Corporations Are Not People

We have written about the U.S. Supreme Court’s decision saying that corporations have a First Amendment right to spend as much money as they want to influence and, some say, “buy elections.” There has been an overwhelming response from our readers and 99% oppose the Court’s ruling. Most can’t understand how the right to free speech can apply to a corporation since corporations are not people. Since a corporation isn’t a person, there is no logical way it can have the same right as a person under the Constitution.

I believe this ruling will wake up the public to the dangers of an activist majority on the nation’s highest Court. Nationwide, polls show a tremendous majority of folks disagree with what the Court did. I know that in Alabama at least one poll revealed over 75% thought the Court was wrong and that the ruling was bad for ordinary folks. I totally agree with that finding.

It’s Time To Reign In The Lobbyists

Folks have been upset with Washington for the past nine years. But things have intensified in recent months. With all of the fuss about what is wrong in Washington, the media has failed to discuss the role of corporate lobbyists in creating what is being described as a mess. Credit is due to a powerful band of operatives who collectively are more to blame for the wrongs in Washington than most folks realize. There are currently 11,195 lobbyists who are plying their “nefarious trade” day and night in Washington. Because of their connections, they have almost total access to members of Congress and Congressional staffs. The lobbyists know their way around the hallways and back rooms where deals are made. I suspect many of our readers will be shocked to learn that Corporate America spent $2.95 billion on their lobbyists last year. This was more than six times greater than the total amount spent by all consumer, environmental, worker, and other non-corporate groups combined.

Many of the lobbyists are former members of Congress who are now working for corporate lobby firms. I doubt seriously that many Americans fully realize that these lobbyists wield tremendous power and influence over what passes and fails to pass in Congress. The lobbyists actually have their own lobby—the American League of Lobbyists (ALL)—which has the duty to make sure nothing happens to lessen their power and influence. The primary responsibility of ALL is to fend off legislative, regulatory, and ethical restrictions on influence peddling in our Nation’s Capitol. I believe most ordinary folks would oppose most everything that ALL supports.

It’s time for Congress to reign in the powerful lobbyists. But therein lies the problem. Congress seems to like the current system. As a result, it may be unwilling to do what is needed to bring about reform. That’s where people come into the picture. Unless ordinary folks get involved and let the politicians know how they feel, nothing will happen concerning the power and influence of Washington lobbyists. If you believe this power and influence should be curtailed, let your U.S. Senators and House members hear from you.

Federal Probe Into Colonial BancGroup Continues

A federal criminal investigation is continuing into the activities of Colonial BancGroup, according to a report to Congress that was released on April 20th. The Special Inspector General for the Troubled Asset Relief Program issued its quarterly report, which mentions Colonial and SIGTARP’s investigation. The report described Colonial as the subject of an ongoing criminal investigation.

Montgomery-based Colonial Bank was shut down by the government in August and sold to BB&T Corp. Later that month, Colonial BancGroup filed for Chapter 11 bankruptcy protection. At least eight different lawsuits have been filed against the bank, which became the biggest U.S. bank to fail in 2009 and the sixth-largest in U.S. history. The failure of Colonial has hurt Montgomery since it was the only publicly-traded company with its headquarters in the capital city.

Source: Montgomery Advertiser

Huntsville Tops The List Of Best Places To Live

Even though the U.S. Chamber of Commerce may not think so, Alabama is still a pretty good place to live and work. In fact, one of our cities was honored recently. Job growth and a diverse economy helped

IN THIS ISSUE

I. Capitol Observations .................. 2
II. Drug Manufacturers Litigation ...... 3
III. Purely Political News & Views ...... 5
IV. Legislative Happenings ............... 7
V. Court Watch ................................ 7
VI. The National Scene ................... 8
VII. The Corporate World ................. 9
VIII. Congressional Update ............... 9
IX. Toyota Litigation Update ............. 9
X. Product Liability Update .............. 12
XI. Mass Torts Update ..................... 15
XII. Business Litigation ................... 17
XIII. An Update on Securities Litigation .. 18
XIV. Insurance and Finance Update ..... 19
XV. Employment and FLSA Litigation .. 20
XVI. Predatory Lending .................... 21
XVII. Premises Liability Update ........ 22
XVIII. Transportation ...................... 23
XIX. Workplace Litigation ............... 24
XX. Healthcare Issues ..................... 25
XXI. Environmental Concerns .......... 25
XXII. The Consumer Corner ............... 28
XXIII. Recalls Update ..................... 31
XXIV. Firm Activities ..................... 34
XXV. Special Recognitions ............... 35
XXVI. Favorite Bible Verses .............. 37
XXVII. Closing Observations ............ 37
XXVIII. Parting Words ...................... 39

www.BeasleyAllen.com
launch Huntsville, labeled the “Rocket City,” to the top of RelocateAmerica.com’s annual list of best places to live. Huntsville is home to the NASA Marshall Space Flight Center and boasts unemployment well below the national average. The Rocket City also ranked Number One on the site’s list of “Top 10 Recovery Cities,” those poised for a swift economic rebound or already experiencing growth. Huntsville has benefited from having a diverse economy, specifically within defense, aerospace and life sciences. Huntsville also ranked high on quality-of-life aspects, including safety and education.

RelocateAmerica.com is a Web site that provides online resources to people who are moving. Each year, it collects nominations for its list of 100 best cities to live. In addition to the overall list, breakout lists include the best places to retire, the most “earth-friendly” cities, the top recreation cities and the top small towns. For the 8,000 nominations received for 2010’s list, the editorial team analyzed economic, environmental, education, crime, employment and housing data of the areas, interviewed local leaders and reviewed resident feedback to come up with rankings. The overall list is put together for consumers who are considering relocation options, with a heavy emphasis on places where there are positive job possibilities.

Source: Market Watch

THE BARRON-BEASLEY ROAD BILL PASSES

Alabama lawmakers passed the Barron-Beasley road bill on the next to the last day of the Regular Session. This bill will allow a vote by the people of Alabama to authorize spending up to $100 million a year for ten years from the Alabama Trust Fund for state roads. The vote will be in November. The money will be spent on transportation projects statewide. Most observers believe this was one of the most important matters to be passed during the session.

In the years when $100 million is to be spent on transportation, $39 million would be spent in the 67 counties by the Department of Transportation. Another $5 million would be spent by the DOT in each of the seven Congressional districts. Also, short-line railroads would get $1 million and $25 million would be distributed to counties and cities. Of the money reserved for the Congressional districts, as much $1 million a year in each of the ten years for the 6th and 7th Congressional districts, would be spent on mass transit.

Sen. Lowell Barron and Rep. Billy Beasley sponsored the proposal and worked very hard with good help from other legislators to get it passed. This measure—once approved by the voters—will generate a tremendous number of jobs for Alabama citizens and will allow pressing needs in the state’s transportation system to finally be met. Since both the jobs and the highway needs are critically important, I believe the voters will approve the measure in November by a very large margin.

Source: Birmingham News

II. DRUG MANUFACTURERS LITIGATION

JURY RETURNS $141 MILLION VERDICT AGAINST PFIZER IN NEURONTIN CASE

A Boston jury has found that Pfizer, Inc. violated the federal racketeering law by improperly promoting its epilepsy drug Neurontin. The world’s largest drug maker was ordered by the jury to pay $47 million in damages. Since the penalty is automatically tripled under the RICO Act, the verdict will actually cost Pfizer $141 million. The company says it will appeal the verdict.

Kaiser Foundation Hospitals and Kaiser Foundation Health Plan alleged that Pfizer had illegally promoted Neurontin for unapproved uses, such as for migraine headaches, pain and bipolar disorder. As has been reported, it appears the drug doesn’t work for those purposes. While doctors are free to prescribe medicines as they see fit, drug makers are only allowed to promote them for uses approved by the FDA. This is not the first rodeo for this drug company. In 2004, Pfizer agreed to pay $430 million to federal and state governments and pleaded guilty to criminal charges of illegally marketing Neurontin. The company obtained the drug with its 2000 acquisition of Warner Lambert Corp. Pfizer contends that the judge improperly allowed details of that case and settlement to be considered by the Boston jury.

There are more than 1,000 civil lawsuits pending against Pfizer accusing it of illegally promoting Neurontin for unap-
proved uses and helping to cause some users’ suicides. Pfizer’s Warner-Lambert subsidiary also pleaded guilty in 2004 to criminal charges filed by the Justice Department in connection with allegations it illegally marketed Neurontin. It paid a $430 million fine.

Along with the $430 million settlement of allegations over Neurontin, Pfizer also paid $2.3 billion in October 2009 to resolve U.S. Justice Department allegations that it illegally marketed the pain-killer Bextra and three other drugs. These are all indications of how the drug industry operates.

Source: Reuters and Bloomberg

**JUDGE REFUSES TO DISMISS TOPROL LAWSUIT**

A federal judge in Delaware has refused to dismiss a lawsuit accusing AstraZeneca of anticompetitive practices involving the heart drug Toprol-XL. The court’s ruling involves consolidated antitrust complaints filed in 2006 by drug wholesalers and pharmacies, and by health and welfare plans, self-insured employers and others.

The Plaintiffs allege, among other things, that AstraZeneca engaged in monopoly practices that forced them to pay higher prices for Toprol. They say the company withheld information from federal patent officials in order to fraudulently obtain Toprol-related patents, then restricted generic competition by filing sham patent-infringement lawsuits against rival manufacturers. The judge ruled that the Plaintiffs had adequately stated a claim, and that their allegations were sufficient to survive AstraZeneca’s request for dismissal.

Source: Associated Press

**FDA WARNS PFIZER ABOUT LAX OVERSIGHT OF DRUG STUDY**

Federal regulators say that Pfizer has failed to correct problems with its testing procedures that resulted in overdoses for more than two dozen patients during a company trial. The FDA issued a warning letter saying Pfizer is not properly monitoring physicians testing Geodon, an experimental medication. Pfizer is studying this drug in relation to children with bipolar disorder.

The FDA warning, posted online, follows up on problems first cited in 2006, when 26 patients in a company trial received overdoses of the psychiatric drug. Despite Pfizer retraining the physicians, FDA says three additional overdoses occurred in 2007. A July 2009 inspection, which prompted the new warning, found Pfizer was still not following its own guidelines for safely conducting the study. Specifically, FDA inspectors said that the company was not alerting clinical investigators to new dosing problems as they occur. While Pfizer responded to the agency’s complaints in July, the FDA letter states that “the response did not contain a detailed outline of procedures or processes that would be implemented to prevent the future occurrence of these observations.”

The FDA is demanding that Pfizer submit a plan for correcting the problems. Geodon, part of the antipsychotic drug class, is already approved to treat schizophrenia and bipolar disorder in adults. Side effects include diabetes, facial spasms and seizures. The FDA regularly issues warning letters to companies that do not follow regulations for manufacturing, marketing and testing. While the letters are not legally binding, the agency can take companies to court if they are ignored.

Source: USA Today

**NEW ETHICS CODES SET TO CURB INFLUENCE OF DRUG MANUFACTURERS**

The drug manufacturers have been paying for developing medical guidelines for several years. This practice is difficult to defend. A new ethics code that dozens of leading medical groups announced last month, aimed at limiting the influence that drug and device makers have over patient care, is a good thing. It’s the most sweeping move ever taken by the Council of Medical Specialty Societies to curb conflict of interest—a growing concern—as private industry bankrolls a greater share of medical research.

The Council includes 32 medical societies with 650,000 members, from neurologists and obstetricians to family doctors and pediatricians. They include the American College of Physicians, the American College of Cardiology and the American Society of Clinical Oncology, the largest group of cancer specialists in the world. One of the most controversial rules is one requiring top leaders of any medical
society and top editors of its journals to have no consulting deals or financial ties to industry. Among other things the code of ethics will require:

- Any industry support the group receives, such as money for continuing education sessions, must be posted publicly.

- Industry funding for developing medical practice guidelines, such as who should get a drug, a test, or treatment, must be declined. Members of a guidelines panel must be free of financial ties to industry.

- Any financial ties that leaders and board members have with companies must be disclosed.

- The use of company or product names and logos from pens, bags and other giveaways at conferences must be banned.

Fourteen groups in the Council, including ASCO and the College of Physicians, have already adopted the code. It was reported that most of the rest plan to by the end of the year. Last year, leading medical journals agreed to use a uniform conflict-of-interest disclosure form for researchers publishing in their journals. The new ethics code the Council is adopting should make financial ties more transparent and that’s very important.

Source: USA Today

III.
PURELY POLITICAL
NEWS & VIEWS

Tom Edwards Challenges Incumbent

Tom Edwards has qualified to run for the Alabama Supreme Court, challenging incumbent Mike Bolen. Tom, a sole practitioner, is a very good lawyer. While he doesn’t represent any of the elite in Corporate America, Tom does a very good job of representing ordinary folks. Known as a tenacious yet highly-professional lawyer, Tom is highly regarded by his peers and by folks in his community. Tom lives in Elmore County, but has his law office in Montgomery.

Tom is a graduate of Auburn University Montgomery and Jones School of Law. He also holds a Master of Divinity degree from Fuller Theological Seminary in Pasadena, California. From 1987 through 1992, Tom preached the Gospel and he remains active in the United Methodist Church. He and I attend the same church, St. James United Methodist Church, and for that reason I know about his commitment. At one stage in his professional career, Tom served as an aide to then-U.S. Senator Howell Heflin. Tom has also served as President of the Alabama Trial Lawyers Association.

Tom says he is running to restore integrity, balance and impartiality to the Supreme Court. Tom firmly believes the Wall Street corporate stacking of the High Court flies in the face of the fundamental beliefs of Alabamians in God, Country and Freedom. Tom wants to put a stop to what he views as a dangerous trend of judicial activism on the Court, which he says has put profits of large corporations far above the rights of ordinary people. He believes it’s time for a fresh start in Alabama and that regular folks should at least have a chance when their cases are heard in the Supreme Court.

I have known Tom Edwards for a number of years and know first hand that he is highly qualified. Tom will make an outstanding member of the Alabama Supreme Court. I plan on voting for Tom and supporting his candidacy. If real issues are discussed and out-of-state corporate money is kept out of the campaign, Tom can win!

The Rest Of The Supreme Court Races

There are Democratic candidates running in the other two Supreme Court seats that are up for election this year. Rhonda Chambers, a Birmingham lawyer, will face the GOP candidate, Judge Kelli Wise, who currently serves on the Criminal Court of Appeals, for Place 1. Jefferson County Circuit Judge Mac Parsons will face the GOP nominee for Place 3. The Republican nominee will be decided in the primary. The incumbent, Tom Parker, is facing two opponents in the primary. They are Birmingham lawyer Erin Johnson and Elmore County Assistant District Attorney, James Houts. In the race for Place 2, a Republican primary candidate, Dothan lawyer Tracy Cary, is facing Justice Mike Bolin, the incumbent. It’s rather unusual to have primary races in Supreme Court races, but this year is different. Most observers believe, however, that all of the races will really be run looking toward the general election in the fall. The only exception would appear to be the primary race for Place 2 on the Court.

The Governor’s Race In Both Primaries Heats Up

The Democratic Primary

The Democratic primary had been fairly dull, but things are finally beginning to heat up. According to the most recent polls, Artur Davis still has a large lead and should be able to win the primary by a fairly large margin. He has impressed the people of Alabama with his intelligent discussion of the real issues facing our state. Artur has a vision for Alabama and it’s one that includes all Alabamians. Most everybody agrees that the number one issue facing our state deals with the economy. Education—which has been sorely neglected in many areas for years—has to be the second most important issue in my opinion. Since the next governor will face serious fiscal problems, it will take a qualified person filling this job who can not only do his part, but can also bring folks together to get things done. I believe without a doubt that Artur Davis is that person.

The Republican Primary

To say that the GOP primary race has been rather weird so far is a gross understatement. It’s really been hard to figure out exactly what is going on with the candidates. It’s apparent that somebody is running some real tough ads at great cost against Bradley Byrne and Tim James, and the AEA appears to be getting credit for this attack strategy. Bradley and Tim have been slugging it out and that most likely won’t change. Judge Roy Moore is clearly being helped by the Tea Party movement.

and has a built-in base that most observers believe won’t leave him.

Bill Johnson, the former Riley confidant and cabinet member, is working hard and has made a good impression in certain areas of the state. The real surprise, however, has been the campaign being waged by Rep. Robert Bentley. The Tuscaloosa doctor has moved up in all the polls and is now being considered as a viable candidate. In fact, most observers believe he and Judge Moore have had the best television ads thus far.

At this juncture, it appears all of the other Republican candidates are fighting for a slot in a runoff against Judge Moore. I originally thought the run-off would include Bradley, but I’m not sure about that now. The next few weeks will be most interesting and hopefully folks will pay attention to the records of the candidates and also listen carefully to what they are saying about the number of very serious issues facing our state.

**NASCAR LEGEND BOBBY ALLISON ENDORSES JUDGE MOORE**

Former Chief Justice Roy Moore has picked up an important endorsement in the governor’s race. The endorsement by Bobby Allison was made at his museum in Hueytown. The NASCAR legend praised Judge Moore for his service in Vietnam and said the candidate has strong Christian principles. Allison, a Bessemer native, also said he knows Judge Moore has the welfare of the citizens of Alabama in his heart. While some endorsements in a political race don’t amount to a hill of beans, an endorsement like this one—considering how many NASCAR fans are in Alabama—is very important.

**THE CHOICE IN THE REPUBLICAN PRIMARY FOR ATTORNEY GENERAL IS CLEAR**

The race for Attorney General in the Republican primary between incumbent Troy King and challenger Luther Strange has taken a number of different twists and turns since qualifying ended. There have been lots of charges made by Luther, but so far nothing seems to have made much of an impact. Lots of folks seem to remem-

ber Luther’s campaign for Lt. Governor in 2006, which wasn’t very pretty. When you get down to it, the choice in the Republican primary for Attorney General is very clear. It’s whether the people of Alabama want a prosecutor or a lobbyist to serve as Attorney General in this state.

**ALABAMA ATTORNEY GENERAL CANDIDATES MAKE THEIR INCOME TAXES PUBLIC**

James Anderson, a Democratic candidate for Attorney General, made public his federal income tax returns. The Montgomery lawyer filed copies of his 2007 and 2008 tax returns with the State Ethics Commission. James is a former chairman of the State Ethics Commission. The candidate says he made his tax returns public because he believes transparency in government is essential. Michel Nicrosi, a candidate from Mobile, followed suit and also made her tax records public. Maybe it would be a good idea for all candidates to follow James’ lead and let the public know about their finances. Perhaps Joe Turnham and Mike Hubbard, chairmen of their parties, will jointly make that request of all candidates running under their respective party banners.

Source: Al.com

**KAY IVEY DROPS DOWN TO ANOTHER RACE**

Kay Ivey is now officially a candidate for Lt. Governor. While some say her chances of winning the nomination for this job are better than for Governor, Kay still has an uphill battle on her hands. While she is now the highest profile candidate in the Republican primary, I believe Senator Hank Erwin will give her a run for her money. Regardless of who survives the GOP primary, Jim Folsom, a very strong incumbent, will be virtually impossible to beat in his re-election bid. In fact, it would take a major miracle for anybody in the race to beat the very popular Democrat.

**TEA PARTY MOVEMENT WILL BE A FACTOR IN ALABAMA**

Some political experts believe the Tea Party movement in Alabama will be a major factor during this election year. While I believe it’s too early to tell how much of an impact the groups will have, I do believe they will have an impact. So far none of the dozens of Tea Party groups have registered as a political action committee, which would allow them to raise money and contribute to campaigns. It’s not certain, according to informed sources, if the groups will even endorse candidates.

It’s evident that a number of Tea Party rallies across Alabama have drawn some pretty big crowds. A few statewide candidates—all Republicans—have tried to latch on to the movement. In this election year, I believe Roy Moore will be the most likely beneficiary of the Tea Party movement insofar as votes are concerned. Tim James, Bill Johnson, George Wallace, and Kay Ivey are also “courting” the Tea Party groups. But they don’t seem to fit into the movement as well as the former Chief Justice does. In any event, it will be interesting to see how the connection between the Tea Party groups and political campaigns works out for the candidates.

Source: Associated Press

**POPULAR STATE SENATOR KICKED OFF GOP SLATE**

State Senator Harri Anne Smith has been officially given the “boot” by the GOP. As a result, she won’t be allowed to run on the Republican Party ticket. Senator Smith, who is very popular in her district, was disqualified as a Republican candidate. Subsequently, she asked her supporters if they want her to run as an independent in her Senate district that includes Geneva, Dale and Houston counties. To take that route, it will take a petition with names of 3% of the voters in the last governor’s election in the Senate district, or about 1,065 signatures. The deadline for submitting the petition is June 1st. If I had to make a guess, it would be that the Senator will run as an independent and will return to the Senate.

Source: Associated Press

**A LOOK AT SENATE DISTRICT 28**

I have a definite interest in the outcome of the race in Senate District 28. Not only does it include my home county of
Barbour, but my brother Billy is a candidate. Billy is running to replace my good friend Myron Penn who is retiring after serving the multi-county district for two terms. I must admit upfront that I am for Billy because he is my brother. But if we weren’t blood-kin, I would still be for him 100%. Billy has been a most effective member of the House of Representatives, having served three terms with a number of significant accomplishments and without a single mishap.

Billy is an extremely hard worker and he truly likes people. He will be an effective member of the Senate and will represent all people in the counties making up the district. There is one thing that I can guarantee, and that is Billy Beasley will never embarrass the people in Senate District 28. He is as solid and trustworthy as they come and I know that from having been his brother for lots of years. I am proud to be one of his strongest supporters and hope all of my friends will join with me in this effort.

IV. LEGISLATIVE HAPPENINGS

A Recap of the Regular Session

The regular session of the Alabama Legislature—without a great deal of fanfare—came to an end on April 22nd. Much of the session dealt with budgeting issues, complicated by a lack of money, and those issues were handled extremely well in the House and Senate. There were some good things during the session, but as usual, there were also the bad. Bingo battles took up a great deal of time and eventually the bill that would have put the bingo issue to a vote of the people died on the last day of the session.

Two major issues that passed were the highway financing bill and the legislation to save the PACT. Perhaps the top achievement—other than passing the budgets—was passage of the road bill sponsored by Sen. Lowell Barron and Rep. Billy Beasley. This measure is badly needed. Considering all of the state’s problems, especially those of a fiscal nature, the session has to be considered a success.

One of the biggest failures was not passing the bill to take the sales tax off food. This measure was killed by Republican House members. Another failure was the refusal of the Senate to pass the PAC to PAC transfers bill. Some are questioning if any of our “political leaders” really want the current system to change. Rep. Jeff McLaughlin has worked very hard on this issue and has to be frustrated. There were other measurers that failed to pass and I am sure there will be lots of media attention on those in the coming weeks.

V. COURT WATCH

Another Ruling by the Alabama Supreme Court That Is Difficult To Defend

The Republican members on the Alabama Supreme Court have rejected proposals to make it easier for the public to file complaints accusing judges of unethical conduct. The court’s eight Republicans voted to maintain rules that many believe puts Alabama out of step with the rest of the country. The ruling clearly was designed to stifle complaints. The rules include giving a judge, who has been accused of impropriety, the name of the person who filed a complaint, what the complaint entails and any evidence gathered during the investigation of the complaint.

Chief Justice Sue Bell Cobb urged her colleagues to replace the rules with those recommended by a committee of the American Bar Association. The Chief Justice wrote in her dissent that the current rules impose requirements that exist in no other state and “engender a fear of retribution” among anyone who complains about a judge. She asked a pretty good question in her dissent: “Why would the highest court in Alabama make it more difficult to discipline an unethical judge?” Interestingly, the eight Republicans did not explain the majority’s reasoning in their order of April 1st. Also, I find it most interesting that the order was not publicly announced. It appears that the Associated Press learned about the ruling from court officials. In any event, I believe the eight members of the Court should rethink what they have done in the ruling and make the necessary changes.

The Alabama Supreme Court sets the rules for the Judicial Inquiry Commission. In 2001, when Roy Moore was Chief Justice, the Supreme Court changed the commission’s rules to no longer protect the identity of people filing complaints. The Court wrote rules providing a judge with detailed information about a complaint, including who filed it, what evidence is gathered, and who is interviewed during the investigation. That was a drastic change. The Supreme Court made the rule changes retroactive so that they applied to charges the Commission had brought against then-Supreme Court Justice Harold See. Candidate See had been accused of running false and misleading ads against Roy Moore in the 2000 Republican primary for Chief Justice, which See lost. The case against See was subsequently dropped.

According to the American Judicature Society, a nonprofit group that works to maintain the integrity of the courts, Alabama’s rules appear to be designed to discourage complaints about judges and give more rights to judges than Defendants in criminal courts are entitled to. That’s not good in my opinion.

The ABA’s Standing Committee on Professional Discipline, which studied Alabama’s rules at the Supreme Court’s request, recommended undoing several of the 2001 rule changes, including notification of the complainant and providing evidence while the investigation is in progress. The committee found that telling a judge who filed a complaint “has a chilling effect on those who may want to file a complaint against a judge.” The committee noted that complaints dropped significantly after the 2001 rule change that required a person’s identity to be disclosed.

In Chief Justice Cobb’s dissent, she ended by saying: “How this court’s action—or inaction—today might serve to engender the ‘respect of the people’ that is so necessary for its existence, I cannot imagine.” The bottom line is that few
JUDICIAL RACES ARE NO PLACE FOR POLITICS OR PARTISANSHIP

The Alabama Legislature hasn’t seen fit to take party labels out of judicial races in Alabama. In fact, all efforts have failed. I believe the legislators should at least make races for our appellate courts non-partisan. Serving as an appellate judge should not come with a party label. There should be no Democrats or Republicans on the Alabama Supreme Court or on any of the other appellate courts—just qualified judges—and I believe most Alabamians agree with that premise. In fact, all polls reflect that Alabamians don’t like partisan races for judges.

There should be only men and women serving as judges who are dedicated to dispensing fair and impartial justice to the people of Alabama with absolutely no requirement for party affiliation. The perception of bias that comes attached to a party label has no place in our judicial system. Most folks expect justice to be applied equally in weighing all issues that come before any court. That’s why the lady holding the scales of justice is blindfolded.

Men and women serving on our state’s appellate courts should never be perceived as leaning one way or the other, particularly when politics often sticks its ugly head into judicial matters and legal arguments. For years a number of Alabama newspapers have been advocates of stripping party titles from all judicial races. The following editorial appeared in the Opelika-Auburn News recently.

**Serving as a judge should not come with a party label, period. There should be no Democrats on the bench. There should be no Republicans on the bench. There should be only men and women dedicated to offering justice to the communities they serve with absolutely no party affiliation or perception of leniency. The scales of justice are supposed to be equal.**

That said, judges should not obviously lean to one side or the other of the political spectrum. Republican lawmakers often lean one way on issues. Democratic lawmakers often lean the other way on issues. Men and women holding the gavel should never be perceived as leaning one way or the other, particularly when politics often makes its way into judiciary matters and legal arguments. This newspaper has been an advocate of stripping party titles from judicial races, will continue to be such, and urge lawmakers in Montgomery to continue pressing the issue.

**Wednesday, the Alabama House Constitution and Elections Committee voted 7-2 to defeat a bill made by Rep. Jeff McLaughlin, D-Guntersville, which called for state Supreme Court justices and judges from the Court of Criminal Appeals and Court of Civil Appeals to be elected in a non-partisan fashion. Earlier this year, a bill calling for circuit and district court judges to be elected in non-partisan elections was also defeated. Lee County is in the midst of an election season with a large field of judicial candidates in circuit and district courts. Some are running as Democrats. The majority of the candidates are running as Republicans.**

Political preference should not be the determining factor for a registered voter when it comes to the court system. Men or women seeking the bench should be elected based on their record and abilities, not because they wear an elephant or donkey lapel pin. For other seats on the ballot, fine, be Democrats or Republicans. But in what is expected to be the impartial makeup of Alabama’s court system, let’s play it straight down the middle and be independent on the ballot in the future.

Opelika-Auburn News
April 10, 2010

In the recently completed regular session, the Alabama Legislature took no action to make judicial races non-partisan. Hopefully, one of these days the legislators will pay attention to how the people of Alabama feel about this issue.

Source: Opelika-Auburn News

VI. The National Scene

The Political Climate in the U.S.

There is a growing mood of political discontent in our country and it doesn’t seem to have any single issue as the focal point. Folks are just mad! Most “political experts” believe there are a number of reasons for this discontent. Perhaps, the most obvious cause is the economic pain that folks have had to deal with over the past few years. I attribute much of the blame for the lack of civility to the right wing talk show hosts and their constant negativity. Lots of those people are paid big bucks to preach “hate” on a regular basis. That sort of thing is very dangerous at any time, but it’s even worse when economic times are tough. Recent polls show that the discontent amongst the people is aimed at both political parties.

Some believe the simple fact that our President is an African-American makes him a good target for Rush Limbaugh and others like him who thrives on a message that is based on pure racism. If that’s true it’s a sad state of affairs. We should all support the President and realize that the problems facing our country were there when he was sworn into office. While he has made mistakes, his resolve to get the job done can’t be questioned.
Alabama Brings Federal Funds Home

I get sort of amused when some of my Republican friends complain about all of the ‘pork’ that members of Congress put in federal budgets. Yet these same friends applaud those in Alabama who bring the money home—but only when they are fellow Republicans—and that may seem sort of inconsistent. Although the overall amount of politically-directed “pork” spending dropped this fiscal year, Alabama moved up in state-by-state rankings. A watchdog group’s annual tally revealed that Alabama in fact did very well. On a per-capita basis, according to the “Pig Book” released on April 14th by Citizens Against Government Waste, Alabama, after ranking 16th last year, advanced to 14th. Our state collected at least $242.3 million in earmarks, or about $51 per person, which isn’t too bad. I haven’t heard the GOP bosses in Alabama saying we should send the $242.3 million in federally “earmarked” spending back to Washington. That amount—by the way—was almost twice the national average of about $27 per person, the report indicates.

Nationally, pork spending totaled $16.5 billion this year compared to $19.6 billion last year, according to the report. Although definitions vary, pork—as earmarking is informally known—typically refers to taxpayer money targeted to particular projects on the basis of political clout with little or no formal review on the merits. My friend Sen. Richard Shelby, a senior member of the Senate Appropriations Committee (which plays an influential role in federal spending matters), has done extremely well on this front. I give him very high marks!

Interestingly, Mississippi did even better than our state in the pork parade. Senators and House Members from our neighboring state brought home $324.6 million in pork. But I haven’t heard any fuss in Jackson, the state’s capital, about their bringing in much more pork per capita than the national average. In fact, it appears the GOP governor in Mississippi and other local politicians like the “pork system.” That is interesting to say the least.

Source: Al.com

The Corporate World

VII.

29 Are Killed in West Virginia Coal Mine Blast

An explosion ripped through a West Virginia coal mine owned by Massey Energy last month, killing 29 miners in the deadliest U.S. mining disaster since 1984. The explosion occurred at the Upper Big Branch Mine in Montcoal, about 30 miles south of Charleston. The mine is owned by Massey’s Performance Coal subsidiary. The death toll makes it the deadliest U.S. mining disaster since 1984, when 27 miners died in a fire in Utah, according to the United States Mine Rescue Association. It’s evident that mines can be very dangerous and that’s why safety must be a top priority for both owners and the government.

Massey, headquartered in Richmond, Virginia, is the largest coal producer in Central Appalachia, with operations in West Virginia, Kentucky and Virginia. This company has had a very poor safety record. According to federal records, the Upper Big Branch Mine has had three fatalities since 1998 and has a worse-than-average injury rate over the last ten years. Two of the miners died in roof collapses in 1998 and 2001, while a third was electrocuted in 2003 when repairing an underground car.

According to Ellen Smith, the editor of Mine Safety and Health News, the Upper Big Branch mine had been repeatedly cited for safety violations going back years and continuing this year. The mine, which employs just over 200 people, uses the “longwall mining” method to tear coal from a lengthy face, leading the ground behind it to collapse. Critics say the method can cause surface subsidence and damage to buildings.

Because of the most recent disaster, the extremely poor job done by the federal regulatory agency over the years is being widely discussed in the national media. When you look at the history of Massey, with all of its safety problems, violations and warnings, it’s quite evident that this is a company that has never made safety and the welfare of its employees a real priority.

Source: Insurance Journal

The Deadlock in Washington

VIII.

UPDATE

I have been watching the political scene for a good while, but I don’t ever recall things being so partisan and ugly in the halls of Congress. The situation today is by far the worst in recent memory. The GOP members of Congress are dead set against anything the Obama Administration proposes. Taking orders from the likes of Rush Limbaugh, the Republican leadership says “no” to everything and it doesn’t look like that position will change anytime soon.

With all of the problems facing our nation, it’s time for Democrats and Republicans to find some middle ground and to start working for the American people. That seems simple and certainly necessary, but when the extreme right wing of the Republican Party—led by Rush Limbaugh—is calling the shots and dictating policy, moderate Republicans in Congress seem to fall into line and march in lockstep to the beat of the right wing drum.

Toyota Litigation Update

IX.

Toyota’s Massive Safety Problems Continue

The massive safety-related problems at Toyota are still being uncovered. Things are still coming to light—almost on a daily basis—that are very disturbing. I will update the timeline relating to Toyota’s problems that was in the last issue, which hopefully was helpful to our readers.

Source: www.JereBeasleyReport.com

9
The Updated Toyota Timeline

1986

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

1999

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

2000

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

2003

- Toyota makes 6.78 million vehicles and overtakes Ford Motor Co. in annual sales to become No. 2 in sales behind only General Motors.

- In February, NHTSA conducts the first of many defect investigations regarding speed control problems. The first two involve the Camry and Solara models.

- In April, Toyota internally deals with an “unwanted acceleration” incident during the production testing of the Sienna model. Toyota blamed a faulty trim panel clip, trapping the pedal assembly. Toyota calls this an “isolated incident.” Toyota does not report to NHTSA until five years later during a blanket information request by the agency.

- In July, NHTSA opens first probe of sudden-acceleration complaints in Lexus sedans at owners’ request.

- In September, the Lexus probe is closed claiming no defect was found.

2004

- In March, after another customer petition, NHTSA opens a wider probe into Lexus Sedans. NHTSA also informs Toyota that the agency is opening an investigation into unwanted acceleration and vehicle surge complaints in 2002-2003 Camry and Solaris models. Toyota's VP for regulatory affairs, Christopher Tinto, and another of his employees, Christopher Santucci, “work closely” with NHTSA and manage to narrow the investigation to 11 incidents involving five crashes. Both Mr. Tinto and Mr. Santucci are former NHTSA employees.

- In July, NHTSA closes its investigations again, claiming no defects were found. NHTSA turns down two more requests from owners for new looks at the problem. NHTSA cites lack of resources as the reason for that decision.

2005

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

- In August, NHTSA conducts an evaluation of the Camry after reports of “inappropriate and uncontrollable vehicle accelerations.”

- In November, Toyota’s Tinto writes NHTSA that a dealership-led review of 59 owner complaints about their Toyota vehicles found that “no evidence of a system or component failure was found and the vehicles operated as designed.”

2006

- By January, NHTSA had opened a second investigation and had received questionnaires sent to Camry owners. Hundreds are returned from owners with reports of problems of acceleration and braking. NHTSA says the claims are of “ambiguous significance” and closes the investigation. Again, a strange turn of events.

- Toyota group global sales of 8.808 million vehicles exceed GM’s by 128,000, making it the world’s biggest automaker.

- In August, NHTSA receives more complaints about the accelerator issues with the Camry models that cover model years 2002-2006.

- In September, NHTSA opens a third investigation. Another Camry owner petitions the administration to investigate multiple “engine surging” incidents he experienced.

- Toyota’s Tinto writes NHTSA and says that Toyota found no abnormality in the throttle controller and blames water damage from driving in heavy rain as the reason for any problems that might exist.

- NHTSA fails to identify the problem and closes the investigation citing “the need to best allocate limited administration resources” as the reason for the closure. Again—even if true—very strange.

2007

- In March, NHTSA launches probe into floor mats in Lexus models. Toyota says “issue is not a safety concern.”

- On July 26th, for the first time, NHTSA verifies fatal crash link to floor mats. Troy Edwin Johnson is killed when a Camry accelerating out of control hits his car at 120 mph. The driver of the Camry had been unable to slow the vehicle for 23 miles prior to the accident. Toyota eventually settles with the family for an undisclosed amount.

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

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

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

- Documents now obtained from Toyota show that the carmaker noted that it had saved $100 million by conducting a limited recall as opposed to a full recall. The company said that was a “win.”
2008

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

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

2009

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

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

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

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

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

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

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

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

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

2010

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

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

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

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

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

• On February 3rd, Kelley Blue Book devalued Toyota models by as much as 5%. Edmunds (an auto research firm) puts the average devaluation between 4% and 8% on Toyota vehicles. This devaluation is expected to continue.

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

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

• On February 9th, Toyota announces that Exponent Consulting (formerly Failure Analysis Associates Inc.) had completed a 56-page report and sent to Congress a report that a test of Toyota’s electronic throttle system behaved as intended.

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

• The Wall Street Journal publishes an article that discusses Toyota’s “black box” event recorder and its use for investigating Toyota’s safety problems. According to NHTSA and Toyota, only one “reader” exists in the U.S. And is located at Toyota’s headquarters in California. Toyota claims that the unit is still experimental and can give false readings. In comparison, all U.S. Automakers have made their event recorders easily readable by third party companies that make diagnostic equipment.

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

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

• On February 23rd, the Congressional hearings started and over a period of days a great deal was learned about Toyota’s safety issues.

• On March 2nd, Toyota executives tell U.S. lawmakers they will make data recorders available to read the “black boxes” to enable regulators to access the information on Toyotas involved in SUA incidents.

• By March 3rd, at least 20 Toyota owners have complained to NHTSA about SUA incidents after they had recall repairs done at Toyota dealerships.

• On March 4th, Associated Press starts an ongoing report about Toyota’s efforts to block access to data recorder information in previous lawsuits. The information was gathered from lawsuit records and interviews with auto crash experts.

• On March 8th, Toyota assembles a group of “experts” to hold a press conference intended to discredit the scientists and
safety experts who had warned the public about ongoing SUA and brake dangers at Toyota.

- That same day, James Sikes, a Toyota owner, calls 911 from his out of control Prius after it began speeding uncontrollably down a California highway at up to 94 miles per hour. Only with the help of a Highway Patrol officer’s use of his squad car was Sikes able to slow his Prius down.

- As of April 5th, NHTSA had received 70,000 internal documents that were requested and produced from Toyota.

- On April 5th, Toyota was notified of an impending statutory fine of $16 million as a result of the carmaker’s actions up to the recall. This is far and away the largest fine ever levied against an automaker.

- On April 8th, an internal e-mail between Toyota executives is published in the national media. In that e-mail, one of the executives tells his colleagues that “the time to hide is over” and they need to “come clean” about the pedal issues.

- On April 8th, our firm, along with others, proactively filed a Freedom of Information Act request to access and independently review the 70,000 Toyota documents turned over to NHTSA.

- On April 12th, Associated Press continues its investigation into Toyota’s behavior and publishes a report showing the “questionable, evasive and deceptive legal tactics” when Toyota was sued. It was stated by Associated Press that Toyota “frequently claimed that they [Toyota] did not have information and even ignored court orders to produce documents.”

- On April 16th, Toyota announces yet another recall of vehicles. Toyota’s 600,000 Sienna minivans have problems with their spare tire carrier. Toyota claims it was unaware of any accidents or injuries regarding this new recall; although, NHTSA said it had recorded six complaints of spare tires falling off the subject vehicles.

- On April 18th, Toyota agrees to pay the $16 million dollar fine from NHTSA for its failure to announce the “sticky” pedal recall in a timely manner.

- On April 19th, Toyota again issues another recall. The Lexus GX 460 Sport Utility Vehicle (SUV) model is recalled to address problems with the electronic vehicle stability control system. Prior to this recall, Consumer Reports announced a ‘don’t buy’ rating for these Toyota vehicles due to the roll over danger.

The battle with Toyota is far from over. The company will continue its public relations campaign—combined with its aggressive defense of all litigation—and that combination assures a lengthy battle. Our firm has already filed a number of death cases and our lawyers in the Product Liability Section are currently investigating a number of potential claims. If you need more information, contact Cole Portis, Graham Esdale, Greg Allen or Dana Taunton in our firm at 800-898-2034 or by email at Cole.Portis@beasleyallen.com, Graham.Esdale@beasleyallen.com, Greg.Allen@beasleyallen.com or Dana.Taunton@beasleyallen.com.

**TOYOTA MDL WILL BE HANDLED IN CALIFORNIA COURT**

The U.S. Judicial Panel on Multi-District Litigation (MDL) has selected the U.S. District Court for the Central District of California to hear the litigation arising out of the Sudden Unintended Acceleration (SUA) problems. All lawsuits, including both individual personal injury claims and consumer class actions filed on behalf of Toyota owners who contend the value of their vehicles has been negatively affected by Toyota’s SUA problems, will be moved to the MDL court. Cases that are filed in state courts and remain in state courts won’t be affected by the April 9th order.

Thus far our firm has filed a total of five consumer class actions in federal court in four states—Alabama, California, Florida and Georgia. We also have filed two wrongful death cases involving Toyota SUA in state courts in Alabama and Oklahoma. We will be filing several more suits of this nature in the near future. The MDL Panel’s decision to send the cases to Judge James V. Selna in California makes sense, and both the location and the judge appear to be good choices. At present that federal court has the most advanced set of Toyota cases in the country. Lawyers who have handled cases before Judge Selna consider him to be the perfect judge for this litigation.

Nearly 200 lawsuits related to the sudden unintended acceleration issues at Toyota have been filed in federal and state courts throughout the country. This decision will consolidate federal court consumer and personal injury suits in one jurisdiction. After discovery is completed, the personal injury and death cases will be returned to the federal courts for trial. Toyota’s U.S. Headquarters is located in Torrance, California. As reported, more than 8 million Toyota vehicles have been recalled worldwide for sudden unintended acceleration problems. Toyota has blamed the problems on defective or improperly installed floor mats, and sticky accelerator pedals, but has ignored the electronics that will eventually have to be faced. Dee Miles, who heads up our firm’s Consumer Fraud Section, is leading our effort in the MDL. If you need additional information on this subject, contact Dee at 800-898-2034 or by email at Dee.Miles@beasleyallen.com.

**X. PRODUCT LIABILITY UPDATE**

**A LOOK AT AUTOMOTIVE BLACK BOXES**

A great deal has been written by the national media over the past few weeks about Toyota’s mounting safety problems. As you may know, there have been several mentions of black box issues relating to Toyota. I have found that few people really understand what the black box is and, even if they do know about it, most don’t understand exactly how such a creature works. For this reason, I asked Mike Andrews, a lawyer who handles Product Liability cases in our firm, to write on this subject for this issue.
Automotive Black Boxes

By now most everyone is aware that many passenger cars sold in the United States today are equipped with “black boxes” or Event Data Recorders (EDR) designed to monitor and capture data in a car crash. Originally black boxes grew out of the computer systems that monitored and deployed airbags. When the computer “sensed” a crash, it would send signals to deploy the airbags and the crash data was retained in the black box computer. As vehicles grew more and more computerized, more data was available to be monitored. For instance, antilock brake computers, anti-sway or traction control systems, frontal and side impact airbags, seatbelts, brake and throttle (accelerator) computers, seat position controllers and other computer-controlled devices all became potential sources for black box data. And certainly by now, in the year 2010, the recorders are standardized and the information recorded is uniform and trustworthy…..right? Unfortunately not.

Interpreting black box data is complicated and requires a complete understanding of the crash to get the whole picture. To begin with, not every carmaker installed the same level of data recording at the same time. This means that two identical year model cars from different carmakers may not provide the same data in a crash. Complicating things further, two identical year model cars from the same carmaker may not either. Because the level of features offered in base models versus luxury models varies greatly, different data is available. For example, a base level car may be equipped with frontal airbags only and its black box is designed to monitor forces involved with frontal crashes to decide when to deploy the airbags. However, a more expensive model may be equipped with side impact airbags and seatbelt pre-tensioners. As a result, the black box in the luxury car may record side impact forces which were simply not monitored in the base vehicle. Consumers should not be forced with a decision between price and safety, but sadly that is the reality when choosing between the levels of features in many new cars.

In addition to the problems associated with varying years and models and levels of data, some black boxes are blacker than others. Partly as a result of lawsuits involving product liability claims, data from Ford and GM black boxes has been available for several years. Special computer equipment is required to download and interpret the data, but if can be done and is regularly used in product liability cases. Additionally, GM remotely gathers crash data every day through its OnStar systems and uses that information to assist in notifying rescue personnel—when an airbag is triggered in an OnStar-equipped vehicle—GM receives data regarding the crash conditions and stores that information about the crash. But the public is now learning what product liability lawyers have been facing for several years: information from Toyota black boxes is sketch at best. In the recent rash of runaway Toyota vehicles, the news media has begun reporting that Toyota black boxes sometimes do not tell the whole story. Toyota has changed its position several times on just what data is actually being recorded and until recently there was only one computer in the United States that could download Toyota black box data. Toyota has generally fought to keep black box data out of the courtroom in trials against it unless that data was helpful to its own case.

The bottom line is that black boxes can and do provide a wealth of data from a crash, but real expertise is required to interpret that data and determine if it is complete and reliable. Some automakers have provided much more information than others. Still others, like Toyota, continue to play hide-the-ball with crash data while it desperately attempts to explain away the current acceleration and braking problems. There are several bills before Congress which seek to standardize automotive black boxes and the data they record. As vehicles continue to become more and more computer-driven this is an issue which will continue to gain importance. Safe and reliable operation of our vehicles is a reasonable expectation of consumers, and access to the reliable crash data when something goes wrong is an equally reasonable expectation.

Mike Andrews
Beasley Allen
April 30, 2010

I appreciate very much Mike writing this piece. Hopefully, it will help explain black boxes for our readers. If you need more information, you can contact Mike Andrews at 800-898-2304 or by email at Mike.Andrews@beasleyallen.com.

GM To Install Brake Override Systems On All Cars By 2012

General Motors will install a new brake override safety system, which it calls “an enhanced smart pedal,” in all its cars worldwide by 2012. In reality, GM may only be getting a public-relations jump on an issue that’s going to come its way anyway. The Transportation Department will most likely require the override systems to become mandatory on all cars. A brake override cuts engine speed when the driver alternately steps on both the brake and accelerator as if in a panic mode. GM plans to install the pedal as a software upgrade in the electronic throttle control systems of new vehicles. It already uses such a system on a few performance vehicles, like Chevrolet Corvette.

FORD SETTLES CASE OVER LAP-ONLY SEAT BELT

Ford Motor Co. has settled a lawsuit in a state court in Cobb County, Georgia. This case involved a girl who was paralyzed after a 2006 crash in which she was
FOUR KILLED IN OSPREY CRASH IN AFGHANISTAN

It was reported last month that a U.S. aircraft crashed in southern Afghanistan, killing three U.S. service members and one civilian employee. We were not surprised when we read the aircraft that went down was the Air Force CV-22 Osprey. The cause of the crash of the Osprey was not known, according to a statement by the International Security Assistance Force. Several other service members were also injured in the crash which occurred late at night on April 8th. The CV-22, which conducts long-range infiltration and resupply operations for the U.S. military, crashed seven miles west of the city of Qalat, the capital of Zabul province.

While the Taliban claimed its fighters shot down the aircraft, you may recall that the Osprey has a history of problems unrelated to combat flying. We have successfully handled litigation against the manufacturer of the Osprey. If you would like to have more information on the Osprey litigation, you can contact Cole Portis, who heads up our Product Liability Section, at 800-898-2034, or by email at Cole.Portis@beasleyallen.com.

Source: CNN

JURY ORDERS BAYER TO PAY ARKANSAS RICE FARMERS $46 MILLION

An Arkansas jury has returned a verdict against German conglomerate Bayer CropScience and awarded a dozen Arkansas farmers nearly $50 million in damages for allowing a genetically altered strain of rice to escape into the commercial market, damaging rice prices in 2006. The jury in Lonoke County, Arkansas, ruled against Bayer in the case last month. The farmers said an experimental rice strain developed by Bayer called Liberty Link was allowed to make its way into the stream of commercially marketed rice. Liberty Link was developed to withstand a popular herbicide that kills weeds in the fields.

Rice prices fell after the U.S. Department of Agriculture announced in August 2006 that trace amounts of Liberty Link rice were found in U.S. long-grain rice stocks. Bayer argued that any damages farmers may have suffered were minimal, and didn’t last long. The case was the fourth to go to trial among dozens filed by rice-belt farmers against Bayer CropScience, a subsidiary of the German chemical giant that makes aspirin.

Bayer faced judgments of $4.5 million in the three cases it had lost before this one. The amount awarded in this case far exceeds the $1 million judgment returned against Bayer by a jury in Woodruff County jury in March. The jury’s award in this case included compensatory damages of $5.9 million and $42 million in punitive damages. Liberty Link rice was developed so farmers could apply Liberty herbicide without fear that it would damage their crops.

No nation has approved genetically modified rice for the marketplace. Rice futures plummeted by $150 million immediately after the contamination announcement. European nations quit accepting shipments of rice from the United States that hadn’t been extensively tested to show they weren’t contaminated. Japan banned all American rice. Growers in Arkansas, California, Louisiana, Mississippi, Missouri and Texas filed lawsuits against Bayer. The Lonoke County farmers argued that Bayer was not only negligent in its handling of Liberty Link rice, but acted with malicious intent by not announcing the contamination of the commercial rice-seed pool as soon as the company learned of it.

The suit claimed Bayer knew of the contamination as early as January 2006, before that year’s crops were sowed. Farmers didn’t learn of the contamination until the USDA’s announcement, when it was almost time to harvest crops. Bayer claims that when Liberty Link had shown up in commercial rice, it was immediately reported to the government. Scott Powell, a very good lawyer who is with the Birmingham firm of Hare, Wynn tried the case and did an excellent job.

Source: Associated Press

APPLICATION OF THE CRASHWORTHINESS DOCTRINE TO NON-AUTOMOBILE CASES

A significant practice area for our firm involves automotive product liability...
claims. We have dedicated significant resources to those cases because of their importance. Many times those claims involve what is known as the crashworthiness doctrine. Automotive manufacturers are required to design crashworthy cars. The crashworthy doctrine recognizes that accidents are statistically inevitable and that the manufacturer has a duty to eliminate unreasonable risks and to provide reasonable protection to occupants in a collision.

We have seen this doctrine properly extended to non-automotive claims. For instance, a motorcycle or bicycle helmet must be “crashworthy” or able to protect the wearer from a reasonable impact to the helmet. If it doesn’t, the helmet may be defective under the crashworthiness doctrine.

Our firm is currently litigating a case involving an aircraft crash. In that case, a bird impacted the windscreen of the helicopter causing it to fail and resulted in the aircraft crashing. We will prove in the case that the windscreen wasn’t designed to protect the occupants from the foreseeable bird impact.

When dealing with the concept of crashworthiness, understanding the particular product in question is important. It may be impossible to protect against a foreseeable crash. A good example is the limitations jet engines have on bird impacts. We all are now aware as a result of the U.S. Air flight landing in the Hudson River that jet engines aren’t designed to be impacted by birds. Unlike engines, wind-screens are and can easily be designed to protect occupants. Aircraft manufacturers and the manufacturers of aircraft components have a duty to make these parts crashworthy where reasonable.

XI.
MASS TORTS UPDATE

GARDASIL IS MOST DANGEROUS FOR YOUNG GIRLS

Gardasil, a vaccine manufactured and marketed by Merck Sharp & Dohme, Ltd, is marketed as a vaccine to prevent cervical cancer. In fact, Gardasil is a vaccine to prevent the sexually-transmitted disease human papillomavirus or HPV. The vaccine prevents four types of HPV, two of which are thought to be associated with the development of cervical cancer and only occur in a very small percentage of patients. Since 2006, the vaccine has been suggested or indicated for girls ages nine to 26. Recently, it was approved for use in boys.

Gardasil came to our attention in spring 2007 when Merck began a huge push to make Gardasil mandatory for all girls between the ages 11 and 12 in the State of Texas. Though the efforts of Merck’s lobbyist failed in Texas, they have been successful in the District of Columbia and the State of Virginia. Other states mandate that information regarding Gardasil be given to girls near age 12. Over 25 million young women in the U.S. have been vaccinated with Gardasil.

Within the last year, our firm received calls from numerous mothers of young girls who, after receiving the vaccine, suffered debilitating adverse events. Healthy young girls after vaccination developed acute onset auto-immune diseases such as rheumatoid arthritis, lupus, and others. Over 16,000 adverse events have been reported through the Vaccine Adverse Event Reporting System (AERS). Of these adverse events, more than 50 have been deaths.

In addition, in recent months very disturbing information about the testing of the drug has come to light. Dr. Diane Harper, a leading expert on HPV, a Merck consultant, and a lead investigator for Gardasil, publicly expressed her concern that the vaccine has not been adequately tested for safety or effectiveness in girls under the age of 15. According to Dr. Harper, the practice of vaccinating girls 15 and younger is a “great big public health experiment.”

For many parents considering having their daughters (or sons) vaccinated, the risks of Gardasil may far outweigh the benefits. For those who have been vaccinated and are experiencing health problems such as seizures, lupus, or rheumatoid arthritis, recourse may be available. If you need more information on Gardasil, contact Leigh O’Dell at 800-898-2034 or by email at Leigh.Odell@beaslevallen.com.

A LOOK AT THE GADOLINIUM BELLWETHER TRIALS

The first bellwether trial case in the gadolinium-based contrast agent MDL is scheduled to begin on the 24th of this month. Gadolinium-based contrast agents are marketed by Bayer (Magnevist), Tyco/Mallinckrodt (OptiMark), GE (Omniscan), and Bracco (Multihance & Prohance). The gadolinium is used to enhance the contrast of MRIs and MRAs making it easier for radiologists to read the results of those studies.

In people with normal renal function, gadolinium appears to be easily cleared by the kidneys. In people with compromised or diminished kidney function, the kidneys are unable to clear the gadolinium from the body. In some, the body reacts to the toxic gadolinium, leading to nephrogenic systemic fibrosis (NSF). As you may already know, NSF typically involves swelling and tightening of the skin, usually at the extremities. In many cases, skin thickening makes movement difficult, resulting in muscle contractures. Many individuals with NSF are unable to walk or fully extend their joints. Additionally, individuals with NSF have reddened or darkened patches, papules, or plaques on their skin. The skin often feels woody or bark-like. Individuals typically experience burning and itching and severe/sharp pains. Autopsies of individuals with NSF have revealed fibrosis and disease advancement in organs other than the skin.

The “bellwether” trial process, named after the lead, bell-wearing sheep in a flock, allows the judge and the parties to test the merits of a case by trying a representative sample of cases, the results of which can be used as a basis for resolving numerous similar claims. In addition to the May 24, 2010, bellwether trial, a second bellwether trial has been scheduled for September 20, 2010.

Judge Dan Polster is presiding over the bellwether trials. On February 28, 2008, the Judicial Panel on Multidistrict Litigation ordered that all gadolinium-based contrast agent cases then or thereafter pending in the federal court system be

transferred to the United States District Court for the Northern District of Ohio, and assigned to the Honorable Dan A. Polster, for coordinated and consolidated pretrial proceedings. If you need more information on this subject, contact Roger Smith at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

SWITCHING FROM KEPPRA TO A GENERIC CAN PROVE DEADLY

Given the increases in costs of prescription drugs over the years, it’s not uncommon for doctors, pharmacists and insurers to switch patients to the generic form of prescribed drugs in an effort to help patients save money. Sometimes this practice is safe and helpful to consumers. Studies have shown, however, that it’s not safe to make substitutions from brand name to generic drugs and vice versa when dealing with anti-epileptic drug (AEDs). In fact, when it comes to AEDs, substitutions can cause breakthrough seizures, serious injury, or even death.

Typically, manufacturers of generic prescription drugs must show that their product is the “bioequivalent” of the brand name drug. However, “bioequivalent” does not mean that the drug is the same. The generic may contain the same level of active ingredient as the brand name drug, but the FDA allows for some variance in the inactive ingredients as long as the variance and the resulting effect on the body is not deemed significant. According to the Epilepsy Foundation, substitutions of AEDs, either from brand name varieties to generic, or from generic to brand name, can be dangerous because studies show that even a slight variation in the amount or delivery of the active ingredient can lead to serious injury or death in epileptic patients. A patient’s epilepsy medication may be substituted by doctors who are unaware of the potential side effects of making the change, pharmacists who may unilaterally decide to fill the prescription with the generic instead of filling it as written, or by health insurers who require that the patient only receive the generic form as a cost-cutting measure. In a three-year survey of patients who switched from brand-name to generic AEDs, 59% of the respondents experienced worse seizures and 49% experienced worse side effects.

Keppra is the brand name for an anti-epileptic drug that went off patent in January 2009. After this date, the generic form of the drug, Levetiracetam, began being substituted for Keppra. The Epilepsy Foundation as well as the American Academy of Neurology strongly oppose generic substitution of AEDs and are fighting to bring this issue to the attention of doctors, patients, health insurers, the FDA and Congress. If you have experienced adverse effects of being given a generic substitution for Keppra, please contact Roger Smith or Danielle Mason at 800-898-2034 or by email at Roger.Smith@beasleyallen.com or Danielle.Mason@beasleyallen.com for more information.

WYETH SCIENTIST GUILTY OF RESEARCH MISCONDUCT

The U.S. Government’s Federal Register reports that a senior scientist with Wyeth Pharmaceuticals was found guilty of falsifying data related to Hormone Therapy—in particular Wyeth’s research on estrogen receptors, which was a critical area of study for Wyeth’s womens’ health initiative. This revelation will have a bearing on lawsuits filed on behalf of women who took Wyeth’s Prempro and ended up with estrogen receptor positive breast cancer.

Our firm is looking forward to trying one such case this summer in Philadelphia. Our client, Pauline Lescinski, is glad to know her day in court is close at hand. While hers is only one of approximately 1500 cases filed in Pennsylvania State Court, over 10,000 additional cases are pending in federal courts around the country. Recently, the federal judge overseeing those cases issued an order identifying hundreds of cases that are ripe for discovery and trial settings. This recent development is very good news for those women who now head toward their day in court as well.

So far, juries have found in favor of Plaintiffs in 11 of 14 hormone therapy trials, with Plaintiff’s compensatory verdict averaging around $5 million. This is not surprising given the seriousness of these injuries. Moreover, each time a jury has been allowed to award punitive damages, they have done so and averaged approximately $30 million per case. This too is not surprising given evidence showing Wyeth’s callous indifference to the safety and welfare of women. I certainly hope the announcement of such numbers suck the air out of the corporate board room and put them to thinking about people and their safety. If you need additional information on this subject, contact Ted Meadows at 800-898-2034 or by email at Ted.Meadows@beasleyallen.com.

THERE MUST BE LEGAL RESPONSIBILITY WHEN HEART DEVICES FAIL

A landmark episode, brought to light by two Minneapolis cardiologists, changed the way the medical device industry deals with the safety of heart implants. Now these very same doctors, some five years later, have raised a fundamental question about medical safety and the law: who should be held accountable when a company sells a flawed product that can injure or kill patients? They ask: Is it the company or the people who run it? The lawsuit that arose from the doctors’ revelations involves heart defibrillators once made by the Guidant Corporation (now part of Boston Scientific.)

Guidant continued to sell the devices, even after it discovered that some might short-circuit and fail. The defibrillators, intended to protect people from erratic, potentially fatal heart rhythms, have been associated with at least six deaths, including that of a 21-year-old patient of the two cardiologists. The doctors don’t believe enough has been done to protect the public when corporations knowingly put defective medical devices on the market.

Short of executives facing prosecution, drug companies see the financial settlements reached by the Justice Department as a price of doing business, according to industry critics. In the corporate world, the likelihood that an executive would face criminal prosecution depends on the industry and the shifting interests of prosecutors. In recent years, the Justice Department has placed a particular emphasis on charging individuals in bribery, antitrust and other financial cases. While officials of

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medical products companies have sometimes been prosecuted, one of the few recent criminal cases involving corporate officers of a major medical manufacturer was in 2007, when federal prosecutors in Virginia brought misdemeanor charges against three top executives of the drug company Purdue Pharma, which makes the prescription narcotic OxyContin.

The problems involving Guidant’s heart devices came to light in 2005 when The New York Times published an article based on interviews with Dr. Hauser and Dr. Maron. It was soon disclosed that Guidant had known that two of its defibrillator models could fail catastrophically by short-circuiting just when they were charging up to send out a life-saving jolt. While the company fixed the flaw in newer devices, Guidant never alerted doctors or regulators about the problem. Patients continued for a time to get the potentially flawed older defibrillators because the company did not pull the implants from hospital shelves.

The case highlighted problems with the way makers of medical devices disclosed defects, and it resulted in both greater regulatory oversight of the industry and increased self-regulation. Prosecutors charged that Guidant had knowingly sold the potentially flawed defibrillators, but that issue was not addressed in the company’s plea agreement this month. The two misdemeanor charges in that agreement relate to the completeness and accuracy of the company’s filings with the FDA.

Source: New York Times

XII.
BUSINESS
LITIGATION

LITIGATION FOR FALSE PATENT MARKING A GROWING TREND

Our firm has filed suit against five major corporations alleging false patent marking in violation of federal law. The suits, filed against Bausch & Lomb, Bayer, GlaxoSmithKline, Novartis, and Procter & Gamble, allege that the companies marked various products with one or more expired patents, in violation of a provision of the patent code. The false marking statute, 35 USC § 292, prohibits falsely marking a U.S. patent for the purpose of deceiving the public. The statute reads:

Whoever marks upon, or affixes to, or uses in advertising in connection with an unexpired patent, any word or number importing that the same is patented for the purpose of deceiving the public ... shall be fined not more than $500 for every such offense.

The statute provides a private right of action similar to a qui tam claim under the False Claims Act. It allows “any person” to sue for the penalty, “in which event one-half shall go to the person suing and the other to the use of the United States.” A burgeoning wave of litigation in this area was initiated by the Federal Circuit’s recent ruling in Forest Group, Inc. v. Bon Tool Co., 590 F.3d 1295 (Fed.Cir.2009). The court rejected the Defendant’s interpretation that limited the imposition of fines under § 292 to each “decision” to falsely mark. Instead, the Federal Circuit held that the statute imposes a penalty of up to $500 per “article” that is falsely marked with intent to deceive the public. In other words, for every purposefully and falsely marked bottle of aspirin, bow tie clip, or razor blade (all examples from recently filed cases), the patentee, licensee, manufacturer, and/or distributor may face a penalty ranging from a fraction of a penny up to $500 per bottle, clip, or blade.

The Forest court further rejected the Defendant’s argument that the court’s more expansive reading of the false marking statute would spawn “a new cottage industry” of false marking litigation by Plaintiffs who have not suffered any direct harm.” Noting that false marking deters scientific research and innovation, increases industry costs, and stifles competition in the marketplace, the court stated:

Rather than discourage [false marking suits by private Plaintiffs], the false marking statute explicitly permits qui tam actions. By permitting members of the public to sue on behalf of the government, Congress allowed individuals to help control false marking.

If you need more information on the above subject, please contact Archie Grubb at (800) 898-2034 or Archie.Grubb@beasleyallen.com for further information on false patent marking cases.

MERCK SUES SANDOZ OVER ANTIFUNGAL DRUG PATENT

Merck & Co. has filed suit to stop Novartis AG’s Sandoz division from selling a generic version of its antifungal drug Candidas. Filing the patent infringement lawsuit will keep the Food and Drug Administration from approving Sandoz’s generic for 30 months, or until the litigation is resolved. Merck said Sandoz is challenging a formulation patent that is set to expire in 2017.

Merck filed suit against another generic drugmaker, Teva Pharmaceutical Industries Ltd., in November over the same drug. Candidas was approved in January 2001 as a treatment for fungal infections. According to Merck, U.S. sales totaled $73 million in 2009. Merck said it hopes to resolve the lawsuits before the mandatory waiting periods are over. The waiting period for Teva ends on April 22, 2012, and on August 25, 2012 for Sandoz.

Source: Associated Press

CHRYSLER SETTLES DEALER LAWSUIT AGAINST NORTH CAROLINA

Chrysler Group LLC has settled a lawsuit that was filed against the state of North Carolina. The suit involved a law in that state that gives dealers the right to block the automaker’s plan to thin its dealership ranks. The automaker said in a statement that North Carolina has agreed not to enforce a recently-passed law that gives dealers who were cut by Chrysler the right to challenge or stop the company from awarding new franchises in their areas.

Chrysler says it will pursue lawsuits against Oregon, Maine and Illinois, which recently enacted similar laws. Chrysler claimed in a lawsuit filed last year with the U.S. Bankruptcy Court in New York that the state laws are trumped by the bankruptcy court order approving plans to shed 789 dealerships.

Source: Associated Press

XIII. AN UPDATE ON SECURITIES LITIGATION

SEC CHARGES GOLDMAN SACHS WITH FRAUD

Goldman Sachs Group Inc. has been charged with fraud by the U.S. Securities and Exchange Commission in the structuring and marketing of a debt product tied to subprime mortgages. The SEC alleged that Goldman structured and marketed a synthetic collateralized debt obligation that hinged on the performance of sub-prime residential mortgage-backed securities, and which cost investors more than $1 billion. It was alleged in the complaint that Goldman did not tell investors “vital information” about the CDO, called ABACUS. This included allegations that a major hedge fund, Paulson & Co., was involved in choosing which securities would be part of the portfolio, and had taken a short position against the CDO in a bet its value would fall.

According to the SEC complaint, Paulson & Co. paid Goldman $15 million to structure the CDO, which closed on April 26, 2007. Little more than nine months later, 99% of the portfolio had been downgraded, according to the SEC. It was stated by the SEC that Goldman Vice President Fabrice Tourre, who also was charged with fraud, was principally responsible for creating ABACUS.

Source: Insurance Journal

SEcurities regulators CHARGE Morgan Keegan in Fund Meltdown

Morgan Keegan & Co., the brokerage division of Regions Financial Corp., and some of its former top investment professionals, have been charged with misrepresentation, making unsuitable investment recommendations and offering preferential treatment to selected investors, according to the Alabama Securities Commission. The allegations were made in an administrative complaint filed in conjunction with a multi-state investigation into the RMK Select family of mutual funds that lost $2 billion in 2007 and 2008 resulting from investing in risky mortgage-backed bonds.

The Securities and Exchange Commission is also involved and has charged Morgan Keegan and two employees with fraud related to the mutual funds managed by the firm. One of the employees is none other than James Kelsoe, who directed the sub-prime investing activities of the mutual funds, which cratered when mortgage defaults began skyrocketing in 2007. The administrative enforcement action filed by the Alabama Securities Commission requires Morgan Keegan to prove why its state license should not be revoked.

Alabama and the other states also intend to seek financial penalties and restitution for investors. We have been working on Morgan Keegan cases for a good while. Currently, our firm is representing a number of individuals who have claims against Morgan Keegan. If you need additional information, contact Scarlett Tuley or Archie Grubb, lawyers in our firm, at 800-898-2034 or by email at Scarlett.Tuley@beasleyallen.com or Archie.Grubb@beasleyallen.com.

Source: Birmingham News

METF LifE Pays $13.5 Million To Settle U.S. Contingent Commission Case

MetLife Inc., the largest U.S. insurer, has agreed to pay $13.5 million to settle a federal government investigation into improper payments made to a San Diego-based insurance broker. The U.S. Justice Department said the millions of dollars of payments Metlife made to the insurance broker, URL, were not disclosed to Metlife’s customers or reported by MetLife as required by the Employee Retirement Income Security Act of 1974.

According to the agreement entered into by the New York-based company, MetLife adopted a program of undisclosed payments designed to induce the insurance broker and its top executive to recommend MetLife to its clients, the department said. It said that MetLife’s sales force was also instructed to leverage the improper payments to promote MetLife products. The U.S. Attorney’s Office in San Diego said it agreed to the settlement, partly because of MetLife’s voluntary and full disclosure of the conduct, its cooperation and previous payments to its policy holders.

Source: Insurance Journal

SCHWAB Agrees To Pay $200 Million In Fund Settlement

Charles Schwab Corp. has agreed to pay $200 million to settle claims that it misled investors on the amount of mortgage-backed securities held by its Schwab Yield-Plus Fund. Schwab agreed to settle the claims filed in 2008 by paying the $200 million to Plaintiffs. The lawsuit alleged that Schwab incorrectly described the fund, once the world’s largest short-term bond fund, as “safe.” A trial was scheduled for this month. U.S. District Judge William H. Alsup had denied Schwab’s bid to dismiss the case in early April. Steve Berman, a lawyer with Seattle-based Hagens Berman Sobol Shapiro, represented the investors and did a very good job.

Source: Bloomberg

THE Second In A Series On The Alabama Securities Commission

As I have consistently stated, the Alabama Securities Commission has done a tremendous job over the past ten years protecting Alabama investors. The following is the second of the three-part series by Dan Lord, who is with the Commission, on the work of this important agency.

The Alabama Securities Commission Forges Another Banner Year For Investor Protection

To add muscle to the fight against financial crimes in Alabama, the ASC supported legislative efforts during last year’s regular session to increase the legal penalties for those convicted of financial fraud. As of August 1, 2009, all fraudulent acts related to the offering and/or sale of securities in Alabama was upgraded from a Class C Felony to a Class B Felony, allowing a more assertive means by which to prosecute financial criminals who prey on the state’s investors.
Of course, investigation and prosecution are not the only two superb aspects of what the Alabama Securities Commission does. An active Education and Public Affairs Division not only gets the word out to state and national media outlets about the agency’s successes in combating financial crimes, but also is actively engaged in an ongoing movement to educate Alabama citizens of all ages and economic backgrounds on the many facets of investing and especially on how to avoid becoming victims of financial fraud. This division helps conceive, develop and implement investor education initiatives that provide all Alabamians, from high school students and working adults to seniors aged 50 and older; the most relevant information available to help them make informed financial decisions. This knowledge leads to the prudent use of their monetary resources, avoiding victimization and achieving the fiscal sophistication required to shield their hard-earned assets and secure a comfortable and stable retirement.

The Commission collaborates with numerous agencies such as the Alabama Department of Education, the Alabama Jump$tart Coalition, the Investor Protection Trust, the Alabama Department of Senior Services, the Alabama Cooperative Extension Service and AARP among others, to deliver insightful personal financial education and outreach. During FY2009, Education and Public Affairs personnel, together with ASC’s education partners, took part in 70 education and fraud prevention events, reaching more than 5,400 citizens throughout Alabama.

Concurrently, the Commission is an active participant in the North American Securities Administrators Association (NASAA), the oldest international organization devoted to investor protection, whose membership consists of 67 state, provincial and territorial securities administrators in the 50 states, the District of Columbia, Canada, U.S. Virgin Islands, Puerto Rico and Mexico. ASC Director Borg is a member of the Board of Directors, has held several other officer positions and has served as NASAA President on two occasions, making him one of two individuals to complete a second term in the organization’s 90-plus-year history.

The ASC is especially proud that two of its staff members have received accolades from the international organization for conspicuous service to investors. In November 2005, Dan Lord, Education and Public Affairs Manager, received a Distinguished Service Award for his development and implementation of an outstanding education and information program that promotes investor education and securities fraud prevention to Alabama citizens. In January 2008, NASAA presented Senior Special Agent Ricky Locklar, of the Commission’s Enforcement Division, with its 2008 Enforcement Award for his dedication, expertise and extensive work in securities law enforcement. ASC staff members also participate in special NASAA committees and project groups to develop uniform standards and policy guidelines, programs focusing on financial education, registration/licensing, litigation and enforcement. The Commission’s participation enables it to proactively address the concerns of main street investors and seek a stronger, more comprehensive and efficient approach to financial reform and regulation.

Dan Lord
Alabama Securities Commission
April 2, 2010

XIV.
INSURANCE AND
FINANCE UPDATE

STATES ALARMED OVER HEALTH INSURANCE SCAMS

It was reported last month by USA Today that bogus health plans advertising comprehensive coverage at bargain prices are on the rise. These scams result in desperate consumers paying for policies that won’t cover their medical bills. In recent weeks, there has been an increase in activity by the state insurance departments. For example, The Alabama Insurance Department has warned Alabama citizens about these scam artists. Missouri regulators have cracked down on 13 companies; California has ordered firms to stop selling misleading and unlicensed health discount cards; and Tennessee regulators have seized a company they allege has collected more than $14 million from people across the country—then left them with unpaid bills. Other states are also getting involved. Insurance Commissioner are saying they have never seen anything like this. James Quiggle, spokesman for the Coalition Against Insurance Fraud, which represents consumers and insurance companies, had this to say:

There’s high unemployment, health premiums are expensive and tens of millions of people have no health coverage. This is an ideal breeding ground for scams.

Among 37 insurance bureaus responding to a coalition survey last fall, 57% reported increases in health plan scams. The nation’s new health care law may actually encourage more scams that prey on public expectations for expanded coverage and misrepresent the changes, Secretary of Health and Human Services Kathleen Sebelius warned in letters sent to states last month. Among the groups regulators are targeting:

• American Trade Association: In March, Tennessee regulators seized the headquarters of the association and another firm, Smart Data Solutions. The state alleges in court records the firms enticed at least 12,400 consumers to buy “bogus health coverage,” then
unjustly denied claims and diverted funds. An attorney for the two companies, Nader Baydoun, said his clients were just membership benefit administrators who also are victims of outside insurance companies. Tennessee regulators question whether the products were ever underwritten by any legitimate insurance company.

- **Consolidated Workers Association:** Montana regulators are among those that have taken actions to stop the association and an affiliated firm, the National Alliance of Benefit Services Association (NABSA), from selling “bogus insurance.” Internet ads and unsolicited faxes advertised $10 doctor visits and “Pre-existing Conditions OK” at rates starting at $199, regulators said in a press release.

- **HealthcareOne:** California regulators issued cease-and-desist orders in February against HealthcareOne, Elite Healthcare and others at the same Arizona address. The firms misled consumers into thinking they were getting insurance accepted by 900,000 providers. Then the consumers couldn’t locate providers who honor the discount card.

A good example is an ad by HealthcareOne that featured an image of the White House and the words: “Healthcare Alert! Daily registration limits have been established for all Americans seeking affordable access to healthcare. Register now for immediate acceptance.” Cindy Ehnes, director of the California Department of Managed Health Care, said the ad capitalized on the national health care law then pending in Congress.

State insurance regulators are advising consumers to check with their offices before buying health plans. Hopefully, the companies responsible for the scams will be dealt with in the most severe method available. We have too many problems with healthcare issues to allow companies to cheat consumers who are looking for help.

**Source:** USA Today and Montgomery Advertiser

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**KEY KATRINA CASE IN MISSISSIPPI SETTLED OUT OF COURT**

A Mississippi couple and the insurer they were suing over hurricane damage to their coastal home from Hurricane Katrina have settled their closely-watched case. The terms of the settlement haven’t been disclosed. The case (Corban v. USAA) dealt with what hurricane damage is covered by an “all risk” homeowners insurance policy with an “anti-concurrent” clause.

The lawsuit by policyholders Magruder and Margaret Corban, who are from Long Beach, had been scheduled to go to trial in circuit court on April 19th. The circuit court asked the Mississippi Supreme Court to clarify application of the “anti-concurrent” clause (ACC) in the Corbans’ policy in cases where both wind and water are factors. The insurer, USAA, argued that the policy covers damage caused by wind only, and that the ACC wording excludes coverage for damage caused by a combination of wind and water. Thus it said the policy, which covers wind only damage, would not cover damage caused by wind that was later affected by water from storm surge.

A federal court, the 5th U.S. Circuit Court of Appeals, sided with insurers in a 2007 ruling that found the ACC wording excludes wind damage from coverage when storm surge contributes to the loss. But in a 9-0 decision last October, the Mississippi Supreme Court gave the Corbans a good ruling. The state High Court found that a policy may exclude hurricane damage when it is caused by a combination of wind and water acting together. But the Court said that the ACC exclusion does not apply to the Corbans’ situation because wind and water had acted separately. The Court said a jury must decide whether the damage to the Corbans’ home was caused by wind or water.

The Mississippi Circuit Court ruling was significant because property insurance is governed by state, not federal, law. The upcoming trial would have applied the state ruling to the Corbans’ situation. While the state Supreme Court affirmed the flood exclusion provision found in most homeowners’ insurance policies, which expressly excludes coverage for hurricane driven water (or storm surge), it raised issues for insurers in cases where damage caused by wind versus water can be distinguished.

Under most “all risk” policies, a peril that causes damage is covered unless it is specifically excluded by language. Wind damage from a hurricane is typically covered while damage from flood or rising water, as opposed to rain water, in a hurricane is generally excluded by private policies but is covered under separate flood insurance policies issued by the federal government. Judy Guice, a lawyer from Biloxi, Mississippi, handled this case and did a very good job.

**Source:** Insurance Journal

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**APPEALS COURT REFUSE TO APPROVE $35 MILLION LOUISIANA CITIZENS SETTLEMENT**

The Court of Appeals for the Fourth Circuit has refused to approve the $35 million settlement of two class action lawsuits against Louisiana Citizens Property Insurance Corp. The Court said the settlement was not fair to some policyholders. Citizens face three class-action lawsuits because of delays in adjusting and settling claims from hurricanes Katrina and Rita. The settlement voided by the Fourth Circuit covered Citizens’ failure to offer to settle claims within 30 days of being notified of losses.

**Source:** Insurance Journal

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**XV. EMPLOYMENT AND FLSA LITIGATION**

**PIGLRIM’S PRIDE TO PAY $10 MILLION TO SETTLE FLSA SUIT**

Poultry company Pilgrim’s Pride Corp. will pay $10 million to settle a class action accusing it of failing to pay overtime to about 8,400 employees in 11 states. This will allow class members to recover about 85% of the back pay they sought, according to the Plaintiff’s lawyers Judge Harry F. Barnes of the U.S. District Court for the Western District of Arkansas has approved the settlement, finding it “fair, reasonable and allowable.”
MOHAWK AND ZURICH SETTLE RICO SUIT FOR $18 MILLION

Flooring company Mohawk Industries Inc. And Zurich American Insurance Co. will be required to establish an $18 million settlement fund as part of an agreement to resolve a hard-fought putative class action lawsuit. Mohawk was accused of violating state and federal racketeering laws and depressing the Plaintiffs’ wages by hiring illegal aliens. Judge Harold L. Murphy of the U.S. District Court for the Northern District of Georgia signed off on an order granting the Plaintiffs’ unopposed motion for preliminary approval off the settlement.

Source: Law 360

SCHOOL BUS COMPANY SETTLES LAWSUIT

First Student Inc., a school bus company operating in Maryland, has agreed to pay $1.5 million to settle a class-action lawsuit involving overtime pay. Brought by former employees that were bus drivers and aides, the lawsuit alleged that First Student had avoided paying overtime compensation to the employees by recording the employees’ various duties separately.

For example, if an employee spent 30 hours per week driving a school bus and 20 hours training other employees, the employee’s time spent working would not be documented as a 50-hour workweek. Instead, the time spent would be recorded separately so as to indicate that the person worked less than 40 hours that particular week. The Fair Labor Standard Act, the federal act governing wage and hour issues such as overtime compensation, requires an employer to pay one-time-and-a-half the rate of an employee’s pay when the employee works more than 40 hours per week.

Source: www.schoolbusworkersunited.org

HAVING UNPAID INTERNS IS NOT ALWAYS LEGAL

As the economy has tightened in the last two years, many companies have been looking for ways to save money, including decreasing their paid workforce by laying people off and/or cutting back their hours. In response, many of those same companies are increasing their unpaid workforce by bringing on more individuals for “internships.”

Traditionally, an internship has been a valuable tool to students and others looking to break into a particular field or career. Many internships are set up through schools and trade programs to assist both companies and potential employees with opportunities to evaluate each other. People accept internships for many reasons, including for experience, resume padding or just the desire to help and serve a greater purpose. However, one central characteristic of a true internship is that it is supposed to be an educational experience. Many of the abuses we are seeing in internship programs is because they are not truly educational and have little or no oversight.

Internships are usually divided into paid or unpaid positions and involve either “for-profit” companies or “not-for-profit” companies. If a person interns at a “for profit” company there are certain criteria under federal law that must be met for it to legally be considered an “unpaid” internship. Those criteria are:

• The internship must be similar to the training given in a vocational school or academic institution.

• The intern should not displace a regular paid worker.

• The employer should not “derive an immediate advantage” from the intern’s activities.

The abuses we are seeing is where an intern is hired and is doing the exact same job that other paid employees are doing. In fact, many of them are separately assigned work and have minimum oversight. Similarly, if an intern is simply making coffee, running errands and cleaning all day, without receiving any educational experience, then the internship probably violates federal law and should be paid.

Because so many students are looking for future employment, they are often hesitant to speak up if they are being used for “free labor.” This makes them prime targets for abuse. Additionally, because many of the workplace harassment and discrimination laws only apply to “employees,” some courts have ruled that interns are not protected by these federal laws. This also leads to more mistreatment.

The rules for unpaid interns are less strict for non-profit entities, such as charities, since people are allowed to volunteer their work. Many great and rewarding experiences can come from internships. But the idea that an individual should be coerced into laboring, especially at the expense of displaced employees, is one that should have been abolished when this country outlawed indentured servitude. If you need more information on this subject please contact Roman Shaul at 800-898-2034 or by email at Roman.Shaul@beasleyallen.com.

XVI. PREDATORY LENDING

NEW PREDATORY LENDING TACTIC TARGETS ELDERLY AND DISABLED CITIZENS

Lawyers in our firm are seeing a disturbing pattern where payday loan companies and other high-interest lenders are increasingly targeting recipients of Social Security and other government benefits, including disability and veterans’ benefits. Many payday lenders are engaging in a practice whereby the borrower essentially pledges his or her monthly benefit check as collateral for a loan. Social Security and other government benefits have long been protected by federal law from garnishment or assignment.

The payday lenders have circumvented this long-standing prohibition by forging cozy relationships with banks, who act as “authorized payment agents” for elderly or disabled borrowers. This allows for a borrower’s monthly benefit check to be direct deposited into a specially created bank account. When the bank receives the borrower’s monthly stipend from Social Security, the bank immediately transfers the funds to the payday lender. The lender then subtracts the borrower’s monthly loan payment, including hefty interest and fees, before handing over the remaining amount. It is not unusual for the remaining amount to be less than half the original amount of the borrower’s monthly check.

Social Security recipients have become targets of the $50 billion payday loan industry in the wake of legislation in the 1990s that required Social Security beneficiaries to receive their checks by electronic deposit (unless they opt out). The number of recipients with direct deposit increased from about 50% in the mid-1990s to more than 80% today. With direct deposit, a Social Security recipient’s monthly checks are now easily pledged as collateral for short term loans. In fact, data collected by the U.S. Department of Housing and Urban Development shows that payday lenders are now disproportionately clustered near government-subsidized housing for seniors and the disabled.

The AARP, a strong defender of consumer rights, has voiced concern about this practice, in which “check cashers, pawnshops, and rent-to-own outlets are permitted to become conduits of federal benefit payments.” The consumer advocacy group stated:

[We] are very concerned that if non-financial “fringe banking” institutions are allowed to be authorized agents, recipients may be charged high fees whenever their payments are accessed. As many recipients are low-income consumers or are living on fixed incomes, this would jeopardize their financial well-being. Further, it is fundamentally unfair to expose recipients to payment agents that are not subject to federal consumer protection laws, and are not charged with acting in the recipients’ fiduciary interest.

Our firm is concerned that payday lenders’ easy access to needy borrowers’ monthly government benefits presents the potential for wide-spread exploitation of our society’s most vulnerable members. We are monitoring this situation very closely. If you need more information, please contact Archie Grubb at (800) 898-2034 or Archie.Grubb@beasleyallen.com to discuss predatory lending cases.

Source: Wall Street Journal

XVII. PREMISES LIABILITY UPDATE

FIVE KILLED IN TESORO REFINERY BLAST IN WASHINGTON STATE

A toxic explosion last month at an oil refinery in Washington State killed five workers and critically injured two others. The blast, which occurred at the Tesoro Corp. oil refinery located north of Seattle, was the deadliest refinery blast in five years. The U.S. Chemical Safety Board, the federal agency that investigates large industrial accidents, is currently investigating the incident. The Occupational Safety and Health Administration also will be involved in the investigation. Last April, state environmental regulators fined the Anacortes refinery $85,700 for 17 serious safety and health violations that could lead to death or serious physical injury.

As has been reported, there have been a number of other refinery explosions. This latest accident comes as a probe continues into an October fire at Tesoro’s Salt Lake City refinery. Fortunately, no one was injured in that incident, which temporarily shut down a portion of an interstate and damaged equipment and several trailers. Another company, BP, continues to deal with legislation and other legal issues relating to the March 23, 2005, incident at Texas City. That refinery only returned to full operation last summer. BP has been fined at least $150 million by federal agencies as a result of that incident.

Tesoro shut down one area of the Anacortes plant, near the blast site at a unit that makes naptha, a key gasoline component. At the time of the explosion, all of the employees killed or injured in the blast were putting a unit back in service after a maintenance project. Many refinery accidents happen during the restart or shutdown of units. Tesoro has seven refineries in the western part of the country, with a combined capacity of about 665,000 barrels a day. The company’s Anacortes plant is the third-largest of four major refineries in the area.

Source: FoxBusiness.com

MISSISSIPPI JURY AWARDS $19 MILLION IN TEXACO LEADED GAS SUIT

A jury in Hinds County, Mississippi, has returned a $19 million verdict for five women against Texaco, now a division of Chevron Corp. The plaintiffs allege the oil company was responsible for their children being born with disabilities and illnesses, including mental retardation. The women claimed they were pregnant when they worked in the old Jefferson County office building in Fayette, which previously was a gas station affiliated with Texaco. In their suit, the women contended they were exposed to leaded gasoline fumes from tanks left in the ground when the former gas station was renovated.

Lorraine Simon, the lead plaintiff in the case, alleged her 20-year-old daughter, Rosalyn, is severely mentally disabled. The children of the other women suffer from respiratory conditions and learning disabilities. The trial was moved from Jefferson County to Hinds County on a change of venue request by Texaco because the women were known or worked in the county. Texaco says it never owned, operated or controlled the service station or the underground storage tanks at issue.

Ms. Simon said the victory “was bittersweet” because of her child’s condition. The woman testified during the trial that she and her husband had taken their daughter to several doctors trying to determine the cause of her condition. They have two older children who do not have any mental defects. Ms. Simon didn’t work in the building when she was pregnant with the other two children.

None of the other plaintiffs’ children have serious mental disabilities, but they all suffer from asthma. Each of their children, who now range in age from 11 to 20, has some learning disability. The Mississippi Department of Environmental Quality had the tanks and contaminated soil removed in 2000. According to expert testimony, Ms. Simon was exposed to 46,000 times the safe level for exposure to leaded gasoline fumes. A Texaco expert said no medical records substantiate the claims of the women being exposed to dangerous levels of leaded gas fumes. The company’s lawyers say an appeal will be filed.

Source: Insurance Journal

Source: Wall Street Journal

www.BeasleyAllen.com
$9 Million Verdict In Wal-Mart Suit

A jury has ruled in favor of a Houston woman who was wrongly arrested in 2008 at a Wal-Mart store and awarded $9 million in damages. Nitra Gipson filed a civil lawsuit against the retailer after store employees accused her of trying to exchange counterfeit Wal-Mart money orders for cash. The woman was arrested and spent two days in jail. The District Attorney's Office declined to pursue charges after it was determined that the money orders were actually genuine. That meant Ms. Gipson had been falsely accused and falsely arrested. The jury awarded $8.2 million compensatory and $820,000 punitive damages in her case.

After Ms. Gibson had been released from jail, Wal-Mart lawyers, based in Utah, sent her a letter claiming that she owed Wal-Mart money for taking merchandise. The letter threatened to pursue a shoplifting charge if the poor woman didn't pay $200. The jury found that Ms. Gibson had been defamed by being accused of forgery, counterfeiting, theft and shoplifting. Lloyd Kelley, a lawyer from Houston, represented Ms. Gipson and did a very good job. Hopefully, Wal-Mart and their lawyers learned a lesson from this case.

Source: Houston Chronicle

AIR-TRAFFIC REPORTS TOP 14,000

A report in USA Today on the results from a new error-reporting program in the United States' air-traffic system is rather shocking. It was reported by USA Today that thousands of previously-unknown hazards such as dangerous runway crossings and unreported midair problems are being revealed. In the 18 months since the Federal Aviation Administration kicked off the program—which guarantees employees immunity in exchange for honest accounts of all but the most serious lapses—the agency has received more than 14,000 reports, according to USA Today. It was reported that:

- About 45% of reports, or more than 6,000 since June 2008, are cases in which aircraft flew unapproved routes or came too close to another plane, and the lapse had not been reported through official channels. The cases are overwhelmingly minor, but they will allow the agency to target procedures to minimize risks.
- In late 2008, controllers began reporting numerous potentially dangerous cases of jets flying too fast as they departed to the south from Chicago's O'Hare International Airport, said one controller.
- Bugs in sophisticated computerized autopilots are causing some jets departing from Dallas/Fort Worth International Airport to turn too close to other aircraft. Controller reports have helped lead to software changes.

The federal government must take all steps necessary to make air travel as safe as reasonably possible. Not only should errors in the air-traffic system be reported, but preventative measures must be taken to eliminate errors.

Source: USA Today

Jury Awards $10 Million In Ambulance Birth

A jury has awarded $10 million to a woman, finding EVAC Ambulance Service at fault for the injuries her son received during his premature birth in 2003. The jury found that the company was negligent for transporting the woman who gave birth to her son in the ambulance while en route to a hospital in Orlando. The child, now six, weighed 1.7 pounds at birth and suffered a lack of oxygen to the brain, leaving him with cerebral palsy.

The original lawsuit included Bert Fish Medical Center in New Smyrna Beach, Halifax Medical Center in Daytona Beach, and two doctors for their roles in the medical case, but both hospitals and the doctors settled with the Plaintiff for a total of $1.4 million. Early on September 21, 2003, the expectant mother went to Bert Fish Medical Center suffering pain and premature labor. The emergency room physician planned to have her treated at Halifax, but an ambulance was called to transport her to Arnold Palmer in Orlando. The baby was born about 15 minutes into the trip, but had trouble breathing, and CPR was performed. Bob Kelly, a lawyer from Ft. Lauderdale, Florida, represented the Plaintiffs and did a very good job.

Drunk Driving Case Settled For $2,255 Million

A police officer and the bar that served her alcohol have agreed to pay a total of $2,255 million—the limit of their insurance policies—to compensate the families of four young people killed and one man injured in a traffic crash in Des Peres, Mis-
souri. A wrongful-death lawsuit, brought by the dead victims' families and the survivor, alleged that the female officer, who was off duty at the time, drank "a high quantity" of alcohol at O'Leary's Restaurant & Bar, and then drove her car into oncoming traffic. The officer is awaiting a criminal trial on manslaughter charges.

The suit said the officer was at fault based on allegations of driving drunk and driving on the wrong side of the road, among other things. Her blood-alcohol content, according to the investigating officers, was 0.169% three hours after the crash. The threshold for drunk driving in the state is 0.08%. The parents also sued the restaurant because it's "employees knew" the officer "was intoxicated" and failed to stop her from driving or call her a cab, according to the lawsuit. Interestingly, the restaurant is in a strip mall about 1,000 feet from the Sunset Hills police station. The suit alleges bar workers served the officer alcohol despite her slurred speech and unsteady gait.

Under the state's dram shop law, a bar or restaurant can be held liable for injury or death caused later by an inebriated patron. Dram shop suits carry the highest burden of proof for the Plaintiffs of any civil action. Plaintiffs in such cases must provide "clear and convincing" evidence that an intoxicated customer was served, while most civil cases require proof that is "more likely than not," according to a lawyer who handles dram shop litigation in that state.

The civil suit was filed on June 15th, six days after criminal charges were lodged against the officer. She faces four counts of first-degree involuntary manslaughter, plus one count of second-degree assault for injuries suffered by the other car's driver. The Sunset Hills Police Department put the officer on unpaid suspension after the charges were filed. The crash occurred about 1:45 a.m. March 21st, when the officer's Mitsubishi collided with a Honda. Four passengers in the Honda were killed. Stephen Schultz, who is a lawyer from St. Louis, represented the Plaintiffs and did a very good job. This case is a tragic reminder that drinking and driving never pays and quite often results in innocent lives being lost.

Source: Saint Louis Post Dispatch

HIGH COURT REINSTATES PART OF HUNTSVILLE BUS WRECK CASE

In a recent opinion, the Alabama Supreme Court has ruled that the lack of seat belts in the school bus that crashed in Huntsville in 2006, killing four students, can be used in a lawsuit against the bus manufacturer. The Court’s unanimous opinion reversed a ruling by the trial judge in Madison County. That judge had ruled the issue of seat belts in school buses should be addressed by the Legislature, not the courts.

The ruling by the Supreme Court reinstated a claim against Chicago-based IC Corporation and International Truck and Engine Corporation. The Legislature has not addressed safety belts in school buses since 1986. As you may recall, the school bus, carrying 40 students to a technical school, plowed off a downtown interstate bridge and fell 30 feet. A compact car collided with the bus just before it went over the retaining wall.

Source: Huntsville Times

XIX. WORKPLACE LITIGATION

GULF RIG EXPLOSION KILLS AND INJURES WORKERS

Eleven workers were killed in an explosion and fire last month at an offshore drilling platform in the Gulf of Mexico. Fortunately, most of the 126 people on board escaped safely after the explosion on the rig, Deepwater Horizon, on April 20th, but sadly 11 of the workers didn’t make it. The rig was located about 52 miles southeast of Venice, Louisiana. In addition to those killed, seven workers were critically injured.

The rig was drilling, but was not in production, according to a spokesman for its owner, Transocean Ltd., in Houston. The rig was under contract to BP PLC. According to Transocean’s website, the Deepwater Horizon is 396 feet long and 256 feet wide. The rig was built in 2001 by Hyundai Heavy Industries Shipyard in South Korea. The site is known as the Macondo prospect, in 5,000 feet of water. The rig, designed to operate in water depths up to 8,000 feet, can accommodate a crew of up to 130. The rig has a maximum drill depth of about 5.5 miles.

Source: Associated Press

JURY AWARDS $10 MILLION IN FATAL WORKPLACE FALL

A jury in Russell County, Alabama, returned a $10 million verdict last month in favor of a woman whose husband had been killed in a workplace incident. The widow, Erica Dupree, sued her husband’s employer, a contractor, a Montgomery engineering firm, and the Russell County Water Authority, contending the Defendants failed to provide safe work conditions that led to her husband’s fatal fall in 2008. The worker, Christopher Hardin Dupree, was killed in 2008 when he fell about 150 feet while helping paint a water tank in Huntsboro.

The painting company, water authority and engineering firm were dismissed as Defendants before the trial. The lawsuit was amended to focus on the construction company because, as the general contractor on the project, it was responsible for workplace safety. An investigation by OSHA found safety violations at the water tank work site. Jurors were asked to return a verdict that would send a message to all employers that they must provide a safe working environment for employees.

Chuck Kelly from Florence, Ala., and Sam Loftin, from Phenix City, Alabama, were the lawyers for Mrs. Dupree. They did a very good job for her.

Source: Birmingham News and Times Daily

McDonald’s SETTLES WITH KENTUCKY WORKER OVER STRIP SEARCH

Fast food giant McDonald’s has withdrawn a petition to the Kentucky Supreme Court over a $6.1 million award to a former fast food worker who was forced to strip after someone called posing as a police officer. The Louisville Courier-Journal reported that the company withdrew its petition asking the High Court to hear the case and agreed to a settlement with the victim.
A lower appellate court in November ruled that Illinois-based McDonald’s Corp. knew about a series of hoax calls to restaurants around the country, but didn’t warn employees before Louise Ogborn was strip searched and sexually assaulted as the result of such a call in 2004. The two sides agreed to the withdrawal of the part of the judgment—$5 million—that was punitive.

Source: Associated Press

XX. HEALTHCARE ISSUES

HOSPITAL INFECTION RATES ARE RISING

It appears that the nation’s hospitals are failing to stamp out common infections that can turn life-threatening for patients. The Health and Human Services Department’s 2009 quality report, released last month, revealed that “very little progress” on eliminating health care infections has been made. For example, rates of bloodstream infections following surgery increased by eight percent. Infections from urinary catheters rose by 3.6 percent.

It seems fairly certain that such medical missteps will have both health and financial consequences. The new health care overhaul law will impose penalties on hospitals for preventable readmissions and certain infections that can usually be avoided with good nursing care. The infection rate increase presents a most serious problem and one that must be dealt with. Folks go to hospitals to get well—not to get sick—and that is something people have a right to expect. The cause of the infections in many cases is a failure to do simple things such as washing hands as required by hospital rules.

Source: HHS Reports

DRUGS THAT TREAT EPILEPSY AND DEPRESSION LINKED TO SUICIDE

Some antiseizure drugs used to treat epilepsy as well as depression, chronic pain, migraine, bipolar disorder, and other conditions are said to be associated with a higher risk of suicide and violent death than other drugs in the same class, according to a new study. Experts caution that patients should not stop taking the drugs—gabapentin (Neurontin), lamotrigine (Lamictal), oxcarbazepine (Trileptal), tiagabine (Gabitril), and valproate (Depakote)—without their doctor’s permission. It’s still not clear whether these risks are related to the drugs themselves or to underlying mood problems.

The study, published last month in the Journal of the American Medical Association, echoes a 2008 review by the U.S. Food and Drug Administration that found that taking anticonvulsants (as this class of drugs is known) roughly doubled the risk of suicidal thoughts and suicide attempts, although the absolute risk remained small—less than one-half of one percent.

According to the FDA analysis, which included 11 anticonvulsants, the risk that a person taking those drugs would exhibit suicidal behavior or have suicidal thoughts was about one in 230, compared to about one in 450 in people taking a placebo. As a result, the FDA required that the label of all anticonvulsants carry a warning about this increased risk. It should be noted that the agency stopped short of requiring a black box warning similar to those found on the labels of other antidepressant drugs.

The use of anticonvulsants has risen in recent years, among adults as well as children and teens. It’s being reported that doctors are increasingly prescribing the drugs off-label, meaning the drugs are not officially approved by the FDA for that condition. In the new study, a team of researchers led by Elisabetta Patorno, MD, a research fellow at Brigham and Women’s Hospital in Boston, looked at prescription data for 13 different anticonvulsants from health plans across the country and compared them to federal death records and data on emergency room visits and hospitalizations.

Source: Health.com

XXI. ENVIRONMENTAL CONCERNS

TVA COAL ASH DISASTER UPDATE

As all of our readers should know by now, on December 22, 2008, TVA’s Kingston plant released 5.4 million cubic yards of coal ash waste onto 300 acres and into local waters. This is the largest accident of its kind in U.S. history, with clean-up expected to cost approximately $1.2 billion, and to take at least five years to complete. TVA recently admitted that the clean-up will not remove all of the ash from the rivers and will leave an untold amount of ash in Watts Bar Lake, which is made up of the Emory, Clinch, and Tennessee rivers.

The remaining ash is expected to be covered with native sediment over time, and after approximately five years, the fly ash residuals that migrate from the original spill site may be diluted to background levels. In the meantime, it is unknown whether the toxins held within the ash—arsenic, selenium, and other heavy metals—will leach into the river and the surrounding environment. Experts acknowledge that “the long term stability of fly ash and associated constituents is relatively unknown at the time.”

It’s fair to say that Watts Bar Lake has become a large experiment into the long-term effects of coal ash in the environment. In fact, TVA hosted a seminar in March for researchers working on the Kingston spill. During the seminar, presenters stated that the ash spill could not have happened in a worse place because of the three rivers converging so close to the spill. Presenters also admitted that nothing else behaves like ash, which makes scientific research difficult. As a result, the people and environment near the spill will be subject to experimentation, not only as clean-up progresses, but also for the long-term.

As far as the clean-up is concerned, it’s happening in three phases, with Phase I projected to be completed this month, about 18 months after the spill occurred. Phase I is what EPA refers to as the “time
critical" phase where ash is removed from the Emory River. As part of Phase 1, a portion of the Emory River has been closed to the public completely. The closed portion was recently extended to include a full six-mile stretch of the Emory River and the closure is expected to last until at least this month.

Phase II is the "non-time-critical" phase, and three alternatives have been proposed for accomplishing that phase, which will remove ash from two sloughs of the Emory River and from surrounding lands. A decision hasn't been made on which of the three alternatives will be used. Each of the three alternatives involve restoration of embayments and sloughs to pre-spill conditions; closure of the failed dredge cell and adjacent Ash Pond; and enhanced perimeter dikes constructed of soil-cement columns for long-term stability of the closed dredge cell. The three options differ in the amount of coal ash disposed off-site vs. on-site; final elevation of the closed dredge cell; the type and amount of construction traffic; duration of work; and cost. The public comment period on the proposed alternatives ended in April, and a final decision is expected some time this month.

As reported previously, our firm, working with Tennessee lawyer Gary Davis, filed a class action lawsuit in January 2009 on behalf of property owners and residents affected by the coal ash disaster. Beasley Allen attorneys are working to hold TVA accountable for this disaster, and our clients are pleased that the case will move forward after the court rejected TVA's argument that it is immune from suit. In March, Thomas Varlan, U.S. District Judge for the Eastern District of Tennessee, issued an order denying TVA's motion to dismiss the case. TVA argued that it is immune from suit due to sovereign immunity.

TVA is a federal corporation and as such may be immune from suit in some instances. In our case, however, we argued that this is not one of those instances and the Court agreed. The Court held that TVA has discretion to determine how best to handle its coal ash waste, but once it made that determination, TVA has a responsibility to ensure safe construction and maintenance of the coal ash disposal pond. TVA can not negligently allow the ponds to endanger others or damage property. We will now move forward to prove that TVA neglected its responsibilities for the coal ash pond.

Now in the discovery phase of the litigation, our lawyers are working to take the disposition of Tom Kilgore, TVA CEO. However, TVA is asserting that Mr. Kilgore has no knowledge related to the Kingston coal ash ponds. We have filed a motion to compel Mr. Kilgore's deposition. As the head of TVA, we believe Mr. Kilgore should answer Plaintiffs' questions and not be allowed to hide behind carefully crafted statements put together by TVA's public relations department.

In addition to discovery, we are working to consolidate our class action suit with two other class action cases filed in response to the coal ash disaster. Since TVA recently dropped its objection to the consolidation, we hope to have a ruling on that issue in the near future. As reported previously, we believe that combining these class action claims gives us strength in numbers and allows us to present an even more efficient method to the judge so the matter can be resolved quickly and fairly. If you need additional information on this subject, contact Rhon Jones or David Byrne in our firm at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or David.Byrne@beasleyallen.com.

Sources: Knoxville News Sentinel, U.S. EPA

**TVA ASH DISPOSAL ISSUES NOT CONFINED TO TENNESSEE**

More than a year after the TVA coal ash spill mentioned above, the problem is spreading into several other states. The disaster resulted in the release of 5.4 million cubic yards of coal ash over 300 acres and into the Emory, Clinch, and Tennessee Rivers. This was enough ash to cover a square mile five feet deep. The arsenic- and mercury-laced muck or its watery discharge has been moving by rail and truck throughout the southeast to at least six different sites. As reported previously, the coal-ash sludge is laden with heavy metals linked to cancer. The EPA is considering new regulations that could classify coal ash as hazardous waste.

In the meantime, residents from Kingston, Tennessee to Perry County, Alabama are concerned about the effects coal ash will have on their health. The coal ash that is removed from the Emory River, near Kingston, is being shipped by rail to a landfill located in Perry County, Alabama. Unusually heavy rain—roughly 25 inches from November through February—has caused the landfill's liquid collection system to produce up to 100,000 gallons a day of tainted water. The rainfall percolates through the landfill and leaches contaminants from the ash to create a toxic-laden mixture. This toxic mixture, called leachate, is then trucked to wastewater treatment plants.

The leachate from the Perry County landfill was originally shipped to two other Alabama locations in Marion and Demopolis. But problems with treatment at those two plants caused the landfill to ship its leachate to a commercial wastewater treatment plant in Mobile, Alabama, some 500 miles from the original coal ash spill. During January and February of 2010, the Mobile plant accepted the leachate until public outcry in Mobile persuaded the plant to stop accepting the toxic liquid.

In addition to the Mobile plant, a private treatment facility in Cartersville, Georgia took some of the befouled liquid for a short time in February. Georgia environmental officials later revealed that the company failed to have a required state permit. As a result, toxic leachate, with contaminants that originated in eastern Tennessee, will now be hauled to a non-hazardous waste disposal site in Louisiana and to a public wastewater plant in Mississippi.

The leachate disposal is not the only issue with the Perry County landfill. To make matters worse, the landfill recently filed bankruptcy, calling into question not only the landfill’s solvency, but also its ability to manage the nearly 3 million cubic yards of coal ash being deposited there and the resulting leachate. Therefore, what began in Kingston, Tennessee. As the largest environmental disaster in U.S. history, is now having ramifications not only in eastern Tennessee but also in Alabama, Georgia, Mississippi, and Louisiana.

If you need additional information on this subject, contact Rhon Jones or David
Mine Subsidence Update

Our firm is currently litigating cases on behalf of property owners in Walker County, Alabama for property damage as a result of mine subsidence. Mine subsidence is the movement of surface property due to a failure in an underground mine's support structure. In room and pillar mines like the one underneath our clients' properties, giant underground rooms are mined and coal “pillars” are left behind for permanent surface support. If the mining companies fail to leave behind coal pillars capable of permanently supporting the surface, a catastrophic underground collapse can occur and cause substantial damage to surface property.

Due to the unpredictable nature of subsidence damage from room and pillar mines, these cases are expert intensive and extremely complicated. Adding to a subsidence case’s complexity, subsidence can occur either gradually or suddenly, and can appear in many different forms, including cracks, sinkholes, troughs, or fissures in the ground. If subsidence occurs underneath a home, the effects can compromise the foundation, cause water and gas main failure (creating a fire hazard), destroy the roof line and crack floors and walls.

Room and pillar mining lends itself to abuse by mining companies. For starters, the more coal the mining company mines, the more money it makes. As a result, there is a tremendous incentive to cut corners and “shave” support pillars (which are made of coal) to mine as much coal as possible. Additionally, once a room is completely mined, it is oftentimes closed off forever. As such, any evidence of wrongful pillar shaving is buried behind tons of stone walls deep in the mine. Finally, regulations place a much higher emphasis on temporary stability of mine structure to protect workers rather than permanent support of the surface. These “minimum standards” endanger the properties on the surface many years after the mine closes.

The cases are currently progressing through the discovery phase and should be ready for trial at the beginning of 2011. These cases are complex and involve powerful Defendants with unlimited resources. But Rhon Jones and Parker Miller, lawyers in our firm, are fighting to make a difference for their clients in Walker County, Alabama. If you need additional information on this subject, contact Rhon at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or Parker.Miller@beasleyallen.com.

Construction Stormwater Wreaks Havoc on Downstream Properties

Sediment carried by stormwater is a leading cause of water pollution in the U.S. Silt and sediment (mud) runs off the exposed earth at construction sites when the land is cleared and graded. It's estimated that runoff from construction sites sends approximately 80 million tons of sediment into the nation's water bodies each year. This mud can choke lakes, rivers, and streams, and destroy wildlife habitat and downstream properties.

State and federal laws require construction site operators engaged in clearing, grading, and excavating activities that disturb one acre or more, including smaller sites in a larger common plan of development or sale, to obtain coverage under a Clean Water Act permit. In addition, these laws require site operators to use a host of techniques to prevent mud from washing offsite. These techniques are called Best Management Practices or BMPs.

Considerable development across the Southeast has caused construction stormwater problems throughout the region. By comparison, regulators have dramatically shrinking budgets and too few personnel to inspect construction sites and enforce stormwater regulations. Therefore, construction runoff presents a problem that often goes unchecked and causes property damage downstream. We have seen examples where property owners' lakes and ponds are filled with sediment that washed onto their property; where new developments direct stormwater onto adjacent landowners' property causing flooding; and where mud slides onto downstream property from upstream construction sites.

Lawyers in our firm are currently reviewing cases that involve property damage due to construction stormwater runoff, including a potential claim in Georgia against one of the largest home-builders in the U.S. This particular home-builder has a long track record of violating stormwater laws and for damaging downstream properties. If you need additional information on this subject, contact Rhon Jones in our firm at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com.

Maryland Sues Mirant Over Pollution From Prince George’s Landfill

The Maryland Department of the Environment has filed suit against an Atlanta-based power company, alleging that its coal-ash landfill in Prince George's County is polluting groundwater and a nearby creek. The state agency says the Brandywine landfill, operated by Mirant Mid-Atlantic, is allowing coal-ash contaminants to seep into the ground and get into Mattaponi Creek. The lawsuit, filed in U.S. District Court in Baltimore, comes 60 days after state environmental officials warned Mirant that the company would be sued if it did not agree to clean up pollution from the 300-acre landfill.

Secretary of the Environment Shari T. Wilson said in a statement that her staff has been unable to get Mirant to agree to a timetable for investigating and cleaning up the pollution, nor to come into compliance with 2008 regulations tightening controls on coal-ash disposal. Under the rules, landfills must have liners to keep contaminants out of groundwater, must collect any liquid leaching from the landfill, and must monitor groundwater for possible leaks. The state says about 8.5 million tons of ash from Mirant’s power plants in Southern Maryland have been dumped at the Brandywine landfill over the past 30 years.

This is the second lawsuit brought by the State of Maryland against Mirant over ash disposal. The state sued the company in 2008 in Charles County Circuit Court, alleging that pollutants and heavy metals
from its now-closed Faulkner coal-ash landfill were getting into Zekiah Swamp.

State officials filed the Brandywine lawsuit in federal court because the potential penalties are higher under federal law and because they hope to get a quicker resolution there, according to MDE spokeswoman Dawn Stoltzfus. The judge in the Faulkner case hasn’t ruled on the motion by Mirant to dismiss the state’s lawsuit. The state’s action on the Brandywine landfill comes after environmental groups threatened last fall to file their own lawsuit. According to the MDE spokeswoman, the groups—the Patuxent Riverkeeper, the Sierra Club, the Chesapeake Climate Action Network and the Defenders of Wildlife—could join the state’s federal lawsuit.

Source: Baltimore Sun

HUNDREDS FILE SUIT IN CALIFORNIA OVER HOUSING PROJECT SITE CONTAMINATION

More than 400 people, former residents of the county-owned Ujima Village housing complex in Willowbrook, California, and their survivors, have sued Los Angeles County, the site’s developers, and a former property owner, Exxon-Mobil, contending that they were exposed to toxins while evidence of hazards was concealed. In a civil lawsuit, filed in Los Angeles County Superior Court, the Plaintiffs allege that contamination at the 300-unit complex built on a former oil tank storage site caused cancer, leukemia, miscarriages, respiratory distress, chronic infections, asthma, anemia and cognitive and neurological issues. They are seeking damages to compensate for back rent, injuries, medical costs and for the wrongful deaths of at least 38 former residents.

ExxonMobil officials said in a statement that they were first informed of “potential concerns with soil conditions” at Ujima in 2007 and have since been working with the Los Angeles Regional Water Quality Control Board and other state and local agencies to conduct an extensive environmental investigation. The Ujima families contend their clients were kept in the dark about the hazards. The Plaintiffs say they didn’t know that the County was renting them contaminated properties. They contended that actual testing that showed hazardous topsoil and vapors coming from the soil were withheld.

Ujima Village was built in 1972 by a group of architects and developers. In Swahili ujima means “collective work and responsibility.” After decades of mismanagement and dilapidation, the complex was taken over in 1990 by the U.S. Department of Housing and Urban Development. Los Angeles County purchased it five years later for only one dollar. With $20 million in renovations needed by 2004, the County tried to sell the property. Developers discovered gas and crude oil contamination and by 2008 the California Regional Water Quality Control Board ordered the County Housing Authority and Exxon to test and clean up the site. In November 2008, Los Angeles County supervisors voted to close the complex and relocate remaining tenants.

Source: New York Times

XXII. THE CONSUMER CORNER

SUPREME COURT SAFEGUARDS CLASS ACTIONS

The U.S. Supreme Court—in an important case handled by Public Citizen—has ruled that state laws barring class actions cannot trump federal court rules allowing such cases. The case, Shady Grove Orthopedic Associates v. Allstate Insurance Company, was argued by Public Citizen’s Scott Nelson. The opinion—authored by Justice Antonin Scalia and joined by Chief Justice Roberts and Justices Stevens, Thomas and Sotomayor—accepted Public Citizen’s argument that the federal rules, by their terms, authorize class actions in any case that meets the criteria set by the rules, and that conflicting state laws cannot override the federal rules.

This case ensures that class actions will be available as a means for redress for Plaintiffs advancing claims based on both state and federal substantive law if there is a basis for federal court jurisdiction over the case. Because Congress expanded federal-court jurisdiction over class actions in the so-called “Class Action Fairness Act,” state efforts to curtail class actions will not be effective for the large numbers of cases over which that Act provides federal jurisdiction. This was not only a good result, it was the right result under the law.

Source: Public Citizen

THERE ARE SUBSTANTIVE DIFFERENCES AMONG CONSUMER FRAUD STATUTES

Lawyers in our Consumer Fraud Section have learned in handling consumer fraud cases for clients in Alabama and other states that there are considerable differences among the many state consumer protection statutes. Before filing a case involving a consumer fraud issue in any state, a lawyer must check carefully the applicable statutory law in that state. Never assume that all states have like or even similar statutory laws, because they don’t. The major areas of difference are:

• whether the statutes permit a private cause of action;
• whether injury is a required element;
• whether causation is a required element;
• whether reliance is a required element;
• whether and to what extent intent constitutes a required element, and
• the exact remedies that are available and the standards for making awards, including attorney’s fees.

The substantial differences among state consumer protection statutes emphasize the difficulties and issues that a lawyer must address in order to bring a nationwide, multi-jurisdictional class action based on these consumer protection acts. While some consumer protection statutes can be enforced only by a state’s Attorney General, many statutes allow an individual to bring a private cause of action. But some consumer protection statutes allow private claims only for procuring injunctive or other equitable relief. Many states’ statutes, however, allow private claims for the recovery of damages. Some of these states, in turn, allow a consumer to bring a private cause of action for the recovery of
damages only in particular and specific circumstances.

State consumer protection statutes vary as well in relation to the requirements of causation and injury. Under many consumer protection statutes, a Plaintiff must prove that he or she was actually injured and that the injury was the result of the statutory violation in order to recover damages. But under some statutes the requirement of injury is embedded within the definition of standing to sue.

A violation of some statutes, as opposed to a claim of damages, may be established solely by proof that an act or practice was capable of being interpreted in a misleading manner or had a tendency to deceive consumers. Other statutes require a Plaintiff to prove only that there is a likelihood of damage. Under these statutes, the Plaintiff need not allege that the consumer actually was deceived. In one state, Georgia, the Plaintiff must prove that the Defendant’s actions have the potential to harm the public.

Consumer protection statutes also contain differing requirements relating to proof of reliance. Some of the statutes require the Plaintiff to prove actual reliance on the Defendant’s deceptive practices, while others require only that the reliance be reasonable. But under some of the statutes, reliance doesn’t even have to be proven at all. Other statutes require proof of reliance only for certain violations. For example, in Iowa, proof of reliance is only required when the Defendant conceals, suppresses, or omits a material fact. In some states, such as Arizona, Georgia, Illinois, Oregon, and Texas, reliance is an element of causation.

Even in states where reliance is not an actual element required to state a cause of action under the consumer protection statutes, proof of reliance is usually necessary to show proximate cause in order to establish damages. Thus, a Plaintiff’s burden with respect to individual reliance varies considerably depending on the jurisdiction. You can readily see from this brief discussion of states’ consumer protection statutes that there are significant differences in the laws. I can also say that in some states, the laws are fairly strong, while in others—like Alabama—they are pretty weak.

**FDA Cracks Down On Nestlé And Others Over Health Claims On Labels**

The Food and Drug Administration released 17 warning letters recently to food manufacturers, making good on a vow to crack down on misleading labels on food packages. The agency accused the companies of pumping up the nutritional claims of their products or masking contents such as unhealthy fats. The letters went out to the makers of a broad array of products, including Gerber baby food, Juicy Juice, Dreyer’s ice cream, POM pomegranate juice and Gorton’s fish fillets.

Source: New York Times

**EPA Lists Bisphenol As Chemical Of Concern**

The Environmental Protection Agency is formally listing Bisphenol A—a chemical found widely in consumer goods—as a “chemical of concern.” The chemical is added to plastics to harden them, and has been used in soda cans, baby bottles and food containers. It is so widespread that 90% of Americans show traces of it in their urine. But, in recent years, studies have linked BPA to heart disease and cancer in humans, and to abnormal development in animals. In January, the Food and Drug Administration said it had “concerns” about the chemical’s effect on human health.

The EPA’s decision to add BPA to the “chemicals of concern” list does not trigger any new regulation. But the agency did order manufacturers to test the chemical’s impact on animals and the environment. The EPA will also test to see how much BPA leaks into the air and water from facilities where it is made, or into dumps where it is disposed. It will be interesting to see what further steps the federal government will take to make sure consumers are protected.

Source: Washington Post

**Judge Approves Settlement In E-Ferol Case**

A federal judge has approved a $110 million class-action settlement against the manufacturer and distributor of an intravenous vitamin E supplement that federal officials have linked to the deaths of dozens of premature infants in the mid-1980s. U.S. District Judge Sidney A. Fitzwater approved the settlement in the case, which was filed in Wichita Falls, Texas. There were 369 Plaintiffs in the suit. The vitamin supplement was on the market for four-and-a-half months before it was recalled in April 1984. Federal health officials have linked E-Ferol to the deaths of about 40 babies.

E-Ferol was marketed and administered without approval from the Food and Drug Administration as a way to prevent or reduce blindness in premature babies. Research determined the agent that made the vitamin E water soluble was causing symptoms including kidney and liver failure in babies. The drug manufacturer, Carter-Glogau Laboratories of Glendale, Arizona, and its distributor O’Neal, Jones & Feldman Pharmaceuticals of Maryland Heights, Missouri, are no longer operating. Each company stopped doing business about 20 years ago, but liability insurance that was in place will fund the settlement.

Dosage instructions were unclear and the more doses a child was given, the greater the chance of injury or death. Many children who received the supplement weren’t harmed, most likely because they only got a low dosage. Indictments were handed down in 1987 for Carter-Glogau and its former president, Ronald M. Carter, along with Larry K. Hiland, the former president of O’Neal. They were convicted of conspiracy, marketing an unapproved drug and misbranding the drug. The company was fined $130,000 in 1989, and the two executives were sentenced to six months in jail.

The parents in the lawsuit weren’t aware their children had gotten the supplement. They became aware when they received notice of the lawsuit. The class-action lawsuit includes the parents of 42 infants who were given the supplement and died, and persons, who as babies, got the supplement and suffered damage or need medical monitoring. There have been more than 100 settlements involving E-Ferol, and it’s believed that at least 80 babies died from the supplement. When lawyers tried to find patients who had gotten the supplement, some of the 89 hospitals found to have administered
E-Ferol were willing to share that information. But many others had to be forced in court to reveal whether children had gotten the supplement. Art Bender, a lawyer in Fort Worth, filed this lawsuit in 2003. He worked hard and eventually got a good result for the families in the lawsuit.

Source: Associated Press

**Exploding Breast Implants Recalled**

Officials in the United Kingdom have issued an alert to plastic surgeons after it was discovered some breast implants manufactured in France and sold worldwide are twice as likely to explode as are standard implants. These implants were made with an unapproved silicone gel and could affect 45,000 women worldwide who used the product made in the now-closed French factory.

It was pointed out by medical experts that, although broken implants are rare, they can potentially be dangerous. An exploding breast implant was explained as one that has ruptured, or the lining capsule is essentially broken. In each instance, silicone can leak out into the natural breast tissue. That can cause a severe infection such as gangrene or toxic shock. It was stated further by the experts that a breast implant capsule is two layers. In order for an implant to leak, both layers would have to be punctured. They say it’s infrequent that a silicone implant leaks through both layers. The most common way it can happen is through a needle biopsy procedure if the needle goes into the implant.

The French government banned the sale of the implants made by Poly Implant Prothese, but 90% of them have already been shipped to surgeons abroad. Medical professionals urged women who may have the implants, which surgeons in the United Kingdom began using in 2001, to remain calm but to contact their physicians to have them removed. Doctors are recommending that an implant should be removed even if just one layer of the capsule is broken, to prevent the chance of leaking. According to the experts, saline implants have the same risk of leaking, but the product is considered much safer because it is similar to fluid already found in the body, and can be absorbed by muscle tissue. It appears from reports that the way these implants were manufactured made them unsafe.

Source: Fox News

**PET FLEA AND TICK PRODUCTS CAN BE DEADLY**

Since we have four dogs and Willie, a cat, at our house, I fully realize humans must make sure they take care of their pets. Outdoor time for dogs and their owners is a welcome break after a long winter, but it’s also a field day for ticks and fleas that want to make a home on your pets. That’s why many pet owners have turned to “spot on” treatments applied once a month to keep fleas and ticks away. Veterinarians have been prescribing these treatments for years because they are both very effective and also easy to use. Unfortunately, just a little bit of this product can turn to poison.

The EPA reports 44,000 sick pets in 2008 because of spot-on products. That’s about 50% more than the year before. Six hundred of those animals died. The EPA says reactions include vomiting, diarrhea, trembling, depression and seizures. The EPA doesn’t believe it was a bad batch, but instead believe it was a misuse because labels weren’t clear. For example, there are dangers in using a dog product on a cat or using a product for a large dog on a small dog. I know this to be true because our cat Willie almost died when a treatment intended for a large dog was used on him. Fortunately, our veterinarian, Dr. Charles McElmore, did a tremendous job and saved Willie’s life. But he spent several weeks in the “cat hospital” before he fully recovered.

The EPA says to increase the safety of these products it will “begin reviewing labels to determine which ones need stronger and clearer labeling statements.” There is another concern. Flea and tick products made for dogs contain a pesticide called permethrin, which can kill a cat.

If you have any doubt, consult with your veterinarian, especially if you’ve got an older dog, or a pregnant or nursing dog or cat. The best advice is to be more vigilant and if in doubt, don’t use a product. While permethrin is a pesticide, we must remem-ber that it’s also a poison. Pet owners should treat it with utmost care.

Source: NBC News

**PHARMACY SUED OVER POLO HORSE DEATHS**

The Florida owners of 21 polo horses that died after getting an improper vitamin mixture filed a $4 million lawsuit against a pharmacy. Quantum Management Co. of Wellington, Florida, and three player-owners filed suit in state court in Palm Beach County. It was alleged that Franck’s Pharmacy in Ocala, Florida, is solely responsible for improperly mixing a vitamin compound, leading to the horses’ fatal selenium poisoning. Franck’s calls itself “the nation’s premier compounding pharmacy” on its Web site.

The Lechuza Caracas polo team was preparing April 19, 2009, to play in the U.S. Open at the International Polo Club Palm Beach in Wellington when the team’s horses started to falter and collapse. Fourteen died that day and seven others died overnight. The deaths sparked local, state and federal investigations that are continuing. The team’s veterinarians had ordered doses of the drug Biodyl, which is not approved by the U.S. Food and Drug Administration, to help the horses recover from the wear and tear of polo play. The drug reduces physiological stress. The team asked Franck’s to create a Biodyl substitute, mixing the key components together. The horses were considered worth at least $100,000 each. Unfortunately, nine horses owned by polo players were not insured.

Source: UPI.com

**CONCERN OVER TAINTED BEEF**

There is a growing concern over beef containing harmful pesticides, antibiotics and heavy metals being sold to the public. This disturbing information comes from a federal audit which says that the problem is caused because federal agencies have failed to set limits for the contaminants or adequately test for them. The audit by the U.S. Department of Agriculture’s Office of Inspector General stated that a program set up to test beef for chemical residues “is
not accomplishing its mission of monitoring the food supply for...dangerous substances, which has resulted in meat with these substances being distributed in commerce." That's not good news for consumers and especially when you consider that the OIG's audit says the health effects on people who eat such meat is a "growing concern."

The testing program for cattle is being run by the USDA's Food Safety and Inspection Service (FSIS), which also tests meat for such pathogens as salmonella and certain dangerous strains of E. Coli. But there are other federal agencies involved. The residue program relies on assistance from the EPA, which sets tolerance levels for human exposure to pesticides and other pollutants, and the FDA, which does the same for antibiotics and other medicines. The audit points out that limits have not been set by the EPA and FDA "for many harmful substances, which can impair FSIS' enforcement activities."

The FSIS has agreed with the Inspector General on corrective actions and says it will work with the FDA and EPA to prevent residues or contaminants from entering into commerce. If that actually happens, it will be a step in the right direction. But even when the inspection service does identify a lot of beef with high levels of pesticides or antibiotics, it really doesn't have the authority in many cases to stop the distribution of that meat. That's because there is no legal limit for those contaminants.

Finally, it's very clear that there is a most serious health threat to the consuming public. The Obama Administration and Congress must take all appropriate action to remedy this situation. Those GOP members of Congress who constantly harp about "too much government regulation" must get on board since the problem affects folks all over the country regardless of party affiliation. I would have to believe the beef cattle industry would welcome efforts by the federal government to correct the problem.

Source: USA Today

**Mississippi Joins Ranks Of States With Data Breach Law**

Mississippi became the 46th state to enact a data breach notification law last month. Just four states—Alabama, Kentucky, New Mexico and South Dakota—have yet to pass legislation requiring a business to notify consumers if their personal information has been illegally obtained. Mississippi's law tracks that of most states, defining personal information as a consumer's name in combination with a driver's license number, Social Security number or financial account number.

The law applies to any business in the state that owns or licenses such personal information, but also provides a safe harbor for companies that encrypt their information. The state's Attorney General will enforce the law, which prohibits private lawsuits based on a data breach. The Attorney General may seek injunctive relief, and for knowing or willful violations, criminal penalties (including fines and imprisonment) or civil penalties of up to $10,000 per violation. The law becomes effective July 1, 2011.

In the wake of several large data breaches in 2005, states began passing data breach notification laws. Some states—like Massachusetts, Nevada and Washington—have taken their data breach laws a step further by adding stricter data security requirements. Instead of reacting to a data breach, the new laws are an attempt to require companies to take proactive measures to prevent or limit data breaches.

Source: Lawyers USA

**Payday Loan Scams Targeting Area Residents**

Residents throughout north Alabama and southern Tennessee are being warned of an ongoing scam regarding payday loans. Last month folks received phone calls from a company known as InstaCash or a fictitious law firm in regards to a case pending against them regarding a payday loan that they had received and not paid back. The callers were threatening the victims by saying they would send a team of investigators to their residence to make an arrest. It appears the scam artists are trying to put folks in fear, and forcing them to pay money they don't owe.

According to Michelle Mason, president of the Better Business Bureau of North Alabama, she has seen an increase in the past couple of years in phone scams of this kind. She says the callers "become very aggressive and unfortunately a lot of people will go ahead and give out information just to get these callers to stop the harassment." Residents should never give out personal information to people they don't know.

Source: Times Daily

**Consumers Should Report Dangerous Products**

We are asked from time to time if ordinary folks can report a defective product. The answer is a most definite yes. To report a dangerous product or a product-related injury, you can call the Consumer Product Safety Commission (CPSC) Hotline at (800) 638-2772 or CPSC's typewriter at (301) 595-7054. To join a CPSC e-mail subscription list, you can go to https://www.cpsc.gov/cpsclist.aspx. Consumers can obtain recall and general safety information by logging on to CPSC's Web site at www.cpsc.gov. I encourage folks to report any dangerous product or a product-related injury to the CPSC.

**XXIII. RECALLS UPDATE**

As is usually the case each month, there will be a number of recalls to be reported in this issue. Fortunately, there don't appear to be as many auto recalls to report. The following are some of the other significant recalls since those included in our last issue.

**Toyota Recalls 2010 Lexus GX 460 SUVs**

Toyota is recalling its 2010 Lexus GX 460 to address a potential problem with the SUV's stability control system that targets possible rollovers. The recall affects about 9,400 vehicles that
have been sold since the SUV went on sale in late December. As reported, Consumer Reports issued a “Don’t Buy” warning on the 2010 GX 460, saying it was susceptible to rolling over. Toyota says dealers will update software in the vehicle stability control system. Toyota already had halted sales of new GX 460s and begun tests on all of its SUVs.

600,000 Toyota Sienna Minivans Recalled

Toyota Motor Sales is recalling about 600,000 1998-2010 Toyota Sienna minivans “to address potential corrosion in the spare tire carrier cable.” The recall covers 2WD minivans equipped with a spare tire and driven in cold climates with high road salt usage. Vehicles currently registered in the District of Columbia and the following states are involved in this recall: Connecticut, Delaware, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, Wisconsin and West Virginia. Toyota said:

“Continued prolonged exposure to road salts may cause excessive corrosion of the carrier cable in some of these vehicles. In the worst case, the carrier cable may fail and the spare tire could become separated from the vehicle, a road hazard for following vehicles that increases the likelihood of a crash.”

Toyota is sending Sienna customers a notice instructing them to bring their vehicle to a dealership for a free inspection. If a Toyota Sienna owner has already paid for the repair of his or her tire carrier cable for this problem before having received Toyota’s notification, Toyota is instructing the car owner to mail a copy of the repair order, proof-of-payment, and proof-of-ownership to the following address for reimbursement consideration: Toyota Motor Sales, U.S.A., Inc; Toyota Customer Experience, WC 10; 19001 South Western Avenue; Torrance, CA 90509. For more information or questions, you can contact the Toyota Customer Experience Center: 1-800-331-4331.

Ford Recalls 33,000 Vehicles To Replace Recliners

Ford Motor Co. is recalling 33,000 midsize vehicles and SUVs in the United States to fix front seat recliners. The recall affects some versions of the 2010 Ford Fusion, Explorer, Explorer Sport Trac and 2010 Mercury Milan and Mountaineer with front seat manual recliners. The vehicles under recall were built from mid-December through early February. The recliner’s gears could have problems that would lead to the seat back and head restraint moving toward the rear in a crash, increasing the risk of injury. The government says the vehicles don’t comply with federal requirements for head restraints. Dealers will replace the manual seat recliners free of charge. A Ford spokesman says there have been no accidents or injuries reported.

Tracheostomy Tubes Recalled After Three Deaths

A Massachusetts company is recalling tracheostomy tubes used to help patients on ventilators breathe after receiving reports that three people died while using them. The company told the FDA that there were also about 1,200 complaints of leaks involving the recalled devices. The FDA is investigating the deaths and complaints. The recall affects tracheostomy tubes placed in patients’ throats to help them breathe on ventilators.

Covidien is recalling certain cuffed Shiley-branded tracheostomy tubes and Shiley-branded custom tracheostomy tubes because the product’s cuff may not hold air due to a possible leak in the pilot balloon. This could result in a sudden decrease in the amount of oxygen in the blood or a sudden increase in the amount of carbon dioxide that can lead to serious injury or death.

Howard Berger Recalls Extension Cords And Power Strips Due To Fire Hazard

About 12,000 indoor and outdoor extension cords and power strips have been recalled by the manufacturer Howard Berger Co. Inc., of Cranbury, New Jersey. The extension cords and power strips have inadequate coating material around the cords and copper conductors that are smaller than required, posing a fire hazard to consumers. This recall involves Brightway heavy duty outdoor extension cords and Brightway indoor household extension cords and power strips. Model numbers involved in the recall are R2600 through R2615 (outdoor extension cords), EE6 through EE20 (indoor extension cords) and MP6DG (power strips). “Brightway” is printed on the cords. Model numbers are printed on the product’s packaging. Consumers should immediately stop using the extension cords and power strips and return them to the place of purchase for a full refund. For additional information, contact Howard Berger at (800) 221-6895, visit its Web site at www.hberger.com or email them at robertwinterstein@hberger.com.

Recall Of Frozen Yellow Fin Tuna

Whole Foods Market is recalling frozen yellow fin tuna steaks, with best-by dates of December 5, 2010, because they could have elevated levels of histamine. High levels of histamine can cause an allergic reaction called scombroid poisoning. Symptoms may include tingling or burning sensation in the mouth, facial swelling, rash, hives and itchy skin, nausea, vomiting or diarrhea. Two incidents have been reported.

The fish was sold in Alabama, Texas, Oklahoma, Louisiana, Illinois, Indiana,
Kansas, Ohio, Wisconsin, Minnesota, Missouri, Michigan, Maryland, Virginia, Pennsylvania, Florida, Georgia, Kentucky, South Carolina, Tennessee, North Carolina, Connecticut, Nebraska, New Jersey, New York, Maryland, Rhode Island, Maine and Washington, D.C. Details are available by phone at 512-542-0656.

**Agio International Recalls Outdoor Gas Fire Columns**

Agio International Co. of Hong Kong has recalled about 5,800 Patio Glow Outdoor Gas Fire Columns. Gas can leak from connections in the columns, posing a fire hazard to consumers. Agio has received five reports of fires. The recalled product is a propane gas fire column used for outdoor ambiance. The base of the column is rectangular with brick styling. The top has a bowl shape with lava rocks. This unit does not include ceramic logs. Only products with serial numbers running sequentially from 0081959SD through 0087754SD are affected. The model number GFP207 and the serial number is printed on a label that is located inside the base. The fire columns were sold at Costco from August 2009 through February 2010 for about $200. Consumers should stop using the fire columns immediately and return the columns to any Costco retail outlet to receive a full refund. For more information, call Agio-USA at (800) 598-6532 or e-mail the company at customerservice@va-cs.com. Additional information is available on Agio’s recall Web site: www.va-cs.com/recall.

**Gund Recalls To Replace Baby Books Due To Choking Hazard**

Gund, of Edison, New Jersey, has recalled Gund Baby Paperboard Books. The recall includes about 15,100 books in the United States and Canada. The styrofoam used to fill the books’ binding can detach, posing a choking/aspiration hazard to infants and young children. Gund has received three reports of children mouthing the styrofoam that detached from the books. This recall involves three miniature children's paperboard books with plastic handles designed as baby rattles.

The recall includes Animals (item number 059174), Numbers (item number 059175) and Colors (item number 059176). The books were also sold as a three-book set (item number 059173). The name “Gund” and the item number are located on the back of the books. The books measure 4 1/2 inches by 7 inches. The books were sold at gift and specialty stores nationwide from January 2009 through March 2010 for about $8 individually and $20 for the set.

Consumers should immediately take the books away from young children and contact Gund for a free replacement product. For additional information, contact Gund at (800) 436-3726 or visit the firm's Web site at www.gund.com.

**Hammary Furniture Recalls Chests And Tables**

About 7,000 decorative wood chests and tables have been recalled by Hammary Furniture Co., of Lenoir, North Carolina. The surface coating paint on the furniture could contain excessive levels of lead in violation of the federal lead paint standard. This recall includes several styles of decorative wooden chests and tables. We have the model number, style and average price if you need that information.

Furniture manufactured since April 2009 will have a label that specifies the date of manufacture, the item number, the country of origin, a product description and the name “Hammary Furniture.” This label is located on the unfinished back of the item or, if the back is finished, on the underside. Products manufactured earlier than April 2009 will not have any identifiable markings on them. Visit the manufacturer’s Web site www.regcen.com/hammaryrecall, for photos of all furniture items included in this recall.

The chest and tables were sold at major department stores and furniture retail stores from November 2001 through November 2009 for between $200 and $900. They were manufactured in the Philippines, China and Vietnam. Consumers should immediately stop using the recalled furniture, keep young children away from it and contact Hammary to receive a free replacement. For additional information, contact Hammary toll-free at (888) 577-4098 anytime or visit its Web site at www.regcen.com/hammary recall.

About 800 Women's Peacoats have been recalled by Foria International Inc. of City of Industry, California. The peacoats fail to meet the federal flam mability standard for wearing apparel and pose a risk of burn injury. This recall involves women's peacoats that are double-breasted and have long sleeves. They are made from 100% cotton fleece in large blue and white plaid print. “Authentic” is printed on the label at the center back neckline of the garments. The coats were sold by Bass Pro Shops nationwide from October 2009 through January 2010 for about $60. Consumers should stop using the recalled coats immediately and return them to Foria International for a full refund of retail price including shipping. Foria International’s address is 18689 Arenth Avenue, City of Industry, California, 91748. For additional information, contact Foria International toll-free at (888) 999-6568 or visit its Web site at www.foria.com. 

Source: CPSC.gov
**Tabata USA Recalls Scuba Regulators Due To Drowning Hazard**

About 250 TUSA RS-670 Regulators have been recalled by the importer Tabata USA Inc. (TUSA), of Long Beach, California. The first stage balance chamber plug can loosen from the scuba regulator causing a high-pressure leak and creating unstable pressure. This poses a drowning hazard to divers. This recall involves R-600 first stage scuba regulators with the following serial numbers: UR6000022 through UR6000029, UR6000031 through UR6000043, UR6000637 through UR6000676, UR6000708 through UR6000716, and UR6000737 through UR6000776. The serial number and TUSA logo are printed on the regulators.

The regulators were sold by authorized TUSA distributors and diving and equipment stores nationwide from May 2009 through September 2009 for about $450. Consumers should immediately stop using the recalled scuba regulators and return the product to TUSA or an authorized dealer for a free inspection and replacement. For additional information, contact Tabata USA at (800) 482-2282 or visit its Web site at www.tusa.com.

**Dive Computers Recalled By Mares**

Mares USA, of Boca Raton, Florida, has recalled Mares Nemo Air Dive Computers. About 600 have been recalled in the United States, 140 in Canada and 15 in Puerto Rico. An O-ring in the high pressure air connector can fail and leak air, causing a continuous but slow loss of breathing gas, which could require a diver to surface quickly, posing a drowning hazard to divers. This recall involves the Mares Nemo Air Dive Computer, Mares Air Dive Computer with Compass, Mares High Pressure Hose with Quick Connector for Nemo Air, and Quick Connector Assembly for Nemo Air. These computers have a digital screen which allows scuba divers to measure the time and depth of a dive and process other information to help divers determine safe dive times and ascent rates.

The computers were sold by dive shops nationwide from July 2008 through July 2009 for between $800 and $900 (U.S.) and between $880 and $990 (Canadian). Consumers should immediately stop using the recalled dive computer and connectors, and return the products to their authorized Mares dive shop for a free replacement O-ring connector assembly. The O-rings in some units may already have been replaced, but this recall requires replacing the metal quick connector fitting at the end of the high pressure air hose that holds the O-ring. Replacement connector assemblies have a groove machined around the middle of the fitting, but recalled units do not. All consumers should take their Nemo Air dive computers to a Mares dive shop to confirm whether this connector fitting has been replaced. For additional questions, contact Mares at (800) 874-3236, visit its web site at www.mares.com (this is a pdf file that can be downloaded) or e-mail Mares at kflood@us.mares.com.

**Trendset Originals Recalls Girls’ Hooded Jackets**

Trendset Originals LLC, of New York, New York, has issued a recall for about 2,400 of the Shampoo brand and an unknown number of the Marci & Me brand girls’ hooded jackets. The hooded jackets have a drawstring through the hood that can pose a strangulation hazard to children. The sweater jackets have a drawstring through the waist that can pose an entanglement hazard to children. In February 1996, CPSC issued guidelines (which were incorporated into an industry voluntary standard in 1997) to help prevent children from strangling or getting entangled on the neck and waist drawstrings in upper garments, such as jackets and sweatshirts. This recall involves two styles of girls’ jackets. The Shampoo brand jackets are denim with a pink hood and sleeves, and were sold in sizes 5/6, 7/8, 10/12 and 14/16. The Marci & Me brand sweater jackets are black or tan and were sold in sizes 7/8, 10/12 and 14/16. The tag at the neck reads “Shampoo” or “Marci & Me.”

The hooded jackets were sold by Burlington Coat Factory stores nationwide from September 2007 through September 2009 for between $11 and $13. Consumers should immediately remove the drawstrings from the jackets to eliminate the hazard. Consumers can also return the jackets to any Burlington Coat Factory store for a full refund. For additional information, contact Trendset Originals at (800) 908-8308, or visit its Web site at www.trendsetny.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’s web site: www.BeasleyAllen.com/recalls. You may also contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information.

**XXIV. FIRM ACTIVITIES**

**Employee Spotlights**

**Don Gilliland**

Don Gilliland joined the firm in January as a Web Developer. In this position he develops and maintains websites which focus on providing information to the public about issues and cases that the firm is pursuing which have or may in the future affect them. Currently, Don maintains nearly 40 websites (includes beasleyallen.com, jerebeasleyreport.com, mymeso.org and many more) with over 30 being focus-related.

Don and his wife, Terri, who have been married four years, are expecting their first child, a daughter, in June. They are very excited. Don previously worked with Northrop Grumman on various Department of Defense projects. His team won...
several awards for technical innovations, improving efficiency, improving security and reducing tax-payer costs. Don likes to read, generally 40-50 books per year and all non-fiction. He says his first love was music. He started playing guitar almost 20 years ago. He does not get to play as often as he would like now, but enjoys the times he does get to play. Don is a most valuable employee and we are pleased to have him with the firm.

MELINDA HENDERSON

Melinda Henderson, who has been with our firm for a little over a year, works as a Clerical Assistant in the Personal Injury Section. Basically, Melinda does whatever needs to be done for lawyers, paralegals, and secretaries in the Section. Melinda has a degree in Broadcast Journalism with a minor in Public Relations from Troy University. She is currently working on her Masters in Public Administration, also from Troy. The work Melinda does in the Section is very important and she does a very good job. Melinda has one son, Nicolas, who is six and they live in Troy. She enjoys reading, traveling (especially to Savannah, Georgia), going to the movies and spending time with her son. We are fortunate to have Melinda with us.

EBONY PARKS

Ebony Parks came to the firm in September of 2007 as a Clerical Assistant, working on Dollar General cases. She then became a Law Clerk before leaving the firm in April 2008. Ebony returned in July 2008 as Law Clerk/Legal Assistant for three of our lawyers in the Consumer Fraud Section. In May 2009 she was moved to Legal Research Assistant for Larry Golston in that same Section. In that role, she helps investigate the cases of all potential clients, interviews clients, and does legal research on issues that relate to potential claims. Ebony also does legal research for filed cases.

Ebony’s father is retired from the United States Air Force and her mother is a civilian employee for the military. Having parents who worked for the military afforded Ebony opportunities to live in different states and visit other countries. She graduated from the University of Alabama in 2004 with a degree in Public Relations and Marketing. Ebony graduated in 2007 from Thurgood Marshall School of Law at Texas Southern University in Houston, Texas. She passed the Texas Bar in 2007.

Ebony enjoys graphic design work. Using her background in marketing and public relations, she volunteers for different non-profit campaigns and political campaigns. She is also a professional makeup artist and is currently a specialist for a cosmetics company at its local branch. Ebony is a very good employee and we are fortunate to have her with us.

LAWCALL CONTINUES TO BE VERY ACTIVE

Gibson Vance is continuing to host the widely popular LawCall, a 30 minute legal show, which airs each Sunday night at 11:00 pm on WSFA. Viewers from across Alabama have the opportunity to learn about different legal issues that are discussed each week. Viewers are invited to submit any legal question they may have to LawCall via the web at free.consult@beasleyallen.com or they may call Beasley Allen directly at 800-898-2034. Some of the topics scheduled for May are, “Mom and the Law,” “Hurt on the Job,” and the very popular ‘Ask us Anything.’ Callers are not restricted to the topics of the night. Gibson tells me that he never knows what sort of questions he will get on the show.

XXV. SPECIAL RECOGNITIONS

MONTGOMERY MAYOR DECLARES ASBESTOS AWARENESS WEEK

Montgomery Mayor Todd Strange presented a proclamation on April 7th to Wendi Lewis, our firm’s Communications Director and author of the firm’s web site, www.myMeso.org, declaring April 1-7 as Asbestos Awareness Week in the city of Montgomery, Ala. The proclamation supports National Asbestos Awareness Week, as established by Senate Resolution 427.

Our firm established www.MyMeso.org in February 2008 as a public awareness and community outreach effort to increase awareness of the dangers of asbestos exposure. It is the primary goal of www.MyMeso.org to raise awareness in the public about mesothelioma and related asbestos diseases, to provide a forum for those affected by mesothelioma, and to create a network of information and resources expanding hope for a cure.

It is the purpose of Asbestos Awareness Week to raise public awareness about the prevalence of asbestos and the dangers of asbestos exposure in the United States and around the world. Microscopic asbestos fibers can be inhaled or ingested, and imbed themselves in the body where they can cause diseases such as asbestosis, a severe scarring of the lungs, and mesothelioma, a deadly cancer that can affect the chest and lungs, the abdomen, or the heart.

The U.S. Congress has recognized a National Asbestos Awareness Day or Week the first week of April for the past six years. The awareness effort is a project of the Asbestos Disease Awareness Organization (ADAO), which is the largest organization in the United States serving as the voice of asbestos victims. The ADAO lobbies for the complete ban of asbestos and asbestos-containing products in the U.S. It is estimated that within the next decade 100,000 workers around the world will die of an asbestos-related disease. That equals 30 deaths each day.

Current statistics show 2,000-3,000 people are diagnosed with malignant pleural mesothelioma in the U.S. each year, and 10,000 Americans die from all asbestos-related diseases. Mesothelioma was not tracked as a specific cause of death by federal health officials until 1999, so actual totals for mesothelioma may be much higher.

MONTHLY MESSAGE FROM STATE BAR PRESIDENT TOM METHVIN

The following is the monthly message from Tom Methvin in his capacity as State Bar President. Tom has worked extremely hard as president and has had a very good run so far. He has been able to enlist the help of lawyers throughout the state and that’s very important. Tom will serve as president through July when his successor takes over.

Law Day 2010—“And Justice for All”

Each year on May 1st, the Alabama State Bar participates in the recognition of Law Day. This national event was created by the American Bar Association in 1958 to bring an understanding and appreciation for the law to every person. Today, Law Day activities play an important role in the educational and outreach efforts of the Alabama State Bar (ASB). This is an opportunity for us to share how the law directly affects all of us, in a positive way.

The theme for ASB’s Law Day 2010 celebration was “And Justice for All.” We chose this theme in order to emphasize the importance of Access to Justice for the poor in civil cases. Access to justice is the number one priority of our state bar this year, since Alabama is dead last in funding for this. The average state spends $4.1 million per year. Alabama spends $300,000. As a result there are a lot of hurting people without legal representation.

In keeping with this, we issued a challenge to all local bar associations to increase their participation in the Volunteer Lawyer Program (VLP) during Law Day celebrations. We provided the President of each local bar with a list of participation percentages in every circuit in Alabama. Circuits that show the greatest increase in participation will be recognized at the ASB Annual Meeting in July. The underlying idea of Law Day is to make the law available and accessible to ordinary people. It is our obligation to make this possible, and the VLP helps accomplish that.

This year, we also greatly expanded our Law Day activities, with the goal of having the best Law Day celebration in the history of the ASB. Law Day activities were held in almost every judicial circuit, under the direction of local Bar associations. Our activities this year were designed to help those in need, to promote Volunteer Lawyer service, to raise public awareness of pro bono work, and create positive public relations for lawyers. We held law “help line” programs on local television and/or radio stations, free legal clinics, and a variety of contests and events at local schools.

Many local Bar associations created unique programs to recognize Law Day. For example, the Mobile Bar held a Naturalization Ceremony for America’s newest citizens, featuring a swearing-in, guest speakers and other celebrations. What a great introduction to the American legal system! In Escambia County, high school seniors participate in a program that allows them to be involved in an actual trial. In Tuscaloosa, a new “Pillars of the Bar” luncheon honors two members of the Tuscaloosa County Bar Association who have demonstrated outstanding service to the legal profession and pro bono service.

These are just a few of the many outstanding events bringing Law Day to the next level in Alabama. I’m looking forward to seeing this program continue to grow. It is my hope that Law Day will inspire young people to practice law, and encourage attorneys to share their time and talents with those less fortunate through the VLP. I also hope that through Law Day activities, the public has a better understanding of what lawyers do, and the services we render.

The Law Day Committee coordinated all the activities in our 41 judicial circuits. Ashley Swink and Holly Alves, both graduates of the ASB Leadership Forum, were selected to head the committee. They chose 12 other Leadership Forum graduates to serve on the Law Day Committee. Each committee member visited one or two judicial circuits to determine what programs were already in place, or to identify where programs were needed.

Law Day Committee members were M. Hamp Baxley, Ryan G. Brake, Valerie K. Chitrom, Christy D. Crow, Anne L. Durward, Adrian D. Johnson, Tara W. Lockett, Jonathan M. Lusk, David E. Rains, Emily H. Raley, Brian P. Streng and William R. Wablen, Jr. The Committee also includes Young Lawyers President Liaison Robert N. Bailey, II, Local Bar Coordinator Charles R. Godwin, and ASB Staff Liaison Brad Carr. Our Bar owes them all a debt of gratitude for the great work they did in helping us celebrate and promote Law Day and “Justice for All.”

Tom Methvin
State Bar President
April 14, 2010

BeasleyAllen.com Racing Makes Tracks For Talladega

As this edition of the Report was going to press, the BeasleyAllen.com race car had just finished in a strong third-place position at the Texas Motor Speedway, with driver Grant Enfinger and crew making tracks for Talladega. Grant ran the BeasleyAllen.com car in the top ten all night at the 150-mile ARCA race in Texas on April 16th, before being edged out by Steve Arpin, who took the win. Craig Goess snagged the runner-up position. Grant was a strong third.

Third place in this crowd is nothing to sneeze at, but Grant was left wishing he’d placed even higher. He led 20 laps toward the end of the race, but said in the end it came down to tires. “Our restarts killed us,” he said. “The race car was nearly perfect all night, except that I spun the tires on restarts, even when I started in second gear.”

However, despite his disappointment at missing out on the checkered flag, Grant was upbeat and said overall it was a positive experience. “The entire race weekend
was fun,” he said. “Crew chief Howard Bixman, spotter Jeremy Lundy and the entire crew performed perfectly. They and Beasley Allen deserved the win, and we are determined to give it our best shot next week in Talladega.”

Fans had a few opportunities to see Grant, the crew and the car between races, as the team traveled to Houma, Louisiana, the Sunday after the Texas race for a public appearance. This was followed by a stopover in Fairhope, Ala., where they worked on the set-up for the Talladega car to make it ready for tech and practice later in the week. Then the car made a pit-stop in Montgomery on April 21st for what is becoming a popular annual appearance at the Farmer’s Market Café during lunch hour, before making the short drive to Talladega SuperSpeedway.

Both the Texas race and the Talladega event were broadcast live on Speed TV, which last season learned that ARCA races—especially those involving Grant Enfinger and the BeasleyAllen.com car—make for exciting viewing. BeasleyAllen.com Racing promotes the Beasley Allen law firm to race fans throughout southeastern United States, while also working to bring attention to the battle against Cystic Fibrosis.

Wendi Lewis
Beasley Allen
April 21, 2010

XXVI.
FAVORITE BIBLE VERSES

John Gibbons and Eric Armster, who work with the Fellowship of Christian Athletes, do the Lord’s work on a daily basis. John and Eric are my good friends and I appreciate very much their sending in a verse this month for our readers.

_I thank my God every time I remember you. In all my prayers for all of you, I always pray with joy because of your partnership in the Gospel from the first day until now._

Philipians 1:3-5

Ellen Cheek, who lives in Montgomery and attends St. James United Methodist Church, sent in two verses this month. Ellen, who is one of Sara’s best friends, is extremely talented in the arts, music, French hand-sewing, and gourmet cooking. Ellen is also one of the best Bible teachers around.

_For the Chief Musician. A Psalm of David. O LORD, You have searched me and known me. You know my sitting down and my rising up; You understand my thought afar off. You comprehend my path and my lying down, And are acquainted with all my ways. For there is not a word on my tongue, But behold, O LORD, You know it altogether You have hedged me behind and before, And laid Your hand upon me. Such knowledge is too wonderful for me; It is high, I cannot attain it._

Psalm 139

_Let us acknowledge the Lord; let us press on to acknowledge him. As surely as the sun rises, he will appear; he will come to us like the winter rains, like the spring rains that water the earth._

Hosea 6:3

LaBarron Boone, one of the veteran lawyers in our firm, furnished this verse. LaBarron handles Product Liability cases for the firm.

_For we are God's workmanship, created in Christ Jesus to do good works, which God prepared in advance for us to do._

Ephesians 2:10

Ann Easley, who works with Greg Allen in the firm’s Product Liability Section, furnished this verse:

_Being confident of this, that He who began a good work in you will carry it on to completion until the day of Christ Jesus._

Philippians 1:6 (NIV)

Jill Cawley, another of our employees, also furnished a verse for this issue. As you may recall, Jill has been very active in the work of the American Heart Association. She works with the firm’s investigators.

Be still, and know that I am God

Psalm 46:10

Michelle Bailey, one of our employees, furnished a verse for this issue. Incidentally, Michelle is responsible for the Jere Beasley Report Database, which is a major undertaking.

_Vengeance is Mine, and recompense; Their foot shall slip in due time; For the day of their calamity is at hand, And the things to come basten upon them._

Deuteronomy 32:35 (New King James Version)

Lester Henderson, a long time friend, sent in a verse this month. Lester is a retired businessman who had a very good career. He is a real expert on baseball history, which is a good thing to know. Lester is a hard worker in his church and is a good man by any standard. Lester’s verse contains a good reminder for all of us.

_I can do all things through Christ who strengthens me._

Philippians 4:13

If you would like to send a verse in for the June issue, please do so. We really appreciate all of those who have sent in their verses for previous issues. We consider this to be a very important part of the _Report_ each month. You can send verses by mail to P.O. Box 4160, Montgomery, AL 36104, by email at _jere@beasleyallen.com_ or by telephone at 800-898-2034.

XXVII.
CLOSING OBSERVATIONS

_ALABAMA IS OUT OF STEP WITH THE REST OF THE NATION_

The tort reformers have done a very good job—with very little opposition—of selling the people of Alabama a bill of
goods about our state’s judicial system. Spending millions of dollars, the Karl Rove-managed public relations campaign, using terms such as “tort hell,” “frivolous trial lawyers,” and “greedy trial lawyers,” has been successful. But when people hear the truth about the court system, they realize immediately that tort reform is nothing more than a myth. Alabama has a number of laws on the books that favor big business and insurance companies and penalize ordinary folks. Alabama is out-of-step with the rest of the states when it comes to the laws that govern civil litigation in many important areas.

• **Tort Reform Legislation:** In 1987 the Alabama Legislature passed a tough package of laws which made it even harder for victims of corporate wrongdoing to obtain complete justice.

• **Litigation Accountability Act:** The Alabama Legislature passed a bill in 1987 that gives any Defendant, who has been sued by a party in a lawsuit without legal merit, the right to file a claim for damages against the party and the lawyers who file the suit.

• **Mandatory Arbitration:** The right to trial by jury has been taken away from consumers in many areas of consumer disputes. This has been a nationwide thing—not because of Congress—but because of rulings from the U.S. Supreme Court. Congress never intended for this to happen, but it has.

• **Unanimous jury verdicts:** Alabama is one of the few states that require all jurors to agree on a civil jury verdict.

• **Contributory negligence:** Alabama is only one of five states to recognize this antiquated law. It is very much anti-victim and favor wrongdoers.

• **Guest Statute:** Alabama is the only jurisdiction to still have this law, which makes it virtually impossible for a guest passenger to win a lawsuit against the driver of a vehicle regardless of how bad the driver’s conduct may have been.

• **Fraud laws:** Our Supreme Court has made it difficult for a consumer to win fraud cases.

• **Consumer protection laws:** Alabama has the weakest consumer protection laws in the country.

• **Wrongful death law:** Alabama is the only state in the country to allow only punitive damages in death cases. No compensatory damages are allowed in our state.

• **Workers’ Compensation benefits:** Alabama has the weakest set of workers’ compensation laws in the country which hurts workers in our state who are injured on the job.

When you consider that in recent years the Alabama Supreme Court has gone over board to protect corporate wrong-doing, it’s impossible to understand how the tort reformers can claim Alabama to be tort hell. I believe folks in Alabama are now beginning to question the bogus claims made by the public relations campaigns financed by the giants in Corporate America designed to convince them that our courts are really bad and that jurors can’t be trusted in civil lawsuits. It’s time for the silent opposition to the myth of tort reform to become vocal. This would be a good project for the Tea Party groups who say they believe in individual rights and don’t like wrongdoers.

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**When Good Folks Sit Idle Bad Things Happen**

It has always been difficult to understand why folks don’t get more involved in issues that affect our country’s well-being. Edmund Burke, the 18th Century Irish orator, philosopher, and politician had this to say: “All that is necessary for the triumph of evil is that good men do nothing.” That astute observation, made over 150 years ago, was true in his time and it’s certainly applicable today.

All too many of us complain about the evil in the world, but do very little to combat it. Evil, and its many faces, will spread when good people sit back and do no more than complain. Most of us simply don’t like to get involved in efforts to resist the evil doers. As a result, things can get to the point where it’s virtually impossible to stop the movement.

There are all sorts of examples of this sort of thing. Perhaps the failure of the many good people in Germany during the 1930s to stand up to Adolph Hitler is the best example. Admittedly, this is an extreme example, but it had a simple beginning. The evolution of Nazi Germany, with such things as the Holocaust and the movement by Hitler toward virtual world domination, resulted from the attitude of the German people and even others outside that country. Fortunately, people in Europe and around the world finally woke up to Hitler’s threat. Led by Great Brittan and the United States, an evil man was eventually stopped, but not before he had caused a tremendous amount of hurt and misery in a large part of the world.

My hope and prayer is that people all across the land will stand up to anybody or anything that threatens our country’s welfare. We simply can’t avoid getting involved in combating evil regardless of the source.

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**A Reminder**

I was reminded by several folks that we left out an important part in our last issue. That was my fault and it won’t happen again. The following will be included in every issue until such time that such a message is no longer needed.

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

2 Chron 7:14

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**Demand a Zero Tolerance Policy**

In recent months there has been a great deal said in the national media about bullying in schools around the country. In many cases there have been tragic endings to what started out as so-called typical bullying amongst youngsters. But bullying has become a universal issue that touches almost every person, family, school, business or community at one time or another. This is true regardless of age,
gender, race, religion or socio-economic status.

Bullying has become more than just a “school” issue. It’s actually now a much broader community health and wellness issue. The effects of bullying can last a lifetime and can also result in the loss of life, quite often at a very young age. Most folks don’t realize that bullying can also take place in the workplace. But for now I am going to put my emphasis on schools and young folks.

Parents should never have to be concerned about sending their children to school. Neither should children be in fear or afraid to go to school because of bullying that is going on and may be directed toward them. It has been reported that bullying has become the number one non-academic issue that many teachers and school administrators face. Parents and teachers must become aware of the dangers that accompany bullying and learn how to deal with it. A Zero Tolerance Policy must be demanded in every school in this country.

There are a number of websites and a great deal of information available on the subject. If you want more information, contact Graham Esdale, a lawyer in our firm, at 800-898-2034 or by email at Graham.Esdale@beasleyallen.com.

XXVIII.
PARTING WORDS

Over the past several years I have received prayers from various sources by email. These now come on a daily basis. I find reading at least one of them early each morning to be a great way to get my day started. The following prayer, sent to me last month by my longtime friend Corky Hawthorne, came at a time that I needed to be reminded that we all serve an awesome God.

Lord, we are grateful that your thoughts and your ways are higher than our own. Thank you for forgiving our sins. Thank you for new mercies each new day. Thank you for always welcoming us back into fellowship with you. Thank you for providing waters from which we may drink and never thirst again. What an awesome God we serve. Lord I pray this morning that I may be Your ambassador today and glorify You in all that I say and do. In Jesus name in the power of the Holy Spirit. Amen.

I encourage each of our readers to start their day off by asking God for guidance and direction. I find it most helpful to include an Upper Room devotional and a prayer like the one Corky sent to me each day. We never know what a day will bring into our lives and getting started on the right foot is extremely important.

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.
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.