been strong opposition to the reform efforts and things got pretty rough before final passage occurred. While the bill is not perfect, it's definitely a major step in the right direction.

While there are a number of important features in the bill, the key feature has to be that the overhaul gives an additional 32 million Americans access to basic health insurance by 2019, according to the Congressional Budget Office. This is the biggest change in the American health system since Medicare was enacted in 1965, and one that many thought would never happen. Many presidents tried for reform and all of them failed. President Obama refused to give up and won the battle against great odds.

Following House passage of the Senate bill, the House then passed a "reconciliation bill" to make needed adjustments to the Senate-defined package. The Senate took the bill up and sent it back to the House with two changes. Those changes were accepted by the House on March 25th. The President has signed the change bill into law.

Health Reform Will Do These Things

Even though the health care reform bill has been signed into law by President Obama, the heated debate continues. This debate will continue—hopefully in a more civil manner—during the coming weeks. There has been much misinformation about the reform measure and that is most unfortunate. I believe there are ten things every American should know about the health care reform package:

- Once reform is fully implemented, over 95% of Americans will have health insurance coverage, including 32 million who are currently uninsured.
- Health insurance companies will no longer be allowed to deny people coverage because of preexisting conditions—or to drop coverage when people become sick.
- Just like members of Congress, who have access to the best health insurance in the world, individuals and small businesses who can't afford to purchase insurance on their own will be able to pool together and choose from a variety of competing plans with lower premiums.
- Reform will cut the federal budget deficit by $138 billion over the next ten years, and $1.2 trillion in the following ten years.
- Health care will be more affordable for families and small businesses because of new tax credits, subsidies, and other assistance—paid for largely by taxing insurance companies, drug companies, and the very wealthiest Americans.
- Seniors on Medicare will pay less for their prescription drugs because the legislation closes the "donut hole" gap in existing coverage.
- By reducing health care costs for employers, reform will create or save more than 2.5 million jobs over the next decade.
- Medicaid will be expanded to offer health insurance coverage to an additional 16 million low-income people.
- Instead of losing coverage after they leave home or graduate from college, young adults will be able to remain on their families' insurance plans until age 26.
- Community health centers would receive an additional $11 billion, doubling the number of patients who can be treated regardless of their insurance or ability to pay.

It would appear that all of these are good things for the American people. While parts of the package are currently unpopular, I sincerely believe that healthcare reform will be good for America. Time will tell if the projections set out above prove to be true.

Lawuits Have Brought About Safety Improvements

Litigation in cases where a defective product is the culprit has been a significant factor in making automobiles safer, according to legal and safety experts. Lawsuits brought by victims are credited with such innovations as impact-absorbing dashboards and steering columns, and gas tanks that won't explode when an automobile is rear-ended. A prime example of the effect of defective product litigation involves what happened after the problems of the Ford Pinto were revealed because of the lawsuits. Now all cars are designed to take...
at least a 50-mph rear-end crash. Thousands of lives have been saved as a result.

Perhaps the best example of how a carmaker and NHTSA, having known about a most serious safety problem and still failing to solve it, involves the massive safety problems now being revealed at Toyota. The sudden acceleration issue, which has caused a great number of deaths and resulted in massive recalls, was known both by the carmaker and NHTSA for several years. Yet, nothing was done by either to address and solve the problem. Now Toyota will be forced to do what it should have done years ago to resolve the safety problems and also to inform the public of what they should have known several years ago.

Ben Kelley, who worked for the U.S. Department of Transportation and is recognized as a pioneer in motor vehicle safety research at the highly-respected Insurance Institute for Highway Safety, had this to say:

*The courts then (after some early litigation) became a much more active place for Plaintiffs and their attorneys to come with claims of injury caused by insufficient crash-worthiness design. During the 1970s and 1980s, litigation was watched keenly by manufacturers and regulators as a kind of early warning system on safety defects.*

You can trace the progress in vehicle design safety, as the result of litigation, that has been made beginning in the 1970s right up to the present relating to design changes in cars, SUVs and trucks. Such things as improved seat belt systems and seat backs in vehicles, which were the direct result of lawsuits involving death or disabling injuries, have made vehicles safer. All of this is why it’s critically important to preserve a fair and independent court system in this country.

Source: *Los Angeles Times*

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**II. FEATURED CASE OF THE MONTH FOR THE FIRM**

**JURY AWARDS $2.75 MILLION IN EXPLORER ROLLOVER CASE**

On Friday March 12, 2010, our firm obtained a $2.75 million verdict for our clients against Ford Motor Company in a wrongful death action related to defects in the 1999 Ford Explorer. On July 22, 2007, Catherine Parker was driving her 1999 Ford Explorer when the vehicle went out of control and rolled over three times. As a result of a poorly designed roof and seat belt system, Ms. Parker was partially ejected and received fatal injuries. We filed suit in the Circuit Court of Montgomery County, Alabama. Against Ford alleging that the Explorer was not crashworthy because of a weak roof and a seat belt system that would not retain occupants in the vehicle during a rollover.

The evidence at trial presented by our roof expert, Steve Forrest, showed that Ms. Parker’s 1999 vehicle was a third generation Explorer known internally at Ford as the UN150. The UN150 was produced by Ford between the years 1998 and 2001. Ford claimed that the roof structure met the minimum Federal Motor Vehicle Safety Standard 216 which only requires that a roof withstand 1.5 times the weight of the vehicle. (Recently, NHTSA found this standard to be inadequate and has increased it to three times the weight of the vehicle.) But, prior to production of the UN150, Ford never actually tested a UN150 for compliance with a FMVSS 216. Instead, Ford used testing that had been done on the previous generation of Explorer (the UN105) and engineering judgment to determine that the roof structure of the UN150 would pass FMVSS 216. In reality, six inches of steel reinforcement had been removed from the front door window frame for the UN150 which was a substantial reduction. This reduction in reinforcement actually reduced the strength of the roof by ten to 12%.

After the UN150 went into production, Tim Chen, a Ford engineer, conducted an FMVSS 216 certification test on the UN150. The Explorer failed the FMVSS 216 test. Mr. Chen began a five-month investigation to determine why the UN150 performed so poorly. Unfortunately, Mr. Chen was never made aware of the reduction of the reinforcement steel in the front door window frame. He ran a second test and the UN150 again performed poorly and barely passed FMVSS 216. In order to obtain passage on FMVSS 216, Ford altered the weight numbers associated with the test in order to get the vehicle to pass. At trial, Ford’s roof expert did not have Mr. Chen’s testing in her file and claimed it was a prototype test and should not be considered. Instead, Ford’s expert relied on the testing conducted on the UN105 to claim the UN150 was safe.

Steve Forrest conducted several drop tests showing the performance of the production and reinforced UN150 Ford Explorer. He was able to establish through that testing that the strength of the Explorer roof could have been tripled for a cost of approximately $40. His testing showed that a reinforced roof in Ms. Parker’s wreck would have crushed approximately two inches instead of ten inches.

We also proved that the seat belt system in the 1999 Explorer was defective and failed to retain Ms. Parker in the vehicle during the rollover sequence. The evidence presented showed that slack could be introduced into the belt system when the B pillars were crushed inward. Plaintiff’s expert, Steve Meyer, testified that due to the poor roof design, the seat belt system should have included a cinching latch plate or been integrated into the seat back instead of being mounted to the B pillar. Mr. Meyer also testified that performance of the seat belt could be improved if the roof was strengthened.

The jury in this case took a courageous step by finding the 1999 Explorer defective. This verdict should send a message to Ford Motor Company that it should not design its roof structures down to the minimum federal strength requirements of 1.5 times the weight of the Explorer. A roof designed to only a 1.5 strength to weight ratio is totally inadequate. It’s a shame that folks don’t have any way of knowing the roof strength of their vehicles. Instead, they have to rely on the manufacturer’s word. Ford claims the quality of its roof design is good, but in reality it’s not. The tragic results in
this case are the result of a corporate strategy to increase profits at the expense of consumer safety. Our firm has a number of similar roof-crush cases currently pending with the exact same defect. Greg Allen, Cole Portis, and Ben Baker from our firm tried the case for the family and did a very good job.”

DRUG MANUFACTURERS LITIGATION

Pfizer To Pay $142 Million For Drug Fraud

The pharmaceutical giant, Pfizer, has been ordered to pay $142 million in damages for fraudulently marketing gabapentin, an anti-seizure drug, marketed under the name Neurontin. A federal jury in Boston ruled on March 25th that Pfizer fraudulently marketed the drug and promoted it for unapproved uses. The jury sided with California-based Kaiser Foundation Health Plan Inc. and Kaiser Foundation Hospitals. This was the first trial of a gabapentin case against Pfizer.

The drug was promoted by Pfizer as a treatment for pain, migraines and bipolar disorder—even though it wasn’t effective in treating these conditions and was actually toxic in certain cases, according to the Therapeutics Initiative, an independent drug research group at the University of British Columbia. The company had been forced in lawsuits to release all of its studies on the drug, including those it had kept hidden.

A new analysis of those unpublished trials by the Therapeutics Initiative suggests that gabapentin works for one out of every six or eight people who use it, at best. The review also concluded that one in eight people had an adverse reaction to the drug. To date, Pfizer has been assessed $440 million in penalties and fines for fraudulently promoting gabapentin in the U.S.

Source: CBS News

California County Sues Glaxo Over Diabetes Drug

A lawsuit was filed last month against GlaxoSmithKline, accusing the pharmaceutical company of suppressing evidence that its diabetes drug Avandia causes increased risk of heart attacks. The lawsuit, filed in a California federal court, seeks restitution for all Avandia purchasers in California. It’s alleged that the company violated state false-advertising statutes. This lawsuit is the first by a government entity against the company over Avandia. Santa Clara County’s acting county counsel Miguel Marquez had this to say about the lawsuit:

“Glaxo’s unlawful conduct has cost patients, their insurers, and government payers millions of dollars, and it has caused needless suffering to thousands of Californians. This is precisely the sort of corporate malfeasance that California law prohibits.”

The drug manufacturer, which is based in London, claims the lawsuit has no merit and that scientific evidence shows the FDA-approved drug doesn’t increase heart attack risk. The lawsuit comes after the release of a U.S. Senate report in February charging that Glaxo minimized Avandia’s safety risks and withheld data from the Food and Drug Administration. The Senate Finance Committee’s report was based on researchers’ studies of Avandia, internal GlaxoSmithKline documents, and FDA documents.

According to Santa Clara County officials, the County spent $2 million to provide Avandia for patients at its public hospital between 1999 and 2007. The County said that because Glaxo’s Avandia advertising campaign was aimed at diabetics, who are classified as disabled under California law, they are seeking triple damages. It will be interesting to see how this litigation progresses and whether other state and local governments file suit.

Source: Associated Press

Alpharma To Pay $42.5 Million To Settle Lawsuit

Alpharma Inc. has agreed to pay $42.5 million to settle charges that it paid doctors to promote and prescribe Kadian, the firm’s morphine drug. The settlement resolves a lawsuit brought against Alpharma, which is a unit of King Pharmaceuticals Inc., by a whistleblower in 2006. The suit alleged that Alpharma misrepresented the safety of Kadian and paid doctors to prescribe the medicine from 2000 through 2008. Tony West, Assistant Attorney General for the Justice Department’s civil division, had this to say: “Illegal marketing of pharmaceutical drugs jeopardizes the public’s confidence in our health-care system.”

Source: PR News Wire United Business Media

I totally agree with Mr. West’s statement. We badly need to clean up the system. The money for the settlement will be divided among the federal government and the states. Debra Parks, the person who filed the lawsuit in 2006, will receive a portion of the settlement as a whistleblower under the federal law.

Source: Wall Street Journal

Another Guilty Plea In Criminal Case

Our firm currently has a civil lawsuit in Alabama against Ethex Corporation and KV Pharmaceutical Company (KVP) involving the death of a person who took a prescription medication manufactured by Ethex. In February of this year, KVP, the parent company of Ethex, announced it had reached a settlement agreement, subject to court approval, with the United States Attorney for the Eastern District for Missouri and the Office of Consumer Litigation for the United States Department of Justice. This agreement—if approved—will resolve a criminal investigation regarding certain activities of Ethex Corporation.

Ethex Corporation is the generic pharmaceutical and distribution subsidiary of KVP. Under the terms of this settlement, Ethex will plead guilty to criminal charges and will be required to pay a fine and restitution of $25.8 million. Ethex also will not contest an administrative forfeiture of $1.8 million. Ethex Corporation will plead guilty to two felony counts for failure in 2008 to file field alerts for the drugs Dextroamphetamine and Propafenone.

In light of the plea and likely exclusion of Ethex from participation in governmental programs, the company has elected to stop all operations of Ethex in the future. It appears that KVP is stepping up to the plate and taking its medicine from the federal government in the criminal matters. Our firm hopes to make them do the same thing in our civil case in Alabama. If you have questions about this matter, you can contact Roger Smith, a lawyer in our firm, at Roger.Smith@beasleyallen.com or by phone at 800-898-2034.

Source: PR News Wire United Business Media

4 www.BeasleyAllen.com
Roche Files $545 Million Suit Against Credit Suisse

As we all know, Big Pharma is no stranger to the judicial system in this country. Every drug manufacturer has been a Defendant in at least one civil lawsuit. Most of them have been sued on many occasions. Roche, the Swiss drugmaker, has filed a civil lawsuit itself and is seeking $545 million in damages against Credit Suisse. Two former directors at the bank—who were later charged with fraud—invested Roche’s cash in $545 million worth of the now-notorious collateralized debt obligations and auction rate securities. Roche alleges in its Complaint:

Credit Suisse fraudulently invested over $545 million of Roche’s cash in CDOs and other ARS collateralized by subprime mortgages... And other risky collateral, rather than in federally guaranteed student loan securities as represented.

The suit also names Eric Butler and Julian Tzolov, former Credit Suisse brokers, who were accused earlier this year of just such a “bait-and-switch” scheme. In those cases, Tzolov pleaded guilty to fraud charges and Butler was convicted of fraud.

Actually, Roche isn’t the only company that has sued over investments that turned out to be risky. Nor is it the only pharmaceutical company that lost money on auction rate securities (ARS). For example, Bristol-Myers Squibb took a $275 million charge early this year for ARS losses. Also, Teva Pharmaceutical Industries sued Merrill Lynch over ARS that dropped in value from $273 million to $10 million. It’s rather ironic to see drug manufacturers filing civil lawsuits alleging fraudulent conduct.

Source: FiercePharma.com

A Needed Correction

I apparently made a mistake in the March 2010 Report relating to litigation involving Merck & Co. I wrote that Merck had “settled the shareholder lawsuits that were filed against the company over Vioxx.” That was somewhat misleading and will be corrected. Although the parties to the derivative action have actually agreed to settle the case, it will not resolve, nor will it release the claims being litigated in the consolidated shareholder securities fraud class action against Merck and its senior officers and directors. On November 30, 2009, the United States Supreme Court heard oral argument in the case (Merck & Co., Inc., et al. v. Reynolds, et al., No. 08-905) over the issue as to when the statute of limitations begins to run for securities fraud claims. The Supreme Court is expected to issue a decision during this term, which ends in June.

In the securities fraud class action, Plaintiff shareholders, including the Public Employees’ Retirement System of Mississippi (Co-Lead Plaintiff), allege that the Defendants issued public statements that misrepresented their true beliefs concerning the cardiovascular safety profile of Vioxx, and that the trading price of Merck securities dropped sharply when the truth was disclosed to investors. We are glad to make this correction as requested. We want all of the information in the Report to be completely accurate and regret this mistake. I appreciate the Mississippi Attorney General’s office bringing this matter to our attention and requesting the correction.

III. PURELY POLITICAL NEWS & VIEWS

The Use Of Fear In Campaigns

I have observed over the years that more folks vote in elections against something they consider bad rather than voting for a good thing. I suspect that has something to do with human nature and also the tone of campaigns. The fear of something also factors into the voters’ decision-making. Recently, the Republican National Committee (RNC) held a training session in Florida that involved teaching political operatives how to raise big bucks for GOP candidates. The RNC laid out its specific plans for fundraising at this meeting.

Apparently, the party bosses believe they can scare their donor base into forking out huge sums of money through an aggressive campaign capitalizing on fear of President Obama and a promise to save the country from heading into socialism. The power point presentation used at the meeting wasn’t supposed to be made public. Not only did the presenters talk about using fear to raise money, but also discussed appealing to the egos of wealthy contributors. The question was put to the group: “what can you sell when you do not have the White House, the House, or the Senate?” The answer was to scare folks about the President and socialism.

Federal Grand Jury Closes King Investigation

Alabama Attorney General Troy King was informed last month that a federal grand jury investigation of him and his office has been closed. U.S. Attorney Joyce Vance of the Northern District of Alabama informed Troy’s lawyers that the investigation had been concluded and the grand jury adjourned. Troy and his wife Paige met with members of the news media to discuss the difficulties “many months of intense scrutiny” and a “protracted investigation” had caused him and his family. Troy had this to say:

While this has been a long and often stressful process, I never wavered in the knowledge that I have conducted myself and the high office I hold in an honorable and ethical fashion, and in accordance with the law. Holding this office requires a person to demonstrate courage, sometimes even standing up to the powerful, sometimes at great cost. Doing right has always carried a cost though. Holding the office of the attorney general or U.S. Attorney is a position of sacred trust. A prosecutor is vested with one of the highest callings in preserving our freedom and upholding our sense of justice, but that authority and responsibility can also be misused and abused if it goes unchecked. If the person holding such an office sets out to settle political scores, the very powers that protect and defend can also destroy reputations and hurt innocent people.

Many observers around Montgomery believe this investigation was politically motivated. Whether that’s true or not may never be known. Regardless, it’s finally over and that’s good news for Troy and his family. In my opinion, it’s also good news for the people of Alabama.
STRANGE ACCUSES THE ATTORNEY GENERAL OF TAKING GAMBLING MONEY

Luther Strange, the lawyer-lobbyist, has accused Troy King’s campaign of taking contributions from gambling interests, including casino operators and slot machine manufacturers. Luther, who ran a very poor race in 2006 against Jim Folsom for Lt. Governor, made these charges about the same time news hit the streets on the grand jury giving Troy King a clean bill of health. But I’m sure the timing was just a coincidence. Troy has denied taking any money from gambling interests.

Source: Associated Press

TROY KING TAKES OVER GAMBLING TASK FORCE

Attorney General Troy King announced last month that he was taking control of the Governor’s Task Force on Gambling and said he was dismissing John Tyson Jr. as task force commander. The Attorney General instituted a “temporary moratorium on raids” of Alabama casinos and said he would ask Alabama courts to decide, through declaratory judgments, whether the gambling machines at such venues are legal. But Tyson, who seems to be enjoying the lime light, refused to give up control, and at press time this matter was still up in the air. We appear to have a constitutional crisis on our hands. Eventually, the Alabama Supreme Court will have to decide this very important issue.

Troy has criticized the task force’s attempted large-scale, pre-dawn raids of gambling venues throughout Alabama and has said that so-called electronic bingo machines may be legal. On the other hand, Gov. Riley has defended the raids and maintains that the machines—which he says look and play much like slots—are illegal and are against the law.

Birmingham Circuit Judge Robert Vance had previously ruled that the Attorney General had the authority to take over the task force. This question is before the Supreme Court and will ultimately be decided by that Court. Douglas McElvy, a well-respected Montgomery lawyer and former president of the Alabama State Bar Association, was selected by the Attorney General to be the state’s new lead lawyer in the bingo litigation. Tyson, the fulltime district attorney for Mobile County, may be walking on thin ice. He claims the Attorney General, who is the state’s top law enforcement officer, had no authority over the task force.

Troy said he strongly opposes gambling, and only took control of the task force because the law should be enforced “in the proper way and in the proper venues.” The Attorney General added that since the Alabama Supreme Court had not yet ruled on whether or where in the state bingo can be played on electronic machines, he would wait for a definitive ruling by the High Court. Gov. Riley says the Supreme Court has already ruled on the issue, referring to an earlier Lowndes County decision. But since there are a number of separate constitutional amendments that relate to individual counties, it would seem that each amendment would stand on its own. Regardless how one feels about the gambling issue, it certainly would appear that the courts will have to resolve the conflict between the Governor and the Attorney General.

Source: Al.com

VIEWS OF PARTY CHIEFS ON BINGO

There can be little doubt that the debate over bingo in Alabama has been dominating the state news scene for weeks. In fact, I don’t believe there has been any one single issue in recent years that has been more widely discussed and debated. It’s rather sad to see so many critical issues requiring the full attention of the Governor and legislators being virtually ignored. Some folks around the State House believe the whole affair has been mostly political in origin. For that reason, I am going to set out the views of the leaders of the two major political parties in Alabama on the bingo battle. Their views are worth a review in my opinion.

MIKE HUBBARD ON BINGO

Mike Hubbard, chairman of the Alabama Republican Party, appears to be following Gov. Riley’s lead in the bingo battle. Mike believes the bingo machines are actually Las Vegas-style slot machines that operate and pay-out just like thousands of identical machines in the gambling capitals of the worlds. He says these machines are currently illegal in Alabama under the state constitution and statutory laws. Because of the way they operate, Mike says the machines should be Class III devices, which are prohibited by law in the state. His view is that facilities that offer them to the public are clearly breaking the law. If Mike is correct, the court system is the place to find the answer.

JOE TURNHAM ON BINGO

While Joe Turnham, chairman of the Alabama Democratic Party, isn’t in favor of gambling in any form, he believes the ultimate solutions to the constitutional and legal issues lie with the courts and in the Alabama Legislature. Joe believes this matter should be decided by the voters of Alabama. He says we should allow the people to vote and settle this matter once and for all. According to Joe, once this issue is put to a vote of the people, we should all get on with our lives. Recent polling seems to indicate about 80% of the people of Alabama agree with Joe on the right to vote issue.

MY OWN VIEW

I pretty well made my views on the ongoing “political” battle involving bingo known in the last issue of the Report. Nothing has happened since that time to change my mind. I am still against gambling and don’t believe it should be a major tax base for any state. However, I strongly believe in giving the people of Alabama the right to vote on any important issue that requires such a vote. We badly need to get this matter behind us!

ATTORNEYS GENERAL SUE FEDERAL GOVERNMENT OVER HEALTH CARE OVERHAUL

Attorneys General from 14 states, including Alabama, are suing the federal government to stop the massive health care
overhaul, claiming the new law is unconstitutional. The lawsuit, which was filed minutes after President Obama signed the overhaul bill, names the U.S. Departments of Health and Human Services, Treasury and Labor as Defendants. Florida Attorney General Bill McCollum is taking the lead in the lawsuit filed in federal court in Pensacola.

At press time Attorneys General from Alabama, South Carolina, Nebraska, Texas, Michigan, Utah, Pennsylvania, South Dakota, Louisiana, Idaho, Washington and Colorado had joined in the suit. It’s reported that other GOP Attorneys General may join the lawsuit later or sue separately. Virginia’s Attorney General has already filed an individual suit.

These lawsuits most likely will fail because the reform measure clearly appears to meet constitutional muster. But filing the lawsuits may prove to be good politics for the segregation battles of the 1960s. But, individual suit.

Attorney General has already filed an individual suit.

To meet constitutional muster. But filing the lawsuit because the reform measure clearly appears impossible. It also appears the bingo legislation will resurface and who knows what will happen there. The road construction bill that has passed the Senate is now in the House. My brother, Billy Beasley, is handling this bill in the House. If passed, it will both create badly-needed jobs and solve some critical infrastructure needs in our state. There are other issues that should also be addressed, including ethics and campaign finance reform, and taking the sales tax off groceries. Hopefully, each of these issues will be considered and passed.

Source: Birmingham News

JEB BUSH ENDORSES BRADLEY BYRNE FOR GOVERNOR

Bradley Byrne, a Republican candidate for Governor, picked up an endorsement last month from former Florida Gov. Jeb Bush. The brother of George W. Bush released a statement calling Byrne “the conservative reformer in the race for governor of Alabama.” It was reported that Bush will appear at a fundraising event for Bradley in Birmingham this month. Bush, who served as Florida’s governor from 1999 to 2007, is now chairman of the Foundation for Excellence in Education.

Source: Birmingham News

IV. LEGISLATIVE HAPPENINGS

BIG LEGISLATIVE AGENDA LEFT

On March 23rd, Alabama legislators came back to Montgomery from Spring Break facing lots of work that needs to be accomplished during the legislative days left in the session. The final one-third of the session will likely be dominated by three big topics: budgets, bingo and roads. The State is in big trouble financially and passing budgets will be extremely tough this year. Good budgets—without new revenues—will be impossible. It also appears the bingo legislation will resurface and who knows what will happen there. The road construction bill that has passed the Senate is now in the House. My brother, Billy Beasley, is handling this bill in the House. If passed, it will both create badly-needed jobs and solve some critical infrastructure needs in our state. There are other issues that should also be addressed, including ethics and campaign finance reform, and taking the sales tax off groceries. Hopefully, each of these issues will be considered and passed.

VETERAN LEGISLATOR HINTON MITCHEM WILL RETIRE

State Senator Hinton Mitchem, a veteran of more than 30 years in the Alabama Legislature, won’t seek re-election this year. Hinton, who served two years as Senate President Pro-Tem, has been a very good legislator. He was most effective and represented his people well. In making his announcement, Hinton said through a written statement:

I have carefully weighed the choice before me; to continue to work and provide senior leadership to a district that has come to count on that, or to devote time to my family who have always supported my public service, but who have made numerous sacrifices as they yielded to the constraints and endless schedules of an elected official. I have decided that I will not run for re-election this year. I have had a long and productive career and am satisfied that I have served the citizens of my district well.

Hinton served in the Alabama House of Representatives in 1974-78 and the Senate in 1978-86. He lost a bid for Lieutenant Governor in 1986, but returned to the Senate in a special election in 1987. The University of Georgia graduate has served there ever since. He was elected President Pro-Tem in January 2007 and held the post until February 2009, when Senator Rodger Smitherman succeeded him. Hinton, who earned the respect of his peers over the years, will be missed in the Senate.

Source: Birmingham News

V. COURT WATCH

ANOTHER STRONG VOICE FOR JUDICIAL ELECTION REFORM

U.S. Supreme Court Justice Ruth Bader Ginsburg spoke out last month on a very important issue, urging some badly-needed reform of the American court system. The type reform the highly-respected jurist was referring to dealt with the obscene sums of money being spent electing judges throughout the county. Justice Ginsburg joined with her former colleague, Sandra Day O’Conner, who has been an outspoken proponent of cleaning up the system. Fortunately, concerns about the greatly expanding role of big money in judicial elections has been getting much more attention in recent months. This is due to the huge amounts of money being poured into the political campaigns of state judges around the country and the fact that the media is reporting on the subject.

Few citizens realize that unprecedented amounts were spent in the last two election cycles. It has been reported that, in the past decade, candidates for state judgeships took in more than $206 million, which more than doubled the $83 million received by judicial candidates in the 1990s. I suggest our readers take a look at the report released recently by the Brennan Center for Justice at NYU School of Law and Justice at Stake. These are non-partisan groups that have been working on reforming the judicial selection process. The amounts men-
tioned above don’t ever include the hundreds of millions spent by so-called issue groups which don’t have to report their sources of funding nor how much they spend on behalf of candidates for judicial office. Reform of a broken system, as it relates to electing judges, is badly needed. Hopefully, the American people will agree with Justices Ginsburg and O’Conner and demand reform.

Source: ABC News

**Republican Claims of Activist Liberal Judges Are Hypocritical**

We have all heard the battle cries over the years from the GOP about liberal, activist judges who they say threaten to destroy our nation’s judicial system. During the nomination of Supreme Court Justice Sonia Sotomayor in August 2009, corporate interests flooded news broadcasts throughout the country warning of the judge’s liberal “activist” qualities. But, recent judicial history in environmental, civil procedure, discrimination, and political law demonstrates quite clearly that the conservative majority on the U.S. Supreme Court has been anything but status quo when it comes to activism. If you check the record, you might decide that the GOP has been sort of hypocritical on this issue.

Perhaps no ruling has had such a dramatic and alarming effect on the practice of law as the high court’s rulings in two significant cases, *Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal*. Lawyers who practice in the federal system say that by “retiring” the notice pleading standard for the newer and stricter plausibility standard, those decisions overturned nearly 50 years of procedural precedent. Since the rulling, federal courts have been inundated by motions to dismiss and lower court judges remain puzzled on trying to determine the Court’s vague interpretation of the plausibility pleading standard. As a result of the Supreme Court’s decisions, plaintiffs face difficult, if not insurmountable pleading requirements, in discrimination, conspiracy, fraud and antitrust cases.

John Vail, senior litigation counsel and vice president of the Center for Constitutional Litigation, noted that Iqbal has been cited by courts more than 2,700 times since it was decided in May 2009. He made this observation: “We are talking about signifi-

cant cases that are getting dismissed because of Iqbal and Twombly and we have judges noting that.”

Since 1907, the government was permitted to ban political spending by corporations in campaign elections. This 100 year old precedent, and two recent cases upholding the precedent, were also abolished by the conservative majority of the Supreme Court in a split 5-4 decision in *Citizens United v. Federal Election Commission*. While corporations spent hundreds of millions in campaign contributions through political action committee trusts, they were forbidden from directly funding campaigns until the Court’s recent 2010 decision. This was all changed by five members of the court. The dramatic shift in political spending restrictions will now permit corporations to directly influence and contribute millions in campaign contributions to their chosen political candidates—an overwhelming majority of which are Republicans—with no restrictions.

In 2001 and 2006, the U.S. Supreme Court effectively reversed over 30 years of Clean Water Act law, when it issued opinions as to the meaning of “navigable waters” in the *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* and *Rapanos v. United States* cases. These rulings effectively exclude over 45% of major polluters from oversight under the Clean Water Act. As a result, EPA enforcement personnel and state regulators are at a virtual standstill due to the inconsistency and vagueness in the new law. They have halted nearly half of their investigations since 2006.

On the employment discrimination side, the U.S. Supreme Court again sided with corporate interests and reversed years of precedent in the case *Gross v. FBINational Services, Inc.*. Before the Court’s decision, years of age discrimination precedent required a burden-shifting analysis, whereby if the employee could demonstrate they were fired because of age, the burden of proof would shift to the defendant to prove it had a legitimate reason for its action, apart from age. However, the conservative majority, extending its decision beyond the narrow questions it had previously set to resolve in the case, over-turned longstanding precedent and now require the employee to bear the entire burden of proof that age was the reason he or she was fired. Because few—if any—employees would be present behind closed doors while their employers discussed laying them off or demoting them, it would be extremely difficult to obtain hard evidence that age was the key determining factor. Obviously, large corporations were very happy with the ruling.

In summary, it certainly appears that judges are only considered to be activists when they don’t rule for the big folks and especially the most powerful companies in corporate America. So, I will leave it up to our readers—has the GOP been “fair and balanced” in its views on judicial activism?

Sources: Lawyers USA, *New York Times*, and *Los Angeles Times*

**Alabama Court System Faces Layoffs**

According to Chief Justice Sue Bell Cobb, the Alabama court system will have to lay off more than 100 temporary employees. The layoffs were to be effective March 31st due to funding shortages. The Chief Justice said across-the-board cuts appear likely for the state General Fund budget, and the cuts will mean a drastic reduction for the state court system. Chief Justice Cobb said the layoffs could grow to several hundred court employees unless the Governor uses money from the state’s rainy day fund to help state agencies.

In my opinion, the layoffs will badly hurt the court system and will likely result in justice being delayed for persons and companies having a real need for justice. It’s rather interesting—with perhaps a touch of irony—that the Alabama Supreme Court justices ruled against the State of Alabama in litigation against Exxon and several drug companies that cost the state billions of dollars. Had that money been available it would have certainly helped solve the state’s financial problems.

Source: Associated Press

**A Movement That Would Restructure Alabama Courts**

There has been a quiet movement under-the-table—that if approved—would drastically change Alabama’s court system. It involves a total reorganization of the Circuit and District Courts at the local level. Chief Justice Sue Bell Cobb reportedly is the mastermind
of this effort and it appears to have some support. The following is an editorial on this subject that appeared last month in the Mobile Press Register.

Reorganizing circuit and districts courts to increase efficiency statewide responds to growth patterns and economic conditions. Baldwin County Presiding Circuit Judge James Reid is leading the Realignment of Judicial Resources Committee, and he is well aware of the impact of population growth on the Baldwin court system. The committee was created by Alabama Supreme Court Justice Sue Bell Cobb. Two major changes being considered are a consolidation of circuit and district courts, and allowing the Supreme Court to move open seats to circuits that need them.

Moving judges’ seats around is likely to create some political waves, and giving that power to the Supreme Court rather than the Legislature may not fly with a governing body reluctant to give up control over even the most local and minor of matters. But the idea is to evenly spread the caseload. A report by Judge Reid says some district judges’ caseloads are up to five times larger than other judges, and some circuit judges have triple the caseloads of others. When people with pending criminal or civil cases have to wait longer in some counties than in others, Alabama justice is neither even-handed nor swift. Supreme Court justices could act more quickly and with much more expertise to shift positions as needed. No sitting judge would be moved; the seat would be shifted only when a vacancy occurred.

Chief Justice Cobb says that creating a new judgeship costs about $400,000. With the state funding crunch, the best use of taxpayer dollars is to instead move a judgeship from a circuit that may not be busy to one where caseloads are burdensome. However, consolidating district and circuit judgeships may prove less effective. While such a move might spread the caseload more equitably, district court cases are generally less complicated and carry less severe criminal or civil consequences. The two types of caseloads are not necessarily comparable, and assigning them in such a way that any judge might draw a broader range of cases could make each judge less efficient with his or her docket. Regardless, the overall review of the circuit and district court system is warranted to meet the challenges of population shifts and tough economic times.

It will be interesting to see how this reorganization works out. I don’t believe many folks outside the judicial system even know about it. So far things have been mighty quiet across the state on this matter and also in the Legislature.

Source: Mobile Press Register

**BP Wins $99 Million Reduction In Toxic Fumes Case**

A federal judge in Houston has drastically reduced the $100 million verdict returned in December against BP’s Texas City refinery. The verdict was cut to less than half a million. This deal the British oil giant a rare and perhaps unexpected legal victory. U.S. District Judge Kenneth M. Hoyt said the Plaintiffs failed to prove BP was “grossly negligent” in a chemical release at the refinery that sent more than 100 workers to area hospitals on the evening of April 19, 2007. The judge wrote that without “clear and convincing” evidence of gross negligence, the $100 million in punitive damages initially awarded ten workers from that group “must be set aside.” Instead, he awarded those workers a combined $340,660 in actual damages for medical expenses, lost income and mental anguish.

Source: Houston Chronicle

**South Carolina Supreme Court Overturns Verdict In Ford Crash**

The South Carolina Supreme Court has overturned an $18 million verdict against Ford Motor Co. in a fatal crash. The Court ruled that one expert shouldn’t have been allowed to testify about cruise-control problems. Sonya Watson, 17 years old, was paralyzed after losing control of her Ford Explorer in December 1999. The teenager’s sport-utility vehicle veered off the left side of an interstate highway, rolling four times. Her female passenger was killed. Both women were ejected from the SUV, a 1995 model.

But the idea is to create more efficient courts. The Court rather than the Legislature might draw a broader range of cases and make each judge less efficient with his or her docket. Regardless, the overall review of the circuit and district court system is warranted to meet the challenges of population shifts and tough economic times.

The judge added that Mr. Anderson said he had never even operated a vehicle with a cruise-control system or published any articles on the subject. The Court also ruled that the trial judge shouldn’t have allowed testimony about similar acceleration problems that involved vehicles of different models made in different years. Once this case is looked at carefully, I don’t believe many courts will follow this decision.

Source: Associated Press
VI. THE NATIONAL SCENE

THE OBAMA ADMINISTRATION AND CONGRESS CAN NOW GET MOVING

At the end of the President’s first year in office, lots of folks were assessing the performance of the Obama Administration. While there have been some major shortcomings, I believe this President has accomplished quite a bit, especially when you consider the mess he inherited and the opposition of the GOP members of Congress since he took office. When President Obama took office, he faced some of the toughest economic times since the Great Depression. At that time the nation’s economy was losing almost 700,000 jobs a month on average. Our banking system was in crisis and lending was frozen. Almost $10 trillion in wealth was either gone or lost in the stock market. Millions of Americans found their savings were at great risk of being wiped out. We had gone from large budget surpluses to huge deficits during the eight years of the Bush Administration.

Now we are finally beginning to see some real light at the end of the economic tunnel. Most believe that the economy has been stabilized and, hopefully, our financial institutions are now being better regulated. No doubt our standing in the world community has greatly improved. But, without any doubt, there is still lots to do and that requires Congressional action. The lingering debate over healthcare reform consumed the majority of the President’s energy and efforts. Now that this important reform has passed, this Administration and Congress must get down to work on other important issues. There are many critical issues—other than healthcare reform—that now must be dealt with. It’s time for things to get moving in our Nation’s Capitol!

MORE ON THE FINANCIAL CRISIS FACING OUR NATION

The debate still is ongoing as to why and how our nation’s economy was almost destroyed during the Bush years. In fairness to President Bush, the problems began even before he took office in 2001. There were also some key legislative leaders involved who must share the blame with the Bush Administration on this issue. One of them is former Senator Phil Gramm, the architect of a number of measures that became law, that were special-interest created and driven. Senator Gramm would be near the top of any list of suspects when you attempt to figure out what led to the economic meltdown.

Most economists agree that the economic crisis facing this country wouldn’t have happened but for the Gramm-Leach-Bliley Act. The banking deregulation bill eliminated the structural restraints that had prohibited commercial banks from the speculation that brought the United States perilously close to a major depression last year. Interestingly, it was the same Senator Gramm who was a co-sponsor of the Commodity Futures Modernization Act of 2000. That legislation exempted over-the-counter derivatives from regulation. The unregulated trading of derivatives—especially credit default swaps—directly resulted in the $181 billion bailout of AIG (the insurance giant that was too big to fail) and the collapse of Lehman Brothers (the investment bank which most felt couldn’t sink). But Senator Gramm didn’t stop there.

Gramm was the author of the so-called “Enron Loophole” in the futures deregulation bill. That resulted in exempting the trading of energy, metals and electricity from federal regulation and wound up causing the eventual collapse of Enron. If you don’t recall the rolling blackouts in California in 2001, I guarantee you that the people in that state do. If you are interested, you might check to see where Dr. Wendy Lee Gramm (the Senator’s wife) was hanging out during the time her husband was at work in the Senate and where she wound up. I suspect you will be shocked to learn that Dr. Gramm became a vice-president at Enron in charge of audits. She was also a stockholder in the company.

Some say that Phil Gramm would win an award for being the architect of financial failure if they gave such an award for that dubious honor. While there were others who helped him, Gramm would most likely get the top award. Interestingly, Gramm wound up working in the banking industry after his days of “public service” came to an end. I have often wondered why the national news media has never bothered to delve into the involvement of Phil Gramm and his wife relating to the Enron debacle.

GOODYEAR SETTLES VETERAN’S JOB LAWSUIT

Goodyear Tire and Rubber Co. has agreed to pay $40,000 to settle claims that its Lawton plant failed to promptly rehire an Army Reserve officer after he returned from active duty in 2007. Goodyear will pay David J. Ellis for back wages and other damages. The U.S. Justice Department sued Goodyear on Ellis’ behalf in May, alleging the company had violated the Uniformed Service Employment and Re-employment Rights Act of 1994.

The law requires employers to re-employ returning service members in the position they would have held had their employment not been interrupted by military service. The lawsuit alleged Goodyear failed to take steps to determine what job Ellis would have had if he had not been deployed for nearly two years. He was not re-employed for nearly a year after his October 2007 return. Ellis, who began working at the plant in October 1996, was re-employed September 19, 2008, but he left a short time later, according to the lawsuit.

While I only know what has been reported in the media about his case, I do know that men and women who serve in the Reserves or the National Guard, and who are called to active duty, must have job protection when they return. That shouldn’t be a problem and hopefully this case was an isolated incident. The American people support our troops and that’s a proven fact over the years!

Source: Newsok.com

VII. THE CORPORATE WORLD

CUTTING DOWN ON CORPORATE FINANCIAL CRIME

Over the past decade, there has been massive activity in Corporate America that appears to involve violations of the criminal laws. I have often wondered why there
haven’t been more criminal prosecutions in that arena. Maybe it’s because the federal government has been closing its regulatory and prosecutorial eyes to a most serious and growing problem. It’s been reported that 95% of criminologists in the United States study blue collar crime, while only 5% study white collar crime. And, it is said that of the small minority who even bother to study white collar crime, 95% focus on the individuals who cheat the corporation. Some have asked why there isn’t greater emphasis on crime by the corporation itself. That would seem to be a fertile field for regulators and prosecutors. There is a type of fraudulent conduct that is called “control fraud.” That’s where the CEO of a company uses the corporation as a weapon to commit fraud.

Bill Black, a lawyer and a former federal bank regulator, is the author of what is described as the corporate crime classic—The Best Way to Rob a Bank is to Own One. Mr. Black has listed some specific steps that he says can be taken to control corporate crime and specifically crimes of a financial nature. The following are a few things on his most interesting list:

- Strong and effective regulation is essential.
- 1,000 FBI agents should be hired.
- A chief criminologist should be appointed at each of the financial regulatory agencies.
- Executive bonuses should be fixed by tying them to long term corporate performance.
- The top 100 corporate criminals should be targeted.
- He wants the FBI partnership with the Mortgage Banker Association (the trade association of the big banks) “busted up.”
- Get rid of Too Big to Fail in Corporate America.
- He wants the creation of a Consumer Financial Protection Agency that is truly independent and he even has a suggestion of who should head it up—Elizabeth Warren, the Harvard Law School professor.

In addition, Mr. Black believes that Ben Bernanke should be replaced as Chair of the Federal Reserve and Timothy Geithner replaced as Treasury Secretary. While Mr. Black isn’t alone on this front, I don’t know enough to agree on his opinion of these two powerful men. But I do agree that each of them must perform at a much higher level in the coming months.

Source: Corporate Crime Reporter

**Pharmaceutical Group Spent $6.3 Million Lobbying In Three Month Period**

It has been reported that the pharmaceutical industry’s main trade group spent $6.3 million in the fourth quarter lobbying in our Nation’s Capitol. Congress, the White House and multiple government agencies on health care provisions and related issues were targeted, according to a quarterly disclosure report. The Pharmaceutical Research and Manufacturers of America (PhRMA) has among its members drug giants Pfizer Inc., Merck & Co., Johnson & Johnson and more than two dozen other U.S. And foreign companies. PhRMA lobbied on multiple aspects of the health care overhaul.

Not surprisingly, most of the individuals registered to lobby on the trade group’s behalf in the third quarter were former government officials and former legislative assistants to members of Congress. While in government some of them held some pretty important positions. For example, one lobbyist is Anne Pritchett, former Senior Policy Analyst in the White House Drug Policy Office and the Executive Office of the President; and another is Jennifer Swenson, former Deputy Legislative Director for Senator Pat Roberts (R-KS).

Source: Forbes

**IX. TOYOTA LITIGATION UPDATE**

**TOYOTA SEeks To Block Executive Testimony In Suit**

Most folks would expect that top officials in a corporation that has been accused of massive wrongdoing would have to testify in court. But Toyota Motor Corp. asked a Michigan appeals court last month to intervene in order to keep the carmaker’s top two U.S. executives from being questioned under oath by lawyers for the family of a woman killed while driving a Camry in 2008. The appeal was filed on March 8th after a Michigan trial judge denied a motion by Toyota to keep the two executives, Toyota Motor North America President Yoshi Inaba, and Jim Lentz, head of U.S. sales for Toyota, from being questioned by lawyers for the family of Guadalupe Alberto.

Toyota claimed the two officials didn’t have to appear for their depositions that had been scheduled and that the case should be litigated without the depositions. Toyota said making Inaba and Lentz answer questions from opposing counsel before the trial would be unduly burdensome, harassing and would subject these “employees” to depositions in nearly every product

liability case filed against the company. That position is shocking and totally without merit. It tells me those folks have much more to hide. Hopefully, the depositions will go forward as soon as the appeal is heard and disposed of. It’s impossible to justify Toyota’s position in the matter and is an indication of the arrogance of the carmaker’s bosses.

Source: ABC News

SMOKING GUN MEMO REVEALS TOYOTA WORKERS’ SAFETY FEARS

Toyota has been forced to turn over to United States Congressional investigators a “smoking gun” memo produced by its own factory workers that warned management as far back as 2006 of systemic threats to car safety. The two-page memo, which was drafted by a group of long-term Toyota employees and sent directly to Katsuki Watanabe, the president of the company in 2006, condemns “safety sacrifices” made by the company in pursuit of profit. The memo highlights the inadequate development times for new vehicles and the general decline of craftsmanship at Japan’s most famous manufacturing business. It concludes that vital processes were now in the hands of “amateurs.” The document also offered a prediction of the calamity that was to come, warning that Toyota’s management policy would ultimately threaten the company’s survival.

Toyota, which remains in crisis mode after a global recall of nearly nine million vehicles, will face a growing barrage of lawsuits as a result of its safety problems. Tragically, the failure by Toyota to deal with these safety issues, has caused the deaths of dozens of innocent victims on American roads. The memo warned the bosses at Toyota that an increasing number of problems that led to vehicle recalls were arising not at the manufacturing level, but in the planning stages.

The company has finally acknowledged that it expanded too fast, leaving it with a shortage of necessary specialists. The memo warned of that phenomenon in 2006, blaming the company for sidelining highly experienced workers in its pursuit of growth and profit. The principal author of the 2006 memo, Tadao Wakatsuki, has worked on the floor of one of Toyota’s largest Japanese factories for 45 years.

The memo, dated October 3, 2006, was sent to Katsuki Watanabe, president of Toyota Motor. It made seven requests of Toyota’s bosses. One of them demanded a review of cost reduction measures “so that the company can guarantee the manufacturing of safe cars.” While Toyota has now acknowledged that senior management had seen the original memo, the carmaker responded to only one of its requests and that was unrelated to safety. The company bosses ignored all of the rest. The memo was written in Japanese, but here are the translated highlights:

• Between 2000 to 2005 Toyota was forced to recall more than a million cars, a higher proportion of total vehicle recalls than other carmakers.

• Toyota faces a serious problem that could threaten the survival of the company if it is not more thorough in identifying problems and their origins.

• The company is threatened by: combining vehicle platforms, the sharing of parts between models, the outsourcing of planning, a shortage of experimental data on prototypes because of shortened development time, a shortage of experienced specialists and an increase in working hours for employees.

• We are worried about the processes that are vital for manufacturing safe cars, but that ultimately may be ignored … in the name of competition.

• Requests: a priority on safety, a review of cost-reduction measures, better training for contract workers, a return to craftsmanship.

The fact that Toyota not only kept this memo secret, but failed to heed the warnings, tells a great deal about how this company dealt with safety issues. It’s obvious that profits and marketing trumped safety concerns and sound engineering judgment.

Source: The Times

A SIGNIFICANT TECHNICAL SERVICE BULLETIN IN 2002

Our readers may be shocked to learn that a technical service bulletin (TSB) issued by Toyota in 2002 warned its dealers about surging problems. An attempt to fix the problem ignored reprogramming the on-board computer. It certainly appears Toyota knew it had an electronics problem. Lawyers in our Product Liability Section had known about this TSB for some time, but apparently NHTSA didn’t have knowledge of it until CNN reported on it last month.

Source: The Times

POST-RECALL TOYOTA COMPLAINTS ARE BEING REPORTED

At press time federal officials had received a tremendous number of complaints from Toyota owners who say their vehicles experienced sudden acceleration even after repairs under the automaker’s two recalls for the problem. At press time the number of complaints was near 100. NHTSA should order Toyota to come up with a new fix once it realizes that Toyota’s recalls did not fully address problems of sudden acceleration. NHTSA administrator David Strickland says the agency is “determined to get to the bottom of this.” NHTSA says it plans to contact every owner who makes such a complaint to gather more information.

NHTSA has launched three probes into whether Toyota moved too slowly to address complaints of sudden acceleration and whether the automaker’s electronics were to blame. Toyota officials have said they would also aggressively investigate any reports of post-recall sudden acceleration. Yet they have also maintained that two recalls covering 5.6 million vehicles in the United States fixed all known causes of sudden acceleration in Toyota and Lexus models, and that Toyota’s engine electronics were designed with “absolute reliability.” It’s pretty obvious that neither statement is accurate. I believe that, due to the sudden acceleration issues involving Toyota vehicles, federal officials will continue to get complaints about the issue from Toyota owners. It’s now being reported that over 50 deaths have been linked to the sudden acceleration issue.

Source: Free Press Washington
**TOYOTA WAS ASKED IN 2007 TO CONSIDER INSTALLING SOFTWARE TO PREVENT SUDDEN ACCELERATION**

It has been discovered that in 2007 federal regulators asked Toyota Motor Corp. to consider installing software to prevent sudden acceleration in its vehicles. This request came after a tremendous number of complaints that vehicles could race out of control. It took Toyota over two years to start installing the safety feature, known as brake override. It started in January after the widely-publicized accident involving a runaway Lexus ES that killed four people in California. Safety regulators have acknowledged that they pressured Toyota again last fall to consider the override software in the wake of that crash, which set off a chain of events leading the company to issue nearly 10 million recall notices worldwide.

Brake override—software that automatically drops a vehicle’s throttle to idle when both the brake and accelerator pedals are depressed simultaneously—is designed to stop a car even if its engine is accelerating. E-mails and a company memorandum obtained by Congress show that National Highway Traffic Safety Administration investigators discussed brake override with Toyota officials in August 2007, and that in 2008, a year before the San Diego crash, the automaker ordered an internal feasibility study of the technology. Toyota began installing brake override in four recalled models in January. Toyota now says it will extend the feature to three other recalled models and make it standard on all new cars by the end of the year.

In the e-mails, officials in Toyota’s Washington office describe being asked by federal regulators about the brake override, as well as modifications to the push-button ignition on some vehicles, as part of an ongoing sudden-acceleration investigation involving two Toyota models. An August 23, 2007, e-mail from Chris Santucci, manager of technical and regulatory affairs in the Washington office, to a superior and seven other Toyota employees, noted that at least two other manufacturers were already using brake override at the time. Santucci, a former NHTSA investigator who joined Toyota in 2003, wrote that he didn’t “believe that these functionalities are things [regulators] want Toyota to implement,” adding that “there are no requirements to do so.”

The investigation was closed seven weeks later without a defect finding by NHTSA. As we reported last month, Toyota officials later bragged that they “negotiated” a favorable outcome, saving the company more than $100 million. A year later, a Toyota memo called for an internal study of brake override technology in response to increasing NHTSA pressure over sudden acceleration, but the company did not move to adopt the feature.

Toyota continues to say that floor mat entrapment of accelerator pedals and sticking gas pedals are the causes of sudden acceleration in its vehicles. In response to public skepticism about those explanations, both Toyota and NHTSA are reviewing the “possibility” that the electronic throttle system in the carmaker’s vehicles could cause the problem. Eventually Toyota will have to admit that their primary safety problem is related to electronics.

Source: Los Angeles Times

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**PRODUCT LIABILITY UPDATE**

**A FEW OF THE DEFECTIVE PRODUCT CASES THE FIRM IS WORKING ON**

Our firm has been handling product liability cases for years. Because a product liability claim focuses on whether or not a product is defective, a product case can arise in all sorts of situations. These cases can arise in any type of product—from an automobile to a lawn mower or even to a tree stand—if it is defective and was sold to the consuming public. In automobile cases, the defective product could be the entire vehicle, or a component part such as the seat belt or tires. If an individual is injured while on the job, a product case may be found in the defective industrial machinery that caused the injury. Our lawyers are trained to recognize defect claims in all types of cases. Any accident, whether it is an automotive or an industrial or an at-home accident, that involves a serious injury or death, including paralysis, loss of limb or brain damage, should be carefully analyzed for possible product liability claims. Here are just a few of the type of product cases our firm is currently working on.

**Tire Failures**

Because of the publicity surrounding the Ford/Firestone litigation, tire failures have been reported with increasing frequency. Although most of us will log thousands of miles in our lifetimes without so much as an air leak, tire failures can and do occur regularly. Many of these failures can be directly attributed to manufacturing defects, design defects, or a tire manufacturer’s failure to warn of dangers inherent in their products. These dangers have been known to the tire industry for years. Tire manufacturers know that tire treads will wear with proper use and at some point fail if not serviced properly and replaced after their intended period of use has expired. So, tire failures, blowouts and detreads are foreseeable events. Although not all tire failures result in serious accidents, the sudden failure of a tire can cause a vehicle to lose control and roll over or collide with other vehicles on the roadway. Tire failures are especially dangerous if the vehicle is traveling at highway speeds.

Tire tread separation can be caused by bonding problems in the tire manufacturing process, contaminants introduced into the tire during the tire making process, under-vulcanization, old ingredients, improper sized components, or something as simple as air being trapped in between the layers of the tire during manufacturing. Detreading of these defective tires can result in single- or multi-vehicle accidents, or even rollovers. Even the auto manufacturers agree that drivers should be able to pull over, not rollover, when a tire detreads. That is unfortunately not always the case.

If you would like more information or have a question, you can contact Greg Allen (Greg.Allen@beasleyallen.com) or Cole Portis (Cole.Portis@beasleyallen.com) or JP Sawyer (JPSawyer@beasleyallen.com) at 800-898-2034.

Seat Belts

There are thought to be two collisions in an auto accident. The first collision is the vehicle's impact with another vehicle or object. The second collision is the passenger's impact with the interior of the vehicle, or in cases of ejection, impact outside the vehicle. Seat belt injuries occur when a defective seat belt fails to adequately protect a vehicle passenger in the “second collision” phase of an automobile accident. The purpose of a seat belt is to minimize the injuries caused in a second collision, by reducing or eliminating injurious occupant contact with the vehicle’s interior. Seat belt injuries often occur when there is a seat belt design, production, or installation defect. You may have a seat belt defect case if:

- an occupant who was believed to have been belted is found unbelted after the accident;
- a belted occupant makes contact with the vehicle interior, resulting in injury;
- the occupant is ejected outside the vehicle or outside the restraint of the seat belt, but the seat belt buckle is latched;
- the webbing of the seat belt is loose after the accident;
- the webbing of the seat belt is torn;
- the door mounted seat belts in the vehicle were ineffective when the door of the vehicle opened;
- the seat belt is “only” a lap belt or shoulder belt;
- the vehicle occupant compartment is intact and a belted occupant is injured; or
- the seat belt mounts came loose from the floor or vehicle pillars during the accident.

If you would like more information or have a question, you can contact Greg Allen or Cole Portis at 800-898-2034, or by email at Greg.Allen@beasleyallen.com or Cole.Portis@beasleyallen.com.

Work Place Injuries

Thousands of workers are injured or killed each year at their work place. Although a state's workers' compensation system places limitations on the ability of employers to hold employers accountable for these work-related injuries, many people do not realize that there may be another available source of recovery. Injuries in the work place quite often are caused by defective products. If a product causes an on-the-job injury, a product liability suit may be brought against the product's manufacturer. Catastrophic injuries, deaths, and amputations unfortunately too commonly occur from defective products found in the work place. Given the notable shortcomings of workers' compensation benefits, it is extremely important to evaluate on-the-job injury claims to determine if a third party claim exists against some other party. Commonly, injured employees are mangled or killed by defective machinery. In these cases, a third party claim can be filed against the designer, manufacturer, seller and/or the assembler of the machinery. In addition to defective machinery, employees can sustain injuries on the job due to the negligence of a third party.

If you have any questions or would like to discuss this topic more, please contact LaBarron Boone or Kendall Dunson, lawyers in the Section, at 800-898-2034 or email them at Labarron.Boone@beasleyallen.com or Kendall.Dunson@beasleyallen.com.

Big Truck Cases

Product liability cases are often overlooked, especially in single vehicle accidents involving large trucks. However, theories of defect apply equally to 18-wheelers as they do to cars. For example, defective roofs and defective seatbelts cause injuries in 18-wheeler truck accidents as well as passenger car wrecks. Also, some defects, such as defective under ride protection, are almost exclusive to 18-wheeler trucks. So, it is important to keep your eyes open while investigating an 18-wheeler accident so that you don’t miss important product liability claims.

Take the time to look at the correlation between the severity of the accident and the severity of your client’s injuries. Determine if there is a headache (header board) rack defect, a seatbelt defect, an airbag defect, underride protection defect, roof structure defect, or any other defect. If you would like more information or have any questions, please feel free to contact Ben Baker, a lawyer in the Section. His email is Ben.Baker@beasleyallen.com. He can also be reached at 800-898-2034.

Mesothelioma

Every year in the United States, between 2500 and 3500 people are diagnosed with mesothelioma. Mesothelioma cancer, or malignant mesothelioma, is a rare disease generally affecting the lining of the chest or abdominal cavity. Mesothelioma cancer is most strongly associated with expo-
sure to asbestos, and can remain latent in those exposed for 20 to 50 years.

Mesothelioma is a deadly disease. By the time the symptoms appear and cancer is diagnosed, the disease is often advanced. The average survival time is about one year. The five-year relative survival rate is around 10%. Because of the long latency period (the period of time from exposure to manifestation of symptoms) involved in mesothelioma cases—20 to 50 years—mesothelioma cases present unique challenges. For example, because it is necessary to properly identify the asbestos-containing products the client was exposed to, it is necessary to develop and maintain an ever-expanding library of product identification materials. The product identification library consists of labels, photographs of asbestos products, advertising materials and the like from products used in specific industrial settings 50 or more years ago. Further, many of the long-thought-of primary Defendants in asbestos litigation are in bankruptcy and many Claimants are left with no further recourse than to seek payment through a bankruptcy trust.

As a result, development of secondary and tertiary Defendants has become much more important and promises liability claims are often included in current mesothelioma lawsuits. Indeed, many of the current viable mesothelioma claims proceed against little-known companies responsible for manufacturing and selling asbestos gaskets, packing materials, industrial insulation used in boilers, power plants, ship yards, pumps and air compressors.

Due to the complexity and uniqueness of these cases, it is critically important to associate a law firm with resources and experience to tackle these difficult and challenging issues. If you would like more information or would like to discuss a potential case, please contact Mike Andrews or Ben Locklar, lawyers in the Section. They can be reached at Michael.Andrews@beasleyallen.com or Benjamin.Locklar@beasleyallen.com or 800-898-2034.

A LOOK AT VEHICLE ROOF CRUSH

Because of its extreme significance from a safety perspective, I asked Greg Allen, the Senior Lawyer in our Product Liability Section, to write a piece on roof crush litigation. Greg has handled a number of these cases and has several pending. He is extremely knowledgeable about roof crush issues. He is recognized as an expert on the subject.

Roof Crush

Our firm has recently handled a number of rollover cases where the roof in the car or truck failed to protect the occupants. Consumers have no way of knowing when they buy a car or truck whether the roof will protect them in a rollover crash. The strength of a vehicle’s roof is measured by what manufacturers call the “strength to weight ratio.” The federal standard governing minimum roof strength was passed in 1971. That standard only requires that the manufacturer meet a strength to weight ratio of 1.5 times the weight of the vehicle.

Some manufacturers design their roofs to have exceptionally good strength while others do not. Some manufacturers design down to the minimum standard of 1.5 times the vehicle weight. It is obvious that in a rollover the strength of the roof must significantly exceed one and a half times the weight of the vehicle. Rollover forces are much higher than that.

To pass the current federal standard, a car must withstand basically being placed on its roof and one half of its weight being gently put on the bottom of it. If the vehicle can support the weight plus one half with less than five inches of roof crush, it will pass the standard. Obviously, that is inadequate roof support.

Fortunately, NHTSA recently saw the error of its ways and in December of 2009 passed a rule that will double the strength of vehicle roofs of passenger cars and light trucks starting in 2012. In the meantime, the Insurance Institute for Highway Safety will be adding a new roof rating system. It is important that the public understand what they’re buying. In order to receive a marginal rating from the Insurance Institute, minimum strength to weight ratio of 2.5 will be required. An acceptable rating will be 3.25.

To receive a good rating the vehicle roof must withstand a force of four times the vehicle weight before reaching five inches of crush. Anything lower than a 2.5 will be considered a poor vehicle. There are many vehicles on the road that have less than 2.5 strength to weight ratio. There are serious injuries, including quadriplegia and deaths resulting from these extremely poor roofs. The cost of the vehicle is not related to roof strength. There are some very inexpensive vehicles that have very strong roofs. NASCAR drivers and their car builders have known for years of the need to have a strong roof. These cars can roll over many times and the occupant usually escapes injury.

Hopefully manufacturers will someday design the roofs to protect the occupants. It’s too bad we have to wait for the federal government to mandate stronger roofs.

Greg Allen
Beasley Allen
March 30, 2010

If you want more information on this subject, you can contact Greg at 800-898-2034 or by email at Greg.Allen@beasleyallen.com. He will be glad to answer any questions you might have.

VERDICT IN CASE INVOLVING AN AGED AND RECALLED TIRE

A jury in California awarded $18 million to a family who lost their 11-year-old son in a rollover caused by the catastrophic failure of an aged, recalled Firestone Tire. The jury found that American Tire Depot, the dealer, was negligent for installing the 12-year-old spare despite its recall status and Firestone inspection guidelines against using tires more than ten years of age. On May 24, 2006, the child was the rear seat passenger in a Ford Explorer driven by his brother, when the left rear tire experienced a cata-
strophic tread separation on a California highway. The child, who was wearing his seatbelt, was partially ejected in the rollover crash and died of massive head injuries.

“This tragedy could have been easily prevented,” said attorney Roger Braugh, who represented the Moreno family. “The facts of this case showed very clearly that American Tire Depot did not offer even a minimum of professional attention to tire safety.” In January 2006, the child’s father brought the family’s 1994 Ford Explorer to American Tire Depot to replace two rear tires. ATD, a Firestone dealer, advised the father to rotate the spare, a recalled Firestone Radial ATX, onto the vehicle and sold him one new tire.

The family, which purchased the Explorer used in 2005, was unaware that the Firestone spare was 12 years old and part of the massive 2000 Firestone recall.

At the time ATD installed the 12-year-old recalled tire, both Ford and Firestone had issued warnings against using aged tires. A Firestone dealer Technical Bulletin, dated October 2005, advised against the use of tires older than ten years, regardless of the tread depth. Ford Motor Company also issued a warning in 2005 advising against the use of tires older than six years. Ford’s warning actually read: “Tires degrade over time, even when they are not being used. You should replace the spare tire when you replace the other road tires due to the aging of the spare tire.” The tire technicians at ATD failed to follow these guidelines, nor did they check to determine if the tire was recalled.

At the trial, ATD acknowledged that it provided no training for its tire technicians on tire aging or how to read the tire date, which is embedded in the alphanumeric DOT code molded on the tire sidewall. The company also admitted that it lacked any policies or procedures to identify and capture recalled tires. An ATD store manager testified that he would provide the same service again. A company representative claimed he would expect a technician to do “nothing” if presented with an aged, recalled tire.

The jury found the tire dealer was 85% liable for the child’s death. The family had previously settled their case against Firestone. In the wake of this tragedy, the Moreno family has advocated for better tire safety laws. A family member testified before the California Assembly in 2009, urging it to pass a bill requiring tire dealers to disclose tire age.

Sean Kane, President of Safety Research & Strategies, who has been advocating for expiration dates on tires and consumer disclosure on tire age, says that this verdict sends a strong message to the industry. He had this to say:

Tire dealers and tire manufacturers must implement policies that ensure proper training to prevent aged and recalled tires from being installed on vehicles. The failure to do so jeopardizes public safety.

Roger Braugh and Jason Hoelscher, partners at Sico, White, Hoelscher & Braugh, L.L.P., a law firm based in Corpus Christi, Texas, represented the family in this case and did a very good job.

Source: Sico, White, Hoelscher & Braugh, L.L.P.

COOPER TIRE HELD RESPONSIBLE FOR FATAL MINIVAN ROLLOVER

An Iowa jury has found that Cooper Tire & Rubber Co., the second-biggest U.S. tiremaker, is largely responsible for the fatal rollover of a minivan in 2007. The jury found that the Cooper tire that failed on the 1997 Chrysler Corp. minivan wasn’t state-of-the art when it was designed and manufactured. A total of $32.8 million was awarded to the Plaintiffs. Of the total, jurors awarded $28.4 million to Ivon Toe, a 39-year-old woman rendered quadriplegic in the accident.

Punitive damages of $1.5 million were also assessed against Cooper and is included in the total verdict. Documents that were devastating to Cooper’s case were introduced during the trial in which Cooper-Tire executives discussed tire failure rates and the cost of remediation. The company delayed making needed changes to its products for more than four years. Wesley Todd Ball and Kyle Farrar, lawyers with the firm of Farrar & Ball in Houston, Texas, represented the Plaintiffs and did a very good job.

Source: Autonews.com

XI. MASS TORTS UPDATE

A REPORT FROM OUR FIRM’S MASS TORTS SECTION

Andy Birchfield, who heads up our firm’s Mass Torts Section, provided the following information concerning activities in this Section. The lawyers and staff are currently investigating the following topics. Lawsuits have been filed and are pending in courts around the country dealing with these products. Some of them will be mentioned in more detail in this issue.

NHTSA SHOULD MANDATE BRAKE OVERRIDE SYSTEM

The federal government is likely to order brake-override systems on all light vehicles because of Toyota’s unintended-acceleration problems. Some observers believe General Motors Co. And Honda Motor Co. probably will feel the biggest impact. Currently, GM and Honda are the only major automakers without brake-override systems in most vehicles and these companies do not have firm plans to install the systems on a widespread basis.

The two companies would have to develop software to tell engines to ignore acceleration commands if the brake pedal is depressed. The U.S. Department of Transportation is considering a proposal to require the systems on all new vehicles. Sen. Jay Rockefeller (D-WV), chairman of the Senate Commerce Committee, said legislation may be introduced in Congress with a brake-override requirement.

Electronic brake-override systems automatically cut engine power when the gas and brake pedals are both depressed. Clarence Ditlow, executive director of the Center for Auto Safety, believes the government would have to address when the rule should go into effect and what performance standard to establish. One issue, for example, will be whether to allow half a second, a second or two seconds to elapse between the activation of both the gas and brake pedals and the slowing of the engine, according to Mr. Ditlow.
**YAZ, YASMIN, OR OCELLA**

Yaz is a combination birth control pill containing drospirenone and ethinyl estradiol. It is marketed not only as a contraceptive pill, but as a proven treatment for premenstrual dysphoric disorder (PMDD), a condition with severe emotional and physical premenstrual symptoms. Yaz is also marketed as an effective treatment for moderate acne. However, studies indicate that Yaz poses a particular health hazard because one of its two primary ingredients, drospirenone, is a diuretic, which can cause an increase in potassium levels in the blood and lead to hyperkalemia, which causes heart rhythm disturbances that can cause blood clots leading to sudden cardiac death or pulmonary embolism or strokes. Diuretics can also cause significant problems with the gallbladder, leading to gallbladder removal.

If you have taken Yaz, Yasmin or Ocella and experience any of these problems, please contact Alyce Addison, a lawyer in the section, for additional information at 800-898-2034 or by email at Alyce.Addison@beasleyallen.com.

**BARD COMPOSIX KUGEL MESH HERNIA PATCH®**

The Composix Kugel Mesh Hernia Patch, manufactured by Davol, Inc., was first introduced in 2000. The patch is used to repair ventral hernias. In some cases, a hernia can be repaired surgically. However, when the stomach muscles can’t withstand the stitching required, mesh is inserted and placed between the intestines and the stomach muscles to help contain the intestines.

Not long after the patch was introduced into the market, the FDA began to receive reports of problems with the patch. By 2005, the number of reports had greatly increased regarding the recoil ring which could easily break. When the ring breaks, patients experience bowel perforations and other serious injuries. The reports prompted the FDA to issue a recall in December 2005 of the Bard Composix Kugel Mesh hX Larage Patch. Doctors were warned to stop using that version of the Kugel Mesh Hernia Patch, and patients with this particular patch were told to seek medical attention if they experienced unexplained fever, persistent abdominal pain, or tenderness to the incision site. By February 2007, the Kugel Patch recall had been expanded twice to include several other sizes of the device.

The hernia mesh patch is inserted into the abdomen through a small incision. In order to fit through the incision, the mesh is folded in half by the surgeon. Once inside the abdomen, the mesh re-deploys as a result of a “memory recoil ring” that is embedded in the mesh. The patch was recalled by Davol after it was discovered that the “memory recoil ring,” which opens the patch, can break under the stress of surgical placement. The ring can form a sharp, hard edge which can cut into and through internal organs.

If you had hernia surgery after 2000 and have experienced similar problems, you can contact Danielle Mason, a lawyer in the Mass Tort Section, for more information at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com.

**FOSAMAX®**

Fosamax®, manufactured and heavily marketed by Merck, is in a class of drugs to prevent and treat osteoporosis in post-menopausal women. The Journal of Oral and Maxillofacial Surgeons has reported a link between bisphosphonates and a serious bone disease called Osteonecrosis of the Jaw (ONJ). Osteonecrosis is a disfiguring and disabling condition of the jaw bone that causes infection and rotting of the bone. Osteonecrosis is a dreaded disease that is often accompanied by pain, soft-tissue swelling and infection, loosening of teeth, drainage, and exposed bone. Symptoms may occur spontaneously, or at the site of previous tooth extraction.

We have an upcoming trial in Montgomery, Ala. on behalf of a sweet lady who developed osteonecrosis of the jaw due to Fosamax usage.

If you have taken Fosamax and experienced any of these problems, please contact either Chad Cook or Leigh O’Dell, lawyers in the Mass Tort Section, for additional information at 800-898-2034 or by email at Chad.Cook@beasleyallen.com or Leigh.ODell@beasleyallen.com.

**GARDASIL®**

Gardasil, a vaccine manufactured and marketed by Merck and Company, is marketed as a preventative for cervical cancer. However, Gardasil has not been proven to prevent cervical cancer. In fact, it is a vaccine to prevent only four types of the sexually transmitted disease HPV (human papillomavirus) two of which are associated with cervical cancer. These two types of HPV are present in only 3.3% of the cases. Scientific data indicates that the vaccine may not last longer than five years, if that long. The drug is indicated for young women and men from the age of nine years old up to 26 years old, though the vaccine is primarily given to girls. The Vaccine Adverse Event Reporting System has received over 16,000 reports of adverse events related to the administration of this vaccine including 50 deaths. Serious adverse events include Guilliane Barre, lupus, seizures, paralysis, blood clots, brain inflammation and death. The vaccine is recommended to most young girls in their early teens. Parents should proceed with caution before allowing their daughters (and sons) to be vaccinated. Some believe this drug could be the next Vioxx due to the dangers involved.

If you or one of your children have had this vaccine and experienced problems, you can contact Leigh O’Dell for more information at 800-898-2034 or by email at Leigh.ODell@beasleyallen.com.

**Hormone Therapy**

For years, women have taken Hormone Therapy (HT) to reduce the symptoms of menopause. Studies now show that HT medications such as Prempro and Premarin can increase the risk of breast cancer, ovarian cancer, stroke and heart disease. Our firm has several cases slated for trial this year. So far, juries have found in favor of Plaintiffs in 11 of 14 trials, and in each case the jury has awarded damages in excess of $1 million. This is not surprising given the seriousness of these injuries. A verdict in a HT case is discussed in this issue.

If you or your spouse took HT and have been diagnosed with breast cancer, you can contact Ted Meadows, a lawyer in the Mass Tort Section, for more information at 800-
**Pain Pumps**

Pain pumps are portable and often disposable pain management devices which continuously administer local anesthetic through a catheter to a surgical wound site for several days following surgery to decrease post-operative pain and assist in earlier rehabilitation. A “Y-connector” accessory is sometimes available so that the pain pump can be used on multiple wound sites.

Recently, the use of pain pumps to administer medication directly into the glenohumeral joint space following shoulder surgery has been linked to a severe condition called Postarthroscopic Glenohumeral Chondrolysis (“Chondrolysis”), in which the cartilage of the humeral head and the glenoid space of the shoulder process has been destroyed and lost. The destruction of the shoulder cartilage can be attributed to the application of anesthetic medication directly into the joint space via the pain pump catheter. In 2003, it appears that some pain pump manufacturers may have increased the anesthetic dosing capacity of their pain pumps, which may have hastened the onset of Chondrolysis in some patients.

Chondrolysis symptoms usually present between six weeks and six months following surgery and include increased shoulder pain and stiffness, loss of cartilage, decreased range of motion, loss of shoulder joint space, crepitus in the shoulder, and loss of strength. Patients suffering from Chondrolysis are usually unable to complete their post-surgical physical therapy due to pain. Whatever the patient’s condition was prior to his or her shoulder surgery, the post-operative diagnosis of Chondrolysis is much more severe. Ultimately, complete shoulder replacement surgery (acromioarthroplasty) could become necessary in order to eliminate the painful and debilitating symptoms of Chondrolysis.

If you have experienced any of these problems, contact Frank Woodson, a lawyer in the Mass Torts Section, for additional information at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

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**REGLAN®**

Reglan is used to treat gastrointestinal disorders such as heartburn caused by reflux. The FDA required a black box warning linking Reglan and Tardive Dyskinesia. Symptoms of tardive dyskinesia include involuntary and repetitive movements like tongue thrusting, eye blinking and head jerking as well as involuntary movements of the fingers. These symptoms are rarely reversible with no known treatment. Those at increased risk for developing Tardive Dyskinesia are the elderly, especially older women, and people who have taken the drug for a long period of time. The FDA has advised physicians to avoid long term use of Reglan and recommends treatment not exceed three months. We will write more on Reglan in this issue.

If you have taken Reglan and experienced any of these problems, please contact Danielle Mason for additional information at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com.

**STEVEN’S-JOHNSON SYNDROME**

Steven’s-Johnson syndrome is an immune complex hypersensitivity reaction that can be caused from an infection or immune response to drugs. It is a severe expression of a simple rash known as erythema multiforme. SJS is also known as erythema multiforme major. It affects all ages and genders including pediatric populations. The most severe form of SJS is toxic epidermal necrolysis (TENS). SJS occurs twice as often in men as in women. Most cases of SJS appear in children and young adults under age 30. Females with SJS are twice as likely as males to develop TENS, and have an even higher chance if taking a category of drugs known as NSAIDs, non-steroidal anti-inflammatory drugs.

If you have experienced any of these problems, please contact Frank Woodson for additional information at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

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**ALABAMA WOMAN WINS $9.45 MILLION VERDICT IN HRT LAWSUIT**

A Philadelphia jury ordered Pfizer Inc.’s Wyeth unit to pay $9.45 million to an Alabama woman in a hormone-replacement drug lawsuit. The woman contented that the drug caused her breast cancer. The jury awarded $3.25 million in compensatory damages and $6 million in punitive damages to Audrey Singleton, a retired school-bus driver from Chatom, Alabama. The verdict also included $200,000 to Mrs. Singleton’s husband for loss of consortium. Pfizer says it will appeal the decision.

Mrs. Singleton’s cancer has been in remission. More than six million women took the pills to treat symptoms such as hot flashes and mood swings before a 2002 study highlighted the drugs’ links to cancer. Until 1995, many patients combined Premarin, Wyeth’s estrogen-based drug, with progestin-laden Provera, made by Pfizer’s Pharmacia & Upjohn unit. Wyeth combined the two hormones in Prempro.

Mrs. Singleton, a mother of three, began taking Prempro in August 1997. Results of a mammogram at that time were normal. She stopped taking the drug in January 2004 after her breast cancer diagnosis. Lawyers for Pfizer argued during the trial that Mrs. Singleton learned in July 2002 of the risks associated with the drug. Zoe Littlepage and Rainey Booth from Houston, and Sam Ableser and Esther Berezsky from Philadelphia, represented the Plaintiff in this case and they did a very good job.

Source: The Philadelphia Inquirer

**REGLAN LITIGATION HEATS UP**

Reglan has been prescribed for the treatment of heartburn after eating, gastroparesis, certain digestive disorders, nausea, vomiting, and morning sickness in pregnant women. However, due to studies and reports over recent years linking Reglan (or its generic counterpart, metoclopramide) to Tardive Dyskinesia, a number of lawsuits have been filed against these drug manufacturers.

Tardive Dyskinesia is an involuntary muscle movement disorder that can affect the muscles in the face, arms, legs and overall body. Due to an increased rate of incidences, the Food and Drug Administration required the manufacturers of Reglan to carry a black box warning on their label and/or package insert emphasizing the risks of developing Tardive Dyskinesia when using the drug. The black box warning also indicates that this serious movement disor-
der could be irreversible, and that use for over three months should be avoided.

While litigation involving Reglan and its generic counterpart has been in existence for several years, only recently have successive trial dates been set. From April, 2010 through January, 2011 there have been 14 trials set across the country in various states such as Alabama, Oklahoma, Arkansas, Colorado, Pennsylvania, North Carolina, West Virginia, South Carolina, Texas and California. On the 19th of this month, this group of trial settings will begin in Birmingham, Alabama. More trials are likely to be set during this same time frame as well. Based on the strong evidence regarding these drug companies’ negligence and failure to warn of the risks associated with Reglan, the victims in these cases are expected to obtain favorable outcomes in all of the cases set for trial. If you need more information on Reglan Litigation contact Navan Ward in our Mass Torts Section at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

**AN MDL FOR SHOULDER PAIN PUMP LITIGATION SHOULD BE FORMED**

Our firm has been heavily involved over the past year in the shoulder pain pump litigation. We have been working with Williams, Love, O’Leary & Powers, a very good law firm in Portland, Oregon. Jointly our firms represent over sixty individuals who have suffered the death of the cartilage in their shoulder joint as the result of the use of a shoulder pain pump. A petition for an MDL was filed and heard in 2008. While at that time there were five pending pain pump cases in the country, there are now several hundred pain pump cases pending all over the United States. A new petition for an MDL has been filed.

While some of the Defendants have consented to the formation of an MDL, others have objected. The issue was set for hearing in San Diego at the end of March, but this issue was sent to the printer before the court ruled. Although there are several manufacturers of pain pumps, the formation of an MDL would streamline the discovery and the coordination could help move this litigation along faster in the long run. If you need more information on this subject, you can contact Frank Woodson, a lawyer in the Mass Torts Section, at Frank.Woodson@beasleyallen.com or by phone at 800-898-2034.

**A RECENT SHOULDER PAIN PUMP VERDICT**

As mentioned above, our law firm is working on shoulder pain pump cases with the Williams firm in Portland, Oregon. That firm, along with the Paulson Coletti Law Firm, recently tried a case in Portland. Tom Powers of the Williams firm and John Coletti, a very good trial team, obtained a verdict for their client in that case against I-Flow Corporation. The package of experts and liability information our two firms have developed was used extensively during the trial. The jury returned a compensatory damages verdict in the case in the amount of $5,475,000.00. This was the first shoulder pain pump case tried to a verdict.

Several shoulder pain pump cases went to trial in February of last year in Portland against Stryker Corporation, but never made it to a verdict. After approximately one week of trial, Stryker settled with those six Plaintiffs for an undisclosed amount. I-Flow had previously settled another shoulder pain pump case in the fall of 2008.

The injuries and damages to the Plaintiffs in these cases are always substantial. Chondrolysis, or the loss of cartilage, causes extreme pain and leads very quickly to a shoulder replacement. We believe that while there are many more cases that exist, many victims don’t know what happened to their shoulder. As the public becomes more aware of the problems with the pain pumps, we expect these cases to continue to surface. As stated above, if you have any questions about shoulder pain pump litigation, Frank Woodson can help you. Contact him at Frank.Woodson@beasleyallen.com or by phone at 800-898-2034.

**CONCERNS OVER METAL ON METAL HIP IMPLANTS**

Some of the nation’s leading orthopedic surgeons have reduced or stopped use of a popular category of artificial hips amid concerns that the devices are causing severe tissue and bone damage in some patients, often requiring replacement surgery within a year or two. In recent years, such devices, known as “metal on metal” implants, have been used in about one-third of the approximately 250,000 hip replacements performed annually in this country. They are used in conventional hip replacements and in a popular alternative procedure known as resurfacing. The devices, whose ball-and-socket joints are made from metals like cobalt and chromium, became widely used in the belief that they would be more durable than previous types of implants.

Studies in recent years indicate that the devices can quickly begin to wear, generating high volumes of metallic debris that is absorbed into a patient’s body. That situation can touch off inflammatory reactions that cause pain, death of tissue in the hip joint and loss of surrounding bone. Doctors at leading orthopedic centers like the Mayo Clinic say they have treated a number of patients over the last year with problems related to the metal debris. Surgeons at Mayo had reduced by 80% their use of metal-on-metal implants over the last year in favor of those made from other materials, like combinations of metal and plastic. Other doctors said that to be cautious they were also scaling back their use of the all-metal implants until the scientific evidence became clearer.

Given the large number of people who have received metal on metal devices, thousands of patients in the United States could be affected. All the major orthopedics makers sell metal on metal hip devices. Some experts argue that some manufacturers, in a rush to meet the demand for metal-on-metal devices, marketed some poorly designed implants and that some doctors fail to properly implant even well-designed ones. We are currently looking into this situation. If you need more information on the subject, contact Frank Woodson at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

Source: New York Times

**ORAL SODIUM PHOSPHATE LITIGATION UPDATE**

Our firm continues to investigate kidney failure cases caused by over-the-counter Fleet Phospho-soda and Fleet EZ Prep Bowel Cleansing System and prescription-based Visicol and Osmo Prep, oral sodium phosphates used for bowel cleansing as preparation for a colonoscopy or other surgical procedures. On December 11, 2008, due to increased reports that these prod-
products were causing consumers to suffer acute phosphate nephropathy, the Food and Drug Administration ordered Salix Pharmaceuticals, Inc., the manufacturer of Osmo Prep and Visicol, to include a Black Box Warning, the most serious warning, in its Visicol and Osmo Prep prescription labels and prescribing information. Also on December 11, 2008, the Food and Drug Administration issued a Safety Alert that over-the-counter oral sodium phosphate-based bowel cleansers should not be used by consumers. As a result of the Safety Alert, C.B. Fleet recalled its Fleet Phospho-soda and Fleet EZ Prep Bowel Cleansing System.

Acute phosphate nephropathy is a serious form of acute kidney injury that is associated with deposits of calcium-phosphate crystals in the renal tubules, potentially resulting in permanent renal function impairment and often requiring permanent dialysis or kidney transplant. The diagnosis is typically made by a biopsy of the kidney which reveals nephrocalcinosis—diffuse tubular injury with calcium phosphate crystal deposits.

All Fleet oral sodium phosphate cases have now been consolidated in the United States District Court for the Northern District of Ohio. C.B. Fleet has been working diligently with Plaintiffs’ attorneys to construct a settlement matrix to compensate confirmed acute phosphate nephropathy cases caused by Fleet products. Our firm has numerous Fleet cases pending in the Northern District of Ohio, and we continue to evaluate kidney failure cases caused by Fleet products.

Lawyers in our Mass Torts Section are also investigating numerous Visicol and Osmo Prep injury cases. We are working with a consortium of lawyers across the United States to investigate and litigate these cases. If you need more information on these cases, contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email Roger.Smith@beasleyallen.com.

XII.
AN UPDATE ON SECURITIES LITIGATION

Over the past several years, the Alabama Securities Commission has done a tremendous job protecting investors and potential investors in our state. Joe Borg, who serves as Director, and his staff, have been very busy and also very effective in their work. Dan Lord, who is with the Commission, wrote an article that will appear as a three-part series in the Report starting this month. I believe that our readers will find the series to be both informative and helpful. I can say without reservation that the Commission under Joe Borg’s leadership has done tremendous work for Alabama citizens. The first of the series is set out below.

The Alabama Securities Commission
Forges Another Banner Year
For Investor Protection

A small but very energetic agency within Alabama State Government that has received national accolades as one of the top agencies in its field for the past ten years is uniquely positioned and expertly managed to be the first line of defense for our state’s “main street” investors against securities fraud that could rob them of their financial independence. The Alabama Securities Commission (ASC), simply-stated, has as its critical mission “to protect investors from securities fraud and preserve legitimate capital markets in Alabama.”

ASC Director, Joseph Borg, has been at the helm of the agency since 1994. He has meticulously molded the Commission staff into an efficient and effective body that enjoys an admirable reputation among the nation’s state securities regulators for its leadership in protecting Alabama’s investors from losing their financial futures to fraudulent practices. “During these uncertain economic times, main street investors throughout Alabama and America are worried that they may not have enough savings to guarantee a comfortable retirement,” Borg said. “There is real concern, especially among our retired population, that, due to ever-changing economic circumstances, they may outlive their assets.”

As the current volatile economic drama plays out, Borg said investors may feel compelled to seek questionable investment “alternatives” to help make up for shortfalls in their retirement assets. Unfortunately, financial criminals understand and exploit this mindset to prey on investors’ fears. “Rushing into a potentially ruinous financial decision could make them prime targets for financial fraud,” Borg said. “Many investors looking to shore-up their long-term financial security may succumb to the lure of the ‘quick-fix’ pandered by all manner of so-called independent advisers and financial ‘specialists.’”

When unwary investors run afoul of financial scam artists, the ASC is ready, willing and able to step in on their behalf. It is Borg’s and the Commission’s passion to see financial fraud vigorously prosecuted and defrauded investors made as financially whole again as possible.

The ASC is a self-funding agency, not reliant on tax dollars or General Fund appropriations from the Alabama Legislature to conduct its operations. Annual revenues are generated from securities licensing and registration fees, industrial revenue bonds, sale of checks fees, mutual fund exemptions and administrative assessments, among others. Annually, revenues average from $8-12 million after expenses and reserve accounts deposits, with remaining revenues going to the state General Fund. Last year, ASC contributed $8,300,660 to the state General Fund and other state causes after paying all its expenses.

The ASC has 47 employees including six attorneys, ten securities analysts and 12 seasoned special agents with more than 270 years combined law enforcement and investigative experience whose job it is to field investor complaints associated with suspicious, unsuitable and/or illegal
investment offerings and the sale of fraudulent and unregistered investment products. Enforcement Division staff work very closely with the agency’s Legal and Audit Divisions and, often, local, state and federal authorities to thoroughly scrutinize complaints, analyze financial transactions and help bring legal action against any person or entity who violates the Alabama Securities Act. ASC is one of only a handful of state securities regulators that have authority to prosecute Alabama’s suspected financial fraud cases and has been recognized as having one of highest conviction rates for criminal securities fraud in the U.S. “In fact,” Borg said, “with our Enforcement Division leading the way, we probably bring more direct criminal financial fraud cases to court, per capita, than any other state. Our record for convictions is unmatched.” (CNN reported that ASC has a 98%-plus conviction rate over the past ten years).

Statistics bear out what Borg says. Over the past five years, Enforcement and Legal Division personnel have coordinated efforts to secure, on average, more than 17 criminal indictments per year for securities fraud. The Courts have also ordered almost $84 million in victim restitution in these cases during the past five years. Agency statistics also show that during the past fiscal year (2009), enforcement actions led to 23 arrests, 24 convictions and helped secure 213 years of prison time for violators of the Alabama Securities Act. Presently, 26 individuals await trial for securities violations. “We intend to send a clear message to financial criminals,” Borg added. “This state will not tolerate financial crimes targeting Alabamians and we will aggressively prosecute offenders, regardless of the complexity of the case or the dollar amount involved.”

The ASC in 2008, together with securities regulators from other states, began to address increasing investor complaints of whether several prominent Wall Street firms had systematically misled their clients by falsely assuring them that auction-rate securities (ARS) were as safe and as easily accessible as cash. When ARS markets failed in February 2008 and investor funds held in these securities were frozen, allegations surfaced that financial firms foresaw the collapse of the ARS market and attempted to mitigate their own exposure while continuing to market the securities to their clients, leaving them with no access to their money and triggering complaints alleging significant personal financial damages. Since the beginning of the ARS investigation, the ASC has entered orders with the firms unfreezing almost $634 million of Alabama retail clients’ funds from nine investment firms and has secured fines and recovered investigative costs totaling almost $2.8 million. The ASC continues to negotiate ARS settlements with additional investment firms.

Dan Lord
Alabama Securities Commission
April 2, 2010

The second part of this series will appear in next month’s issue, with the closing portion scheduled for June. We really appreciate Dan’s willingness to furnish this series for our readers. Hopefully, it will prove to be of benefit to our readers.

XIII. INSURANCE AND FINANCE UPDATE

Lloyd’s Must Pay Stanford’s Legal Fees

A federal appeals court has ruled that insurer Lloyd’s of London must pay claims related to the alleged swindler Allen Stanford’s defense. Stanford, his former chief investment officer Laura Holt, and former accounting executives Gilbert Lopez and Mark Kuhrt sued Lloyd’s after the firm stopped providing coverage under a directors and officers policy last year, citing “a money laundering exclusion.” But U.S. District Judge David Hittner in Houston ruled in January that Lloyd’s must pay costs and expenses that had been submitted by Stanford and his lawyers. Lloyd’s appealed that decision to the U.S. Court of Appeals for the Fifth Circuit in New Orleans.

The Appeals Court upheld Judge Hittner’s ruling on March 15th, but also sent the case
back to the District Court for additional arguments on the coverage question. However, the Appeals Court said in its ruling that Lloyd’s must pay in the meantime. The Court wrote:

_The underwriters are enjoined from refusing to advance defense costs as provided for in the DEO policy unless and until a court determines in fact by clear and convincing evidence that money laundering occurred._

As we have reported, Stanford, Holt, Lopez, and Kuhrt face criminal and civil charges for defrauding investors in a $7 billion Ponzi scheme centered around certificates of deposit issued by Stanford’s Antiguan bank. Each has denied any wrongdoing. Stanford is now in jail awaiting his January 2011 trial. Hopefully, the courts will protect those persons and entities who were cheated by Stanford as well as these courts have protected the alleged swindler in their claims.

Source: Insurance Journal

**Nationwide Lawsuit Settled For $6 Million**

Approximately 230,000 current and former Nationwide term-life insurance customers across the country will benefit from the recent settlement of a class-action lawsuit against the Columbus-based company. Nationwide has agreed to pay a $6 million settlement in connection with a suit filed in Franklin County Common Pleas Court in 2005. It was alleged that the company collected more than the maximum annual premiums outlined in their policies. Nationwide had been accused in the lawsuit of fraud and violating Ohio consumer-protection laws. The suit charged that customers who paid semi-annually, quarterly or monthly were charged more than the maximum premium. Those who paid once a year were not charged additional fees. About 26,500 of those 230,000 customers are in Ohio. The overpayments were said to have taken place between February 10, 1990, and February 2, 2006.

Source: The Columbus Dispatch

**Anthem Blue Cross Must Reimburse California Man For Transplant**

A Los Angeles jury has concluded that Anthem Blue Cross should cover the cost of an out-of-state liver transplant that a California man paid for after the insurer refused to pay. In addition, the jury ordered Blue Cross to pay the Plaintiff’s legal expenses, which could greatly exceed the $206,000 cost of the transplant. Blue Cross approved Nemhe’s liver transplant in late 2006, and he was on the waiting list at UCLA Medical Center. But the company refused to pay when Nemhe, gravely ill and fearing for his life, decided to have the operation in Indiana, where wait times are far shorter than in California.

The jury awarded Nemhe $2.8 million. The jury voted 10 to 2 that the company breached its contract with the Plaintiff. It voted 9 to 3 that the health insurer acted in bad faith by refusing to pay for the out-of-state operation. The Plaintiff’s lawyer will ask the trial judge to order Blue Cross to allow its California members to pursue organ transplants at hospitals nationwide that do business with its parent, Indianapolis-based WellPoint Inc., the nation’s largest health insurer. This request is under the state’s unfair competition law.

Interestingly, according to Blue Cross, it offered to settle the case with the Plaintiff several months ago for more money than the jury awarded. The Plaintiff, a 62-year-old produce merchant and grandfather, said the case was not about money. Before the trial began he offered to donate any winnings to liver research. He saw the suit as a way to pressure Blue Cross to stop denying out-of-state transplants, adding that he was particularly concerned about patients who could not afford to pay out of pocket. The Plaintiff said before the trial started:

_‘I’m trying to save lives. There are a lot of people who need liver transplants, and they should be able to get them wherever they need them.’_

The Plaintiff’s liver began to fail in 2006, and he was placed in line for a transplant at UCLA. Blue Cross readily approved the procedure at the hospital, which is part of its contracted network. But his condition rapidly deteriorated, and his UCLA physician urged the Plaintiff to go to the Clarian Transplant Center in Indianapolis, where he had sent other patients. At the time, the median wait time for livers at UCLA was more than two years. At Clarian, an Indiana University-affiliated hospital, the wait time was about six weeks. When Blue Cross refused to pay, the Plaintiff went anyway and paid the cost of the January 2007 operation. He recovered and returned to work as the owner of produce markets in the Simi and San Fernando valleys. The suit contends that Blue Cross denied the Indiana transplant to save money.

Source: Boston Globe

**Wal-Mart settles gender discrimination lawsuit action for $11.7 million**

Wal-Mart Stores Inc. has reached an $11.7 million settlement with the U.S. Equal Employment Opportunity Commission in a long-running lawsuit accusing the retailer of discriminating against female job candidates at one of its Kentucky distribution centers. Under the settlement, Wal-Mart will pay $11.7 million in back wages and compensatory damages, and will provide warehouse jobs filling orders, as they become available, to women on whose behalf the suit was filed. I have to wonder how long it will take employers to realize that women should be paid on an equal basis with men!

Source: Law360

**Wells Fargo sued for not modifying mortgages**

Two homeowners have filed a lawsuit in U.S. District Court in Massachusetts against Wells Fargo for failing to modify their mortgages through the federal home modification program. According to the allegations in the lawsuit, Wells Fargo entered into agreements for temporary trial modifications under the Home Affordable Modifica-
tion Program. Under this program, lenders agree to reduce homeowners’ monthly mortgage payments to no more than 31% of their income. The lawsuit also says the homeowners complied with the written agreement and submitted required documentation, but Wells Fargo “ignored its contractual obligation to modify loans permanently.”

The Home Affordable Modification Program is a cornerstone of the Obama administration’s efforts to reduce foreclosures, and it is intended to assist up to 4 million homeowners in the next three years. To date, about a million trial modifications have been initiated, and about 116,000 have become permanent. For a trial modification to become permanent, homeowners must make three payments and submit proof of their income.

The lawsuit is seeking to be certified as class action, claiming “hundreds, if not thousands of Massachusetts homeowners” may be in similar situations. The lawsuit names Wells Fargo Bank, as well as Wells Fargo Home Mortgage of West Des Moines and its operating unit, America’s Servicing Co. in Fort Mills, South Carolina, as Defendants. Wells Fargo estimates that only half of the 92,000 homeowners who currently have trial modifications pending will be eligible to participate in the program because several do not return any or all of the required documentation, and then others who have returned all the documentation will be deemed ineligible after documents have been reviewed.

Under program guidelines, servicers had previously been able to collect information from homeowners throughout the trial period. However, beginning June 1st, the Treasury is requiring servicers to verify income before putting homeowners in a trial modification. Wells Fargo, which was to begin doing this on March 1st, stated this “better enables customers to understand if they qualify and what their final payment relief likely will be.” If you need more information on this type litigation contact Bill Robertson, a lawyer in our firm, at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com.

Source: Des Moines Register

XVI. PREMISES LIABILITY UPDATE

$11 M illion Awarded In Hog Odor Verdict

A Jackson County, Missouri jury awarded $11 million today to neighboring farmers who sued a factory farm operation saying hog odors were so bad they couldn’t go outside. The jury returned the verdict against industrial hog producers Premium Standard Farms, Inc. (“Premium Standard”), a subsidiary of Smithfield Foods SFD, and the privately held ContiGroup Companies. The verdict, covering 11 years of damages, is the largest monetary award against a hog farm in an odor nuisance case. The Middleton Firm, Seeger Weiss LLP and the Speer Law Firm represented the seven households, who filed their case in 2002. Plaintiffs, some of whom have owned their farms for well over 100 years and spanning five generations, alleged that relentless and extreme odors emanating from Defendants’ finishing farm—known as concentrated animal feeding operations, or CAFOs—created an unreasonable nuisance.

In the early 1990s, Premium Standard bought and leased some 4,300 acres in the community of Berlin, Missouri, to create a “finishing farm,” processing an estimated 200,000 hogs per year. The hogs excrete waste into a slatted floor, which collects in basins beneath each barn, where it is evacuated through a piped flushing system that deposits it in four-to-five acre lagoons located across the property. Collectively, the lake-sized lagoons collect some 83 million gallons of hog waste during the course of a year—generating enormous quantities of methane, ammonia and hydrogen sulfide that can be detected for miles.

Premium Standard has now lost three of four jury trials brought by one attorney and his clients. Those awards against Premium Standard now total almost $21 million. In the current lawsuit, the Plaintiffs said Premium Standard had failed to clean up the odors in 11 years even though the company was under orders by the Missouri Attorney General. “The odors and flies coming off this farm have devastated the lives of these fine Missouri citizens. For them, it’s been a living torment. The fami-
lighting materials at the store loading dock were likely causes.
Source: Insurance Journal

**$14.7 Million Settlement In Trampoline Lawsuit**

A Chicago man injured on a mini-trampoline when he was an eighth-grade student at a South Side elementary school 18 years ago has finally settled his lawsuit against the Chicago Board of Education and a private youth center for almost $14.7 million. Ryan Murray, who was 13 at the time, was injured in a tumbling class at the school in 1992. Murray, who is now 30 years old, became a quadriplegic after he hit his head as he did a flip off a mini-trampoline onto a mat in the school’s gymnasium.

The class was an extracurricular activity held during lunch period. A mini-trampoline owned by the Chicago Public Schools was being used and the event was supervised by an employee of the Chicago Youth Centers, a private group. The suit has been hanging around in the courts for years. In July 2006, it was dismissed by the Illinois Supreme Court, which found that Murray did not have the right to sue the Board of Education because it is a government entity. The Court ruled the action that led to his injury had to be intentional to allow for an exception to the law against suing government bodies. The lower court heard the case again. It was contended that school officials and others had conducted the class recklessly, without proper equipment and had ignored basic safety rules. The case was appealed again to the Supreme Court.

In 2007, the Supreme Court reversed itself in a 7-0 decision, noting that if a government body shows “an utter indifference or conscious disregard for the safety of others,” it can be sued for willful and wanton conduct. The case was again sent back to Cook County Circuit Court for a trial. The case was then settled.
Source: Chicago Tribune

**Texas Jury Awards $58 Million In Home Builder Lawsuit**

A jury in Texas awarded $58 million recently to a Mansfield couple in a suit against their home builder, Perry Homes, and a home warranty company, Warranty Underwriters Insurance Co. Prior to this trial, the lawsuit had been arbitrated, had been appealed to the Texas Supreme Court and sent back to the lower court for trial.

The Plaintiffs filed suit in December 2000 in an attempt to get Perry Homes to fix structural and foundation problems that started shortly after they moved in 1996 into their 2,900-square-foot, four-bedroom house. The case became politically charged as it moved through the judicial process. Perry Homes is owned by Bob Perry, who has contributed heavily to judicial candidates and political action committees in Texas. The house was bought by the Plaintiffs for nearly $234,000 and it was the only new home they have ever lived in. The home was bought as their “retirement home.”

After initially filing their lawsuit in court, the couple in late 2001 asked a judge to submit their case to arbitration, which was done. Perry Homes appealed the court’s order sending the case to mediation, but lost. In 2002, an arbitrator awarded the couple $800,255. Perry Homes appealed the award to the Texas Supreme Court. In 2008, the court vacated that award in a 5-4 decision, citing legal issues with the way the case was switched from the courts to arbitration, and sent it back to the trial court. When the case was tried the Plaintiffs were awarded $7.1 million in actual damages and $40 million in punitive damages against Perry Homes. The jury also awarded $7.1 million in actual damages and $4 million in punitive damages against Warranty Underwriters. It seems the Defendants in this case may have been a little too smart for their own good since the arbitration award was lots smaller!
Source: Star Telegram

**Truck Crash Kills 11 In Kentucky**

A truck crossed the median of a Kentucky interstate highway last month, crashing head-on into a Mennonite church van headed to a wedding, killing 11 people. Two children survived the horrific crash. The family—men, women and children—were on their way to a wedding in Iowa. The truck driver, who was from Alabama, was also killed. The National Transportation Safety Board dispatched a team to investigate the crash, which is one of the most deadly traffic accidents in recent Kentucky history. The stretch of interstate where the crash occurred is said to be very dangerous. It narrows from three lanes to two for motorists going south. This was a very sad scene when the investigating officers arrived.
Source: Insurance Journal

**Texting Student Caused Fatal Crash**

A jury found in a recent case tried in Texas that a Texas A&M University student was texting while driving, causing a deadly wreck, and ordered him to pay $22 million in damages. The victim, a senior at Baylor University, was driving to Waco when the November 2007 accident happened. The evidence at trial indicated a vehicle driven by the Defendant crossed the center line and struck the victim’s vehicle head-on. Phone records introduced indicated the Defendant sent and received 15 texts and made seven calls in the 45 minutes before the wreck. Prior to the trial, the Defendant filed for bankruptcy.
Source: Insurance Journal

**Texting While Driving Said To Cause Death Of Bicyclist**

James L. Caskey Jr., a former marathon runner, was hit by a car in 2008 while riding his bicycle in his North Naples, Fla. neighborhood. The 62-year-old died from his injuries. The driver of the car was ticketed for failing to yield to a stop sign and was found guilty and was fined. His license was suspended for six months. A wrongful death lawsuit has been filed in state court which alleges that the driver was texting while driving. The texting-while-driving wrongful death lawsuit was filed in state court.

The Florida Legislature is considering a law banning texting—or all cell phone use while driving. If passed, Florida would join 19 other states with texting-while-driving bans. As reported, last month, U.S. Transportation Secretary Ray LaHood announced a federal ban on texting for commercial truck drivers. Alabama’s legisla-
ture is currently considering passage of legislation that would ban texting.

The victim’s widow is suing the driver of the car, a pharmaceutical representative, and Astellas Pharma US Inc., which owned the car, for her husband’s wrongful death. The lawsuit alleges that the driver, who was working at the time, engaged in intentional misconduct or gross negligence, by texting on his cell phone when the crash occurred. Cell phone carriers record sent messages to the minute and 911 calls are also recorded to the minute. These records will be evidence in the case.

The National Safety Council released a report recently that showed 28% of the roughly 1.6 million crashes yearly are caused by drivers on cell phones or texting. Studies back the necessity for such legislation, especially as texting increases. The International Association for the Wireless Telecommunications Industry found that about 385 billion texts were sent in the first half of 2008, compared with more than 740 billion during that same period in 2009. When you add driving to the mix, studies show, that can be deadly. A Virginia Tech Transportation Institute study determined truck drivers who texted were 23 times more likely to crash than non-distracted drivers. The Federal Motor Carrier Safety Administration found texting drivers take their eyes off the road for about 4.6 seconds. That means while driving 55 mph, a driver would be crossing the entire length of a football field without looking out the windshield.

Tests by Car and Driver magazine showed sending and reading messages caused drivers to have significantly slower response times than those of drunken drivers. One drove an extra seven feet when reacting to brake lights while drunk, at 0.08%, the level at which drivers are presumed impaired in most states. While sober, that same driver went an extra 41 feet while texting and 45 feet more while reading a message.

Source: Naplenews.com

**BUS CRASH VICTIMS WIN LAWSUIT AGAINST NEW YORK CITY TRANSIT**

New York City Transit has been ordered by a jury to pay $7.5 million in damages to two Brooklyn women in a lawsuit arising out of a bus accident. Brenda Whaley and Amanda Wade were riding in a car in Brooklyn in 2005 when a city bus ran a red light and crashed into them. The bus driver claimed the car was at fault, and NYC Transit refused to pay the women. The case was tried and a jury found the bus driver was responsible for the crash.

NYC Transit had a chance to settle the case for $3 million years ago, but refused. Instead, the women had to file suit. The jury awarded them $7.25 million and $250,000, respectively. Herbert L. Subin, a lawyer located in New York City, represented the Plaintiffs, and he did a very good job. The agency says it will appeal the verdict.

Source: New York Daily News

**TOUR BUS COMPANY SETTLES LAWSUIT**

Travel Plaza Transportation LLC, a tour bus company, has agreed to settle a lawsuit arising out of a bicycle accident that resulted in a triathlete becoming a paraplegic. John Henderson, 35, participated in several Ironman Triathlon World Championships in Kona, Hawaii before being struck from behind while riding on a paved shoulder along a public highway in May 2009. Henderson was struck by the bus, thrown 90 feet, and was severely injured. His injuries involved multiple pelvic fractures, eight fractured ribs, multiple vertebrae fractures, spinal cord injury, a tear in the spleen and lacerated liver.

The Plaintiff’s medical bills exceed $700,000. His doctor estimated that the Plaintiff’s future medical care will be several hundred thousand dollars a year for the rest of his life. The Plaintiff was hospitalized for more than three months. The Plaintiff says no amount of money could possibly replace what he lost when he was hit by the tour bus.

In January, the Plaintiff returned to work as a surgical representative in the operating room, consulting with doctors on surgical procedures. He says that he has a responsibility to create public awareness about street safety and promote the need for drivers to share the road. The Plaintiff is now advocating passage of a bill in the state legislature that would make it illegal for a vehicle to pass within three feet of a cyclist. It would also add information about the rights of bicyclists to the Hawaii driver’s license test. Richard Fried Jr., a lawyer from Honolulu, handled the case for the Plaintiff, and he did a very good job.

Source: Star Bulletin

**XIII. WORKPLACE LITIGATION**

**BP FACES FINE OVER SAFETY AT OHIO REFINERY**

U.S. regulators have fined British oil giant BP PLC $3 million, citing safety problems at its Toledo, Ohio, refinery. This came some four months after the government imposed a record penalty on the company over its refinery in Texas. The fines show the tougher safety stance being taken by the Obama administration. BP is working to improve safety at its plants since a 2005 explosion at Texas City, Texas, that killed 15 people and injured 170. The U.S. Department of Labor’s Occupational Safety and Health Administration cited the Toledo refinery, which is jointly owned by BP and Canada’s Husky Energy Inc., with 42 alleged willful violations and 20 alleged serious violations for exposing workers to safety hazards. The infractions stem from an OSHA investigation at Toledo that began last September. Secretary of Labor Hilda L. Solis said in a statement:

OSHA has found that BP often ignored or severely delayed fixing known hazards in its refineries. There is no excuse for taking chances with people’s lives. BP must fix the hazards now.

OSHA began an inspection of the Toledo facility last September to see if BP had complied with a settlement agreement reached after a previous check in 2006. BP was found to be in compliance, but OSHA said it found other violations that weren’t covered by the original settlement. For example, it said workers were exposed to serious injury and death in the event of flammable and explosive materials being released. It cited BP for not providing adequate pressure relief for process units, among other issues. BP said it was disappointed that OSHA had chosen to characterize the majority of its audit findings as willful. Reg-
ulators define willful violations as those committed with indifference to employee safety and health, and with intentional disregard for the law.

Last October, OSHA hit BP with an $87 million fine, the largest in the agency’s history, for failing to correct safety problems identified after the 2005 explosion at Texas City. The agency cited 270 “notifications of failure to abate” and 439 new willful violations for failures to “follow industry-accepted controls on the pressure relief safety systems”—a citation that the recent action on Toledo echoed. BP says it has spent more than $1 billion to improve safety at Texas City since the 2005 blast and hopefully the company now has made safety a top priority at its facilities.

Source: Wall Street Journal

XIX.
NURSING HOME UPDATE

JURY RETURNS VERDICT IN BEDSORES CASE

A Philadelphia jury returned a verdict for $5 million in punitive damages last month against Jeanes Hospital and a Wyncoate nursing home in the death of a man who developed ultimately fatal bedsores while at both facilities. The damages—$1.5 million against Jeanes and $3.5 million against the Hillcrest Convalescent Home—came two weeks into the second phase of the trial after the same jury awarded $1 million in compensatory damages in the case. The damages were awarded to the widow of Joe N. Blango, who died of bedsores in 2008, two years after being discharged from Jeanes Hospital. This was the first punitive damages case to go to a jury in Philadelphia.

Steven R. Maher, a lawyer whose firm has offices in several states, including Pennsylvania, represented the Plaintiff and did a good job.

Source: Philly.com

FAMILY SETTLES SUIT AGAINST NURSING HOMES

A Missoula family has settled its lawsuit against two nursing homes. The amount of the settlement is confidential. Riverside Health Care Center and the Village Health Care Center were the two nursing homes involved in the lawsuit. Family members of the late Ralph Seewald alleged that the nursing homes acted negligently when they failed to provide adequate health care for the 87-year-old man, who died in November 2005 of a blood infection. Mr. Seewald fell and fractured his neck during a transfer from his wheelchair, an accident that left him bedridden. He then developed severe pressure ulcers that worsened over a period of months, and led to a fatal case of gangrene in his leg. Both the wheelchair transfer and the treatment of his bedsores were inadequate and breached the standard of care in such cases. Rob Kornfield, a Kirkland, Wash., lawyer, represented the Plaintiff and did a good job.

Source: BillingsGazette.com

LAKE WORTH NURSING HOME ACCUSED IN RACKETEERING LAWSUIT

A Lake Worth nursing home has been accused of engaging in racketeering to defraud Medicare and Medicaid and “preying on vulnerable adults.” It’s claimed that Lake Worth Manor failed to provide adequate treatment to patients or improperly kept them until they developed other diseases that could restart government payments. The suit, filed by an 83-year-old former patient, seeks class action status and also names Millennium Management LLC and Horizon Staffing LLC as Defendants. The Plaintiff says she developed disfiguring ulcers on her heels before leaving the facility.

The lawsuit, filed in U.S. District Court in Miami, refers to more than two dozen other patients by their initials and ages. Records show Lake Worth Manor, a 120-bed, for-profit nursing home, has a one-star rating from the state’s Agency for Health Care Administration, placing it in the bottom 20% of nursing homes in the region for compliance with safety and health regulations. The home also has spent 31 days on a state “watch list” since 2007, according to AHCA’s website. A Medicare site rates the home with two out of five stars.

It appears there were some “interesting persons” working in key slots for Lake Worth Manor. The facility’s co-medical director had his license to practice suspended in Pennsylvania in 2001 after he had consensual sex with a 20-year-old patient, according to records. New Jersey revoked his license in connection with the incident and he gave up his license in New York, but is fully licensed in Florida. He stepped down from his director’s role in February. The person identified in the lawsuit as head nurse during the Plaintiff’s stay was arrested in October for operating an assisted living facility in Loxahatchee without a license, according to the Florida Attorney General’s Office. The woman worked for the nursing home from August to November 2008. Marc Kurzman, who is from Minnesota, and Dara Siegel, who is from Boca Raton, Fla., were the lawyers who represented the Plaintiff in this lawsuit. They did a very good job.

Source: Palm Beach Post

XX.
HEALTHCARE ISSUES

TOUGHER WARNING FOR ECZEMA DRUGS

Novartis AG and Astellas Pharma eczema drugs may have to expand their warning labels after dozens of new reported cases of cancer and infection in children, according to the U.S. Food and Drug Administration. On March 18th, scientists with the FDA said 46 cancer cases and 71 infection cases have been reported in patients aged 16 and younger from 2004 to 2008. Elidel is made by Novartis and Protopic is made by Astellas. Both drugs—also known as pimecrolimus and tacrolimus respectively—already carry strong warnings about cancer and infection, but officials should now consider expanding them to include the new post-marketing reports, according to the FDA.

Source: Reuters

FDA WARNS OF GREATER MUSCLE RISK FROM ZOCOR

The Food and Drug Administration says that the highest available dose of the cholesterol drug Zocor can cause muscle damage as well as severe and potentially
lethal kidney damage. The agency says statin drugs like Zocor are known to cause muscle damage in some patients, but the risk is more severe when patients are taking 80 milligram doses of Zocor. The risks include rhabdomyolysis, a form of muscle damage that can lead to kidney damage or failure, and death. Zocor, or simvastatin, is sold by Merck and Co. Merck's cholesterol drug Vytorin and Abbott Laboratories' drug Simcor also contain simvastatin. According to the FDA, the warning is based on clinical trials, studies, reports of side effects by users, and prescription data.

Source: Forbes

**EPA To Issue Stricter Drinking Water Standards**

The Environmental Protection Agency is tightening drinking water standards to impose stricter limits on four contaminants that can cause cancer. EPA Administrator Lisa Jackson says her agency is developing stricter regulations for four chemical compounds: tetrachloroethylene, trichloroethylene, acrylamide and epichlorohydrin. All four compounds can cause cancer. Trichloroethylene, also known as TCE, and tetrachloroethylene are used as industrial solvents and can seep into drinking water from contaminated groundwater or surface water. The other two compounds are impurities that can be introduced into drinking water during the water treatment process.

Ms. Jackson said the EPA will issue new rules on TCE and tetrachloroethylene within the next year. Rules for the other two compounds will follow. She announced a new strategy to better protect public health from contaminants in drinking water. With budgets strained and new threats emerging, the EPA, states and utilities must foster innovation that can increase cost-effective measures to protect drinking water.

Exposure to high concentrations of the chemical can cause nervous system problems, liver and lung damage, abnormal heartbeat, coma and death, according to the Department of Health and Human Services' Agency for Toxic Substances and Disease Registry. The U.S. Army Corps of Engineers is identifying and cleaning up dozens of former nuclear missile sites in nine states. The missile sites include 14 in Kansas, ten in Nebraska, seven in Wyoming, seven in Colorado and two in Oklahoma. California, New Mexico, New York and Texas have one contaminated site each.

Source: Associated Press

### XXI. ENVIRONMENTAL CONCERNS

#### A Look At Environmental Cases Handled By Our Firm

The lawyers and support staff who work in our firm's Toxic Torts Section each and every day fight hard to protect folks and their property from dangerous environmental hazards. While rewarding, environmental litigation presents unique legal challenges not found in other practice areas. These cases are extremely difficult and are both time-intensive and expensive to work up. I will take a look at why we pursue them and what we are looking for. Rhon Jones heads up this Section for the firm.

Nearly every environmental case involves complex scientific and technical issues that can only be addressed through careful analysis, inspection and testing. While the lawyers in our Toxic Torts Section have become very adept at identifying and planning for these scientific and technical issues, they must often work with experts in a variety of fields to address them. In addition, our Toxic Tort lawyers frequently interact with state and federal agencies whose regulatory efforts and interests may significantly impact one of our clients’ cases. For these reasons, among others, environmental cases are among the most difficult cases that a lawyer can attempt to evaluate and prosecute.

Yet despite these challenges, our firm strongly believes that identifying and filing environmental cases against corporate polluters in Alabama and throughout the United States should remain one of our top priorities. The following are just a few examples of the sort of cases we are currently investigating. You may have an interest in one or more of them.

- **Air Pollution:** Some of the more interesting air pollution cases that we are investigating right now involve small-particle (PM 2.5 & 10) dust emissions released by

  Cement manufacturing facilities, Smelting facilities, Animal/Agricultural Feed plants, Steel plants, Carbon Black plants, and Coal-fired Power Generating facilities.

  Small particle dust pollution can impact a person's health in two ways. First, breathing ultra-fine particles can lead to respiratory disease, throat inflammation, chest pain, frequent congestion, and even cardiovascular disease. Second, many ultrafine particle emissions carry dangerous levels of metals (e.g., Mercury, Zinc, Arsenic, Chromium, etc.), that can lead to even more serious and immediate health problems. Additionally, dust emissions can seriously harm and devalue an individual's home, business and personal property. For this reason, property owners are often entitled to compensation for clean-up costs, diminished property values and their personal annoyance and inconvenience. If you have questions or if you would like to talk further with us, please contact David Byrne, a lawyer in the Section, at 800-898-2034 or by email at David.Byrne@beasleyallen.com.

- **Surface Water Pollution:** We are currently investigating or pursuing several cases that involve surface water pollution. One example involves the release of coal ash pollution into rivers and streams. For persons who live or own property near a surface water body that has been impacted by coal ash, the impact on their property and overall health can be devastating. Other examples include public water suppliers who can no longer draw water from a contaminated surface water body. In those cases, the public water supplier is generally forced to find another source of public water (if available) or provide costly treatment for the contaminated water source. If you have questions or if you would like to talk further with us, please contact David Byrne at 800-898-2034 or by email at David.Byrne@beasleyallen.com.

- **Soil and Ground Water Pollution—Leaking Underground Storage Tanks:** Underground Storage Tanks (USTs) can be found buried in virtually every neighborhood in the United States. These USTs are most often used to store gasoline, diesel fuel and other toxic petroleum products at gasoline service stations. When not properly maintained, moni-
tored and replaced periodically, an astonishing number of these USTs develop leaks which release toxic petroleum contaminants into the surrounding soil and groundwater. These toxic contaminants can then migrate through the soil and groundwater to neighboring properties. More often than not, neighboring residents are not informed of a leaking UST until years after the leak occurred, if ever. This creates the all too common circumstance where residents are unaware for years that they are being exposed to dangerous petroleum contaminants, which have been found to cause cancer, respiratory illness, kidney and liver disease, as well as other serious illnesses. We are currently investigating and pursuing several cases on behalf of clients whose health and property have been affected by toxic contamination caused by a leaking UST. If you believe that your health or property may have been harmed by a leaking UST, or if you have questions, please contact Chris Boutwell, a lawyer in the Section, at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com or by phone at 800-898-2034.

Our firm has worked hard to gain a nationwide reputation in environmental litigation. Again, these are difficult cases, but the lawyers in our Toxic Torts Section are dedicated and are fighting to make a difference. Rhon Jones has done a very good job of coordinating the efforts of lawyers and support personnel in the Section. If you would like more information on this Section’s work, contact Rhon at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com.

**TRIAL DATE SET IN PFOA CLASS ACTION CASE AGAINST DUPONT**

U.S. District Judge Renee Marie Bumb recently established a June 2nd trial date for a class action case that our firm and several other firms filed against DuPont in New Jersey federal court. The suit alleges that DuPont’s Chambers Works facility in Salem County, New Jersey, has contaminated area drinking water wells and a local public water supply system with a toxic chemical called PFOA (or C8), ammonium perfluorooctanoate.

Results of quarterly sampling of the Penns Grove Water Supply Company’s (PGWSC’s) production well fields have routinely exceeded the New Jersey Department of Environmental Protection’s (NDEP’s) PFOA Health-Based Guidance Limit of 0.04 ppb in one or more points-of-entry. In addition, numerous private wells in the area have been found to contain PFOA above the NJDEP guidance limit.

In October of last year, Judge Bumb certified the case as a class action for customers of the PGWSC and owners of private drinking water wells that are located within a two-mile radius of the DuPont Chambers Works plant and contain PFOA. According to the Judge’s decision, the sub-class of private well owners will be allowed to pursue claims for private nuisance, while the PGWSC water customer sub-class will be allowed to pursue claims for public nuisance. In addition, the Judge ruled that class treatment was appropriate for a threshold issue involving the class strict liability claims (i.e., whether DuPont’s release of PFOA constitutes an “abnormally dangerous activity”).

Over the next several months, we expect DuPont to file a large number of pre-trial motions in an effort to try and derail or delay the trial of the Plaintiffs’ case. Of course, we intend to do everything that we can to prevent that from happening and to ensure that the class members receive justice. If you need more information on this case, contact David Byrne, a lawyer in the Toxic Torts Section, at 800-898-2034 or by email at David.Byrne@beasleyallen.com.

**WHISTLEBLOWER BRINGS PVB PIPE FRAUD TO LIGHT**

A few weeks ago, a California federal court publically unsealed a whistleblower case filed against JM Eagle in 2006. As you may already know, JM Eagle is the largest PVC pipe manufacturer in the world, with annual sales estimated at $1.6 billion by Plastics News. The company is a major supplier of PVC pipe to government, municipalities and private interests. The suit, filed by whistleblower John Hendrix, a former quality assurance engineer at JM Eagle headquarters, alleges that between 1997 and 2005, JM Eagle knowingly sold inferior PVC pipe products as a result of internal cost-cutting measures to governments, municipalities and private entities. Governmental agencies from throughout the country have joined the suit, including Nevada, Virginia, Delaware, Tennessee, and 42 localities in California, including San Diego, Sacramento, San Jose and the Los Angeles Department of Water and Power.

The whistle blower lawsuit states specific details of JM Eagle’s cost cutting maneuvers. Mr. Hendrix says that the company manipulated and falsified PVC strength testing to make it appear as if the PVC pipe was meeting minimum tensile strength standards. The suit alleges that “backed by this new crop of inexperienced managers, Mr. Wang (JM Eagle president) shifted JM’s focus away from product quality to a single-minded mission of gaining market share and improving the bottom line, irrespective of quality.”

Recently, the *New York Times* reported on the whistleblower’s claims and wrote: “Pipes that should last 50 years are in some cases rupturing in their very first year. This can lead to explosions, leaks, fires and other dangers.” Nevada Attorney General Catherine Cortez Mastro issued a news release on the litigation, stating, “We will hold anyone who cheats Nevada taxpayers accountable.” Virginia Attorney General Ken Cuccinelli echoed those comments, saying that, “dishonest companies who cheat the Virginia taxpayers will be held accountable.”

Taiwanese resin giant Formosa Plastics is also a Defendant in the lawsuit and is identified as the source of the PVC resin. The lawsuit claims that Formosa required JM Eagle to use its resins and compounds for much of the PVC pipe at issue, and played a key role in producing the defective pipe. Recently, Formosa has come under fire by state and federal environmental health agencies for its many years of pollution violations at its plants in Texas, Louisiana and Delaware.

As this litigation progresses, we believe more stories of this fraud will come to light. Our firm is investigating cases where private and municipality interests purchased JM Eagle’s substandard pipe. If you have any questions regarding this litigation, you can contact Rhon Jones or Parker Miller, lawyers in our firm, at Rhon.Jones@beasleyallen.com and Parker.Miller@beasleyallen.com, respectively, or at 1-800-898-2034.
FORMER SUPREME COURT RULINGS WREAK HAVOC ON CLEAN WATER ACT

We mentioned in this issue that the United States Supreme Court might be accused of activism in a number of areas. In two previous decisions involving the Clean Water Act, the conservative majority of the High Court has nearly erased 30 years of Clean Water Act precedent and severely hampered any efforts to regulate waste water disposal. Historically, the Clean Water Act was all that stood in the way of businesses dumping their pollution into public waterways. However, according to regulators and the Environmental Protection Agency (EPA), the Supreme Court has left uncertain which waterways are protected by the Clean Water Act in two cases: Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers (2001) and Rapanos v. United States (2006). As such, businesses are now declaring they (and their dumping operations) are excluded from oversight under the Clean Water Act.

The concern over the Supreme Court’s rulings focuses on the language within the Clean Water Act that limited enforcement to “the discharge of pollutants into the navigable waters” of the United States. For decades, “navigable waters” was broadly interpreted by regulators to include many large wetlands and streams that connected to major rivers. However, the new decisions from the Supreme Court have suggested waterways that are entirely within one state, creeks that sometimes run dry, and lakes unconnected to larger water systems, may not be “navigable waters” and are therefore not covered by the Act—even though pollution from such waterways can make its way into sources of drinking water.

The immediate effects of the rulings have been devastating to water conservation efforts. About 117 million Americans get their drinking water from sources fed by waters that are vulnerable to exclusion from the Clean Water Act. EPA personnel estimate more than 1,500 major pollution investigations have been discontinued or shelved in the last four years, and nearly 45% of major polluters might be either outside regulatory reach or in areas where proving jurisdiction is too difficult. In dry states, major polluters might be completely excluded from Clean Water oversight.

Even as the number of facilities violating the Clean Water Act has steadily increased, EPA judicial actions against major polluters have fallen by almost half since the Supreme Court’s rulings. EPA officials and regulators are in agreement that the rulings could have a lasting effect on the environment. In fact, the EPA is shutting down its Clean Water programs in some states.

UPDATE ON UNDERGROUND STORAGE TANK LITIGATION

We have written in prior issues about our work to protect the rights of people whose health and property have been damaged by harmful, toxic contaminants leaking from underground storage tanks (USTs). You might wonder why we write about this subject so often. The answer is simple: leaking USTs have the potential to pose a very real and serious threat to any person and any property in Alabama.

Think about how many gas stations you see every day. Also, consider how many former gas stations you see that have been abandoned or are no longer in operation. Then consider that each gas station, or former gas station, could have three or more USTs, each of which holds thousands of gallons of gasoline or other toxic petroleum-based fuels. The United States Environmental Protection Agency estimates there are more than 623,000 active USTs in the nation; more than 18,000 are located in Alabama. Unless USTs are properly maintained, monitored and replaced periodically, they will develop a leak. In fact, the EPA has confirmed more than 479,000 releases of toxic petroleum contaminated nationwide; more than 11,000 of these releases occurred in Alabama.

Our firm has filed lawsuits on behalf of many clients from all over Alabama who have been adversely affected by leaking USTs. The effects suffered by our clients range from a single mother who discovered noxious gasoline fumes blowing through the ductwork and in the basement of her home, to a homeowner who discovered gasoline in his drinking water, to clients who were financially crippled when their real estate development was ruined by the discovery of gasoline constituents in the soil and groundwater, to a client whose ancestral land has been reduced to nothing more than a toxic waste dump by a release of more than 50,000 gallons of gasoline from a nearby gas station. We represent many other clients who suffer similar injuries as those described here.

We are continually investigating new UST leaks for our clients. Some of these investigative cases involve homeowners whose homes are located over a groundwater aquifer that is polluted with more than 18,000 gallons of gasoline, to an elderly homeowner who has lived adjacent to a gas station for more than 50 years and was not notified when the station’s USTs sustained a leak that has spread petroleum contaminants onto her property, to a group of impoverished residents who are being victimized by a UST owner who refuses to conduct an investigation and clean-up following notification that its UST has sustained a leak, to a property owner whose water supply was rendered non-potable by toxic gasoline constituents from a nearby leaking UST.

Leaking USTs are everyday occurrences that harm everyday people. Our firm’s mission is to fight for the rights of ordinary folks who have been harmed by corporate polluters who place profits above the safety of their neighbors. If you would like more information, believe that your health or property has been harmed by a leaking UST, or have questions, you can contact Chris Boutwell in our office at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com.

UPDATE ON HOT FUEL LITIGATION

As we have reported in past editions, our firm continues to play an important role in the Hot Fuel Litigation which is consolidated in Kansas City, Kansas. At the center of the litigation is a simple concept and that’s fairness for the consumer. When customers purchase motor fuel by the gallon, they expect to receive a gallon’s worth of energy due. However, due to a phenomenon known as thermal expansion, consumers are not receiving the fuel they pay for. Specifically, thermal expansion causes gasoline to expand at temperatures increase and creates “expanded gallons” of fuel that harbor less energy than before expansion. Ultimately, consumers in hot states, such as Alabama, Georgia or Florida, are receiving less per-gallon energy to power their cars than they are actually paying for while oil
companies are able to generate massive profits from additional "expanded gallons" the high temperatures create.

The oil industry has known about the effects of thermal expansion on motor fuel liquids for decades. As such, the oil industry helped establish the U.S. Petroleum Gallon, where a gallon is equal to 231 cubic inches measured at 60 degrees. To ensure that oil companies received consistent and fair gallons for each intra-industry transfer, they implement a temperature compensation device that would automatically compensate for temperature based on the U.S. Petroleum Gallon. This technology, known as automatic temperature compensation (ATC), is actually utilized at every level of the oil distribution process—except at the Costco Wholesale. In the settlement with Costco Wholesale, we were able to achieve a preliminary agreement—they argued such a question was best left for the regulators to decide. But, the Court sided with the Plaintiffs and denied the Defendants' motions.

During the past couple of months, our firm, working with some of the most successful plaintiffs' firms in the nation, have scored substantial victories in the Hot Fuel case. After defeating the Defendants' initial motions to dismiss on behalf of the plaintiffs, we were able to achieve a preliminary settlement with Costco Wholesale. Costco agreed to retrofit its gasoline dispensers in the states they temperature adjust on an intra-company basis. Final arguments for approval of the Costco settlement were to be heard on April 1st. Approval of the settlement would be a huge step towards resolution of the cases.

Additionally, the Plaintiffs were able to defeat the Defendants' "political question" dispositive motion that would have dismissed the entire litigation. Specifically, the Defendants argued that the Court could not determine whether ATC should be implemented—they argued such a question was best left for the regulators to decide. But, the Court sided with the Plaintiffs and denied the Defendants' motion.

On March 4th, the Plaintiffs won another substantial victory for consumers when Judge Kathryn Vratil of the District of Kansas agreed with the Plaintiffs' arguments and overturned a previous discovery ruling that favored the oil companies. From the inception of this case, the Plaintiffs have claimed that the oil companies conspired and used their political clout to keep ATC out of the consumer marketplace. The oil companies, clutching to a confusing and archaic First Amendment argument, have strongly opposed production of internal lobbying documentation with oil trade groups that would directly support the Plaintiffs' conspiracy arguments. With the release of these very important documents, we expect the truth to finally come out about how the oil companies have "strong-armed" an industry for decades at the expense of consumers.

Currently, the Plaintiffs' motions for certification are pending in the District of Kansas and should be ruled on in the next couple of months. While the oil companies have fought hard in this case, we remain fully confident that right will win out and our side will prevail. If you have any questions about this litigation, please contact Beasley Allen Hot Fuel lawyers Rhon Jones and Parker Miller at Rhon.Jones@beasleyallen.com and Parker.Miller@beasleyallen.com, respectively. Alternatively, you can contact our firm at 800-898-2034.

XXII.
THE CONSUMER CORNER

DANNON TO PAY $45 MILLION TO SETTLE YOGURT LAWSUIT

For two years Dannon has been promoting Activia and DanActive yogurt products as "clinically" and "scientifically" proven to regulate digestion and boost immune systems. The company even launched a television advertising campaign featuring actress Jamie Lee Curtis. A judge in Cleveland has now ruled that Dannon must pay consumers up to $45 million in damages under the terms of a class action settlement reached in federal court. The agreement also calls for Dannon to change its health claims for Activia and DanActive.

Cleveland lawyers John Climaco and Frank Piscitelli Jr., joined with lawyers from California and Florida, represented the class and worked out the settlement, which has been approved by U.S. District Judge Dan Polster. The judge agreed that the company was making claims it simply hadn't proven.

Source: ABC News

MAJOR PHARMACEUTICAL COMPANY STOPS ARTHRITIS STUDY AFTER DEATHS

Swiss pharmaceutical company Roche Group has suspended a late-stage trial for a new rheumatoid arthritis and lupus drug after several patients died from infections. According to Roche, the drug, ocrelizumab, was developed together with Biogen Idec with headquarters in Cambridge, Mass. A review found the safety risk outweighs the benefits observed in these specific patient populations at this time after detecting "serious and opportunistic infections, some of which were fatal," Basel-based Roche said. It declined to say how many patients died, where and when. The company said it was still testing ocrelizumab for patients with relapsing remitting multiple sclerosis.

Source: Associated Press

BABY SLINGS CAN CAUSE SUCCOFICATION

The U.S. government is preparing a safety warning about baby slings—those popular and fashionable infant carriers that parents can sling around their chests to carry their baby. The concern is that infants can suffocate, and a few have died. At press time, there had been at least four deaths reported. The head of the Consumer Product Safety Commission, Inez Tenenbaum, says that her agency will issue a general warning to the public about the slings. She observed:

'We know of too many deaths in these slings and we now know the hazard scenarios for very small babies. So, the time has come to alert parents and caregivers. There have been complaints for a couple of years now about some baby carriers. In 2008, Consumer Reports raised concerns about the soft fabric slings and some two dozen serious injuries, mostly when a child fell out of them. A follow-up blog warned about a suffocation risk and linked the slings to at least seven infant deaths. Consumer Reports, published by Consumers Union, complained about the "Sling-Rider" by Infantino. The "bag style" sling wraps around the parent's neck and cradles the child in a curved or "C-like" position,

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nestling the baby below mom’s chest or near her belly. It’s the “C-like” position that causes safety advocates to shudder. They say the curved position can cause the baby, which has little head and neck control in the early months, to flop its head forward, chin-to-chest—restricting the baby’s ability to breathe. Another concern is that the baby can turn its face toward mom’s chest or belly and smother in the parent’s clothing.

Infantino’s “SlingRider” was recalled in 2007 for problems with the plastic sliders on the sling’s strap. But there have been no recalls because of a suffocation risk. A message seeking comment was left with an Infantino representative. Baby slings have been billed as an important way for new moms to bond with their babies. Use of slings, also known as “babywearing,” has become increasingly popular in recent years, with colorful and vibrant slings seen on Hollywood moms and sold everywhere from big retailers such as Babies R Us to a number of smaller firms located in cities all over the U.S.

Source: CBS News

LIFELOCK FRAUD ALERT FIRM TO PAY $12 MILLION IN SETTLEMENT

An Arizona company that promised to protect consumers from identity theft has agreed to pay $12 million to settle false advertising claims brought by the Federal Trade Commission and 35 states. Tempe, Ariz.-based Lifelock Inc. has heavily advertised its $10 per month fraud protection service for several years, promising that it was a “proven solution” that would protect consumers from fraud. Its president, Todd Davis, is famous for plastering his Social Security number on Lifelock ads to show how safe he feels from identity theft. Life- lock agreed to pay $11 million in restitution to customers and $1 million to pay for the investigation. According to the FTC and the Arizona Attorney General’s office, Lifelock agreed to stop saying it protects against all types of identity theft.

Source: Associated Press

J&J PUSHED RISPERDAL FOR ELDERLY AFTER GOVERNMENT WARNING

In an excellent article, written jointly by Margaret Fisk, Jef Feeley, and David Voreacos for Bloomberg, some disturbing revelations involving Johnson & Johnson, a major drug manufacturer, were revealed. It was written that J&J made plans to reach $302 million in geriatric sales for its antipsychotic Risperdal just months after the FDA said the company falsely claimed the drug was safe and effective with the elderly. The FDA told J&J in 1999 that its marketing materials for geriatric patients overstated Risperdal’s benefits and minimized risks. But, even with that warning, a J&J business plan for 2000 called for increasing the drug’s market share for elderly dementia sales, an unapproved use. J&J officials even wrote in their business plan that “the geriatric market represents Risperdal’s second wave of growth.”

Source: Bloomberg.com

WALGREENS MUST PAY $25.8 MILLION OVER PHARMACY TECH’S ERROR

A Florida appeals court has upheld a $25.8 million judgment in a lawsuit against Walgreens over an error by a teenage pharmacy technician that resulted in a mother of three receiving blood thinner pills with a dosage ten times greater than prescribed. Beth Hippely of Lakeland, Florida, suffered a massive, crippling stroke after taking the pills and was forced to stop treatment for early stage breast cancer. Ms. Hippely died in 2007, before her case went to trial. The judgment against Walgreens was one of the largest ever because of a prescription error, and the appeals court upheld it without comment.

Walgreen was able to drag this litigation out for eight years. The case highlighted the use by major drug store chains of pharmacy technicians who in many states are not even required to have a high school diploma. During the trial, the technician testified that she had typed in “ten milligrams” on Ms. Hippely’s prescription when it should have been one milligram. Prior to working at Walgreens, the young girl had no experience that would even remotely qualify her to fill prescriptions. There is no minimum national standard for the training of pharmacy technicians who are supposed to work under the close supervision of licensed pharmacists.

Critics say the major drug store chains have adopted a “fast food” culture to enhance profits, pushing pharmacists to oversee the prescriptions filled by as many as four or five technicians at a time. There are no publicly available figures on the number of prescription errors in the United States because pharmacies are not required under federal law to report prescription errors, even those resulting in serious injury or death. The actual error rates are treated by the big drug chains as closely-held secrets, and they will not disclose even whether the number of errors has gone up or down over the years. Karen E. Terry, a lawyer from West Palm Beach, Florida, represented the woman’s family, and she did a very good job.

Source: ABC News

FDA ISSUES WARNING ON DIALYSIS MACHINE

Federal regulators have given medical device maker Baxter International’s recall of its dialysis machines the agency’s most urgent safety warning. The Deerfield, Illinois-based company issued a recall on certain HomeChoice dialysis machines in January after reports of patients overfilling abdominal cavities. The FDA has categorized the action as a Class I recall, its most severe level. The classification applies to problems that can cause “serious adverse health consequences or death.” Baxter says it is still investigating the source of the problems and says it’s working on changes to labeling and software to prevent patient errors. According to the company, the machines can still be used.

Source: Decatur Daily

JUDGE ORDERS DIALYSIS FIRM TO REPAY $19.4 MILLION

A federal judge has ordered a kidney dialysis company to repay $19.4 million to Medicare in a case that began as a whistleblower lawsuit filed in St. Louis in 2005. U.S. District Judge William J. Haynes Jr. issued the order on March 22nd against Renal Care Group, Renal Care Group Supply Co. And Fresenius Medical Care Holdings Inc.
The U.S. Attorney's office joined the lawsuit in 2007, alleging that Nashville, Tenn.-based Renal Care Group created RCG Supply as a shell company to earn an extra 30% on dialysis supplies. Fresenius acquired the companies in 2006. The U.S. Attorney's office says several Renal Care Group employees complained about the Medicare billing activity.

Source: Associated Press

MORE SCRUTINY OF FLEA AND TICK PRODUCTS

The EPA says complaints of dogs and cats injured and sometimes even killed by flea treatments have increased significantly. The EPA has outlined plans to make the products safer. The agency will develop stricter testing and evaluation requirements for flea and tick treatments that are applied to pets' skin. The EPA also will begin reviewing labels to determine which ones need to say more clearly how to use the products. These efforts follow increasing complaints from pet owners that the “spot-on” products have triggered reactions in dogs and cats, ranging from skin irritation to neurological problems to deaths.

The EPA has received 44,263 reports of harmful reactions associated with topical flea and tick products in 2008, up from 28,895 in 2007. Reactions ranged from skin irritations to vomiting to seizures to, in about 600 cases, death of an animal. The new restrictions will be placed on all flea and tick products, with additional changes for specific products placed as needed. Possible changes in formulas are also possible. Pet owners must carefully read and follow all labeling before exposing their pet to a pesticide, according to the EPA.

Source: Associated Press

WARNING ABOUT DOG BONE TREAT

The Better Business Bureau has told pet owners in this country to be very cautious when giving their dogs “Real Ham Bone For Dogs,” a pet treat that is sold in stores across the United States. These treats are distributed under the Dynamic Pet Products label of Frick’s Quality Meats of Washington. Several consumers have complained that their dogs became seriously ill or died when the animals ate pieces of the bones, damaging their internal organs. When dogs chew them, the bones can splinter inside their throats and along their digestive tracts. In hundreds of cases across the country dogs have been seriously injured and some have died after eating this specific product.

Source: WSMV.com

MONEYGRAM TO PAY $18 MILLION TO SETTLE FTC CHARGES

MoneyGram International, Inc., the second-largest money transfer service in the United States, will pay $18 million in consumer redress to settle FTC charges that the company allowed its money transfer system to be used by fraudulent telemarketers to cheat U.S. consumers out of tens of millions of dollars. MoneyGram also will be required to implement a comprehensive anti-fraud and agent-monitoring program.

The FTC charged that between 2004 and 2008, MoneyGram agents helped fraudulent telemarketers and other con artists who tricked U.S. consumers into wiring more than $84 million within the United States and to Canada. These consumers were falsely told they had either won a lottery, were hired for a secret shopper program, or were guaranteed loans. While the $84 million in losses is based on consumer complaints to MoneyGram, actual consumer losses likely are much higher. The FTC charged that MoneyGram knew that its system was being used to defraud folks, but did very little about it. In some cases its agents in Canada actually participated in these schemes, according to the FTC.

Source: www.ftc.gov/opa/2009/10/moneygram.shtm

XXIII. RECALLS UPDATE

There are a number of recalls being reported this month. As expected, the previously reported Toyota recalls are still getting most of the media attention and rightfully so. The following are some of the other significant recalls since those included in our last issue. At the outset I will include a response by Toyota on one of its many safety problems.

TOYOTA RESPONDS TO REPORTS OF FUTURE PRIUS RECALL

Media reports, citing a Wall Street Journal article, stated that Toyota would announce a new recall for the 2004-2009 Prius to address the potential risk for floor mat entrapment of accelerator pedals. According to Toyota, there was no new recall being planned for the Prius to address this issue. The 2004-2009 Prius was part of Toyota's November 2, 2009 announcement of a safety recall campaign to address floor mat entrapment in certain Toyota and Lexus vehicles. Toyota's announcement can be found at: http://pressroom.toyota.com/pr/tms/lexus/toyota-begins-interim-notification-112086.aspx.


The remedy process for these vehicles began at the end of 2009 and is occurring on a rolling schedule during 2010. Owners of the involved vehicles that have not yet been remedied are asked to take out any removable driver's side floor mat and not replace it with any other floor mat.

Owners who have further questions are asked to visit www.toyota.com or www.lexus.com or contact the Toyota Customer Experience Center at 1-800-331-4331 or Lexus Customer Assistance at 1-800-255-3987.

TOYOTA TO EXPAND RECALL OF TUNDRA PICKUPS FOR RUST

According to Toyota, it will expand a recall announced last year to fix Tundra pickup trucks with frames that could rust and lead to spare tires falling from the vehicle. The recall will cover
Tundra pickups from the 2000-2003 model years in all 50 states. It would broaden a recall announced in November that covered 110,000 trucks in 20 “cold weather” states and the District of Columbia. Dealers have been notified of the expanded recall.

The National Highway Traffic Safety Administration opened an investigation into excessive rust on Tundra frames in October after receiving 20 complaints of “severe frame corrosion.” NHTSA said then it had received 15 reports alleging the spare tire, stowed under the truck bed, separated from the frame. Five other reports alleged broken brake lines because of the rust. Owners were urged to remove the spare tire from the frame, concerned it could fall onto the road and create a road hazard.

**Nissan Recalls 540,000 Trucks And Minivans**

Nissan is recalling 540,000 vehicles worldwide to fix faulty brake pedal pins and inaccurate fuel gauges. The Japanese automaker’s North American division said no accidents or injuries have been reported, but the company is initiating the recalls based on three reports of brake pedal pins partially disengaging, hindering braking ability. A separate, unrelated fuel gauge issue can lead to inaccurate fuel readings in certain trucks and minivans. The gauge may show gas left when the tank is actually empty.

The brake pedal pin recall affects 2008, 2009 and 2010 Nissan Titan, Armada, Quest and Infiniti QX56 models—about 179,000 of which are in the United States. Owners of these vehicles should bring their vehicles to a Nissan or Infiniti dealership for a visual inspection, the company said. Repairs will be made as necessary. The fuel gauge recall affects 419,000 U.S. vehicles, including 2005 through 2008 Nissan Titan, Armada and Infiniti QX56 models, as well as Nissan Frontiers, Pathfinders and Xterras produced between January and March 2006 and between October 2007 and January 2008.

**GM Recalls 1.3 Million Chevrolets And Pontiacs**

General Motors has recalled 1.3 million Chevrolet and Pontiac models in North America for power steering failures that are tied to 14 crashes and one injury in the United States, according to the company. The recall affects 2005-2010 Chevrolet Cobalt and 2007-2010 Pontiac G5 models sold in the United States, 2005-2006 Pontiac Pursuit vehicles sold in Canada, and 2005-2006 Pontiac G4 models sold in Mexico. GM told NHTSA about the recall after concluding its own investigation first launched in January 2009.

In January 2010, NHTSA opened a separate investigation on 905,000 U.S. Cobalt models after receiving more than 1,100 complaints on power steering failures, 14 crashes and an injury. GM vice president of quality Jamie Hresko said the investigation revealed that the problem develops over time, and is more likely to occur in vehicles whose warranty has expired. The condition tends to impact vehicles that have been driven 20,000 to 30,000 miles, according to GM.

**Honda Recalls 410,000 Vehicles For Brake Problem**

Honda Motor Co. is recalling more than 410,000 Odyssey minivans and Element small trucks because of braking system problems that could make it tougher to stop the vehicle if not repaired. The recall includes 344,000 Odysseys and 68,000 Elements from the 2007 and 2008 model years. Honda said in a statement that over time, brake pedals can feel “soft” and must be pressed closer to the floor to stop the vehicles. Left unrepaired, the problem could cause loss of braking power and possibly a crash, Honda spokesman Chris Martin said. He added that “it’s definitely not operating the way it should, and it’s safety systems, so it brings it to the recall status."

NHTSA has reported three crashes due to the problem with minor injuries and no deaths. Honda has notified NHTSA of the recall. Honda said that owners should wait to get a letter from the company before scheduling a repair because the parts are not yet available. Letters should go out toward the end of this month. After April 19th, owners can determine if their vehicles are being recalled by going to www.recall.honda.com or by calling (800) 999-1009, and selecting option number four.

**GM To Recall 5,000 Heavy Duty Vans**

General Motors Co GM.UL is likely to recall about 5,000 heavy duty vans manufactured in February and March. The company will also halt its production and sale of the vehicles. This was because of a risk of engine fires because of a suspected faulty alternator. Affected vans are reported to include Chevy Express models 2500 and 3500 with vehicle identification numbers (VIN) ranging from A1129327 to A1142523 and GMC Savana models 2500 and 3500 with VINs ranging from A1128784 to A1901915. GM posted in a notice on March 26th that it was still working on the process of determining the way to deal with the flaw. Owners are recommended to stop driving the vans, park them away from buildings and other vehicles and disconnect both battery cables, according to GM. About 1,400 AC Delco replacement alternators are also reported to be recalled and may have been introduced in vehicles in February and March, GM said. The recalled replacement alternators are numbered 15200110, 15288861, 15263859 and 15847291.

**Fork And Spoon Sets For Children Recalled Due To Choking Hazard**

About 127,000 Scooby Doo, Tweety and Batman Fork and Spoon Sets have
been recalled by the manufacturer Peachtree Playthings, of Atlanta, Ga. The middle two prongs of the plastic fork can detach, posing a choking hazard to children. Peachtree Playthings has received one report of a middle prong detaching from the fork. No injuries have been reported. This recall involves the Scooby Doo, Tweety and Batman plastic fork and spoon sets. The two-piece set is white plastic with cartoon images on the handle. The sets were sold at Dollar Tree Stores and Deals during January 2010 for about $1 per set. Consumers should immediately take the recalled fork and spoon sets away from children and return them to Dollar Tree or Deals for a full refund. For additional information, contact Peachtree Playthings at (800) 290-4831, visit the firm’s Web site at www.peachtreeplaythings.com or email the firm at peachtree@peachtreeplaythings.com.

**Graco Recalls Harmony™ High Chairs Due To Fall Hazard**

Graco Harmony™ High Chairs have been recalled by Graco Children’s Products Inc., of Atlanta, Georgia. The screws holding the front legs of the high chair can loosen and fall out and/or the plastic bracket on the rear legs can crack causing the high chair to become unstable and tip over unexpectedly. This poses a fall hazard to children. Graco has received 464 reports of screws loosening/falling out and/or plastic brackets cracking causing the high chair to tip over unexpectedly. These tip-overs resulted in 24 reports of injuries including bumps and bruises to the head, a hairline fracture to the arm, and cuts, bumps, bruises and scratches to the body. This recall involves all Harmony™ High Chairs. The Harmony™ high chair was manufactured from November 2003 through December 2009 and is no longer in production.

The chairs were sold at AAFES, Burlington Coat Factory, Babies “R” Us, Toys “R” Us, Sears, Target, Target.com, Wal-Mart, WalMart.com, Shopko, USA Baby, and other retailers nationwide from December 2003 through March 2010 for between $70 and $120. Consumers should immediately stop using the Harmony™ high chair and contact Graco to receive a free repair kit. To order a free repair kit, contact Graco toll-free at (877) 842-3206 or visit its Web site at www.gracobaby.com. For additional information, contact Graco at (800) 345-4109.

**Baby Slings Recalled After Infant Deaths**

We wrote in this issue on the safety issues relating to baby slings. Now more than one million baby slings made by Infantino have been recalled after claims linking them to three infant deaths. The Consumer Product Safety Commission said babies could suffocate in the soft fabric slings. The agency urged parents to immediately stop using the slings for babies under four months. The recall involves 1 million Infantino “SlingRider” and “Wendy Bellissimo” slings in the United States and 15,000 in Canada.

The Infantino slings being recalled were sold from 2003 through 2010 at several retailers, including Target, Babies “R” Us and Burlington Coat Factory. Consumers can call Infantino at 866-860-1361 to receive a free replacement product. There are no federal safety rules for baby slings. Infantino says it’s working with CPSC and ASTM International, an organization that sets voluntary safety standards, to develop a standard for slings. The CPSC specializes in product safety, and often negotiates agreements with manufacturers for recalls, when necessary.

**More Children’s Jewelry Recalled Over Cadmium**

Federal regulators are recalling more children’s jewelry due to high levels of the toxic metal cadmium. This time it’s charm bracelets with a “Rudolph the Red-Nosed Reindeer” theme sold at dollar-type stores. The U.S. Consumer Product Safety Commission says the items should immediately be taken away from children and thrown away. As we have reported, Cadmium emerged as a major safety concern earlier this year after an Associated Press investigation reported that some children’s jewelry contained as much as 91% of the heavy metal, a carcinogen that also can damage kidneys and bones. This recall is the second related to cadmium by the USCPSC, which says it continues to investigate the issue.

**Boston Scientific Issues Recall Of Its Implantable Defibrillators**

Boston Scientific Corp. is recalling all of its implantable heart defibrillators because it failed to notify regulators of manufacturing changes. The company said it had no indication that the manufacturing changes threatened the safety of patients who have the defibrillators, and it didn’t recommend that doctors remove devices implanted in patients. Boston Scientific described the situation as a documentation problem, saying it was working with the FDA to resolve the issue “as soon as possible.”

The FDA has warned Boston Scientific on prior occasions for failing to follow reporting requirements. In 2006, the agency warned the company about failing to report problems in its devices and barred Boston Scientific from introducing most new products in the U.S. until the deficiencies were corrected. In 2007, the company was cited for failing to report two deaths in a clinical trial. The latest problems are expected to exact a heavy toll. Defibrillators accounted for 15% of Boston Scientific’s U.S. revenue last year.

Boston Scientific informed the FDA that it hadn’t filed for approval and would withdraw its devices. The FDA requires that companies get permission before making such changes, to ensure device safety and effectiveness aren’t compromised, and the review typically takes 30 days.

While the company did not use the word “recall” in a short statement, instead saying it was stopping shipment and retrieving products already distributed, the FDA said Boston Scientific’s action was a recall. Boston Scientific didn’t identify the manufacturing changes that sparked the prob-
lems. The company says it made sure the changes complied with FDA quality rules, but failed to ask the FDA to approve them.

Implantable cardioverter defibrillators, or ICDs, are potential life-savers. The small devices, placed in the chests of patients, give electronic jolts to hearts that are beating abnormally to get them to return to a normal rhythm. The devices are a significant segment of the medical-device industry's business, generating $4.3 billion in U.S. revenue last year.

**LENNOX HEARTH PRODUCTS RECALLS VENT-FREE GAS LOGS AND FIREPLACES**

Lennox Hearth Products, of Nashville, Tennessee, has recalled about 5,700 Superior VFGL Vent-Free Gas Log Sets and VF Vent-Free Fireplaces. The front burners of vent-free gas log set fireplace inserts and the vent-free fireplaces can fail to ignite allowing gas to escape and posing a fire or explosion hazard to consumers. The recalled products are Lennox Superior brand VFGL Log Sets and VF4000, VF5000 and VF6000 fireplaces. Each product has a metal rating plate attached to the grate of the log sets or to the frame of the fireplaces containing the unit’s model number, serial number and other information. Included in this recall are units with serial numbers starting with “6408C” through “6408M,” and those starting with “6409.” Units that had repairs made to the burner assembly between March 2008 and December 2009 are also included.

The products were sold by various fireplace and HVAC retailers and installers from March 2008 through December 2009 for approximately $540 to $775 for the log sets and $1,300 to $1,850 for the fireplaces. Consumers should immediately stop using the recalled log sets and fireplaces and contact Lennox for information about how to arrange for a free inspection and repair. For additional information, please contact Lennox Hearth Products at (800) 826-8546 or visit its Web site at http://www.lennoxhearthproducts.com.

**EVENFLO RECALLS TOP-OF-STAIR PLUS WOOD GATES**

Evenflo Top-of-Stair™ Plus Wood Gates have been recalled by Evenflo Co. Inc. This includes about 150,000 in the United States and 33,000 in Canada. The slats on the gate can break or detach, posing a fall hazard to children. Evenflo has received 142 reports of slats breaking and/or detaching from the gate. Three children gained access to stairs. One of those children fell through the gate and down five steps; another fell down one step. Injuries included four children who sustained bumps and bruises to the head and seven children who sustained minor injuries including scratches, scrapes and bruises. The recall involves Evenflo models 10502 and 10512 Top-of-Stair Plus Wood Gates made from October 2007 through July 2009. The model number can be found on the bottom rail. No other Evenflo model numbers or gates are affected by this recall. The gates were sold at Toys “R” Us, Burlington Baby Depot, Kmart and other juvenile product and mass merchandise retailers nationwide in the U.S. And Canada, and on the Web at Amazon.com and other online retailers from October 2007 through March 2010 for about $40. Consumers should stop using the recalled gate and contact Evenflo to obtain a free newer model 10503 or 10513 Top-of-Stair™ Plus Wood replacement gate. For additional information, call Evenflo toll-free at (800) 233-5921 or visit its Web site at safety.evenflo.com.

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

**XXIV. FIRM ACTIVITIES**

**SPOTLIGHTED EMPLOYEES**

**SUE SCARBOROUGH**

Sue Scarborough, who has been with the firm since July of last year, helps maintain the database for this Report. The Report goes out monthly to over 50,000 individuals. Sue has taken CE courses at AUM in childhood development & education and also has CE credits through the General Board of Discipleship of the United Methodist Church in children's ministry and church leadership. Before coming to the firm, Sue was employed as a Children's Ministry Director. She has been married to Jerry for 31 years and has three grown sons. Sue enjoys teaching children’s Sunday School, cooking, reading, flea-market shopping, spending time with family and is working on a new hobby of running. We are most fortunate to have this dedicated employee with us.

**STEPHANIE MORGAN**

Stephanie Morgan is a Legal Assistant to Benjamin L. Locklar in the firm’s Personal Injury Section. She works with Ben as a part of the Mesothelioma Litigation team along with Mike Andrews and his Legal Assistant Kay Cox. Stephanie and Ben are also working on Ford, GM, Dodge and Suzuki cases.

Stephanie has three sons, Hayden, eight years old, Ethan, six years old, and Cameron who is two years old. The older boys attend Morningview Elementary and are honor students. Cameron is a typical two year old who jumps head first into whatever his older brothers are doing. He keeps things lively and interesting.

Stephanie enjoys spending time with her children, family and friends, and is also a member of the American Poolplayers Association. She enjoys playing at The Breakroom located in Montgomery. Her team was invited in 2009 to play in Las Vegas for competitions with other teams throughout the USA. Stephanie is a very good, hard working employee, and we are fortunate to have her with us.
ANGLIE TAYLOR

Angie Taylor, who currently serves as a Legal Secretary for Alyce R. Addison in our Mass Tort Section, has been with the firm for over six years. She and Alyce work on the drugs Yaz, Yasmin and Ocella. Previously, Angie worked with Roger Smith on the drugs Digitek, Fleet, and Gadolinium. In her current position, Angie speaks with clients who have taken this medication and assists them with their questions and concerns. She sends out update letters every 60 days to keep the clients informed about the status of their claim. Angie also assists the lawyer and legal assistant assigned to a case on a number of specific tasks. Previously, she also worked in the firm’s Personal Injury and Nursing Home Sections.

Angie says she has a small family at home and a large family at work so she is “surrounded by love and family at all times.” She has a 16-year-old son who plays in the band who keeps Angie young at heart. Angie, who graduated from Jefferson Davis High and Prince Institute of Professional Studies in Montgomery, has worked in the legal field since 1989. She says the work is interesting and challenging. Angie enjoys boating, fishing, camping, horseback riding, four-wheeling, gardening, reading and cooking out with family and friends. We are fortunate to have this dedicated employee with us.

LAWCALL IS GOING STILL STRONG

Gibson Vance continues to host LawCall, the very popular 30-minute call-in legal show, each week. The show airs on Sunday nights at 11:00 pm on WSFA. Each week a specific discussion topic is chosen. We have tried hard to have topics of interest to folks from all walks of life. There has been plenty of feedback from viewers who tell us that the show is most informative and helpful. That’s good to hear. Our readers can submit a topic for discussion and we will consider it for future use. Viewers are also invited to submit any legal question they may have to LawCall via the web at free.consult@beasleyallen.com or they may call our firm directly at 800-898-2034.

LABARRON BOONE HOSTS POPULAR RADIO SHOW

LaBarron Boone, one of our veteran lawyers, who handles product liability cases, hosts The Law & You, a live radio call-in program, which is aired each Tuesday from 6-6:30 p.m. on WVAS-FM, 90.7. The show addresses a variety of legal issues and fields calls from listeners. LaBarron also welcomes special guests including lawyers as well as government, industry, civic and political leaders, on the show. Past guests have included Montgomery Mayor Todd Strange, Senator Hank Sanders, Senator Quinton Ross, Jr., Montgomery Police Chief Art Baylor, and the renowned Civil Rights lawyer, Solomon Seay.

The Law & You touches on a wide spectrum of topics, with the goal of helping people find answers to their legal questions and learning more about the law. It is also putting people in touch with the resources they need to find a solution. Each 30-minute show is magazine-formatted, highlighting one call-in topic. LaBarron and guests take live calls from listeners. LaBarron, who really enjoys doing the show, had this to say:

"At Beasley Allen, we will continue serving our community and this country by keeping it legal. Our radio program The Law & You reaches people all over the world, not only over the airwaves, but also on the Internet."

Listeners can call the program at 334-269-6785 or toll-free at 800-631-2893. Folks may also submit questions via Twitter at twitter.com/thelawandyou or online at www.beasleyallen.com. We would like to have input on the show from viewers who can get Channel 12 in Montgomery.

XXV. SPECIAL RECOGNITIONS

A MESSAGE FROM ALABAMA STATE BAR PRESIDENT TOM METHVIN

Tom Methvin, the managing shareholder with our firm, is well into his term as State Bar President. Tom, who has been a most active president, is working hard in a number of important areas. Thus far, Tom has made 17 appearances at meetings of bar groups and at other functions around the state. The following is his monthly message.

Jones Achieves Milestone With ABA Accreditation

Congratulations to Faulkner University’s Thomas Goode Jones School of Law on its recent full accreditation. The school announced in December that it has been granted full approval by the American Bar Association (ABA) Council of the Section of Legal Education and Admissions as an accredited institution of legal education.

This designation makes Jones the third accredited law school in Alabama and is a significant milestone. Dean Charles Nelson, Jones staff, instructors and students should be very proud. Full accreditation means Jones graduates are eligible to sit for the bar exam in any state. Jones School of Law received congratulations from Alabama Gov. Bob Riley and Chief Justice Sue Bell Cobb, among others.

“I personally recognize the influence that Jones’ alumni, administrative staff and faculty members have had on our legal community, and I am grateful to them for their continued support,” Chief Justice Cobb said. “The recognition that this achievement will bring to our state at a national level is certain to reap benefits to our citizens.”

According to school history, Montgomery County Circuit Judge Walter B. Jones founded the Law School in 1928 at the request of several young men and women who wanted to pursue a legal education but could not afford to give up their employment to attend a traditional law school. It was originally owned and operated by Judge Jones as a proprietary educational institution, and he served as president, dean and faculty member until his death in 1963.

In 1972 the University of Alabama acquired the School of Law from Judge Jones’ heir and transferred the institution’s assets to a non-profit corpora-
tion, Jones Law Institute. In 1983, Alabama Christian College (now Faulkner University) purchased the School of Law and moved it to the Faulkner campus, where it has grown by leaps and bounds.

Jones is consistently recognized as an outstanding choice for the pursuit of a law degree. The National Jurist magazine has ranked Jones School of Law as one of its Best Value Law Schools, and The Princeton Review included the school in its Best 172 Law Schools list for 2010. In 2009, Jones boasted an 89.4% pass rate for first-time bar takers, surpassing the overall rate for the state, which was 77.3%. The Law School also boasts a nationally prominent advocacy program whose teams are winning trial advocacy and moot court competitions across the country.

Jones Law School recently welcomed its Class of 2012. The class is comprised of 150 students from 22 states. Out-of-state students make up 50% of the entering class. “This achievement is the result of the hard work of many people who took this as a goal and pursued it,” said Dean Nelson. “To all who played such a significant role in our development over the past five years, I want to extend our heartfelt thanks and our congratulations for a job well done. And, as in all things, to God be the glory.”

I’d like to add my congratulations, also, on behalf of the Alabama State Bar, on this momentous achievement. We are proud of all who helped to make it possible, and look forward to many years of success and continued achievement from Jones Law School and its graduates. Thank you for your continued dedication to excellence in the practice of law.

Tom Methvin
State Bar President
April 2, 2010

XXVI.
FAVORITE BIBLE VERSES

Virginia Jones, an employee at Montgomery-based Pickwick Antiques, sent in a verse that has been a source of strength and inspiration for her over the years. That was especially true, according to Virginia, during the lingering illness of her husband, Bill, that ultimately resulted in his death. In fact, this verse was inscribed on the tombstone at Bill’s grave site. Virginia, a very special person, has been a longtime friend of ours and attends St. James UMC with Sara and me.

He gives strength to the weary and increases the power of the weak. Even youths grow tired and weary, and young men stumble and fall; but those who hope in the LORD will renew their strength. They will soar on wings like eagles; they will run and not grow weary, they will walk and not be faint.

Isaiah 40:29-31

Laurice Kern, another longtime friend, sent in her favorite Bible verse. She is a member of Saint James UMC and a strong Christian lady.

Trust in the LORD with all your heart and lean not on your own understanding; in all your ways acknowledge him, and he will make your paths straight.

Proverbs 3:5-6

A good number of our employees furnished verses for this issue. Unfortunately, we couldn’t use all of them this month and will hold those not used for future issues. The first verse came from Lisa Harris, who is the firm’s Executive Director:

But now, this is what the LORD says— be who created you, O Jacob, be who formed you, O Israel: “Fear not, for I have redeemed you; I have summoned you by name; you are mine. When you pass through the waters, I will be with you; and when you pass through the rivers, they will not sweep over you. When you walk through the fire, you will not be burned; the flames will not set you ablaze. For I am the LORD, your God, the Holy One of Israel, your Savior; I give Egypt for your ransom, Cush and Seba in your stead.

Isaiah 43:1-3 (NIV)

Beverly Larkin, an employee who never misses the firm’s weekly devotionals, furnished this verse:

But they that wait upon the Lord shall renew their strength, they shall mount up with wings as an eagle, they shall run and not be weary, they shall walk and not faint.

Isaiah 41:31

Navan Ward, one of our talented lawyers who walks the Christian walk daily, furnished a verse for this issue:

Wisdom is the most important thing: so get wisdom. If it costs everything you have, get understanding. Treasure wisdom, and it will make you great; hold on to it, and it will bring you honor.

Proverbs 4:7-8 (New Century Version)

Loretta Williams, another of our employees who has been an inspiration for all of us, furnished this verse:

Though the mountains be shaken, and the hills be removed, yet my unfailing love for you will not be shaken nor my covenant of peace be removed, says the LORD, who has compassion on you.

Isaiah 54:10

Carol Stanley, one of our dedicated employees who has worked hard to help TBI patients, furnished this verse:

Rejoice in the Lord always. I will say it again: Rejoice! Let your gentleness be evident to all. The Lord is near. Do not be anxious about anything, but
in everything, by prayer and petition, with thanksgiving, present your requests to God. And the peace of God, which transcends all understanding, will guard your hearts and your minds in Christ Jesus.

Philippians 4:4-7

Bill Robertson, a lawyer who works in the firm’s Consumer Fraud Section, particularly likes a verse from the book of Exodus that was featured in one of his daily devotionals. Bill says when things get sort of crazy at work or in his life outside of work, the verse lets him know we can still experience peace in the midst of turmoil and joy in spite of our fears when we stand quietly and allow God to deliver us from these distractions.

But Moses said to the people, “Do not be afraid, stand firm, and see the deliverance that the Lord will accomplish for you today. . . . The Lord will fight for you, and you have only to keep still.”

Exodus 14:13-14

Kwanza White, who has tremendous people skills, is a very popular receptionist in one of our buildings. She furnished the final verse for this issue:

Whatever you do, do it heartily, as to the Lord and not to men, knowing that from the Lord you will receive the reward of the inheritance; for you serve the Lord Christ.

Colossians 3:23-24

XXVII.
CLOSING OBSERVATIONS

RESPPECTED CONSUMER ADVOCATE MAKES SOME VALID POINTS ABOUT NHTSA

My longtime friend, Joan Claybrook, former head of the National Highway Traffic Safety Administration, has been a dedicated consumer advocate for years. Calling NHTSA a “lapdog, not a watchdog,” Joan believes the agency must adopt “tougher standards” for safety officials who leave and go to work for the auto industry. Joan testified at a hearing of the House Subcommittee on Commerce, Trade and Consumer Protection examining NHTSA operations.

Joan has found 40 cases of former NHTSA and Department of Transportation officials who went to work for the auto industry. Among the 40 are Sue Bailey, a former NHTSA administrator, who went to work for Ford Motor Co., and Rodney Slater, a former Secretary of Transportation, who was recently asked by Toyota to head up a special quality advisory board. While ties between NHTSA and Toyota are currently under scrutiny because of alleged safety defects in Toyota vehicles, the 40 cases mentioned by Joan also involved all three major U.S. manufacturers, BMW, Honda and Suzuki, as well as auto trade associations.

Under federal law, an employee in the executive branch is barred for two years after leaving government service from representing any matter under the employee’s previous official responsibility. Joan believes NHTSA should impose a longer “cooling off” period. I agree that the auto industry has become too cozy with the agency. Joan said “Auto companies, including Toyota, treat the agency with contempt.” In her testimony, Joan cited the case of two former NHTSA safety investigators who went to work for Toyota’s Washington, D.C. office. NHTSA officials sharply narrowed the scope of a 2004 investigation into random acceleration in Toyota vehicles after meeting with the men, Chris Tinto and Chris Santucci.

An ABC News investigation found that federal safety investigators decided to exclude reports of sudden acceleration that lasted for more than a few seconds and those that could not be brought under control with the application of the brake—in effect the most serious cases—after the meeting with Tinto and Santucci, who were hired to be Washington, D.C. representatives of Toyota. “Longer duration incidents involving uncontrollable acceleration” were deemed to be “not within the scope of this investigation,” according to a 2004 memorandum in NHTSA’s files.

The memorandum was written on March 23, 2004, shortly after NHTSA official Scott Yon met with Tinto and Santucci. In testimony in a civil lawsuit, Santucci admitted to this. “We discussed the scope,” Santucci testified, adding, “I think it worked out well for both the agency and Toyota.” Transportation Secretary Ray LaHood was questioned about Tinto and Santucci at the series of hearings on Toyota. He told Congress that an investigation by his department found that the men had not broken the law in discussing safety issues with their former bosses.

Joan in her testimony called for “stricter scrutiny” of NHTSA engineering staff members who move immediately from the agency to a regulated company. “The public loses faith in the government when top staff sell their expertise gained at government expense to the regulated agency,” Joan said. Joan made several valid points in her testimony and hopefully Congress was listening.

Source: ABC News

MOST AMERICANS BELIEVE IT’S TIME FOR CIVILITY

There are two issues that are currently getting all of the media attention in Alabama and folks have been mighty upset over them. The bingo issue had pretty well consumed the nightly news and daily newspaper headlines for weeks and while the health care reform debate has been ongoing for about a year, up until recently it was taking second place with folks in Alabama.

Now it appears the sharp division over health care is the leader both with the media and the public. The politicians are jumping on that bandwagon like hungry pups after fresh meat. Unfortunately, there are some groups on the fringes of our society who are taking the debate to the lowest levels possible.

Things had already been pretty nasty on the national level over the past several months. Now the nastiness in Washington is intensifying and is actually getting dangerous. Even the ugly face of “racism” has surfaced on more than one occasion and that’s most sad and dangerous. Recently, after the healthcare vote, several members of Congress and their families got death threats. Clearly, when that sort of thing starts to happen, things are getting out of hand. The Rush Limbaughs and Glen Becks are doing their dead level best to stir up the masses. Limbaugh made a stupid, but calculated comment on his radio show designed to enflame people. He said “we need to defeat the bastards. We need to wipe them out.” That’s a dangerous thing to say, especially...
considering the existing climate. The talk-
show hosts are even getting help from poli-
ticians like Sarah Palin. She has made
comments like “it’s time to reload” and uses
cross-hairs on the districts of Democrats on
her web site. Some “nut” may listen to all of
this junk and decide to take violent action
against a person he disagrees with.

My prayer is that folks on each side of the
political spectrum will keep their argu-
ments and comments on a high plane.
Opposition and spirited debate—regardless
of the circumstance—don’t have to be
nasty. In fact, that sort of thing definitely
should never be the case. Our political
leaders should set an example for the rest
of us and set the proper tone for the debate
on healthcare and other volatile issues.
Hopefully that will happen and soon!

XXIII.
PARTING WORDS

Christians around the world will cele-
brate the death and resurrection of Jesus
Christ this month. Perhaps, it’s a time for
reflection and self-examination for all of us.
Some of us tend to limit the present-day
power and authority of the great, miracle-
working Savior of New Testament times.
Today we all believe that Jesus can forgive
our sins and relieve our guilt. We also
believe Jesus can provide us with peace
and joy and give us eternal life. As pointed
out recently by David Wilkerson, the pastor
who established New York’s Time Square
Church, Jesus does all of the above in the
“unseen, invisible spiritual world.” He says
that “Jesus is God of the natural world.”

Sometimes Christians either forget, or
simply refuse to accept, that part of his
awesome power and authority. We must
remember that Jesus is Lord over our every-
day affairs—Lord of our homes, Lord over
our children, and Lord over our marriages
and relationships. He is even Lord over our
businesses, our work and our financial
affairs. Consider what Paul wrote in Ephe-
sians 1:18-19:

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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.