I. CAPITOL OBSERVATIONS

POLITICIANS SHOULD PAY ATTENTION

A recent poll shows that 74% of Alabamians believe government officials in Montgomery don’t care what they think. The results of this poll, which was commissioned by the Public Affairs Research Council of Alabama (PARCA), should get the attention of all persons seeking a statewide or legislative office this year. The respected think-tank, based at Samford University in Birmingham and led by former Governor Albert Brewer, provides objective, nonpartisan information to help improve state and local government in Alabama.

At its annual meeting last month, PARCA officials reviewed the results of the statewide poll that shows how people feel about some of the most important issues facing Alabama. The candidates should pay special attention to the following statement by one of the persons polled: “Government officials in Montgomery do not especially care what people like me think.” The poll results showed that 74% of people in Alabama agreed or strongly agreed with that statement.

The general sentiment among many folks seems to be that legislators and other state officials are more interested in keeping their positions and gathering money from lobbyists than in representing the interests of voters. Eighty-two (82%) percent of those polled said the Legislature should not allow transfers between political action committees as a way of hiding the source of campaign contributions. Most Alabamians would like to know where the money is coming from to fund the ads by competing gambling interests. Also, 91% said lobbyists should report all spending on legislators. Fifty-one (51%) percent said the state Ethics Commission should have subpoena power. And 71% believes $250 is too much for lobbyists to spend in gifts for legislators.

Most Alabama citizens believe the Legislature should pass the strongest ethics bill possible this year. I totally agree that this should happen. Changing the perception that lobbyists are running state government would certainly be a good thing. But actually restricting the influence of powerful lobbyists for special interests should be the goal. The people in Alabama have spoken through the PARCA poll and the politicians—both Democrats and Republicans—had better listen.

Source: Times Daily

IT’S TIME FOR REASON TO PREVAIL IN THE BINGO BATTLES

I may be the only person in Alabama who feels this way, but I am sick and tired of seeing the commercials on television both promoting and attacking electronic bingo. Actually, some of them are pretty nasty. While I don’t watch much television except for the news and sports programs, I still see enough of these ads to make me realize each side is spending some big bucks in this battle. It might be interesting to know the funding sources of these media buys and related activities. With all of the problems facing our state, and most of them dealing with economic issues, I have a real difficult time understanding some of the things that have been going on in this on-going battle, and especially with the Tyson Task Force. I predict, before all of this plays out, that Governor Riley may regret his appointment of Tyson. It seems the Task Force Commander may enjoy his “day in the sun” a little too much and that may become a problem before it’s over.

Without any doubt, the failed raids on Victoryland and County Crossing were public relations disasters. Lots of folks are asking why Tyson attempted the night raids on two existing businesses without having a search warrant or a valid court order in hand. It would seem that Mr. Tyson and one state trooper, or maybe even Tyson and a single deputy sheriff, could have gone to the two locations during day light hours, and with a search warrant or court order, accomplish what Tyson failed to do with hundreds of troopers. It appears that about $130,000 of state funds were wasted in one day which is most difficult to understand and really can’t be justified.

For the record, while I am totally against gambling in any shape, form or fashion, I recognize that we already have lots of it in Alabama. If you doubt that take a ride down I-65 around Atmore and see what an Indian tribe has built there, or you can check out the two gambling locations in Montgomery and Elmore counties currently being run by the tribe. Also, gambling on sports I am told, is a very big enterprise in Alabama. In addition to worrying about gambling in our state, I would like to see the same aggressive efforts that we have seen from the Tyson task force utilized in the wars
against illegal drugs, pornography, alcohol abuse, corporate fraud and the list goes on. I have to wonder why electronic bingo—all of a sudden—has been singled out and why none of the others have been targeted by the state in a similar manner.

Personally, I would like to see a reasonable approach taken to resolving the bingo issue in Alabama once and for all. Obviously, the first place where it should take place and be settled is in the court system. The next place is clearly in the Alabama Legislature. I have no problem at all with the people of Alabama deciding this issue. A simple question could be put to the voters in November and that question would be something like: “Do you want electronic bingo in Alabama?” The people would vote either “yes” or “no.” Hopefully, the Governor and the legislators can agree on the proper legal language in a constitutional amendment that will put the bingo issue up for a statewide vote in November. If the vote is “no,” that ends this matter. But if the people vote “yes,” then the state must set up the strongest gaming commission possible— independent of politics—and then tax the bingo facilities at the highest rate currently being levied in the country.

In any event, it’s time to put this issue behind us once and for all and get on with working to solve the many economic problems facing our state. That’s the logical and sensible thing to do and I believe most all Alabamians feel that way!

**LIFE, LIBERTY AND THE RULE OF LAW**

We have been hearing lots in Alabama recently about the Rule of Law and the need to enforce it. I firmly believe that protecting both life and liberty require the Rule of Law to be established, recognized and fairly and equitably enforced. Recent events may cause folks to wonder why the Rule of Law isn’t always applied in that fashion. It appears that on occasion appellate court judges in our state have a hard time applying the Rule of Law fairly when it comes to the rights of ordinary folks when large corporate entities are involved as parties in litigation.

Many believe that political influence has in some cases dictated how the Rule of Law is interpreted and applied. Clearly that should never be allowed and hopefully it hasn’t. Maybe it’s time for the American people to take a look at the state court systems and decide if our appellate courts really need to be independent, fair and totally impartial. When you get down to it—that’s the way the system of justice in our country is supposed to work.

**STATE ENVIRONMENTAL COUNCIL HEAD WORKS FOR BCA**

Anita Archie, who heads the commission that supervises the Alabama Department of Environmental Management, is the new lead lobbyist for the Business Council of Alabama. In that role, she is paid to represent the interests of the Council’s members. Many of those members are companies whose pollution permits are regulated by ADEM. That sure does seem like a potential conflict of interest. But, the state Ethics Commission apparently doesn’t see a conflict in Ms. Archie’s new job.

According to media reports, State Ethics Commission Chairman Jim Sumner has said the Commission does not “clear” jobs and that they have only advised Ms. Archie on how to avoid conflicts. The Environmental Management Commission sets air and water pollution regulations in Alabama and hears appeals from companies fighting punishments. Governor Riley appointed Ms. Archie to the commission in 2006. For the head lobbyist for the BCA to serve in her job is sort of like the fox guarding the hen house.

The federal Clean Water Act requires that state environmental agencies exclude any person who gets “a significant portion of income directly or indirectly from permit holders or applicants for a permit.” The federal Clean Air Act contains similar language. It was reported by the Mobile Press Register that 100% of Ms. Archie’s income will come from the Business Council. Alabama law requires any commission member with a potential conflict to sign a “general recusal” and refrain from voting on any water pollution issues for three years. That provision was created after Governor Riley asked the EPA in 2004 to determine if ADEM was in compliance with federal law regarding conflict of interest. It would appear that the better course of action for Ms. Archie would be to stick with her full time lobbying job and let somebody else serve as head of this very important commission.

*Source: Mobile Press Register*

**LOYING IN WASHINGTON HIT RECORD $3.5 BILLION IN 2009**

It was reported by the Associated Press last month that lobbying costs in our Nation’s Capitol have hit a new high. Health care and business interests led the way, as a record $3.5 billion was spent on lobbying last year. This was largely aimed at the Obama Administration’s efforts to reshape federal policy for the medical, financial and energy industries. Even though most Americans are hurting because of the recession, it appears the powerful special interest lobbyists are doing just fine. A stagnant national economy and the worst unemployment in nearly three decades hasn’t slowed down the special interest groups.

Lobbying expenditures grew by 5% from the $3.3 billion spent in 2008, according to the nonpartisan Center for Responsive Politics. The growth also came despite efforts by President Barack Obama to curb lobbyists’ influence. The figures underline the vast and growing sums that special interest groups are spending to shape laws and regulations and to protect their turf both in Congress and in the executive branch. Put another way, the $3.5 billion is about half of what the government expects to spend this year on the entire federal court system. That’s extremely difficult to explain to folks who believe that the court system is an important function of government, and is the only place ordinary citizens can go looking for protection of their rights and liberties.

Let’s take a look at where some of the lobbying money comes from. Makers of pharmaceuticals and health products spent $267 million lobbying, the most ever recorded by a single industry in a year. Business associations
spent $183 million, the second highest total. Among individual groups, the U.S. Chamber of Commerce was easily the biggest spender at $145 million, with ExxonMobil Corp. being a distant second at $27 million. Highlighting how lobbying expenditures have grown in recent years, that type spending was $1.4 billion in 1998, the first year for which the Center has comparable figures.

The time has come for Congress to reign in the influence of the powerful lobbyists. But when you consider that the lobbyists have literally run the show in our Nation’s Capitol for years, it’s real easy to see how difficult it is to deal with this monumental problem. Congress would have to actually “bite the hand” that’s been feeding it and therein lies the real problem. Nevertheless, unless members of the House and Senate recognize the mood of the American people and get to work, I predict many of them could find themselves unemployed after the next Congressional elections.

Source: Forbes

II. DRUG MANUFACTURERS LITIGATION

Merck settles Vioxx Shareholder Suits

Merck & Co. has settled the shareholder lawsuits that were filed against the company over Vioxx. Under the settlement terms Merck must appoint a chief medical officer—already named in December—and two independent committees to ensure all risks of medicines on sale or in development are promptly disclosed and addressed. Merck will have to report on drugs the company is testing—including all study results—on the federal clinical trials registry, on its own Web site and in major medical journals. The goal of the settlement is for safety issues to become public faster. That’s a worthy goal and one that in theory should be good for consumers and for public safety.

Hopefully, the new requirements for honesty and openness will prevent another scandal like the Vioxx debacle, which certainly tarnished Merck’s reputation. Executives at the drug manufacturer deliberately hid the painkiller’s risks in order to protect sales—and ultimately that cost shareholders billions, as well as creating severe health safety risks. We all know now about the massive number of heart attacks and strokes that occurred. The proposed settlement must be approved by a New Jersey judge at a hearing set for March 22nd, after which Merck must quickly implement the provisions. I am reasonably sure that the court will make sure the settlement is a good one and that shareholders are really benefiting from the settlement.

Source: Forbes

VERDICT AGAINST DRUG MAKER IN ACCUTANE CASE

A Birmingham-area man won a $25.16 million verdict recently against Roche Holding AG, a Swiss drug maker, after proving that the company’s acne medicine led to inflammatory bowel disease. Andrew McCarrell, 38, won his case against Roche in state court in New Jersey, where a company unit that produced the drug Accutane is based. This was the second trial of the man’s case. An appeals court ordered the new trial after overturning a $2.62 million award McCarrell won in May 2007.

McCarrell is a computer technician who has lived in the Birmingham area for about 15 years. He testified he got sick after taking Accutane in 1995. He has had five surgeries, including one to remove his colon. In addition to this verdict, six former Accutane users have won verdicts worth $56 million. All claimed Roche failed to warn of the drug’s risks. Roche stopped selling Accutane last year. Currently, Roche faces almost 1,000 other cases.

McCarrell was a vibrant healthy man until he started taking this drug. A year after he started taking it, he had his colon removed. He had to go to the bathroom ten to 20 times a day and suffers from massive gastrointestinal upset. He and his wife are living day by day. Mr. McCarrell’s lawyer said Roche had internal documents that said Accutane caused inflammatory bowel disease and did not tell anyone. In a statement, the company says it will appeal. Michael Hook, a very good lawyer from Pensacola, Florida, represented the Plaintiff and did an outstanding job.

Source: Birmingham News

III. PURELY POLITICAL NEWS & VIEWS

LOANS BY CANDIDATES TO THEIR CAMPAIGNS

It was reported by the Associated Press last month that Alabama candidates for Governor have lent their campaigns more than $5 million. This was an unprecedented amount and Republican Tim James, who has been very successful in business, leads the lenders with $2 million of his own money pumped into his campaign. Republican State Treasurer Kay Ivey is second at $1.8 million, followed by Rep. Robert Bentley, a medical doctor, at $787,000. The real shock came when it was reported that Democratic candidate Ron Sparks was fourth in line with a $500,000 personal loan. Most folks who know Ron were rather surprised that he could make that large a loan without some major assistance. But I am sure Ron will be able to explain where the money came from. I have to believe it will all be legal and within the rules that apply to elections. That is my belief because Ron has some smart folks running his campaign and they would know better than to create an issue of this sort in a high profile political race. But if there is a problem, that’s another story for another day, and that’s enough said about that.

There were also small loans made by other candidates. Republican Bill Johnson, the former ADECA director, loaned $40,000 to his campaign. Republican Bradley Byrne loaned $24,000 to his campaign, and another Republican, Judge Roy Moore, lent his campaign $4,000. Artur Davis did not make a personal loan to his campaign.

Source: Forbes

www.BeasleyAllen.com
and hopefully, based on early poll results, he won’t have to.

In addition to filing campaign finance reports, candidates for Governor had to file personal financial statements with the State Ethics Commission last year showing their income and assets in broad ranges. Tim James’ statement shows he is certainly able to loan his campaign large sums. He reported owning real estate worth more than $1.5 million and having an annual income exceeding $560,000. Kay Ivey reported that in addition to her $79,579 state salary, she received more than $100,000 from leases and investments and owns land valued at more than $250,000. Rep. Bentley reported he received between $50,000 and $150,000 in rental and farm income. The ethics law did not require him to report an amount from his medical practice, other than that it exceeded $10,000. Interestingly, Ron Sparks reported almost no income above his $79,026 state salary.

Source: Associated Press

A LOOK AT THE RACE IN ALABAMA’S FIFTH CONGRESSIONAL DISTRICT

It appears there will be at least three candidates running as Democrats for the new seat held by U.S. Rep. Parker Griffith. Steve Raby, a political consultant and longtime Congressional insider, will run for Griffith’s seat. Taze Shepard, a Huntsville lawyer and the grandson of Senator John Sparkman, and Mitchell J. Howie, a Huntsville lawyer, will also run for the seat.

Steve Raby served as the chief of staff to the late U.S. Senator Howell Heflin, D-Tuscumbia. Even though this will be his first run for elected office. I believe Raby will be a very strong candidate. Raby, who worked with Senator Heflin from 1983 to 1997, is the owner of Direct Communications, a public relations firm that deals with economic development and political campaigns. Based on conversations with folks in the Tennessee Valley area, Steve is very popular and may well be the leading candidate to replace Griffith.

Taze Shepard formally announced his candidacy on February 10th at his law office in Huntsville. Taze held elected office as North Alabama’s representative on the state school board. From all accounts, he too will be a strong candidate. Mitchell Howie, who also is a first-time candidate, served as a lawyer in the Judge Advocate General Corps in the U.S. Air Force. In August, after completing his active duty, he and his wife moved from Texas to Huntsville where Howie now practices law. I really don’t know how strong Howie will be, but time will tell if he will be able to mount a strong campaign.

The deadline for entering the primary is April 2nd. Meanwhile, on the Republican side, Parker Griffith faces very strong challenges from Madison County Commissioner Mo Brooks and Madison businessman Les Phillip. The incumbent could easily wind up as the third man in that race based on early reports from the district. The word on the street is that many “real Republicans” aren’t too happy with Griffith and are looking for a replacement. In fact the GOP actually sent out an attack letter telling folks how bad Griffith has been in Congress. That’s not much of an endorsement for the party-switcher!

Source: Al.com

GRASS-ROOTS GROUP COULD BECOME A POLITICAL FORCE

Save Alabama PACT, the grass-roots organization that is fighting to bail out the state’s prepaid college tuition program, is planning to endorse political candidates. The group could be a significant force in state politics. The organization, which didn’t even exist a year ago, has tapped a motivated base of about 43,000 PACT contract holders in the state. When parents and grandparents bought PACT contracts, they did so with the belief that their investment was guaranteed to pay for four years of college. But now, with the state warning that the cash-strapped program may fall far short of being able to live up to its obligations, those families are demanding solutions from the Legislature. Senator Ted Little, a Democrat from Lee County, is leading the efforts in the Senate to save the PACT program for contract holders. Rep. Craig Ford, D-Gadsden, sponsored a PACT bailout bill in the House, which has passed and is now over in the Senate.

The prepaid tuition program run by the state treasurer’s office offered parents a chance to lock in then-current tuition rates for students who might not enroll for 18 years. But the program’s assets were far more heavily invested in stocks than most comparable programs, which was a risky approach. According to the program’s most recent actuarial report, it is on pace to run out of money in five years, but has sold contracts requiring it to make tuition payments through 2032. An analysis by the Retirement Systems of Alabama indicates the program needs an infusion of $1 billion over ten years to meet all of its long-term obligations. Senator Little and Rep. Ford, with the help of other legislators, may be able to get something done.

In any event, Save Alabama PACT may wind up being a force in this year’s elections. Patti Lambert, a co-founder of Save Alabama PACT, said the organization plans to post endorsements on its Web site. She says they have established contact with most of the contract holders who live in Alabama. The group is surprisingly diverse, according to Ms. Lambert, including blue-collar and white-collar Alabamians. She says folks from all walks of life are among the membership. A survey of contract holders conducted by the group found that 43% of respondents indicated they work in education. Also, we must all remember that it wasn’t our colleges and universities that caused the PACT problems at the outset, and that fact may have gotten lost in the shuffle.

Source: Birmingham News

IV. LEGISLATIVE HAPPENINGS

A LOOK AT PROGRESS IN THE SESSION

As the legislative session moves near the mid-point it’s a good time to take a brief look at what has happened thus far. It appears the Senate has done a pretty good job of passing bills. As usual, the House has been active,
sending a good number of House bills over to the Senate. But the best thing about this session may be that nothing real bad has happened to the people of Alabama at this juncture.

There have been a number of bills pushed by Governor Riley that failed to get traction in the session. For example, the charter schools legislation appears to be dead. The bills never got out of committee in either the House or Senate. I am not real sure what other bills the Administration is pushing. The bingo legislation hadn’t been up for floor debate in the Senate when this issue was sent to the printer. Hopefully, the bingo issue will have been settled one way or the other by the time this issue of the Report is mailed. There are lots of other important issues that must be dealt with.

**Governor Riley and Other Governors Want Stimulus Funds Extended**

Governor Bob Riley has joined 46 other governors in asking Congress to extend by another six months the federal economic stimulus funds to shore up state Medicaid programs. If granted, an extension would bring an additional $163 million to Alabama's Medicaid program in the first half of 2011 and prevent substantial cuts, according to Alabama’s Medicaid commissioner, Carol Steckel. The American Recovery and Reinvestment Act (the stimulus bill) that Congress passed last year will send a total of $850 million to Alabama for its Medicaid program over 27 months, ending in January. Interestingly, Governor Riley’s position puts him at odds with the state’s Congressional delegation, most of which voted against the original stimulus legislation and a subsequent health care bill that included similar provisions extending federal aid for state Medicaid programs.

It should be noted that enrollment in Alabama’s Medicaid program has jumped by about 100,000 people since 2007. Currently, the program serves about 1 million Alabamians. Commissioner Steckel has recommended cuts in services to make up for funding shortfalls. But even with the extension, the Commissioner says there still may be almost $80 million in cuts to optional programs and services, such as non-institutional hospice care, home health visits for adults and renal dialysis for adults. Many Alabamians don’t realize that the Alabama Supreme Court in recent rulings involving our state’s Medicaid program cost the state hundreds of millions of dollars. That was money that could have been put to very good use in the Medicaid’s program.

Source: Birmingham News

### Legislature Passes TVA Tax Measure

A bill that would allow North Alabama counties to keep all the money paid by TVA in lieu of taxes recently won final passage in the Alabama Legislature. As you may recall, the Governor let it die without his signature during the last session. There wasn’t time then for a veto to be overridden. Rep. Jeff McLaughlin’s bill would repeal a 1978 law that allows 5% of the money paid by the Tennessee Valley Authority to be distributed to “dry” counties and cities that are not served by TVA and which ban the sale of alcoholic beverages.

During the Senate debate, Senator Bobby Denton, D-Muscle Shoals, explained that in 1930, 100% of TVA funds went to the state’s General Fund budget. A legislative deal brokered in 1978 by Governor George C. Wallace began a schedule that slowly transferred most of the funds back to TVA counties. Senator Lowell Barron, D-Fyffe, had this to say about the issue:

*Fifty years ago, 100% of all of that money generated in the northern 16 counties came to the General Fund, which was very unfair. The local cities and the local counties got not one penny of property tax money from the TVA.*

It will be interesting to see if Governor Riley does veto this bill which definitely helps North Alabama, and if he does, what happens on the override votes in the House and Senate. I really hope that there will be no veto this time.

Source: Huntsville Times

### Bills in the Legislature Would Make Alabama Roads Safer

There are two highway safety bills in the Alabama Legislature that should become law. Both bills have passed the House, and are now in the Senate. One bill would establish a statewide ban on texting while driving. The other would strengthen the state’s graduated driver license law by limiting the number of teen passengers in a vehicle with a teen driver, adjusting nighttime driving restrictions and prohibiting the use of a hand-held communication device by teen drivers. These bills should be passed by the Senate. Several safety and consumer groups, including AAA, have endorsed these bills. AAA Alabama spokesman Clay Ingram had this to say:

*We have a terrific opportunity within our reach to make Alabama’s highways safer for all motorists. We have one of the worst teen fatality rates in the country, and passing these bills will absolutely help save lives.*

Hopefully each of these bills will pass. Each is needed in my opinion. If you agree contact your Senator and House member and ask them to vote for them.

Source: Birmingham News

### Arise Citizens’ Policy Project Priorities

The Alabama Citizens’ Policy Project has been working hard to both address and cure the causes of poverty in Alabama. While the Project has had an impact, not all of its goals have been reached. In fact, some of our elected officials have done very little to help the organization reach its goals. ACPP members have selected the following issues as policy priorities for 2010:

- They want fairer state policies toward low-income Alabamians which equates to adequate funding of programs. They believe that budget cuts to health care, child care, education, and other human services can have a “lopsided impact” on the least of these amongst us.

- They want real tax reform which should include eliminating the state
portion of the sales tax on groceries and putting a cap on the deduction for federal income taxes paid.

- They want new revenue for the General Fund.

- Katrina relief is still a problem four years after the storm hit and Alabama residents are being affected by damaged housing. The ACPP supports adequate recovery funding. A comprehensive assessment of unmet needs in Mobile County is needed.

- ACPP supports state investment in the Individual Development Account program.

- ACPP supports reform of the 1901 state constitution and believes the people should decide this issue.

- ACPP supports a three-year moratorium on the death penalty while state government reviews the inequities in our criminal justice system and in the application of capital punishment.

- ACPP supports the creation of an Affordable Housing Trust Fund to help low-income folks.

In addition to the above, ACPP endorses two other policy goals:

- Dedicated state funding for public transit.

- Creation of an Equal Pay Commission to recommend solutions to end the wage disparities between men and women.

I generally agree with the priorities set out above. It will be interesting to see how they fare in the Legislature.

**The Legislature Loses A Good Man**

Rep. Warren Beck of Geneva died of an apparent heart attack on February 24th. Warren was a good man and will be missed by his family and his many friends. He most definitely will be missed in the House of Representatives where he was an effective legislator and a good influence on other members.

**K.L. Brown Wins Handily In District 40 Race**

K.L. Brown, a Republican, won the special election for the Alabama House District 40 seat with 55.5% of the vote. Democratic candidate Ricky Whaley received only about 42% of the vote while independent candidate Carol Hagan received about 2%. Brown, who is in the funeral home business, has been sworn in and is now a member of the House of Representatives.

*Source: Anniston Star*

**Alabama House Kills Constitutional Convention Plan**

The Alabama House of Representatives rejected a resolution last month that would have let voters decide in November whether to call a convention of delegates that could propose a new state constitution. The House voted 58-32 to kill the resolution by Rep. Demetrius Newton, D-Birmingham, that would have left the decision to a vote of the people in November. While I really believe this was a mistake, the special interests which oppose constitutional reform should be very happy. It doesn’t appear that our heavily-amended 1901 constitution will be reformed this year.

*Source: Birmingham News*

**V. COURT WATCH**

**Big Business PACs Finance Republican Judicial Candidates**

PACs representing businesses, insurers, and automobile dealers are already pouring money into the campaigns for most of the Republican candidates seeking appellate court seats in Alabama. Pro-business political action committees, according to disclosure forms, provided some of the largest contributions last year to Republicans Kelli Wise, seeking Place 1 on the Alabama Supreme Court, and Mike Bolin, who wants to return to the High Court. The PAC for the Alabama Independent (insurance) Agents Association and those representing automobile dealers, state retailers and the state forestry association, made substantial contributions to the GOP candidates.

Three seats on the Alabama Supreme Court are on the ballot this year. Justices Bolin and Tom Parker are seeking reelection. Justice Patti Smith won’t seek a second term. The state Court of Criminal Appeals and Court of Civil Appeals each have one seat on the ballot. It appears all of the Republican candidates, with the exception of the Criminal Appeals Court, will be heavily funded by big business PACs. It’s not too hard to figure out why the criminal courts don’t interest those who fund those PACs.

Thus far, Mac Parsons, a circuit court judge in Bessemer, is the sole Democrat to qualify for a seat on the state Supreme Court. Judge Parsons, who has also served in the State Senate, is running for the seat now held by Justice Tom Parker. But at this juncture it doesn’t appear that other Democrats are lining up in great numbers to run for the High Court. Both Wise and Bolin may go back on Court having had no real opposition. Many believe the lack of funding sources could be the main reason for so little interest in the Court races this year. Maybe once things get a little clearer, a few candidates will surface on the Democratic side.

**The Election Of Judges In Alabama**

At the risk of offending the current members of the Alabama Supreme Court, I am going to mention the results of several polls that dealt with potential court races. According to recent polls, most Alabamians can’t name more than two members of the Court. Both Chief Justice Sue Bell Cobb and Justice Tom Parker have fairly good name recognition with potential voters, but neither is quite as high as I had expected. None of the others even on the High Court registered in the polls. So it appears nobody knows who serves on the highest court in Alabama and that’s a shame. But I guarantee you, the bosses at Exxon and at drug companies like GSK know the names of each Justice on the Court.
Also, most of those polled were shocked to learn that there were no African-American Justices on the High Court and that the political split was 8 to 1 in favor of Republicans. The polls indicated that judicial elections should be non-partisan. Nobody can justify electing Supreme Court Justices in partisan elections, but that's exactly what we have in Alabama. Large sums of money pumped into the candidate's campaigns—and even more money coming into the campaigns through third party groups who don't have to reveal money sources—dictate who sits on the Alabama Supreme Court. That's not good for working men and women, retirees or persons who now find themselves unemployed. Hopefully, one of these days the way we elect and finance judges will be changed.

There was an editorial last month in The Daily Home that addressed judicial elections in Alabama. It contained a very good assessment of our current situation and how judges should be elected.

It is supposed to be “blind justice” in the judicial system—no consideration of a person’s station in life, the color of his skin or his political views. Yet in Alabama, when it comes to electing judges, voters decide based on party affiliation. This state requires that judges run with a political label attached to them, which can trump qualifications and judicial history just because an R or a D following their name.

We think that’s wrong. And so does state Rep. Jeff McLaughlin, D-Guntersville, who has been trying to get a bill passed that would require judicial candidates to run in non-partisan elections since 2004. His bill is up again this week before a House panel on Constitution and Elections, and he is making the same valid arguments he has in the past. He rightly points out that there is no place for partisan judges bearing cases on child custody, contract violations or a felony charge. Democrat or Republican should make no difference. Judicial experience and the ability to render a fair decision should.

The bill's proponents and opponents are split largely along party lines with Democrats in favor and Republicans opposing. And therein, lies part of the problem. Republicans say it is because they hold the advantage on the state level, and Democrats are trying to wrangle away those seats on the bench. It is yet another partisan attack on what should be common sense—that it is justice for all, not justice based on a political party. Alabama needs to follow the lead of other states that conclude that judges should not come to the bench with a publicly set political view. They need to rule based on the law, and a party label gives the appearance that justice isn't as blind as it needs to be.

The Daily Home
February 16, 2010

I have always wondered how much effect newspaper editorials really have—maybe none—but oftentimes the writers reflect the mood of ordinary folks. Most Alabama citizens believe judges shouldn’t be elected in partisan elections, but instead candidates should go before the voters in non-partisan races. It will take a Governor and enough legislators—who can withstand political pressure from the powerful special interests—to finally clean up the current way we elect judges in Alabama.

Source: Birmingham News and The Daily Home

VI.
THE NATIONAL SCENE

MANY BELIEVE POOR OVERSIGHT CAUSED OUR ECONOMIC CRISIS

Many astute observers believe that regulatory failure was largely responsible for the housing bubble and subsequent financial crisis in this country that came very close to causing a major depression. While there has been considerable debate over what the root cause of the financial crisis actually was, I believe lax regulation was the main cause. Some say low interest rates and others opine that the cause was plain old greed that led to massive corporate frauds. Had the federal and state governments exercised stronger regulation and supervision over the financial institutions, I am convinced that our nation’s problems would never have gotten to the crisis stage. Problems with underwriting practices and lenders’ risk management would have been detected at any early stage and corrective action taken. The Federal Reserve has to share some of the blame since it could have raised interest rates to put a curb on the out-of-control market.

Our firm was handling cases against financial institutions that involved such things as bogus appraisals and the like for years before the housing bubble burst. How could our lawyers know about these problems and the government not know? Hopefully, this Administration and Congress have learned from the mistakes of the past and will work hard to put our financial affairs in order. The National Republican Party and its political cry of “too much government regulation” has contributed to and been a large part in causing many of the overall problems. You can’t let any industry—and certainly not our financial institutions—run loose and be poorly regulated, and not face bad consequences as a result.

GREED WAS THE ROOT CAUSE OF OUR ECONOMIC WOES

Wall Street still wants the American people to believe that the causes of the financial crash are too complicated for ordinary folks to understand. But fundamentally, when you get down to it, the real cause comes down to pure old greed. Mortgage brokers sold unaffordable mortgages to collect their commissions. Stock brokers made huge, risky bets in order to get big bonuses. And now that the American taxpayers have rescued Wall Street, we see that greed is making a real comeback.

Fortunately, the FDIC—the agency that insures bank deposits—is trying to
do something about it. The FDIC wants banks that hand out big bonuses for risky behavior to pay higher insurance premiums. Just like a reckless driver pays more for automobile insurance, these banks would pay more if they insist on rewarding recklessness. The FDIC took public comments on the proposed new rule up until February 18th. The big banks fought hard against the rule and many of the comments made to the FDIC were from bankers. The FDIC needed to hear from ordinary, hard-working Americans who got stuck with the bill when these big bankers wrecked our nation's economy. Hopefully, they did. Those in Congress have an obligation to take the actions necessary to make sure the financial institutions are properly regulated. They failed to live up to that responsibility in the past and see what happened to our economy as a result. There are several truths that really can’t be disputed and a few of them are:

• If Wall Street traders are allowed to gamble heedlessly with other people's money, it won’t be long before we face another financial crisis. They cannot be allowed to keep the profits when their risky bets pay off, but get bailed out by taxpayers when they don’t.

• Despite the banks’ pleas to “trust us,” Wall Street has proven incapable of regulating itself. The fact that the biggest banks are giving out $1.45 billion in compensation this year—more than before the crash—is proof that they have not learned their lesson. Wall Street must be regulated.

• The FDIC should not wait for Congress or the Federal Reserve to create new rules of the road for compensation practices—especially when there’s no guarantee either will act. The proposed rule is a commonsense change that should be implemented immediately. It could be supplemented by further improvements as needed.

It will be interesting to see what the FDIC does with the proposed rule. Hopefully, it will do the right thing and make it final. In the meanwhile, the American people should put pressure on members of Congress to act immediately to improve regulation of this country’s financial institutions. That pressure must be applied until all necessary legislation is passed.

**IT APPEARS THE FAT CATS QUICKLY FORGET THEIR POLITICAL FRIENDS**

Recently most significant development currently involving Big Pharma went pretty much under the radar and unnoticed by the public. Billy Tauzin, who has been the top lobbyist for the drug manufacturers, was forced out by his bosses. Tauzin, a former powerful member of Congress, announced that he was stepping down as President of the Pharmaceutical Research and Manufacturers of America. He had held that job since resigning from Congress.

Tauzin was the sponsor of legislation that has made the drug manufacturers billions of dollars, and much richer, over the past few years. He pushed the Medicare drug bill through Congress with the obvious help of the Bush Administration. That legislation has been a financial bonanza for Big Pharma and very costly to U.S. taxpayers. Tauzin, after getting the drug industry’s bill passed, left Congress and immediately went to work for the very companies who benefited from it. But now he’s gone and many are wondering why.

According to Washington sources and media reports, Tauzin was kicked out because he was willing to compromise with President Obama on the healthcare legislation. At Tauzin's urging, Pharma agreed with the President for the drug industry to contribute $80 billion in health care cost savings over the next decade. The companies would have to reduce the price of some drugs to close a gap in seniors' Medicare coverage. Obviously, Big Pharma—once it realized what it was doing—changed its mind and set out to kill health care reform in Congress. The partisan stand taken by the GOP most likely helped Pharma make the decision to give Tauzin the boot.

**BLACK FARMERS’ RACIAL DISCRIMINATION CLAIMS SETTLED**

On February 18th the Obama administration announced a $1.25 billion settlement with black farmers that could end a years-long stalemate over racial discrimination by the Agriculture Department. If approved by Congress, it would be the second round of damages stemming from a class-action lawsuit the government originally settled in 1999. The new money is intended for folks who were denied earlier payments because they missed deadlines for filing. The amount of money each person would get depends on how many claims are successfully filed. It should be noted, however, that the settlement will have to be funded by Congress.

President Obama initially called for the $1.25 billion in his budget last year, but the request stalled in Congress as disagreements persisted over the amount of funding and the structure of the settlement. Agriculture Secretary Tom Vilsack said this recent agreement should pave the way for Congressional approval and get money flowing soon to those who are entitled to payments.

The original lawsuit, known as Pigford, was named after Timothy Pigford, a black farmer from North Carolina who was among the original Plaintiffs. Under the 1999 settlement, the government paid out more than $1 billion to about 16,000 farmers, mostly from the South. Most Claimants opted for expedited payments that required a relatively low burden of proof. The payments were $50,000 plus $12,500 in tax breaks. It should be pointed out that thousands of folks were denied claims. Many said they didn’t know about the settlement and missed the deadlines for filing. The new agreement calls for a similar process in which Claimants can be paid without actually having to go to court.

According to Associate Attorney General Thomas Perrelli, Claimants can seek fast-track payments of up to $50,000 plus debt relief, or they can choose a longer process for damages of up to $250,000. Estimates on the number of potential claims vary widely, but some expect totals of about 65,000—which would set average payments at roughly $20,000.
may disagree, I believe this is a fair and equitable settlement and one that is deserved by those who will finally benefit.

Source: Mobile Press Register

**SENATE COMMITTEE SAYS BLACKWATER IS ARMED AND DANGEROUS**

A U.S. Senate committee has blasted the private military company formerly known as Blackwater, accusing the firm of engaging in “reckless use of weapons, hiding its identity to score government contracts, and harming America’s war effort in Afghanistan.” Investigators for the Senate Armed Services Committee said they also found that Blackwater contractors in Afghanistan secured more than 500 weapons from the U.S. military, even though company employees were not authorized to carry weapons there. They also found that the military signed over some of the weapons to a contractor who used a fake name borrowed from a character in the TV cartoon *South Park*.

The hearing was part of an on-going investigation by the Armed Services Committee into the role of contractors in Afghanistan, and focused on a shooting incident involving two Blackwater security trainers. The trainers, who were working for Paravant, a subsidiary of Blackwater’s successor company, Xe Services, have been accused of killing two Afghan civilians in May 2009. Both face federal charges of murder, but maintain their innocence. Both Paravant and Xe are owned by Erik Prince, the owner and founder of Blackwater. Blackwater changed its name to Xe in early 2009 after the company was involved in a series of deadly incidents in Iraq.

In Afghanistan, Xe offshoot Paravant was operating as a subcontractor to Raytheon, providing weapons training to the Afghan National Army. During a recent hearing, committee chairman Carl Levin (D-MI), reported that a Paravant executive, who acted as point man with Raytheon after the May 2009 shooting incident, told Senate investigators that Paravant routinely disregarded policies and rules in Afghanistan. It was reported to the Senate that Paravant “had no regard for policies, rules, or adherence to regulations in country.”

Senator Levin has pointed out that both men accused in the civilian shooting incident had unsatisfactory military records that should have disqualified them from employment with Paravant. According to Senator Levin, Paravant was arming contractors who never should have had weapons in the first place. Blackwater has been accused of hiding its identity by setting up new companies when securing government contracts. Paravant has been called a “scam company,” and a “shell” for Blackwater. The Department of State said in 2008 that it had lost confidence in Blackwater’s credibility and management ability. Blackwater lost a security contract with the State Department after a 2007 shooting incident that cost the lives of 17 Iraqi civilians.

**HARD TO EXPLAIN THIS PAY SCALE**

It was reported recently that employees at Wall Street financial firms collected more than $20 billion in bonuses in 2009. I am sure some of these were justified, but we have learned the hard way that in many instances Fat Cat compensation has nothing to do with good corporate performance. If you doubt that assessment, take a look at some of the CEOs who were exorbitantly compensated for “driving their companies off the cliff” while being paid huge salaries in the process. For example:

- Lehman Brothers CEO Richard Fuld earned $246.3 million between 2005 and 2007, the year before his company filed for bankruptcy.
- Merrill Lynch CEO Stanley O’Neal was forced out in 2007 and took a $161.5 million payment. This was paid in spite of his subprime mortgage bets that proved to be a disaster.
- AIG CEO Martin Sullivan took a $47 million severance payment in 2008, just months before his company took a federal bailout at a cost of more than $13 billion.

You would think that the Fat Cats had learned their lesson, but that doesn’t appear to be the case. For example, AIG, the fallen insurer, paid out an additional $100 million last month and I am told there is another $75 million on the way. I believe Congress should put a stop to this sort of thing. At a minimum, Congress should make sure in the future that corporate bosses are paid for long-term performance—not short-term illusions which quite often in the past have resulted in...
financial disasters for companies and their shareholders.
Source: Public Citizen

**CHRIST HOSPITAL SETTLES KICKBACK SCHEME LAWSUIT**

Christ Hospital has settled a federal whistleblower lawsuit accusing its acclaimed cardiac-care center of running an illegal kickback scheme. Christ and the Health Alliance of Greater Cincinnati, a co-Defendant, will pay millions to settle the lawsuit. The suit was filed by Dr. Harry Fry, a retired cardiologist, in 2003. The parties were still finalizing settlement documents at press time. Reports are that the amount of the settlement could approach $100 million. The government insisted that each of more than 100,000 Medicare or Medicaid claims filed from the heart station from 1999 to 2004 were a separate violation with a penalty of up to $11,000 each.

Dr. Fry’s lawsuit was unscaled in April 2008 when the Justice Department filed its own Complaint. Christ Hospital acquired the assets of Ohio Heart & Vascular Center, the doctors group that filled most of the heart-station slots, and it has now withdrawn from the alliance. The case was set for a trial later this year, but Judge S. Arthur Spiegel forced final settlement talks. While Christ Hospital insisted it had done nothing wrong, it settled the case and for a very large amount.

Source: Cincinnati Enquirer

**LIBERTY MUTUAL CLAIMS IT WAS VICTIM OF FRAUD BY GENERAL RE**

Liberty Mutual Insurance Co. claims that it has been the victim of fraud. The insurance company asked a federal judge to undo part of a recent settlement by General Re Corp., a reinsur-ance unit of Warren Buffett’s Berkshire Hathaway Inc., with federal investiga-tors. Gen Re agreed in January to pay $92.2 million to resolve charges that it entered into sham reinsurance contracts with American International Group Inc. and Prudential Financial Inc. that made those insurers’ financial statements look better. Prudential settled civil charges in 2008, after the SEC accused it of violating financial reporting provisions.

In a filing with the U.S. District Court in Manhattan, Boston-based Liberty Mutual claims it deserves $12.1 million that the reinsurer paid to the U.S. Secu-rities and Exchange Commission as part of the settlement. Liberty Mutual claims it had been unaware when it bought some Prudential property and casualty units in 2003 that those units were involved in what Liberty Mutual called a fraud scheme with Gen Re. It said the reinsurer later paid it $29.2 million out of $41.3 million owed under some agreements, but paid the balance to the SEC. Liberty Mutual complained that the SEC rejected its request to put the sum in escrow until a court or arbitration panel could decide who had a right to it. Liberty Mutual now wants the Federal Court to amend the settlement.

Source: Reuters

VIII. CONGRESSIONAL UPDATE

**THE AMERICAN PEOPLE NEED A STRONG CONSUMER PROTECTION AGENCY**

Consumer advocates should redouble their efforts to convince members of Congress favoring big banks over the interests of ordinary Americans to support legislation which would create the Consumer Financial Protection Agency. The proposal for a new agency to protect consumers of mortgages, credit cards and other such products from abuses by lenders, is badly needed and should become law. This proposal is a key element of the Obama administration’s blueprint for financial reform and was included in a House bill that passed in December with support only from Democrats.

The financial industry, aided by a number of key Republicans, has labeled the proposed agency as unnecessary and too expensive. On the other hand, consumer groups believe the proposed agency is essential to preventing the kinds of abuses that contributed to the current financial crisis. This is a classic example of the critical choices members of the House and the Senate have to deal with that affect the public interest. In this instance, the legislators can either be on the side of the big banks or ordinary folks. It shouldn’t be a tough call if they really want to protect the public.

Elizabeth Warren, a Harvard law pro-fessor and architect of the proposal for the new agency, wrote a Wall Street Journal commentary in which she said Wall Street executives “might have had some thoughtful suggestions for how to better shape a consumer agency. Instead, they have unleashed lobbyists who are determined to do anything to kill the consumer agency.”

Any new consumer-protection regu-lator—whoever a stand alone agency or one housed in an existing agency—must remain independent. The agency must have the power to write and enforce new rules and will need a dedicated source of funding. Individual states must be able to impose laws that go beyond federal standards, a concept that big banks have fought vehemently.

The financial industry has poured months of effort and millions of dollars into advertisements, political contributions and lobbying efforts, with their goal being to shape the proposed legislation and kill parts they say would stifle innovation and increase the cost of doing business. The big banks like the status quo and we know how poorly that has worked for most Americans.

The U.S. Chamber of Commerce, for example, has spent millions of dollars on a campaign to label the proposed agency as a massive bureaucracy and a threat to small businesses. It should be noted that Republican political consultant Frank Luntz wrote a memo in January advising opponents of the pending legislation to depict it as “filled with bank bailouts, lobbyist loopholes and additional layers of government bureaucracy.” He concluded with a handy guide of “words to use,” such as “bloated bureaucracy,” “big bank bailout bill,” “wasteful Washington spending” and “unintended consequences.” I believe it’s now time for Congress to take action that will finally protect the interests of ordinary folks and small business owners instead of
dancing to the same old tune played by the Big Mules in Corporate America. What do you think?
Source: Washington Post

IX. TOYOTA LITIGATION UPDATE

TOYOTA HAS MASSIVE SAFETY ISSUES

The massive safety-related problems at Toyota are impossible for most folks to keep up with unless they have a Toyota vehicle that has been recalled or have had a bad experience with a sudden-acceleration problem. Even then, their knowledge of the reasons for, or extent of, all of the problems has to be extremely limited. Lawyers in our firm understand the sudden-acceleration issue because they have been dealing with it in actual lawsuits for several years. Things are now coming to light—almost on a daily basis—that are very disturbing. I am setting out a timeline relating to Toyota’s problem, which may be helpful to our readers.

The Toyota Timeline

1986
• In September, NHTSA orders its first recall of Toyota cars because of “speed control” problems related to a faulty cruise control system in models as far back as 1982. A second investigation into sudden-acceleration dangers with Toyota vehicles takes place that same year.

1999
• Toyota recalls the popular Lexus RX for problems with an electronic control unit that causes the headlights and taillights to turn on and off without warning.

2000
• Toyota discontinues using mechanical linkage in its throttle systems in favor of an electronic throttle control system.

2003
• Toyota makes 6.78 million vehicles and overtakes Ford Motor Co. in annual sales to become No.2 in sales behind only General Motors.
• In February, NHTSA conducts the first of many defect investigations regarding speed control problems. The first two involve the Camry and Solara models.
• In April, Toyota internally deals with an “unwanted acceleration” incident during the production testing of the Sienna model. Toyota blamed a faulty trim panel clip, trapping the pedal assembly. Toyota calls this an “isolated incident.” Toyota does not report to NHTSA until five years later during a blanket information request by the agency.
• In July, NHTSA opens first probe of sudden-acceleration complaints in Lexus sedans at owners’ request.
• In September, the Lexus probe is closed claiming no defect was found.

2004
• In March, after another customer petition, NHTSA opens a wider probe into Lexus Sedans. NHTSA also informs Toyota that the agency is opening an investigation into unwanted acceleration and vehicle surge complaints in 2002-2003 Camry and Solaris models. Toyota’s VP for regulatory affairs, Christopher Tinto, and another of his employees, Christopher Santucci, “work closely” with NHTSA and manage to narrow the investigation to 11 incidents involving five crashes. Both Mr. Tinto and Mr. Santucci are former NHTSA employees.
• In July, NHTSA closes its investigations again, claiming no defects were found. NHTSA turns down two more requests from owners for new looks at the problem. NHTSA cites lack of resources as the reason for that decision.

2005
• CTS, a manufacturer, begins to make pedal assemblies for Toyota.

2006
• By January, NHTSA had opened a second investigation and had received questionnaires sent to Camry owners. Hundreds are returned from owners with reports of problems of acceleration and braking. NHTSA says the claims are of “ambiguous significance” and closes the investigation. Again, a strange turn of events.
• Toyota group global sales of 8.808 million vehicles exceed GM’s by 128,000, making it the world’s biggest automaker.
• In August, NHTSA receives more complaints about the accelerator issues with the Camry models that covers model years 2002-2006.
• In September, NHTSA opens a third investigation. Another Camry owner petitions the administration to investigate multiple “engine surging” incidents he experienced.
• Toyota’s Tinto writes NHTSA and says that Toyota found no abnormality in the throttle controller and blames water damage from driving in heavy rain as the reason for any problems that might exist.
• NHTSA fails to identify the problem and closes the investigation citing “the need to best allocate limited administration resources” as the reason for the closure. Again—even if true—very strange.

2007
• In March, NHTSA launches probe into floor mats in Lexus models. Toyota says “issue is not a safety concern.”
• On July 26th, for the first time, NHTSA verifies fatal crash link to floor mats. Troy Edwin Johnson is killed when a Camry accelerating out of control hits his car at 120 mph. The driver of the Camry had been unable to slow the vehicle for 23 miles prior to the accident. Toyota eventually settles with the family for an undisclosed amount.

• In August, NHTSA upgrades its investigation to an “engineering analysis.” This means the agency will do vehicle testing instead of just reviewing complaints or single vehicles and crunching questionnaire numbers as done in the past.

• State Farm Insurance notifies NHTSA of accident data related to 2005-2007 Toyotas and an uptick in numerous complaints of “unwanted acceleration.” The insurer did the right thing and you would think NHTSA would have to pay attention to this warning.

• In September, under pressure from NHTSA, Toyota recalls 55,000 Camry and Lexus models because of suspected floor mats that interfere with the accelerator pedal.

• Documents now obtained from Toyota show that the carmaker noted that it had saved $100 million by conducting a limited recall as opposed to a full recall. The company said that was a “win.”

2008

• In January, NHTSA, again, at a customer’s request, launches probe of sudden acceleration in Tacoma pickups. The complaints involve 478 incidents where 2004-2008 model year Tacoma engines allegedly sped up even when the accelerator pedal wasn’t pushed. Toyota’s Tinto told NHTSA that the automaker couldn’t find enough evidence to support allegations and an investigation wasn’t warranted.

• In August, after an eight month review, NHTSA closes the Tacoma investigation, claiming to find no defect despite hundreds of complaints. This is the eighth investigation of Toyota vehicles since 2003. Over 2600 complaints of Toyotas and “runaway cars” have been reported, and 271 of these complaints were rejected by NHTSA without even asking Toyota for data. Again, most strange!

2009

• In April, NHTSA receives another petition, this one to investigate throttle-control problems unrelated to floor-mat issues in the Lexus ES vehicles.

• In August, the fatal crash of a Lexus ES350 in California kills four people. NHTSA quickly links this incident to floor mats.

• In September, NHTSA tells Toyota it expects wider recall of mats by the end of the month.

• In October, Toyota issues floor mat warning but has to be pushed by NHTSA to issue recall.

• In October, Toyota recalls 3.8 million vehicles related to the floor mat issue.

• In November, Toyota expands the floor mat recall by over a million vehicles.

• In December, NHTSA opens investigations on whether the electronic control modules in some Corolla and Matrix models causes them to stall without warning. The agency also opens an investigation into the 2003 Sequoia SUV model for problems with the computerized vehicle stability control system.

• In December, NHTSA officials fly to Tokyo to meet with Toyota executives, asking for quicker response to safety concerns.

• NHTSA investigations of Toyota and allegations of unintended acceleration rise to 13 in a 25 year period resulting directly in four recalls.

2010

• On January 16th, Toyota tells NHTSA it may have “an issue” with sticking accelerator pedals.

• On January 19th, NHTSA meets with Toyota officials in Washington, telling the automaker it must conduct a recall.

• On January 21st, Toyota issues recall for 2.3 million vehicles for sticking accelerator pedals.

• On January 26th, Toyota halts production and stops selling eight models under pressure from NHTSA.

• On January 27th, Toyota expands the pedal recall by 1.1 million vehicles.

• On February 3rd, Kelley Blue Book is reported as devaluing Toyota models by as much as 5%. Edmonds (an auto research firm) states the average devaluation between 4% and 8% on Toyota vehicles. Both companies state that this devaluation could continue.

• On February 5th, Toyota admits problems with brake software in 2010 Prius Hybrids.

• On February 8th, Toyota recalls 2010 Prius, 2010 Lexus HS 250h, 2010 Camry Hybrids, and the Sai (sold only in Japan) due to faulty brake systems. This recall affects 437,000 vehicles worldwide.

• On February 9th, Toyota announces that Exponent Consulting (formerly Failure Analysis Associates Inc.) had completed a 56-page report and sent to Congress a report that a test of Toyota’s electronic throttle system behaved as intended. Exponent was “unable to induce...unintended acceleration or behavior that might be a precursor to such an event.”

• Exponent’s work is highly criticized by many independent experts as not being neutral. Exponent’s executive chairman Mike Gaulke was quoted as saying 65% of the company’s $228 million dollars in revenue is derived from research related to materials created for litigation in defense of companies. A noted environmental consultant, Cindy Sage, is quoted in the LA Times as saying “The first thing you know is that when Exponent is brought in to help a company, that company is in big trouble.”

• Exponent’s actual testing in the report is criticized as not complying with the type of testing necessary to
replicate the methods that automotive engineers say are needed to ensure that electromagnetic interference does not cause failure of the hardware or software of engine controls.

• If any of our readers—or the consuming public in the U.S.—believe that Exponent is an “independent investigator,” they are sadly mistaken. This company has been paid hundreds of millions to defend design defects for the automobile industry over the years.

• On February 12th, Toyota recalls 2010 Tacoma due to a dangerous drive shaft condition.

• The Wall Street Journal publishes an article that discusses Toyota’s “black box” event recorder and its use for investigating Toyota’s safety problems. According to the NHTSA and Toyota, only one “reader” exists in the U.S. and is located at Toyota’s headquarters in California.

• Toyota claims that the unit is still experimental and can give false readings.

• In comparison, all U.S. automakers have made their event recorders easily readable by third party companies that make diagnostic equipment.

• On February 16th, the Department of Transportation demands that Toyota turn over documents related to its massive recalls to see how long the automaker knew of safety defects before taking action. The company is given between 30 and 60 days to respond or face fines. Toyota’s recalled vehicles tops 9 million units.

• On February 16th, Toyota begins to “look into” steering problems with its Corolla models.

• On February 18th, it was learned that NHTSA had excluded eight early reports of deaths linked to the sudden acceleration problem. That may well bring the total deaths to 42.

• On February 23rd, the Congressional hearings started and I would encourage all of our readers to find out what all the Toyota bosses had to say at the hearings. Some of what they said there will shock you.

Now more and more lawsuits are being filed by families who have lost loved ones because of the sudden, unintended acceleration problems at Toyota. There will be many more suits filed in the coming weeks. Our firm has already filed suits and our lawyers in the Product Liability Section are currently investigating a number of potential claims. If you need more information, contact Cole Portis, Graham Esdale, Greg Allen or Dana Taunton in our firm at 800-898-2034 or by email at Cole.Portis@beasleyallen.com, Graham.Esdale@beasleyallen.com, Greg.Allen@beasleyallen.com or Dana.Taunton@beasleyallen.com. Hopefully, the timeline we developed will give our readers some real insight into how both Toyota and NHTSA have been operating over the past several years.

Our Firm HasFiled Three Class Actions On Behalf Of Toyota Owners Affected By The Massive Recalls

In addition to the death and personal injury cases, our firm has also filed three separate class action lawsuits against Toyota. The first Complaint, seeking class action status, was filed on behalf of over 5 million Toyota owners whose vehicles have been recalled by Toyota Motor Sales, USA Inc. That suit was filed in the United States District Court for the Southern District of Florida against Toyota Motor Corporation and Toyota Motor Sales, USA Inc. We charge Toyota in the Complaint with breach of warranty, fraudulent concealment, unjust enrichment and breach of the covenant of good faith. Until recently, Toyota has clearly downplayed or dismissed owner complaints of sudden unintended acceleration.

A second lawsuit, seeking class action status, was filed in the U.S. District Court Middle District of Alabama on behalf of Toyota owners. The allegations in this case are similar to those in the Florida case. This case was assigned to Judge Mark Fuller.

The third suit was filed on behalf of more than 500,000 Toyota Prius and Lexus Hybrid owners whose vehicles have been recalled by Toyota Motor Sales, USA Inc. That lawsuit, also filed in the Middle District of Alabama against Toyota Motor Corporation and Toyota Motor Sales, USA Inc., charges Toyota with breach of express warranty, breach of implied warranty of merchantability, breach of implied warranty of fitness for particular purpose, fraudulent concealment, unjust enrichment, and breach of the covenant of good faith and fair dealing. The Complaint alleges Toyota concealed facts relating to the defects in the accelerator braking system. This case, which was originally assigned to another judge, has been reassigned to Judge Fuller.

Dec Miles, who heads our firm’s Consumer Fraud and Class Action Section, will be working with lawyers Brian W. Smith in Florida, Joe R. Whatley in New York and Howard Rubinstein in Colorado. I will also be involved in these cases. It’s difficult to comprehend how Toyota, knowing about these defects long before they even issued a recall, continued to market the vehicles as safe and reliable. That’s inexcusable and can’t be tolerated.

As stated above, our firm is also handling individual claims, where deaths or severe injuries and disabilities are involved. The first such case was filed in the District Court of Oklahoma County, State of Oklahoma, on behalf of Plaintiffs, Jean Bookout and Charles Schwarz, against Toyota Motor Corporation, Toyota Motor Sales USA, Inc., Toyota Motor Engineering and Manufacturing North America, Inc., and DUB Richardson Toyota. This suit involves a case of sudden, unintended acceleration of a 2005 Toyota Camry, which resulted in serious injury and death.

According to Sean Kane, an independent automotive safety expert and founder of Safety Research and Strategies, Inc., a tremendous number of deaths and injuries can be attributed to 815 separate crashes involving Toyotas that accelerated suddenly and unexpectedly. The latest death count was at 42 according to our information. At last count, 2,262 incidents involving unintended acceleration had been reported since 1999. I suspect the number is actually much higher. In many crashes, the excessive speed of the driver, who was killed, was believed by investigating officers to have caused the crash.

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fact, many of these crashes may well have been the result of a sudden high speed acceleration.

Graham Esdale, Greg Allen, Cole Portis, Ben Baker and I will be working on the individual client claims. We are being contacted on virtually a daily basis with requests to investigate crashes that are believed to be caused by sudden high speed acceleration problems.

**Beasley Allen Lawyer Travels To Washington For Hearings**

One of our lawyers, Graham Esdale, traveled to Washington during the week of February 22-26, accompanied by the three adult children of a lady who died in the crash of a Toyota vehicle. Graham and our Oklahoma clients, Margie Louise Meibergen, Sharon L. Brandt and Julie Brandt Mayfield, attended the Congressional hearings. They told the committee about the tragic death of their mother, Mrs. Barbara Schwarz, in a runaway Toyota Camry.

The daughters of Mrs. Schwarz also appeared on several television news channels, including CBS, CNN, and Fox. They wanted to bring more attention to the fact that Toyota (http://www.toyota-lawsuit.com/) has yet to recall the 2002-2006 Toyota Camrys, which studies have shown may be more susceptible to sudden unintended acceleration than other models. Mrs. Schwarz was killed when the 2005 Toyota Camry she was in suddenly began speeding out of control. She was critically injured when the Camry left the interstate and crashed. Graham says the hearings were both informative and emotional.

Graham and other lawyers in our firm’s Product Liability Section are reviewing hundreds of Toyota sudden unintended acceleration cases, involving deaths or serious injury. We have been involved with the Toyota cases for several years and know long before the Congressional hearings started that the company had serious safety issues.

**PRODUCT LIABILITY UPDATE**

**Honda Adds Vehicles To Recall Over Air Bags**

Honda has added 437,763 vehicles to a previously announced recall to fix drivers-side air bags in 2001 and 2002 model year vehicles. This brings the total number of affected vehicles to 947,913 worldwide. The company will replace the air bag inflator in the cars because they can deploy with too much pressure, causing the inflator to rupture and injure or kill the driver. Honda said it is aware of 12 accidents related to the issue, including one that resulted in death, with the others causing injuries.

The expanded recall by Japan’s number two automaker includes 578,758 vehicles in the United States, as well as 41,685 in Canada, 4,042 in Japan and 13,278 in other countries. That brings the total number of Honda vehicles recalled for the air bag issue to 826,424 in this country. Models affected include the 2001 and 2002 Accord, Civic, Odyssey CR-V and some and some 2002 Acura TLs. Honda informed NHTSA of its decision to expand the recall on February 9th and notified the Japanese government.

Honda issued its first recall related to the air bag inflators in November 2008 for 3,940 model year 2001 Accords and Civics in the United States on complaints back to February 2007. In 2009, Honda received five more reports of shards and in June 2009 Honda expanded the recall to 443,727 Accords and Civics from the 2001 model year. The National Highway Traffic Safety Administration then asked Honda in August 2009 why the expanded group of vehicles hadn’t been part of the original recall. Honda and its supplier, Takata, said they had limited the recall based on their understanding of a problem with the air bag propellant. Honda told NHTSA in September that the June recall was “expected to capture all affected vehicles.”

NHTSA’s inquiry remains pending. Honda officials claimed their most recent action was not due to NHTSA’s questions or pressure. Honda is notifying all owners of affected vehicles and is encouraging the owners to take their vehicles to an authorized dealer so that the air bag can be replaced.

Source: Free Press

**MACHINE HAZARDS ARE A SERIOUS SAFETY RISK FOR WORKERS**

Defectively designed machines account for hundreds of injuries to workers each year. Unfortunately, unguarded machine hazards can result in lost limbs, crush injuries and even death. We currently represent a family in a wrongful death action against the original manufacturer of the machine and an entity that modified the subject machine years after it was placed in the stream of commerce. Because machines can be in operation for fifty or more years, it’s very important to ascertain whether the machine has been modified to determine if the modifier has any liability with respect to the injury or death.

There are three things that proper design of a machine must consider. The first deals with designing to eliminate a defect in order to prevent a hazard. If the hazard can’t be designed out, then the hazard must be guarded. There must also be a warning. The subject machine’s original design in our case was defective in that it left a dangerous entrapment hazard unguarded. Entrapment hazards must be eliminated or effectively guarded before a machine is placed in the stream of commerce. Machine and OSHA standards mandate this requirement. Original manufacturers and designers have a duty to conduct a safety analysis to identify a hazard and either eliminate it or guard from the hazard. When original manufacturers and designs fail to perform a safety analysis, and an unguarded hazard exists, machine operators can be severely injured or killed. Because machines have long shelf lives and are commonly sold numerous times, it’s always necessary and very important to consider whether a previous owner or another entity modified the machine in question.
Modifiers of machines have a duty to modify the machine in a reasonable manner. In the case we are currently handling, the modifier refurbished the same hazard the original manufacturer left unguarded. Additionally, the modification actually enhanced the hazard by requiring the machine operator to clean the machine while it was in operation. The modifier, even if it does not enhance the hazard, should still perform a safety analysis. All identified hazards should be eliminated, guarded and/or warned against. The modifier should also inform the owner of the need to eliminate hazards to users and operators. Failure to act can result in legal liability. If you need more information you can contact Kendall Dunson in our firm at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

**SECONDHAND EXPOSURE TO ASBESTOS IS A PROBLEM**

As we have previously reported, our firm is handling a good number of mesothelioma cases. As you know, mesothelioma is a deadly form of lung cancer that is caused from exposure to asbestos. Asbestos is a fiber that was inhaled by many workers, and inhalation of the fiber led to the development of lung cancer. The workers who were at the greatest risks included those who worked in shipyards, in the construction industry, around insulation, around or near boilers, and in industries where asbestos was a common product used in the manufacturing process.

What is perhaps most fascinating, and alarming at the same time, about this disease is that it can lie dormant in the body for 20 to 50 years! In other words, a person could have inhaled fibers on the job in the 1940s or 1950s and only now develop the disease. During the 1970s and 1980s, the Occupational Safety and Health Administration began demanding that businesses greatly reduce or eliminate the presence of asbestos in their products and in their buildings. Despite the tremendous reduction in asbestos in products and materials, the rates of new mesothelioma diagnoses continue to remain constant.

More and more of the cases being diagnosed are of women and people who did not work in industries known for asbestos exposures. Studies have shown that wives who washed their husbands’ asbestos-covered clothing were also exposed. Children whose fathers worked in the industries with the greatest risks were also exposed from the dangerous dust and fibers that their fathers would bring home on their clothing. Grandchildren who hugged their grandfathers or sat on their laps when they came home from work may have also been exposed. Literally, the possibilities of second-hand exposures are limitless.

Our firm is continuing to investigate these claims. If you know someone who may have developed this awful disease, please have them contact one of our asbestos lawyers, Mike Andrews or Ben Locklar. They can be contacted at 800-898-2034 or by email at Michael.Andrews@beasleyallen.com or Ben.Locklar@beasleyallen.com.

**CATERPILLAR MUST PAY $54 MILLION TO PARALYZED TEXAS WORKER**

A jury in Texas returned a $54.2 million verdict recently against Caterpillar Inc., the world’s largest maker of bulldozers, in a lawsuit filed by an injured worker. The Plaintiff, Alfonso Lopez, was badly injured. Jurors in a San Antonio state court found Caterpillar and one of its distributors liable for the Plaintiff’s injuries. The scraper involved was from the line of Wheel Tractor 623 G Scrapers. The jurors ordered the companies to pay a total of $15.8 million in compensatory damages and $40.5 million in punitive damages. The Plaintiff contended that electronic-control defects caused the machines to unexpectedly bounce. It was alleged that Caterpillar delayed addressing the defects for two years.

The Plaintiff was using the scraper, which sells for $518,000, to help build a subdivision north of Dallas in August 2006 when the machine “suddenly and without warning began dramatically bouncing up and down.” The scraper’s bucking caused its seat to fail. The Plaintiff was slammed against the scraper’s frame. He suffered spinal injuries and a punctured lung in the accident and is now paralyzed from the waist down.

In the suit, Lopez and his family contended Caterpillar failed to inform the worker about defects in the company’s 623 G Wheel Tractor Scraper. Holt Texas faced claims that the company failed to perform proper maintenance on the machinery. An examination of the tractor’s “black box” revealed several mechanical malfunctions that contributed to cause the incident. Mark Lanier, a Houston lawyer, represented the family and did a very good job.

Caterpillar was ordered by the jury to pay 90% of the actual damages, or $14.2 million, plus $40 million of the punitive damages. Holt Texas Ltd., the dealership that sold the scraper, was held liable for 10% of the actual damages and $500,000 in punitives, or a total of $2.1 million. Caterpillar says it will appeal the verdict.

Source: Bloomberg

**FORD LIABLE FOR DEFECTIVE FUEL TANK**

The Illinois Appellate Court has ruled that Ford Motor Co. could be held liable for negligently designing a fuel tank in a vehicle that burst into flames when struck from behind. The Court’s decision affirms a $43 million jury verdict. The Plaintiff and her husband were stopped at a construction site on an interstate highway when their 1993 Lincoln Town Car was rear-ended by another vehicle travelling at approximately 65 miles per hour. The fuel tank in the Lincoln was punctured when a pipe wrench stored in the trunk was propelled forward by the force of the crash. A fire ensued and the Plaintiff suffered burns over 32% of her body. The Plaintiff’s husband died after suffering burns over 80% of his body.

The Plaintiff sued Ford alleging that the Lincoln Town Car was negligently designed with the fuel tank in an exposed position behind the rear axle. Ford argued that the Plaintiff failed to show that the car company breached the applicable standard of care. But the Court disagreed with Ford and ruled for the Plaintiff. The opinion of the Court stated:

The [plaintiff] presented extensive evidence of alternative fuel tank
locations recognized and used in the automobile industry, including at Ford. The evidence revealed that Ford’s engineers were well aware of the danger of an aft-of-the-axle fuel tank being punctured in a rear-end collision, including by trunk contents, long before the manufacture of the 1993 Lincoln Town Car.

The [plaintiff] alleged that Ford should have either moved the fuel tank to a safer location or provided a guard or shield to prevent a puncture of the fuel tank by component parts of the vehicle or trunk contents or warned consumers about the danger of trunk contents puncturing the fuel tank. There was ample evidence on the standard of care to justify the submission of these claims to the jury.

This is a most significant appellate decision. It’s important to realize that the standards set by the federal government are only minimum standards and oftentimes they are very weak. Quite often, science and engineering requirements are much higher than the government’s standards, which can be extremely weak. This Court reached the correct decision in this case.


JURY AWARDS WOMAN $23.4 MILLION AGAINST FORD MOTOR CO.

A jury in California awarded a woman $23.4 million last month in a lawsuit against Ford Motor Co. The case arose out of a 2007 freeway accident that left her a quadriplegic. Cynthia Castillo, 40, lost control of her 1997 Ford Explorer on March 23, 2007, after the tread separated from her left-rear tire as she drove on the freeway. The car left the freeway and rolled three times down an embankment. The accident left her legs and most of her body paralyzed, with limited movement in her arms. The woman’s lawyers presented evidence that design faults caused the vehicle to easily lose control when the tire tread separated.

Three witnesses who saw the accident said Castillo’s car immediately began fishtailing when the tread separated. Internal Ford safety documents from the 1980s and 1990s, obtained during the litigation, revealed that the company was aware the vehicle would easily go out of control with a rear tire detread. Engineers found ways to improve the vehicle’s safety, but Ford’s management turned down their recommendations. According to Brian Brandt, who represented the Plaintiff, Ford offered to settle the case prior to trial for $1.2 million. Brian, who practices in Upland California, did a very good job in handling this case.

Source: Dailybulletin.com

XI. MASS TORTS UPDATE

UPDATE ON YAZ LITIGATION

As we have reported in past issues of the Report, we are working on a large number of cases involving injury caused by the birth control pills Yaz, Yasmin, and Ocella. As we have previously reported, these products, known as fourth generation birth control pills, are believed to cause serious injury including heart attack, stroke, deep-vein thrombosis, pulmonary embolism, and gall stones.

As of the date this article was written, our firm has filed four cases against the manufacturers of Yaz and Yasmin, and we expect to file at least three more lawsuits by the time this issue is published. Thus far, we have filed suits in the Court of Common Pleas of Philadelphia County, Pennsylvania, where consolidated litigation is proceeding before Judge Moss.

One of the cases our firm has filed is on behalf of an otherwise healthy young woman who had to have her gallbladder removed when she was 18 years old. The diuretic component of Yaz, Yasmin, and Ocella caused her body to dehydrate, and thereby caused stones to form in the gall bladder. The Plaintiff suffered significant pain both before and after surgery, and continues to suffer from lingering digestive pain and problems. Unfortunately, her experience is quite typical of the cases we are reviewing.

Our firm is working on many cases involving Yaz, Yasmin and Ocella. For more information on those cases or the subject generally, you may contact Alyce Addison or Andy Birchfield in our firm at Alyce.Addison@beasleyallen.com or at Andy.Birchfield@beasleyallen.com.

THIRTEEN STRAIGHT COURT VICTORIES FOR VICTIMS IN HRT LITIGATION

Proving once again its ability to manage a large number of complex cases, the Philadelphia Complex Litigation Department remains the most active court in the country when it comes to Hormone Replacement Therapy (HRT) litigation. Last month a jury returned a compensatory damages award of $5.45 million for the Plaintiff and her husband against Wyeth. This case was very important because the woman continued to take HRT even after the landmark Women’s Health Initiative study was terminated prematurely because so many women were getting breast cancer.

Additionally, the jury found that $6 million in punitive damages was warranted to punish Wyeth for its egregious conduct. This was the 13th time in a row that a jury, after hearing all the evidence, has ruled for a victim of HRT and awarded over a million dollars in actual damages. And each time a jury has been asked to do so, it has awarded punitive damages against Wyeth. Zoe Littlepage and Rainey Booth, both from Houston, Texas and Sam Abloser from Philadelphia, were the lead lawyers who represented the Plaintiff in this case and they did a very good job.

THE MOST RECENT HRT VERDICT

In a second case that was being tried at the same time as the above case was in trial in Philadelphia, the jury found that Wyeth was at fault, but that Prempro had not caused the Plaintiff’s cancer. Since this verdict came down just as this issue was being sent to the printer, I don’t have the full story on www.JereBeasleyReport.com
the trial. It appears that the outcome of this case was decided, not on the conduct of the drug manufacturer, but instead, was decided on medical causation. In any event, this was the first real set-back in the HRT litigation, but it shouldn’t be that serious. In all of the cases, medical causation has to be proved and that usually isn’t a problem.

**AN UPDATE ON THE BARTON CASE**

We previously reported on the jury verdict in the Barton case, which was also tried in Philadelphia. Late last month, the judge presiding over the case, Judge Norman Ackerman, entered an order denying Wyeth’s motions for case, and for a new trial, and for remittitur of the $3.7 million compensatory award. The Court did grant a remittitur of the $75 million punitive jury award and entered a final judgment in the amount of $10.6 million. Judge Ackerman, who is not known for entering punitive awards, published a 60-page opinion that does an admirable job of summarizing each of the following:

- Wyeth’s failure to study its own drug despite requests from the FDA and leading researchers;
- its policy of “dismiss and distract;”
- the company’s misleading labels;
- its ghost-written articles; and its over-promotion of HRT.

Judge Ackerman wrote in his order, “This Court wonders how a doctor can make an informed decision that accurately evaluates a patient’s needs when the supplier desires the doctor to have a less-than-clear understanding of the risks and benefits of a drug.” In explaining his reduction of the punitive award, Judge Ackerman states, “The jury’s decision was clear in its rebuke of Wyeth’s reprehensible actions and this Court does not reduce the award because it believes that the punishment should be lessened.” He goes on to explain the reduction was to comply with his interpretation of controlling legal precedent on punitive damages.

In the midst of all the Philadelphia trials, one medical article after another has been published condemning both Wyeth’s conduct in paying for ghost-written articles and its hormone therapy drugs for increasing the risk of everything from cataracts to heart attacks. Its chemical “replacement” for a woman’s natural hormones may have been profitable, but it was clearly a catastrophe for women’s health. Rigorous studies from across the US and at least eight other countries have demonstrated a clear cause and effect relationship between the use of these chemicals and breast cancer. A leading researcher estimates that these drugs caused 20,000 women a year to develop breast cancer.

Given the messages from the scientific community and from the juries, who have heard the facts, one can only wonder why Wyeth (now Pfizer) has made no effort to accept responsibility for its past wrongs and do right by the thousands of women it injured. Instead, the drug manufacturer announces it will accept no jury determination against it and will continue to spend hundreds of millions of dollars to defend itself. Its latest trial strategy was to sever its employment relationships with key witnesses and relocate them to other states so that lawyers like us will no longer be able to compel their attendance at trial and force them to explain their conduct to juries. This attempt to avoid justice, as have the company’s previous attempts, will certainly backfire. One day, its shareholders and/or the FDA may want to ask some very difficult questions to the company’s executives. If you need more information on the HRT litigation, contact Melissa Prickett, Russ Abney or Ted Meadows at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com, Russ.Abney@beasleyallen.com or Ted.Meadows@beasleyallen.com.

**A LOOK AT SOME KEY EVENTS IN THE VIOXX LITIGATION**

As you know, Andy Birchfield, who heads up our Mass Torts Section, was instrumental in negotiating the massive settlement with Merck & Co. over Vioxx. I thought it might be interesting to review some key events that occurred in the Vioxx litigation. As you should already know, there have been a number of significant developments over the past decade. Some of the most important are set out below:

- May 1999—The FDA approved Vioxx for treating arthritis and acute pain.
- June 2000—Merck gave FDA results of a study known as VIGOR, in which patients taking Vioxx had five times the number of heart attacks as those taking an older pain reliever, naproxen, which Merck contended protected the heart.
- September 2001—FDA sent Merck a warning letter saying a promotional campaign “minimizes the potentially serious cardiovascular findings” and “misrepresents the safety profile of Vioxx.”
- September 30, 2004—Merck voluntarily withdrew Vioxx from the market after halting its own study that showed Vioxx, then being taken by about 2 million people, doubles risk of heart attack or stroke.
- August 19, 2005—In the first Vioxx product liability trial, a Texas jury awarded $253.4 million to the widow of Robert Ernst, who died in May 2001. Texas punitive damage caps later cut that to about $26 million.
- April 27, 2007—FDA rejected Merck’s request to market a successor to Vioxx, Arcoxia, two weeks after advisers voted 20-1 against approval.
- September 6, 2007—New Jersey’s Supreme Court rejected a potential class-action lawsuit brought on behalf of health insurance plans seeking to recoup what they paid for Vioxx.
- November 9, 2007—Merck agreed to a settlement requesting it to pay $4.85 billion to end about 50,000 lawsuits. It was one of the largest drug settlements ever. This was the settlement our firm was heavily involved in.
- February 9, 2010—Merck reached a proposed settlement to end state and federal lawsuits brought by shareholders who allege they lost billions of dollars collectively because Merck hid risks of Vioxx. The settlement

www.BeasleyAllen.com
denied a motion for summary judgment. That's exactly what happened at Merck. It became profits over safety without any doubt.

Source: Forbes

**PLAINTIFF CAN SHOW CAUSATION IN FOSAMAX CASE**

A ruling was handed down a few weeks back that is considered to be very important in the Fosamax litigation. A federal judge in New York denied a motion for summary judgment filed by Merck & Co. The judge ruled that the Plaintiff could show causation. The Plaintiff introduced sufficient evidence showing that the osteoporosis drug Fosamax was the cause of her bone disease, according to the judge. The case had been selected as the third of three bellwether trials in multidistrict products liability litigation concerning Fosamax, which was made by Merck & Co. As we reported previously, the first of these cases ended in a mistrial. Merck was granted summary judgment in the second case.

The Plaintiff in this case sued Merck for negligent failure to warn under Indiana law. She developed osteonecrosis of the jaw after taking Fosamax. Merck argued that the Plaintiff could not establish causation. But the court concluded that the Plaintiff's evidence was sufficient to show that the doctor could have chosen a different course of treatment for her had he been adequately warned. Moreover, the court decided that the scientific methodology used by the Plaintiff's expert—a "differential diagnosis"—was of sufficient reliability for him to render an opinion that Fosamax was the cause of the Plaintiff's injuries. The court's order reads:

Merck's objections to the soundness of [the expert's] opinion are noted, but they do not lead the court to conclude that there is such a large analytical gap between the medical records and his conclusion as to warrant exclusion.

This is a most significant development in the overall Fosamax litigation. We have always felt that causation shouldn't be a problem in these cases. Andy Birchfield and I will try a Fosamax case in Montgomery, Alabama, in May.

**NEW AVANDIA FINDINGS ARE SIGNIFICANT**

New findings that show users of the diabetes drug Avandia have more than double the risk of a heart attack compared with other diabetes drugs is most significant. A recent study by Harvard researchers, slated for publication by the American Diabetes Association, found twice the number of heart attacks among 26,375 diabetic patients studied between 2000 and 2006 who took Avandia, compared with diabetic patients in the same time period who took a different oral diabetic medication. A separate study sponsored by GlaxoSmithKline—the manufacturer of Avandia—and i3 Drug Safety, an independent drug safety firm, found that Avandia users have a 35% to 41% increased risk of heart attack over users of Actos, Avandia's main competitor.

The Harvard group analyzed clinical care data taken from the electronic medical records of patients at several Boston area hospitals and clinics associated with Harvard Medical School. All 26,375 patients' records reviewed included a diagnosis of diabetes and the use of at least one oral diabetic medication used between the years 2000 and 2006. The researchers then reviewed the records to find all patients who suffered "myocardial infarction" or heart attack. The incidence of heart attack was more than double for Avandia compared with its main competitor Actos.

The GlaxoSmithKline-i3 study analyzed health insurance data from July of 2000 through March of 2007 for two groups of 47,501 subjects each. One group used Avandia and the other Actos. The GlaxoSmithKline-i3 study is slated for publication in the journal Clinical Therapeutics. These two studies—and especially the one by the Harvard group—adds to the overwhelming evidence that Avandia causes heart attacks in an already vulnerable population.

About 13,000 former Avandia users who have suffered heart attacks and other serious injuries have filed suit against GlaxoSmithKline in state and federal courts. The lawsuits accuse GlaxoSmithKline of aggressively marketing Avandia and failing to warn patients about the increased risk of heart attacks, heart failure and strokes. More than 500 federal suits have been consolidated in multi-district litigation in the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia.

Sales of Avandia, introduced in 1999, have declined in the wake of studies showing an increased risk of heart attacks, heart failure, liver diseases, bone fractures, anemia and macular edema, a swelling of the retina that can cause blindness. The Food and Drug Administration requires Avandia to carry a "black box" warning about potential increased risk of heart attack, but has resisted efforts by health experts and the consumer group Public Citizen to pull the drug off the market.

Source: Lawyers USA Online

**BAYER MUST PAY $1.5 MILLION TO RICE FARMERS**

A federal court jury in Missouri has returned a verdict against the German conglomerate Bayer CropScience and ordered the company to pay $1.5 million to farmers in Arkansas and Mississippi whose rice seed was contaminated with a genetically altered strain. The verdict was the second against Bayer CropScience for losses sustained by farmers when an experimental
variety of rice that Bayer was testing infiltrated the farmers’ crops.

In December a jury awarded about $2 million to two Missouri farmers. There are three additional test cases scheduled to be tried this year involving farmers in Louisiana and Texas as well as a rice exporter. Thus far no punitive damages have been awarded by any of the jurors. The contamination slowed international orders for Arkansas rice, which in turn drove down the price. These will be the facts in all of the cases.

**Jury Awards $2.9 Million in MRI Death of a Child**

The family of a child in New York, who was killed in an MRI chamber, has settled its lawsuit for $2.9 million. Michael Colombini, who was six years old, was killed in 2001 at the Westchester Medical Center when an oxygen tank flew into the chamber, drawn in by the MRI’s 10-ton electromagnet. As previously reported, most metal items are banned from MRI rooms. In this case, the tank was inadvertently carried into the MRI room by a staffer. That mistake resulted in the tragic death of the child. The case was pending in a New York state court at the time it was settled.

We wrote about the dangers and risks related to MRI chambers in a previous issue of the **Report**. The family now feels they have received some justice even though it took some nine years to get there. The New York State Health Department fined the hospital $22,000 over the incident. Matt Gaier, a New York lawyer, represented the family and did a good job.

Source: Associated Press

**XII. BUSINESS LITIGATION**

**Liberty Mutual Goes to Court Over Alleged Plot To Steal Its Business**

The insurance giant Liberty Mutual Insurance has filed suit against nine former employees and their new employer, Bermuda-based Aspen Insurance Holdings. It’s alleged by Liberty Mutual in the Complaint that the Defendants plotted to steal professional liability insurance business from its Liberty International Underwriters unit. The suit, filed last month in New York County Supreme Court, alleges that the workers and Aspen “unlawfully conspired (and continue to conspire) to breach duties of loyalty to Liberty, raid Liberty’s business operations, and misappropriate Liberty’s trade secrets and goodwill.”

The suit alleges further that the plot was planned and executed by senior employees at Liberty International Underwriters while they were still employed by Liberty Mutual. It claims Aspen allegedly induced these employees to steal confidential information that helped Aspen build an infrastructure necessary to run a successful professional liability insurance operation in direct competition with Liberty Mutual. The suit seeks injunctive relief and unspecified actual and punitive monetary damages.

Liberty says it has been building its professional liability business since 2000 and that employees are required to abide by a code of business ethics and conduct to ensure the secrecy of its information. Liberty alleges the nine employees breached that code. The Complaint accuses Aspen of inducing, aiding and abetting a breach of loyalty owed by the employees. The other causes of action against Aspen and the nine former employees include unfair competition, tortious interference with contractual and business relationships, unjust enrichment, misappropriation of trade secrets and breach of contract.

It’s rather interesting that Liberty Mutual would resort to the court system as the place it would go to seek relief. I am used to hearing the tort reformers claiming that arbitration is the “quickest, cheapest and best” place for disputes to be resolved and that the courts are to be avoided. But, on second thought, they would only make that type statement when the claimant just happened to be a consumer. But many times when a large corporation is victimized, it heads straight to court leaving its “belief” in the myth of tort reform behind. That seems to be sort of inconsistent when you consider Corporate America consistently claims arbitration is the best way to resolve consumer disputes.

Source: Insurance Journal

**XIII. AN UPDATE ON SECURITIES LITIGATION**

**MoneyGram Settles Investor Securities Lawsuit For $80 Million**

Payment services provider MoneyGram International Inc. has agreed to settle a federal lawsuit filed by investors for $80 million. The class-action case, filed in Minneapolis, stems from subprime real estate investment losses in 2007 and 2008. The Plaintiffs contended their losses were hidden from investors by company executives. The agreement requires MoneyGram to pay $80 million in cash to the Plaintiffs with all but $20 million to be paid by the company’s insurer.

The lead Plaintiff in the case is the Oklahoma Teachers’ Retirement System, which through the teachers’ pension fund owned stock in the company. Shares had traded as high as $37 in mid-2006, but fell to below $1 a share by mid-2008. It was alleged in the lawsuit that the company eventually realized a $1.6 billion loss in its investment portfolio. The company’s executives hid from investors the losses it was incurring in its investment portfolio “because they knew investors would panic if they learned the truth,” according to the Plaintiffs.

The losses led the company to seek a financial bailout and in early 2008, private equity company Thomas H. Lee Partners invested more than $750 million in preferred shares in exchange for nearly 80% equity in the company. As part of the court settlement, the company agreed to change its business, corporate governance and internal controls. The company claims some changes have already been implemented as part of the recapitalization.
The settlement agreement is subject to notification of shareholders and final approval of the court.
Source: Los Angeles Times

**FEDERAL JURY FINDS VIVENDI LIABLE IN SHAREHOLDER LAWSUIT**

A federal court jury in New York has found that Paris-based Vivendi misled investors about the company’s financial health from 2000 to 2002. The jury found the company liable on all 57 counts of violating U.S. securities laws in a shareholder lawsuit. The case was one of several class-action lawsuits brought against Vivendi by shareholders. The jury did not award any damages in the case. That will be determined after shareholders file their individual claims.

As you may know, Vivendi had transformed itself from a water utility into a media and telecommunications giant, buying up Universal Studios and other properties that saddled the company with a crippling $77 billion debt. As a result, the company’s stock price dropped sharply.

Interestingly, Jean-Marie Messier, the company’s former chief executive, was not found liable by the jury. The jurors also found in favor of the company’s finance chief, Guillaume Hannezo. Messier testified that he did not mislead investors and that Vivendi’s stock price was hurt by various events beyond his control, including a tightening in debt markets. But in 2003, Vivendi agreed to pay $50 million to the Securities and Exchange Commission to settle fraud charges. Messier paid a $1 million fine.

In 2003, Vivendi sold the bulk of its Universal properties to General Electric Co., but retained 20% ownership in the newly-formed NBC Universal group. The company recently announced plans to sell its remaining stake in Universal Studios to General Electric for $5.8 billion. Vivendi also owns Universal Music Group, the world’s largest music company.
Source: Los Angeles Times

**FINANCIAL ELDERT ABUSE IS A GROWING PROBLEM**

*Investment News* and lawyersandsettlements.com reported recently that there is a growing trend of financial elder abuse being reported in stockbroker fraud arbitrations. This may well be the result of a combination of the bad economy and plain old greed. The elderly are preyed upon all too often. For example, the Financial Industry Regulatory Authority (FINRA) recently granted awards to two senior citizens defrauded by brokers.

One award went to a 95-year-old California investor, David Wolfson, who accused StockCross Financial Services, Inc., and two of its brokers of misconduct and self-dealing. According to Wolfson, who filed a Statement of Claim with FINRA in March, 2009, the brokers recommended unsuitable and risky investments, thereby putting Wolfson’s home at risk. Then, after bilking Wolfson of all his assets, including his cash reserves, insurance money, and home equity, the brokers discharged Wolfson as a client.

At arbitration, Wolfson won a total of $1.6 million, including $320,000 in compensatory damages, $960,000 in damages for elder abuse, $234,000 in legal fees and an additional $83,000 in other fees. StockCross was also ordered to pay $10,000 for not following discovery orders.

Also in 2009, FINRA announced that it was permanently barring a former New York broker after finding that the broker defrauded an elderly investor out of a significant portion of his life savings. The 90-year-old man died before his daughter brought the broker’s activities to FINRA’s attention. FINRA found that the broker induced the customer to invest approximately $500,000 between 2004 and 2006 in a speculative, development-stage company that did not have publicly-available financial information. Furthermore, FINRA found that the broker sold those securities without the knowledge of the two brokerage firms with which he was registered.

The elderly client reportedly paid between $3 and $4 per share for stock in the company, although FINRA found no reasonable grounds for valuing the stock at those prices. The broker netted approximately $76,000 in commissions for sale of the dubious investment. FINRA concluded that the broker “was found to have effected unsuitable investments for the customer given the customer’s age and financial condition.”

Sadly, preying on the elderly is not a new trend. In keeping with our firm’s commitment to “help those who need it most,” we welcome the opportunity to investigate instances of financial elder abuse. Our firm is equipped to handle cases involving allegations combining financial elder abuse and stockbroker fraud, which typically involve time consuming and expensive arbitrations. You can contact Archie Grubb, a lawyer in our firm, at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com. If you know of a senior citizen who is a victim of financial elder abuse at the hands of an unscrupulous broker or investment advisor, feel free to contact Archie.
Sources: *Investment News* and lawyersandsettlements.com

**XIV. INSURANCE AND FINANCE UPDATE**

**JURY RETURNS $37 MILLION VERDICT OVER CANCELED INSURANCE**

A jury in Colorado has ruled that Time Insurance Company, a health insurance company, must pay $37 million to a woman whose health insurance policy was canceled after she was seriously injured in a car accident. The insurance company said the woman had failed to disclose previous medical treatments, namely an emergency room visit for shortness of breath and treatment for uterine prolapse, when she took out the policy. You are probably wondering, “what in the world does that have to do with the auto accident?” The insurer refused to cover $185,000 in medical bills incurred as a result of the accident and then canceled the woman’s policy.

The Plaintiff, a former preschool teacher, now supports her four children on Social Security disability payments. Time Insurance Co., which also
does duties, however, remained substantially duties, according to the suit.

During overtime, AT&T changed the name/title the same as the old First Level Manager of the bottom of a seven-tier management layer. Without receiving overtime pay. The actual job duties, however, remained substantially the same as the old First Level Manager duties, according to the suit.

The lawsuit points out that the workers filing the lawsuit were at the bottom of a seven-tier management hierarchy and that they performed very few managerial duties. In addition to having limited supervisory roles, these AT&T workers were occasionally required to work up to 100 hours without receiving any overtime pay.

In an effort to help workers who have been wrongly denied their overtime compensation, our firm routinely pursues class action litigation under the Fair Labor Standards Act to recover unpaid overtime wages. For more information on this subject you can contact Larry Golston or Lance Gould at 1-800-898-2034 or by email at Larry.Golson@beasleyallen.com or Lance.Gould@beasleyallen.com. You can also visit our firms’ website at www.beasleyallen.com.

**AT&T FACES $1 BILLION OVERTIME LAWSUIT**

Approximately 5,000 former BellSouth employees have filed two class action lawsuits against AT&T seeking $1 billion in unpaid overtime compensation. According to the allegations in the Complaint, BellSouth originally paid workers called “First Level Managers,” overtime before AT&T took over BellSouth a few years ago. The lawsuit alleges that, in order to avoid paying overtime, AT&T changed the name/title of the First Level Managers and classified these workers as exempt from receiving overtime pay. The actual job duties, however, remained substantially the same as the old First Level Manager duties, according to the suit.

The lawsuit points out that the workers filing the lawsuit were at the bottom of a seven-tier management hierarchy and that they performed very few managerial duties. In addition to having limited supervisory roles, these AT&T workers were occasionally required to work up to 100 hours without receiving any overtime pay.

In an effort to help workers who have been wrongly denied their overtime compensation, our firm routinely pursues class action litigation under the Fair Labor Standards Act to recover unpaid overtime wages. For more information on this subject you can contact Larry Golston or Lance Gould at 1-800-898-2034 or by email at Larry.Golson@beasleyallen.com or Lance.Gould@beasleyallen.com. You can also visit our firms’ website at www.beasleyallen.com.

**STAPLES OVERTIME SUITS SETTLED**

Staples Inc., the Framingham-based office supply retailer, has reached a $42 million settlement in several class-action lawsuits involving allegations that the company failed to pay its assistant store managers overtime to which they were entitled. A court must approve the settlement, which covers more than 5,500 current and former Staples employees. The settlement resolves claims dating back as far as 2002 and includes an agreement by Staples to drop an appeal of a verdict against it last year in New Jersey.

In one case, a former employee, Ronald Stillman of New Jersey, was not compensated for working 50-hour weeks as an assistant sales manager at Staples. The man’s work “required little skill” and no “managerial responsibilities.” The Plaintiffs alleged that they didn’t have the duties and responsibilities of management and were entitled to overtime. This is generally the testimony by persons who are employed by companies and given titles that have nothing to do with management duties. It’s obvious that those employers are simply trying to avoid paying overtime to employees who are entitled to receive it under the law.

**FEDERAL JUDGE APPROVES SETTLEMENT OVER SEC CHARGES**

A federal judge has reluctantly approved a $150 million settlement between the Securities and Exchange Commission and Bank of America over civil charges accusing the bank of misleading shareholders when it acquired Merrill Lynch. U.S. District Court Judge Jed Rakoff approved the agreement after the two sides agreed to make changes in their original agreement. The judge said his approval depended on the parties formally ratifying the amended agreement. The dispute had been scheduled for trial when the settlement was reached. As you may recall, the judge had earlier rejected a $33 million settlement stemming from the early 2009 acquisition, calling it a breach of “justice and morality.” It’s interesting to note that the judge called the recent settlement “half-baked justice at best.”

Sources: Associated Press and USA Today

**XVI. PREDATORY LENDING**

**STATE OF FLORIDA SETTLES WITH COUNTRYWIDE**

The state of Florida has settled its lawsuit against Countrywide Financial. Under terms of the settlement, more than 2,700 Floridians will receive monetary relief. As part of the settlement, Countrywide is offering foreclosure relief payments to eligible borrowers who returned valid and timely claims forms. The settlement will result in more than $16.9 million being paid out.

In 2008, Florida sued Countrywide, one of the largest mortgage companies in the country, for deceptive and unfair trade practices. It was alleged that the company put borrowers into mortgages they couldn’t afford. Countrywide made loans with misleading rates and penalties. For information about the settlement, you can call Rust Consulting 866-411-6987, or go to www.countrywidesettlementinfo.com. It’s good to see state Attorneys General
who are not afraid to go after those in Corporate America who lie, cheat and steal in their dealings with consumers.

Source: MiamiHerald.com

AMERIQUEST SETTLES 29 CLASS ACTION LAWSUITS

The Ameriquest group of subprime lenders has agreed to settle 29 class-action lawsuits alleging predatory lending. The group has pledged $22 million to repay those aggrieved borrowers, which is merely a fraction of payments they made in previous suits before Ameriquest shut down as the mortgage meltdown began. This settlement potentially affects 712,000 borrowers across the United States.

Ameriquest, based in Orange County, California, was once the nation's largest subprime lender. Many of the loans included in the settlement were from Argent Mortgage Co., an arm that funded borrowers through mortgage brokers. Also involved in this latest settlement were AMC Mortgage Services Inc., Bedford Home Loans Inc., Town & Country Credit Corp., Olympus Mortgage Co. and Ameriquest Mortgage itself. The settlement proposal, filed in U.S. District Court in Chicago, bars all parties from discussing it. But the proposed settlement terms were spelled out in the letters recently mailed to borrowers and online at https://ameriquestmdsettlement.com.

The agreement covers loans dating back to December 14, 2001, and sorts claims into five categories, including hefty upfront charges, loans with variable rates when fixed rates were promised, and interest rates that were higher than promised by nine-tenths of a percentage point or more. Payments to borrowers will differ depending on the relative strengths and potential damages of each type of claim, and the proposal excludes borrowers who accepted previous individual and class-action settlements.

Those previous individual and class-action settlements include Ameriquest's 2006 payment of $325 million to end an investigation by 49 state Attorneys General who alleged it had deceived borrowers, pressured appraisers to overstate home values and falsified loan documents; and a San Mateo County private-party lawsuit on behalf of Alabama, Alaska, California, and Texas, borrowers that the company settled for $50 million in 2005. The settlement by the Attorneys General provided an average of more than $900 for the borrowers who accepted it. By contrast, the current class-action settlement, which must be approved by a federal judge, works out to a bit more than $30 for each potential class member, and only $20 after administrative costs and legal fees.

The borrowers had until February 22nd to opt out of the settlement if they wanted to pursue their own lawsuits. To receive settlement funds, borrowers must fill out and submit a claim form no later than the 9th of this month. Those who have neither opted out or submitted a claim form will receive no settlement money. They will have also given up all rights to file suit and seek damages. If you need additional information on this type litigation, you can contact Bill Robertson in our firm at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com.

Source: Los Angeles Times

XVII. PREMISES LIABILITY UPDATE

PLANTATION OAKS SETTLEMENT

Our firm settled a wrongful death case against Plantation Oaks, a large commercial hunting resort outside of Tuskegee, Alabama. Our client’s wife was killed while they were hunting on a guided hunt run by the Defendants. In January 2006, our client John Tidwell and his wife, Lisa, were on a paid hunt at Plantation Oaks. Their hunting party included eight other hunters from around the South. Before the hunt that morning, severe weather was forecast to move through Macon County around noon. The forecast included winds of up to 70 mph, thunderstorms and dangerous lightning and even tornadoes. Lisa Tidwell, and several of the other hunters, were concerned about hunting that morning because of the threat of severe weather. In fact, Mrs. Tidwell decided not to hunt. But, the Defendants assured Mrs. Tidwell and the other concerned hunters that Plantation Oaks’ personnel would monitor the weather, stay close to the hunters and get them out of the woods before any dangerous weather struck. Because of the Defendants’ assurances concerning her safety, Mrs. Tidwell agreed to hunt that day.

Mr. and Mrs. Tidwell were taken to the hunting area, which was about 25 minutes away from the lodge and shelter, by the Defendants, and dropped off before daylight. At 7:10 a.m. the National Weather Service issued a severe weather watch for Macon County which predicted that conditions were favorable for severe thunderstorms, tornadoes, wind gust up to 70 mph and “dangerous” lightning. By 9:00 a.m., the hunters began to hear thunder and see lightning and tornadoes. By 9:15 a.m., the hunt was over. The hunters were out of their stands and heading to their designated pick-up area expecting Plantation Oaks’ personnel to be there. While the hunters were all at their designated pickup spots by 9:45 a.m., the Plantation Oaks personnel were not there as promised. The personnel were not even close to the hunting area as they had assured the hunters, including Mrs. Tidwell, that they would be.

The Defendants’ personnel were actually 45 minutes away on another tract of hunting land. They were actually performing maintenance work for the next group of hunters who were scheduled to come the following week. Meanwhile, the very dangerous weather struck the hunting grounds just before 10:00 a.m. According to the hunters, the storm was one of the most furious they had witnessed. Extremely intense and dangerous lightning struck all around. The hunters were huddled together in the woods under bushes and trees and remained in the very dangerous weather for approximately 30 minutes fearing for their safety and for their lives.

Expert testimony established that at approximately 10:20 a.m., Lisa Tidwell was killed when a bolt of lightning struck in the area where she was waiting for the Defendant’s personnel.

The personnel for the resort arrived at the hunting area at the same time 10:20 a.m.- and found Lisa dead ten minutes later. Had the personnel done what was reasonable and what they had promised, Mrs. Tidwell would have been out of the woods long before the storm struck.

While the danger and destruction caused by tornadoes and hurricanes is well acknowledged, the danger posed by lightning is often overlooked. Records show that lightning kills more people each year than tornadoes and hurricanes combined. The Defendants’ own expert in this case acknowledged that companies that organize outdoor events should always have a plan in place for dangerous weather, including lightning. He further admitted that organizations like this resort must get its customers out of the elements during dangerous weather since statistics prove there is no safe place outside in a lightning storm.

Plantation Oaks failed to have any plan in place to protect its paying customers from dangerous weather. It was significant that—even without a plan—the Defendants actually promised Mrs. Tidwell that they would stay close to the hunting area, monitor the weather and be there to pick her up if the dangerous weather approached. Mrs. Tidwell would never have hunted that day but for those promises. Tragically, Plantation Oaks took none of the steps required of it and which would have easily prevented Mrs. Tidwell’s death. As a result of this negligence, John Tidwell lost his faithful wife and the mother of their two children.

The case, which was pending in the Circuit Court of Macon County, was settled just before jury selection started. The amount of the settlement is confidential. Rick Morrison and Labarron Boone from our firm and Walter McGowin from Tuskegee represented Mr. Tidwell in this case. While the amount of the settlement is confidential, we are hopeful that the owners and operators of Plantation Oaks learned their lesson.

**SAFETY RULES ISSUED ON NORTH CAROLINA PLANT GAS EXPLOSION**

The U.S. Chemical Safety Board has recommended that national fuel gas codes be changed to improve safety when gas pipes are being purged of air during maintenance or installation of new piping. The federal recommendations came after a probe of the deadly explosion at a ConAgra Slim Jim snack factory in North Carolina last year.

The draft recommendations urge the National Fire Protection Association (NFPA), the American Gas Association (AGA), and the International Code Council (ICC) to strengthen the national fuel gas code provisions on purging. If adopted, the guidelines would require that purged gases shall be vented “to a safe location outdoors, away from personnel and ignition sources.” In cases where outdoor venting is not possible, companies would be required to seek a variance from local officials before purging gas indoors, including approval of a risk evaluation and hazard control plan. The recommendation would also require the use of combustible gas detectors to continuously monitor gas concentrations; the training of personnel about the problems of odor fade and odor fatigue; and warnings against the use of odor alone for detecting releases of fuel gases.

The June 9, 2009, natural gas explosion at the ConAgra Slim Jim production facility in Garner, North Carolina, caused four deaths and three critical life-threatening burn injuries. There were other injuries that sent a total of 67 people to the hospital. CSB investigators determined that the catastrophic explosion resulted from the accumulation of significant amounts of natural gas that had been purged indoors from a new 120-foot length of pipe during the startup of a new water heater in the plant that made Slim Jims, a popular beef-jerky product. During pipe purging, workers feed pressurized gas into a pipe in order to displace air or other gases so that only pure fuel gas remains in the piping when it is connected to an appliance such as a water heater or boiler. Interestingly, the Chemical Safety Board’s vote was 2 to 1. There are currently two board vacancies that need to be filled.

Under current national safety codes, developed by a committee convened by the National Fire Protection Association and the American Gas Association, gas purges “shall not be discharged into confined spaces or areas where there are sources of ignition unless precautions are taken.” North Carolina has since voted to enact emergency changes to its code, adopting the new safety suggestions.

A settlement was reached in December between ConAgra and the state Labor Department over the Slim Jim plant accident. It was agreed that a contractor released a mixture of pressurized gas and air into an enclosed room while installing a natural gas-fired water heater. ConAgra agreed to pay $106,000 for workplace safety violations. CSB said it has examined several other similar accidents in which gas was purged indoors and not detected.

CSB investigations supervisor Donald Holmstrom said:

*We have determined that workers cannot rely on their sense of smell to warn them of danger; in part because people become desensitized to the odorant added to natural gas and propane. Gas detectors must be used.*

Other incidents examined by the CSB include: a 1999 explosion at a Ford power plant in Dearborn, Michigan, killing six, injuring 38, and causing a $1 billion property loss; a 2008 explosion at a Hilton Hotel under construction in San Diego, California, that injured 14 people; a 2005 school explosion in Porterville, California, burning two plumbers; and an explosion at a hotel in Cheyenne, Wyoming, in 2007, severely burning two plumbers. It will be interesting to see if the recommendations are followed.

Source: Insurance Journal

**FIVE WORKERS KILLED IN CONNECTICUT ENERGY PLANT EXPLOSION**

An explosion at an energy plant in Central Connecticut that was under-construction has killed five workers and injured 12 others. This disaster prompted a major emergency response by local and state officials. Approxi-
mately 50 construction workers were inside the building on February 7th shortly before noon when it’s believed that a leak in one of the lines at the gas-fired energy plant ignited, blowing apart much of the structure. Authorities have launched a criminal investigation into the cause of the explosion.

The plant, located in Middletown, was being built by Kleen Energy Systems, which broke ground on the project nearly two years ago. It was scheduled to go online in June. Reports were that the blast could be felt miles away. The state dispatched a four-person Behavioral Health Team to help provide counseling for the families, workers and others affected. The powerful explosion blew apart large swaths of the nearly completed 620-megawatt Kleen Energy plant as workers for the construction company, O&G Industries Inc., were purging a gas line. The blast tore apart sheet metal that covered the plant’s sides and left parts of the complex so unstable that rescuers were unable to work the next day because of the danger of collapse. Rescue crews were unable to get to all areas of the plant for a considerable period of time. But authorities have said that everyone who was assigned to work at the plant at the time of the explosion has been accounted for.

Workers for O&G Industries, a Torrington-based general contractor, were clearing the gas lines of air when the explosion happened just outside the building, between two of the generators. During this procedure, equipment such as welding machines and electricity should be shut off. Officials don’t know if all equipment was shut down before the blast. Investigators will look into whether any equipment was on or whether there was anything at the scene that could have ignited the gas.

The Board’s investigators will determine which federal safety standards apply to the Kleen Energy plant. The fuel gas code has an exemption for power plants. Safety board investigators have done extensive work on the issue of gas line purging since the explosion last year at the Slim Jim factory in North Carolina which killed four people. The investigators have identified explosions at other sites caused by workers who were unsafely venting gas lines inside buildings. 

Source: Insurance Journal

GAS EXPLOSION LAWSUIT FILED

A lawsuit has been filed against Dominion East Ohio Gas Co. and an investment company arising out of a home explosion that occurred in January, damaging 57 buildings on Cleveland’s West Side. The lawsuit, filed in state court, alleges that Dominion and the California-based company, EZ Access Funding, are to blame for the explosion. It’s alleged that EZ Access shirked its responsibility for maintaining a vacant two-story home on West 83rd Street. The house had been vacant since at least last summer, according to the lawsuit. It’s alleged that Dominion failed to make sure gas to the house was shut off when residents complained of the odor of gas four days before the blast. Fortunately, no persons were killed or injured by the explosion. But there was considerable property damage done.

Source: The Plain Dealer

BP TO PAY $100 MILLION SETTLEMENT IN TOXIC FUMES LAWSUIT

A jury in Texas has found in favor of ten Plaintiffs in a lawsuit against BP North America Inc. The workers who filed the suit claimed that the oil company released toxic chemicals into the air around its refinery in Texas City. The jury awarded a total of $100 million by the verdict. In the case, Garner v. BP Products North America, Inc., the Plaintiffs were among dozens of employees treated for sore throats and dizziness associated with exposure to the toxic chemicals in March and April, 2009. As we have reported, BP’s refinery had a poor safety record, including a 2005 explosion that killed 15 people and injured 170. That is a reality that can’t be disputed. The Plaintiffs contended that BP failed to take adequate steps to remedy the problems caused by exposure to the toxic chemicals.

Not surprisingly, BP denied the Plaintiffs’ allegations. But, the Texas jury found the oil and gas giant at fault, awarding each of the ten Plaintiffs $10 million in punitive damages, and between $5,000 and $244,000 per person in compensatory damages for medical expenses, lost earnings, and pain and suffering. Hopefully, BP has learned a lesson that will result in safety becoming a top priority for the company.

Source: VerdictSearch Texas

XVIII.
TRANSPORTATION

AN UPDATE ON HEAVY TRUCK LITIGATION

Our firm has handled several cases arising out of highway crashes involving heavy trucks. In each case a death or serious injury occurred and in many of the cases a design defect in the truck was to blame. In one such case, our client’s husband was driving a log truck for a trucking company when the passenger side wheels of his truck went off the side of the road. Before he could ease the truck back onto the road, the truck flipped over onto the passenger side. When the vehicle turned over, part of the truck’s load slid forward, hitting the piece of metal that the manufacturer called a “cab guard.” The so-called cab guard failed, allowing the few logs that slid forward to press against the back of the cab. The thin metal cab guard was in no way capable of withstanding the forces of a load of logs. When it failed, there was nearly three feet of intrusion into the occupant compartment and the driver was killed as a result. Unfortunately, this is all too common an occurrence in heavy trucks, and it’s not just the cab guard that is often defective. Defective roof structures and defective seatbelts are also common problems in heavy trucks.

Statistical evidence shows that nearly 1,000 heavy truck occupants are killed in crashes every year. In the 1980s, the National Highway Traffic Safety Administration (NHTSA) sponsored a number of research papers that evaluated statistical information related to heavy truck crashes in the United States. The reports consistently found that the primary contributing factor to heavy

truck occupant fatalities was injury caused by ejection and rollover which involved severe cab deformation and occupant entrapment. The same reports consistently found that the best way to reduce heavy truck occupant fatalities was to enhance the structural integrity of the cabs, and improve methods to reduce occupant impacts with the interior surfaces of the vehicles. Despite this overwhelming evidence, heavy truck crashworthiness and roof strength is not regulated by the federal government. In contrast, passenger car manufacturers are required to pass minimum roof strength and crashworthiness standards found in the Federal Motor Vehicle Safety Standards.

Although the crashworthiness of heavy truck cabs is not regulated in the United States, there have been foreign standards in place for years. Heavy trucks sold in foreign countries are required to meet a variety of crashworthiness and roof strength standards including the Swedish standard and the ECE Rule 29 standard. These foreign standards require cab strength testing by static and dynamic loads. These particular tests require impacts to the roof, rear of the cab, front of the cab and the A pillars of the cab.

Apparently, in response to the overwhelming research data, American heavy truck manufacturers undertook the “Heavy Truck Crashworthiness Study” in conjunction with the Society of Automotive Engineers (SAE) during the late 1990s. This study culminated in an SAE recommended practice for testing the strength of heavy truck cabs. Unfortunately, the test does not simulate actual forces that would be imparted into a heavy truck cab that rolled over while travelling down the highway. As a result, heavy trucks manufactured in the United States still provide unsafe cabs of thin aluminum with fiberglass roofs. Therefore, truck occupant fatalities continue to occur in the event of rollovers. It is very difficult for a heavy truck driver to survive a wreck when the roof and cab structure disintegrate around him during a wreck and fail to maintain reasonable occupant survival space.

With such bleak statistics and an almost nonexistent regulatory history, it’s no wonder that heavy truck crashworthiness is an emerging area of product liability litigation. Product liability cases are often overlooked in single vehicle accidents—especially in accidents involving large trucks. However, theories of defect apply equally to 18-wheelers as they do to passenger cars. For example, defective roofs and seatbelts cause injuries in 18-wheeler truck accidents as well as passenger car wrecks.

So, it is important to keep your eyes open while investigating a heavy truck accident so that you don’t miss important product liability issues such as defective cab guards, roof structures and seatbelts. If you need additional information relating to this subject, contact Ben Baker (Ben.Baker@beasleyallen.com), Chris Glover (Chris.Glover@beasleyallen.com) or Rick Morrison (Rick.Morrison@beasleyallen.com) at 800-898-2054.

**Commercial Carrier Settlement**

Our firm recently settled a trucking case that was turned down by two other law firms. Apparently, those law firms turned the case down because the Uniform Traffic Accident Report indicated that our client was the primary contributing driver in the wreck. In other words, based on the report, it would appear that our client was at fault. However, after a thorough investigation, we determined that the law enforcement officer who handled the wreck did not thoroughly investigate the accident. The officer failed to interview our client, who was taken to the local hospital emergency room. Nor did the investigating officer interview the other motorist who was involved in the wreck.

After we completed our initial investigation, we determined that a truck driver had struck our client’s truck and trailer as he was traveling in the right hand lane of I-85 with his vehicle’s emergency flashers operating. At the time, our client was traveling at approximately 45 to 50 miles per hour behind another vehicle that was having mechanical problems and was attempting to make it to the next exit to have repairs made. The two vehicles had been traveling in the right hand lane for over 1000 feet that night before our client was struck.

After completing all of the pretrial discovery in the case, we determined further that the Texas trucking company hired a driver with a questionable driving history. While he was driving for the Texas company during the 18 months prior to the wreck, the driver accumulated three more serious moving violations. It was clear that the company not only failed to check out the driver’s prior history, but also failed to properly supervise the driver after hiring him, and failed to audit his logs. We were able to find over fifteen to twenty log violations by the driver in the five months prior to the wreck involving our client.

At first glance one could see how many lawyers would pass on this case after reviewing the investigating officer’s report. Only through a thorough pre-suit investigation and pretrial discovery process, were we able to determine how the wreck actually occurred. We found that our client was not at fault. We also learned that the Defendant trucking company completely failed to adhere to the Federal Motor Carrier Safety Regulations that govern its conduct. While most motor vehicle accidents are thoroughly investigated by the investigating officers, this one seems to have slipped through the cracks. The case was settled on a satisfactory basis for our client by Mike Crow of our firm. Mike and his support staff did an outstanding job investigating and working up this case.

**Train Engineer Awarded $3.18 Million In Jury Trial**

A jury in St. Louis County, Missouri, recently awarded $3.18 million to John Walsh, a locomotive engineer, who was injured when the train he was working on was struck by another train. The Plaintiff claimed Burlington Northern Santa Fe Railway Company (BNSF) was negligent in failing to provide safe working conditions. The employees of the train coupling into the train the Plaintiff was working on failed to call ahead and did not stop—violations of BNSF safety protocol.
Because safety protocols were violated, liability was essentially not an issue in this case. Lawyers for BNSF contended that the Plaintiff could have radioed the other train to let them know that he was still on the train. But apparently that was not the typical practice. As a result, the issue for the jury really came down to damages. Due to the Plaintiff’s back injury, he is no longer able to work for the railroad. He was 34 at the time of the accident. Roger Denton, a lawyer with the Missouri firm of Schlichter, Bogard & Denton, represented the Plaintiff and did a very good job.

Source: Lawyers USA Online

**Alabama State Troopers Making More Bus Inspections**

Alabama state troopers have joined a nationwide campaign to make passenger buses safer by focusing on bus drivers, who according to federal officials, caused 60% of the fatal motorcoach crashes from 1998 to 2008. During 2008, 26 people were injured in 182 motorcoach crashes in Alabama. There were also 156 crashes with property damage only, according to statistics from the Alabama Department of Public Safety. Captain Jack Clark, who heads up commercial vehicle inspections for the troopers, plans to increase inspections of passenger buses and drivers from 145 in the 2009 fiscal year to 271 this year. Bus inspectors are using strike forces to saturate tourist spots to inspect motorcoaches and their drivers with an eye at catching tired drivers and parking unsafe buses.

According to DPS, there has been a large increase in bus traffic in Alabama over the past two years. With an increase in the number of trips being made, fatigue among bus drivers is a chief concern of inspectors. The inspectors say some drivers may be gambling at casinos in Mississippi where they dropped their passengers instead of resting. After passengers unload, drivers can do what they want and are not required to rest.

Drivers are supposed to drive a maximum of ten hours a day before resting for eight hours. The bigger issue is with the companies where drivers don’t keep log books of time spent driving and resting. Even those who keep log books may have drivers who don’t record accurate information. In actual litigation, we have found that driver fatigue is a major factor in many bus accidents.

It’s very important to make sure companies that go into the passenger bus business are competent and qualified. In Alabama, anyone can go into the passenger bus business by applying to the Alabama Public Service Commission for a license to operate within the state. But to get an interstate bus business license a person must apply for USDOT and FMSCA numbers, pass a commercial driver license test and incorporate the company. New bus company owners apply for a safety audit from DPS and FMSCA to be fully qualified to operate. The USDOT appears to be working hard to increase bus passenger safety. That’s certainly a good thing. It’s also good that Alabama is moving in the right direction in that area of concern. Bus passengers are entitled to know that both the state and federal government are working to make sure that bus trips are safe trips.

Source: Birmingham News

**Repeat-Drunk Drivers Are A Safety Risk**

In 2008 about 12,000 Americans were killed in drunk driving vehicle crashes. Over 4,000 of the total fatalities involved repeat-offender drunk drivers. Unfortunately, Alabama is one of the states that fails to adequately prevent first-time offenders from becoming repeat offenders. That can and should be remedied. Legislative bodies should pass laws that address this problem, including:

- the mandatory use of ignition interlocks for all drunk driving offenders;
- the utilization of the strictest prevention measures;
- tough enforcement of existing penalties for drunk driving; and
- each state becoming a leader in eliminating to the extent possible drunk driving on our highways.

Since the legislative sessions in many states start early this year, it’s essential that governors and legislators be contacted and asked to support measures designed to eliminate drunk driving. The carnage on our highways caused by drunk drivers must stop.

**$40 Million Awarded In Teen’s Death Caused By Drunk Driver**

A jury in Pima County, Arizona, has awarded $40 million to the parents of a Tucson boy killed by a drunk driver. City taxpayers will be responsible for a third of that total, with the driver and Chuy’s restaurant sharing responsibility for the rest. Jose Rincon Jr., 14, and a friend were riding their bicycles in January 2008, when Glenda Rumsey, a drunk driver, struck both teens with her car. Young Rincon died from his injuries. Although the city was found to be only one-third responsible, its share of more than $13 million will be the largest individual judgment ever against the city.

Ms. Rumsey, whose blood-alcohol level was 0.249 two hours after the crash, was sentenced to 14 years in prison last year. Chuy’s, the restaurant where she had been drinking, had already settled with the family for an undisclosed amount. The city was found to be partially at fault because of the poor design of the road. The city says it will appeal.

During the trial, jurors heard that a city engineer had abandoned plans to add five feet of asphalt to the roadway during an improvement project. This was said to create a large offset in the lanes on either side. As a result, the drunk driver ended up in the bike lane when her lane ended and she tried to merge. The lawyer for Ms. Rumsey agreed that his client and Chuy’s were largely responsible for the crash, but he, too, blamed the city because of the road design. The city contended that its engineers did nothing wrong. The city blamed Ms. Rumsey, saying roads can’t be designed to be drunken-driver-proof.

This, like most drunk-driver cases, was an extremely sad case. The victim, a straight-A student, died hours after he took entrance exams for high school. He was known to be a kind youngster who was an exceptional musician and
tented athlete. Ronald Mercola, a lawyer with the Mercola Law Firm in Tucson, Arizona, represented the Plaintiff and did a very good job.

Source: Arizona Daily Star

$18.5 MILLION AWARDED IN DRUNK DRIVING CASE

A Colorado man was awarded $18.5 million for catastrophic injuries he suffered when a driver, drunk on alcohol and high on marijuana, left a mountain road and slammed into him as he was changing the oil in his wife’s car in their own driveway. District Court Judge Russell Granger, in a bench trial, assessed the award against Kevin Ruszkowski, the 24-year-old driver; Randall Guy, the owner of the Jeep; and Guy’s son, Justin Guy, 20, who had allowed Ruszkowski to drive the vehicle. Paul Savage, 46, who was injured, was head waiter at the Alpenglow Stube at Keystone at the time. Ruszkowski had no license because his driving privileges had either been suspended or revoked for prior driving misconduct.

Judge Granger said he was awarding $1 million in punitive damages against Ruszkowski both for “driving the Jeep while drinking and smoking marijuana and for fleeing the scene of a collision amid the screams of his victims.” The judge also awarded $1 million against Justin Guy, who was a passenger in the jeep, who had permitted Ruszkowski to drive his Jeep despite knowing that he had been drinking and smoking marijuana all day. Judge Granger noted that Savage is now in a wheelchair and will never walk again except “more than a few heavily assisted steps at a time” and is a “functional paraplegic.” Savage has had more than $4.3 million in medical bills and is expected to have another $4.9 million the rest of his life.

On the day of the accident, the judge said Ruszkowski and Justin Guy, both Denver residents, had taken Guy’s Jeep to the mountains and were driving on Virginia Canyon Road near Idaho Springs. Ruszkowski was so drunk and high on marijuana that he ran off the road once and was warned by a passerby that they shouldn’t be on the road driving drunk. After pulling out of the ditch, according to the judge’s order, Ruszkowski, while speeding, lost control of the vehicle and slammed into Mr. Savage, crushing him. The Jeep, which became airborne, then crashed into the Savage’s house. Both Ruszkowski and Guy fled the scene, but were apprehended a short time later. This case is a classic example of the tragic results that accompany drinking and driving. The judge in this case is to be commended for his order. Jim Chalat, a lawyer from Denver, Colorado, represented the Plaintiff and did a very good job.

Source: Denver Post

XIX. NURSING HOME UPDATE

Nursing Home Litigation

Our firm continues to represent families in several states in nursing home litigation. In each case, a family lost a loved one while that person was a resident at a nursing home. Currently, much of what we do is in states other than Alabama. We have seen some pretty tragic incidents that gave rise to these cases. Unfortunately, we are seeing lots of “Shell Corporations” being set up by the real owners of the facilities in attempts to avoid liability. When a death occurs that is caused by the facility, bankruptcy is filed in many cases. State legislative bodies should correct that type situation and one way to do it is to require an adequate amount of liability insurance before a facility can operate. This sort of thing is why it’s important for a family to investigate a nursing home before placing a family member there.

Finding A Good And Safe Nursing Home Is Essential

Lawyers in our firm get lots of calls from concerned family members who have questions about how to choose the right nursing home for a loved one. This is an extremely tough decision, and it often has to be made on short notice. We have previously mentioned the website www.medicare.gov/HCMPARE. This is an excellent tool to find and compare nursing homes across the country. The website contains the newly implemented Five-Star Quality Rating System for nursing homes. The Five-Star System provides nursing home ratings based upon three sources:

- health inspections;
- staffing levels; and
- quality measures.

The system then provides a star rating for each category and a combined score in the form of an overall rating. The website is also extremely helpful in that you can identify nursing homes by state, county, or city. You can research the Five-Star Quality Rating for all nursing homes in a particular geographic area.

Once a person has those ratings, they can conduct their own in-person inspection of the nursing home. One can actually print out a “Nursing Home Checklist” which provides information about what to look for and what questions to ask when visiting a prospective nursing home. Along with this information, persons seeking a good, safe nursing home should be able to make an informed decision about the level of care offered by a facility.

JP Sawyer, one of the lawyers in our firm’s Personal Injury/Product Liability Section, handles nursing home litigation for our firm. I, along with other lawyers from the section, work with JP on these cases. Over the past several years, we have seen some real horror stories involving the care of nursing home residents. We believe strongly that nursing homes should be held accountable when a resident is either mistreated or receives substandard care and treatment. If you want additional information on this subject, you can contact JP Sawyer at 800-898-2034 or by email at JP.Sawyer@beasleyallen.com.
XX.
HEALTHCARE
ISSUES

THE TOXIC SUBSTANCES CONTROL ACT SHOULD BE AMENDED

It’s widely believed that the Toxic Substances Control Act (TSCA) of 1976 does not adequately protect Americans from toxic chemicals. In the 34 years since TSCA was enacted, the EPA has been able to require testing on just 200 of the more than 80,000 chemicals produced and used in the U.S., and just five chemicals have been regulated under this law. Environmental Protection Agency Administrator Lisa Jackson has asked Congress to provide her agency with better chemical management tools for safeguarding our nation’s health.

Much has changed since TSCA became law more than 30 years ago. Scientists have developed a more refined understanding of how some chemicals can cause and contribute to serious illness, including cancer, reproductive and developmental disorders, neurologic diseases, and asthma. The Safer Chemicals, Healthy Families coalition believes that, by reforming TSCA, the following can happen:

- our exposure to toxic chemicals can be reduced;
- we can improve our nation’s health; and
- we can lower the cost of health care.

More than 30 years of environmental health studies have led to a growing consensus that chemicals are playing a role in the incidence and prevalence of many diseases and disorders in our country, including:

- Leukemia, brain cancer, and other childhood cancers, which have increased by more than 20% since 1975.
- Breast cancer, which went up by 40% between 1973 and 1998. While breast cancer rates have declined since 2003, a woman’s lifetime risk of breast cancer is now one in eight, up from one in ten in 1973.
- Asthma, which approximately doubled in prevalence between 1980 and 1995 and has stayed at the elevated rate.
- Difficulty in conceiving and maintaining a pregnancy affected 40% more women in 2002 than in 1982. The incidence of reported difficulty has almost doubled in younger women, ages 18–25.
- The birth defect resulting in undescended testes, which has increased 200% between 1970 and 1993.
- Autism, the diagnosis of which has increased more than ten times in the last 15 years.

According to the U.S. Centers for Disease Control and Prevention (CDC), 133 million people in the U.S.—almost half of all Americans—are now living with these and other chronic diseases and conditions, which now account for 70% of deaths and 75% of U.S. health care costs. Estimates of the proportion of the disease burden that can be attributed to chemicals vary widely, ranging from 1% of all disease to 5% of childhood cancer to 10% of diabetes, Parkinson’s disease, and neurodevelopmental deficits to 30% of childhood asthma. Whatever the actual contribution, effective chemical policy reform will incorporate the last 30 years of science to reduce the chemical exposures that contribute to the rising incidence of chronic disease. And any decline in the incidence of chronic diseases can also be expected to bring health care cost savings. Even if chemical policy reform leads to reductions in toxic chemical exposures that translate into just a tenth of 1% reduction of health care costs, it would save the U.S. health care system an estimated $5 billion every year.

The United States currently spends over $7,000 per person per year directly on health care. This sum does not include the many other kinds of costs, such as the costs of raising a child with a severe learning disability or coping with a young mother’s breast cancer diagnosis. Chemical policy reform holds the promise of reducing the economic, social and personal costs of chronic disease by creating a more healthy future for all Americans.

Source: Healthreport.saferchemicals.org

PARKING LOT SEALANT RAISES HEALTH CONCERNS

The United States Geological Survey (USGS) recently released an alarming study raising concerns that dust from parking lots and driveways that have been treated with coal tar sealants may pose an increased risk of cancer to nearby residents. Coal tar sealant is made from a waste product of the steel manufacturing process (created by baking coal to produce coke) and is commonly applied to asphalt parking lots and driveways in the United States to protect against cracking and water damage and to give the surface a dark black color.

Coal tar, which contains a high amount of chemicals know as polycyclic aromatic hydrocarbons (PAHs), is known to cause cancer in humans. The most dangerous and potent of the cancer causing PAHs found in coal tar is benzo[a]pyrene. Although adults are at risk from PAHs in house dust, studies have shown young children are especially vulnerable. In addition to the danger of developing cancer, emerging evidence suggests that babies who were exposed to PAHs while in the womb may be more prone to asthma and other ailments, and may have lowered IQs.

According to the USGS, once it is applied to asphalt, coal tar sealants do not stay put. The sealant slowly wears off and forms dust which is tracked into homes on the shoes of residents. In the study, conducted in Austin, Texas, researchers discovered alarming levels of PAHs in house dust in homes near parking lots and driveways coated with coal tar sealant. The PAH level in homes near coal tar sealed parking lots or driveways was at least 25 times higher than dust in comparable homes not near coal tar sealed pavement. During the study, driveway dust at two suburban homes was found to contain levels of benzo[a]pyrene, which is mutagenic and highly carcinogenic, that would have triggered a cleanup action at a toxic-waste site.

In addition to the direct human health dangers of PAHs in house dust, PAHs have been found to kill marine life and cause other adverse environmental effects in waterways near coal tar sealed pavement. This happens when particles of dirt containing dangerous levels of PAHs are deposited in nearby creeks and streams by rainwater running off parking lots coated with coal tar sealants. The cities of Austin, Texas, Washington D.C., and Madison, Wisconsin, have banned coal tar sealants after finding elevated levels of PAHs in local waterways.

Although coal tar sealants are more likely to be found in the eastern half of the United States, Congressman Lloyd Doggett (D-TX) is calling for a nationwide ban of coal tar sealants. Pavement sealants made from asphalt—rather than coal tar—are readily available, just as effective, and are a safer alternative to coal tar sealants. If you need more information on this subject you can contact Chris Boutwell, a lawyer in our firm, at 800-898-2034 or email at Chris.Boutwell@beasleyallen.com. Source: msnbc.com

**Children Must Become More Active**

A Kaiser Family Foundation study released in January indicates that children spend more than 53 hours per week plugged into electronic media. That is an alarming 20% increase in just five years. In contrast, American children spend less than 30 minutes playing outside each week. That is not a good trend. I was glad to see First Lady Michelle Obama taking the lead in making sure that our children get active and improve their health outlook. She is making this a priority and that’s good news.

**XXI. ENVIRONMENTAL CONCERNS**

**Coal Ash Industry Allowed To Edit EPA Reports**

According to U.S. Environmental Protection Agency documents released recently by Public Employees for Environmental Responsibility (PEER), EPA publications and reports about uses and dangers of coal combustion waste have for years been edited by coal ash industry representatives. Based on the EPA documents, PEER concludes that the coal ash industry watered down official reports, brochures and fact-sheets to remove references to potential dangers and play up “environmental benefits” of a wide range of applications for coal combustion wastes. The EPA is currently deciding whether to classify these materials as hazardous wastes following the disastrous December 2008 coal ash spill in Tennessee.

PEER asserts that during the Bush administration, the EPA entered into a formal partnership with the coal industry, most prominently, the American Coal Ash Association, to promote coal combustion wastes for industrial, agricultural and consumer product uses. This effort has helped grow a multi-billion dollar market which the industry worries would be cramped by a hazardous waste designation.

These documents obtained by PEER under the Freedom of Information Act purportedly show how this partnership gave the coal ash industry a chance to change a variety of EPA draft publications and presentations, including:

- Removal of “cautionary language” about application of coal combustion wastes on agricultural lands in an EPA brochure to be replaced with “exclamation point! language” “re-affirming the environmental benefits...that reinforces the idea that FGD [flue gas desulfurization] gypsum is a good thing” in the word of an American Coal Ash Association representative;

- A draft of EPA’s 2007 Report to Congress caused industry to lobby for insertion of language about the need for “industry and EPA [to] work together” to weaken or block “state regulations [that] are hindering progress” for greater use of the coal combustion wastes; and

- EPA fact-sheets and PowerPoint presentations were altered at industry urging to delete significant references to certain potential “high risk” uses of coal combustion wastes.

PEER Executive Director Jeff Ruch, who examined thousands of industry-EPA communications, stated “For most of the past decade, it appears that every EPA publication on the subject was ghostwritten by the American Coal Ash Association.” He further added that “EPA is supposed to be an objective regulatory agency dedicated to protecting the public instead of protecting a gigantic subsidy for a powerful industry.”

Source: Corporate Crime Reporter

**Dry-Cleaning Solvent Classified Correctly**

The Environmental Protection Agency was correct to classify a dry-cleaning solvent as “likely to be a human carcinogen,” according to a review by the independent National Research Council. The report by the Council says the solvent—tetrachloroethylene, also known as perchloroethylene or PERC—contains the air, groundwater, surface water and soil. It can damage the nervous and reproductive systems, liver and kidneys. Folks are mostly exposed to PERC by breathing it in the air, but also can be exposed to it through the skin. The EPA aims to estimate the chemical’s health effects and to establish standards for clean air and water. That’s a good thing!

Source: USA Today

www.BeasleyAllen.com
XXII. THE CONSUMER CORNER

ALABAMA SHUTS DOWN DEBT SETTLEMENT OPERATION

The Alabama Attorney General’s Office and the Alabama Securities Commission announced the permanent shutdown last month of what has been described as one of the largest debt settlement schemes in the nation. Autauga County Circuit Judge Ben Fuller granted the state’s request for a permanent injunction to stop what were described as deceptive and illegal activities by a lawyer and his companies, Allegro Law LLC and Allegro Financial Services LLC. The Court’s summary judgment ruling established a permanent receiver and made provisions for the receiver to protect and recover remaining resources for the benefit of the Defendants’ clients.

Attorney General Troy King and Joe Borg, Director of the Alabama Securities Commission, filed a lawsuit seven months ago which halted operations and froze the Defendants’ assets while the Court reviewed allegations regarding “Allegro’s unlicensed business, its ineffectiveness in reducing the debts of its clients, and its false representation of the services provided.” The Court’s ruling permanently prohibits the Defendants from “engaging in any further deceptive trade practices and from operating a debt settlement or debt management business in Alabama.” Commenting on the Court’s ruling, Attorney General King had this to say:

Now the Court has put an end to Allegro Law’s illegal operation, and has stopped it from continuing to exploit the clients it purported to serve. People who were in desperate circumstances came to Allegro for help, and instead they suffered greater harm. With this ruling, Allegro will not be allowed to cause further damage, and steps are being taken to restore as much money as possible to the victims whose trust was betrayed. My office will not permit any person or business to operate massive scams within our state.

Joe Borg, who has been a real friend of Alabama consumers over the years, has been recognized nationally for his good work. Joe had this to say about the conclusion of this case:

This action continues our determination to enforce compliance with the law in the debt management industry. With the continuing financial crisis affecting Alabama citizens, those who have credit issues must carefully investigate and understand the debt management solutions being offered. Before any Alabamian enters into a contract with a debt resolution company, check their license with the Alabama Securities Commission’s Registration Office (800-222-1253) to make sure they are licensed as required under Alabama law and be certain you fully understand what the terms of the contract are.

In his order, Judge Fuller, an experienced and highly-respected jurist, agreed with the State’s claims that the Defendants violated the Deceptive Trade Practices Act and the Sale of Checks Act. Approximately $12 million in assets will be held for approximately 15,000 Allegro customers nationwide, of which about 175 are Alabama residents. These assets have been in the care of Louis Colley, the court-appointed receiver, who will permanently oversee the protection of the funds to insure that the funds are handled appropriately and in the clients’ best interest. The distribution and scheduling of any potential refunds will be determined at a later date. Clients will be contacted by the receiver. Interested persons may also contact him by mail at Allegro Law Receivership, P.O. Box 680840, Pratville, Alabama 36068, by telephone toll free at 1-888-361-3303, or on the web at www.Allegrolawreceivership.com.

Under the Sale of Checks Act, any person engaging in a debt payment services business must obtain a license from the Commission prior to conducting business in Alabama. The Defendants operated in violation of the law by failing to obtain a license as required by the Sale of Checks Act before engaging in the debt payment services business nationwide from their Alabama office. The Alabama Deceptive Trade Practices Act is designed to protect consumers by prohibiting business from committing a variety of deceptive practices including engaging in any “unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” Defendants were found to have violated the Deceptive Trade Practices Act by engaging in various deceptive business practices, including making false, misleading, and deceptive representations to consumers.

Source: WSFA.com

FOURTH RECALL OF BLAIR CHENILLE ROBES

Blair LLC of Warren, Pennsylvania, has issued its fourth recall of its Full Length Chenille robes. Anybody who has one of these robes should stop using it immediately. Continued use will likely put the user in danger of death or serious injury if the robe comes into contact with an open flame or other ignition source. Blair says it has received 452 reports of incidents where the robes caught on fire. Nine deaths and 61 injuries have been reported. We are currently handling death and serious injury cases against Blair. If you’d like more information on this subject, contact Rick Morrison at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

CHEVROLET COBALT STEERING COMPLAINTS BEING INVESTIGATED

The National Highway Traffic Safety Administration has opened an investigation into complaints that power steering systems in the Chevrolet Cobalt, which is made by General Motors, can fail, making it more difficult to control the car. According to NHTSA, there have been 1,132 complaints about the Cobalt’s electric power steering, including reports of eleven accidents and one injury. The preliminary review covers about 905,000 Cobalts in the model years from 2005 to 2009. A majority of the
complaints have come in the past six months.

Some drivers said they couldn’t stay in their traffic lane when steering became difficult. General Motors said in a statement that the NHTSA review is the first step in an investigation, and that it will answer questions from the safety agency. After the initial review, the case will either move to an engineering analysis or it will be closed. I find it most difficult to see how this investigation could be closed.

Source: KAIT8.com

PRINCESS AND FROG PENDANTS RECALLED FOR CADMIUM

We wrote about cadmium, the toxic metal, in recent issues of the Report and tried to explain how dangerous it is. “The Princess and The Frog” pendants, which are very popular, are now being recalled by Rhode Island-based jewelry company FAF Inc., because of high levels of cadmium. This unprecedented action reflects concerns of an emerging threat in children’s products. The recall affects two products, about 32,000 items, sold exclusively at Wal-Mart stores for $5 each. The U.S. Consumer Product Safety Commission, which disclosed the recall, had been testing for cadmium in children’s metal jewelry in response to the Associated Press investigation that reported high levels of the known carcinogen in the Disney movie-themed pendants and other children’s metal jewelry imported from China.

Wal-Mart Stores Inc. had pulled three items from its shelves, including the two in the latest recall—a crown pendant with UPC number 72783367144 and a frog pendant with UPC number 72783367147. The items had been on sale at Wal-Mart stores since November, in conjunction with release of the animated movie. Soon after Wal-Mart pulled the items, the CPSC’s chairman advised parents to throw away all pieces of inexpensive metal jewelry, noting that children who chew, suck on or swallow a bracelet charm or necklace may be endangering their health. Consumers can return the two recalled items “to any Wal-Mart store for a full refund or a free replace-

ment product,” according to the recall notice.

The recall marks the first time any consumer product has been recalled in the United States because of cadmium. Recent research also suggests Cadmium can harm brain development in children. The CPSC said in a statement that there have been no reports of cadmium poisonings associated with the pendants, but that its investigation into other pieces of jewelry remains open and active.” The Walt Disney Co. produced the movie and it has said it “supports the decision by FAF and the CPSC to recall the jewelry.”

Lab tests conducted on 103 pieces of low-priced children’s jewelry as part of the AP’s original investigation found 12 items with cadmium content above 10% of the total weight. One item consisted of 91% cadmium by weight. Pendants from four “The Princess and The Frog” necklaces ranged between 25% and 35% cadmium, according to the testing. At the time, Walt Disney said in a statement that test results provided by FAF Inc. showed the item complied with all applicable safety standards. But in the case of cadmium, unlike lead, there have been no specific levels that would automatically trigger health risks to children or a push for a recall.

As part of its investigation, the CPSC bought pieces of the jewelry cited in the AP reports, tested them in the agency’s lab and found high levels as well. Based on the Federal Hazardous Substances Act, agency staff determined that the items posed a health risk to children. It appears FAF has cooperated with the investigation and agreed to the recall.

Source: Associated Press

CHINA FINDS 170 MORE TONS OF TAINTED MILK POWDER

China has found another 170 tons of tainted milk powder in an emergency crackdown that has made it increasingly clear many products discovered in the country’s 2008 milk scandal were repackaged for sale instead of being destroyed. The Chinese government promised to overhaul its approach to food safety after hundreds of thousands of children in that scandal were sickened by milk products tainted with an industrial chemical. At least six children died. But it now appears that the promise will be challenged. Tainted milk products have recently emerged in China’s largest city, Shanghai, and in the provinces of Shanxi, Shandong, Liaoning, Guizhou, Jilin and Hebei.

China’s ten-day emergency crackdown on the products was set to end on February 10th. Thus far, the deadline—to my knowledge—hasn’t been extended.

In the latest discovery, officials recalled more than 170 tons of milk powder tainted by the industrial chemical melamine and closed two dairy companies in the northern region of Ningxia. Officials seized 72 tons of the powder, but were still looking for the rest. The rest had been repackaged by the Ningxia Tiantian Dairy Co. Ltd. and sold to factories in the neighboring region of Inner Mongolia and the bustling southern provinces of Guangdong and Fujian. Dairy suppliers in the past have been accused of adding melamine, which is high in nitrogen, to make milk appear protein-rich in quality tests.

It appears from media reports in China that tainted powder should have been destroyed after the 2008 scandal broke. The 2008 milk scandal was China’s worst food safety crisis in years. Chinese officials knew tracking and getting rid of the tainted products would be difficult, but the government didn’t promise to destroy seized products itself. Instead, it issued guidelines on how to destroy the tainted products, suggesting they be burned in incinerators or buried in landfills. This obviously has not worked very well. It’s now being reported that more than one in ten Chinese children, sickened by contaminated milk, showed signs of kidney damage six months later. Consumers—as well as the federal government—should continue to be wary of consumer products made in China.

Source: Associated Press

BANS SOUGHT FOR BPA IN BABY AND TODDLER PRODUCTS

States are now moving to ban the chemical BPA from food and drink containers, primarily those meant for infants and toddlers, because of health
Safety Violators Will Face Tough Penalties

Inez Tenenbaum, the head of the Consumer Product Safety Commission, has warned manufacturers of children’s products, such as toys and cribs, that failure to respond to complaints quickly and adhere to safety warnings may result in tough penalties, including fines and lawsuits. She stated recently in a public appearance:

*We have a new, expanded Commission. A new Commission that has new powers—and we are not afraid to use them. If you resist our efforts to recall children’s products, be forewarned, this Commission stands ready to be creative in the use of our enforcement authorities.*

Ms. Tenenbaum was referring to the Consumer Product Safety Improvement Act, which passed in 2008 following widespread recalls of products that posed a threat to children, including toys made with lead or lead-based paint. Her remarks can be found in full on the CPSC website (www.cpsc.gov).

Ms. Tenenbaum testified before Congress and said that manufacturers need to investigate allegations of problems and quickly notify the public, since government action often takes much longer. She says that her agency is committed to acting quickly in response to reports of dangerous children’s products, ordering recalls and taking other actions, and manufacturers should be prepared to cooperate—or else. Ms. Tenenbaum made it very clear when she said:

*As the Toyota experience has shown in recent weeks, this government will not allow for delay in recalling dangerous products. I will continue the transformation of CPSC from what some have described as a ‘teething tiger’ into the world’s leading lion of consumer protection.*

It’s certainly good news to know that the CPSC understands its role. It’s encouraging to see the federal government doing its job when it comes to regulation and enforcement. Ms. Tenenbaum should be commended for her strong leadership in this area of concern.

Source: Lawyers USA Online

XXIII. Recalls Update

I wish I didn’t have to say it, but there are lots of recalls to be reported this month. While the Toyota recalls have gotten most of the media attention—and rightfully so—there have been many other recalls of a significant nature. The following are some of the recalls since our last issue.

**Toyota Recalls**

We have written about all of the Toyota recalls in another section of this issue. Please refer to that section for detailed information on the massive safety problems at Toyota. The problems at Toyota leading up to the tremendous number of recalls must be dealt with by the company and by NHTSA.

**Honda Launches Recall to Repair Air Bags**

Honda, Japan’s second-largest automaker, has recalled 437,763 vehicles globally to repair air bags that can deploy with too much pressure, adding to previous U.S. recalls for the same defect. The expansion covers 378,758 vehicles in the United States. The Tokyo-based carmaker recalled about 4,000 cars and minivans in Japan. The company says it knows of one death and 12 incidents related to the air-bag defect, “The air bag produces excessive internal pressure, and there’s a risk of some metal shards coming through. That could cause injury,” according to a Honda spokesman.

U.S. vehicles to be repaired include some 2001 and 2002 Accord and Civic cars, Odyssey minivans, CR-V...
sport-utility vehicles and 2002 Acura TL cars. An initial U.S. recall in November 2008 included 4,600 Accords and Civics, and another 440,000 of those cars and some Acura TLs were added in July.

Honda said it will notify affected customers by mail and phone with instructions on how to have their vehicles inspected and updated at an authorized dealer. The entire production of each of the models in question is not necessarily included in the recall. Last month, Honda announced a separate recall of 646,000 2007 and 2008 Fit, City and Jazz models worldwide, after a fire hazard involving a power window switch resulted in a death in South Africa.

**HYUNDAI ISSUES VOLUNTARY RECALL ON SONATA SEDAN**

Hyundai Motor is recalling its new Sonata sedan to replace some front door latches following a few customer complaints. Hyundai said it discovered a mechanical problem in the vehicle’s front door latches, which, in rare instances, will not close properly. The recall will affect some 46,000 Sonatas produced in South Korea until December 6th and about 1,300 others manufactured at Hyundai’s plant in Montgomery, Alabama, and sold to American customers until February 16th. “To avoid a possible occurrence of the problem, Hyundai has been applying modified parts to some of its Korean and U.S. production models,” Hyundai said in a statement. Hyundai should be commended for its prompt corrective action in this matter.

**CHRYSLER TO FIX AIRBAGS IN SOME 355,500 MINIVANS**

Chrysler Group LLC will replace a front airbag sensor in more than 355,500 minivans, starting in June for what Chrysler calls a “safety improvement campaign.” The recall covers 355,562 of its 2005-2006 Chrysler Town & Country and Dodge Grand Caravan minivans, including 259,437 in the United States and 72,035 in Canada. The move comes after Chrysler found one of the front airbag crash sensors could crack under some environmental conditions and allow water to enter the sensor, potentially causing the sensor to become inoperative. The company, which is controlled by Fiat S.p.A., said it is not aware of any complaints, injuries or property damage related to this issue.

Chrysler claims the campaign is different from a recall because should problems occur, the vehicles would still meet crash standards outlined by U.S. safety regulators. “If the front crash sensors become inoperative, the driver is immediately alerted by illumination of the airbag warning light,” Chrysler said in a document sent to NHTSA. “Until the vehicle is repaired, the airbags may not provide the enhanced protection in the event of a crash.” Frankly, I would consider this a recall. It will be interesting to see what NHTSA calls it.

**PRODUCTS MADE IN CHINA FOR CHILDREN PULLED FROM STORES IN U.S.**

The U.S. Consumer Product Safety Commission has issued three voluntary recalls involving children’s products that were manufactured in China. About 7,200 children’s hooded pullover sweatshirts and zip hooded sweatshirts distributed by New Mode Sportswear in Garden Grove, California, are being pulled from shelves because the drawstring on the hood can pose a strangulation hazard. The sweatshirts were sold at various T-shirt outlets on the West Coast from January 2006 through July 2006.

The second recall also involves a drawstring hazard. GTM Sportswear Inc., of Manhattan, Kansas, is recalling more than 200,000 children’s hooded nylon jackets in sizes XXS-XL (2T-16). Styles include the youth medalist jacket, legacy jacket, eclipse jacket, dominator jacket, booster jacket and achiever jacket. The garments were sold at GTM Sportswear, K-State Super Store, and Cats Closet stores in Kansas and in GTM Sportswear and the Just for Kix catalogs from January 2003 through December 2009.

The last recall involves children’s toy jewelry sets imported by Playmate Toys of Costa Mesa, California. About 250,000 charms sold with the “Tink Tink and Friends” jewelry sets are being recalled because the charms contain an illegal amount of lead. The sets containing the charm accessory were sold in a variety of styles including Tinker Bell’s Lil’Tinker Bracelet and Rosetta’s Rosebud Key Chain. The items were sold at retailers nationwide from November 2008 through November 2009. To date, no injuries have been reported in relation to these recalled products.

**GENERATION 2 WORLDWIDE AND “CHILDGRESIGNS” DROP SIDE CRIB BRANDS RECALLED**

There has been a recall of all Generation 2 Worldwide and “ChildESIGNS” drop side cribs. CPSC is warning parents and caregivers who own these drop side cribs that infants and toddlers are at risk of serious injury or death due to strangulation and suffocation hazards presented by the cribs. CPSC staff urges parents and caregivers to stop using these cribs immediately and find an alternative, safe sleeping environment for their baby. The agency says not to attempt to fix these cribs.

Due to the fact that Generation 2 went out of business in 2005, CPSC has limited information about the cribs. Although CPSC does not know the total number of units distributed or the years of production, it is believed that there were more than 500,000 of these cribs sold to consumers. Some of the known
model numbers are: 10-110X, 10-210X, 21-110X, 20-710X, 64-515X, 26-110X, 90-257X, 20-810X, 46-715X, 64-311X, 74-315X, 21-815X, 21-810X, 20815X, 308154 and 54915. (The “X” denotes where an additional and varying number may appear at the end of the model number.) However, all Generation 2 Worldwide and “ChildESIGNS” drop side cribs are included in this recall, including those with other model numbers.

The name “Generation 2 Worldwide” appears on a label affixed to the crib’s headboard or footboard. Some labels identify the place of manufacture as Dothan, Alabama. Others identify China as the country of manufacture. The name “ChildESIGNS” appears on the teething rail of some of the cribs. The recalled cribs were sold at numerous local furniture and retail stores including Buy Buy Baby, and Kmart and Wal-Mart stores nationwide for between $60 and $160. Consumers should contact the store from which they purchased the crib for remedy information, which will vary between a refund, replacement crib or store credit, depending on the retailer. Consumers are urged to contact CPSC and report any difficulties in obtaining a remedy from their place of purchase.

Innovage llc recalls Discovery Lamps For Children Due To Fire And Burn Hazards

Innovage LLC, of Foothill Ranch, California, has recalled about 360,000 Discovery Kids™ Animated Marine and Safari Lamps. A defect in the lamp’s printed circuit board can cause an electrical short, posing a fire and burn hazard to consumers. Innovage has received nine reports of incidents, including seven reports of lamps catching fire, one involving smoke inhalation injury to a child and three involving minor property damage.

The lamps were sold at mass merchandisers, department, drug and hardware stores nationwide, online and through direct sales from July 2009 through January 2010 for about $10. Consumers should immediately stop using the lamps, and contact Innovage for information on returning the product for a full refund. For additional information, contact Innovage toll-free at (888) 232-1535, visit its Web site at www.lamprecall.org or email info@lamprecall.org.

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’s web site at www.BeasleyAllen.com/recalls. You may also contact Shanna Malone at Shanna Malone@beasleyallen.com for more recall information.

XXIV.
FIRM ACTIVITIES

Spotlighted Employees

ASHLEY LOCKLAR

Ashley Locklar came to the firm in April of last year as a temporary Legal Secretary, working with Scarlette Tuley. She was hired permanently in August and now serves as the Legal Secretary for both Scarlette and Archie Grubb, both lawyers in the Consumer Fraud Section. Scarlette and Archie concentrate their time these days mostly on Morgan Keegan security cases. Those cases are currently in the discovery phase and Ashley is an important part of the litigation team. One of her tasks is to get documents scanned and organized for production. She handles maintaining all files, which include opening and closing of the files, updating pleadings and correspondence, getting the lawyers’ correspondence out, filing of complaints and other pleadings and discovery and maintaining the lawyers’ calendars. There are also other tasks the lawyers or the legal assistants may need from time-to-time.

Ashley graduated a semester early from Robert E. Lee High School in Montgomery in 2001. After graduation, she attended Troy State University of Montgomery, majoring in Criminal Justice. Ashley and her husband Chuck have one son, Cal Jaxon, who is almost eight months old. It’s apparent after talking with Ashley that she really loves her “little man” and considers him to be her most important accomplishment. It is also evident that she is very thankful for the family she came from. She has expressed strong gratitude for her mother, who raised Ashley and her younger sister all by herself after their father passed away in 1993.

For the past six and a half years, Ashley has been an important part of the Children’s Ministry of St. James United Methodist Church, teaching Sunday School and Children’s Church. She enjoys being a part of this congregation and loves working with all of the children there. She also enjoys acting and has been in local commercials, which she is very proud of. Ashley’s favorite hobby is playing pool and feels that it is one of her better skills. She also enjoys scrapbooking, cooking, entertaining or hosting events, and shopping. Ashley is a good, dedicated employee and we are fortunate to have her with the firm.

BEAU WOMACK

Beau Womack, who joined the firm as an employee about one year ago, serves as a Law Clerk in the Toxic Torts Section. In this position, he mainly does research. Beau grew up in Tuscaloosa, where most of his family still lives. He has a bachelor’s degree in mathematics from UAB and will receive his J. D. from Faulkner in May. Beau has been a member of Faulkner’s Mock Trial Team for the past two years. He won two “Best Advocate” awards while on the team, one at the Greg Allen Mock Trial Tournament held in Montgomery, and another at the Lonestar Classic Mock Trial Tournament in San Antonio, Texas. Beau is engaged to Katie Reifenberg from Montgomery. According to Beau, because of law school and work, his hobbies have been on hold for the past three years. However, he does enjoy working crossword puzzles and playing any type of trivia game. Beau is a valuable employee and will be a very good lawyer. He understands how important it is to represent people who have
been victims. We are fortunate to have him with us.

**CAROL STANLEY WORKS FOR TBI VICTIMS**

One of our employees—Carol Stanley—has been working very hard to make folks aware of how persons who have suffered traumatic brain injury (TBI) can still be productive citizens. Carol, whose son Jason suffered a TBI, has been making an effort to improve awareness as well as services and support for persons with TBI. We are extremely proud of Carol for her involvement in this important area of concern. She has helped make a difference for TBI victims and that’s extremely important.

**LAWCALL IS STILL GETTING LOTS OF ATTENTION**

We are beginning our second year as host of LawCall, which is a weekly, 30-minute legal show, airing each Sunday night on WFSA at 11:00 pm. Gibson Vance hosts the show and he brings on a guest each week. A specific topic is chosen to discuss each week and there are lots of questions and comments from viewer. The show covers topics such as work place injuries, defective products, environmental issues, motor vehicle accidents, nursing home litigation, domestic issues, and estate issues, among others. Viewers are invited to submit their questions via the web at free.consult@beasleyallen.com or they may call Beasley Allen directly at 800-898-2034.

**VALENTINE CARDS DELIVERED TO BRANTWOOD**

Employees at Beasley Allen provided Valentine cards and treat bags last month for the 28 youngsters who are currently living at Brantwood Children’s Home. There was such a great response by our employees that the firm was also able to enclose a $5 bill and a $5 gift card donated by Wal-Mart in each child’s Valentine card. The cards and bags were presented at Brantwood by a group of our employees and the boys there were glad to see them. Beth Warren, one of our dedicated employees, organized this effort for the firm and did a very good job. The Beasley Allen family is concerned about folks and that’s why our employees work so hard to help others.

**MARCH FOR BABIES 2010 COMING SOON**

On April 24th at the Montgomery Riverwalk Amphitheater, the March for Babies 2010 will take place. Employees at our firm are real excited to be a part of this important event. On a daily basis, thousands of babies are born too soon, too small and often very sick. A number of our employees and lawyers are walking because they want to help do something about this. The money raised from the walk will support March of Dimes research and programs that help mothers have full-term pregnancies and babies begin healthy lives. The funds will also be used to bring comfort and information to families with a baby in newborn intensive care. The March of Dimes does tremendous work and we are pleased to be able to help them.

Our firm’s ambassadors this year are J.P. Seithalil, (Sandra Walters’ grandson), and Joshua, (Bilinda Stokes’ baby). Sandra and Bilinda are both employees in the firm. For your information, J.P was born weighing 1 pound, five ounces and he now weighs 14 pounds. Joshua was born at six pounds and now he is at 19 pounds. Both of these babies was born prematurely and each had a very rough time. Both babies stayed in NICU for weeks, but they are now healthy and doing well. If you want more information on this project, go to http://www.marchforbabies.org. The March of Dimes would appreciate any financial help, which is badly needed. Holly Newton, an employee of our firm, is coordinating this effort for the firm and she has done a very good job.

**XXV. SPECIAL RECOGNITIONS**

**A MESSAGE FROM ALABAMA STATE BAR PRESIDENT TOM METHVIN**

**LAWYERS HELPING LAWYERS—THE ALABAMA LAWYER ASSISTANCE PROGRAM**

Few professions are as stressful as the practice of law. Every day, lawyers talk to clients about problems. They work long hours, and often face frustration and disappointment when they feel they can’t right a wrong. Too often, people facing these types of challenges try to find relief in what seems an easy answer—alcohol and drugs. However, this temporary relief can quickly spiral out of control, leading to devastating consequences.

Here to help is the Alabama Lawyer Assistance Program (ALAP). The ALAP is a program of the Alabama State Bar (ASB) that assists legal professionals with chemical dependency and/or psychological problems. It provides evaluation, assessment and referral services, peer and facilitated support, aftercare programs, and monitoring services. It serves lawyers, judges and law students in Alabama. In addition, ALAP engages in preventative services through educational outreach programs and presentations to the judiciary, law schools, law firms, bar associations, bar seminars and other organizations.

Working in conjunction with the ALAP, the Alabama Lawyer Assistance Foundation can provide funding for lawyers who cannot afford treatments. The money is distributed as a loan, paid directly to the treatment provider, and attorneys make arrangement to repay the loan when they are back on their feet. This ensures
there are always funds available for the next lawyer or judge in need. Lack of funds should never be a reason why a lawyer doesn’t get appropriate help.

ALAP is assisted by the Lawyers Helping Lawyers Committee and its many lawyers and judges throughout the state who volunteer to carry the message to fellow members of our profession that recovery is possible.

Recently, the ALAP honored three lawyers who have demonstrated outstanding commitment to this program. James O. Standridge (Crownoover & Standridge; Tuscaloosa, Alabama) received the Highest Distinguished Service Award in recognition of the innumerable lives he has touched through encouraging and selfless actions. He has passed on hope to the hopeless and encouragement to the dismal and broken. Kimberly Davidson (member, Shelby County Bar) was honored for her commitment and service to women in early recovery. She hosts a women’s support group in her home each week, encouraging wellness and recovery, and helping women get through the shame of addiction. Mobile Bar’s Mack Bruner Binion III (Briskman & Binion, P.C.; Mobile, Alabama) was honored for his time and commitment in assisting members of the legal profession through offering hope and healing to members in need. Mack has formed a recovery support group in Mobile for lawyers in recovery.

Thank you, to each of you, for giving your time and talents to help those in crisis.

If any Alabama lawyers need assistance with an alcohol or drug dependency problem or with other emotional or stress-related issues, or know someone who does, they can contact the ALAP. They are there to help. You can find more information online at www.alabar.org/alap. You can also call to speak to someone confidentially at 334-834-7576. These calls do not go through the State Bar switchboard, and are confidential. These names are not referred for any type of disciplinary action. If you feel you are in urgent need of assistance, the ALAP also operates a 24-hour help line at 334-224-6920.

NICE GUYS DON’T ALWAYS FINISH LAST

When I was growing up and playing baseball in my hometown of Clayton, I recall reading where one of the major league managers said that “nice guys always finish last!” Over the years, on occasion, things have seemed to work out that way. But thankfully, nice guys don’t always finish in last place. In fact, quite often they finish at the head of the pack and do so with dignity and class. One recent example involves Drew Brees, the talented quarterback for the New Orleans Saints, who led his team to a tremendous win in the Super Bowl. The Purdue graduate, a tremendous quarterback, is a strong Christian and a strong family man who plays by the rules. Drew Brees is the sort of man that every father should want to see. He has been very active in the Fellowship of Christian Athletes. This is one time that a nice guy did finish first!

Heath Evans, who played at Auburn and is now with the Saints, had this to say about Drew: “Real men of God are always trying to find ways to draw closer to the King. Drew never misses a chapel, team Bible study or couples’ Bible study.” That pretty well tells me what sort of man Drew Brees is. We need more like him in the sports world.

XXVI.
FAVORITE BIBLE VERSE

My longtime friend Cecil Spear, who is still working very hard with Trinity Industries, sent in two verses this month. Cecil said the first verse was the topic of discussion recently during a weekly Bible study led by Rev. Lawson Bryant, the senior pastor at First Meth-
weekly devotion leaders, sent in a favorite verse.

You are the salt of the earth. But if the salt loses its saltiness, how can it be made salty again? It is no longer good for anything, except to be thrown out and trampled by men. You are the light of the world. A city on a hill cannot be hidden.

Matthew 5:13-14

Gibson Vance, a lawyer in our firm, who will soon be the President of the American Association for Justice, a national organization made up of lawyers who do trial work on behalf of victims, provided the following verse:

Humble yourselves, therefore, under God’s mighty hand, that he may lift you up in due time.

1 Peter 5:6 (NIV)

The following verse comes from the Christian Legal Society and it’s a good one. We certainly need wisdom, but without understanding wisdom can be a dangerous thing. Learning without the gain of wisdom is a waste. But an understanding of wisdom leads to a full life.

Wisdom is supreme; therefore get wisdom. Though it cost all you have, get understanding.

Proverbs 4:7

We really appreciate our readers taking the time to send in favorite verses. We also get lots of comments on this section of the Report. I believe it’s a most important part of what we send out each month. If you would like to submit a favorite verse for next month, feel free to do so.

XXVII.
CLOSING OBSERVATIONS

Pride Leads To Arrogance

My friend Rev. Walter Albritton sends out a message on a weekly basis that always has some wise and sound counsel. Recently Walter discussed Pride and Arrogance and stressed that pride can be very dangerous. Being proud of a good thing is healthy, but Walter says that power and affluence tend to produce the wrong kind of pride. When arrogance takes over, a person—regardless of social standing or position—is bound for an eventual fall and one that can get ugly. Humility is a virtue that we should all strive for.

Jesus is our best example of how humility is the cure for prideful arrogance. Humility—as Walter put it—“can be rare, but it is the only cure for the ugly arrogance that blocks out receiving the spiritual blessings that are available to us.” My mama used to tell me when I was very young that no person should ever “get too big for their britches” and she wasn’t talking about weight. My mama was right and her advice is something that has stuck with me since that time and I pray that it stays with me.

A BAD SCENE IN WASHINGTON

I don’t believe I have ever seen a time when Congress was so divided on a partisan basis as it now is. The Republicans in both the House and Senate have opposed every program proposed by the Obama Administration regardless of whether these programs are good or bad. In fact, some of the GOP members oppose a program and then enjoy the benefits of a program back home by taking credit for it. Sadly, the Republican Party only opposes and offers no real plans as alternatives. The Obama Administration inherited a series of severe economic problems. While all that the President has proposed hasn’t been good, most of it has been. The GOP should at least, give him a chance. But, the President must also lead in his capacity as our nation’s elected leader.

Spirited debate is always good and it’s important for members to take a stand on principle, but to oppose everything just because the president is a Democrat is just plain wrong. The stalemate that has resulted is not good for our country in my opinion. There are too many problems that demand solutions. Hopefully, a spirit of unity and compromise will eventually replace the mood that we now have in our Nation’s Capitol. The American people expect more from our political leaders and they deserve it.

A MONTHLY REMINDER

Again, I am including a very simple, but powerful, Biblical instruction that is the saving grace for the United States of America. While simple—it’s also a most difficult thing for the American people who are Christians to actually put into practice. But, there really is no other way!

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

2 Chronicles 7:14

XXVIII.
PARTING WORDS

I asked Leigh O’Dell, one of our lawyers in the firm’s Mass Torts Section, to write the parting words section this month. Fortunately for our readers, she graciously agreed to do so.

Living The Victorious Christian Life

Over recent weeks, I have thoroughly enjoyed watching the Winter Olympics. From the artistry of figure skating to the power of downhill ski racers to the amazing tricks of snowboarders and ski jumpers, I have been in awe of the skill, strength, creativity, and incredible God-given talent of the athletes. As much as I wish I could, I know that in my own life I will never be able to match their achievements. I don’t have the talent or time or opportunity. Have you ever had that thought about another believer? Have you looked at another brother or sister in Christ and thought it would be impossible to have the close relationship with the Lord that they have? Thank-
fully, there is no limit on how we can grow in our relationship with the Lord. We are not limited by talent or opportunity. Each of us can live the victorious Christian life—win the gold spiritually. But, as athletes train and discipline themselves in order to reach their athletic goals, we too must train spiritually in order to live victoriously.

**Remember the Cross.** Jesus in obedience to the Father and because of His great love for you and me gave His life in a horrible death on the cross. Isaiah 53 says, “He was wounded for our transgressions, He was bruised for our iniquities; the chastisement for our peace was upon Him, and by His stripes we are healed.” Why? Why would Jesus, the Son of God, do this for you and for me? “In this the love of God was manifested toward us, that God has sent His only begotten Son into the world that we might live through Him. In this is love, not that we loved God, but that He loves us and sent His Son to be the propitiation for our sins.” (1 John 4:9-10, 19). God loves you and me. And to find proof of His love, we need to look no further than the cross. Have you placed your faith in Jesus? Have you accepted His gift of love on the cross? To live victoriously, to live with a right perspective of who we are in Christ, remember the cross.

**Repent of Sin.** Jill Briscoe, a great Bible teacher, often says, “God can use a broken vessel but not a dirty one.” When we place our faith in Christ, we are forgiven of our sins. Jesus’ sacrifice paid our sin debt in full, once and for all. But our daily struggle with sin remains until we see Jesus face-to-face. Therefore, we need to keep a short account with the Lord of our sin. The victorious, effective Christian life is available to all those who place their faith in Jesus, but in order to walk it out on the daily anvil of life, we must recognize the sin in our life for what it is and daily (or even moment-by-moment) repent of our sin. Like a ski racer with something on his skis which binder his speed and power, sin binders our relationship with the Lord and we lose our effectiveness in service. Is there any sin that is binding your fellowship with the Lord Jesus? Repent. If we confess our sins, Jesus is faithful and will forgive us. (1 John 1:9)

**Praise the Lord!**

**Read God’s Word.** Shortly before Jesus went to the cross, He told His disciples, “If you keep My commandments, you will abide in my love. . . You are My friends if you do whatever I command you.” (John 14:10, 14). We show our love for Jesus by keeping His commands. As we keep His commands, we grow in our relationship with Him. The Bible is the revealed Word of God. In effect, the Bible is our “play book” for life. God speaks to us through His Word. Quality time in God’s Word on a daily basis is essential to walking in victory in our Christian life.

**Resolve to Pray without ceasing.** Jesus’ time on earth is marked by prayer to the Father. Throughout the Gospels, we read about instances where Jesus drew away from others and prayed. (Matt. 14:23; Matt 1:35; Luke 6:12). If the Lord needed to pray, bow much more do we need that time of fellowship with the Father?

**How much more do we need His wisdom and power? His comfort and encouragement? In the frenetic pace of life, times of solitude in prayer can be hard to maintain, but they are mission-critical to our love relationship with the Lord.**

**Rejoice Always.** Philippians 4:4 commands us, “Rejoice in the Lord always. I will say it again: Rejoice!” In the ups and downs of life, it is easy to become so focused on our circumstances that we forget to pray for the Lord. Praising the Lord puts our circumstances into perspective. Rejoicing raises our spiritual eyes to His sovereignty, His omniscience, His power and takes our eyes off our limited resources. As we rejoice in Him, our spirits are lifted, our perspective adjusted, and our hearts filled with joy.

Do you desire to live a spiritual life full of power and effective service? Do you want to walk in victory in Christ? Because of His victory over sin and death, we can live victoriously in Him here on earth. But to do so, we must recognize the cross, repent, read His Word, resolve to pray, and rejoice. Don’t settle for a mediocre Christian life. Go for the gold . . . embark on the victorious Christian life today.

Leigh O’Dell
Beasley Allen
February 25, 2010

All I can say after what Leigh wrote is—Amen! What a powerful message! May God bless each of you and your families during the coming weeks.
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.