I would rather go after the bad guys that are in our scopes right now rather than trying to perfect the percentage point of fraud. If the thought is we know how to measure it and we have affirmatively decided not to, and therefore have asked civil servants like myself to be part of a cover-up so we keep the bad news from the public—that smacks of conspiracy to me. Certainly, those of us in the fraud fighting business would love to have more resources to do our job better. So, we have every incentive to bring the scope of this problem and the nature of this problem to the attention of policy makers. And we are doing that.

Based on our experience in the ongoing Medicaid fraud litigation, I am convinced there is a massive amount of healthcare fraud in this country. This fraud is being paid for by the American taxpayers. I wonder why groups like the U.S. Chamber of Commerce aren’t concerned about this very large problem.

Source: Corporate Crime Reporter

HEALTH INSURANCE COMPANIES ARE SNEAKY

It now appears that the health care reform efforts in Congress are on life support with the prospects for real reform now being somewhere between slim and none. Because nobody in charge could explain to the public in simple terms exactly what was in either the House or Senate bills, it was very easy for the drug companies and insurance companies to spend millions and deceive the public and turn public opinion in their favor. It has been reported that health insurance companies secretly gave the U.S. Chamber of Commerce millions of dollars to run third-party attack ads against health care reform. This was done at the very same time that the companies were telling Congress and the American people that they were continuing to "strongly support reform." That is not only sneaky, it is downright deceitful. The industry has laundered millions of dollars through third-parties to influence the health care reform legislation and kill any provisions that might hinder insurers’ profits.

It’s being reported that between $10 million and $20 million came to the Chamber from Aetna, CIGNA, Humana, Kaiser Foundation Health Plans, United-Health Group, and Wellpoint. These companies are all members of the powerful trade group “America’s Health Insurance Plans.” Unfortunately, that amount was just a drop in the bucket on the total amount spent by the special interests. This sort of thing should never be tolerated.

Source: Center for Media and Democracy

ALABAMA STILL A GOOD PLACE FOR SMALL BUSINESSES

Alabama rates as the ninth-best state for small businesses, according to the Small Business & Entrepreneurship Council’s “Small Business Survival Index 2009.” Our state is one of three Southeastern states in the top ten behind Florida and South Carolina, which were sixth and seventh respectively. Alabama topped the state and local property taxes list. The index ranks states based on their public policy climate for small businesses and entrepreneurs. The small business survival index is a comprehensive measure of states and how friendly they are to businesses, based on taxes, various regulatory costs, government spending, property rights, and health care and energy costs.

Alabama’s corporate state taxes are the lowest in the Southeast and seventh nationally. Nevada, South Dakota, Texas, Washington and Wyoming were tied atop the national rankings, followed by Ohio in sixth place. Unfortunately, Alabama was hampered by its crime ranking which is 45th nationally. South Dakota was ranked as the best state for small business while New Jersey was dead last.

Source: Birmingham Business Journal

II.

DRUG MANUFACTURERS LITIGATION

THE ALABAMA SUPREME COURT SIDES WITH THE DRUG INDUSTRY

The Alabama Supreme Court denied our request for a rehearing in the state’s Medicaid fraud lawsuits. The Court again ignored the state’s request for oral argument and ruled for the drug companies without issuing an opinion. Fortunately, the state has been able to settle with a number of drug companies. Also, the state will continue with the remaining cases on a theory of liability other than fraud. Media reports that the Court had found “no fraud” were incorrect. The companies were guilty of fraud, but the Court said—contrary to the trial evidence—that the state knew it was being
cheated, which is most difficult to understand. We still have a number of cases pending in Alabama and plan to go forward with them.

**KENTUCKY MEDICAID FRAUD CASE**

The trial judge in Kentucky’s Medicaid fraud lawsuit has awarded civil penalties to the Commonwealth against GSK in the amount of $5,828,500. This is a significant award, which was made under Kentucky’s Consumer Protection Act, because the jury awarded less than $1 million in compensatory damages. GSK had argued, among other things, that the court could not award civil penalties that were greater than compensatory damages. The court applied the same methodology for counting violations as had been done in the Sandoz and AstraZeneca cases, but reduced the per violation penalty from $1,000 to $500 in light of the compensatory damages award. Clearly, this is a huge win for the people in Kentucky.

Source: Lexington Herald-Leader

**A MOST SIGNIFICANT RULING IN FEDERAL COURT**

The City of New York and a number of New York counties have won a significant ruling in their Medicaid fraud case in federal court against 13 drug companies. The Plaintiffs’ victory came on their motion for partial summary judgment on liability. All of the 13 drug companies had reported WACs and most had reported AWPs for Medicaid reimbursement purposes. The reported prices were not the actual prices paid for any of the companies’ drugs. Employees of the companies actually admitted that the WACs and AWPs reported were not the real prices paid to acquire their drugs. The court ruled as a matter of law that the Defendants reported false prices and had committed fraud.

The Defendants tried to convince the court that the Plaintiffs knew the reported prices were false, but the judge didn’t buy that defense. The court ruled that AWPs are by statute prohibited from being used for reimbursement and are to be kept as confidential by the federal government, Centers for Medicare and Medicaid Services (CMS). Thus CMS could not have given this information to Plaintiffs. The court pointed out further that the Medicaid Act required CMS to set its prices on the basis of the companies’ published prices.

The court ruled that the Defendants made false representations in the form of WACs and AWPs in order to be reimbursed for their drugs. The judge granted partial summary judgment on the liability issue in favor of the Plaintiffs and against each of the 13 drug companies.

The companies involved in the ruling were: Barr Laboratories; Dey; Ethex Corporation; Ivax Corporation; Mylan; UDL Laboratories; Par; Purepac Pharmaceuticals; Boehringer Ingelheim (formerly known as Roxane); Sandoz; Schering Corporation; Teva Pharmaceutical USA; Watson Pharmaceuticals; and Wyeth. It should be noted that Ethex subsequently settled with the Plaintiffs after the ruling.

Source: The Court’s Order

**SCHERING-PLOUGH GETS COURT APPROVAL OF $165 MILLION INVESTOR SETTLEMENT**

Schering-Plough Corp., the drug maker acquired by Merck & Co., has received court approval of a $165 million settlement to resolve lawsuits over fraudulent statements to investors about the Clarinex allergy medicine. A U.S. District Judge in Newark, N.J., has given final approval to the class-action settlement, which affects as many as 280,000 investors. The settlement was “reasonable and fair” after seven years of litigation and a “robust mediation process,” according to the court’s order approving the settlement.

Investors claimed Schering-Plough made false statements from May 2000 to February 2001 that failed to adequately disclose “serious and widespread deficiencies” in manufacturing and quality operations. That failure to disclose risked a delay in approval by the U.S. Food and Drug Administration of Clarinex, a successor drug to Claritin. Schering-Plough announced on February 15, 2001, that the FDA found manufacturing deficiencies at its facilities in New Jersey and Puerto Rico, causing the agency to withhold approval of Clarinex. Schering-Plough shares fell 15% the next day.

The settlement is one of the five largest securities class-action cases in a New Jersey federal court. The lead Plaintiff in the case was the Florida State Board of Administration. The lead counsel was Barrack, Rodos & Bacine of Philadelphia which worked very hard over a long period of time and got a good result for members of the class.

Source: Bloomberg

**ABBOTT LABS PAYS $22.5 MILLION TO SETTLE STATE LAWSUITS**

Drug maker Abbott Laboratories has agreed to pay $22.5 million to settle allegations that it tried to block generic competition from a popular cholesterol medication. The agreement was announced by attorneys general from 23 states, including Arkansas and the District of Columbia, which had filed suit against Abbott to recover costs to state Medicaid plans. The multistate lawsuit alleged that Abbott and a unit of Belgium drug maker Solvay Pharmaceuticals made minor changes to the formulation of TriCor to prevent cheaper generic versions from launching.

The companies depriving taxpayers, state agencies, and consumers of a fair marketplace that would have lowered prices by offering less expensive generics. Generic drugs can cost between 30% to 80% less than brand-name medications. Generic drug makers typically launch low-cost versions of a drug after the patents on the original expire.

Several drug makers, including Teva Pharmaceuticals, were slated to launch generic versions of TriCor in 2002, as the drug's patents were set to expire. But Abbott and Solvay made minor changes in the form and dosage strength of Tricor to renew its patent protection. Abbott claimed the formulations provided useful options to patients in terms of dosing and convenience.

North Chicago-based Abbott agreed last year to acquire Solvay for more than $6 billion. The deal is expected to close in the first quarter of this year. Abbott licenses the U.S. rights for Trilipix and TriCor from Brussels-based Solvay. The drugs are used to raise “good” HDL cholesterol while reducing triglycerides and “bad” LDL cholesterol. Abbott reported $919 million in sales for TriCor and Trilipix during the first nine months of 2009. The states that will receive payments
include Arizona, Arkansas, California, Connecticut, Florida, Iowa, Kansas, Maine, Maryland, Minnesota, Missouri, New York, Nevada, Oregon, Pennsylvania, South Carolina, Washington, and West Virginia.

Source: Associated Press

**Doctors Group To Pay $9.5 Million In False Claims Case**

A doctors group in Michigan will pay $9.5 million to settle allegations that it submitted false claims to Medicare, Medicaid and the military TRICARE medical program. The Farmington Hills-based Visiting Physicians Association will pay $9.5 million to settle allegations that it submitted false claims for unnecessary home visits, tests and procedures, as well as services that were never provided. The claims were for people with Medicare, Medicaid and the military TRICARE insurance programs. The association will make the payments to the U.S. government and the state of Michigan.

Visiting Physicians Association, which has provided home health services in Michigan, Ohio, Georgia and Wisconsin, will make the payments to the U.S. government and the state of Michigan, to settle the allegations that it submitted claims for unnecessary home visits, unnecessary tests and procedures and other services it never provided. The settlement resolves four lawsuits filed by private Plaintiffs under provisions of the False Claims Act, which permit private parties to file an action on the government’s behalf and share in any recovery.

Source: Freep.com

III.
PURELY POLITICAL NEWS & VIEWS

**The Governor’s Race Will Now Get The Public’s Attention**

Now that qualifying has started in the Democratic primary, it’s probably a good time to take a look at the field of candidates. So far, on the Democratic side, Artur Davis and Ron Sparks are the only two candidates in the race. In the early polling, Artur has a commanding lead in all of the polls, with as much as a 26% spread in one of the polls. While I have never put too much stock in early polling, this has to be a very good sign for Artur. While the race is expected to tighten up some, a 26% lead will make it very difficult for the trailing candidate to catch up.

There are a number of announced Republican candidates even though qualifying won’t start for the GOP primary until April 3rd. All early polls show Judge Roy Moore leading the pack with about 35% of the vote. Bradley Byrne, Tim James, Robert Bentley and Bill Johnson trail Judge Moore and they are fairly well bunched up. Many believe that either Bradley or Tim will wind up in a runoff with Judge Moore. Interestingly, many observers say that Rep. Bentley has been very impressive in the forum-type events where all candidates have to take positions. The Tuscaloosa doctor may turn out to be the dark horse in the race.

In any event, Alabamians will witness a most interesting gubernatorial race. Since I am directly involved with a candidate, I won’t make any further predictions. But I will say that the respective campaigns will now shift into a much higher gear. I hope that the issues facing Alabama citizens will be discussed fully and solutions by the candidates, designed to solve our problems, will be laid out for public scrutiny.

**A Look At Artur Davis’ Plan For Progress**

Artur Davis has laid out a framework for how Alabama state government should operate and I believe his plan is a sound one. The following are proposals by Artur, who according to all polls that I have seen, has a very large lead in the Democratic primary. Artur’s primary focus deals with fixing the economy in Alabama and the creation of jobs for the people in our state. The following are his list of priorities:

- Artur has a strong jobs program which will benefit all sections of Alabama and with our state now having an 11% unemployment rate, this is a top priority;
- Making public education a top priority will be a hallmark of a Davis administration;
- His Taxpayer Protection Plan is designed to boost transparency and accountability and fight government waste;
- He wants the toughest ethics law in the country;
- Constitutional reform will also be a priority;
- Fixing the PACT program is a must and will be done.

I have enjoyed working in the Davis campaign and have been greatly impressed with Artur’s vision for our state. If you would like more information on the campaign you can go to www.arturdavis2010.com.

**Judge Moore’s Former Aide Running For Lieutenant Governor**

A key spokesman and major fundraiser for Judge Roy Moore has entered the Republican race for Lieutenant Governor. Dean Young of Orange Beach, who announced his candidacy on January 26th, served as a fundraiser and spokesman when Judge Moore was campaigning for Chief Justice and during the Judge’s legal battle to display the Ten Commandments in his courtroom. I understand that Dean also helped the Judge launch his current race for governor. He told The Associated Press, however, that his campaign for Lieutenant Governor is separate from the Moore campaign. Dean is now a homebuilder and real estate agent on the Alabama coast. He is making his second bid for state office. Dean ran unsuccessfully for Secretary of State in 2002.

Others seeking the GOP nomination for Lt. Governor are Baldwin County school teacher Gene Ponder and Senator Hank Erwin of Montevallo. Jim Folsom, the incumbent, will likely be unopposed in the Democratic primary. He will be the overwhelming favorite to gain another term.

Source: Associated Press
JAMES ANDERSON ENTERS RACE FOR ATTORNEY GENERAL

Montgomery lawyer James Anderson is running as a Democrat for Attorney General. James filed his qualifying papers on January 16th, the first day of the Democrats’ qualifying period. He is well respected and will be a formidable candidate. Thus far most folks have been focusing on the Republican side of the race where lobbyist Luther Strange is mounting a primary challenge against incumbent Troy King. But it now appears the Democratic side of this race will have three primary candidates. Former Democratic Party state chair Giles Perkins and former prosecutor Michel Nicrosi have also qualified. James Anderson is a very good lawyer who does primarily insurance defense work. He will have broad support in the Democratic primary.

ALABAMA FARMERS FEDERATION PAC ANNOUNCES PRIMARY ENDORSEMENTS

The political action committee of the Alabama Farmers Federation (Farm-PAC) announced its endorsements of candidates last month for the Democratic and Republican primaries. In making its announcement, Farm-PAC said in a news release that its philosophy is to support candidates “with moral character who will fight for accountability, fairness, security and opportunity.” The committee endorsed: U.S. Senator: Richard Shelby; U.S. Representative, District 1: Jo Bonner; U.S. Representative, District 2: Bobby Bright; U.S. Representative, District 3: Mike Rogers; U.S. Representative, District 4: Robert Aderholt; U.S. Representative, District 6: Spencer Bachus; U.S. Representative, District 7: Earl Hilliard Jr.; Attorney General: Troy King; State Treasurer: George Wallace Jr.; Commissioner of Agriculture & Industries: Dorman Grace; for Justices on the Alabama Supreme Court: Place 1: Kelli Wise; Place 2: Mike Bolin; Place 3: Tom Parker; and Court of Civil Appeals Judge: Tommy Bryan.

Farm-PAC advisory trustees met at the federation headquarters in Montgomery, where several candidates seeking endorsements spoke before the committee. Alabama Farmers Federation President Jerry A. Newby had this to say in the association’s news release:

We are a non-partisan organization and have members who have sought our recommendations in both primaries. We hope our endorsements will be of assistance to our members if they are not familiar with the candidates.

All candidates, as a rule, work hard to get the endorsement of this politically powerful organization. Interestingly, no endorsements were made for either Governor or Lt. Governor. I guess those will come later.

Source: News Release

IV. LEGISLATIVE HAPPENINGS

THE REGULAR SESSION KICKS OFF

The regular session of the Alabama Legislature got off to a rather fast and somewhat rocky start on January 13th. There was a flurry of committee activity during the first weeks of the session. Gov. Riley’s state of the state message gave the impression that there will be adequate money available to fund the two major state budgets. While that may prove to be true, I seriously doubt it. Even with the additional stimulus money from the federal government—which is yet to be voted on in Congress—there will still be major money shortages in both budgets. Some observers believe it will take up to $1 billion in federal money to balance the state’s budgets for the next fiscal year. But if Congress doesn’t come through, some drastic cuts will have to be made in both education and in all of the state agencies. That will make for a very tough session.

SEPARATE AGENDAS FOR THE REGULAR SESSION IN ALABAMA

Folks who understand state politics in Alabama, and those who follow the affairs of state government closely, pretty well agree that the regular session of the Alabama Legislature is going to be most difficult. Currently there are several agendas on the table for the session, including one from the Governor, and one from the Democratic Party. There are some positive and well-meaning items in each agenda. I will take a brief look at each of them below.

Gov. Riley

Everybody agrees that Gov. Riley has a most ambitious agenda for his last regular session. His legacy will depend in large part on how the session plays out. His priority list includes:

- Level funding for all state agencies and departments with a possible increase of up to 4%:
- His education budget would have an increase for public schools of more than $400 Million;
- To nobody’s surprise, the Governor called for no new taxes;
- A $1,500 tax credit for all businesses for each employee hired from the ranks of those currently drawing unemployment benefits;
- A tax credit for a business that opens in the counties with the highest unemployment rates.
- Charter schools which would be created by local boards of education;
- Comprehensive ethics reform; and
- Opposing gambling of any kind.

The Democrats

The Democratic leadership in the House and Senate came with an equally ambitious agenda. Since we are in an election year, in order to get anything done, I believe the Democratic leadership must take a bi-partisan approach on all major issues. Their list includes:

- Putting Alabamians back to work;
- A $1 billion dollar package for road improvements over the next ten years;
- Elimination of the state sales tax on groceries;
- Budgets that focus on teachers, mental health workers, state troopers, and correction officers;
• Banning no-bid contracts;
• Comprehensive ethics reform; and
• Taxing and regulating gambling in Alabama.

The Republicans

I haven’t seen a separate agenda from the Republican legislative leaders and assume that they will push the Governor’s agenda with little deviation. But if the special interests oppose the Governor, I suspect at least some of the Republican lawmakers will jump ship. Since the Republican leadership in both the House and Senate have had a tendency to take a negative stand on many important issues, I believe they too must be more bi-partisan on all major issues facing our state that require legislative action during this session.

Conclusion

I believe the creation of jobs and dealing with issues relating to the economy should take center stage during the session. It’s clear that Gov. Riley is depending on more stimulus money from Washington to make his budgets work. That source of money will have to be in the range of $1 billion to fund the budgets in addition to the available state revenues as projected by the Finance Director. I agree with Speaker Seth Hammett who said: “you can not count an appropriation from the Congress until the Congress approves the appropriation.” This makes good sense and especially this year with all of the partisan bickering in Washington. Of course, the vote in Massachusetts for the U.S. Senate seat may change the climate in Washington on the stimulus money. So as Rep. Robert Bentley observed: “Until I see the money I am not going to believe it.”

In addition to the agendas mentioned above, the special interest groups will play a major role in the legislation that passes and fails during the session. I guarantee you that their lobbyists are already hard at work. Actually, I probably should have included a separate agenda for them, but space limitations wouldn’t allow it. You can probably figure that most of the agendas for those in Corporate America who operate in Alabama aren’t very consumer friendly.

Ban On Driver Texting Supported In The Alabama Legislature

The Alabama Legislature should ban folks from text-messaging while driving a motor vehicle, and hopefully the Alabama Legislature will get that job done during the current regular session. A majority of House and Senate members, responding to a survey by the Associated Press, said they favor passing legislation to ban people from sending text messages while driving a motor vehicle.

Seventy-nine percent of Senators responding to the poll favored the bill; 10% were opposed; and 10% undecided. Responding to the survey were 70% of House members and 83% of Senators. If the bill receives final passage, and is signed by Gov. Riley, Alabama would join 19 states that currently ban texting while driving, according to the Governors Highway Safety Association. Another nine states ban texting by young or novice drivers.

The Legislature began its regular session on January 12th, and it will run until the middle of April. Banning texting while driving is a simple issue and it must be addressed. The goal is to prevent deaths and injuries on our highways. When a person sends a text message while driving, others on the highway are put at risk. It’s a pretty dumb thing to do, but smart folks do it. It appears the House and Senate leadership have made this issue a top priority for the session. A bill passed the House on January 19th and is now in the Senate.

Source: Associated Press

Alabama’s Constitution Is Full Of Amendments

Alabama doesn’t have a constitution—it has an original document with 827 separate amendments. Alabama’s constitution will have 25 new amendments up for a vote this year. At this rate, it won’t be too long before the constitution, already the nation’s longest, will have been amended 1,000 times. To say that very few—if any—folks in our state know what all is in our Constitution, with all of its amendments, is probably a most accurate statement.

Source: Tuscaloosa News

Hank Sanders Will Seek Re-Election

Senator Hank Sanders, one of the most powerful members of the Alabama Senate, has decided to seek another four-year term. Hank, a member of the Senate since 1983, announced several months ago he would not run for re-election. Fortunately, he has changed his mind. Hank’s experience and his ability to bring Senators—both Democrats and Republicans—together are both badly needed in the Senate. The Senator from Selma chairs the committee that handles the state’s education budget and that requires an exceptional talent. Coming up with good budgets at a time of financial crisis is very difficult. I am glad that Hank will be around for the next four years.

State House Passes PAC Transfer Ban

The House of Representatives has again passed legislation to ban money transfers between political action committees that make campaign contributions hard to track. The House approved the bill without a dissenting vote. Rep. Jeff McLaughlin, D-Guntersville, has been proposing the PAC transfer ban in every Legislative session since 2002. Rep. Alvin Holmes got involved with the bill this time and it sailed through the House. The House usually approves the bill without dissent, but it has never passed the Alabama Senate. Hopefully, the Senate will make the House bill stronger and return it to the House for their approval.

V. THE NATIONAL SCENE

Report Says Stimulus Saved Jobs

President Obama’s stimulus package saved jobs according to USA Today’s quarterly survey of 50 economists. But, not surprisingly, these experts also believe that the government still needs to do more to get our economy back on track. It was estimated that without the $787 billion stimulus program there would have been an additional 1.2 million jobs lost around the country. Almost two-thirds of the economists said that the government should do
more to spur job growth. The economy clearly is the number one issue facing our country and political leaders today. We must get our economy back on track and create jobs and not allow the loss of jobs to continue. This has to be the very top priority for the President and for Congress.

**President Obama’s Proposed Tax On Banks**

President Obama has called on Congress to tax the largest banks to ensure that taxpayers won’t lose anything as a result of the federal bailout of the financial, auto and insurance industries over the past year. The “financial crisis responsibility fee” would target major institutions. It would be levied on those that were the main contributors to the financial crisis and the most significant beneficiaries of the extraordinary actions taken by the Federal Reserve and the Treasury Department. President Obama, who believes that banks should tap their bonus pools to pay the fee, stated:

*My commitment is to recover every single dime the American people are owed. We want our money back and we’re going to get it. If these companies are in good enough shape to afford massive bonuses, they are surely in good enough shape to afford paying back every penny to taxpayers. I’d urge you to cover the costs of the rescue not by sticking your shareholders or your customers or fellow citizens with the bill, but by rolling back bonuses for top earners and executives.*

The President’s announcement came as banks were set to pay out tens of billions of dollars in bonuses. If passed by Congress, the fee would take effect on June 30th and is estimated to raise $90 billion over ten years. More than 60% of the money will come from the ten largest financial institutions. If the fee ends up raising more money than is needed to fully repay the bailout money, the additional funds would be used to help improve the U.S. fiscal position, which was worsened by the crisis.

The administration estimates that roughly 50 companies will have to pay the fee, of which as many as 27 would be banking institutions. Roughly 35 would be U.S. companies and the rest would be the U.S. subsidiaries of foreign companies. This appears to be a good program and hopefully it will be enacted and put into effect.

*Source: CNN*

**FBI Warned About Mortgage Fraud Problem In 2004**

The Financial Crisis Inquiry Commission is investigating the causes of the U.S. financial crisis and has been holding hearings. The commission has been looking into the assertion that in 2004 the FBI issued a warning of a looming outbreak of mortgage fraud. Attorney General Eric Holder has been questioned about whether the FBI acted on the warning and, if so, what the agency did. Risky banking practices and very poor regulation led to the worst financial crisis in the United States since the Great Depression. It will be interesting to see what the FBI and Department of Justice did as a result of the FBI's 2004 warning.

Attorney General Holder told the bipartisan panel exploring the root causes of the U.S. financial crisis that the Justice Department is using “every tool at its disposal” to fight the financial crimes that contributed to the meltdown and certainly could cause another. He believes fighting financial crime will foster confidence in the system and he totally agree with him. Anybody or any entity that committed a crime should be investigated and prosecuted.

It has become quite obvious that the financial crisis exposed some fundamental weaknesses in the regulatory system. The Obama administration has proposed a sweeping overhaul of the system. Currently, both the House and the Senate are working on separate bills. A new interagency Financial Fraud Enforcement Task Force was created by President Obama to coordinate efforts between the Justice Department and other agencies. Mortgage fraud and a number of large financial crimes have been exposed and the SEC has come under fire for failing to detect the frauds and criminal activities years before the crisis.

Our law firm apparently knew more than the federal government did in some areas of concern. For example, our lawyers have been filing civil lawsuits against a number of the financial institutions for years. We knew that they were playing fast and loose in a number of areas and that the regulatory system was failing to do its job. Congress must now take the necessary steps to make sure we don’t have another financial crisis in this country.

*Source: USA Today*

**Banks Should Work With Homeowners**

While there has been some progress in dealing with the housing crisis, the foreclosure relief program really hasn’t seemed to work very well. Banks are still foreclosing on homeowner loans and refusing to modify the mortgages for folks who badly need to keep their homes. Millions of Americans are struggling to save their homes from foreclosure and are trapped in very bad situations that they didn’t create. There has been a great deal of misinformation put out by both the government and the financial institutions concerning efforts to give homeowners the badly-needed relief. When you consider that the very institutions causing the foreclosure mess have benefited financially and are now paying out billions in bonuses, their victims have to be both disappointed and frustrated. I can only imagine how a family facing foreclosure must feel when it reads about the banks paying out all of the huge bonuses.

Almost a year into the government’s third program in two years to stop the wave of foreclosures nationwide, it’s being reported that the latest effort is falling far short of its goal. Getting loan modifications even when the government’s guidelines are followed is most difficult. Even after modifications are approved it appears in many cases the banks are still foreclosing. You may recall that the first government-industry joint program (the Hope Now Alliance) was started in October 2007. The $75 billion Home Affordable Modification Program (HAMP), the third effort, was to be the flagship effort to halt the massive wave of foreclosures. The guidelines in HAMP required lenders to try to modify every mortgage before moving to foreclose. It doesn’t appear that it is working that way.
I really can’t understand why the banks won’t work with homeowners and modify their loans if there is any chance that the homeowners would be able to keep their homes and pay off the modified loan. Banks certainly don’t need to have a huge inventory of foreclosed homes that they can’t sell. Maybe banks working with homeowners are too much of a common sense approach to solving the problem, but I believe it would work in a tremendous number of cases. At least, it would be worth a try.

VI.
THE CORPORATE WORLD

TORT REFORM ALLOWS WRONGDOERS TO PROFIT AND ESCAPE PUNISHMENT

The tort reformers have started their annual assaults on the civil justice system. The efforts are well-planned and well-financed and attempt to sell the myth of tort reform to the American people. The tort-reformers learned long ago that claiming the judicial system is broken and needs fixing, while false, pays dividends for them. That approach, which started about 20 years ago, has resulted in folks around the country eventually accepting the notion that some type of reform was needed. Hence, the term “tort reform” was conceived and it caught on. Ordinary folks hearing the term really didn’t know exactly what a “tort” was, but they understood that “reform” means that it needed fixing.

It’s amazing when you consider that the major wrongdoers in Corporate America are the very ones who have not only successfully pushed their version of tort reform over the past two decades, but are the only ones who actually benefit from the reforms brought about. What they really want to do is to destroy the American jury system. It’s always been a mystery to me that working men and women—and ordinary folks generally—would give their support to a movement designed to destroy the jury system. In effect they are hurting themselves and helping wrongdoers. Having access to justice, and an independent judiciary, is something every American citizen needs and it’s something we should all fight to preserve.

BOSTON SCIENTIFIC SETTLES WITH THE FEDERAL GOVERNMENT

A major medical device manufacturer, Boston Scientific Corp., has settled a U.S. Department of Justice investigation by paying a fee and signing an integrity agreement. The company, which makes heart pacemakers, implantable heart defibrillators, heart stents and other medical devices, will pay $22 million in the civil settlement. The company will also sign a “Corporate Integrity Agreement” related to its pacemaker business. The agreement required the company to disclose on a website any payments to physicians.

The DOJ was investigating Boston Scientific’s subsidiary, Guidant Corp., for trying to boost sales by paying physicians between $1,000 and $1,500 to implant Guidant-brand pacemakers and defibrillators in patients. Guidant paid the physicians after the devices were implanted through four separate studies. The investigation began in 2005 prior to Boston Scientific acquiring Guidant Corp in 2006.

Boston Scientific agreed in November to pay $296 million to settle a separate DOJ investigation into product recalls issued by Guidant. The company says it received a subpoena from the U.S. Department of Health and Human Services, Office of Inspector General, to produce information about donations made by the pacemaker division of the company to charities with ties to physicians and their families.

Source: Reuters

CHILDRN RESTRAINED FOR NEEDLESS DENTAL PROCEDURES

A Nashville-based provider of Medicaid pediatric dental services has agreed to pay the federal government $24 million in a settlement. FORBA is the largest provider of dental care to small children through its Small Smiles clinics. A dental assistant at one of the clinics told a local television station she had been fired for complaining about a bonus system with daily financial goals that she believed provided incentives for unnecessary procedures for more Medicaid money.

Many times, the unnecessary procedures involved treatments similar to root canals in which children had to be restrained on papoose boards while the procedure was done. Other times, children would have caps installed that were not medically indicated. Parents were often told that they couldn’t be back in the treatment areas at these clinics because of HIPPAs. The majority of dentists in the United States will not treat pediatric Medicaid patients, so FORBA was treating these patients exclusively.

Source: WSMV.com

FHA CRACKS DOWN ON LENDERS

It appears that the Federal Housing Administration is following through on promises to get tough on lenders. The federal mortgage insurer pulled the licenses of three lenders and a fourth lender was suspended. The FHA ejected Strategic Mortgage Corp., of Oklahoma City, Okla.; ProMortgage Inc., of Claremore, Okla.; and Americare Investment Group Inc., of Arlington, Texas. It suspended Home Mortgage Inc., of Burr Ridge, Ill., for six months. Strategic and ProMortgage were ejected for failing to uphold FHA loan standards, including charging excessive fees and having poor quality controls. Americare violated terms of a previous settlement, and Home Mortgage failed to disclose the indictment of a part-owner.

As you probably know, the FHA doesn’t make loans but only insures lenders against losses. The FHA’s capital cushion has eroded sharply because of rising mortgage defaults. Officials of FHA have promised to be vigilant in cracking down on lenders they believe are putting the agency’s reserves at risk. Hopefully, they are serious and will continue to follow up on this promise.

Source: Wall Street Journal

VII. PRODUCT LIABILITY UPDATE

TOYOTA HAS LOTS OF EXPLAINING TO DO

In a shocking development last month, Toyota Motor Corp. announced a suspension in sales of eight of its models linked to the sudden acceleration problem. The company’s problems began in November 2009, when it recalled more than 4 million vehicles, blaming the problem on defective floor mats. But, subsequent investigations and continued vehicle crashes clearly called that theory into question. Then in mid-January, Toyota announced a recall of nearly 3 million additional vehicles, saying there was evidence of problems with the accelerator pedal. The suspension announced on January 26th includes Toyota’s top-seller, the Camry, models since 2007, as well as the 2009-2010 model year RAV4, Corolla and Matrix, the 2008-2010 model year Sequoia, the 2007-2010 model year Tundra, the 2005-2010 model year Avalon and the 2010 model year Highlander.

You will recall that on November 25, 2009, Toyota announced a “solution” for more than 4 million of its recalled cars and trucks that have the potential to accelerate suddenly and unintentionally. The automaker said the accelerator pedal should be shorter and a re-design of the floor mats. Until those safety repairs could be made, Toyota advised owners of the recalled models to remove the floor mats. On the day after Christmas, four people died in Southlake, Texas when the 2008 Toyota they were riding in sped out of control, crashed through a fence, and landed upside down in a pond. Authorities at the scene discovered that the car’s owners had removed the floor mats and stored them in the trunk as they were advised to do in the recall. Investigators ruled out floor mats as the cause of that accident.

We believe that Toyota has known about the sudden acceleration problem for a long time. Toyota has blamed drivers, floor mats, sticking gas pedals, and had basically walked away from the problems until it became apparent it had to take action. You may recall that NHTSA started investigating the sudden acceleration problems in 2004. That involves the 2002 and 2003 Conveys, Solaras, and Lexus ES300s. NHTSA claimed it found no defect and closed the investigation.

Since Toyota announced its sudden acceleration recall, more than 60 new incidents of runaway Toyotas have been reported. When Toyota announced its solution to the problem in November, it said that the gas pedals would be redesigned in all of the recalled vehicles and the mats replaced in some of them. The automaker said in a statement:

In addition, as a separate measure independent of the vehicle-based remedy, Toyota will install a brake override system onto the involved Camry, Avalon, and Lexus ES 350, IS 350 and IS 250 models as an extra measure of confidence. This system cuts engine power in case of simultaneous application of both the accelerator and brake pedals.

Toyota has a major problem and it has pretty much been ignored. We are convinced the real problem is related to electronics. When an automaker quits selling vehicles, you can rest assured they have a major safety problem on their hands. Since things are developing so fast, it’s possible that our readers will have information not contained in this issue. I know our product liability lawyers are being contacted by folks from all over the country on this most serious matter. If you need more information please contact Graham Esdale, Greg Allen or Cole Portis at 800-898-2034 or by email at Graham.Esdale@beasleyallen.com, Greg.Allen@beasleyallen.com, or Cole.Portis@beasleyallen.com.

Sources: ABC News, Southern Injury Lawyer.com and Reuters

AIRBAG FRAUD IS A MAJOR SAFETY ISSUE

We have tried over the past several years to make our readers aware of potential safety issues related to motor vehicles. One such risk involves the purchase of used vehicles. This safety issue involves the hidden danger of fraudulent repairs and the use of “dummy” airbags in used vehicles. This issue arises when a damaged airbag system is replaced with a non-functioning “dummy” airbag. The issue can also arise when airbag systems are improperly repaired or reconnected following minor accidents.

The National Highway Traffic Safety Administration has reported that approximately one-half of the fatal accidents with non-deployed airbags involve cars that have missing or faulty airbags. We recently investigated a case where a vehicle was involved in a collision where clearly an airbag should have deployed. Our investigation revealed that the vehicle had previously been involved in a minor collision where the airbag had deployed. The vehicle had been repaired and sold, however the airbag sensors had not even been reconnected. We have also had other reports where airbags were removed from vehicles and “dummy” airbags were used to fill the hole left by the removal of the functioning airbag.

When purchasing a used vehicle, many consumers assume the airbag is actually there and that it will function appropriately. Unfortunately, this hidden danger is not revealed until the airbag is needed in an accident. A few things that you can do to protect yourself from this hidden danger are:

- Have the vehicle inspected by an ASE-certified airbag mechanic prior to purchase.
- Obtain a CarFax Vehicle History Report to check for prior accidents involving the vehicle.
- Turn on the ignition. The airbag indicator light should appear momentarily and then go out. If the indicator light remains on or flashes, this may indicate that an airbag system problem exists.

Consumers can obtain information and a free Airbag Deployment Report at www.carfax.com/airbag. If you want more information on this subject you can also contact JP Sawyer in our firm at 800-898-2034 or by email at JPSawyer@beasleyallen.com.

AGRICULTURAL EQUIPMENT SAFETY

When discussing machine guarding, the arena is normally a place of business. Thousands of people are injured or killed each year from machines that are not adequately guarded. Agricultural equipment, just like machines in factories, has
similar hazards that, if not properly guarded, could lead to serious injury or death. Our firm is currently investigating a case where improper guarding of a hay baler led to serious injuries to our client’s hand.

Our client purchased the baler brand new and immediately experienced problems with the functioning of the equipment. He followed the directions provided with the baler and even consulted the dealer and the manufacturer. While following a process of cleaning the belts on the baler, his hand was caught in a nip point leading to serious injury. The guard for the area where our client was injured was not interlocked. In other words, the hazard could operate and cause injury when the guard was open for maintenance. Interlock technology is common, inexpensive and has been available as a standard safety device for decades. The most common household interlock is the simple microwave oven. A microwave oven will not operate unless the door is closed. Interlock technology would have prevented the injury to our client.

In addition to the pain, suffering, inconvenience and medical bills associated with his injury, our client also lost the ability to earn income as a farmer and he lost business income because the baler never functioned as promised by the dealer and manufacturer. We will keep you updated on the progress of this litigation. If you need additional information please contact Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

VIII. MASS TORTS UPDATE

YAZ LITIGATION CONTINUES TO GROW

Our firm is investigating numerous cases regarding the birth control pills Yaz, Yasmin, and Ocella. As we have previously reported, these products, known as fourth generation birth control, are believed to cause serious injury including heart attack, stroke, deep-vein thrombosis, pulmonary embolism, gall stones, and kidney stones. In addition, as we have also reported, the FDA warned Bayer Healthcare about its Yaz advertising campaign, which was misleading regarding the benefits and risks of the drug.

The number of cases filed against Bayer Healthcare and Barr Pharmaceuticals (manufacturer of the generic Ocella) are growing at a rapid rate. Thousands of cases have been filed nationwide. State courts in Pennsylvania have consolidated cases regarding Yaz, Yasmin, and Ocella and a similar request is pending in New Jersey. Bayer is located in Pittsburgh, Penn. and Wayne, N.J., so many lawsuits will be filed in these states. Cases filed in United States District Courts are consolidated in the Southern District of Illinois as part of an MDL or multi-district litigation.

Currently, lawyers in our Mass Torts Section are working on several cases involving these products. For more information, you may contact one of our lawyers, Alyce Robertson Addison at 800-898-2034 or by email at Alyce.Addison@beasleyallen.com.

OPIOID NARCOTICS—ACTIQ AND FENTORA—MARKETED FOR OFF-LABEL USE

Thousands of persons suffer from debilitating migraine/headache pain. Despite concerns raised by many experts, doctors sometimes use opioid narcotics for treatment of such pain. Given the strength of many of these drugs and the potential risk of improper patient selection, improper dosing, and misuse, certain patients may be placed at risk from these drugs. Despite these safety risks, drug companies are encouraging doctors to prescribe these drugs for purposes not specifically approved by the FDA.

One such drug, Actiq, is a powerful opioid narcotic that is delivered to the bloodstream by a lollipop lozenge. Cephalon has owned and marketed Actiq since 2000. Due to Cephalon’s aggressive marketing, annual sales for Actiq have exceeded $500 million dollars. Actiq was approved by the FDA for the limited use of breakthrough pain in cancer patients who were “opioid tolerant.” Breakthrough Pain (BTP), a component of chronic pain, is a transitory flare of moderate-to-severe pain in patients with otherwise stable persistent pain. Patients considered opioid tolerant are those who are taking at least 60 mg of oral morphine per day, at least 25 mcg of transdermal fentanyl per hour, at least 30 mg of oxycodone daily, at least eight mg of oral hydromorphone daily, or an equianalgesic dose of another opioid for a week or longer.

In 2007, a study by PrimeTherapeutics reported Actiq had an “off-label” use of 90%. There is no safe “off label” use of Actiq. The drug is highly dangerous for persons who are not opioid tolerant. Fentanyl, a key ingredient in Actiq, has been linked to fatal respiratory complications. In fact, Actiq was associated with the deaths of 127 people and another 91 FDA reported incidents of severe side effects.

While doctors are permitted to prescribe a drug for “off-label” use, drug companies are not allowed to promote or market a drug for uses other than those specifically approved by the FDA. The extraordinary “off-label” use of Actiq prompted the FDA’s Office of Criminal Investigations and the U.S. Attorney General to undertake an investigation of Cephalon’s marketing practices. From 2001 through at least 2006, Cephalon was alleged to have promoted Actiq for non-cancer patients to use for such maladies as migraines, back pain, and even injuries. The government asserted that Cephalon had trained its sales force to disregard the FDA restrictions in the approved label.

The government’s investigation revealed that Cephalon focused marketing efforts on doctors other than oncologists and that Cephalon structured its sales quotas and bonuses in such a way that sales representatives could only reach their goals if they sold the drug for off-label use. Cephalon ultimately pled guilty to a criminal charge for Distribution of Misbranded Drugs and paid a fine of $425 million dollars.

Cephalon purchased Fentora, a new opioid drug, from Cima Labs. The company began marketing Fentora when Actiq became open for sale as a generic during the Fall of 2006. Fentora, like Actiq, is approved for the very limited use of breakthrough pain in cancer patients. The FDA approved indication for Fentora was for patients who were being treated around the clock with
opioids. Fentora is reportedly three to four times more powerful than Actiq.

Within months of being on the market, it was reported that the percentage of Fentora sales associated with “off-label” use was very similar to that of Actiq. By early summer 2007, several deaths were associated with Fentora use. These deaths prompted Cephalon in September 2007 to send a “Dear Doctor” letter reporting that “Serious Adverse Events, including deaths, have occurred in patients treated with Fentora.” Cephalon then blamed the deaths on improper patient selection, improper dosing, and/or improper product substitution.

Our Mass Torts Section is investigating claims where a doctor or hospital prescribed or administered Actiq, Fentora or another opioid narcotic for treatment other than breakthrough pain in cancer patients. If you or a loved one has suffered injury from taking an opioid narcotic or if you need additional information, please contact Leigh O’Dell or Alyce Addision at 1-800-898-2034 or by email at Leigh.Odell@beasleyallen.com or Alyce.Addison@beasleyallen.com.

**APPEALS COURT SAYS HRT CLAIM IS NOT TIME-BARRED**

A Pennsylvania appeals court has ruled that a state statute of limitations does not bar a product liability claim brought by a woman who alleged that she developed breast cancer as a result of taking the Defendant’s hormone replacement therapy drug. The Plaintiff developed breast cancer after taking Provera, which is manufactured by Upjohn, for approximately ten years as part of a hormone replacement therapy program. The Plaintiff sued Upjohn for failing to provide adequate warnings. The Defendant argued that the lawsuit was barred by Pennsylvania’s two-year statute of limitations for personal injury claims.

But the appeals court decided that the Plaintiff’s suit was timely because it was filed within two years of the Women’s Health Initiative Study published in 2002 by the National Institutes of Health. “It is entirely unreasonable that a lay person, completely lacking in medical training, would make the logical connection between [hormone replacement therapy] and breast cancer prior to the release of the [Women’s Health Initiative] study,” the court said. The Plaintiff presented sufficient evidence, according to the ruling, for the jury to find that her doctors would not have prescribed Provera had Upjohn provided different warnings. Accordingly, the court reinstated a $1.5 million jury verdict, subject to the trial court’s consideration of Upjohn’s motion for a new trial.

Source: Lawyers USA Online

**PREMPRO LAWSUITS SENT BACK TO STATE COURT**

A federal Appeals Court has ordered a return to state court of more than 100 lawsuits against the makers of hormone replacement therapy drugs that allegedly caused breast cancer. The U.S. Court of Appeals for the Eighth Circuit reversed a lower court ruling in the Eastern District of Arkansas that dismissed many of the cases and blocked most of the lawsuits from being sent back to state court in Minnesota.

As we have reported previously, the hormone replacement therapy was prescribed to treat symptoms of menopause. A study in 2002 showed that a group of women taking the drugs had more instances of breast cancer than women not taking the hormones. The Appeals Court found that the district court didn’t have jurisdiction and the lower court rulings were reversed.

Source: Associated Press

**JURY AWARDS $4.75 MILLION IN MEDICAL DEVICE LAWSUIT**

A jury in Oregon has ordered a medical-device company to pay $4.75 million to a man and his wife in a product liability lawsuit that will have national implications. The jury found I-Flow Corp. liable for destroying the cartilage in the man’s right shoulder, leaving the 38-year-old father of four with constant pain and a disabled arm. He has had a partial shoulder replacement and will face three to five replacements in his lifetime. Although the Plaintiff can still do his job as a commodities broker for Electro Scientific Industries Inc., it’s highly unlikely he will be able to continue in his work until retirement age because of intensifying pain.

I-Flow encouraged surgeons to use a "pain pump," which delivers pain medication by way of a catheter to the affected spot, in an unapproved and unsafe manner for patients recovering from shoulder-joint surgery. I-Flow and
other manufacturers face hundreds of similar lawsuits alleging that such pumps have caused severe cartilage deterioration, called chondrolysis, in patients around the country.

After dozens of reports of chondrolysis, the Food and Drug Administration in November issued a statement clarifying that it has not approved such devices for prolonged infusion of medicine to joints. I-Flow used this case as a test case. It appears the jury has sent the company a message. Hopefully, it will be heard by I-Flow’s bosses as well as other potential victims around the country.

I-Flow had been pushing surgeons to use its pain pump directly in the joint area as a new avenue for making money. It failed to conduct testing or pay heed to safety concerns. This was a most ill-advised marketing decision that led to medical disasters for lots of folks. I-Flow, now part of household goods conglomerate Kimberly-Clark Corp., plans to appeal. Kimberly-Clark bought California-based I-Flow for $325 million late last year.

John Coleti, who is with the Paulson Coleti firm, and Tom Powers, who is with Williams, Love, O’Leavy & Powers, both in Portland, represented the Plaintiffs and they did a very good job.

Source: The Oregonian

IX.
BUSINESS
LITIGATION

$24 BILLION LAWSUIT FILED AGAINST CREDIT SUISSE

Property owners at four struggling and bankrupt resorts in Idaho, Montana, Nevada and the Bahamas have filed a $24 billion federal lawsuit against Credit Suisse, alleging that the bank made predatory loans to the resorts’ investors as part of a scheme to take over the properties. Property owners at Idaho’s Tamarack Resort, the Yellowstone Club in Montana, Nevada’s Lake Las Vegas resort and the Gin Sur Mer Resort in the Bahamas filed the lawsuit in U.S. District Court in Boise. They are seeking class-action status. The property owners contend that Credit Suisse set up a branch in the Cayman Islands to get around and avoid U.S. federal banking regulations. It’s alleged that the Defendants appraised the resorts at artificially inflated values as part of a plan to foreclose.

Source: Associated Press

AT&T MISSOURI TO PAY $7.45 MILLION TO THE CITY OF SPRINGFIELD

AT&T Missouri will pay the city of Springfield, Mo., $7.45 million to settle a back-taxes lawsuit, bringing to over $25 million the amount that the city has received from recent telecom settlements. All of the $7.45 million will go to the police-fire pension fund. The settlement results from a lawsuit the city filed in the U.S. District Court in Jefferson City in May 2004, naming AT&T, Sprint, Alltel, Cingular (now AT&T Mobility) and Nextel as Defendants.

The U.S. District Court ruled in the city’s favor in July 2007 on issues involving wireless services, leaving only the landline issues to be resolved. With this settlement, the city has netted $25,128,788 from the telecom providers. Of that amount, $24,088,788 has been or will be applied to the police-fire pension fund, including the entire amounts of the last three settlements. The city elected not to join a class-action lawsuit with 240 other Missouri communities and that decision proved to be a good one. While that lawsuit resulted in a $218 million settlement, Springfield would have received only about $5.5 million had it joined the class. Obviously, it did much better on its own.

Source: News-leader.com

X.
AN UPDATE ON SECURITIES LITIGATION

OUR FIRM HAS INCREASED FILINGS OF SECURITIES FRAUD ACTIONS

In 2010, a new decade began with many financial challenges. In 1999, the Glass-Steagall Act of 1933 was repealed opening the door for commercial and consumer banking to join forces in a way not seen since before the Great Depression. Following the Great Crash of 1929, one in every five banks in America failed. Many people, especially politicians, saw the market speculation by banks during the 1920s as a cause of the crash.

In 1933, Senator Carter Glass and Congressman Henry Steagall (who was from Alabama) introduced the historic legislation that bears their names. This legislation sought to limit the conflicts of interest created when banks were permitted to underwrite stocks or bonds. In the early part of the century, individual investors were seriously hurt by banks whose overriding interest was promoting stocks and benefits to the banks, rather than their individual investors.

The Glass-Steagall Act banned commercial banks from underwriting securities, forcing banks to choose between being simple lenders or underwriters (brokerage). The Act also established the Federal Deposit Insurance Corporation, insuring bank deposits, and strengthened the Federal Reserve’s control over credit. In the Nation, Robert Sheer recently commented that:

The reversal of Glass-Steagall unleashed the robber barons, as was freely conceded by Goldman CEO Blankfein in an interview be gave to the New York Times in June of 2007. “If you take a historical perspective,” Blankfein said, gloatting back then about the vast expansion of Goldman Sachs, “we’ve come full circle, because that is exactly what the Rothschilds or J.P. Morgan the banker were doing in their heyday. What caused an aberration was the Glass-Steagall Act.”

This “aberration” was the sensible regulation of Wall Street to prevent another Great Depression, which now seems dangerously close at hand. Since Glass-Steagall was repealed in 1999, Goldman Sachs experienced a 265 percent growth in its balance sheet, totaling $1 trillion in 2007.

Without proper oversight over the banks and, more specifically, the housing market, the newly-created securitized debt market roared to life. Banking became an industry fueled by greed, creating profits from financial instruments that were built on foundations of sand.
When the instruments faltered, the result was disaster. Unfortunately, after the bank bailout, taxpayers were left with ruined retirement investments, and the loss of value in what was often their largest asset, their homes.

Hopefully, our country has passed through the worst of this financial crisis. While the federal government attempts to decide how to handle the financial markets going forward, our firm, based on experience and commitment, is expanding our investigations and filing actions on behalf of consumers and investors who were damaged as a result of this intentional and fraudulent behavior. If you need more information please contact Tim Fiedler or Dec Miles at 800-898-2034 or by email at Tim.Fiedler@beasleyallen.com or Dec.Miles@beasleyallen.com.

MORGAN KEEGAN LITIGATION CONTINUES AT RAPID PACE

Our firm continues to handle securities fraud claims on behalf of investors against Memphis-based brokerage Morgan Keegan (a subsidiary of Regions Bank) for losses sustained as a result of investments in certain bond funds that were aggressively promoted by the company. Specifically, our lawyers are handling claims involving the following funds: Select Intermediate Bond Fund; Select High Income Fund; RMK High Income Fund; RMK Strategic Income Fund; RMK Advantage Income Fund; and RMK Multi-Sector High Income Fund.

These claims are being arbitrated through the Financial Industry Regulatory Authority (FINRA), with early results showing a promising degree of success. For example, you may have heard last fall that a FINRA arbitration panel awarded $1.4 million to a former professional basketball player, Horace Grant, as compensation for losses he suffered as a result of investments in Regions Morgan Keegan bond funds. Also in 2009, a FINRA panel awarded $950,000 to a former Kansas City Chiefs football star, Jerome Woods, and awarded $100,000 to another former baseball star and broadcaster, Tim McCarver.

These funds were a proprietary product of Morgan Keegan, and could not be held in or transferred to accounts outside of Morgan Keegan or its affiliates. Morgan Keegan earned substantial fees based on the average daily assets of the funds, and received commissions for selling the funds. Thus, Morgan Keegan had a keen financial incentive to promote the fund to prospective investors, and also maintained an incentive to discourage its investors from selling their shares in the funds—even as the funds began to tank.

In soliciting investors, Morgan Keegan represented that the funds were safe, secure, and offered the opportunity for high income without high risk. In fact, these funds were heavily invested in risky collateralized debt obligations backed by subprime loans. The majority of the funds' holdings were in these high-risk asset-backed securities, contrary to Morgan Keegan's marketing materials and SEC filings. The manager of these funds for Morgan Keegan has admitted that he was "intoxicated" by the high-risk asset based securities.

Unfortunately, as we all now know, these investments were a "ticking time bomb." When the funds began to lose value in early 2008, Morgan Keegan sought to reassure investors to "sit tight," when in reality Morgan Keegan knew that the funds were imploding. Many investors lost a substantial portion of their life-savings due to the fraudulent mismanagement of these funds. For further information concerning the Morgan Keegan litigation contact Scarlett Tuley or Archie Grubb at 800-898-2034 or by email at Scarlett.Tuley@beasleyallen.com or Archie.Grubb@beasleyallen.com.

BROADCOM TO PAY $160.5 MILLION TO SETTLE STOCKHOLDER SUIT

Broadcom Corp. will pay $160.5 million to settle a securities fraud lawsuit which involved backdated stock options. This settlement marks the third time Broadcom has agreed to pay millions of dollars to settle options-related litigation. The settlement, which must be approved in federal court, covers class-action litigation filed on behalf of investors who bought Broadcom stock between July 21, 2005, and July 13, 2006. The suit evolved from a case brought by a New Mexico investment council that accused Broadcom and top executives of misleading investors by understating expenses.

In an April 2008 civil settlement, Broadcom paid $12 million in a Securities and Exchange Commission case that accused it of falsifying its reported income by illegally backdating options for five years. Broadcom's insurers paid $118 million last year to settle a lawsuit accusing the company's top officials of mismanagement and unjust enrichment through the misdating of options.

Source: Los Angeles Times

GOLDMAN SUED BY PENSION FUND OVER BONUS PLANS

A lawsuit was filed on January 7th against Goldman Sachs Group Inc. by an Illinois pension fund. The suit, filed in a New York state court, seeks to recover billions of dollars of bonuses and other compensation being awarded for 2009, alleging that the payouts harm shareholders. In the lawsuit filed on behalf of shareholders, the Central Laborers' Pension Fund said Goldman had by September 25 set aside nearly $17 billion for compensation and might pay out more than $22 billion for the year. It said this "highlights the complete breakdown" of corporate oversight. The lawsuit contends further that Goldman's revenue for the year was artificially inflated by government bailouts of the banking industry and the insurer American International Group Inc, as well as a change in Goldman's fiscal year.

It was alleged that Goldman has shown "scant regard" for the interests of shareholders. Other Defendants in the suit are Chairman and Chief Executive Lloyd Blankfein, Chief Operating Officer Gary Cohn, Vice Chairman J. Michael Evans, Chief Financial Officer David Viniar, and ten directors. The Illinois fund is seeking damages sustained by shareholders, restitution from executive officer Defendants, corporate governance changes and other remedies in their lawsuit.

Source: Reuters

GENERAL RE SETTLES FRAUD CHARGES

The Securities and Exchange Commission charged General Re Corp. for its involvement in separate schemes by American International Group and Prudential Financial, Inc. to manipulate and
falsify their reported financial results. Now Gen Re has agreed to pay $12.2 million to settle these charges. In addition, in a non-prosecution agreement with the Department of Justice in connection with a related criminal investigation of Gen Re’s transactions with AIG, Gen Re agreed to pay $19.5 million to the U.S. Postal Inspection Service Consumer Fraud Fund. Gen Re also agreed to pay $60.5 million through a civil class action settlement to AIG’s injured shareholders. Gen Re previously forfeited to the government approximately $5 million in fees it earned for its participation in the scheme with AIG. Andrew M. Calamari, associate director of the SEC’s New York Regional Office, had this to say:

Gen Re arranged to sell financial products to AIG and Prudential for the sole purpose of enabling those companies to manipulate their accounting results and mislead investors.

The SEC previously charged AIG with securities fraud and improper accounting, and the company settled those charges by paying more than $800 million in addition to other relief. The SEC also previously settled charges against AIG former chairman Hank Greenberg and former chief financial officer Howard I. Smith. In addition, the government brought charges against former senior executives of Gen Re for their roles in connection with the scheme with AIG. The SEC separately charged Prudential with securities law violations in 2008.

The SEC said that a foreign subsidiary of Gen Re entered into two sham “reinsurance” transactions with AIG in 2000 to “improperly allow AIG to reverse the declining reserve trend and falsely report additions to both loss reserves and premiums written.” According to the SEC, senior officials at Gen Re helped AIG structure the two sham transactions that appeared to transfer risk to AIG, but did not transfer risk.

According to the SEC, Gen Re separately entered into a series of sham reinsurance contracts with Prudential’s property/casualty division from 1997 to 2002. The contracts had “no economic substance and purpose other than to allow Prudential to build up and then draw down on an off-balance sheet asset or ‘finite bank’ parked with Gen Re,” according to the government. As a result of the sham transactions, the SEC says that Prudential “improperly recognized” more than $200 million in revenues in 2000, 2001, and 2002. Gen Re received fees totaling $8.1 million for structuring and executing the scheme with Prudential. The latest settlement is subject to court approval.

Sources: Securities and Exchange Commission and U.S. Department of Justice

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<th>XI. INSURANCE AND FINANCE UPDATE</th>
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**Dead Peasant Policies Are Still Around**

Over the past few years we have written about secret insurance policies taken out by employers on their employees, which have been referred to as “dead peasant” policies. It now appears these type policies are still being used by some companies. Irma Johnson, a widow from Texas, who was featured in a Michael Moore movie, is now trying to let others know that their employers may have purchased secret insurance policies on their lives and stand to “profit handsomely” when they die. Her story was also retold on Good Morning America. We learned a few years back that the industry refers to the policies as “dead peasant” life insurance. Had it not been for a post office error, Mrs. Johnson may never have learned that when her husband, Dan Johnson, died of brain cancer in 2008, a bank got $4.7 million in insurance proceeds on his life. The bank had fired him years earlier and never told him or his family about the insurance policy.

After accidentally destroying an envelope containing a check for nearly $1.6 million made out to Amegy Bank, the post office misdirected it to Mrs. Johnson’s home because Dan Johnson’s name also was on the check. Mrs. Johnson wasn’t supposed to know that Amegy had the insurance policy on her husband, who worked as a project manager for the bank. His annual salary had been about $70,000.

Mrs. Johnson filed a lawsuit and forced the bank to reveal it bought policies in 2001 on more than 40 employees, including coverage on her husband. Mr. Johnson was diagnosed with terminal brain cancer about 18 months earlier and been out from work for several months. Mrs. Johnson is now trying to force Amegy to reveal the names of those other employees. In the lawsuit Mrs. Johnson is seeking to recover the net proceeds Amegy received, $3.8 million—the death benefit minus the premiums it paid—from the bank.

Amegy Bank admits it purchased life insurance policies on a group of vice presidents and other officers and claims it was done to offset the cost of providing employee benefits. Amegy said taking out such policies is a “common practice among banks and other industries and is recognized and permitted by the applicable banking regulatory authorities.”

It appears a number of banks have purchased hundreds of billions of dollars of “bank-owned life insurance” on the lives of their employees. The policies typically remain in effect years after an employee leaves the bank. Banks receive significant tax advantages on the policies by writing off the interest they pay on loans to buy the insurance. Money invested in the policies grows tax-deferred and when the insured person dies, the death benefit is tax-free.

Mrs. Johnson’s story was featured last year in Capitalism: A Love Story, film maker Michael Moore’s critical examination of economic practices in the United States. Mike Myers, a lawyer with McClanahan Myers Espey in Houston, Texas, represents Mrs. Johnson in her lawsuit. Hopefully, he will prevail on his client’s claim and will be able to alert others to what this bank is doing. It’s impossible to defend the practice of employees taking out “dead peasant” insurance policies on employees without their knowledge.

Source: Houston Chronicle

**$500 Million Award Upheld Against U.S. Life Insurance Co.**

The U.S. Court of Appeals for the Ninth Circuit has upheld an arbitration award requiring U.S. Life Insurance Co. to pay reinsurance of more than $500 million to Superior National Insurance Companies. Superior was the workers’ compensation insurer and is now in liquidation. Califor-
nia Insurance Commissioner Steve Poizner had this to say about the ruling:

*Upholding this award means that that hundreds of millions of dollars will be available to pay the claims of workers injured on the job through the California Insurance Guarantee Association (CIGA) and other guarantee associations.*

U.S. Life is a subsidiary of American International Group (AIG) and was a reinsurer for five California workers’ compensation insurance companies that were liquidated in 2000. U.S. Life contended that Superior National and its affiliates failed to disclose to U.S. Life all pertinent information regarding the adequacy of its outstanding reserves for payment of claims, and exposing U.S. Life to substantial losses.

On June 25, 2007, a district court in Los Angeles entered an original judgment against U.S. Life for $443.5 million. U.S. Life subsequently appealed to the Ninth Circuit. The original judgment was unanimously upheld by the federal three-judge appeals panel. Including post-judgment interest, the judgment is now more than $517 million. Interest will continue to accrue until payment is received from U.S. Life.

It appears that at no time were people in the workers’ compensation system at risk of not being paid. The California Insurance Guarantee Association has been paying the claims of injured workers whose policies were reinsured by U.S. Life. Once the money is collected from U.S. Life, or from the $600 million bond AIG posted as security, it will be distributed to CIGA and other guaranty associations. CIGA will receive about 90% of the final amount.

Source: *Insurance Journal*

**XII. EMPLOYMENT AND FLSA LITIGATION**

*Bias Complaints Remain At High Level*

The number of workers claiming job discrimination based on disability, religion or national origin surged, as federal job-bias complaints overall stayed at near-record levels last year. The Equal Employment Opportunity Commission received more than 93,000 discrimination claims during the fiscal year ended September 30th, a 2% decrease from the record set in 2008, but the second-highest level in the commission’s history. As in previous years, claims based on race, sex and retaliation were the most frequent. The EEOC said that charges of disability discrimination rose by about 10%, to 21,451, the largest increase of any category. Allegations of race discrimination remain the most frequent complaint, accounting for about 36% of filings last year.

Source: *Bloomberg*

**Outback Steakhouse Settles Gender Bias Suit**

Outback Steakhouse has agreed to pay $19 million to settle a sex-discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission on behalf of female employees at the restaurant chain. Outback is owned by private-equity investor Bain Capital LLC. It was alleged by the EEOC that Outback, with 950 restaurants worldwide, discriminated against its female workers by denying them equal opportunities to advance. Women “hit a glass ceiling” and couldn’t get promoted to management positions that offered profit-sharing, according to the EEOC.

The EEOC filed the suit in 2006 in federal court in Denver, Judge Christine Arguello has approved the settlement. Outback agreed to start an online application system for employees interested in managerial jobs and hire a vice president of people, a new position. An outside consultant is to monitor compliance. The women alleged they were denied promotions to lucrative managing-partner positions because of their gender.

The settlement is the largest ever for a case handled by the U.S. Equal Employment Opportunity Commission’s district office, which covers Colorado and four other states, according to Rita Byrnes Kittle, a senior trial lawyer for the agency in Denver. She had this to say: “The EEOC brokered this far-reaching and comprehensive settlement in the public interest to foster a discrimination-free workplace at Outback.” More than 20,000 current and former female employees at Outback restaurants nationwide could be eligible for awards of up to $100,000 as part of the class. To qualify, employees need at least three years’ tenure with Outback from 2002 to the present. The amount of the award is based on an employee’s experience, position and claims. A claims administrator will send letters to those who may be eligible.

Source: *Themorningcall.com*

**XIII. PREMISES LIABILITY UPDATE**

*Judge Approves Settlement For New Jersey Fire Victims*

A federal judge has given final approval to settlements earmarked for more than 300 victims of the 2003 Station nightclub fire. The judge called reaching that stage a “red-letter day.” The mechanism by which payments will be made was also approved. The action taken by Senior U.S. District Court Judge Ronald R. Lagueux makes it likely now that the victims of the fourth-deadliest nightclub fire in U.S. history will be paid from a $176-million settlement fund in a matter of months. But much remains to be done before payments are actually made.

Probate judges have to approve the settlements in the 100 cases of those who died in the fire and for the minors who stand to get over $10,000. A special master—appointed by the court—made recommendations for allocation of the settlement funds. Those recommendations were approved by Judge Lagueux. The settlement money is being paid by 65 Defendants. The judge also approved co-trustees of a trust from which disbursements will be paid. Considering the number of Claimants and the number of Defendants, this appears to be a good settlement.

Source: *projo.com*

*Family Of Child Who Drowned In Septic Tank Files Lawsuit*

The tragic drowning death of a three-year-old boy has resulted in a lawsuit
being filed against a water and sewer district and others. The wrongful death lawsuit, which was filed in Butte district court last month arose from the January 24, 2007, death of Loic Rogers, who drowned in a septic tank on a property in Kalispell, Mont. The lawsuit filed by the family names Evergreen Water and Sewer District, JB Estates, Robert Rinke, John Cozialr, Rinke’s Red Hawk Ranch and Carver Engineering as Defendants.

It’s alleged in the Complaint that the district, land developers and an engineering company were negligent in placing the septic system on the property. The lawsuit claims the septic tank access did not have a “kid-catcher” safety device installed that would have prevented the child from falling in. The boy’s father told police he took his son to his car outside a friend’s home, told the boy to get in and then returned to the house to get his daughter. When he got back, the boy was gone. The boy’s body was found two days later in a septic tank less than ten feet from the house where he was last seen.

The lawsuit alleges that the designers of the septic system were negligent by placing access to the septic tank too close to a driveway. The Plaintiffs claim the cover and riser for the septic tank were damaged when a vehicle slid into it in December 2006. The lawsuit seeks damages for pain and suffering, funeral expenses, lost income and other damages.

Source: Montana Standard

SEX ABUSE CASES AGAINST COACH SETTLED

A $1.5 million settlement has been reached in civil lawsuits filed by the families of 13 former students alleging they were molested by a coach at a school gym in Illinois. The former coach is awaiting retrial on charges that he sexually abused seven minor girls. His 2005 conviction and 20-year prison sentence were overturned in 2008, when the Illinois Appellate Court ruled a different judge made evidentiary errors in the original trial. The coach’s mother, who owns the American Institute of Gymnastics, also was named in a civil suit that was part of the settlement.

The court has set a February 15th hearing to determine distribution of the money, which is not expected to be divided equally among the families. The coach originally was charged in 2002 with sexually abusing 14 girls in the gym. After a two-month trial in 2005, he was convicted of charges involving seven of the girls and acquitted of charges involving seven others. He also was acquitted of the most serious charges of predatory criminal sexual abuse. The gym’s insurance company will pay the full amount of the settlement.

Source: Chicago Tribune

XIV. WORKPLACE HAZARDS

OBAMA ADMINISTRATION TAKING AGGRESSIVE APPROACH TO WORKPLACE SAFETY

Soon after she became labor secretary in the Obama Administration, Hilda Solis warned corporate America there was “a new sheriff in town.” Less than a year into her tenure, it appears she was dead serious about making workplaces in this country safer. Her aggressive moves to boost enforcement and crack down on businesses that violate workplace safety rules are encouraging. Employers are now scrambling to make sure they are following the rules. The changes are a departure from the policies of the secretary’s predecessor. President Obama promised during his campaign to boost funding for the Occupational Safety and Health Administration, increase enforcement and safeguard workers in dangerous industries. It appears secretary Solis is following through on those promises.

There have been 250 new investigators to protect workers from being cheated out of wage and overtime pay. A new program was started that scrutinizes business records to make sure worker injury and illness reports are accurate. New standards are being proposed to protect workers from industrial dust explosions – an effort the Bush administration had long resisted.

A November report from the Government Accountability Office revealed there is widespread underreporting of workplace safety issues. Investigators cited evidence that some employers pressure workers not to report illnesses and injuries, and they urged OSHA to be more aggressive in verifying business records. It appears that businesses will be assisted in understanding the rules along with stepped-up enforcement. There are plans to hire 100 new OSHA inspectors next year. All of this is good news for workers in this country.

Source: Insurance Journal

COMPANY FINE FOR WORKER’S DEATH AT TEXAS FACILITY

The Occupational Safety and Health Administration has fined a Houston company $1,477,500 for a July 2009 explosion that left a worker dead. CES Environmental Services Inc. was fined after an investigation into the death of 45-year-old Bruce Clayton Howard, who was killed while cleaning a tank at a CES facility in Houston. According to OSHA, an altered piece of equipment ignited flammable vapors inside the tank. Federal regulators noted that the fatality was the third death in less than a year at CES facilities. Two hydrogen sulfide exposure-related deaths at a related facility, Port Arthur Chemical & Environmental Services LLC (PACES), occurred in December 2008 and April 2009.

Based on the most recent investigation, OSHA issued 15 willful citations with proposed penalties totaling $1,050,000, alleging that 15 pieces of electrical equipment were unsafe to use in the tank wash area due to the presence of flammable and combustible vapors. Two additional willful citations with proposed penalties totaling $125,000 also have been issued. One alleges that CES failed to ventilate tanks in which employees were working, exposing the workers to toxic atmospheric hazards. The other alleges that CES stored flammable and reactive chemicals together, which posed fire and explosion hazards.

In addition, OSHA issued 54 serious violations with proposed penalties totaling $302,500. These include allegations that CES failed to implement all aspects of the process safety management standard; provide proper respiratory protection, confined space rescue equipment and adequate fall protection; properly install and maintain boiler equipment; implement an emergency response plan,
and adequate energy control procedures; train powered industrial truck operators; guard and anchor machinery adequately; store compressed gas cylinders safely; and label hazardous chemicals.

Source: Insurance Journal

**Firms Fined After Worker Dies In vat Of Chocolate**

Two chocolate processing companies in Camden, N.J. have been fined for safety violations following the death of an employee who fell into a giant vat of chocolate in July. The Occupational Safety and Health Administration cited Lyons & Sons Inc. and Cocoa Services LP with a total of 12 serious citations. The employee died in July after he was hit by a paddle used to mix chocolate. OSHA said there were improper safety precautions at the facility and that a first-aid program was not in place. Fines for the two companies total more than $39,000.

Source: Insurance Journal

**Verdict Returned For Worker Injured At BP Plant**

A jury has returned a $1.72 million verdict in favor of a man who was severely injured in an industrial accident at BP America Inc.’s oil refinery plant in Texas City, Texas. The jury in Galveston County found Bridgeville, Pa.-based Maxim Crane Works liable for the worker’s injuries. The injured worker was supervising a job at the BP plant on January 18, 2006, when he was struck by an oil burner being lifted by a Maximum Crane Works crane operator.

The Plaintiff suffered crushing injuries to his ribs, back, neck and shoulder, and endured extensive surgeries to repair the damage. The verdict includes $300,000 in lost wages, $550,000 in medical expenses and $170,000 to the injured worker’s wife. Trial evidence showed that the crane operator lifted the oil burner without waiting on a signal from anyone that the area was clear, and also moved the crane boom in such a way that it was out of alignment with the load, contributing to the accident. The worker and his wife were represented by Arnold & Itkin lawyers Cory Itkin and Michael Pierce. They did a very good job.

Source: Insurance Journal

**$11 Million Verdict Returned Against Gulf Marine**

The family of a worker who was killed in an accident at work has been awarded $11 million by a jury in San Patricio County, Texas. The accident happened nearly two years ago at the Gulf Marine Fabricators plant in Ingleside. A jury found the company at fault in the death of 50-year-old Adrian Flores. Back in the spring of 2008, Flores was helping move a 1,200-ton load. Gulf Marine didn’t have enough cranes to move the load, causing the crane to collapse. It trapped Flores for two-and-a-half hours before he died.

Two of Flores’ daughters were working for the company, but weren’t told what happened. Interestingly, the two daughters don’t work for Gulf Marine anymore. They were laid off after their father’s death. The family says they hope this verdict will make companies pay close attention to the safety of their employees. Bill Tinning, a lawyer from Portland, Texas, represented the family and did a good job.

Source: Kiiitv.com

**Relatives Of Employee Who Was Killed Sue Store Owners**

Relatives of a convenience store clerk who was killed in the robbery of a store in Texas have filed suit against the owners of the store. The gunman was sentenced to life in prison. The 40-year-old employee, Abdul H. Meje, was killed in the 2008 robbery at a Citgo Store in Galveston. The gunman entered a guilty plea and agreed to spend the rest of his life in prison without the possibility of parole.

A wrongful death lawsuit was filed in a state court in Galveston County, Texas, alleging that, among other things, ABHI Enterprises was guilty of negligence. The employee was behind the checkout counter when he was shot. It’s alleged that the company failed to provide adequate security to ensure his safety and that the risk for a crime of violence occurring on the premises was reasonably foreseeable. The lawsuit seeks damages for pain and suffering, medical expenses and funeral and burial expenses. It also seeks compensation for mental anguish, loss of care, support and future inheritance.

Source: GalvestonDailyNews.com

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**XV. TRANSPORTATION**

**Federal Government Bans Texting By Drivers Of Large Trucks And Buses**

The U.S. government has banned handheld texting by drivers of large commercial trucks and buses to avoid the danger of distracted driving. The prohibition which took effect on January 26th, follows a similar ban in December for drivers of federal government vehicles. Transportation Secretary Ray LaHood had this to say:

*We want the drivers of big rigs and buses and those who share the roads with them to be safe. This is an important safety step and we will be taking more to eliminate the threat of distracted driving.*

Research by trucking regulators show that drivers take their eyes off the road for much of the time that they send and receive text messages. As a result, they are significantly more at risk of getting into an accident than someone who is not texting. The National Safety Council, a research and advocacy group, estimates that 200,000 crashes of all types on U.S. roads are caused by drivers who are texting. Nearly two dozen states ban texting while driving for all motor vehicles, and others are considering similar action. Legislation has also been introduced in Congress to prohibit the practice. Many companies in the United States also ban texting by their employees while driving on the job. The new ban carries fines of up to $2,750.

Source: Insurance Journal

**ALDOT Bans Texting By Employees**

The Alabama Department of Transportation has banned all employees from texting while driving. The ban will apply to all employees while they are operating ALDOT-supplied motorized equipment on business. Violation will result in disciplinary action. It should be noted that the department has 4,750 employees. This decision by the leadership at ALDOT is to be commended.
Texting Believed To Be Cause Of Fatal Accident In Limestone County

Texting while driving appears to have been a factor in a fatal accident that occurred on January 28th in Limestone County, Ala. Edna Taylor Barker, 59, was killed after a 23-year-old driver ran a red light at a highway intersection. The state troopers, who investigated the crash, said texting while driving factored into the accident. Barker was an employee with the Limestone Correctional Facility.

Source: AL.com

Two Heavy Duty Truck Death Cases Settled

Over the past several years our firm has successfully handled a large number of cases involving heavy duty trucks or 18-wheelers. We have settled two separate death cases recently. In each case the driver of the truck was killed during a rollover event when the roof of the cab separated from the truck. Although rollover events in heavy trucks are foreseeable events, studied by the industry for decades in each case, the manufacturer failed to perform any type of rollover crashworthiness testing before the trucks were put on the market. The industry has known about this type risk for years.

Rollover research sponsored by truck manufacturers in the 1990’s showed that truck cabs could experience loads as high as 30,000-50,000 pounds in a rollover. The same research showed that heavy truck cabs would crash to the dash, eliminating the survival space, during a rollover onto the roof. Even in the face of this research American cab manufacturers refuse to perform any dynamic rollover testing to determine occupant safety in a rollover. Unfortunately, the heavy truck industry is not heavily regulated for safety by the government like the passenger car industry. Ben Baker handled these cases for the firm and did a very good job for the clients. If you would like more information on heavy duty truck litigation you can contact Ben at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

Case Involving Truck Driver Killed In 18-Wheeler Accident Settles

Our firm has settled a wrongful death case against Medic Trucking, Inc., a Florida company. The case arose out of a collision that occurred in Mississippi on August 3, 2007. Our client’s husband (the decedent) was driving a tractor-trailer on U.S. Highway 72 in Iuka, Miss., at about 11:30 p.m. Another commercial vehicle, owned by Medic Trucking, was stopped in the right lane of the highway without any warnings in an area that had no lighting. The decedent was behind another vehicle as they approached the stopped vehicle. The first vehicle was able to maneuver around the stopped vehicle, which was in the right lane. That driver couldn’t tell the truck was stopped. The decedent, who was behind, swerved to the left, but was unable to avoid striking the rear left corner of the Medic Trucking trailer. Upon impact, the decedent’s tractor exploded into flames and he died instantly in the horrific collision.

The driver of the stopped Medic vehicle was confused and had stopped his tractor and trailer in the right lane of the highway even though there was plenty of room on the right for him to have pulled completely off the highway. The Medic driver was apparently lost and was looking for directions. This case, one of gross recklessness on the part of the Medic Trucking truck driver, was settled for the company’s liability insurance policy limits. Julia Beasley handled the case for the firm and did a very good job.

Case Involving Tragic Boating Accident On Lake Martin Settles

A wrongful death case arising out of a tragic boating accident that occurred in 2008 on Lake Martin was settled recently by our firm. A young man, who was intoxicated, ran his runabout boat into a pontoon boat that was anchored and occupied by a group of people from the Prattville area. The group included Sue Gilmore Tatum, who suffered a traumatic brain injury when struck, leaving her in a coma. There were others on the pontoon boat and one of them, Donny Tatum, was killed instantly. Sue Tatum died from her injuries after being in a coma for several months. Lights on the pontoon boat were on at the time and were working properly. The drunk driver was totally at fault and his intoxication caused two deaths.

The Alabama Marine Police did an excellent job in investigating this tragic accident. Julia Beasley handled the case for our firm and reached a satisfactory settlement for our clients. The widow of Donny Tatum was represented by Ted & Leah Taylor from Birmingham and that case was also settled satisfactorily. This horrific accident is a prime example of why drinking and driving a boat simply don’t mix. There needs to be a revision in the state laws relating to this sort of thing. Many people don’t realize how dangerous it is to operate a boat while drinking. This driver paid a heavy fine and hopefully learned a painful lesson.

Settlement Reached In Air France Lawsuit

Air France and two other companies will pay $11.5 million to settle a lawsuit from a 2005 incident in which a passenger jet overshot a Toronto runway. A judge in the city approved that Air France will pay $9.5 million plus interest and Airbus SAS and Goodrich Corp. will pay $1.58 million to the passengers of Air France Flight 358, which crashed into a ravine after missing the runway at Pearson International Airport during a torrential rainstorm in August 2005.

Judge Joan Lax wrote in her decision that the settlements are “fair, reasonable and in the best interests of” the passengers. Although no one was killed in the incident, 33 people were hospitalized. A 2007 Canadian Transport Safety Board report determined that the plane came in too high and too fast and that the Air France crew “did not calculate the landing distance required for the conditions at destination.”

Source: UPI.com

Jury Awards $9.5 Million In Slip-And-Fall Case

A British fitness instructor, who was injured when he slipped and fell on a wet floor at a cruise ship spa, was awarded $9.5 million recently by a Miami-Dade Circuit Court jury. Danny Simpson, 42, who worked for Miami-
based Steiner Transocean, sustained a back injury and became incontinent and impotent as a result of the fall in 2006. The Defendant—Steiner Transocean, which operated the spa on Norwegian Cruise Line’s Norwegian Crown—has asked for a new trial or a reduction of the jury award.

The verdict included damages for economic losses, medical expenses and past and future pain and suffering. Miami-based Norwegian Cruise Lines previously settled out of court prior to the trial. Joseph J. Rinaldi Jr., who is with the firm of Downs Brill Whitehead in Miami, represented the Plaintiff and did a very good job.

Source: The Miami Herald

PALO ALTO SETTLES CELL PHONE CRASH LAWSUIT FOR $1.5 MILLION

The City of Palo Alto has agreed to pay nearly $1.5 million to the victim of a 2006 vehicle crash involving a city worker who was using his cell phone while driving. The Plaintiff was involved in a rear-end crash on an Oregon highway leaving him with debilitating spinal injuries. The city worker ran into him at a red light because the employee was reaching for his cell phone rather than watching the road.

Source: MercuryNews.com

COUNTY PAYS $7 MILLION TO WOMAN HIT BY METRO VAN

Under the terms of a settlement, King County, Wash., will pay $7 million in a lawsuit filed by a woman severely injured when a van driven by a Metro Transit supervisor struck her while she was riding a scooter to work. The City of Seattle was also named as a Defendant after King County claimed the intersection where the accident occurred was unsafe. Elizabeth Newman was “struck violently” by the Metro van as she rode her scooter on the way to her job as an operating-room nurse at Swedish Medical Center on the morning of November 21, 2007.

The Metro van driver passed a stop sign and failed to yield the right of way to Mrs. Newman, who was thrown 40 feet by the impact of the collision. She suffered severe internal injuries and compound leg fractures, and was in a coma for several days. Mrs. Newman hasn’t recovered sufficiently to return to work. Raymond Dearie, a lawyer from Seattle, represented Mrs. Newman and her husband, and did a very good job.

Source: Seattle Times

XVI.
NURSING HOME UPDATE

JURY AWARDS $19 MILLION IN NURSING HOME LAWSUIT

A jury has awarded nearly $19 million in damages against a Brooklyn nursing home to the family of a 76-year-old patient. The patient was neglected so badly that he left with more than 20 bedsores. The award was the first in New York State against a nursing home that includes punitive damages.

John Danzy, the resident, was removed from the Brooklyn Queens Nursing Home after being in the facility for just nine months. The man weighed 237 pounds on admission and walked with a cane. He weighed 148 pounds and had “holes all over his body,” when the family took him out of the facility. Danzy, a retired truck driver and butcher, was moved to another nursing home. Six months later, according to trial testimony, in November 2003, he died from an infection caused by the bedsores.

The jury found that the Cypress Hills facility delivered substandard care. The jurors awarded $3.75 million for the resident’s pain and suffering, and added $15 million in punitive damages. Trial testimony indicated that the home had doctored records to try to cover up the neglect. An FBI expert testified that about 100 different skin-check notes showing “G” for “good” had been penned over to show “B” for “broken”—an effort by the home to claim it hadn’t missed the horrific sores. The agent said that “someone went back and wrote B’s over the G’s to cover their tracks, so they falsified the records.”

The nursing home restrained the Alzheimer’s-stricken Danzy to keep him from wandering off, but left him unattended for long periods. Medical standards require that bedridden or restrained patients be moved every two hours to prevent such sores, but Brooklyn-Queens only moved Danzy every four hours—if at all. Dennis Kelly represented the resident’s family and did a great job.

Source: New York Post

THREE NURSING HOME PATIENTS KILLED BY CHEMICAL RESTRAINTS

Reports on events at a California nursing home which started back in 2003 should shock even the most conservative person around. According to state prosecutors, when residents at the Kern Valley Nursing Home complained or annoyed nursing director Gwen Hughes, she chemically restrained them with powerful anti-psychotic drugs. The director’s restraints were so severe that three residents at the facility died. One resident was given a powerful anti-seizure drug that, according to the state, killed her.

Three nursing home officials appeared recently at a hearing on charges of elder abuse at the Kern Valley facility from 2003 to 2007. They included Gwen Hughes, as well as the administrator and a staff physician. While the three Defendants pleaded not guilty, each faces up to 11 years in prison. Additionally, a former pharmacist at the facility accepted a plea bargain on the condition that she agreed to testify for the prosecution.

While what happened in the rural California nursing home may be an extreme case, experts say over-drugging is common nationwide. They say that the number of nursing home residents who are given these drugs is rising. It has been estimated that nursing homes give anti-psychotics to one in every four patients. Some suggest that the drugs are replacing physical restraints, which are now illegal except as a last resort.

Toby Edelman, who is with the watchdog Center for Medicare Advocacy, had this to say: “They’re hiding the restraints. A physical restraint is visible, but a chemical restraint is not.” Using chemicals purely as restraints is also illegal, but they are widely used. A Food and Drug Administration official has estimated that unnecessary anti-psychotics kill 15,000 nursing home patients each year. If you want more information on this matter,
you can contact Shanna Malone at Shanna.Malone@beasleyallen.com.

Governments at the federal and state level must do a better job of regulating the nursing home industry. In my opinion there has been a great deal of abuse in the industry. Failure to provide adequate care for nursing home residents, who are among the most vulnerable persons in our society, can’t be tolerated.

Source: ABC News

Nursing Home Company Admits Crime And Agrees To Pay $1.6 Million

Another nursing home horror story involves Texas-based Cathedral Rock Corp., a company that which bought 11 Missouri and Illinois nursing homes in 2001. At the time, owner and CEO C. Kent Harrington told employees that residents were the first priority and would get “extra-special treatment.” According to media reports, however, the real priority was packing “elderly and disabled clients into those homes—including five in the St. Louis area that were understaffed and provided substandard care.”

Until 2005, the services at the facilities “were grossly inadequate” and represented “a complete failure of care,” according to Assistant U.S. Attorney Dorothy McMurtry. She stated this in a court hearing last month as the company waived indictment and pleaded guilty to health care fraud.

Cathedral Rock also settled a whistleblower civil lawsuit filed by nurses in 2003 that triggered what officials said was a relatively rare criminal prosecution of a nursing home over poor care. Five Cathedral Rock-owned companies that ran those homes agreed to pay $1 million in criminal fines and penalties, and $628,000 in the civil settlement. Harrington is to pay $100,000 in the criminal case.

The charges against the nursing home included some very shocking actions by the facility. Among the claims was that the homes’ staff doctored patient charts, falsified drug records and failed to give necessary medications. Some residents suffered from bed sores, others wandered away, one ended up on a roof, another was found days later, and one died after falling from a window. The homes were repeatedly cited by regulators, fined and penalized. According to government officials, the homes filed corrective plans, but then failed to comply or “misrepresented” their efforts to comply. All the while, Harrington and other senior staff at the facilities were aware of the problems, but continued to bill Medicare and Medicaid for care that was either not provided or essentially “worthless.” An internal email message gives a clear indication of how the facilities were run.

FTB (fill the beds) is everything, read a 2004 e-mail from a Cathedral Rock regional vice president to another executive. Whereas compliance is important and cost control is as well, CENSUS is to be your primary focus.

In 2004, Cathedral Rock had 2,600 beds in 25 nursing homes and assisted living facilities in Missouri, Illinois, Texas, Ohio and South Carolina. Its website currently lists 1,308 beds in 15 homes in Texas and New Mexico. According to a spokesman, the company no longer operates facilities in Missouri or Illinois. Criminal proceedings of nursing homes over their care are difficult. The cases are document-intensive and witnesses are often infirm and may die during the case. That pretty much leaves the civil justice system or “forced arbitration” as the only places where justice can be done. You can figure out pretty quickly which route the nursing home industry prefers of the two alternatives.

Source: St. Louis Dispatch

XVII. Healthcare Issues

Public Citizen Says Tamiflu Should Not Be Used For Routine Control Of Flu

Tamiflu, the anti-flu drug being snapped up in record amounts, does not prevent serious complications from the flu and should not be used for routine control of the flu in healthy adults, according to Public Citizen. In an article sent to online subscribers of www.WorstPills.org, Public Citizen called for an independent review of raw data from clinical trials funded by Tamiflu’s maker, Roche. The company has claimed that the drug dramatically reduced hospital admissions as well as bronchitis and pneumonia. But a recent investigation by the British Medical Journal and British TV Channel 4 concluded that such claims were meritless.

In the wake of widespread media coverage of the H1N1 virus, Tamiflu sales have skyrocketed. In October, 2.5 million prescriptions were filled in the U.S. compared to just 35,000 prescriptions in October 2008. For the past 12 months, 6.8 million prescriptions were written, compared with 4.3 million the previous 12 months. Dr. Sidney Wolfe, who is director of Public Citizen’s Health Research Group, had this to say:

Tamiflu is being erroneously peddled as a panacea to flu. In fact, no research exists to support this in healthy adults. At best, it can modestly reduce some minor flu systems in such people for a day.

Public Citizen says that all of the clinical research conducted to determine the effectiveness of Tamiflu on healthy adults has been funded by the drug’s manufacturer, Roche. The British investigation involved a review of all published studies examining the effects of Tamiflu in preventing serious complications of the flu in otherwise healthy adults. The authors concluded that we “have no confidence in claims that [Tamiflu] reduces the risk of complications and hospital admission in people with influenza,” and they wrote that it should not be used in routine control of seasonal influenza. There was also concern about underreporting of side effects of the drug. Although the data available were gathered before the H1N1 virus made its appearance, Dr. Wolfe said the results can probably be extrapolated to H1N1 because it is another variety of flu.

Source: Public Citizen

New Standards On Human Test Data Needed

Two leading medical journals have found weaknesses in how the Food and Drug Administration approves cardiovascular medical devices. The journals say

some products reached the market based on tests that were inadequate and open to bias. The studies came as the FDA was facing intense pressure to overhaul the medical-device approval process.

The FDA says it is developing guidelines that will set tougher scientific standards for data from tests on humans that makers of medical devices submit when seeking approval of their products. Dr. Jeffrey Shuren, the acting director of the Center for Devices and Radiological Health, says that the FDA most likely will soon urge device makers to take steps like using more sharply-defined targets to measure the success of clinical trials. The agency may also urge producers to more closely follow patients enrolled in such trials to determine whether the targets are met, according to Dr. Shuren.

Manufacturers should be made to know exactly what is expected of them and then the FDA should make sure they comply. The FDA is beginning to recognize the problems and hopefully will take the steps necessary to see that this happens. Clearly, the FDA must raise its clinical trial standards for medical devices. The data produced by trials must be reliable. If the data aren’t reliable, the risks for severe problems greatly increase. Hopefully, the FDA will do the right thing and protect the public.

Source: Wall Street Journal

AstraZeneca Setstle With A Generic Challenger

AstraZeneca PLC has reached a settlement with Teva Pharmaceutical Industries Ltd., the world’s biggest generic drug maker. This will result in a delay of three years generic competition to AstraZeneca’s top-selling drug, the extended-release heartburn treatment Nexium. Teva, which is based in Israel, agreed to keep generic versions of Nexium, the world’s third-best-selling drug by revenue, out of the U.S. market until 2014. Financial terms of the settlement have not been disclosed. Nexium is heavily advertised, touted in TV commercials as “the purple pill” that stops heartburn for 24 hours. Its net sales totaled $7.84 billion in 2008, according to health data firm IMS Health, with roughly $500 million of that going to Merck & Co.

under a long-standing marketing partnership.

The settlement, which ends a long-running dispute between the two companies, was reached as a court trial was about to start last month. It also reduces the likely impact of sales from competitive generic drugs on AstraZeneca’s revenue from 2011. Under the settlement, AstraZeneca, has granted Teva a license to enter the U.S. market on May 27, 2014, subject to regulatory approval. Teva has conceded that all patents-at-issue in U.S. litigations are “valid and enforceable.” It also conceded that six Nexium patents would be infringed by the manufacture or sale of Teva’s U.S. generic esomeprazole.

The companies also settled patent litigation over AstraZeneca’s older heartburn drug Prilosec, also known as omeprazole, with Teva agreeing to make a one-time payment to AstraZeneca relating to past sales. Prilosec, which now is available in a nonprescription version, brought AstraZeneca nearly $1.1 billion in sales in 2008. Teva will continue to market omeprazole in the United States. AstraZeneca is under increasing pressure to fill out its thin pipeline of future drugs as generic competition increases, particularly in the United States where it does the bulk of its business.

Source: Associated Press and Forbes

China Hid Tainted Milk Problem For Months

We continue to learn more almost weekly about China’s food safety problems. It was reported recently that Chinese authorities kept concerns about the safety of a Shanghai dairy’s products secret for nearly a year. The company was shut down for manufacturing contaminated milk in January. The delay in notifying the public about the tainted products raises questions about the effectiveness of China’s efforts to restore confidence in its food industry after several safety scandals in recent years—including one involving contaminated milk—that exposed serious flaws in monitoring the nation’s food supply.

Food safety authorities in Shanghai found contamination in Shanghai Panda Dairy Co. Ltd.’s products last February and started investigations. Chinese authorities said the diary was one of 22 that produced tainted milk in 2008. They detained three executives in April, but Shanghai’s food safety bureau first told the public of the problem only when it shut the dairy. The dairy was selling milk powder and condensed milk tainted with the industrial chemical melamine, which can cause kidney stones and kidney failure.

The same chemical had been introduced into infant formula and other milk products in 2008 in one of the country’s worst food safety crises. At least six children died and more than 300,000 were sickened after drinking the adulterated milk. The scandal exposed the widespread practice of adding melamine, normally used in the manufacture of plastics and fertilizer, to watered-down milk to fool inspectors testing for protein, and to increase profits.

As we have reported previously, China enacted a food safety law early last year promising tougher penalties for makers of tainted products that also says authorities should immediately inform the public when food products have been found unsafe for consumption. Shanghai Panda was one of the dairies named by China’s product safety authority in the 2008 scandal. Tests at the time showed its products had among the highest levels of melamine and the company suspended operations as investigations were carried out. The company was allowed to resume production after it pledged to improve safety standards. Shanghai authorities said eight batches of contaminated milk powder and condensed milk produced by the company had been found to contain unacceptably high levels of melamine and would be destroyed.

Sources: Associated Press and MSNBC

FDA Shifts Gears Again On The Chemical BPA

The Food and Drug Administration now says the chemical Bisphenol A (BPA), used to harden plastics, might not be safe for young children. This reverses a position taken by the FDA that the chemical was safe at currently-allowed levels. BPA appears in products such as bottles, CDs, bike helmets and sunglasses. It is also used in resins that coat the

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inside of bottle tops and metal cans. One concern, since BPA is in many premixed, liquid formula containers, is the amount of BPA to which certain formula fed-infants are exposed. The chemical is rarely found in powdered formula containers, according to FDA officials. The chemical was also used to harden some plastic baby bottles, but hopefully most manufacturers have already reformulated such bottles to remove BPA.

In 2008, the FDA said BPA was safe at the low levels used in plastic bottles and other food containers, in a draft report on the chemical. The stance differed from the National Toxicology Program (NTP), which is part of the National Institutes of Health. The NTP said, also in a 2008 report, that BPA was of “some concern for effects on the brain, behavior, and prostate gland in fetuses, infants, and children at current human exposures.”

FDA Commissioner Margaret Hamburg said in a statement last month that the FDA now agrees with the NTP that BPA is of “some concern” for children and infants. But, she said more needs to be known about the impact of BPA before the agency will take any steps to ban the chemical or reduce amounts. According to William Corr, Health and Human Services deputy secretary, the Department will invest $30 million to conduct studies on the health effects of BPA on young children. This situation should be monitored by consumer groups such as Public Citizen to make sure the FDA stays on top of the matter.

Source: Wall Street Journal

Researchers Question Effectiveness Of Antidepressants

A study of 30 years of anti-depressant drug treatment data was recently published in the Journal of the American Medical Association. The research team, led by psychologists at the University of Pennsylvania, concluded that the ability of antidepressant medications to reduce depressive symptoms varied considerably. They found that antidepressants were virtually no better than a placebo for people with mild or moderate depression. The benefit of antidepressant medications was shown to be substantial for patients with very severe depression.

Researchers looked at data from six studies that examined the effectiveness of two commonly prescribed anti-depressants, paroxetine and imipramine. Paroxetine is sold under the brand name Paxil and is one of a popular class of drugs known as selective serotonin reuptake inhibitors. Imipramine is an older tricyclic antidepressant drug.

The exact number of patients with milder cases of depression who take antidepressants is unknown. However, one survey cited by the researchers found that 71% of all patients seeking treatment for depression fall in the milder category. At least 27 million Americans take antidepressants and, according to IMS Health, more than 164 million prescriptions for antidepressants were written in 2008. Billions of dollars have been spent over the past few decades by people who might have done just as well by taking a placebo.

Source: Forbes

XVIII. ENVIRONMENTAL CONCERNS

Manufacturers Hide Harmful Chemicals In Their Products

Last year, a Colorado nurse became seriously ill after treating a worker involved at a gas-drilling site chemical spill. The man, who later recovered, appeared at a local hospital complaining of dizziness and nausea. His work boots were damp and he reeked of chemicals, according to the nurse. Two days later, the nurse, Cathy Behr, was fighting for her life. Her liver was failing and her lungs were filling with fluid. Her doctors diagnosed chemical poisoning and called the manufacturer, Weatherford International, to find out what she might have been exposed to. Weatherford provided safety information, including hazards, for the chemical, known as ZetaFlow. But because ZetaFlow has confidential status, the information did not include all of its ingredients.

For 33 years, corporations have exploited a little-known federal statute in order to hide the names and physical properties of dangerous chemicals in their products. The policy, called the 1976 Toxic Substances Control Act, requires manufacturers to report to the federal government new chemicals companies intend to market. But, the law exempts from public disclosure any information that could harm the company’s economic bottom line.

Over the past several years, 95% of the notices for new chemicals sent to the government requested some secrecy, according to the Government Accountability Office. To put that number in perspective, nearly 700 new chemicals are introduced to the market each year. In total, roughly 17,000 secret chemicals exist, and manufacturers have stated in mandatory reports that many pose a “substantial risk” to public health or the environment. In March of last year, for example, more than half of the 65 “substantial risk” reports filed with the Environmental Protection Agency involved secret chemicals.

Government officials, scientists and environmental groups say that manufacturers have exploited weaknesses in the law to claim secrecy for an ever-increasing number of chemicals. Richard Wiles, senior vice president of the Environmental Working Group, an advocacy organization that documented the extent of the secret chemicals through public-records requests from the EPA, says:

You have thousands of chemicals that potentially present risks to health and the environment. It’s impossible to run an effective regulatory program when so many of these chemicals are secret.

A week after he arrived at the agency in July, Steve Owens, assistant administrator for the EPA’s Office of Prevention, Pesticides and Toxic Substances, ended confidentiality protection for 530 chemicals. In those cases, manufacturers had claimed secrecy for chemicals they had promoted by name on their Web sites or detailed in trade journals. Owens said that “people who were submitting information to the EPA saw that you can claim that virtually anything is confidential and get away with it.” That obviously leads to abuse in the system.

Currently, Congress is slated to rewrite chemical regulations for the first time in over a decade. Consumers must wait to see if Congress will force companies to
prove their substances should be kept confidential. Additionally, proponents of disclosure hope for better communication between federal and state entities as it pertains to secret chemicals. In my opinion, the public is entitled to know the chemical make-up of products that could cause harm to them.

Source: The Washington Post

**UST LEAK IN NORTHWEST ALABAMA THREATENS NEARBY RESIDENTS**

Leaking underground storage tanks (USTs) continue to contaminate property with dangerous petrochemicals and threaten the health and safety of people across Alabama, and the nation. Lawyers in our Toxic Torts Section are committed to protecting the rights of people whose property and personal safety have been threatened by toxic substances released from leaking USTs. On December 18, 2009, our firm filed a lawsuit on behalf of four individuals against the current and former owners of the Wheeler Dam Market, a gasoline station and convenience store located in Killen, Ala. The Alabama Underground and Above Ground Storage Tank Trust Fund was also named a Defendant pursuant to Alabama law.

Documents obtained from the Alabama Department of Environmental Management reveal that an estimated 1,500 gallons of gasoline leaked from one or more USTs located at Wheeler Dam Market and have spread through the soil and groundwater over a large area of the surrounding neighborhood. The Complaint, filed in the Circuit Court of Lauderdale County, alleges that the owners and operators of Wheeler Dam Market breached their duty to operate, maintain, and monitor the USTs with such care as to insure the USTs would not leak and contaminate the surrounding neighborhood.

The Defendants also had a duty not to interfere with the use and enjoyment of Plaintiffs’ property. However, as a result of Defendants’ actions and omissions, gasoline and gasoline fumes have been found in the Plaintiffs’ homes and in their drinking water. Their right to exclusive possession, use and enjoyment of their property has been violated. In fact, testing of one of the Plaintiff’s drinking water revealed concentrations of benzene and other gasoline-related chemicals above the level deemed safe by the ADEM. As you probably know, benzene is a known cancer-causing agent and is most often linked to certain kinds of leukemia.

The Plaintiffs have set out five causes of action: negligence, wantonness, trespass, nuisance and strict liability. Plaintiffs seek damages they have suffered from their property’s diminution in market value, loss of use and enjoyment of their property, costs to clean up the gasoline contamination, mental anguish and other forms of relief. Rhon Jones and Chris Boutwell from our firm will be handling this case. If you need additional information you can contact Rhon or Chris at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or Chris.Boutwell@beasleyallen.com.

**INDUSTRIAL POULTRY FARMING OPERATIONS CAUSE PROBLEMS FOR RESIDENTS**

Agricultural changes in the United States over the past 25 years have resulted in the increase in factory farms across the United States. Factory farms, also known as Concentrated Animal Feeding Operations (CAFOs), are farms with large scale feed lots for beef, pork, and poultry. CAFOs are scattered across rural America and the impacts of their vast operations are being felt by their neighbors through foul odor and pollution of the air and water.

According to the Poultry Division of the Alabama Farmers Federation, Alabama poultry producers market more than a billion birds each year. Alabama ranks third in broiler production behind Arkansas and Georgia and ranks 13th nationally in total egg production. The highest concentrations of poultry CAFOs are in north Alabama, where Cullman, Dekalb, Marshall, and Blount counties rank highest for broiler production. The large majority of these chickens are raised on factory farms.

These operations are so large in scale that they produce noxious odors, dust and pollution. Many residents living near chicken CAFOs are unable to enjoy the outdoors due to the stench, but the smell is just part of the overall problem. Other concerns about living near these factory farms include water contamination and loss of property value. Alabama is one of eight states, including Illinois, Iowa, Kentucky, Maryland, Michigan, Minnesota and Missouri, where property tax assessors have lowered the tax rates by ten to thirty percent due to their close proximity to CAFOs. It was stated in a Pew Commission report:

Industrialization of animal agriculture leads to the reduced enjoyment of property and the deterioration of the surrounding landscape, which are reflected in declining home values and lowering of property tax assessments. Recurrent strong odors, the degradation of water bodies, and increased populations of flies are among the problems caused by CAFOs that make it intolerable for neighbors and their guests to participate in normal outdoor recreational activities or normal social activities in and around their homes.

It’s estimated that animal feeding operations in the United States generated more than 500 million tons of manure in 2003—approximately three times more than humans produced that year. These are large-scale feeding operations that generate more waste than the sewer systems in small towns. Yet, while small towns treat their waste, these farms don’t. For poultry CAFOs, each bird produces between 62 and 95 pounds of litter each year. With over a billion broilers produced each year in Alabama (not to mention the egg layers), this amounts to an astounding amount of chicken litter. Therefore, contaminants from the excess litter become a problem for nearby water sources, including drinking wells.

Contaminants from poultry litter include ammonia, nitrates, pathogens, antibiotics, hormones, and heavy metals. For example, poultry feed includes compounds that contain arsenic. When metabolized by the chickens, these compounds break down and cause arsenic to be passed into the poultry waste. The arsenic then leaches into surface and groundwater. Arsenic is a known carcinogen.

It’s estimated that there are over 600 factory farms in Alabama, and the Alabama Department of Environmental...
Management does not have the resources to regularly inspect these farms. The same is true in other states as well, where the resources of environmental agencies are stretched thin. The State of Oklahoma was forced to file suit against large poultry producers when contamination from the chicken industry in neighboring Arkansas polluted Oklahoma drinking water.

CAFOs aren’t what we envision when we think of family farms. In the case of chicken CAFOs, the farm owner assumes the risks and responsibilities for operation and maintenance of the chicken houses, including raising the birds and disposing of their waste. But, the farmer does not own the birds. Instead, large agribusiness firms—such as Tyson Foods, Gold Kist, and Perdue Farms—own the birds and provide the feed, and these firms then pay the farmer for the weight gain realized by the birds. The agribusiness firms provide both the input and outlet for production, leaving the farmer squeezed in the middle. There is considerable unevenness between the bargaining power of the farmer and the agribusiness firms. Farmers often enter into contracts to save the family farm and then become beholden to the whims of these large multi-national corporations.

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@beaslevallen.com or David.Byrne@beaslevallen.com.

Sources: New York Times, Alabama Farmers’ Federation, Sierra Club, Pew Commission on Industrial Animal Production

BE AWARE OF THE DANGEROUS CHEMICAL TCE

The chemical trichloroethylene (TCE), the subject of a class action lawsuit in Florida, is once again garnering attention over its toxic effects on people and property. Trichloroethylene is a colorless liquid chemical widely used for textile processing and degreasing in metal-cleaning operations. Due to its volatile chemical composition, TCE can travel great distances when it is released in the soil. Contamination of the water supply, either through public water or private wells, is a big concern. Additionally, TCE is known to leach through soil and up through small cracks in homes, where it evaporates and becomes trapped inside the home. As a result, a dangerous inhalation hazard is created.

Folks are exposed to TCE in a variety of ways. But on-the-job exposure is the most likely occurrence, either by way of skin absorption or simply inhaling TCE vapors. For example, TCE has been used or is a common byproduct in waste in textile facilities, paint, automobile and home cleaning product manufacturer operations. Additionally, construction and heavy equipment operators have been known to use TCE as a degreasing material. Property owners and residents are also exposed to TCE by dumping. Because TCE is so volatile, companies that dump or release it are almost assured of contaminating entire neighborhoods adjacent to the release site.

We are particularly concerned with residents who own private drinking water wells adjacent to plants that use TCE because drinking water contamination can lead to serious health effects. Oftentimes, nearby residents have no way of knowing whether they are actually being exposed to TCE until they become very ill from prolonged exposure. TCE poses a very real threat and is associated with a host of illnesses. In small doses, either by inhalation or ingestion, TCE exposure causes headaches, skin irritation, mood swings, sleepiness, and unconsciousness. A more acute inhalation or ingestion of TCE can cause impairments in motor and cognitive senses, cardiac arrhythmia, liver damage and kidney damage and central nervous issues. TCE has also been linked to a variety of cancers, including esophagus, kidney, bladder, lung, pancreas, cervix and leukemia.

Rhon Jones and Parker Miller with our firm are currently investigating these cases. If you or your property have been severely injured or damaged as a result of TCE exposure, we would like to speak with you. You can contact Rhon or Parker at Rhon.Jones@beaslevallen.com and Parker.Miller@beaslevallen.com, or by telephone at 800-898-2034.

Source: EPA

STATE’S AUTHORITY OVER WATER PERMITTING PROGRAM CHALLENGED

Fourteen Alabama environmental organizations, led by the Alabama Rivers Alliance, filed a petition last month asking the Environmental Protection Agency to withdraw the state’s authority over Alabama’s water pollution permitting program. The petition says the state doesn’t meet the minimum requirements of the Clean Water Act. Mitch Reid, who is the Director of the Alabama Rivers Alliance Program, had this to say:

The water pollution permitting program administered by the Alabama Department of Environmental Management (ADEM) is fundamentally broken and does not meet minimum federal standards. This failure is a systemic, statewide problem. From funding to implementation to enforcement, the failures of the current system are leaving the citizens and environment of Alabama unprotected.

The water pollution permitting program, known as the National Pollutant Discharge Elimination System (NPDES) is a part of the federal Clean Water Act. Each state is required to implement at least the minimum standards required in the federal law. For more than a decade, environmental and citizen organizations have worked with state agency leaders to find ways to improve this program. When that failed, the petitioners sought relief through the Alabama Environmental Management Commission (EMC), a seven-member governing board of ADEM appointed by the Governor of Alabama. Solutions have also been sought, when necessary, in the courts.

While there have been modest gains on a few individual issues, these have not addressed the substantial systemic failures of Alabama’s water pollution permitting program. Intervention by the EPA is the only relief left available to the environmental community to ensure the proper actions are taken to fix this defective program. The petition initiates a legal process that is expected to engage EPA, ADEM, and all interested parties in developing concrete solutions to reform ADEM’s water pollution permitting.
program. The goal of the petitioners is for Alabama’s water pollution permitting program to meet or exceed minimum federal standards under the Clean Water Act in order to protect human health and the environment for the citizens of Alabama.

If you would like to have the names of the groups involved in this case as Plaintiffs, contact Shanna Malone at Shanna.Malone@beasleyallen.com.

Source: Alabama Rivers Alliance

XIX.
The Consumer Corner

Forced Arbitration Is Bad For All American Consumers

Congress should pass legislation that would allow injured workers and consumers to file lawsuits in state and federal courts instead of having their cases handled through arbitration. Putting an end to what some call “forced arbitration” should be a priority for Congress. While arbitration is bad for ordinary folks in all consumer transactions, it is especially bad in instances involving nursing homes. Quite often, contracts that residents must sign before admission to a facility prevent them or their families from suing the nursing homes for poor or substandard care. Other businesses also use arbitration clauses in contracts to avoid being sued for their wrongdoing in a court of law. Mandatory, binding arbitration that is forced on nursing home residents and consumers generally simply can’t be justified.

Organizations fronting for the bad guys in Corporate America, such as the U.S. Chamber of Commerce, claim arbitration is a lower-cost and often speedier option than jury trials, and they contend it’s fair for injured parties. Congress should pass the Arbitration Fairness Act and the Nursing Home Arbitration Act as soon as possible. This legislation would require that workers or consumers determine whether they want to sue or use arbitration after a dispute has arisen. The Nursing Home Arbitration Act would ban forced arbitration clauses in nursing home contracts.

The arbitration fight is one in which all consumers should become involved. Keeping the courts open for nursing home residents and their families and for consumers is an absolute necessity. If you agree, contact the House member in your district and your Senators and ask them to push the Arbitration Fairness Act and the Nursing Home Arbitration Act and then vote for them.

Source: thehill.com

Alabama Adopts Fire-Safe Cigarettes

While fire-safe cigarettes are long overdue in this country, most folks don’t even realize that those cigarettes are available. Smokers in 12 states will be lighting – and relighting – fire-safe cigarettes designed to go out when they’re not puffed as the result of new laws that went into effect on January 1, 2010. These states are among the last to require that all cigarettes meet standards first implemented by New York six years ago. The states with laws now going on the books are Alabama, Arkansas, Florida, Georgia, Michigan, Missouri, Nebraska, New Mexico, North Carolina, South Carolina, Tennessee and Virginia.

Wyoming is the only state that hasn’t passed such a law, according to the Coalition for Fire-Safe Cigarettes. Fire-safe cigarette laws will also take effect in Mississippi, Ohio and South Dakota by the first week of 2011. Canada also has a similar law. It has been reported that cigarettes are a major cause of fires, especially in residential occupancies. The coalition says cigarettes cause 700 to 900 fire deaths and about 3,000 injuries every year in the United States. Interestingly, many of them are among nonsmokers. The coalition’s members include fire prevention, consumer and health organizations.

The fire-safe standards require cigarettes to burn out 75% of the time when not in active use. There are tiny, ultra-thin bands of paper that are literally layered on the white part of the cigarette and when the lit end of the product crosses one of those bands it acts like a speed bump and it slows down the burn rate. Most states allow businesses to sell conventional cigarettes past the effective dates of their laws until existing stocks are exhausted. Fire-safe packs are gener-

Court Rejects Class-Action Settlement With Carfax

An Ohio appeals court has agreed with Public Citizen’s objections to a nationwide class-action settlement involving Carfax, ruling that a trial judge should not have approved the settlement without requiring notice to all of the affected consumers and without considering information about whether the coupons offered under the settlement had any value. The settlement would have resolved a class-action lawsuit alleging that Carfax, a company that sells history reports for used cars, deceives consumers by representing that its reports are based on complete national accident data. Public Citizen represented 17 individual class members and the nonprofit Center for Auto Safety in objecting to the proposed settlement.

The settlement had defined the class of consumers bound by its terms to include anyone who purchased a Carfax vehicle history report prior to October of 2006, which would include consumers who purchased the reports during more than a decade preceding that date. However, individual notice of the proposed settlement was sent only by e-mail and only to customers who bought Carfax reports during the one year preceding the settlement. As a result, the majority of class members got no notice of the settlement, according to Public Citizen’s objections. The decision of the Eleventh District Court of Appeals in Ohio held that individual notice should have been sent to all class members.

Moreover, as part of the settlement, consumers were offered a coupon for additional Carfax history reports. The time for claiming a coupon had expired before the trial court approved the settlement, yet the court had denied Public Citizen’s motion seeking disclosure of how many class members filed claims.
The Court of Appeals found that the trial court erred in not requiring Carfax to disclose how many consumers had taken advantage of the coupon offer. Those numbers would show whether the coupons had actual value to the class members and, therefore, whether the settlement had value to the class. Deepak Gupta, one of the Public Citizen lawyers, observed:

**Class actions are a tool for securing consumer justice, but settlements like this one give class actions a bad name. The Appeals Court’s decision sends a strong message that class-action settlements should be approved only after a legitimate attempt to inform the class members and only if the settlement offers real value to the class.**

I agree with this assessment. Class actions that don’t provide any real and substantial value to members of the class should never receive court approval. Public Citizen should be commended for getting involved in this matter. This consumer group does tremendous work!

Source: Public Citizen

### Preliminary Approval Given To Countrywide Settlement

A federal judge in Kentucky has given preliminary approval to a settlement between Countrywide Financial Corp., and millions of customers whose detailed financial information was exposed in a security breach. Under the terms of the settlement, Countrywide, now owned by Bank of America, will give free credit monitoring to up to 17 million people whose information was exposed during the security breach. That group includes anyone who obtained a mortgage and anyone who used Countrywide to service a mortgage prior to July 1, 2008. The settlement entitles a person to up to $50,000 in reimbursements from Countrywide per instance of identity theft, provided they actually lost something of value, were not reimbursed, and it’s more likely than not that the theft stemmed from Countrywide.

U.S. District Judge Thomas B. Russell of Paducah, who oversaw more than 35 lawsuits related to the security breach, granted class-action status to the suit and has already given preliminary approval to the settlement. A fairness hearing is scheduled for July in Louisville. Countrywide Financial had all of this financial information, including mortgage information, credit card and Social Security numbers and birth dates.

### Stolen BlueCross Hard Drives Affect 220,000

An ongoing investigation has revealed that computer hard drives stolen from BlueCross BlueShield of Tennessee in Chattanooga contained personal information on 220,000 of its members. BlueCross and law enforcement agencies are investigating the October theft of 57 computer hard drives. Some of them contain Social Security numbers, birth dates, addresses and medical information.

BlueCross is offering a year of free ID protection monitoring to those affected among its 3.1 million customers.

BlueCross BlueShield says the theft of computer hard drives has already cost the insurer more than $7 million. All of its members in Tennessee and elsewhere, who were affected, have been contacted. Company officials believe as many as 500,000 members could eventually be identified as facing a risk of identity theft.

It was reported that more than 700 employees have been working to determine what exactly was on the 57 hard drives and assess the backup copies of the missing records. BlueCross Vice President Ron Harr says the company has sufficient resources to absorb the losses.

Sources: Associated Press and Insurance Journal

### Toxic Metal Found In Jewelry For Children

An investigation by the Associated Press has revealed some disturbing news concerning children’s jewelry. Barred from using lead in children’s jewelry because of its toxicity, some Chinese manufacturers have been substituting cadmium, which is a much more dangerous heavy metal, in sparkling charm bracelets and shiny pendants being sold throughout the United States. The most contaminated piece analyzed in lab testing performed for the Associated Press contained a startling 91% cadmium by weight. The cadmium content of other contaminated trinkets, all purchased at national and regional chains or franchises, tested at 89%, 86% and 84% by weight. The testing also showed that some items easily shed the heavy metal, raising additional concerns about the levels of exposure to children.

The U.S. Consumer Product Safety Commission, which regulates children’s
products, is opening an investigation and says it "will take action as quickly as possible to protect the safety of children." Cadmium is a known carcinogen and like lead, it can hinder brain development in the very young, according to recent research. Children don't have to swallow an item to be exposed—they can get persistent, low-level doses by regularly sucking or biting jewelry with a high cadmium content.

A patchwork of federal consumer protection regulations does nothing to keep these nuggets of cadmium from U.S. store shelves. Since there are no cadmium restrictions on jewelry, such items are sold legally. The CPSC has never recalled an item for cadmium. Since lead is now heavily regulated under the Consumer Product Safety Improvement Act of 2008, jewelry factories looked for substitutes. When cadmium prices fell sharply it was readily available.

The Act set a new, stringent standard for lead in children's products: only the very smallest amount is permissible—no more than 0.03% of the total content. The statute has led manufacturers to drastically reduce lead in toys and jewelry. The law also contained the first explicit regulation of cadmium, though the standards are significantly less strict than lead and apply only to painted toys, not jewelry.

The chairman of the Consumer Product Safety Commission, who is the country’s top product safety regulator, has warned parents and care takers to take cheap metal jewelry away from children out of concern they could be exposed to toxic heavy metals such as lead and cadmium.

Sources: Tuscaloosa News, Associated Press, and USA Today

**TYSON SETTLES LAWSUIT OVER ANTIBiotics**

Tyson Foods Inc. has agreed to settle a lawsuit that accused the poultry giant of falsely claiming its chickens were "raised without antibiotics." Under the settlement, which came about in a case pending in a Baltimore federal court, Tyson will pay up to $50 to anyone who bought poultry that was labeled antibiot ics-free. The payout from Tyson will be capped at $5 million. If Tyson doesn’t give that much money back to consumers, it will make up the difference by donating products to food banks. Tyson will also have to pay legal fees. U.S. District Judge Richard D. Bennett has given preliminary approval to the settlement. Tyson will begin a national print and Internet advertising campaign to let people know how they can claim refunds.

Tyson began advertising and labeling its poultry products in 2007 as having been "raised without antibiotics." The following year, the U.S. Department of Agriculture ordered Tyson to remove the labels when it found that the company had injected its chickens with antibiotics before they hatched. Tyson argued the labels were accurate because chickens aren’t "raised" until after they’re born. Researchers believe the widespread use of antibiotics in livestock has fueled the emergence of drug-resistant bacteria known as ‘superbugs,’ which killed more than 65,000 people in the United States last year.

The class-action consumer lawsuit grew out of the USDA probe and a previous lawsuit filed by Tyson’s competitors over its ad campaign. Tyson was said to have taken advantage of the growing market for organic and natural foods. James J. Pizzirrusso, a lawyer from Washington, D.C., represented the Plaintiffs and it appears he did a very good job.

Source: Associated Press

**HEART ATTACK WARNING ADDED TO DIET PILL**

Abbott Laboratories stopped marketing a weight loss pill in Europe after regulators there said the drug increases the risk of heart attack and stroke when used by heart disease patients. The European Medicines Agency advised doctors and pharmacists to stop using sibutramine, saying “the risks of these medicines are greater than their benefits.” The agency said Abbott’s license to market the drug should be suspended and European Union nations are expected to follow that recommendation.

The U.S. Food and Drug Administration has added new warnings to sibutramine, marketed here as Meridia, highlighting its increased risks for patients with a history of heart problems. The new label says the drug should not be taken by patients with heart failure, hypertension, irregular heart beats and other problems. In a statement posted online, the FDA urged patients to talk to their doctors about whether they should continue taking the drug. The FDA also said that health care professionals should regularly monitor the blood pressure and heart rate of patients using Meridia.

Abbott has agreed to add the FDA’s contraindication language to its marketing. The drug is only approved for patients with no previous history of heart disease. As we reported previously, late last year Public Citizen had petitioned the FDA to pull Meridia off the market, based on new data about heart risks. The group’s health care specialist, Dr. Sidney Wolfe, blasted the FDA for not taking a harder line against the drug.

“The FDA has once again copped out,” said Dr. Wolfe, who directs Public Citizen’s Health Research Group. The drug was prescribed to about a quarter-million patients in the U.S. last year, according to Public Citizen. FDA approved Meridia in 1997 as a weight loss aid alongside diet and exercise. The drug is related to the amphetamine family of stimulants.

Public Citizen said 84 deaths associated with Meridia had been reported to the FDA as of June. Regulators previously rejected a 2002 petition from Public Citizen to withdraw Meridia, saying they wanted to wait for the findings of a 10,000-patient study. Preliminary findings from that study released in November showed a slightly higher risk of heart-related problems in patients taking Meridia, compared with a dummy pill. Patients in the study were older than 55 and overweight with a history of heart disease or diabetes.

Source: Associated Press

**RENTERS SHOULD NOT IGNORE THE NEED FOR RENTER’S INSURANCE**

With the wave of foreclosures and job losses that have swept our country, more and more people are finding themselves back in the rental market. Whether they are renting houses, condominiums, apartments, or mobile homes, rental insurance is often overlooked. Those who have a child away at college, may also want to consider helping the student get a rental insurance policy.

Source: Associated Press

www.BeasleyAllen.com
Many people assume that since they are renting and don’t own the property, the landlord’s insurance will cover everything in the event of a disaster or accident. But, to the surprise of many, it is very rare that a landlord’s insurance policy will cover renters’ losses. A landlord’s insurance policy typically covers only damage to the actual building, not the renter’s possessions. The only time a renter’s possessions and contents are usually protected is when they have purchased renter’s insurance. Most renter’s policies can be purchased at the same place where a homeowner’s policy is purchased for a home. A person’s automobile insurance company may also offer renter insurance.

Renter insurance is generally limited to covering only the renter’s possessions. It’s similar to homeowner’s insurance except that it does not provide coverage for damage done to the actual rental building. In addition to possibly offering the renter some protection in the event they become personally liable for an incident, renter’s insurance will also generally cover damage done to electronics, clothes, furniture, sports equipment, appliances, jewelry, and collectibles.

In addition to the above, renter’s insurance will also typically cover certain types of disasters, such as fire or lightning, windstorm or hail, explosion, riot or civil commotion, aircraft, vehicles, smoke, vandalism or malicious mischief, theft, damage by glass or safety-glazing material that is part of a building, volcanic eruption, falling objects, weight of ice, snow, or sleet, water-related damage from home utilities, and electrical surge damage. Importantly, renter’s insurance doesn’t usually cover flood damage or damage caused by earthquakes. So, those people who live in areas where these risks exist, may want to consider a separate policy for those risks.

One last important thing to keep in mind is that when purchasing a renter’s insurance policy, buyers should pay close attention to whether they are buying “actual value” coverage or “replacement value” coverage. For example, with an “actual value” policy where the renter purchased a TV for $500 over three years ago, and it was subsequently destroyed, the insurance company is only going to pay the cost of what that TV is worth at the time it was damaged. The chances are that it will not be worth the $500 paid for it and there will probably not be enough insurance money to replace it with a comparable TV.

Source: [www.Findlaw.com](http://www.Findlaw.com)

### AT&T To Pay $18 Million To Settle Early Termination Foes Lawsuit

AT&T has agreed to pay $18 million to settle claims that it imposed unfairly high early termination fees on subscribers who wanted to end their contracts. The case covers customers who were charged a termination fee from as far back as 1998. Those who can prove they were charged a termination fee during that period could be eligible to receive up to $140. Those who didn’t cancel their contract, for fear of the charge, could still be eligible for an AT&T long distance phone card for up to 200 minutes, or have their current AT&T contract changed from a $175 flat rate to one that is prorated.

Before 2008, AT&T charged a $175 termination fees regardless of the time left on a subscriber’s contract. Now the company switched to a prorated fee structure, so customers who are closer to the end of their contracts are charged less that those who opt out earlier. Early termination fees have been a sensitive subject in recent years. Wireless companies claim they are necessary to recover part of the subsidies paid to discount new phones. But in several lawsuits filed against AT&T and other operators, customers claimed the fees were illegal due to “hidden charges” that discouraged them from switching to rival operators. Sprint agreed to pay $17.5 million to settle a similar lawsuit. The Federal Communications Commission has sent letters to AT&T, Verizon, Sprint, T-Mobile and Google, asking them to explain how they notify their customers about termination fees. The inquiry is part of a broader FCC investigation started last year to determine billing practices in the industry.

Source: [Montgomery Advertiser](http://www.MontgomeryAdvertiser.com)

### XX. RECALLS UPDATE

There were a very large number of recalls last month. We had hoped there wouldn’t be as many recalls to report in this issue. The following are some of the recalls since our last issue.

#### TOYOTA RECALLING 2.3 MILLION VEHICLES

Toyota is recalling 2.3 million vehicles to fix accelerator pedals that may stick when pressed. The recall is separate from the recall of 4.2 million Toyota and Lexus vehicles that was supposed to be because of gas pedals getting caught under floor mats. The following vehicles included in the recall are 2009-2010...

Toyota blames the recall on “certain accelerator pedal mechanisms” that it says may, in “rare instances, mechanically stick in a partially depressed position or return slowly to the idle position.” In my opinion, it appears that Toyota has largely ignored the electronics aspect of the sudden acceleration problems with its vehicles. We are convinced Toyota’s problems go much deeper than has been revealed thus far.

**Chrysler Announces Huge Recall**

Chrysler announced last month a nationwide recall in several of its leading brands. Some 24,000 Chryslers, Dodge and Jeep vehicles are being recalled to repair a defective part that could cause sudden and unexpected brake failure. Chrysler says it’s not aware of any accidents that have resulted from the defective brakes, but a test vehicle at one of its assembly plants experienced total brake failure. The recall applies to some 2010 model Chrysler Sebring and Dodge Avenger sedans, Dodge Nitro and Jeep Liberty SUVs, Jeep Commander and Grand Cherokee SUVs and 2009 and 2010 model Ram trucks.

*Courtesy: CNN*

**Honda Recalls Accord**

Honda Motor Co. Ltd. has sent a recall notice on 2008-2010 Model year Accord four-door cars. This recall applies to the 2008—2010 model year Accord four-door vehicles. If the vehicle is equipped with a Genuine Honda accessory nose mask it’s possible for the nose mask material to interfere with part of the hood latch. If the hood hasn’t been completely closed and the nose mask interferes with the secondary hood latch mechanism the hood may fully open while the vehicle is being driven. In such event there is reduced driver visibility and the risk of a crash would be created. Anybody who has one of these vehicles should remove the nose mask immediately and have it replaced. You can call the toll-free Safety Hotline at (888) 327-4236 or go to http://www.safercar.gov for more information.

**Honda Recalls 646,000 Units**

Honda Motor Co. has recalled a total of 646,000 Fit/Jazz and city models, including 140,000 in the United States, because of a faulty window switch, after a child died when fire broke out in a car last year. Honda’s recall added to concerns that the safety-conscious image of Japanese manufacturers would be threatened.

**GM Recalls 22,000 Corvettes**

General Motors has recalled some 22,000 Chevrolet Corvettes, because of potentially leaky roofs. The recall includes 2005-2007 model year Corvettes with removable roofs and 2006-2007 Corvette Z06s. GM’s recall includes 2005-2007 model year Corvettes with removable roofs and 2006-2007 Corvette Z06s. A problem with the adhesive between the roof panel and the frame could cause them to pull apart, according to NHTSA.

**At Least 600,000 Cribs Recalled After Child Death**

The death of a six-month old child prompted the recall Tuesday of about 635,000 cribs sold by Kmart, Sears, Wal-Mart and other stores. The Consumer Product Safety Commission announced the recall of 20 models of Dorel Asia cribs with both drop sides and fixed front rails. Some of the Chinese- and Vietnamese-made cribs were recalled because their drop sides can detach, creating a space where a child can be trapped and suffocate or strangle. A six-month-old child from Cedar Rapids, Iowa, strangled after getting trapped in the crib when the drop-side hardware broke. The child’s parents were using the crib after trying to repair it themselves.

Some of the cribs were also recalled because a child can be trapped if one of the slats is broken or damaged. This damage can occur while the crib is in use as well as when it is being put together, taken apart or shipped. CPSC and Barbados-based Dorel Asia SRL have received 31 reports of incidents involving drop-side cribs, including six incidents of children being trapped between the mattress and the drop side. The agency and company have also received 36 reports of broken slats, including two reports of trapped children. To receive a free repair kit to prevent this hazard, contact Dorel Asia at 866-762-2304. More information is available online at http://www.dorel-asia.com.

**213,000 Play Yards With Bassinet**

A recall by Dorel Juvenile Group Inc. has been announced of about 213,000 Safety 1st Disney Care Center Play Yards and Eddie Bauer Complete Care Play Yards due to possible suffocation hazards. No injuries have been reported but “the one-piece metal bars supporting the floorboard of the bassinet attachment can come out of the fabric sleeves and create an uneven sleeping surface, posing a risk of suffocation or positional asphyxiation.”

The toys are described as “portable and were sold (at Babies “R” Us, Kmart, Sears, Target and Wal-Mart from January 2007 through October 2009) with a bassinet attachment and a built-in changing station. Models included in this recall are 05025, 05026, 05037, 05088 and 05350. The model number is printed on a sticker on one of the support legs underneath the play yard. Safety 1st or ‘Eddie Bauer’ are printed near the bottom of the fabric sides of the play yards.”
Consumers are being advised to immediately stop using the bassinet attachment to the play yard and contact Dorel Juvenile Group for a free repair kit including replacement bassinet fabric, bassinet bars and installation instructions. Contact information: Dorel's Recall Hotline: (888) 233-4903; Dorel's Web site: www.digusa.com; CPSC Recall Hotline: (800) 638-2772 http://www.digusa.com/usa/eng/Safety-Notices.

TYLENOL RECALL EXPANDED

Johnson & Johnson has expanded its recall of over-the-counter medications, the second time the company did so in less than a month. It was because of a moldy smell that has made users sick. The broadening recall now includes some batches of regular and extra-strength TYLENOL, children's TYLENOL, eight-hour TYLENOL, TYLENOL arthritis, TYLENOL PM, children's MOTRIN, MOTRIN IB, Benadryl, Rolaids, Simply Sleep and St. Joseph's aspirin. Caplet and geltab products sold in the Americas, the United Arab Emirates, and Fiji were recalled. Johnson & Johnson's McNeil Consumer Healthcare Products recalled some TYLENOL Arthritis Caplets in November due to the smell, which caused nausea, stomach pain, vomiting and diarrhea. Three weeks prior, the company had expanded its recall to include TYLENOL Arthritis Caplets.

The FDA says McNeil did not act fast enough on the recalls. McNeil knew of the problem in early 2008 but made only a limited investigation. The agency said about 70 people were either sickened by the odor, or noticed it. “McNeil should have acted faster,” said Deborah Autor, the director of the FDA's Office of Compliance of the Center for Drug Evaluation and Research. “When something smells bad, literally or figuratively, companies must aggressively investigate and take all necessary action to solve the problem.”

The FDA sent McNeil a warning letter for violating manufacturing standards and failing to report and investigate the problem in a timely way. The FDA says it wants an explanation as to why the problem was not made public sooner. A full list of the recalled products is online at www.mcneilproductrecall.com.

SAGITTARIUS SPORTING GOODS RECALLS GAS GRILLS

About 10,000 Master Forge Five-Burner Gas Grills have been recalled by the manufacturer Sagittarius Sporting Goods, of China. The flexible rubber hose on the LP gas tank can come into contact with the burner box, causing the hose to melt and rupture when the grill is lit. This poses a fire and burn hazard to consumers. The firm says it is aware of two complaints of the hose melting and rupturing. No injuries or property damage have been reported. This recall involves Master Forge five-burner, stainless steel gas grills. The name “Master Forge” is on the grill hood. The model number L3218 is located on a label inside the left front door of the grill. They were sold exclusively at Lowe's stores nationwide from September 2009 through November 2009 for about $500. Consumers should immediately stop using the recalled grills and contact Sagittarius to obtain a free repair kit. For additional information, contact Sagittarius at (800) 444-6742.

HOME IMPROVEMENT BOOKS RECALLED BY OXMOOR HOUSE

Home Improvement Books by Oxmoor House, Inc., of Birmingham, Ala., have been recalled. The books contain errors in the technical diagrams and wiring instructions that could lead consumers to incorrectly install or repair electrical wiring, posing an electrical shock or fire hazard to consumers. The recall involves nine home improvement books, as listed below: AmeriSpec Home Repair Handbook, Lowe's Complete Home Improvement and Repair, Lowe's Complete Home Wiring, Sunset Basic Home Repairs, Sunset Complete Home Wiring, Sunset Complete Patio Book, Sunset Home Repair Handbook, Sunset Water Gardens, and Sunset You Can Build.

The books were sold at home improvement stores and bookstores nationwide from January 1975 through December 2009 for between $13 and $35. Consumers should immediately stop using these books and contact Oxmoor House for a full refund. For additional information, contact Oxmoor House toll-free at (866) 696-7602 anytime, or visit its Web site at www.sunsetrecall.com.

ACER RECALLS NOTEBOOK COMPUTERS DUE TO BURN HAZARD

About 22,000 certain Acer Aspire-series Notebook Computers have been recalled from manufacturer Acer America Corporation, of San Jose, Calif. An internal microphone wire under the palm rest can short circuit and overheat. This poses a potential burn hazard to consumers. Acer has received three reports of computers short circuiting, resulting in slight melting of the external casing. No incidents occurred in the United States. No injuries have been reported. The recalled notebook computer models are the Acer AS3410, AS3410T, AS3810T, AS3810TG, AS3810TZ and AS3810TZG. The computer's screen size is about 13.3 inches measured diagonally. Not all units are affected.

Consumers should contact Acer to determine if their unit is included in the recall. The notebooks were sold at ABS Computer Technologies, D&H Distributing, Fry’s Electronics, Ingram Micro, Radio Shack, SED/American Express, Synnex Corporation, SYX Distribution, Tech Data Corporation and other retailers nationwide and Amazon.com from June 2009 through October 2009 for between $650 and $1,150. Consumers should stop using the recalled notebook computers immediately and contact Acer to determine if
their notebook is affected and to receive a free repair. For additional information, contact Acer toll-free at (866) 695-2257 anytime, or visit its Web site at www.acer.com.

**GAS CANS RECALLED BY NO-SPILL BECAUSE OF FIRE HAZARD**

Manufacturer No-Spill LLC, of Lenexa, Kan., has recalled about 7,500 No-Spill five-gallon Gasoline Cans. The gas containers can leak fuel at the black plastic collar where the spout connects to the can, posing fire and burn hazards to consumers. The five-gallon gas cans are made from heavy-duty red plastic and carry date codes AIP09202 through AIP09222. The date code is located on the bottom of the can. Not all cans in this date range are affected. The cans were sold at lawn & garden stores nationwide, hardware retailers and online from August 2009 through November 2009 for about $30. Consumers should test their gas cans to determine whether they leak and immediately stop using the leaky cans. Consumers should contact No-Spill to receive a free replacement. For additional information, contact No-Spill toll-free at (877) 928-0049 or visit its Web site at www.nospill.com/recall.

**CHILDREN’S “BIG REX AND FRIENDS” CLOTH BOOKS RECALLED**

About 204,000 “Big Rex and Friends” Cloth Books have been recalled. A red plastic dot sewn in the book contains high levels of lead. Lead is toxic if ingested by young children and can cause adverse health effects. This recall involves “Big Rex and Friends” cloth books. The book has a black and white striped border with a red dinosaur on the cover. The words “Big Rex and Friends” are printed on the cover. ISBN 031249260X or 9780312492601 is printed on the back of the book. The books were sold at Barnes & Noble, Toys “R” Us, Amazon, Borders and other bookstores and retailers nationwide from May 2004 through October 2009 for about $9. Consumers should immediately take the recalled book away from children and contact St. Martin’s Press for instructions on returning the book for a full refund. For additional information, contact St. Martin’s Press at (800) 347-9411 or visit its Web site at www.priddybooks.com/recall.

**PARKERS FARM, INC. RECALLS SEVERAL PRODUCTS**

Parkers Farm, Inc. of Coon Rapids, Minn., has recalled products because they have the potential to be contaminated with Listeria monocytogenes, an organism which can cause serious and sometimes fatal infection in young children, frail or elderly people, and others with weakened immune systems. Although healthy individuals may suffer only short-term symptoms such as high fever, severe headache, stiffness, nausea, abdominal pain and diarrhea, Listeria infection can cause miscarriages and stillbirths among pregnant women. No illnesses have been reported to date in connection with this problem.

The recalled products were distributed nationwide in the following retail stores: Hy-Vec, CUB, Rainbow, Byerlys Lunds, Target, Whole Foods, Jewel, Dominicks, Marsh, Price Chopper, Shop rite, Nash Finch, Sam’s Club, Costco, Safeway.

The recall was a result of a sampling done by the state of Wisconsin and the state of Minnesota which revealed that some finished products contained the bacteria. FDA and the company continue their investigation as to what caused the problem. No illnesses have been reported to date in connection with the problem. Consumers who have purchased these products are urged to return them to the place of purchase for a full refund. Consumers with questions may contact the company at (800) 869-6685.

**RIFLE CROSSBOW RECALLED BY MASTER CUTLERY**

Master Cutlery, of Secaucus, N.J., has recalled about 300 Eagle 5 Rifle Crossbows. The trigger mechanism becomes loose after 30 shots. When the safety mechanism is moved to the fire position, the crossbow will automatically discharge on its own. The recalled crossbow is black fiberglass and metal and has a 120 lb draw. “Cross Bow” and “Eagle 5” are printed on the crossbow. The bows were sold on the Web at www.fingerhut.com from September 2009 through December 2009 for about $100. Consumers should immediately stop using the recalled crossbows and contact Master Cutlery for a free replacement trigger installation. Consumers who purchased the recalled crossbow are being contacted directly. For more information, contact Master Cutlery toll-free at (888) 271-7229 x138, visit its Web site at www.mastercutlery.com or email the firm at sales@mastercutlery.com.

**GRACO RECALLS STROLLERS**

Children’s Products Inc., of Atlanta, Ga., has recalled about 1.5 million Graco’s Passage™, Alano™ and Spree™ Strollers and Travel Systems. The hinges on the stroller’s canopy pose a fingertip amputation and laceration hazard to the child when the consumer is opening or closing the canopy. Graco has received seven reports of children placing their fingers in the stroller’s canopy hinge mechanism while the canopy was being opened or closed, resulting in five fingertip amputations and two fingertip lacerations.

Graco manufactured two different styles of hinge mechanisms for these stroller models. Only strollers or travel systems with a plastic, jointed hinge mechanism that has indented canopy positioning notches are included in this recall. The recalled strollers were manufactured between October 2004 and February 2008. The model number and
manufacture date are located on the lower inside portion of the rear frame, just above the rear wheels.

The strollers were sold at AAFES, Burlington Coat Factory, Babies “R” Us, Toys “R” Us, Kmart, Fred Meyer, Meijers, Navy Exchange, Sears, Target, Walmart and other retailers nationwide from October 2004 and December 2009 for between $80 and $90 for the strollers and between $150 and $200 for the travel systems. Consumers should immediately stop using the recalled strollers and contact Graco to receive a free protective cover repair kit. For additional information, contact Graco at (800) 345-4109, or visit its Web site at www.gracobaby.com.

**LYSOL STEAM CLEANING MOPS RECALLED DUE TO BURNS**

About 162,000 Lysol Steam Cleaning Mops are being recalled because the hot water mixture may spurt out of the products, posing a risk of burns to users. Conair Corp. and the Consumer Product Safety Commission said there have been 14 reports of hot water forcefully spilling out of the water reservoir on the mops. Two consumers have suffered minor burns that required medical attention. Conair’s Lysol Steam Cleaning Mops with model numbers SM10L or SM10LR are included in the recall. The model number is printed on the bottom of the mop under the microfiber cloth, officials said.

The recalled cleaning products were sold at department, drug, hardware and home improvement stores and mass merchandisers across the United States as well as on the Internet from September 2006 through September 2009 for about $40. They were manufactured in China. Consumers should immediately stop using the recalled Lysol mops and contact Conair to receive a free replacement steam cleaning mop, the CPSC said.

**THERMADOR BRAND BUILT-IN OVENS RECALLED**

BSH Home Appliances Corp. of Huntington Beach, Calif., has recalled about 37,000 Thermador brand built-in ovens. This is an expansion of June 2007 recall of 42,000 built-in ovens. The ovens have gaps in the insulation where overheating can occur, and when used in the self-cleaning mode, this can cause nearby cabinets to catch fire. BSH has received three additional reports of incidents, including two that resulted in fires that damaged surrounding cabinets. No injuries have been reported.

The recall involves Thermador Brand built-in double ovens with model numbers C272B, C302B, SEC272, SEC302, SECD272, and SECD302 and serial numbers between FD8403 through FD8701. The recalled items were manufactured in the U.S. and were sold at appliance and specialty stores nationwide from June 2004 through July 2007 for between $3,000 and $4,400.

**LIEBHERR RECALLS BUILT-IN REFRIGERATORS**

Liebherr-Canada Ltd of Ontario, Canada, has recalled about 2,700 Liebherr Built-In 24-Inch Wide Single Door Refrigerators. The refrigerators were manufactured by Liebherr-Hausgeraete Ochsenhausen GmbH, of Germany. The refrigerator’s door can detach, posing an injury hazard to consumers. Liebherr has received 13 reports of doors detaching, including two reports of injuries involving bruising and strains.

This recall involves Liebherr built-in 24-inch wide single door refrigerators with model numbers R1400, RI1400, RB1400, and RBI1400 sold individually or as a component of side-by-side refrigerators. The refrigerators come in stainless steel and various custom finishes and are built into the kitchen cabinetry. “Liebherr” is written on the top interior control panel. The model number can be found on a label located behind the bottom drawer on the left interior side of the single door refrigerator. The side-by-side refrigerators were marketed as model numbers SBS240, SBS24 10, SBS245, SBS2415. This model number is not found on the product. The refrigerators were sold by appliance and specialty retailers nationwide from January 2005 through November 2009 for between $2,500 and $3,200.

Consumers with recalled refrigerators should contact Liebherr immediately to schedule a free in-home repair. Consumers should check their refrigerator immediately to see whether the door hinge pin has become loose. If the hinge has not become loose and the door is functioning properly, consumers may continue to use the refrigerator until it is repaired. For additional information, contact Liebherr toll-free at (877) 337-2653 or visit Liebherr’s Web site at www.liebherr-appliances.com.

**ZIPPO RECALLS CANDLE LIGHTERS DUE TO BURN HAZARD**

About 17,500 Zippo Slatkin & Co. Candle Lighters have been recalled by Zippo Manufacturing Company, of Bradford, Pa. Lighters can produce an excessive flame when adjusted to maximum flame setting, posing a burn hazard to consumers. This recall involves the Zippo Slatkin & Co. candle lighters with date codes G09 or H09. The lighters are finished in high-polish chrome or white with a chrome nozzle. The lighter uses refillable butane fuel and measures 6.5 inches long and one inch wide.

The lighters were sold at Bath & Body Works and White Barn Candle stores nationwide and online in November 2009 for about $10. Consumers should immediately stop using this product and contact Zippo for information on returning the black adjuster knob and receiving a free replacement Zippo candle lighter. For additional information, please contact Zippo at (800) 320-

**Horse Toy Figures Recalled By Blip Toys**

Blip Toys, of Minneapolis, Minn., has recalled about 15,000 Nature Wonders HD Pinto Horse Toy Figures. The surface paint coating on the horse contains excessive levels of lead, violating the federal lead paint standard. This recall involves the Nature Wonders HD pinto horse toy figures with model number 92093. The plastic horse is white with brown spots and measures about four inches tall. The model number and “Nature Wonders HD” are printed on the retail tag wrapped around the horse’s leg. They were sold by Wal-Mart stores nationwide from January 2009 through July 2009 for about $4. Consumers should immediately take the recalled toys away from children and contact Blip Toys to receive a free replacement toy. For additional information, please contact Blip Toys toll-free at (888) 405-7696, or visit its Web site at www.bliptoys.com/recall.

**RadioShack Recalls Knight Hawk Toy Helicopters**

Danbar Knight Hawk Toy Helicopters have been recalled by RadioShack Corp., of Fort Worth, Texas. The battery housing under the helicopter canopy can overheat while charging, posing a fire hazard. The firm has received one report of a fire that started while a store demo toy was charging. No injuries or property damage have been reported. This recall involves Danbar Toys Knight Hawk 3D remote control helicopters. The helicopter can be identified by model number 006047 marked on the back of the controller and the Knight Hawk 3D logo on the front of the controller. The product was sold at RadioShack as catalog number 600-0566 (60-566) for ages eight and up.

The toy helicopters were sold at RadioShack stores, RadioShack dealer franchise stores nationwide and at www.radioshack.com from October 2009 through November 2009 for about $60. Consumers should immediately take the helicopters away from children and return the toy to the nearest RadioShack store for a full refund. For additional information, contact RadioShack at (800) 843-7422, or visit its Web site at www.radioshack.com.

**FAF Inc. Recalls Children’s Necklaces Sold Exclusively At Walmart**

FAF Inc., of Greenville, R.I. has recalled about 55,000 children’s Metal Necklaces. The recalled necklaces contain high levels of cadmium. Cadmium is toxic if ingested by young children and can cause adverse health effects. The recalled jewelry is shaped as a metal crown or frog pendant on a metal link chain necklace in a crown hinged box. The packaging has the words “The Princess and the Frog” on it and contains the following model numbers and UPC codes: Crown, Model # 4616-4187, UPC # 72783367144; Frog, Model # 4616-4190, UPC # 72783367147.

The necklaces were sold exclusively at Walmart retail stores nationwide from November 2009 through January 2010 for $5. Consumers should immediately take this recalled jewelry away from children. Consumers should return the recalled jewelry to any Walmart store for a full refund or a free replacement product. For additional information, contact F.A.F Inc. at (800) 949-3311 or visit the firm’s Web site at www.faf.com.

If you need more information on any of the recalls listed above, or would like information on a recall not listed, you can go to our firm web site at www.BeasleyAllen.com/recalls. You may also contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information.

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**XXI. Firm Activities**

**Employee Spotlights**

**Julie Grimes**

Julie Grimes came to the firm in 1994 and has served as our Accounting Manager since 1997. She graduated from Troy University in 1979. Julie is married to Keith Grimes and they have four children: Celeste, Katie, Chris, and Casey. They also have five grandchildren: Chael, Will, Sean, Jake, and Cade, and one great granddaughter, Olivia Claire. Julie and Keith enjoy traveling and they are currently attempting to visit as many different islands in the Caribbean as possible. Julie also enjoys quilting and cooking. Julie works hard, is a dedicated employee, and does a superb job for the firm. We are most fortunate to have her with the firm.

**Keith Scott**

Keith Scott, who came to work for the firm as an Investigator in June of 2001, currently works in our Personal Injury/Products Liability Section. He also helps out with any other investigative needs for the firm. Needless to say, because of our caseload volume, the investigators have a busy schedule. An important part of their work involves helping our lawyers work up product liability cases. Often, Keith and the other investigators must locate vehicles and parts for use during trials. Serving subpoenas on a daily basis is also part of their work. Keith, who previously worked for the Montgomery Police Department, graduated from Troy University with a degree in Criminal Investigation. He is also a graduate of the Police Academy.

Keith and his wife, Marion, have two children. Their 21-year-old daughter, Meredith, is a senior at Auburn University studying Accounting. She will graduate in May, then begin her Masters before becoming a CPA. Meredith is currently working an internship at Ernst & Young. Their son, Cy, who is 17 years old, is a senior at Prattville High School. He is planning on attending Auburn University on academic scholarship in the Fall. Keith and his family are active members of Prattville United Methodist Church.
Away from work, Keith enjoys hunting and fishing. He also collects old fishing lures and reels. Keith is a very good employee who does outstanding work as an investigator. We are blessed to have him with us.

KRISTEN PIATEK

Kristen Piatek joined the firm last summer and now works as an Accountant II. She works on a variety of important tasks in our Accounting Department. Kristen and her husband, Jeff, have been married for 17 years. Jeff is in the Air Force and has been stationed in Montgomery for the past 18 years. They have two children: Lexy, a junior at Brewtech magnet school and Justin, a 6th grader at Floyd Middle School. The Piateks are members of St. Bede Catholic Church. Kristen has qualified and competed in equestrian show jumping competitions on the state, regional, and national levels. She keeps busy by volunteering for the PTA at both of the children’s schools, volunteering at church, volunteering with the Montgomery County 4H equestrian group, reading, horseback riding, snow skiing, camping, hiking and gardening. As you can see, she has been quite busy. Kristen is a valued employee, who does very good work, and we are fortunate to have her with us.

AN UPDATE ON LAWCALL

The firm has started our second year as host of LawCall, a weekly, 30 minute legal show, which airs each Sunday night at 11:00 pm on WFSA. Gibson Vance, who hosts the show, has done a very good job. We usually have a guest lawyer on each show with Gibson. For example, the nationally-known lawyer, Morris Dees, was the guest on January 17th. When Gibson is unavailable the show is hosted by Kendall Dunson, who also does a very good job.

Each week a specific topic is chosen for discussion. The show covers topics such as product defects, work place injuries, injuries sustained from auto accidents, problems involving nursing homes, as well as a variety of other topics. Kim Wanous, a veteran television personality, moderates the show each week and keeps things moving. Folks are also invited to submit their questions via the web at free.consult@beasleyallen.com. They may also call our firm directly at 800-898-2034.

Footprints Ministry’s Annual Footprints To The Finish Line

On the 27th of this month our law firm will sponsor the Second Annual Footprints to the Finish Line 10k, 5k and 1 mile fun run benefitting the Footprints Ministry, Inc. The Footprints Ministry began serving the Neonatal Intensive Care Unit (NICU) of Baptist South Hospital in Montgomery in August of 2007. The mission statement of the Footprints Ministry is “Walking in God’s grace and sharing His love with families in the Neonatal Intensive Care Unit.” It’s their prayer to share the love of Christ with families during the most exciting yet most difficult time in their life.

Two-and-a-half years after its beginning, the Footprints Ministry is now serving the NICUs of five hospitals in the state of Alabama including Baptist East and Baptist South in Montgomery, St. Vincent’s Hospital in Birmingham, Shelby Baptist in Albaster and Huntsville Hospital in Huntsville. In 2010 more than 2,000 Footprints gift bags will be given to families with children in these Neonatal Intensive Care Units. Each Footprints gift bag includes a Bible, disposable camera, gift card to local restaurants, burp cloth, scent blanket, baby magazine and prayer request card.

Footprints to the Finish Line will begin at 8:30 a.m. on the 27th at GracePointe church in Montgomery. There will be a 10k, 5k and 1-mile fun run. All proceeds will benefit the Footprints Ministry. Kelli Alfreds, one of our employees, who is chairing this year’s event for the firm, says:

I love volunteering for Footprints because I can’t imagine being in a situation where holding onto hope is more important. Footprints provides so many with the opportunity of hope and peace through God’s love!

For more information you can visit www.nicufootprints.org, where you can find out how to sign up to be a sponsor, volunteer or runner. Please join us as we support an amazing ministry!

The John Croyle—Kim Hill Event

The event at St. James United Methodist Church last month featuring Kim Hill as worship leader, and John Croyle as the featured speaker, was a tremendous success. Over 1,000 folks showed up on a Friday night and were blessed by both the singing and the very strong message from John. It was a message that every man should hear. You can learn more about this event by going to our website at www.beasleyallen.com.

XXII. SPECIAL RECOGNITIONS

Alabama-Born Medal Of Honor Winner Dies

All too often, while they are still alive, we fail to recognize the accomplishments of our fellow citizens who have done great things during their lifetime. An Opelika native, considered to be one of the most decorated soldiers in the United States, is a prime example. Without a doubt, Colonel Robert Lewis Howard was a real American hero. He served in the Army from 1956 to 1992. He was awarded the Medal of Honor, the nation’s highest award for valor in combat, for courageous actions during the rescue of an American soldier in Vietnam. Colonel Howard was nominated two other times. This real life hero died in late December.

The standards for receiving the Medal of Honor require that the “deed performed must have been one of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his or her comrades and must have involved risk of life.” Colonel Howard, a Green Beret who served five tours in Vietnam, was wounded 14 times in 54 months. In addition to the Medal of Honor, this soldier was also awarded the Distinguished Service Cross, the Army’s second highest honor, and the Silver Star. He was also awarded eight Purple Hearts.

Brian Williams, anchor on NBC’s Nightly News, recognized Colonel Howard during a news cast, saying, “It’s believed Bob Howard was the most heavily decorated American veteran of the
modern era, period.” The *New York Times* also recognized Colonel Howard’s death. An account of what this soldier did to receive the Medal of Honor is in the book *Medal of Honor: Portraits of Valor Beyond the Call of Duty*, by Peter Collier. Appropriately, the Colonel’s burial took place at Arlington National Cemetery. We just wanted to pay tribute to a real American hero!

**Judge Godbold Made the Judiciary Better**

Judge John C. Godbold, who died in December, was a good man. He was well known and highly respected among his peers on the bench and throughout the legal profession. The veteran federal appeals judge left a tremendous legacy in judicial circles. All Alabamians should be proud of Judge Godbold’s many accomplishments.

Judge Godbold was named to the U.S. Court of Appeals for the Fifth Circuit by President Lyndon Johnson in 1966 and became chief judge of the Fifth Circuit in 1981. When the circuit later was divided into two circuits, Judge Godbold became chief judge of the new Eleventh Circuit. That made him the only person to serve as chief judge of two different circuits. Judge Godbold left the bench in 1986 to become director of the Federal Judicial Center in Washington, D.C. The center is the training and research arm of the federal court system. After three years in that role, he returned to the Eleventh Circuit in senior status.

Judge Godbold was born in the rural Alabama town of Coy and educated in the Selma public schools. He was a partner in the Montgomery law firm of Rives and Godbold. He received a degree from Auburn University and a law degree from Harvard University. He then served in World War II as an artillery officer in the U.S. Army. In 1996, Judge Godbold was honored with the Edward J. Devitt Distinguished Service to Justice Award. Judge Godbold dedicated his life to improve the legal profession and the judiciary. That is a fitting legacy for a man who loved the law.

**More From Dr. John Ed Mathison**

We were pleased to have received a message this month from Dr. John Ed Mathison. It was good hearing from John Ed and I also believe our readers will enjoy hearing from him.

**Overdue**

When I was in college and seminary financial funds were always limited. There were some ways to save money. I always ate my meals in the cafeteria because they were paid for, whether you ate them or not. Eating out was extra.

Another thing I never wanted to do was have a book overdue at the library. That cost money. I figured that if I was in college or seminary I would be smart enough to get the book back on time.

Stanley Dudek’s mother evidently did not have the value of returning books to the library on time. Stanley was going through his mother’s things and found a book that was due at the Bedford Public Library in Massachusetts on May 10, 1910. The overdue fine came to $361.35.

The date 1910 caught my eye because Dad was born in 1910. My Dad said it was always easy to keep up with his age because ten was easy to subtract from whatever the current year would be.

Ninety-nine years is a long time to have a book overdue. It is interesting that the name of the book was Facts I Ought to Know about the Government of My Country. I would be interested to know if that book talked about some facts concerning national debt, TARP bailouts, etc. I wonder if it had a fact in there about being responsible in the little things—like getting a book back to the library on time.

I was thinking about some things in life that can easily be overdue.

• Overdue on making a phone call to check on someone’s emotional, spiritual, or physical health

• Overdue on a visit to spend a few minutes with someone who has made a difference in my life

• Overdue on writing a letter to thank someone for doing something significant or insignificant for me

• Overdue on giving a gift to some organization that I believe in

• Overdue on offering a word of encouragement to somebody who is going through a tough time

• Overdue in telling someone how much I appreciate them and their influence in my life

• Overdue on saying I love you

• Overdue on being more consistent with my spiritual and physical exercise.

I don’t know how much all of those overdue things would add up to—but I need to take them as seriously as I did getting books back to the library on time. Regardless of how overdue anything is, the best time to correct it is now! Don’t start 2010 with anything overdue!

Dr. John Ed Mathison
January 1, 2010

**A Message From Alabama State Bar President Tom Methvin**

The following is the monthly message from Tom Methvin who is well into his term as state bar president. Tom is doing a very good job as head of the bar association and he has made providing legal services to the poor a priority.

**Pro Bono Service Fulfills Moral and Professional Responsibilities**

Many times during the past few months, I have used this space to share information about the State Bar’s Volunteer Lawyer Program (VLP). I’ve presented you with information about Access to Justice, and funding for Legal Services Alabama. This column has been filled with facts, figures and statistics about the number of poor in the state who desperately need our services. This month, I want to move away from the cold hard
The decision to perform pro bono work is different for every lawyer. What is truly unique about the VLP is that we are the only ones who can do what we do. We have a monopoly on the practice of law: If we do not help the poor with legal problems, who will? Because of our position in society, we must help. To whom much is given, much is required.

It’s true that participation in the VLP is one way we can fulfill our professional responsibility to make legal counsel available to the poor. But very rarely is this kind of obligation going to spur someone to meaningful action. If you’re just going through the motions to check off a box, it is doubtful pro bono work will really become a part of your life.

I truly believe that pro bono work makes a difference, not only in the life of the client, but in the life of the lawyer. Several times since taking office in July, you have heard me talk about “the least of these,” when talking about VLP service.

The words “the least of these” doesn’t mean that the people are of little worth. It means that these are people of little means, the forgotten of society. They do not have the resources to help themselves. These are the people we are reaching through our Volunteer Lawyers Program. We might help a family being taken advantage of by an unscrupulous landlord or dishonest mortgage company. Our client may be a hopeless woman, trying to escape an abusive spouse to protect her children, or someone who paid to have car repair work done that was never done.

Some lawyers look at pro bono work with a certain amount of hesitation. They worry that participation in the Volunteer Lawyers Program will take them outside their comfort zone. This is true, it can. It reminds you of the frightening daily realities so many people face. It is good for us as lawyers to see this. It can certainly make us feel good about helping these people.

It is my sincere hope that you will take the step to help. I believe you will learn that by giving of yourself and your unique abilities, you can give so much more than just legal advice. Your service provides peace of mind and a sense of hope, and an answer where before there was none.

I challenge you to go beyond obligation and find out what Volunteer Lawyer service can mean to you. If you are not already a member of the VLP, please join. For more information, or to sign up online, visit www.alabar.org.

Tom Methvin
State Bar President
February 1, 2010

Lee Carpenter’s Wonderful Life

Lee Carpenter, who was a very good football player at Auburn University, is now 57 years old. Lee and his wife Gail have had a good life under some rather difficult circumstances. You see, Lee has Lou Gehrig’s disease and is totally disabled. But this exceptional man hasn’t given up. While he can’t move or speak, Lee still enjoys life and works from his home. While Lee was a tremendous athlete—a star cornerback at Auburn, playing under Coach Ralph “Shug” Jordan and graduating in 1974—his greatest accomplishments have come off the playing field.

When he was first stricken with Lou Gehrig’s disease, Lee almost died. But he was determined to live and he has done just that. Lee has a strong belief in the God who made it possible for him to do things like earn his master’s degree online and teach a distance learning course for Central Alabama Community College with an optically controlled computer interface after he became totally disabled. This courageous man has accomplished more than most of us, who don’t have his obvious limitations. But I really don’t believe Lee realizes he is limited or at least he won’t accept those limits. He continues to be a role model for his wife, family and many others.

I would encourage all of our readers to read the December 16, 2009 article on Lee by Jeremy Henderson. You can get it from The War Eagle Reader (thewarea-glerereader.com). It will make you realize what is really important in your life. You will also learn what an inspiration Lee has been to thousands of people. He and Gail are very special folks and our prayers will continue to be with them. Lee and Gail Carpenter will each have a very special place in Heaven!

Source: thewareaglerereader.com

XXIII. FAVORITE BIBLE VERSE

We received a good number of verses for this issue. It’s gratifying to hear each month that our readers enjoy this section of the Report. In fact, we may actually get more responses on this section than we do on any other part of the Report. The parts on firm activities and spotlights of our employees run a close second. The following verses are passed on to our readers.

Gary Stringfellow, who attends St. James United Methodist Church, sent in the following verse.

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

Willie Fred Gamble, one of the employees at Beasley Allen, sent a verse that gives all of us hope.

Therefore, since we are surrounded by such a great cloud of witnesses, let us throw off everything that binds and the sin that so easily entangles, and let us run with perseverance the race marked out for us. Let us fix our eyes on Jesus, the author and perfecter of our faith, who for the joy set before him endured the cross, scorning its shame, and sat down at the right
band of the throne of God. Consider him who endured such opposition from sinful men, so that you will not grow weary and lose heart.

Hebrews 12:1-3

Moseley Collins, a lawyer from El Dorado Hills, Calif., sent in one of his favorite verses.

That God was reconciling the world to himself in Christ, not counting men’s sins against them. And he has committed to us the message of reconciliation. We are therefore Christ’s ambassadors, as though God were making his appeal through us. We implore you on Christ’s behalf: Be reconciled to God.

2 Corinthians 5:19-20

The following verse came from the Christian Legal Society.

Blessed is the man that trusteth in the Lord, and whose hope the Lord is.

Jeremiah 17:7

My good friend, Ward Sullivan, who is now with Legal Services of Alabama, sent in this verse:

Humble yourselves therefore under the mighty hand of God, that he may exalt you in due time: Casting all your care upon him: for be careth for you.

1 Peter 5:6-7 (King James version)

The Christian Legal Society, which is one of my favorite organizations, furnished this verse:

The LORD gives strength to his people; the LORD blesses his people with peace.

Psalm 29:11 (NIV)

The following verses come from David Wilkerson, who was the Founding Pastor of Times Square Church in New York City, and who as you probably know wrote The Cross and the Switchblade, a best-seller. You can learn more about this outstanding man of God by going to www.worldchallenge.org.

God is our refuge and strength, A very present help in trouble.

Psalm 46:1

For the LORD loves justice, And does not forsake His saints; They are preserved forever, But the descendants of the wicked shall be cut off.

Psalm 37:28

If you would like to furnish a verse for the March issue, feel free to do so. They can be sent to me at P.O. Box 4160, Montgomery, AL 36104 or by email at Jere@beasleyallen.com.

XXIV. CLOSING OBSERVATIONS

THE AMERICAN PEOPLE NEED A VIABLE JUDICIAL SYSTEM

I have said on many occasions that it’s critically important to save the American jury system so that justice will remain available to ordinary citizens. But unfortunately, today the system remains under constant attack. I don’t believe the American people realize how intense these attacks have been. Nor do most folks know how well-planned and well-financed they have been. But the system—while weakened—still holds firm and the battle goes on. It’s very easy to sit back and let others do the work to fight the efforts of those who are determined to destroy the jury system.

Edmund Burke, the 18th century Irish orator, philosopher, and politician, had this to say: “All that is necessary for the triumph of evil is that good men do nothing.” All who want justice and fair play for ordinary citizens, should take that message to heart.

Hopefully, all Americans who truly believe in fair play and justice for all, will get involved in this fight and help save the American jury system. None of us can afford to sit this battle out—it’s too important. The recent U.S. Supreme Court decision that will allow corporations to gain even more influence and power directly affects our judicial system. It will certainly make our cause much more difficult. But I have faith in the American people and I firmly believe they will wake up and get involved.

MILLARD FULLER WAS A GOOD MAN

Millard Fuller was an exceptional person in every respect. He was a very good lawyer for a number of years, but changed his line of work. He shut down his firm and started Habitat for Humanity. Millard ran that program for years and eventually left to start another ministry, the Fuller Center for Housing. Even though Millard died last year, his work on this earth continues.

Millard Fuller loved the Lord and he also loved helping people. He worked hard for years doing good for lots of folks. A great deal can be learned about Millard, and his character, from his acceptance speech at the World Methodist Peace Award in December of 2004, where he was honored. Millard, in accepting the award, had this to say:

Let us recommit ourselves to the message of the heaven’s host of long ago which praised God and exclaimed, “Glory to God in the biggest. And on earth, peace, goodwill toward men.”

Millard’s brother, Doyle, who is an exceptional lawyer in Montgomery and my very good friend, was one of Millard’s biggest fans and supporters. Doyle has lots of good and interesting stories about his brother. Linda Fuller, Millard’s wife for nearly 50 years, wrote shortly after his death:

Millard would not want us to mourn too long his passing from us, but rather encourage everyone to ‘tool up’ and continue … That’s the way he would want to be remembered and honored.

Over the years Millard and Linda Fuller gave a tremendous number of families hope, joy and a new start by providing them homes. I can’t think of a better way to help others who need help. God blessed their work and fortunately the

www.BeasleyAllen.com
work continues. If you want to learn more go to www.fullercenter.org.

XXV.
PARTING WORDS

A MONTHLY REMINDER FOR ALL OF US

The Lord’s words to Israel found in Second Chronicles contain principles that are certainly relevant for us in modern times. The body of believers in the United States have a duty to intercede on behalf of our country during these most difficult and trying times. Christians who want God to hear prayers, forgive national sins, and heal their homeland have an obligation to follow the steps that were laid out by our Lord to King Solomon. Unfortunately, so far we haven’t taken this obligation seriously enough. But fortunately, there is still time for us to get serious and to get down to business.

Today our nation needs the prayers of Christians—perhaps more than ever—and that’s quite clear. As we become aware of unhealthy trends and decisions, we can start with a personal heart cleansing. We must confess and repent of any known sin and then cry out to our heavenly Father for the return of a vibrant, God-fearing culture in this nation. It’s not too late, but we can ill-afford to ignore God’s very plain message:

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

2 Chronicles 7:14

I am reminded each month by many of our readers of how important this message is for our times. Without a doubt, our nation is hurting and badly in need of healing. It will come about if we follow the very clear message set out above. My intention is to include the message in every issue until such time as such a message is no longer needed. Hopefully, that will be soon!

To view this publication on-line, add or change an address, or contact us about this publication, please visit our Website: BeasleyAllen.com

Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of “helping those who need it most,” now employs 44 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.