President Obama. In my opinion, the former Dean of the Harvard Law School is an excellent choice. Once she is confirmed by the Senate, the United States will have three women Justices for the first time in its history. While Kagan has never been a judge, she has enjoyed a tremendous legal career. She was the first female dean of Harvard Law School, and the first woman to serve as the top Supreme Court lawyer for any administration. She will succeed Justice John Paul Stevens who has been a positive force on the High Court for a very long time. At 50 years old, Kagan would be the youngest Justice on the Court.

But the nominee must first win Senate confirmation. Her reputation for bringing folks of competing views together and earning their respect will help her win Senate confirmation. While I believe it would be a big mistake for Republicans to prevent a vote on this nominee, they certainly have every right to question her in confirmation hearings over her qualifications. But undue delay won’t play well with the public.

Kagan holds a Bachelor’s degree from Princeton, a Master’s from Oxford and a law degree from Harvard. She served as a Supreme Court clerk for one of her legal heroes, Justice Thurgood Marshall. And before that, she clerked for Federal Appeals Court Judge Abner Mikva, who later became an important political mentor to President Obama in Chicago. In her current job, Kagan represents the U.S. government and defends acts of Congress before the Supreme Court and decides when to appeal lower court rulings. Her performance as the government’s lawyer before the High Court over the last year has been most impressive.

Kagan would be the fourth woman to serve on the Supreme Court, following current Justices Ruth Bader Ginsburg and Sonia Sotomayor and retired Justice Sandra Day O’Connor. Barring extraordinary circumstances, Solicitor General Elena Kagan should have a relatively smooth confirmation to the Supreme Court. Seven Republicans voted for her nomination to be Solicitor General, making it unlikely the GOP can unify enough to sustain a filibuster.

Source: Associated Press

THE U.S. Census Bureau is reporting what most of us have already know: Alabamians pay the nation’s lowest state and local taxes per person. While that sounds good, it’s not good for many of our fellow citizens. That’s because Alabama families at the poverty level pay the nation’s highest income tax bill and that’s nothing to be proud of. The annual report by the Center on Budget and Policy Priorities, a nonprofit research group in Washington, D.C., is a good source of information on the subject.
Kimble Forrister, executive director of the Arise Citizens’ Policy Project, had this to say about the situation:

**Alabama may be called a 'low-tax state,' but our taxes aren’t low for everyone. Low- and middle-income Alabamians struggle to make ends meet, but compared to others across the country, they pay a high sales tax on groceries, and they pay twice as large a share of their incomes in state and local taxes as the top 1% of earners do. Alabama’s tax system is upside down and out of step with our neighbors.**

Alabamians pay high sales tax on groceries compared to folks in other states. In fact, Alabama is one of just two states that tax the full amount on food. Mississippi is the other state and I don’t guess that’s a big surprise. Other states exempt food, charge a reduced amount or offer tax credits to poor families.

The high state income tax and full sales tax on food makes it very tough on low-income families in Alabama. Families with incomes in the lowest 20%, with an average income of $10,400 a year, pay 10.2% of their incomes in state and local taxes, according to the Institute on Taxation and Economic Policy. Yet, Alabamians in the top 1% of incomes, with an average income of $1.2 million, pay just 4% of their incomes in state and local taxes after the federal deduction. In our state the wealthiest Alabamians can deduct federal income taxes they pay from their taxable state income. Alabama is one of three states that grant the federal deduction in full. All persons whose income places them in the top 1% of incomes should help convince our Governor and legislators to fix this situation.

The data from the Institute show that at least 60% of Alabama families pay a higher share of their incomes in taxes than the state average. Without any doubt, Alabama’s inequitable tax system has come about as the result of special interest influence. Over the years, the Legislature, prompted by lobbyists, has provided loopholes and exemptions for special interests in our state’s tax laws. Also, the state constitution which protects the wealthy is part of the problem. All together, much of the state’s wealth is sheltered from being taxed. The tax system is designed to favor the rich over the poor. Hopefully, in the near future we will see some real tax reform in our state and give relief to low-income Alabama families.

Source: Birmingham News

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**FDIC Reports On Colonial Bank Problems**

A new report on the death of Montgomery-based Colonial Bank indicates that the company bet far too heavily on risky real-estate loans. The bank’s cause of death was real-estate gluttony, a label put on Colonial by the Federal Deposit Insurance Corp., in a report on the bank’s August failure. As was widely reported, Montgomery-based Colonial collapsed in the sixth-largest bank failure in American history. The FDIC said it now expects to lose $3.8 billion—rather than $2.7 billion—from the fall of a bank that had $25.2 billion in assets. I don’t believe the matter is closed at this juncture. Some of the issues raised by the FDIC report are quite disturbing. While the failure of Colonial Bank has hurt the entire state, most of the hurt is in Montgomery. It was a major blow to the Capital City.

Source: Al.com

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**II. A REPORT ON THE GULF COAST DISASTER**

**BP Put People And Property In Peril**

All of the world now knows about the massive oil spill resulting from the explosion and sinking of the oil platform Deepwater Horizon in the Gulf of Mexico on April 20th. When we sent this issue to the printer, at least 250,000 barrels of oil had already been spilled into the Gulf. Actually, that might be a conservative number. Unfortunately, the efforts to stop the spill have been largely unsuccessful. It now appears there is no quick fix available. In fact, many believe that the amount of oil being spilled is ten times worse than is indicated by many reports.

The companies responsible for this disaster must be held accountable for the damages done and they must be made to fully compensate all of the folks who will be hurt badly by what has happened. BP and all responsible parties must repair the ecological damage, make full and prompt reparations to every single person whose livelihood was taken away or greatly damaged, and pay appropriate and full damages to all victims in a court of law.

I am convinced there really aren’t any good oil companies, but BP has been devastatingly bad. For example, BP elected not to install a $500,000 safety device that could have prevented this disaster. A company that made $21.6 billion in profits in 2008 alone refused to spend $500,000 to safeguard the people on the coast from what has turned into the worst oil spill of all time. As the investigations proceed, more and more is being uncovered about the failed safety measures in place, and also about those that were available but were never installed on the rig.

This isn’t the first time BP has had major problems. For example, BP has pleaded guilty in just the last few years to two crimes, willful disregard for workplace safety, and energy market manipulation. A Washington-based research group says two BP refineries in the U.S. Account for 97% of “egregious willful” violations given by the Occupational Safety and Health Administration. The study by the Center for Public Integrity says the violations were found in the last three years in BP’s Texas City refinery and another plant in Toledo, Ohio. As we have previously reported, 15 people were killed in a 2005 explosion at the Texas City refinery.

According to Deputy Assistant Secretary of Labor for OSHA Jordan Barab, BP has a “systemic safety problem.” He told The Associated Press that BP has not adequately addressed the issues, despite being fined more than $87 million. Assistant Secretary of Labor for OSHA David Michaels says similar problems are perva-
sive throughout the U.S. petroleum industry. That’s most disturbing.

It’s time to realize that the oil companies must be properly regulated by the federal government and their activities carefully monitored. BP and all other oil companies must be made to obey and follow the law. Interior Secretary Ken Salazar admits that the federal government has failed to hold the oil industry accountable and ensure safety in offshore oil drilling. He promises to give “more tools, more resources, more independence and greater authority” to the Minerals Management Service, which regulates drilling in the Gulf of Mexico. But the primary emphasis now must be on helping those who will need help because of the massive problems BP and others have caused.

Our Firm Will Be Involved in the BP Oil Spill Litigation

Experts are calling the Gulf oil spill the worst environmental crisis in this country in recent memory and perhaps ever. It clearly appears this one will eclipse the Exxon Valdez disaster. The economic impact will also be greater than that caused by hurricane Katrina. The massive oil spill will certainly negatively affect the entire Gulf coastline and will actually affect folks further inland. This includes a negative economic impact on thousands who earn their livelihood in the seafood industry, as well as in tourism in the area, itself a major industry along the Gulf Coast. Without a doubt, the environmental impact will be severe, with oil and byproducts damaging fragile marshlands, marine and bird life. The coastal states have never experienced anything like this disaster.

Our firm is representing a number of clients who have been hurt and damaged in the Gulf Coast states in the BP oil spill litigation. We have filed a number of class action lawsuits against BP, plc; BP Products North America Inc., BP America Inc., Transocean Ltd., Transocean Offshore Deepwater Inc., Halliburton Energy Services Inc., and Cameron International Corporation. All of these companies are responsible for the tragic occurrence and will have to account for their wrongdoing.

We are representing individuals and businesses that have incurred damages caused by the disaster. The losses will cover a very wide range, including real property damages, personal property damages, loss of profits and earning capacity, loss of commercial and subsistence use of natural resources, increased costs of public services and loss of revenues. The cases filed so far are in federal courts in Alabama, Louisiana and Texas. By the time this issue is received cases will have been filed in Florida and Mississippi.

Our concerns for the people along the Gulf Coast continue to grow as we monitor this situation and oil continues to spill into the Gulf. The situation is especially distressing in Alabama, Louisiana, Mississippi and Florida, where so many people depend on the waters for their livelihood. Texas citizens will also be adversely affected if the oil gets that far and it appears that it will. Our firm has been in extensive litigation with the powerful oil industry in the past and we know first-hand companies like BP can’t always be trusted to do the right thing.

Our firm has an experienced Toxic Tort section that includes lawyers and staff who have handled numerous cases involving environmental disasters. Protection of people, their property, and their livelihood from large corporate polluters has been one of our firm’s top priorities. Our lawyers are fighting to make a difference in the lives of those threatened by environmental pollution. We currently are handling class action litigation against the Tennessee Valley Authority in the largest coal ash spill in U.S. history. From the largest toxic tort settlement in U.S. history for PCB contamination—$700 million—to a $20.7 million verdict against Continental Carbon for air pollution, our firm is playing a significant role in toxic tort cases. This experience will help our lawyers in the BP litigation.

BP Must Be Held Fully Accountable

Any lawyer who has ever been involved in litigation against the powerful and politically influential oil industry knows how little regard the companies have for safety. If anybody really believes that BP intends to fully compensate the victims of this disaster, without being forced to do so, they have never dealt with one of the major oil companies. BP has promised to reimburse the state for any cleanup or mitigation costs it incurs. BP might keep that promise, but again I have serious doubts as to the company’s sincerity. The State of Alabama saw firsthand in the state’s litigation against Exxon how “tricky” and powerful the oil companies are.

While BP first said it would compensate all those affected by the oil spill, that story has now changed drastically. Originally the company said it was taking full responsibility for the spill and promised to clean it up and pay all losses incurred by the victims. But a few days later, the oil giant started to point fingers at others who it says were more to blame than was BP. It didn’t take BP very long to break its original promise. BP even tried to trick folks by including a release form in employment contracts required to be signed by folks along the coast who were hired to help with the clean-up. Fortunately, a federal judge stopped that practice. What BP was doing was both illegal and morally wrong. The court’s order will protect the rights of those whose livelihoods are most impacted by this incident. Trying to trick and cheat its victims is pretty low down. BP should be ashamed of its conduct.

Troy King Takes the Lead for the Attorneys General

Alabama Attorney General Troy King went to work immediately after the oil spill began in an effort to help folks affected by the crisis and to help BP and other companies responsible. Troy called a special meeting of the Attorneys General from Florida, Mississippi, Louisiana and Texas to meet with him to discuss issues related to BP and the oil spill. The Attorneys General said jointly they want Gulf Coast residents to know that they will work together to hold BP and other responsible parties fully accountable.
President Obama was asked to take all legal steps necessary to lay blame for the massive Gulf oil leak and was asked to clear the way for possible court action. President Obama made it clear during a visit to the Louisiana coast on May 3rd that he will make BP pay for the cleanup. A formal declaration of responsibility is needed before the Attorneys General can take legal action against BP or any other companies. I am confident President Obama will do whatever is necessary within his authority to protect residents in the Gulf Coast states.

The White House has already been working to lift the limit on how much BP pays for the Gulf Coast oil spill. The President wants Congress to change a law that caps at $75 million BP’s liability for economic damages such as lost wages or dwindling tourist dollars. BP is responsible for all cleanup costs under the Oil Pollution Act, but other economic costs will be in the billions. The President wants the amount raised to $10 billion.

Finally, the Attorneys General asked President Obama for federal help in preparing damage assessments. Letters were sent on May 6th to the President and to Attorney General Holder, requesting a state-federal working group on enforcement and potential litigation to avoid duplication. Under federal law, responsible parties also have unlimited liability for clean-up costs. Every effort must be made to ensure full restitution to the states is made by the parties responsible for the spill. But the people and businesses who have suffered losses and will in the future must also be protected.

Source: Associated Press and Forbes

**BP Plays The Blame Game**

I suspect most folks along the Gulf Coast were shocked to hear Texas Governor Rick Perry say he believed that the massive oil spill might have been an “act of God.” The Governor was either trying to be funny or was attempting to protect BP and perhaps some other involved entities. In either case, he was off base and made a dumb statement. Obviously, somebody had to be blamed for what happened. BP Chief Executive Tony Hayward is now insisting it wasn’t BP’s fault and he is trying to lay the blame on Transocean.

Source: Forbes

**BP Cut Corners To Make Profits**

A number of critics of British Petroleum believe cost-cutting by the London-based oil giant helped to contribute to the rig explosion and oil spill disaster unfolding in the Gulf of Mexico. For example, Tom Bower, author of the 2009 book *The Squeeze: Oil, Money and Greed in the 21st Century*, says that “BP’s economizing led to a lack of engineers, an overdependence on out-sourcing, and even a lack of supervisors to keep an eye on the sub-contractors.”

We have learned that a number of different problems either caused or contributed to the explosion and the massive oil spill that followed. It was discovered that BP had not filed a plan to specifically handle a major oil spill from an uncontrolled blowout at its Deepwater Horizon project. The logical question is—how could this be? It’s because the federal agency that regulates offshore rigs changed its rules two years ago to exempt certain projects in the central Gulf region. According to the Minerals Management Service (MMS), an arm of the Interior Department, and known for its cozy relationship with major oil companies, the agency issued the relief from the rules because some of the industry wide mandates weren’t practical for all of the exploratory and production projects operating in the Gulf region.

The blowout rule was lifted in April 2008 for rigs that didn’t fit at least one of five conditions. The question now is whether the BP Deepwater Horizon project was covered by the regulation. Interior Secretary Ken Salazar believes that BP was required to file plans for coping with a blowout at the well that failed. But a review of government and BP documents by the Associated Press found that the company had not filed a specific comprehensive blowout plan for the rig that exploded. Instead, a site-specific exploration plan filed by BP in February 2009 stated that it was “not required” to file “a scenario for a potential blowout” of the Deepwater well. That’s shocking to say the least.

The lack of a specific plan for the Deepwater project raises questions about whether BP could have been better prepared to deal with the ongoing disaster and whether MMS is fulfilling its regulatory oversight. BP clearly was not prepared for a disaster of this sort, and neither do I believe MMS has done its job. In its 2009 exploration plan for the Deepwater Horizon site, BP strongly discounted the possibility of a catastrophic accident. Similarly, Shell’s environmental impact analysis for its Beaufort Sea drilling plan asserts that the possibility of a "large liquid hydrocarbon spill ... is regarded as too remote and speculative to be considered a reasonably foreseeable impacting event."

The Deepwater Horizon disaster is not the first time MMS has been criticized as being too close to the oil industry. In 2008, the Interior Department took disciplinary action against eight MMS employees who accepted lavish gifts, partied, and—in some cases—had sex with employees from the energy companies they regulated. An investigation cited a “culture of substance abuse and promiscuity” involving employees in the agency’s Denver office.

Source: Associated Press

**Cheating On Blowout Preventer Tests Said To Be Widespread**

Maybe if somebody in Washington in authority had listened to a man named Mike Mason in 2005, something would have been done that could have avoided the oil spill. It was reported in the *Corporate Crime Reporter* that at that time Mr. Mason, a 27-year oil industry veteran who worked on oil rigs at BP facilities on the North Slope of Alaska, was saying that cheating on tests for blowout preventers was widespread in the industry. Mason said he had actually witnessed BP cheating on the tests in the North Slope. It’s significant that before the disaster in the Gulf, the *Corporate Crime Reporter* ran this article detailing Mason’s allegations of BP’s cheating on blowout preventer tests.
At the time, Mason, who was working for Nabors Alaska Drilling Inc., a BP contractor on the North Slope, said he witnessed two blowouts of BP wells on the North Slope in 2003—one on July 3rd and one on December 6th. Mason said then that cheating on blowout prevention tests was a way of life in the oil industry. He observed, “they cheat to save money and time.” The oil industry veteran said he personally witnessed BP managers repeatedly cheating on blowout prevention tests. If what Mason says is accurate, it tells us lots about BP and it also tells us a great deal of how inept the federal government regulators have been. At the very least, the allegations made by Mason should have gotten the attention of the regulators and also of the President and Congress.

**A Look At What Has Transpired**

So let’s take a look at what has been going on with the blowout preventers. It’s being reported that federal regulators warned offshore rig operators more than a decade ago that they needed to install backup systems to control these giant undersea valves known as blowout preventers, which are used to cut off the flow of oil from a well in an emergency. The blowout preventers (BOP), which can weigh up to 640,000 pounds, guard the mouths of wells. The BOPs are to be the last defense to choke off unintended releases, slamming a gushing pipe with up to 1 million pounds of force.

These warnings were repeated in 2004 and 2009. Yet the MMS, which is charged with regulating the oil industry and collecting royalties from it, never took steps to address the issue comprehensively. Instead, MMS relied on industry assurances that the oil companies were on top of the problem. In addition to the *Corporate Crime Reporter* information, there were numerous warning signals that apparently were ignored by MMS and the oil industry. Numerous blowout preventers and their control systems have failed over the years, though none as catastrophically as those on the well the Deepwater Horizon drilling rig was preparing when it blew up on April 20th. MMS records show that from 2001 to 2007, there were 1,443 serious drilling accidents in offshore operations, leading to 41 deaths, 302 injuries and 356 oil spills. Yet the federal agency continued to allow the industry largely to police itself. That’s an obvious recipe for disaster.

Last year, BP teamed with other offshore operators to oppose a proposed rule that would have required stricter safety and environmental standards and more frequent inspections. At that time, BP said “extensive, prescriptive” regulations were not needed for offshore drilling and the oil giant urged MMS to allow operators to define the steps they would take to ensure safety largely on their own. That is unbelievable and can’t be justified.

In the absence of government regulations, all 23 of the oil drilling rigs currently working in the Gulf of Mexico rely on a backup device known as a remotely controlled submersible vehicle to turn on the blowout preventers if primary controls fail. That was the case with the Deepwater Horizon rig as well. But a consultant hired by the MMS in 2003 warned that these machines were frequently unreliable during blowouts, moving too slowly and often lacking power to do the job. The *New York Times* reported in an article:

*Even worse, the same consultant concluded in a federally financed study that even if rig crews managed to turn the blowout preventer on, the most critical safety component inside these machines—the shear ram, which is meant to cut quickly through the well pipe to stop the flow of oil and gas—was often not strong enough to cut through the modern pipes that drilling rigs use. “This grim snapshot illustrates the lack of preparedness in the industry to shear and seal a well with the last line of defense against a blowout,”* according to the September 2004 report, *written by West Engineering.*

Transocean, the company that operated the Deepwater Horizon rig for BP, has been cited twice in recent years by the authorities in Britain for failing to properly maintain a blowout preventer and related testing equipment on an offshore drill site there, with officials saying in November 2006 that the device “failed in service, exposing persons to risks that endangered their safety.” All told, the explosion on April 20th and the massive oil spill that resulted was an accident waiting to happen!

BP in a massive public relations campaign has been boasting about the cost of its efforts so far. But, it should be noted that BP’s daily profits dwarf the daily cost of spill response, and at the current rate, the company could cover the entire cost of cleanup thus far in just under four days of profits. BP’s “prodigious costs” combating the oil spill in the Gulf are outweighed by its “prodigious profits.” In the first quarter of the year, the London-based oil giant’s profits averaged $93 million a day. Yes, that’s correct—$93 million a day. The amount of oil leaking into the Gulf of Mexico has been estimated at 5,000 to 25,000 barrels a day. In the first quarter, BP produced 2.5 million barrels of crude oil a day worldwide—and it received $71.86 for every barrel. At $93 million a day in profits, BP makes $350 million in about 3.8 days. The *Washington Post* noted that Exxon, because of a very friendly decision by the U.S. Supreme Court, was able to pay only $507.5 million of the original $5 billion in punitive damages that it had been assessed for the 1989 Valdez disaster.

*Source: New York Times, Corporate Crime Reporter and Associated Press*

**Transocean Wants Maritime Law To Limit Its Massive Liability**

On May 13th Transocean filed for protection from lawsuits by claiming Limitation of Liability under a 150-year-old maritime law. As previously stated, Transocean owns the oil drilling platform Deepwater Horizon, which was being leased by BP when it exploded and sank into the Gulf of Mexico. A “limitations lawsuit” was filed in the Houston Federal Court. The suit was brought under a maritime law that was sponsored by Congress in 1851 to protect ship owners.

Limitation of Liability under the 1851 Act allows U.S. ship owners to limit their financial liability to the post-accident
value of its vessel and cargo. Under this antiquated law, the ship owner would have to show it had no knowledge of negligence resulting in the ship’s destruction and subsequent consequences. The Deepwater Horizon oil drilling rig was considered a vessel under U.S. maritime law because it is capable of being navigated. According to this law, Transocean claims the value of the Deepwater Horizon wreck at just under $27 million.

It’s clear Transocean is attempting to limit its massive legal liability by filing this lawsuit. The company and others will owe tens of billions of dollars to the thousands of folks who will be badly hurt and damaged by the massive oil spill. This is a blatant attempt to limit that exposure to only $27 million. Trying to take advantage of an antiquated statute which was never intended to apply to a massive disaster of this magnitude shows how little regard the bosses at Transocean really have for the folks who have been badly hurt and damaged by their actions. In fact, what Transocean did is about as bad as anything a corporate entity with terrific legal exposure could have done in an attempt to further hurt the folks they have already badly hurt. I don’t believe any court will allow billions of dollars in damages to be limited by filing a limitations lawsuit from the 1800s such as this one. What Transocean did was shameful. Our firm will take all appropriate action on behalf of our clients and others to protect their interests and to make sure no wrongdoer gets off the hook.

**Chemicals Used To Fight Gulf Oil May Be A Major Problem**

Environmental toxicologists are now saying that the oil dispersants being sprayed on the oil slick may be more detrimental to the Gulf environment than the oil itself. If that’s true, it may turn out to be a much bigger problem than anybody knows at present. Hundreds of thousands of gallons of a concoction—a mix of chemicals collectively known as “dispersant”—have already been dropped in the Gulf to try to break up the oozing oil, allowing it to decompose more quickly or evaporate before washing ashore. Unfortunately, nobody really knows what the short range and lasting effects of the chemicals used will be. In fact, the massive oil leak in the Gulf of Mexico has become the testing ground for a new technique where a potent mix of chemicals is shot deep underwater in an effort to stop oil from reaching the surface.

Scientists have been hurriedly weighing the ecological risks and benefits of using the chemicals. Only time will tell how bad the effects from the chemicals will be. Hopefully, the impact won’t be as great as some fear it will be. But there is every indication that this will be a major area of concern. In fact, it could be worse in the long haul than the oil itself, and if so that will be very bad.

Source: Associated Press

**III. DRUG MANUFACTURERS FRAUD LITIGATION**

**Drug Maker AstraZeneca To Pay $520 Million**

The federal government has reached a $520 million settlement with pharmaceutical manufacturer AstraZeneca. The case dealt with the company’s promotion of off-label uses for the antipsychotic drug Seroquel. AstraZeneca promoted Seroquel for uses that are not approved by federal drug regulators, including insomnia and psychiatric conditions besides schizophrenia and bipolar disorder.

U.S. Attorney Michael Levy of Philadelphia, where the settlement was approved, stated that the company had “turned patients into guinea pigs in an unsupervised drug test.” Partly because of all the off-label use of Seroquel, the drug brought in $4.9 billion to AstraZeneca in 2009, making it the company’s second-best seller. As we have reported, the FDA approves drugs for specific uses, but doctors are free to prescribe as they see fit.

Drug companies are supposed to market medications only for uses that the FDA has approved. But the companies can find lots of ways to get around the restriction. For example, doctors are told about research indicating that a given drug shows promise to treat a condition that the FDA hasn’t yet cleared it for. Since doctors are eager to get the latest treatments for their patients, especially if other physicians are also prescribing the medication, this ploy seems to work. It’s rather ironic that while the federal government works hard to bring drug manufacturers to justice, the Alabama Supreme Court works hard finding ways to protect them. Maybe one of these days—for the good of Alabamians—that will change.

Source: Associated Press

**Another $100 Million In Pharmaceutical Settlements**

The U.S. Department of Justice has reached two settlements with pharmaceutical companies that will call for a total of more than $100 million in penalties under the False Claims Act and the Food, Drug and Cosmetic Act. The announcements came two days after the department reached the $520 million settlement with AstraZeneca.

In one of the settlements, two Johnson & Johnson subsidiaries, Ortho-McNeil Pharmaceutical LLC and Ortho-McNeil-Janssen Pharmaceuticals Inc., will pay more than $81 million for the off-label promotion of the epilepsy drug Topamax. The FDA approved the drug for the treatment of partial onset seizures. However, the manufacturers also promoted the drug for psychiatric uses. Ortho-McNeil-Janssen Pharmaceutical’s promotion of the drug caused false claims to be submitted to government health care programs. The company will pay more than $75 million to settle civil allegations under the False Claims Act. It will also enter into a corporate integrity agreement with the Department of Health and Human Services to ensure the alleged violations aren’t repeated.

Ortho-McNeil Pharmaceutical will pay more than $6 million in criminal fines for violating the Food, Drug and Cosmetic
Act. The company allegedly marketed the sale of Topamax by hiring outside physicians to join sales representatives on sales calls and speak at events promoting the drug for off-label uses.

In the other settlement, Schwarz Pharma Inc., a subsidiary of Belgium-based UCB S.A., will pay $22 million for violations of the False Claims Act regarding the drugs Deponit and Hyoscymine Sulfate Extended Release. The company failed to tell the Centers for Medicare and Medicaid Services that the two products, neither of which were approved by the FDA, did not qualify for coverage under federal health care programs. Deponit is a skin patch used to prevent angina. Hyoscymine Sulfate Extended Release treats various stomach, intestinal and urinary tract disorders. Neither product is now on the market. Both of these cases began as whistleblower lawsuits, which were filed under the False Claims Act.

**Teva and Baxter Ordered To Pay $500 Million**

Teva Pharmaceutical Industries and Baxter Healthcare Services were ordered by a jury last month to pay a combined $500 million in punitive damages to a Nevada man who contracted Hepatitis C during an outbreak two years ago. The Nevada jury ordered Teva to pay $356 million and Baxter to pay $144 million. This was the largest jury award in Nevada history.

Henry Chanin and more than 100 others contracted the liver disease Hepatitis C after the anesthetic propofol was reused for colonoscopy or endoscopy procedures. Teva made the drug and Baxter distributed it. This trial is the first of what could be many more to come. There are other cases involving Hepatitis C patients pending. Robert Eglet, a lawyer from the Las Vegas firm of Mainor Eglet Cottle, represented the Plaintiff.

**Novartis Settles False Claims Suit For $72.5 Million**

The Swiss pharmaceutical company Novartis AG will pay $72.5 million to settle a whistleblower lawsuit accusing it of improperly billing government programs for unapproved uses of a cystic fibrosis drug. The settlement was announced by the government last month and the lawsuit filed by two former employees in 2006 was unsealed. The lawsuit alleged that biotechnology company Chiron Corp., which Switzerland-based Novartis acquired in 2006, billed for unapproved uses of its drug TOBI between 2001 and 2006. Under the settlement, the federal government will receive $35.68 million. Ten states—California, Illinois, Florida, Texas, Georgia, Tennessee, Virginia, Massachusetts, Michigan and New York—will divide $29 million. The three whistleblowers will also receive $7.8 million from the settlement.

**Avandia Victims Settle With GSK**

Nearly 700 people, all of whom are suing drug maker GlaxoSmithKline in three separate lawsuits alleging severe adverse events connected with the diabetes medication Avandia, are settling with the company for nearly $60 million. Avandia, also known as rosiglitazone maleate, was developed to treat type 2 diabetes mellitus. First approved by the FDA in 1999, the agency reported eight years later a significant increase in the risk of heart attack in those patients to whom Avandia had been prescribed. Thus far a number of deaths have been linked to Avandia. More recently, two independent studies showed that bone fractures, particularly in female patients, have been associated with this popular diabetes drug, while a third study has found a link between Avandia and liver failure. It was alleged in the lawsuits that the Plaintiffs suffered heart attacks, strokes, and congestive heart failure as a result of taking the drug.

**Utah Sues Drug Makers For Off-Label Marketing**

Utah’s Attorney General has filed suit against Johnson & Johnson and AstraZeneca for the illegal off-label marketing of anti-psychotic drugs. The suit, filed in a Utah state court last month by Attorney General Mark L. Shurtleff on behalf of the state’s Medicaid program, alleges the drugs Risperdal and Seroquel were marketed to Medicaid patients for uses that were not approved by the FDA. The suit alleges that AstraZeneca and two Johnson & Johnson subsidiaries—Janssen Ortho and Ortho-McNeil-Janssen Pharmaceuticals—failed to warn the state, physicians and consumers that use of the drugs was associated with the development of diabetes and related conditions.

Risperdal (made by Janssen Ortho and Ortho-McNeil-Janssen Pharmaceuticals) and Seroquel (made by AstraZeneca) were approved only for schizophrenia and bipolar disorders in adults. But the companies, the suit alleges, engaged in “false and misleading marketing, advertising and sales campaigns to promote these drugs for indications that are not approved by the FDA.” It’s alleged further that the companies actively marketed the drugs for the treatment of various conditions in children, who had not been diagnosed with either schizophrenia or bipolar disorder; elderly patients with dementia; and both minors and adults for “broad, vague symptoms encompassing a myriad of mental afflictions such as anxiety and depression.” It should be noted that Utah opted out of the so-called global Seroquel settlement made by the drug manufacturers with other states.

**IV. PURELY POLITICAL NEWS & VIEWS**

**A Preview Of The June 1st Primary**

Many political observers say this election year has been one of the most interesting in years and as I reflect on what
has happened so far, they might be right. Certainly, there have been some rather strange happenings such as the knock-down, drag-out fight between Bradley Byrne and Tim James. Even the Democratic primary battle between Artur Davis and Ron Sparks got pretty lively on occasion. It took a long time for most folks to really get interested in the various races and candidates, but it now appears folks are finally engaged and are finally talking politics. Alabamians will be going to the polls on June 1st and will vote in the two primaries. Without trying to influence anybody’s vote at this late stage, I am going to make some predictions on a few of the statewide races.

**The Governor’s Race**

In the Governor’s race, based on some late polling, it appears Artur Davis will defeat Ron Sparks in the Democratic primary. That race has had some very interesting twists and turns along the way, but Artur will prevail if the polls are accurate. For a long time, the biggest news in this race was Ron’s shaving his mustache and changing his hair-do. But the tone of the race changed pretty quickly after that took place. The primary winner will face the Republican nominee in the fall. When you consider this prediction, even though my assessment is primarily based on poll results, remember that I am serving as Artur’s state campaign chairman.

Since there are a number of strong candidates for governor in the GOP primary, a run-off is virtually guaranteed. Based on polling, and what I have been hearing from folks around the state, I believe Tim James and Judge Roy Moore will survive the primary and will face each other in a run-off in July. But I also believe that if Rep. Robert Bentley had been able to raise more money so he could have gotten his positive message to the voters, he would have made the run-off. In fact, I wouldn’t be too awfully surprised if the Tuscaloosa doctor actually makes the run-off or maybe runs third.

The real shocker in the GOP primary, however, has to be how Bradley Byrne was taken off message by Tim James and Paul Hubbert. Bradley’s campaign seemed to fall apart in late April and I don’t believe he has recovered sufficiently to make the run-off. In fact, he could slip to fourth place behind Rep. Bentley. Finally, regardless of how he finishes, each vote Judge Moore receives will cost him substantially less than those received by all of the other candidates in the race.

**The Lt. Governor’s Race**

I see a fairly close race in the Lt. Governor’s race between Kay Ivey and Senator Hank Erwin in the GOP primary, with Kay prevailing. Since that race never seemed to catch on and attract any real attention, Kay’s name identification should be the deciding factor. I will say one thing though. Kay dropped out of the Governor’s race and slipped down to the race for Lt. Governor, and she never missed a beat. Her getting out of the Governor’s race did one thing for sure—it helped Tim James and Judge Moore—and probably that will affect who makes the run-off. Kay would have pulled votes away from both Tim and the Judge.

**The Race For Attorney General**

I believe Troy King will defeat Luther Strange in the Attorney General’s race. I was rather amused that Luther tried to inject my name into this race when he claimed I had endorsed Troy which was a false charge. As all of our readers know, I made the statement in the last issue that Alabama voters would have to decide between a “prosecutor” and a “lobbyist” and I still believe that will be their choice on June 1st when folks go to the polls. From all accounts Luther has been backed heavily by the oil and drug industries, each of whom were mighty unhappy with Troy’s filing suits on behalf of Alabama taxpayers.

Frankly, I just don’t believe Alabama voters will elect a Washington lobbyist who is closely tied to the oil industry as Attorney General. But I can certainly understand why the oil and drug industries don’t want Troy back in office. That’s not hard to figure out—Troy had the courage to take on these politically powerful corporations in a court of law. I can also understand why the powerful oil companies badly want Big Luther, with his big oil ties, to replace Troy because of the disaster in the Gulf of Mexico.

It’s very obvious that the three Democratic candidates for Attorney General have had difficulty raising campaign funds. James Anderson had some unusual—but very good—television ads and those may have pushed him into the lead. Frankly, I have no clue which of the other two candidates—Michele Nicrosini and Giles Perkins—will make the run-off. This is a race in which all of the candidates are very good ones and that’s most unusual in any race. I have known James Anderson since he was a star basketball player at Huntingdon College and we have been very good friends over the years. I believe he would make a very good Attorney General. If I weren’t Artur Davis’ campaign chairman, I would actually support James’ candidacy and that’s no reflection on the other candidates. I just know him better and have a great deal of respect for him. By the way, James is a “defense lawyer” for what it’s worth.

**Lilly Ledbetter Endorses Artur Davis For Governor**

Gadsden’s Lilly Ledbetter, the nationally known advocate for equal pay for women, endorsed U.S. Rep. Artur Davis for Governor. She accompanied Artur around the state and let folks know she supported him. Artur is on record for closing the pay gap between men and women. Artur has proposed that companies that offer gender equality in pay be rewarded. It would include creating a state income tax credit. The credit, aimed at middle and lower income Alabamians, would help pay for childcare. Artur had this to say:

*A man in this state with a college degree makes approximately $20,000 a year more than a woman and we’ve acted as if it just has to be that way. We need to do something about it. We need a Governor who is on the side of our daughters and granddaughters.*
As you will recall, Ms. Ledbetter, a manager at the Goodyear Tire and Rubber Plant, sued the company after discovering she was being paid significantly less than males in similar positions with similar experience. Her lawsuit gained national attention and resulted in Congress passing the Lilly Ledbetter Fair Pay Act of 2009. Artur was the only member of the Alabama Congressional Delegation to vote for the bill.

Source: Birmingham News

CONSTITUTION REWRITE LEADERS ENDORSE ARTUR DAVIS

The leaders of Alabama Citizens for Constitutional Reform have endorsed Artur Davis for Governor. The chair, Birmingham lawyer Lenora Pate, endorsed Artur at the State Capitol and said Artur is the only candidate for Governor who is calling for a constitutional convention. Two other leaders, Lucy Tufts and Karlos Finley, made their endorsements in Mobile. While each of them said they were endorsing as individuals and were not speaking for the group, it’s clear Artur has the support of lots of folks on the reform issue. It’s abundantly clear that the 1901 Constitution protects the rich and powerful to the detriment of ordinary citizens. According to all polls, an overwhelming majority of Alabamians believe constitutional reform is needed and they favor the convention approach. The powerful special interests oppose reform.

Source: Associated Press

GROUPS ENDORSE SPARKS

Ron Sparks received endorsements from several labor groups during the last month of the campaign. He also got the endorsement of both the New South Coalition and the Alabama Democratic Conference. Ron also has the support of AEA and Dr. Paul Hubbert. You would have to believe with all of these endorsements Ron would be leading in the polls, but at press time he was still trailing by a fairly large margin. It will be interesting to see how the race plays out.

Source: Associated Press

REP. BENTLEY RELEASED HIS FINANCIAL RECORDS

In early May, Republican gubernatorial candidate Rep. Robert Bentley released his tax returns, credit history and other financial information. He pledged to lead a new era of transparency and higher ethical standards if elected Governor. The Tuscaloosa doctor said:

As public officials, we should be held to a higher standard and be willing to be more open with our lives than the average citizen. I have decided to lead by example.

Rep. Bentley said he would push for all spending by lobbyists on public officials to be reported online. Now, lobbyists can spend up to $250 a day on a Legislator without having to report it. Rep. Bentley believes candidates “need to place online the amount that anyone spends on public officials.” I totally agree with Rep. Bentley on this point. Maybe one of these days, the election laws will require all candidates to follow Rep. Bentley’s lead.

Source: Birmingham News

ERIC JOHNSTON IS AN INTERESTING CANDIDATE FOR ALABAMA SUPREME COURT

A few weeks ago a coalition of business and agricultural groups, which calls itself the Alabama Civil Justice Reform Committee, endorsed Eric Johnston of Birmingham for Place 3 on the Alabama Supreme Court. Eric faces incumbent Tom Parker and Elmore County Assistant District Attorney James Houts in the Republican primary. Committee Chairman Tom Dart called Eric a strong conservative. Most observers felt this was a rather interesting comment, especially since Tom Parker has been a real Republican, who is as conservative as they come. Tom has the credentials to back that assessment. Since I have known Eric mostly as a lobbyist, I really had forgotten that he was a lawyer. In fact, I have donated financially to his lobby group for a good while and that had nothing to do with his being a lawyer. Based on polling numbers, I believe the outcome of the race between Tom and Eric will depend largely on whom the Tea Party groups like best of the two and at this point that person clearly appears to be Tom Parker.

V. RECENT SETTLEMENTS BY FIRM

THREE EXPLORER ROLLOVER SETTLEMENTS

Our firm has settled three separate lawsuits against Ford Motor Company, each involving rollovers of Ford SUVs. In each case an occupant of an SUV died when they were either totally or partially ejected from their vehicle. The cases involved a 1997 Ford Explorer, a 1999 Ford Explorer and a 1999 Mercury Mountaineer which is the sister vehicle to the Explorer.

In each case, there were defects associated with the vehicles’ roof structure, which allowed excessive collapse of the roof into the occupant compartment during a foreseeable rollover event. Each occupant was properly belted and found with the belt around their body or parts of their body following the wreck.

Our design experts determined that the roof structure for the Explorer was inadequate to provide occupant protection in a rollover event. They also determined that there was a defect in the seat belt system of the Explorer. The experts found that in a rollover event the Explorer seat belt system could intermittently unlock allowing slack to be introduced into the belt system. It was also determined that when excessive crush occurred, the B-pillar would be forced inward, inducing additional slack into the belt system since the belt D-ring was mounted on the B-pillar. According to our experts, Ford should have developed an appropriate occupant restraint system that worked within a vehicle that was known to have a weak roof and propensity to rollover.

In one case, the driver was able to get her head more than 12 inches above the roof rail because the seat belt failed to properly restrain her and the roof collapsed around her. In another case, the...
driver was ejected out the rear passenger door window but his ankles were caught in the seat belt system. He was found hanging out of the driver side rear window. In the third case, the occupant was allowed to be partially ejected and her lower torso crushed under the weight of the vehicle.

In each case, the occupants were properly belted, but received fatal injuries due to roof crush and excessive belt system slack. In one case, Ford’s representative agreed that the Explorer seat belt system was designed primarily for frontal collisions and not rollover events. In one of the cases, an Alabama State Trooper testified that he saw more repeat rollover wrecks involving the Ford Explorer. The Trooper also testified that in teaching public safety courses to the public he often advised parents not to purchase the Ford Explorer for their children due to its propensity to rollover and be involved in fatal wrecks. Each of the cases were settled with the amounts of the settlements being totally confidential.

Greg Allen, Cole Portis, Ben Baker and Rick Morrison, all of whom are lawyers in our firm, worked on these cases. They did a very good job for their clients in the three cases. If you want more information on the cases or on the Explorer problems, contact Ben Baker at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

Alabama’s method of choosing judges is just as troubling in off-election years as it is during the years featuring political campaigns. But the election years do have a way of bringing the problem home. Simply put, those who aspire to be the impartial referees in our system of justice are put in a position where they must align with a political party and try to drum up support (and money) from people who appear in their courts. That’s like making football referees pick a team and shake down the players before heading out to call the game.

Alabama would never stand for such a system with regard to our favorite sport. Why do we stand for it in our courts? As it turns out, we might not if we were given the alternatives, according to a recent survey by the Alabama Education Association’s respected polling operation. The Capital Survey Research Center in Montgomery found, for starters, that many Alabamians aren’t even aware our system of choosing judges is screwy. Almost 63% of those polled didn’t know Alabama is one of only 12 states that elect judges by political party. More than 67% didn’t know our Supreme Court elections have been among the nation’s most expensive or that campaign contributions to those candidates are unlimited.

When given a chance to consider possible alternatives, just less than 17% said they would keep electing statewide judges by political party. Close to 15% would keep partisan elections but elect statewide judges by congressional district. But: Close to 35% said they would support having judges appointed based on merit. And almost 23% would at least move to nonpartisan election for judges. The rest either didn’t know or didn’t answer. The poll involved 874 likely voters, and it ran in February, March and April. If the questions were asked during the heat of a judicial race—at least if it were a race like some of the nasty ones we’ve endured in years past—the alternatives might draw even more support.

This editorial page’s position is that nonpartisan judicial elections would be better than partisan ones, but would not really solve the problem. Truth be told, businesses and plaintiff lawyers don’t care whether judicial candidates have a “D” or an “R” by their names. They’d still pump money into nonpartisan races just like they do the partisan ones. The better answer is to have judges appointed based on merit and then appear on ballots later to give voters a chance to retain them, or not. Would there still be politics involved? Of course. But it wouldn’t be the kind of corrosive judicial campaigns Alabama experiences today.

We’re hoping this year’s court races will be less shameful than some in years past. But the current system of elections provides an incentive for the candidates and their campaigns to act in ways unbecoming impartial referees for our courts. The spectacle of our judicial elections is often an embarrassment to some of the state’s fine judges, and it fuels public mistrust of the courts. For obvious reasons, Alabamians believe there is a connection between judicial rulings and judges’ campaigns. The good news is, there are better ways to select judges. The better news is, many Alabama voters recognize them.

Birmingham News Editorial Board
May 12, 2010

The only way that non-partisan judicial elections will ever take place in Alabama is for a Governor to make it a top priority, and that will happen if ordinary folks will let the person who sits in that powerful office know how they feel on this issue. That opportunity will be available in 2011 when a new Governor is sworn in. It might be good to find out how the candidates for Governor feel about this
issue before voting in the general election.

**U.S. Supreme Court Rejects Class Arbitration In Stolt-Nielsen Case**

The U.S. Supreme Court ruled in favor of Petitioners, including Stolt-Nielsen SA, last month in a closely-watched antitrust case. The case dealt with an important issue involving arbitration. Many observers believe this ruling could have broad effects on arbitration, but I’m not too sure about its actual impact on consumers. The Justices ruled that imposing class arbitration on parties that hadn’t agreed to class arbitration conflicts with the Federal Arbitration Act. The sole issue was whether class members, who had not consented to be bound by arbitration, were bound by an arbitration clause in a contract.

In a 5-3 decision delivered by Justice Samuel Alito, the High Court reversed a panel decision by the U.S. Court of Appeals for the Second Circuit, which had agreed with a ruling by the arbitrators who were involved. This was a case involving two businesses as parties. Since the case didn’t involve a consumer dispute, it will be interesting to see how the Justices will deal with consumers if the same fact situation comes to the High Court. If the ruling in a dispute between a consumer and a business goes off on whether the consumer actually agreed to be bound by arbitration, the arbitration request would go out the window I would think.

Source: Law360

**Unconscionable Mandatory Arbitration Clauses Challenged**

The U.S. Supreme Court heard arguments recently in what has been referred to as a watershed arbitration case that poses significant questions about the scope and meaning of the Federal Arbitration Act, the relationship between courts and arbitration, and the basic ability of consumers and employees to gain access to courts. The issue before the Justices in Rent-A-Center v. Jackson was whether an arbitration agreement that specifies that any challenge to the validity or enforceability of the arbitration agreement must be decided by an arbitrator requires a court, when faced with an unconscionability challenge to the arbitration agreement itself, to enforce the agreement and send the parties to arbitration for resolution of that unconscionability challenge. We will wait to see how the justices rule before saying too much about this case.

Source: Public Justice

**VII. The National Scene**

**How We Got Into This Tragic Mess In the Gulf**

For eight years, George Bush’s presidency infected the oil industry’s oversight agency, the Minerals Management Service (MMS), with a septic culture of corruption from which it has yet to recover. Persons in the White House with close ties to the oil industry encouraged agency personnel to engineer weakened safeguards that directly contributed to the Gulf catastrophe.

The absence of an acoustical regulator—a remotely triggered dead man’s switch that might have closed off BP’s gushing pipe at its sea floor wellhead when the manual switch failed—was directly attributable to industry pandering by the Bush White House. Acoustic switches are required by law for all offshore rigs off Brazil and in Norway’s North Sea operations. In fact, BP uses the device voluntarily in Britain’s North Sea and elsewhere in the world as do other major players like Holland’s Shell and France’s Total. In 2000, the Minerals Management Service, while weighing a comprehensive rulemaking for drilling safety, deemed the acoustic mechanism “essential” and proposed to mandate the mechanism on all Gulf rigs.

Between January and March of 2001, it was reported that incoming Vice President Dick Cheney conducted secret meetings with over 100 oil industry officials allowing them to draft a wish list of industry demands to be implemented by the administration. Cheney also used that time to re-staff the MMS with persons from the oil industry. In 2003, the newly-reconstituted MMS recommended the removal of the proposed requirement for acoustic switches. The agency’s 2003 study concluded that “acoustic systems are not recommended because they tend to be very costly.”

As we mentioned in another section of this issue, the acoustic trigger costs about $500,000. Estimated costs of the oil spill to Gulf Coast residents have already been projected to exceed $20 billion. President Bush’s 2005 energy bill officially dropped the requirement for the acoustic switch off devices, explaining that the industry’s existing practices are “failsafe.”

Clearly, MMS has failed to do its job and folks in the Gulf Coast states are paying a heavy price for that agency’s sorry performance. A 2009 investigation of the Minerals Management Service found that agency officials “frequently consumed alcohol at industry functions, had used cocaine and marijuana, and had sexual relationships with oil and gas company representatives.” Three reports by the Inspector General describe an open bazaar of payoffs, bribes and kickbacks spiced with scenes of female employees providing sexual favors to industry big wigs who in turn rewarded government workers with illegal contracts.

Industry lobbyists underwrote lavish parties and showered agency employees with illegal gifts, and lucrative personal contracts and treated them to regular golf, ski, and paintball outings, trips to rock concerts and professional sports events. The Inspector General characterized this orgy of wheeling and dealing as “a culture of ethical failure” that cost taxpayers millions in royalty fees and produced reams of bad science to justify unregulated deep water drilling in the Gulf.

The Inspector General reported with some astonishment that officials at MMS, when confronted with the laundry list of bribery, public theft and sexual and financial favors to and from industry, “showed no remorse.” BP failed to install a deep hole shut off valve—another fail-safe that might have averted the spill. It’s being
reported that BP’s willingness to violate the law by drilling to depths of 22,000-25,000 feet, instead of the 18,000 feet maximum depth allowed by its permit, may have contributed to this catastrophe.

Nobody familiar with Washington politics should have been surprised to learn that Halliburton is one of the primary villains in this disaster. Halliburton had a lucrative contract that gives it legal exposure for what happened on April 20th. The blowout occurred shortly after Halliburton completed an operation to reinforce drilling hole casing with concrete slurry. This is a sensitive process that, according to government experts, can trigger catastrophic blowouts if not performed correctly. According to MMS, 18 of 39 blowouts in the Gulf of Mexico since 1996 were attributed to poor workmanship injecting cement around the metal pipe. It should be noted that Halliburton is currently under investigation by the Australian government for a massive blowout in the Timor Sea in 2005 caused by its faulty application of concrete casing.

The Obama Administration has assigned nearly 2,000 federal personnel from the Coast Guard, the Corps of Engineers, the Department of Defense, the Department of Commerce, EPA, NOAA and Department of Interior to deal with the massive spill—an impressive response. Still, the current White House is not totally without fault. The government should, for example, be requiring a far greater deployment of absorbent booms. But the real culprit in this villainy is a negligent industry and poor oversight by an agency corrupted by eight years of grotesque subservience to Big Oil.

AFTER 21 YEARS—EXXON VALDEZ SCARS ARE STILL SLOWLY HEALING

Many Americans have pretty much forgotten about the oil spill that occurred in Alaska 21 years ago. The spill began at 12:04 a.m. on March 24, 1989 when the Exxon Valdez ran aground on Bligh Reef. Over the course of 56 days, the leaking oil spread, damaging 1,300 miles of shoreline. Ten thousand people helped clean it up. It took more than four summers and cost Exxon $2.1 billion. Twenty-one years later, things look pretty normal along the shoreline. But, things are far from normal. The fishing industry in the area is still hurting. Not even the stunning beauty of Alaska’s Prince William Sound can hide the deep and lasting scar just beneath the surface.

While herring populations are still devastated, other species such as salmon and bald eagles have recovered. On the shoreline, all you have to do is move a couple of rocks and you strike oil—Exxon Valdez oil—21 years later. In fact, over 21,000 gallons of oil are left from the spill. It’s naturally decreasing at a rate of zero to 4% per year. At that rate, it will take decades—or perhaps even centuries—before it’s all gone. According to experts, the oil is still a threat some two decades later.

Along with the oil, bitterness remains. A jury awarded fishermen and other residents along the sound $5 billion, but Exxon appealed and only had to pay $507 million. The community has paid a heavy price and Exxon could care less. It’s said by local residents that their lives have been ruined forever.

AN UPDATE ON LOBBYIST SPENDING IN WASHINGTON

Until Congress reins in the special interest lobbyists our national government will never function as it should. For years, lobbyists have called the shots in Congress and in many regulatory agencies. Special interests spent $916 million to influence legislation and government policy during the first three months of 2010, according to new lobbying reports. The spending comes as President Obama and Congress pursue a legislative agenda that will affect in a good way virtually all parts of the U.S. economy—from bills on health care and energy to badly-needed regulations for banks and Wall Street firms. In years past, federal regulation of the oil, drug, auto, and insurance industries has been very weak and ineffective. The lobbyists for those powerful special interests have seen to that. Now these lobbyists are fighting hard to maintain the status quo. The lobbying expenses for the first quarter exceeded the $848.1 million spent during the same period in 2009, according to the non-partisan CQ MoneyLine. Lobbyists spent an average $305 million a month from January to March to influence policy this year—more than double the monthly rate of spending a decade ago—and that’s a huge amount.

The top spenders were from the healthcare industry. Other top-spending sectors, such as finance, also face dramatic new regulation of their industries if legislation now being considered by Congress becomes law. Energy and natural resource interests, bracing for Senate action on a comprehensive energy and climate change bill, spent $125.5 million during the first quarter—or nearly a 30% jump over what the industry spent on lobbying during the same period last year. The legislation is aimed at slowing global warming by reducing emissions of greenhouse gases.

There were a number of lobbying clients, all of whom spent big bucks from 1998 to the present. I will set out a few of them with the amounts spent.

- US Chamber of Commerce $637,655,680
- American Medical Association $227,202,500
- General Electric $204,700,000
- Pharmaceutical Research & Manufacturers of America $180,413,920
- American Hospital Association $178,953,431
- AT&T Inc $152,130,528
- Northrop Grumman $147,135,253
- Blue Cross/Blue Shield $142,751,298
- National Association of Realtors $142,737,380
- Exxon Mobil $142,276,942
- Edison Electric Institute $138,165,999
- Verizon Communications $137,189,841
- Business Roundtable $136,370,000
- Lockheed Martin $125,985,553
- Boeing Co $125,638,310
- General Motors $108,259,170
- Pfizer Inc $ 97,077,268

When you look over this list, you might ask yourself a simple question: “How many of these companies and groups have been looking out for my interest?” While I know the answer, I suspect most of you will, too. Ordinary citizens have very few lobbyists in Washington who work to protect them. Fortu-
nately, there are a few such as Public Citizen and the AARP, but more are needed if the current system is ever to be changed. The real need is to control spending by the lobbyists and passage of meaningful campaign finance reform.

Source: USA Today and Center for Responsive Politics

VIII. THE CORPORATE WORLD

THE PUBLIC IS WAKING UP TO CORPORATE WRONGDOING

When one considers all of the wrongdoing and corruption that’s been uncovered involving many in Corporate America over the past few years, it’s evident that the federal and state governments haven’t done a very good job of regulation. In fact, it’s very clear that the regulatory agencies have in many areas failed miserably to carry out their duties and responsibilities. The drug, financial and oil industries are prime examples of those which have been poorly regulated and we have seen the consequences. In fact, the disaster on the Gulf Coast is the clearest example of what can happen when the “tail wags the dog” when it comes to governmental regulation of an industry. Hopefully, ordinary citizens are finally realizing they must get involved in the political process and support real reform candidates who are not owned or rented by the powerful special interests.

A LOOK AT OUR ECONOMY AND HOW WE GOT INTO TROUBLE

Things have really changed in this country since 1948 when Harry Truman was President. That year, 56% of profits in the U.S. economy came as a result of manufacturing. And, at that time, 8.3% of profits came from the financial sector. Now let’s fast forward to 2007—the year the financial collapse of our economy began—and see how things have changed. In 2007, manufacturing produced 10% of profits, while the financial sector produced 26% of profits. I have never understood how our political leaders could sit back and allow our nation to lose manufacturing jobs in mass to foreign countries.

As we have mentioned in previous issues, there has been lots of speculation on the probable causes for the collapse of our economic system. I will mention one of the theories here. Prior to 2007, few of us had any idea what Credit Default Swaps—the complex financial instruments that pushed the global economy to the edge of depression—actually were. Credit Default Swaps (CDS) weren’t even around before the early 1990s. CDSs ballooned in the 2000s and there was a reason. These CDSs took off after a 250-page amendment—written by Wall Street lawyers and sponsored by none other than Senator Phil Gramm—was quietly tacked onto an appropriations bill as Congress was adjourning for Christmas in 2000. One provision in the amendment exempted CDSs from regulation and while that in itself was a bad thing, it went virtually unnoticed. I suspect the timing of this event was more than just a random coincidence.

In the 1980s, mortgage lenders began bundling and selling mortgages. Buyers of those securitized mortgages bought Credit Default Swaps as insurance policies in the event the bundled mortgages were to default. Because the insurance swaps were unregulated, there was no way of knowing whether the insurer could pay off in the event of default. There was one thing that was certain, however, and that was a good number of bundled mortgages were sub-prime loans.

There is a term labeled “Naked Default Swaps,” in which a party who doesn’t own a security buys a policy on it, betting on it, either to fail or succeed. The bet was that either the security would be okay or would not be okay. Then Wall Street would come in and sell them what amounted to an insurance policy of sorts made on that bet. If that sounds weird and complicated, I can tell you it is.

When the nation’s financial system collapsed in 2008, an estimated $62.2 trillion in CDS value was hanging out there—a figure equivalent to the gross domestic product of the entire world in 2008. Because CDSs are unregulated, there was no way of knowing what capital reserves backed them. An estimated 80% of that $62.2 trillion was in “naked swaps,” directional bets in which the parties own no interest in the securities they were insuring. And 80% of all Credit Default Swaps were traded by the nation’s five biggest investment banks—their losses backed by the FDIC and the U.S. Treasury. If anybody believes that there is no need for stronger regulation of our financial institutions, the above information should change their mind. There is no telling how much fraud has been committed, and the lack of regulation made it extremely easy.

You will recall that in mid-April, the SEC charged investment banker Goldman-Sachs with using credit default swaps to defraud its clients of $1 billion. It was alleged that Goldman bundled mortgages that were calculated to lose value, sold them to clients, and then purchased credit default swaps on the securitized mortgages. When the value of the “synthetic collateralized debt obligation” packages that Goldman sold their clients went in the tank, Goldman cashed in on the swaps, collecting billions of dollars. It was reported that Goldman Sachs used a separate entity (Abacus 2007-AC1). If this sounds familiar, you might remember the Enron story to sell the investment packages the SEC alleges were designed to fail.

According to an article in the New York Times, reporting on Goldman’s dealings, seven of the Abacus deals were insured by Credit Default Swaps purchased from AIG. You will recall that the federal government bailed AIG out with an initial $180 billion in TARP funding.

Source: New York Times

FBI PROBES MASSEY ENERGY

The FBI is interviewing current and former employees of Massey Energy Co. in a criminal probe of the West Virginia mine explosion that killed 29 men. According to media reports, the FBI has been looking for any evidence that the company engaged in criminal negligence. National Public Radio has

www.BeasleyAllen.com
reported that the Mine Safety and Health Administration is also under investigation. The FBI is examining possible bribery of officials at the agency that oversees the mining industry and possible criminal negligence on the part of Massey, according to the NPR report. A Massey spokesman said Massey Energy was aware that investigators were interviewing witnesses, but said the company didn’t know the nature of the investigation.

Prompted by the separate mine accident in Kentucky, President Obama says his administration is taking steps to demand accountability for safety violations and to “strengthen mine safety so that all of our miners are protected.” The FBI probe of the accident at the Upper Big Branch coal mine followed strong statements two weeks ago in which the President criticized the company. On April 15th, President Obama asked the Secretary of Labor to work with the Justice Department “to ensure that every tool in the federal government is available in this investigation.” The President observed at the time:

**Safety violators like Massey have still been able to find ways to put their bottom line before the safety of their workers—filing endless appeals instead of paying fines and fixing safety problems.**

Massey Energy called the President’s remarks “regrettable” and said that “unfortunately, some are rushing to judgment for political gain or to avoid blame.” This company has a terrible safety record and the President’s remarks were on target in my opinion.

Source: Associated Press

**RELATIVES OF MINE BLAST VICTIMS SHOULD BE FULLY COMPENSATED**

Massey Energy has said it will provide financial packages providing health care and other benefits for the families of 29 miners who were killed in the April 5th explosion at Massey’s Upper Big Branch mine in West Virginia. According to Massey officials, the company will cover health care and college expenses for the miners’ children, and provide increased life insurance payouts. While this sounds good, and it will help families in a limited manner, it’s clearly not enough. Massey’s history, combined with the events leading up to this accident, require much more and the company’s proposal is clearly inadequate. Not only should the families be adequately compensated, but this company should be severely punished for its disregard for employee safety. The announcement came a day after a memorial to those killed and injured in the explosion.

Source: Associated Press

**Home Depot Ordered To Pay Millions To An Inventor**

Home Depot may wish they had never heard of Michael Powell. This inventor’s lawsuit, brought against the hardware giant for stealing his invention that keeps store employees safe, is really making the news. A federal judge ruled last month that Powell crafted a simple, yet ingenious, way to keep Home Depot employees from slicing off their fingers while they’re cutting wood for customers. U.S. District Judge Daniel Hurley, in his ruling, had this to say about Home Depot’s conduct:

*Home Depot knew exactly what it was doing. They simply pushed Mr. Powell away and they did it totally and completely for their own economic benefit.*

Calling the company callous and arrogant, Judge Hurley ordered Home Depot to pay Powell $3 million in punitive damages. This came in the second phase of Powell’s case. A jury, in March, said the company should pay him $15 million for stealing his “Safe Hands” gadget that is now affixed to radial saws at nearly 2,000 Home Depots nationwide.

Judge Hurley also ordered Home Depot to pay Powell’s lawyers $2.8 million, and to pay Powell an estimated $1 million in interest annually on the judgment. The interest began building up in 2006 and will continue accruing until Home Depot pays up. I understand the $25 million judgment could have been avoided had the company agreed in 2004 to pay Powell the $2,000 he offered to charge for each device. That would have come to $4 million. Instead, Judge Hurley said, the firm dispatched workers to duplicate the saw guards Powell allowed them to test in eight stores in Georgia and California. “It’s sad to say, but Home Depot literally organized a theft of the Powell invention,” he said.

Source: Palm Beach Post

**IX. CONGRESSIONAL UPDATE**

**Auto Safety Overhaul Legislation Introduced In The House**

A major overhaul of how the federal government regulates automobile safety is long overdue. There is currently a movement in Washington to conduct such an overhaul. Rep. Henry Waxman (D-CA) is the author of a bill in the House that would make significant changes in the safety standards and the authority of the National Highway Traffic Safety Administration to enforce them. This legislation is needed now more than ever.

In handling product liability litigation, lawyers in our firm are routinely faced with arguments from automobile manufacturers saying that their vehicles are “reasonably safe” just because the designs comply with the NHTSA standards. There are numerous problems with this argument. First and foremost, many of the standards are grossly outdated. Some of the standards were established 30-40 years ago. Due to advances in technology and materials, the standards are weak and fail to address many of the “new” problems created by the rapid changes in the design of automobiles and their components. Prime examples are the safety regulations relating to vehicle tires.

While some recent upgrades to the standards have been made, many of the current criteria were put into place when the vast majority of tires on the roads were bias-ply tires. Today, virtually all tires on the roads are steel belted radials. Another issue involves SUVs. The
standards that apply to SUVs were adopted at a time when these popular vehicles were barely in existence. As a result the standards are grossly inadequate from a safety perspective.

Rep. Waxman’s legislation would mandate that all vehicles be equipped with black boxes that would provide basic vehicle diagnostic data. The legislation would also mandate that manufacturers install brake override systems—a measure that would directly address the sudden acceleration problem we are seeing in Toyotas and other vehicles. Toyota recently agreed to pay $16.4 million for delaying by at least four months a recall of 2.3 million vehicles over sticky pedal concerns. If the Waxman bill had been law, NHTSA could have imposed a $69 billion penalty. Most importantly, the bill would grant the regulatory agency power to order the immediate cessation of sales and production of vehicles that pose an “imminent danger” to the public.

Rep. Waxman, who has long been a champion of consumer rights, said the bill was aimed at restoring “the faith of the driving public.” A group of House Republicans, who are ignoring reality, are opposing the bill, calling it “overkill.” This legislation is badly needed, and if it were to result in the avoidance of another Toyota-type safety crisis, the efforts made to pass the reform measure would be well worth it.

**More on the Motor Vehicle Safety Act of 2010**

Senators introduced their version of broad automobile safety legislation in early May that would set new standards for stopping distance, push-button ignition systems, data recorders and electronic controls. It comes a week after House lawmakers unveiled their own auto safety measure as mentioned above.

This will be Congress’s first serious look at auto safety in a decade, when lawmakers passed reforms after accidents involving Firestone tires on the Ford Explorer. Senator John D. Rockefeller IV, Democrat of West Virginia, who is chairman of the Senate Committee on Commerce, Science and Transportation, and Senator Mark L. Pryor, Democrat of Arkansas, who heads the Senate subcommittee on consumer protection issues, introduced the Senate measure. Senator Rockefeller, in discussing the legislation, had this to say:

> Recent Toyota recalls showed an urgent need to update safety standards to reflect modern vehicle technology and give auto safety regulators the stronger tools and resources they need to protect the public. We can do better by the American people—and we will with this bill.

Both the House and Senate bills are titled the Motor Vehicle Safety Act of 2010. The Senate bill has provisions similar to the version proposed by Rep. Waxman. The Senate bill would require automakers to be able to stop within a certain distance, even with an open throttle, a priority with safety advocates for many years. One way to meet the standard would be for carmakers to install brake override systems. Interestingly, neither bill requires the systems. The Senate bill does require NHTSA to issue a rule requiring a minimum distance between accelerator and brake pedals and the vehicle floor. It requires a standard governing the safety of electronic vehicle controls. Also, NHTSA would establish standards on keyless ignition systems, which have become more popular in a number of automobiles. The rule would be aimed at standardizing the steps a driver would take to bring a vehicle under control in an emergency.

Automakers would be required under the legislation to install event data recorders, also called “black boxes,” which record information shortly before and after a crash. The provision would require the devices to record at least 60 seconds of data before and 15 seconds after a crash in which the air bag deploys. Many current devices, which are not required, record for a shorter period. The bill would increase the civil penalty on automakers to $25,000 a vehicle, from $5,000, and remove the overall cap on civil penalties for automakers that intentionally fail to report vehicle safety defects or intentionally provide misleading information. The House bill doesn’t contain an amount.

Currently, civil fines are capped at $16.4 million, which was what Toyota agreed to pay recently. In addition, the bill would provide more money for vehicle safety investigations by NHTSA. Senator Rockefeller made this pledge to the America people:

> We are committed to making sure NHTSA finally has the full authority and resources it needs to save lives and prevent injuries.

That’s great news for consumers! Now I just hope members of the House and Senate will do two things: be able to resist the powerful lobbyists, and pass a good bill.

Source: New York Times

**X. TOYOTA LITIGATION**

**TOYOTA NOW FACES HUNDREDS OF STATE AND FEDERAL LAWSUITS**

According to a recent report, Toyota Motor Corp. faces more than 320 lawsuits in federal and state courts related to its sudden acceleration problems. This report was filed on May 1st with U.S. District Judge James Selna. Lawyers for the Plaintiffs and Toyota listed 228 federal cases and 99 related cases in state courts. As reported last month, a judicial panel consolidated the federal cases in April before Judge Selna. Judge Selna’s court is in Orange County, California, near Los Angeles, and is close to Toyota’s U.S. headquarters.

It has been estimated that if Toyota were to settle the cases for even a modest payout to affected motorists, it could cost the company at least $3 billion and possibly much more. In comparison, drug maker Merck & Co. paid more than $4.8 billion into a settlement fund for tens of thousands of claims from folks who used its withdrawn painkiller Vioxx. That was a case in which our firm was one of the lead law firms that participated in the negotiation of the settle-
ment. That was a monumental undertaking and ended with a great result. Toyota already has paid a record $16.4 million fine to the National Highway Traffic Safety Administration, which at the time linked 52 deaths to acceleration problems.

The lawsuits started to be filed last fall as Toyota initiated the first of a series of recalls eventually involving about 8 million vehicles—including about 6 million in the U.S.—over acceleration problems in several models and brake issues with the popular Prius hybrid. Toyota claimed that the acceleration problems were caused by faulty floor mats and sticky accelerator pedals. But our lawyers believe there is a defect with Toyota’s electronic throttle control system. Toyota denies that.

Source: Associated Press

MORE BAD NEWS FOR TOYOTA

There has been more bad news for Toyota. It’s being reported that the automaker waited nearly a year to issue a U.S. recall in 2005 over defective steering rods in trucks and SUVs. This delay occurred even though there was a similar recall in Japan. There were also dozens of reports from American motorists about rods that snapped without warning. The gap between the Japanese and U.S. recalls has triggered a new review by NHTSA, which could fine the automaker up to $16.4 million. As we have previously reported, NHTSA has already leveled a $16.4 million fine against Toyota because of other safety violations. The latest news on how Toyota handles safety issues and recalls was uncovered by an Associated Press investigation.

The AP’s findings are interesting because Toyota has been accused of ignoring foreign recalls and consumer complaints in delaying a recall for the unintended acceleration problems. The result was the huge safety scandal—and numerous recalls—since the crash death of a California highway patrolman and his family last summer brought the issue to the public’s attention. Thus far, NHTSA has linked 16 crashes, three deaths and seven injuries to the steering defect. Toyota claimed initially after the 2004 Japanese recall that it had little evidence of a U.S. problem. But the AP investigation has found that the automaker had received at least 52 reports from U.S. drivers. It would appear that a media outlet is having to do a job that is the responsibility of NHTSA.

Source: USA Today and Associated Press

TOYOTA PLAYS HARD BALL AND IS DECEITFUL

NHTSA released some documents last month that are extremely damaging to Toyota’s claims that it has never hidden anything from the federal government concerning its safety issues. Letters sent by Toyota to NHTSA in 2004 and 2005 were made public. These letters raised questions from both federal investigators and victims’ lawyers about whether the company was hiding safety defects and misleading regulators.

NHTSA opened an investigation into whether Toyota gave the agency timely notification of steering problems with nearly 1 million 4Runner SUVs, T100 pickups and Toyota trucks before starting a September 2005 recall in the U.S. Toyota had received 41 complaints from U.S. customers about fatigue cracks in the steering relay rods before October 2004. That’s the month the company began its Japan recall of comparable Hilux and Hilux Surf vehicles for similar reasons. It’s evident that Toyota knew of several dozen U.S. complaints at least 10½ months before beginning a U.S. recall. Automakers are required by law to notify NHTSA within five business days of safety defects. Here is what Toyota (TMC) told NHTSA in its 2004-05 letters:

• Oct. 26, 2004: “Reason the affected vehicles sold in the U.S. are not involved in this recall: TMC has received field information from the Japanese market, but no similar information from the U.S. market has been received.”

• Sept. 6, 2005: “End of October 2004: TMC conducted a safety campaign for the steering relay rod on certain Toyota Hilux and Hilux Surf vehicles in Japan. TMC considered that problem was the result of the unique operating condition in Japan, i.e. frequent standing full lock turns, such as for narrow parking spaces and close-quarter maneuvering. Although TMC did not receive similar information from the U.S., TMC continued monitoring field information and started to recover subject parts from markets other than Japan.”

Both letters were signed by Toyota Motor North America Vice President Chris Tinto, who previously had worked for NHTSA. The Toyota letters were obtained in litigation against the automobile maker and turned over to NHTSA. A lawyer involved in a lawsuit against Toyota made a request to NHTSA, calling for an investigation into “the wide chronological gaps and apparent falsehoods Toyota has provided.” Now NHTSA’s document request to Toyota includes all consumer complaints, field reports, and crash reports before both recalls. No one should be surprised if Mr. Tinto and a number of his subordinates find themselves in front of a Congressional panel again before long. This company has a history of safety issues, and also it now appears to have a history of hiding what it had to know from NHTSA as well as from the public.

Source: Automotive News

TOYOTA HAS PAID THE $16.4 MILLION FINE

Toyota has paid the record $16.4 million fine for a slow response to its accelerator pedal recall. The Japanese automaker paid the fine on May 18th without much fanfare. The company agreed to the fine on April 19th and had 30 days to pay it. The fine is the maximum allowed under law.

Source: Associated Press
XI.
PRODUCT LIABILITY UPDATE

U.S. PROBES POTENTIAL CHRYSLER STICKY PEDAL ISSUE

NHTSA opened an investigation last month to review a potential “sticky accelerator pedal problem” in Chrysler Group LLC’s 2007 model-year Dodge Caliber cars. According to the agency, five consumers reported that the accelerator pedal became stuck and would not return to the idle position when released. CTS Corp., a supplier, made the pedals involved in the Chrysler investigation. Interestingly, this company is also the supplier of pedals involved in Toyota Motor Corp’s January recall of more than 2 million vehicles.

According to Chrysler, its own review found that consumer complaints were limited to about 10,000 Calibers built during a five-week window in March and April 2006. The probe by NHTSA covers some 161,000 Dodge Calibers built for the 2007 model year. Chrysler and NHTSA said they were not aware of any accidents, injuries or property damage related to the issue. Chrysler said in a prepared statement:

It appears to be a supplier manufacturing concern, which is mechanical in nature and not a design or electronic issue.

The automaker also said the vehicle is equipped with a brake override system, which allows the engine controller to reduce power and stop the car when both the brake and the accelerator are depressed. This matter will be watched closely by lawyers in our Product Liability Section.

Source: Reuters

THE 15-PASSENGER VAN IS STILL DANGEROUS

We have written in several issues over the past year or so that one of the most dangerous vehicles on the road in terms of rollover is a vehicle marketed for use by ball teams, scout troops, churches and day care centers. That vehicle is none other than the 15-passenger van. The history of this vehicle is marked by safety hazards that were identified by litigation, NHTSA and the National Transportation Safety Board. There are alternative designs that should have been considered by the manufacturers which would have made the vans safer. But none of the manufacturers saw fit to use them in designing the vans.

Even unloaded and without passengers, the vans are unsafe. But more passengers and more cargo in these vans makes things much worse. Research by NHTSA has shown that 15-passenger vans with ten or more occupants had three times the rollover ratio than did those with fewer than ten occupants. Fifteen-passenger vans with 10–15 occupants had a rollover ratio of 85% compared with the ratio of 28.3% for vans with fewer than five occupants. Because of their inexpensive price compared to school buses, vans became a popular item. Marketing materials have shown that all three manufacturers have marketed the products for use by ball teams, churches and other groups.

My recommendation is to never drive or ride in a 15-passenger van. Neither should you allow a family member to do so. These vehicles should be taken off of the highways for good. If you would like to have more information on the 15-passenger van litigation, contact Chris Glover at 800-898-2054 or by email at Chris.Glover@beasleyallen.com.

SOME NEWS ON THE FEDERAL PREEMPTION FRONT

In 2000, the U.S. Supreme Court decided Geier v. American Honda Motor Co. In that case, Alexis Geier suffered severe head and facial injuries in an accident while driving a 1987 Honda Accord. The Accord was not equipped with a driver’s side airbag. The Geiers’ claimed that had Honda equipped this Accord with a driver’s side airbag, then Alexis’ injury would have been non-existent or reduced. In a 5—4 decision, the U.S. Supreme Court held that the Geiers’ claims were preempted by the National Traffic and Motor Vehicle Act of 1966. In other words, the High Court determined that the Geiers could not attempt to prove their claims because a federal law took precedence over the common law relied upon by the Geiers.

To support its argument, those five Justices determined that NHTSA had permitted manufacturers to choose among several types of passive restraints, including airbags, so that a variety of passive restraints would be included in automobiles on the market. The Supreme Court determined that Honda should not be punished for choosing a passive restraint other than an airbag since NHTSA had permitted Honda to choose another type of passive restraint.

Once again, preemption is an issue potentially pending before the U.S. Supreme Court in a case styled Williamson v. Mazda Motor Company. The Justices asked the Solicitor General, Elena Kagan, to submit a brief on whether preemption issues raised in Williamson should be argued before the Court. In Williamson, a father, mother and daughter were traveling in a 1993 Mazda MPV minivan. The daughter was seated in a middle position seat. The seatbelt available for the middle position seat was a lap-belt-only seatbelt. The Williamsons’ vehicle collided with another vehicle and the daughter sustained fatal injuries. Specifically, the lap belt allowed the young girl’s body to “jack knife” around the lap belt, which resulted in severe abdominal injuries and internal bleeding which led to her death.

The Williamson family claimed that the 1993 Mazda MPV was defective because Mazda should have installed a three-point restraint system for the daughter’s middle seat position. In response, Mazda claimed that FMVSS preempted the Williamsons’ claims against Mazda. The lower court determined that NHTSA permitted car manufacturers the option to either install a lap belt or a three-point restraint system in that seating position. Therefore, since Mazda had an option to install either one, then the common law claims of the Williamsons were preempted.

In its brief before the Court, the Solicitor General stated that the Justices should hear the arguments of the parties.
in Williamson because lower courts, including the Williamson court, are misreading Geier and misinterpreting the preemptive effective of FMVSS. In its brief, the Solicitor General noted that the Safety Act requires the Secretary of Transportation to "prescribe motor vehicle safety standards," which are "minimum standard[s] for motor vehicle or motor vehicle equivalent performance." Additionally, the Safety Act includes a savings clause which provides "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law."

If a court, according to the Solicitor General, gives too broad a reading to the Geier decision then the court is depriving the Safety Act savings clause of its proper effect. In other words, some lower courts are transforming FMVSS from a minimum standard into a definitive standard of care, which is, according to the Solicitor General, in direct contradiction to the Safety Act. A state common law duty of care that sets a higher minimum does not create a conflict with federal law and thus there should be no preemption.

It is clear from reading the brief of the Solicitor General that Mazda should not be permitted to hide behind a preemption defense for its unsafe seatbelt. As the public well knows, a three-point restraint more effectively protects occupants compared to a lap belt only. In 1993, there was a clear preference for three-point restraint systems and other manufacturers were installing three-point restraint systems throughout every seating position in vehicles. Manufacturers must not design down to the minimum safety standards of NHTSA. Rather, manufacturers should be exceeding by large margins the minimum safety standards of FMVSS in order to produce safe vehicles.

Hopefully, the U.S. Supreme Court will accept the Williamson case and limit the application of the preemption argument by car manufacturers. To do so will encourage manufacturers to build safer cars. I agree with the sound reasoning and legal arguments of the Solicitor General of the United States of America (briefs of the Solicitor General can be located at www.justice.gov/osg/briefs). If you need more information on this subject, contact Cole Portis, who heads up our firm's Personal Injury/Products Liability Section, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com.

AN UPDATE ON THE U-HAUL LITIGATION

We have written about the safety problems concerning U-Haul trailers in previous issues. Now, yet another death has occurred, most likely caused by a U-Haul trailer fishtailing and causing the towing vehicle to lose control. While rollovers are the most likely result, the latest U-Haul fatality caused the towing vehicle to cross an Interstate median and collide head-on with an 18 wheeler. The driver was killed instantly. Unfortunately, the driver's son was following her and witnessed the gruesome death of his mother.

We have represented a number of families against U-Haul International. All of the suits involved a U-Haul being towed by a Ford Explorer or a similar sized SUV. The latest case we are investigating involved a Crossover SUV, which are the smallest SUV's manufactured. As discussed previously, even a Ford Explorer or the largest SUV cannot control a fishtailing, loaded trailer. Common sense dictates that if the largest SUV's are not heavy enough to control a swaying, loaded U-Haul trailer, the smallest SUV's certainly lack the adequate weight to control a swaying, loaded U-Haul trailer.

Unless they have changed their policies, U-Haul's competitors only allow customers to pull their trailers if they are driving one of the company moving trucks. U-Haul's reluctance to follow suit will continue to result in accidents leading to property damage, physical injuries and deaths. U-Haul trailers being towed by passenger vehicles pose a threat, not only to those driving the towing vehicle, but also to those driving on the road in close proximity. Our latest case is compounded by the fact that a U-Haul dealer actually connected the trailer to the Crossover SUV.

In summary, U-Haul allows its customers to pull its trailers with lesser weighted towing vehicles. U-Haul fails to warn its customers about the risks involved. And finally, U-Haul will even attach its trailers to these small vehicles giving the customer a false sense of security. As long as these practices continue, U-Haul trailers will continue to cause accidents and deaths on our roads. If you want additional information, please contact Kendall Dunson, who handles these cases for our firm, at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

XII. MASS TORTS UPDATE

STEVENS JOHNSON SYNDROME IS A MAJOR CONCERN

Our firm has handled a number of cases involving Stevens Johnson Syndrome (SJS), which is a life-threatening illness. As you may already know, SJS is usually caused by a severe allergic reaction to a medication. SJS, which is also known as Erythema Multiforme, Léyll's Syndrome, and in its later stages, Toxic Epidermal Necrolysis (TEN), causes large areas of the skin to become detached and lesions to develop in the mucous membranes. Infections caused by the loss of skin or scarring of major organ systems can lead to debilitation or death. Without a doubt, SJS is a most serious problem and one that is largely unknown to lots of folks.

Most of the SJS litigation involves either a failure to warn or an inadequate warning. While pharmaceutical manufacturers are aware of the risks associated with their drugs, warnings are for the most part inadequate. Many over-the-counter (OTC) drugs such as Ibuprofen—found in Advil and Motrin—have been linked to Stevens Johnson Syndrome. Without adequate warnings, patients who develop SJS may continue to take the SJS-causing drug, which could lead to life-threatening TEN. SJS may be caused by almost any medication, including antibiotics, anticonvulsants, sedatives and painkillers. The leading causes of this disease are the following medica-
developing allergic reactions and developing serious health problems like SJS. It’s critically important of 20-40 years, SJS has been diagnosed in cases to occur in adults between the ages children as young as three months old. Anyone who takes prescription or over-the-counter drugs runs the risk of developing allergic reactions and developing serious health problems like SJS.

We have seen first-hand that all too many drug manufacturers put profits far ahead of the well-being of folks who buy their products. Drug companies that operate in this manner must be held accountable for the damage caused to innocent victims. If you need more information on SJS, contact Frank Woodson at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

**Bayer To Add New Warnings To Yaz And Yasmin Labels**

New safety information revealing the increased risk of blood clots in women has been added to the labels of Yaz and Yasmin. Bayer HealthCare Pharmaceuticals announced on March 26th that it will update the Yaz and Yasmin label in the European Union (EU) to include results of four epidemiological studies. Two of the studies, conducted in Denmark and the Netherlands, found that the birth control pills, which contain the hormone drospirenone, are associated with a notable increased risk to women. These risks include venous thromboembolism, more commonly known as a blood clot in a vein, which can lead to a pulmonary embolism or stroke. Bayer, the maker of Yaz and Yasmin, sponsored the other two observational studies. The Bayer-sponsored studies found that the risk of blood clots in Yaz and Yasmin users is comparable to the risk found for women who use birth control pills that contain the same hormone.

The FDA has been negotiating with Bayer to update the labels for Yaz and Yasmin in the United States. The updated label should clearly outline the dangerous association between the birth control pills and the increased risk of blood clots in women. At press time, the suggested change to the labeling information hadn’t been released. However, some researchers suggest that the updated label may not be intended as a warning to doctors and patients, but instead may be more of an attack on medical researchers who have insisted that Yaz and Yasmin may be unsafe.

**Faulty Hip Replacement Systems Spark Complaints**

Faulty medical devices can cause serious problems for persons receiving those devices. Complaints are surfacing about DePuy ASR hip replacement systems. DePuy Orthopaedics, an Indiana-based orthopedics division of Johnson & Johnson, recently announced that it was withdrawing its ASR hip implant from the market after reports about the device failing soon after implantation. The FDA says it has received about 300 complaints since 2008 regarding the DePuy implant; most of the complaints were from patients who had to have their hip implant replaced, according to The New York Times.

Indications are that DePuy’s ASR system—a metal-on-metal hip replacement device—has a high failure rate similar to several other hip prosthetics. Zimmer Inc. And Stryker Corp., medical device manufacturers, manufacture and supply hip replacement components. They have never had problems with their devices.

While the devices have caused different problems, they all arise from either design or manufacturing defects. Historically, the success rate for hip replacements is very high, even with the elderly. When doctors see a high number of patients who are not recovering after the surgery, it seems clear that there are problems with the device. If you want more information on medical device litigation, you can contact Navan Ward in our firm at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

**Jury Awards $15 Million In Botox Case**

A jury awarded $15 million to an Oklahoma City doctor who suffered botulism poisoning after using the popular anti-wrinkle drug Botox. The Oklahoma jury found that Allergan Inc., the maker of Botox Cosmetic, was negligent. The jury did not award any punitive damages in the case. The doctor complained of severe side effects after getting injections of 50 units of Botox Cosmetic on July 14, 2006. It was her fifth treatment for wrinkles. She eventually had to sell her medical practice and step down as medical director of Lakeside Women’s Hospital in Oklahoma City because of pain and weakness. Ray Chester, a lawyer from Austin, Texas, represented the Plaintiff and did a very good job.

Source: Newsok.com
JURY RULES FOR THE DEFENDANT IN SECOND FOSAMAX TRIAL

The second trial in the Fosamax Multi-district Litigation, located in the Southern District of New York, began on April 19th. The Plaintiff in the case is Louise Maley from Muncie, Indiana. Ms. Maley had been prescribed Fosamax for the treatment of Osteoporosis. Fosamax has been known to cause osteonecrosis of the jaw (ONJ), a debilitating condition that results in the death of the jaw bone which can cause the loss of teeth, disfigurement, and infection. Experts testified that Ms. Maley had ONJ, though it was a mild case. After hearing the evidence, the jury found in favor of the Defendant, Merck Shape & Dohme, finding that Ms. Maley did not suffer from ONJ. Since there was no finding of ONJ, the jury did not answer questions regarding Merck’s liability, failure to warn and causation. As you may recall, the first in the Fosamax MDL involved the case of Ms. Shirley Boles and ended in a mistrial. Ms. Boles’ case is scheduled to be tried again beginning June 2, 2010.

We currently have a number of cases involving Fosamax filed in Federal and State courts. We continue to investigate and file cases involving clients who took Fosamax and developed Osteonecrosis of the Jaw. We are also investigating and filing claims on behalf of clients who took Fosamax and suffered low energy femur fractures. We are seeing case after case where clients who have been taking Fosamax for years suffer femur fractures or breaks without any trauma to the leg or any rigorous activity. If you need more information on this litigation, contact Chad Cook, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Chad.Cook@beasleyallen.com.

XIII.
BUSINESS LITIGATION

SAP AND WASTE MANAGEMENT SETTLE LAWSUIT

A hotly contested lawsuit between SAP and Waste Management has been settled. Under the terms, SAP, the software vendor, will make an undisclosed, one-time cash payment to the trash hauler. Waste Management originally sued SAP in March 2008, claiming fraud over an allegedly failed implementation of its ERP (enterprise resource planning) software. Waste Management claimed that it had suffered significant damages, including more than $100 million it spent on the project and more than $350 million for benefits it would have realized if the software had been successful. The trash disposal conglomerate labeled the project as "a complete and utter failure.”

SAP charged that Waste Management didn’t “timely and accurately define its business requirements,” nor provide “sufficient, knowledgeable, decision-empowered users and managers” to work on the project. Waste Management received “a one-time cash payment” in accordance with the settlement, according to a quarterly earnings filing it made with the U.S. Securities & Exchange Commission. The exact terms of the settlement, including the amounts being paid, are confidential.

Waste Management said it wanted an ERP package that could meet its business requirements without large amounts of custom development. It claimed that SAP used a “fake” product demonstration to trick their officials into believing its software fit the bill. In addition, the trash hauler claimed that SAP’s technical team had “recommended that SAP deliver to Waste Management a later version of the software than the version SAP in fact delivered.” It was alleged that if the newer version had been used instead, “the multi-million dollar sales price for the software could not be immediately recognized as revenue under the accounting rules for revenue recognition,” and salespeople involved in the deal would not receive bonuses. It appears that one employee stood to receive a bonus of more than $1 million out of the deal. Waste Management contended that SAP gave them software that it knew was “unstable and lacking key functionality.” If all of this is true it would appear corporations cheat each other on occasion. I have to wonder why arbitration—rather than the court system—wasn’t used in this case.


ANTITRUST LAWSUIT SETTLED BETWEEN SYNERGETICS AND ALCON

Synergetics USA, Inc. has settled the antitrust lawsuit it had filed against Alcon Laboratories, Inc. And Alcon, Inc. Synergetics entered into a Settlement and Licensing Agreement and a Supply Agreement with Alcon, pursuant to which all litigation between the companies would be resolved and Alcon would receive a license to sell certain Synergetics-patented products. Alcon will pay Synergetics $32 million under the settlement.

Synergetics, a relatively small company, took on a much larger and more powerful competitor in this case. Synergetics and Alcon compete in the sale of light sources and instruments and tools used in vitreoretinal surgery, a highly specialized area of ophthalmological surgery focusing on procedures in the posterior (back) portion of the eye. Surgeons use a primary piece of equipment known as a vitrectomy machine to perform vitrectomy procedures.

The antitrust lawsuit was filed in a New York federal court in April, 2008. The suit alleged that Alcon engaged in certain anti-competitive conduct in the market for vitreoretinal surgical equipment and supplies. Synergetics’ allegations included that Alcon used the market power enjoyed by its vitrectomy machine in an unlawful manner, forcing surgeons to purchase from Alcon the ancillary instruments, tools, and external light sources used in vitreoretinal surgeries. Most notably, Synergetics alleged that Alcon unlawfully tied the sale of its fiber-optic illuminator to the sale of single-use disposable cassettes necessary to operate the Alcon vitrectomy machine.

The law firm of Simmons Browder Gianaris Angelides & Barnerd LLC of East Alton, Illinois, and Hanly Conroy Bierstein Sheridan Fisher & Hayes LLP of New York, handled the case for the Plaintiff and they did a very good job.

Source: News Release from the Simmons Law Firm

MERCK SETTLES PATENT DISPUTE ON CHOLESTEROL DRUG

Merck & Co. has settled a patent dispute with Glenmark Pharmaceuticals involving the cholesterol drug Zetia, one
of its best-selling products. The lawsuit had been scheduled to go to trial in two days when the settlement was reached. Under the terms of the settlement, Glenmark can start selling its generic version of Zetia on December 12, 2016. The patent would have expired on April 25, 2017. Zetia, or ezetimibe, was launched in the U.S. in 2002. In addition to being one of Merck’s biggest sellers, Zetia is one of the two components of a newer cholesterol drug, Vytoris. The other component of Vytoris is Zocor, which is already available as a generic.

Source: Forbes

XIV. AN UPDATE ON SECURITIES LITIGATION

U.S. SUPREME COURT SAYS VIOXX LAWSUITS CAN PROCEED

The U.S. Supreme Court says investors who lost millions when Merck & Co. pulled its blockbuster drug Vioxx off the market can proceed with their lawsuit against the pharmaceutical giant. The High Court agreed with a federal appeals court’s decision to allow a class-action securities lawsuit. The lawsuit was related to the tens of billions of dollars in shareholder value lost overnight after Merck pulled Vioxx off the market.

Source: Forbes

MAXIM SETTLES CLASS ACTION LAWSUIT OVER BACKDATING FOR $173 MILLION

Maxim Integrated Products has settled a stock option backdating litigation against it, according to the company. The Plaintiffs, which were public pension funds, claimed damages during the proposed class period, between 2003 and 2008. It was alleged that Maxim had improperly backdated its stock options, which inflated its stock price. Last July, the trial judge granted much of Maxim’s motion to dismiss the complaint, limiting which company statements the Plaintiffs could argue had caused them to lose money. In December, the Plaintiffs moved to certify the class, and that motion was pending when the settlement was reached.

Gregory Keller, a lawyer with Chitwood Harley Harnes, and Blair Nicholas, a lawyer with Bernstein Litowitz Berger & Grossmann, were co-lead counsel for the Plaintiffs. This appears to be an excellent recovery for shareholders. It also is an indication of the significant impact that institutional investors can have when they take the lead in securities class actions.

Source: Law.com

COUNTRYWIDE TO PAY $624 MILLION IN SETTLEMENT

Countrywide Financial Corp, the mortgage lender acquired by Bank of America Corp., has agreed to a $624 million settlement of a lawsuit accusing it of misleading investors about its lending practices. Countrywide will pay $600 million and its former auditor KPMG LLP will pay $24 million to settle the class-action litigation. The settlement benefits investors who bought the lender’s securities between March 12, 2004 and March 7, 2008.

The case was led by several pension funds, including the New York State Common Retirement Fund (that state’s $129.4 billion public pension fund) and five New York City pension funds. “This is a very good settlement that helps repair the damage Countrywide has done,” New York State Comptroller Thomas DiNapoli, who oversees the Common Retirement Fund, said in a statement.

Once the largest U.S. mortgage lender, Countrywide, and its long-time chief executive, Angelo Mozilo, became synonomous with risky lending practices that helped fuel the U.S. housing boom and subsequent bust. Countrywide nearly collapsed as credit markets tightened, before Bank of America agreed to buy it in January 2008. The $2.5 billion takeover was completed in July of that year. Interestingly, Countrywide once made one in six U.S. home loans. But greed on its part and a lack of regulation led the company down a path that ultimately caused major problems.

The pension funds alleged that Countrywide, Mozilo and other officials misled them about the company’s lending risks, including a large reliance on risky subprime and “option” adjustable-rate mortgages, to fuel rapid growth. This contrasted with public assurances that Countrywide would survive the nation’s housing downturn. I agree with New York City Comptroller John Liu, who advises the five city pension funds in the case, who stated: “This behavior is unacceptable in corporate America.”

Mozilo and two other former Countrywide executives are Defendants in a pending U.S. Securities and Exchange Commission civil fraud lawsuit. The SEC claimed Mozilo misled investors about Countrywide loans and violated insider trading rules in generating a $139 million profit by exercising stock options in 2006 and 2007. It said the exercises came after he admitted in an email to colleagues that Countrywide was “flying blind” as to the quality of the loans.

Bank of America was smart to drop the Countrywide name a year ago. According to the pension funds, the settlement which requires approval by a judge in Los Angeles would be the 13th largest securities class-action settlement since federal laws on private securities litigation were overhauled in 1995.

Source: Associated Press

INVESTORS SUING MASSEY DIRECTORS OVER WEST VIRGINIA MINE TRAGEDY

Institutional investors are continuing to target Massey Energy’s board of directors over the explosion that killed 29 coal miners at West Virginia’s Upper Big Branch mine. The New Jersey Building Laborers Pension Fund blames Chairman

Source: Forbes
Don Blankenship and other board members for the April 5th explosion. It filed suit against the board members in Delaware’s Chancery Court. Two other shareholders (the International Union of Operating Engineers Pension Fund of Eastern Pennsylvania and Delaware, and the Louisiana Municipal Police Employees’ Retirement System) had filed similar lawsuits in Wyoming County Circuit Court.

The Manville Personal Injury Settlement Trust was the first institutional investor to file suit in Kanawha Circuit Court. It’s alleged these officials have violated the 2008 settlement of an earlier lawsuit filed over their management. New York State Comptroller Thomas DiNapoli urged fellow shareholders to withhold their votes for directors Baxter Phillips, Richard Gabrys and Dan Moore when they come up for re-election at Massey’s annual board meeting. DiNapoli, who oversees the New York State Common Retirement Fund (an investor), had earlier called for Blankenship to resign.

Source: Insurance Journal

The Last 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 last 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

Director Borg is an active participant in several notable international organizations advocating cooperative, coordinated regulation and enforcement to strengthen investor protection. Borg served four years as a delegate to an International Expert Group for the United Nations Commission on International Trade Law (UNCITRAL), to study international fraud and criminal misuse and falsification of identity. ASC also works extensively with other international bodies, such as the International Organization of Securities Commissions (IOSCO) and the Council of Securities Regulators of the Americas (COSRA). ASC’s expertise has been called upon six times during the past decade for testimony before committees of the U.S. Senate and U.S. House of Representatives.

The ASC has also developed and launched a new financial education and information resource aimed at helping Alabama’s active-duty and retired military members and their dependents stay on the right track financially and helps protect them and their families from investment fraud. On June 16, 2009, “Protect Alabama Troops” (PATS) debuted as an information-based resource, accessible on the ASC website, www.asc.alabama.gov, consisting of timely, appropriate and practical news, tips and advice for service members to make informed investment decisions and avoid becoming victims of financial fraud before, during and after deployment and in the transition to military retired or civilian life. Director Borg said, “It is this Commission’s honor and duty to make certain our military personnel have the knowledge and tools they need to safeguard their financial futures and to keep financial criminals away from their hard-earned paychecks.” The ASC has highly qualified staff members available to visit installations/units upon request and provide seminars on a variety of financially-related topics.

The ASC provides numerous free services to Alabamians. ASC personnel are available to provide information about topics such as understanding financial risks, types of investment and financial products, licensing/registration requirements, and “specialist” credentials, among many others. Investor education and fraud prevention training is offered to student groups, senior advocacy groups and government, civic and social organizations. Free investor education and fraud prevention materials are available upon request and citizens can access other valuable information on the Commission website. Investors are especially encouraged to “Investigate Before You Invest” by contacting ASC to check out the background and proper registration of broker-dealers, agents, investment advisors, and investment advisor representatives, financial planners, the registration status of securities, or debt management programs. Knowing the background of the person or company you plan to trust with your money could be the difference between a safe and secure future and being a victim of a scam.

There is no doubt that our country and state’s financial landscape is undergoing dynamic changes that average citizens find vexing and fraught with unimagined pitfalls. “We are fully committed to sustaining the confidence of Alabama’s many investors who are such a crucial component to the recovery and long-term prosperity of our capital markets,” Borg said. “We will continue to serve our mission assertively in hopes that adversities recently experienced on Wall Street will be resolved and not revisited on succeeding generations of Alabama investors.”

When it comes to protecting our citizens’ long-term financial well-being, this hard-working and remarkably efficient group of professionals at the Alabama Securities Commission has a proven track record and consistently receives an A+ on its report card.

Dan Lord
Alabama Securities Commission
April 2, 2010

We appreciate very much this information being furnished by Dan for our
readers. The Commission, under Joe Borg’s leadership, has done a tremendous job for Alabama citizens. All Alabama citizens owe Joe and his team a vote of thanks!

XV. INSURANCE AND FINANCE UPDATE

Insurance Industry Reacts To Gulf Coast Oil Spill

The blame game for the recent British Petroleum oil rig accident is just getting started and it will likely continue. The insurance implications of this disastrous event are also just commencing. It will take several years to sort out the various liabilities and what resources, in terms of insurance assets, and other assets, each player will have to contribute, according to a leading expert in environmental insurance coverage. There is one thing for certain, and that is, all of this will be quite complicated, involving a large number of insurance companies.

A number of insurance coverages, such as basic liability, workers compensation, excess casualty and liability, environmental and contingent business interruption have been triggered by the tragic event in the Gulf. All liability coverages will be involved for BP, Transocean, Cameron International Corp. And Halliburton Co. Each of these companies will have extensive liability problems. Folks in the seafood industry, coastal property owners, and other businesses along the Gulf Coast, as well as families of the 11 rig workers who were killed in the explosion, will be Claimants.

While BP is self-insured, its total amount of self-insured retention is unknown at this point. Reinsurers will still be responsible for a substantial amount. Every major reinsurer in the world will likely be involved in this disaster, including Swiss Re, Munich Re, Gen Re, and Partner Re. More will be written on the insurance implications over the coming months.

It has gone largely unnoticed, but Transocean Ltd. has already received $401 million in insurance payments for its oil rig that exploded and sank. You will recall that this company owned the rig and rented it to BP. Transocean expects to be paid promptly for its loss, but it’s very clear the company doesn’t feel that way when it comes to its victims.

Source: Insurance Journal

XVI. EMPLOYMENT AND FLSA LITIGATION

Wal-Mart Settles Wage Lawsuit For $86 Million

Wal-Mart Stores Inc has agreed to pay as much as $86 million to settle a class-action lawsuit accusing it of failing to pay vacation, overtime and other wages to thousands of former workers in California. About 232,000 people will share in the settlement. The settlement requires court approval.

Source: Reuters

Wal-Mart Faces Class-Action Lawsuit

A federal appeals court in San Francisco has ruled that Wal-Mart Stores Inc. must face a class-action lawsuit alleging the world’s largest private employer discriminates against female workers. The 9-0 ruling by the U.S. Court of Appeals for the Ninth Circuit exposes the retailer, based in Bentonville, Arkansas, to billions in damages if it loses the case at trial. The lawsuit was filed in 2001 and includes more than one million current and former workers. It’s contended that the retail giant pays women less than men for the same jobs. It’s also claimed that women receive few promotions and even have to wait much longer when they are promoted than do their male counterparts.

Source: KansasCity.com

XVII. PREDATORY LENDING

Predatory-Lending Lawsuits Are Still On The Rise

During the housing boom, mortgage lenders were making loans to people who could never have previously qualified. Now, homeowners and government officials are increasingly taking these institutions to court, alleging unfair and predatory practices. While many of these suits are still working their way through the legal system, some banks have already settled cases, paying out millions of dollars. The Defendants in those cases include the biggest names in the business—from Wells Fargo to Countrywide Financial to Citigroup. Borrowers are looking to the legal system for help in keeping their houses and it certainly appears they are entitled to relief.

Homeowners are seeking help from the judicial system either individually or as part of class action lawsuits. With foreclosures continuing to rise, borrowers are still looking to force banks to modify unaffordable loans or to stop them from foreclosing on their homes. Often, they also seek monetary relief, especially in cases where a home has already been lost due to foreclosure. To be sure, banks have faced unfair lending lawsuits for years and have paid millions of dollars in settlements. But the recent housing boom was fueled by questionable and exotic loans that many borrowers had no hope of repaying.

Some of the cases involve the classic predatory lending schemes, where
certain borrowers were given mortgages with high interest rates, while other suits are combating loans that are ultimately unaffordable. In addition, the mortgage industry preyed on a wider group during the housing boom capturing more middle-class borrowers, and these homeowners have more means to hire lawyers. Those in more dire financial straits are turning to lawyers who work for non-profit legal services agencies or to those who are willing to take cases against the banks on a contingency fee basis.

Some borrowers who hire lawyers to defend them against a foreclosure sale are succeed in getting the courts to stop or delay the proceeding, or at least delay until the bank considers whether a loan modification would be more appropriate. There have also been class action suits on behalf of hundreds or thousands of homeowners. In one particular current class action lawsuit, Wells Fargo is being sued because one of the banks Wells Fargo now owns originated payment option adjustable-rate mortgages. This type of loan allows borrowers to make very low monthly payments, and the unpaid interest is then added to the principal. Quite often, those loans wind up in default because the borrower simply can’t make the payments.

The goal of the class action suit is to get Wells Fargo to restructure the borrowers' mortgages to make them affordable. The suit also seeks damages, particularly for those borrowers who have already lost their homes or paid off their loans. Wells Fargo attempted to get the case dismissed, calling the borrowers’ claims baseless and a mischaracterization of the bank’s long-standing commitment to responsible lending and pricing practices. That dog simply won’t hunt!

Despite the increase, according to the experts, there are not as many lending lawsuits as one might expect, especially considering the subprime mortgage explosion during the housing boom. The reason for this is evident. It’s because these suits are expensive and difficult to win. Cases could take anywhere from months to years to resolve. Also, there are not that many lawyers who specialize in consumer law and who are willing to take on these labor-intensive cases. Therefore, many troubled homeowners simply cannot hire a lawyer to help them. “These are not easy cases,” according to Ira Rheingold, executive director of the National Association of Consumer Advocates. Also, it should be noted that many of the biggest subprime lenders have gone out of business, declared bankruptcy or been put into receivership by the Federal Deposit Insurance Corporation.

We believe lawyers in our firm have an obligation to help folks who have been taken advantage of and cheated in situations like those discussed above. If you have any questions about predatory lending or feel that you might have been a victim of predatory lending, please contact Bill Robertson, a lawyer in our Fraud Section, who handles predatory lending claims. He can be reached at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com.

Source: CNNMoney.com

**XVIII. PREMISES LIABILITY UPDATE**

### WAL-MART TO PAY $27.6 MILLION IN CALIFORNIA DUMPING CASE

Wal-Mart Stores Inc. has agreed to pay $27.6 million to settle allegations that it improperly handled and dumped hazardous waste at stores across California. The case has led to changes in the retailer’s practices nationwide. Settlement of the case ends a five-year investigation involving more than 20 prosecutors and 32 environmental groups. It was alleged that each of the company’s 236 stores and distribution centers across California, including Sam’s Club warehouse stores, were in violation of environmental laws and regulations.

Wal-Mart was accused of improperly disposing of pesticide, fertilizer, paint, aerosols and other chemicals. In one case, a Solano County boy was said to be found playing in a mound of fertilizer near a Wal-Mart garden section. The yellow-tinted powder contained ammonium sulfate, a chemical compound that causes irritation to people’s skin, eyes and respiratory tract. San Diego County District Attorney Bonnie Dumanis had this to say:

*Today a corporate giant has been held accountable for its actions, and Wal-Mart is cleaning up its act. This should serve as a warning to all companies doing business in the state and in San Diego County that they will not be allowed to flaunt environmental laws in place to keep our communities clean and safe—no matter how large or small the corporation.*

Wal-Mart is also facing civil and criminal investigations by federal officials into allegations that the company’s handling of hazardous waste violated environmental laws in California, Missouri and Washington, D.C. The federal cases are still pending, including the one in California. California’s state investigation started in 2005 when an employee from the San Diego County Department of Environmental Health saw a worker pouring bleach down a drain.

Wal-Mart says it has worked closely with the state of California “on a comprehensive hazardous waste plan that includes improved training programs, policies and procedures.” Wal-Mart now identifies which products are hazardous and has nearly 50 new operating procedures detailing how its employees should handle them properly. The new practices should put the retailer’s stores in compliance across the country, according to a Wal-Mart spokesman.

The company will pay $20 million in penalties to the various prosecuting and investigating agencies, more than $1.6 million in investigative costs and $3 million for environmental projects. It also will invest $3 million to guarantee its stores will remain in compliance.

Source: Associated Press

### MISSOURI CENTER FOR TROUBLED BOYS SUED FOR ALLEGED RAPE

A southwest Missouri center for troubled boys has been sued by a woman who alleges that her 11-year-old was sexually abused at the treatment center.

Source: Associated Press

alleged in the lawsuit that an older boy molested and raped the 11-year-old at the Turnaround Ranch, located west of Joplin, and that the center failed to report the abuse to the state. The lawsuit was filed in a state court against Freeman Health System, Ozark Center, Turnaround Ranch, two counselors and a case manager. The boy’s mother says her son was assaulted four times between September and November of last year.

Source: Columbia Missourian

SUIT ACCUSES COLLEGE FRATERNITY OF INJURING STUDENT IN HAZING

A University of Houston graduating senior and his parents have filed suit against Omega Psi Phi Fraternity and seven members, alleging a hazing incident resulted in injuries that landed the student in a local emergency room. The student, Lee West III, and his parents, Lee West Jr. and Kathleen Truss, alleged that the student was beaten with paddles, a broomstick and a baseball bat so badly he had trouble walking, could not put on his own pants and suffered pain and a hematoma on his buttocks. Lee West Jr., a Dallas man who is a member of the fraternity and pledged it 30 years ago, had this to say: “This wasn’t my son’s call; this was my call. This lawsuit is filed because I would like to clean up this fraternity and get rid of the rogue members.”

The father said he filed the lawsuit over his son’s objections because he’s shocked by what happened in the hazing in February 2009 and the refusal of the local and national fraternity to respond. He said his son, an accounting student, will graduate in May and pledged the fraternity to honor his father. I am convinced that colleges and universities need to clamp down on fraternities that do the sort of thing that’s alleged in this suit.

Source: Houston Chronicle

HOUSING AUTHORITY TO PAY $9.8 MILLION FOR CHILD’S BRAIN DAMAGE

The Philadelphia Housing Authority (PHA) will pay the family of a girl $9.68 million to settle a lawsuit prompted by brain damage she sustained when mold in her public housing apartment triggered an asthma attack. Ebony Gage, now 16, was 12 years old when the episode occurred at the apartment in Frankford. The family contended that PHA was aware of the condition, continued to pay the landlord full rent, and required them to give 30 days’ notice before they could vacate the apartment. It was during that time Gage had the asthma attack.

Under a federal statute known as a “state-created danger,” those three actions left Gage “more vulnerable to harm,” thereby violating her civil rights. PHA paid the rent to a property management company, which also agreed to pay $2 million to settle the suit. Michael Trunk, a lawyer with the Philadelphia firm of Kline & Specter, handled the case for Ebony and her mother. Ebony, who can’t walk or talk, is unable to make her needs known. The settlement will allow the child’s mother to get her the care she badly needs and deserves.

Source: Philly.com

XIX. WORKPLACE HAZARDS

TWO MINERS KILLED WHEN KENTUCKY COAL MINE ROOF COLLAPSED

In another U.S. mining disaster, two miners were killed when a roof collapsed in a large underground coal mine in western Kentucky. A section of roof gave way some 500 feet underground in the Webster County Coal Dotiki Mine. The two miners were operating what’s known as a continuous miner, a toothy machine that digs coal for transport to the surface. At least two other miners escaped after a rock fall in the mine near Providence, about 150 miles west of Louisville. The mine is operated by Alliance Coal Co. The Dotiki Mine employs more than 300 miners. The mine is owned by Alliance Resource Partners, based in Tulsa, Oklahoma. The company’s website says it purchased the mine in 1971 and produces high-sulfur coal there. The company primarily sells coal to electric utilities. It reported 3,090 full-time employees, $1.1 billion in assets and $1.2 billion in total revenues at the end of 2009.

Kentucky has had one miner killed this year in a roof fall at a mine in southeastern Kentucky. The state’s worst mine disaster in recent years occurred four years ago when five miners died in Darby Mine No. 1 in Harlan County. Two of the miners were killed immediately in the May 20, 2006 blast. Three others died of carbon monoxide poisoning while trying to escape. Kentucky led the nation in mining deaths last year with six in coal mines and one in a limestone quarry.
TRUCK DRIVER IN KENTUCKY CRASH SAID TO HAVE BEEN ON HIS CELL PHONE

According to the investigating officers, the Alabama truck driver involved in the March crash that killed 11 people, including the driver, in central Kentucky, was talking on a cell phone at the time. The officers say the truck driver crossed the median of the interstate highway and crashed into the van carrying passengers who were traveling to a wedding. The Kentucky State Police report says the truck driver did not have his tractor-trailer under control and may have also been speeding. Another truck driver who witnessed the wreck estimated the truck driver who caused the wreck was traveling at 80 mph. If cell phone use either directly caused or contributed to traveling at 80 mph, it should be a wake-up call for all employers who entrust vehicles to their employees.

Source: Associated Press

XXI. ARBITRATION UPDATE

A SEMINAR ON ARBITRATION

I was invited to participate in a seminar sponsored by and attended by federal judges. Since judges from Alabama attended the seminar, I felt honored to be included in the program. I, along with Peter Fruin, a lawyer from Birmingham, and Bill Slade, National Director of AAA, took part in a spirited discussion of forced arbitration. I suspect my inclusion in the program was because of my well-known position on the evils of arbitration. It’s also fairly well known that I have never been hesitant to speak out on this subject.

In any event, I really enjoyed the program and got the impression that I wasn’t the only person there who felt arbitration was not good for consumers. I told the group why I felt arbitration wasn’t fair when a dispute between a consumer and a large corporation was the subject of controversy. I also made it clear, however, that there was nothing wrong with arbitration so long as all parties agreed voluntarily predispute to have arbitration settle any disputes that might later arise.

XXII. ENVIRONMENTAL CONCERNS

OFFSHORE OIL BOSSES Fought NEW SAFETY IMPROVEMENTS

It’s being reported that the oil industry fought efforts by federal regulators, safety advocates, and environmental activists which would enhance the safety of workers and reduce the risk of environmental harm. This was going on before the massive Deepwater Horizon rig exploded in April. It now appears Transocean, owner of the massive Deepwater Horizon, and BP, which had contracted the rig for exploration, violated numerous statutes and regulations established by the Occupational Safety and Health Administration and the U.S. Coast Guard.

It appears that both companies failed to provide a competent crew, failed to supervise their employees properly, and failed to provide workers with a safe working environment. Before the explosion occurred, Halliburton, the energy giant, was engaged in cementing operations of the well and well cap. When the Department of the Interior’s Minerals and Management Service (MMS) proposed new rules to improve worker safety last year, Transocean and BP joined other giant oil companies to aggressively oppose them. MMS, which regulates offshore drilling, introduced the new rules after a study found the industry to be replete with accidents, injuries, and fatalities.

In the last nine years, 69 people have been killed and 1,349 injured in oil rig accidents in the Gulf of Mexico. According to MMS, there have been 858 fires and explosions in the Gulf during the same period of time. MMS also issued 150 citations for non-compliance in production and drilling from 2001 to 2007, finding that the industry had failed to improve discernibly in the previous seven years. Because of the offshore oil industry’s poor safety record, MMS proposed that every operator be audited for safety once every three years. The federal agency estimated it would cost the oil companies about $4.6 million in start-up costs and $8 million in annual costs to maintain an adequate safety program. This new requirement would end the industry’s voluntary and self-managed safety programs that have proven to be very ineffective.

Predictably, the oil industry responded with a coordinated attack on the proposed regulations. Oil industry associations and executives sent more than 100 letters to MMS objecting to the regulators. BP’s vice president for Gulf of Mexico production, Richard Morrison, wrote in a letter that the voluntary safety programs “have been and continue to be very successful.” The American Petroleum Institute and the Offshore Operators Committee sent a joint letter to MMS, claiming that the voluntary programs are better because they have “enough flexibility to suit the corporate culture of each company.”

It’s been reported that whistleblowers working on rigs have complained about the work conditions and the environmental damage caused by such operations. The tragic event in the Gulf has called attention to the fact that there is a long-standing safety problem in the offshore industry. BP had been paying Transocean half a million dollars per day to lease the Deepwater Horizon. With that kind of financial pressure, and with the oil industry’s political clout, it’s not too surprising that the big oil companies put production and profits above safety and environmental concerns.

Unfortunately, when these offshore oil companies fail, everyone pays. The Deepwater Horizon spill released nearly a million gallons of diesel fuel into the Gulf waters when it sank, and the wellhead continues to leak what’s conservatively been estimated to be 5,000 gallons of crude every day. The oil has already spread across 2,000 square miles, killing oceangoing animals and threatening wildlife, industry, and livelihoods in all of the Gulf States. The economical and environmental impact on the Gulf States will be tremendous. It’s really beyond com-
prehension at this juncture. The powerful oil companies that opposed efforts by the federal government to increase safety requirement must be held accountable for their irresponsible actions.

Source: Associated Press, New York Times, and Reuters

**EPA Announces Plans To Regulate Coal Ash**

The U.S. Environmental Protection Agency has enacted the first-ever national rules to ensure the safe disposal and management of coal ash from coal-fired power plants. Coal combustion residuals, commonly known as coal ash, are byproducts of the combustion of coal at power plants and are disposed of in liquid form at large surface impoundments and in solid form at landfills. The residuals contain contaminants like mercury, cadmium and arsenic, which are associated with cancer and various other serious health effects. EPA’s risk assessment demonstrates that, without proper protections, these contaminants can leach into groundwater and can migrate to drinking water sources, posing significant public health concerns.

The action by EPA will ensure for the first time that protective controls, such as liners and groundwater monitoring, are in place at new landfills to protect groundwater and human health. Existing surface impoundments will also require liners, with strong incentives to close the impoundments and transition to safer landfills, which store coal ash in dry form. The regulations will ensure stronger oversight of the structural integrity of impoundments in order to prevent accidents like the one at Kingston, Tennessee. The action also will promote environmentally safe and desirable forms of recycling coal ash, known as beneficial uses.

We have written about the dangers associated with structurally unsafe coal ash impoundments, which came to national attention in 2008 when an impoundment holding disposed waste ash generated by the Tennessee Valley Authority broke open, creating a massive spill in Kingston that covered millions of cubic yards of land and river. The spill displaced residents, required hundreds of millions of dollars in cleanup costs and caused widespread environmental damage. Shortly afterwards, EPA began overseeing the cleanup, as well as investigating the structural integrity of impoundments where ash waste is stored.

Coal combustion residual impoundments can be found in almost all states across America, most often on the properties of power plants. There are almost 900 landfills and surface impoundments nationwide. Since the spill at Kingston, EPA has been evaluating hundreds of coal ash impoundments throughout the country to ensure their structural integrity and to require improvements where necessary. The results of the assessments can be found on EPA’s Web site.

**Six Kentucky Coal Mines Shut Down**

Six underground coal mines in Kentucky have been shut down by the U.S. Department of Labor’s Mine Safety and Health Administration. The mines had received numerous citations and closure orders by federal inspectors as a result of the nationwide impact of inspections that took place in April. Each of these operations was forced to suspend production until the violations were corrected. Fifty-seven underground coal mines were targeted for these impact inspections. Each was selected based on its history of significant and/or repeat violations of safety standards concerning methane, mine ventilation and rock dusting. In addition, two of the six Kentucky mines have now been sued by the Labor Department for illegally providing advance notice of a federal inspector’s presence on mine property.

There have been 256 citations, 55 orders and one safeguard issued to these six mines. In total, MSHA inspectors issued 109 withdrawal/failure to abate orders, 1,339 citations and six safeguards nationwide during the five-day inspection blitz that occurred April 19th to 23rd. Joseph A. Main, Assistant Secretary of Labor for Mine Safety and Health, observed:

*After last month’s tragic reminder of the consequences of failing to make safety a priority, it is appalling that these operations continued to flout fundamental safety and health standards. At the very least, they have failed to conduct their own mine examinations for hazards. Mine operators have a responsibility to provide for the safety and health of the miners they employ, and too many of the mines we inspected are failing to take that responsibility seriously.*

It’s apparent we have lots of coal mines in the United States that have poor safety records. The owners and operators of these mines must be held accountable for any injuries or deaths that occur in their mines. Preventive action must be taken by MSHA to correct any existing problems.

Source: U.S. Department of Labor and PR Newswire

**Ford Windstar Minivan Axles Investigated**

It was reported last month that NHTSA is investigating reports of axle failures that can send Ford Windstar minivans out of control at highway speed. Two crashes have been reported—with no deaths or injuries—as a result of the rear axles breaking on 1999 through 2003 Windstars. Ford last sold the Windstar in May 2007 and has replaced it with crossover SUVs. According to Ford, it produced about 1.5 million Windstars during the years under investigation by NHTSA.

NHTSA began a preliminary evaluation—the first of three steps that can end with a mandatory recall—after receiving 234 complaints about rear-axle failure. Obviously, that’s a very large number. NHTSA says that 128 of the axle-failure reports—55%—state that the rear, beam-style axle fractured completely. Fifty-six complaints state that the axles broke while the minivans were traveling 40 mph or faster.

Source: USA Today

www.BeasleyAllen.com
Federal regulators are moving to tighten their oversight of medical devices, including automated pumps that intravenously deliver drugs, food and other solutions to patients. The FDA has issued preliminary guidelines that will require producers of the devices, known as infusion pumps, to supply the agency with more test data on them before they can be approved for sale. These devices have been the most ubiquitous and problematic pieces of medical equipment. The biggest makers of infusion pumps include Baxter Healthcare of Deerfield, Illinois; Hospira of Lake Forest, Illinois; and CareFusion of San Diego, California.

The FDA reports that it has received reports of 710 patient deaths over the last five years that were linked to problems with the devices. But officials at the agency believe the number of deaths could be significantly higher. Some of those deaths involved patients who suffered drug overdoses accidentally, either because a hospital worker entered incorrect dosage data into a pump or because the device’s software malfunctioned.

The FDA Center for Devices and Radiological Health oversees scores of critical products like heart implants, imaging equipment and infusion pumps. Along with reports of 710 deaths, the Center received more than 10,000 complaints about infusion pumps annually from 2005 to 2009. In that same time frame, manufacturers of infusion pumps issued 79 recalls, among the highest for any medical device.

Under FDA rules, life-sustaining devices like heart defibrillators must typically undergo clinical trials before they are approved for sale. But the agency clears the sale of many other critical devices like pumps without clinical testing based on a manufacturer’s claim that a new device is similar to a product already on the market. The FDA is sending a letter to all infusion pump makers to inform them of its findings and outline some proposed additional requirements companies must meet.

The FDA reported that about 280,000 external defibrillators, used worldwide in health care facilities, public places, or in the home, may malfunction during attempts to rescue people in sudden cardiac arrest. Sudden cardiac arrest is a condition in which the heart suddenly and unexpectedly stops beating. When this happens, blood stops flowing to the brain and other vital organs, leading to death if not treated within minutes. External defibrillators can send an electric shock to the heart to try to restore normal heart rhythm when sudden cardiac arrest occurs.

Faulty components in defibrillators manufactured by Cardiac Science Corp. of Bothell, Washington, may cause the devices to fail to properly deliver a shock. In addition to failure to deliver needed shocks, other problems with the affected models may include interruption of electrocardiography (ECG) analysis, failure to recognize electrode pads, and interference or background noise that makes the device unable to accurately analyze heart rhythm. The 14 models, which include automated and semi-automated devices, are:

- Powerheart models 9300A, 9300C, 9300D, 9300E, 9300P, 9390A and 9390E
- CardioVive models 92531, 92532 and 92533
- Nihon Kohden models 9200G and 9231 and
- GE Responder models 2019198 and 2023440

The FDA recommends that hospitals, nursing homes and other high-risk settings obtain alternative external defibrillators and arrange for the repair or replacement of the affected defibrillators. For all other users, including those who use the device at home or as part of public access programs, the FDA recommends using alternative external defibrillators if they are available, and arranging for the repair or replacement of the affected models.

If alternative external defibrillators are not immediately available, the FDA recommends continuing to use the affected devices if needed, because they may still deliver necessary therapy. The agency says the potential benefits of using the available external defibrillators outweigh the risk of not using any of the affected external defibrillators or the risk of device failure. The FDA issued the notice so that “users can take the proper steps necessary to assure they have access to safe and effective defibrillators.”

Cardiac Science recalled its Powerheart and CardioVive models, manufactured between August 2003 and August 2009, on November 13, 2009. But the FDA has since learned that additional Cardiac Science models, two marketed under the Nihon Kohden name, and two marketed by GE Healthcare as GE Responder, have similar problems. Cardiac Science issued a software update for two of its Powerheart defibrillators in February 2010 and plans to issue similar software updates for other affected devices. However, FDA’s review of the updated software indicates that the software detects some, but not all, identified defects. Nihon Kohden is based in Tokyo, Japan; GE Healthcare is located in Great Britain.

While the company issued a recall late last year, the FDA has now learned that more models have the same problems. FDA officials say alternative devices should be used while Cardiac Science Corporation works on the problem. In the case of an emergency, however, the FDA says it’s better to use the potentially defective devices than not.

Source: FDA.gov

Woodforest Bank has agreed to refund more than $12 million to consumers who were charged high overdraft fees on bank accounts. In addition, the bank will pay a $400,000 penalty to the federal Office of Thrift Supervision (OTS). It’s the toughest penalty ever imposed by OTS regarding overdraft fees, as a debate over the fees heats up. Woodforest will repay current and former customers...
“who were misled about the cost of overdraft protection and charged excessive overdraft-protective fees.” Woodforest’s business relied “upon an unreasonably high level of aggregate fees,” according to OTS.

The 169-unit savings bank has 35 offices in Alabama Wal-Mart stores. The savings bank’s owner, Woodforest Financial Group of Woodlands, Texas, also owns the 577-unit Woodforest National Bank. Existing and former depositors charged overdraft fees since January 2, 2008, will get refunds. Under the order, the bank must repay eligible customers by June 23rd. Customers seeking more information can call 1-877-968-7962.

Consumer advocates have been pushing for federal action to cap bank charges for a long time. Customers overdrew accounts by $20 on average, but are charged higher fees, according to Jean Ann Fox of the Consumer Federation of America. She added: “They can charge astronomical interest rates for short-term cash advances, and they don’t have to quote the (rate).” Wal-Mart shoppers fit the profile of banking customers most likely to get caught in a spiral of overdraft charges (low- to moderate-income, female-headed households). It should be safe for low-balance consumers to have a bank account, according to Ms. Fox. I agree with that assessment.

Source: Al.com

WAL-MART TO LIMIT TOXIC CADMIUM IN PRODUCTS FOR CHILDREN

It appears that Wal-Mart Stores, Inc., the world’s largest retailer, has really started to crack down on the use of the toxic metal cadmium in children’s jewelry and other products. The new policy doesn’t affect products now on the shelves of Wal-Mart stores. Instead, children’s jewelry and craft-making kits, toys and child-care articles such as bibs and pacifiers manufactured as of April 9th are being tested for cadmium, according to Wal-Mart.

Setting new standards is a voluntary move. Though cadmium can harm bones and kidneys and is a known carcinogen, unfortunately, there are no government regulations on how much of it is allowed in children’s jewelry. Wal-Mart’s decision was spurred by investigative reports by The Associated Press that showed high levels of cadmium in some pieces of children’s jewelry, including several which Wal-Mart later recalled. The U.S. Consumer Products Safety Commission now wants to restrict cadmium in children’s jewelry, and several lawmakers at the federal and state levels have proposed tight limits. In California, the state Senate has passed a bill that would effectively ban cadmium in children’s jewelry.

Source: Washington Post

SAFETY AGENCY INTENDS TO BAN DROP-SIDE CRIBS

The Consumer Product Safety Commission has committed to enacting a mandatory safety standard this year that will ban the sale and manufacture of baby cribs with sides that drop down, a fixture of the American nursery that has been linked to dozens of children’s deaths. The CPSC has revealed that 32 children have suffocated or strangled to death in the last decade when the drop sides of their cribs separated. They say most of the deaths occurred in the last few years. Another 14 entrapment deaths in cribs may be due to drop-side failure, but the agency says it doesn’t have enough information to be certain. Thus far the CPSC has recalled more than 7 million drop-side cribs.

Source: WHNT.com

XXIV.
RECALLS UPDATE

The beginning paragraph of this section is starting to sound like a broken record. Nevertheless, there will again be a number of product recalls to be reported in this issue. The following are some of the more significant recalls since those reported in our last issue.

TOYOTA RECALLS ABOUT 50,000 SEQUOIA SUVs

Toyota has recalled about 50,000 Sequoia sport utility vehicles from the 2003 model year to fix an unexpected slowing of the vehicle. The problem is with the vehicle’s electronic stability control. According to Toyota, there have been no reports of accidents or injuries. The stability control system helps maintain traction on a vehicle. Toyota says in some cases the system can activate at low speed and prevent the SUV from accelerating as quickly as the driver expects. Owners will receive a software upgrade to fix the stability control.

FORD IS RECALLING 33,000 VEHICLES FOR SEAT PROBLEM

Ford is recalling about 33,000 of its 2010 cars and sport utility vehicles because the front seats may collapse rearward. The models are the 2010 Explorer, Explorer Sport Trac and Mercury Mountaineer as well as the Ford Fusion and Mercury Milan. According to Ford, the problem is that the “gear plate teeth” on the manual recliner mechanism may have been built “out of dimensional specification” and the seat will
Nissan Motor Co. is recalling nearly 135,000 Infiniti G35 sedans and coupes to address a problem that could lead to the air bag not deploying in a crash. The recall involves G35 Coupes from the 2005 to 2007 model years and G35 Sedans from the 2005 to 2006 model year. The automaker says the air bag unit’s wire harness under the front passenger seat could wear down and interrupt the air bag’s signal. In a crash, the air bag may not deploy and could increase the risk of an injury.

According to Nissan, there have been no injuries reported. Nissan was to provide NHTSA with information on the repair in May and begin notifying owners of the recall this month. If a vehicle’s red air bag warning light has turned on, the owner may bring the car into the dealer for repair. For more information, owners may call Infiniti at (800) 662-6200.

Honda is recalling about 167,000 2004-08 TSX sedans equipped with the 2.4-liter four-cylinder engine. The defect involves a power-steering hose that can deteriorate prematurely and crack, leading to a leak and loss of power-steering that may result in smoke or fire. One incident of a fire has been reported. The recall began last month.

NHTSA said on its website that high temperatures under the hood could cause the power steering hose to crack and leak power steering oil. The oil can leak onto a hot exhaust pipe and cause smoke and a burning smell, or even a fire.

Honda says it has received one report of a minor fire connected to the issue. There have been no reports of accidents or injuries. Owners may have a new power-steering hose, O-ring gasket and fluid replaced at no cost. Owners may contact Acura at owners.acura.com/recalls or at (800) 382-2238.

Porsche is recalling all of the 11,300 Panameras that it has built so far to fix a glitch in the seat-belt pre-tensioners. Since Porsche has received top marks from J.D. Power & Associates for its industry-leading quality in its surveys, Panamera is a big deal for the company. The sedan could open the brand to a whole new world of buyers, especially women. Porsche has spared no expense in trying to get the car a decent launch with its targeted market—the wealthy few—and this has to be seen as a setback.

BMW has recalled about 735 of its 2010 X5 Ms because no power cables were hooked up to illuminate the side-marker lights. These models were manufactured between July 1, 2009 and January 25, 2010. The models don’t meet the U.S. standards for lighting and reflectors.

Cobra Electronics has recalled about 32,600 rechargeable batteries sold with Portable DVD/CD/MP3 Players. Thirteen thousand were recalled in October 2008 and 19,600 were recalled in October 2009. The rechargeable batteries can overheat, posing a fire hazard to consumers. Cobra Electronics has received 22 reports of the battery overheating. Eighteen additional incidents of the battery overheating in the TFX-DVD 1020 model have been reported, 17 of which resulted in property damage ranging from minor up to $9,650. No additional incidents have been reported for the TFX-DVD 8501.
The recall involves Coby DVD/CD/MP3 players with product numbers TF-DVD 1020 and TF-DVD 8501. “Coby” is printed on the front cover and the product number is on the bottom of the unit.

The DVD players were sold at discount, electronics, music, toy and office supply stores and distributors of electronic products nationwide. The TF-DVD 1020 units were sold from May 2007 through July 2008 for about $168. The TF-DVD 8501 units were sold from January 2007 through September 2009 for between $140 and $275. Consumers should immediately stop using the players with the recalled batteries and contact Coby to arrange for a free replacement battery. After removing the recalled batteries from the unit, consumers can continue to use it with the AC or DC power adapter. For additional information, contact Coby Electronics toll-free at (866) 945-2629 or visit the firm’s Web site at www.cobyusa.com.

**Inversion Benches Recalled Due To Fall Hazard**

ICON Health & Fitness Inc., of Logan, Utah, has recalled about 33,000 Nordic Track Revitalize Inversion Benches. The ankle clamp can release unexpectedly or the strap used to limit rotation can break, posing a fall hazard to consumers. ICON Health & Fitness has received 75 reports of incidents involving the strap breaking or the ankle clamp releasing, including 23 injuries, some of which were to the head and neck. This recall involves the Nordic Track Revitalize Inversion Bench 2.0 model 831.14895.0, Gold’s Gym Inversion System models GGBE0867.0 and GGCBE0867.0 and Weider Club Inversion System model WBE0878.0. The model number is located under the backrest of the bench. The inversion systems consist of a frame with a backrest, headrest and leg clamp assembly.

The benches were sold at sporting good stores, Wal-Mart, Sears and other retailers nationwide from April 2008 through February 2009 for between $200 and $300. Consumers should immediately stop using the recalled inversion benches and contact Icon Health & Fitness for a free repair kit. For additional information, contact ICON Health & Fitness toll-free at (866) 506-9095, or visit its website at www.iconfitness.com.

**Scuba Diving Buoyancy Compensators Recalled Due To Drowning Hazard**

About 20,000 Buoyancy Compensators used for Scuba Diving have been recalled by Ocean Management Systems Inc., of Middletown, New York. The buoyancy compensator seal ring could crack, posing a drowning hazard to divers. Buoyancy compensators provide buoyancy control for scuba divers by allowing them to inflate or deflate the devices. The compensators were sold in black or red. “OMS” is printed on the front inside of the compensators. Item and serial numbers are printed on the warning label located in the non-inflation area of the buoyancy compensator. A list of serial numbers included in this recall is available from Ocean Management Systems.

The equipment was sold at dive stores nationwide from May 2006 through August 2008 for about $400. Consumers should immediately stop using the diving equipment and contact Ocean Management Systems to receive a free repair. For additional information, contact Ocean Management Systems toll-free at (877) 791-0315, visit its website at www.omsdive.com, or email the company at recall@omsdive.com.

**Graco®-Branded Drop-Side Cribs Recalled**

Lajobi Inc., of Cranbury, New Jersey, has recalled Graco®-branded drop-side cribs made by Lajobi. The drop-side hardware can break or fail, allowing the drop-side to detach from the crib. When the drop-side detaches, a hazardous gap is created between the drop-side and the crib mattress in which infants and toddlers can become wedged or entrapped, posing a risk of suffocation and strangulation. In addition, children can fall from the cribs when the drop-side detaches or fails to lock. CPSC and Lajobi have received a total of 99 reports of drop-side incidents, including hardware breakage and drop-side detachment. There were two incidents in which children became entrapped in the gap created by the detached drop-side. Both children were freed by their caregivers. There were six reports of children falling due to drop-side failure, including one report of a mild concussion.

This recall involves Lajobi-manufactured Graco® wood cribs. The full size cribs were sold in cherry, espresso, natural and white finishes. The production date, item number, purchase order number and finish name is printed on a label affixed to the footboard or headboard. “Lajobi” and the crib model name are printed on a product sticker located on the stabilizer bar or bottom rail of the crib. A list of affected models can be obtained by contacting Shanna Malone at Shanna.Malone@beasleyallen.com or on our web site at www.beasleyallen.com.

The cribs were sold at children’s product stores and other retailers nationwide from February 2007 to March 2010 for between $140 and $200. Consumers should immediately stop using the recalled cribs and contact Lajobi to receive a free hardware retrofit kit that will immobilize the drop side. CPSC urges parents and caregivers to find an alternative, safe sleeping environment for their baby. For additional information, contact Lajobi toll-free at (888) 842-2215 anytime, or visit its Web site at www.Lajobi.com.

www.BeasleyAllen.com
**Simplicity Cribs Recalled By Retailers**

The Consumer Product Safety Commission has announced the recall of all Simplicity full-size cribs with tubular metal mattress-support frames. This recall includes fixed-side and drop-side cribs. These cribs pose a risk of serious injury or death due to entrapment, strangulation, suffocation and fall hazards to infants and toddlers. The crib’s tubular metal mattress-support frame can bend or detach and cause part of the mattress to collapse, creating a space into which an infant or toddler can roll and become wedged or entrapped, or fall out of the crib.

The CPSC has received a report of a one-year-old child from North Attleboro, Massachusetts, who suffocated when he became entrapped between the crib mattress and the crib frame in April 2008. CPSC is aware of 13 additional incidents involving the recalled cribs collapsing due to the metal mattress-support frame bending or detaching, including one child entrapment that did not result in injury, and one child who suffered minor cuts to his head when his mattress collapsed and he fell out of the crib. The CPSC staff urges parents and caregivers to stop using these cribs immediately and find an alternative, safe sleeping environment for their baby. Do not attempt to fix these cribs.

Due to the fact that Simplicity and its successor, SFCA Inc., are no longer in business, CPSC has limited information about the number of cribs sold. All Simplicity drop-side cribs have previously been recalled for a hazard involving the drop-side. Simplicity drop-side cribs could still be in use by parents or caregivers who are unaware of the recalls or by those who received a repair kit to immobilize the drop-side from Simplicity when the firm was still in business. This recall involves all Simplicity cribs with tubular metal mattress-support frames. A list of affected models can be obtained by contacting Shanna Malone at Shanna_Malone@beasleyallen.com or on our web site at www.beasleyallen.com.

The recalled cribs, manufactured in China, were sold at Wal-Mart, Target, Babies R Us and other stores nationwide for between $150 and $300. Consumers should contact the store where the crib was purchased to receive a refund, replacement crib or store credit.

CPSC tells parents not to use any crib with missing, broken or loose parts. Make sure to tighten hardware from time to time to keep the crib sturdy. When using a drop-side crib, parents should check to make sure the drop side or any other moving part operates smoothly. Always check all sides and corners of the crib for disengagement. Any disengagement can create a gap, which could fatally entrap a child. In addition, do not try to repair any side of the crib with tape, wire, rope or by other means. Infants and toddlers have died in cribs with makeshift repairs. For more information on Crib Safety, visit CPSC’s Crib Information Center at www.cpsc.gov.

**McNeil Consumer Recalls Certain OTC Infants' And Children's Products**

McNeil Consumer Healthcare, Division of McNEIL-PPC, Inc., is recalling all lots that have not yet expired of certain over-the-counter children's and infants' liquid products manufactured in the United States and distributed in the United States, Canada, Dominican Republic, Dubai (UAE), Fiji, Guam, Guatemala, Jamaica, Puerto Rico, Panama, Trinidad & Tobago, and Kuwait.

McNeil is initiating the recall because some of these products may not meet required quality standards. The company says the recall is not being undertaken on the basis of adverse medical events. However, it says, as a precautionary measure, parents and caregivers should not administer these products to their children. Some of the products included in the recall may contain a higher concentration of active ingredient than is specified; others may contain inactive ingredients that may not meet internal testing requirements; and others may contain tiny particles. While the company says the potential for serious medical events is remote, the company advises consumers who have purchased these recalled products to discontinue use.

Consumers can contact the company at 1-888-222-6036 and also at www.mcneilproductrecall.com. Parents and caregivers who are not sure about alternative pediatric health treatment options should talk to their doctor or pharmacist and are reminded to never give drug products to infants and children that are not intended for their age groups, as this could result in serious harm.

The recall affects all unexpired lots of TYLENOL, MOTRIN, Zyrtec and BENADRYL formulated for youngsters—more than 43 liquid products in all. Parents across the country rely on the medications to ease their children’s aches and pains, fevers and allergy-associated runny noses and sneezes.

For additional information, including affected NDC numbers, consumers should visit the company’s website www.mcneilproductrecall.com or call 1-888-222-6036. Any adverse reactions may also be reported to the FDA’s MedWatch Program by fax at 1-800-FDA-0178, by mail at MedWatch, FDA, 5600 Fishers Lane, Rockville, MD 20852-9787, or on the MedWatch website at www.fda.gov/medwatch. If you want a list of the recalled products you may contact Shanna Malone at Shanna.Malone@beasleyallen.com or on our web site at www.beasleyallen.com.
**RECALL OF INFUSION PUMPS**

Baxter International is recalling its Colleague infusion pumps from the American market under an agreement with federal regulators that sought to fix problems like battery failures and software errors. The FDA has said previously that infusion pumps used to administer drugs and liquids were linked to more than 56,000 complaints of injuries, deaths and malfunctions from 2005 to 2009. The Baxter Healthcare Corporation, the company’s principal American subsidiary, has been under a consent decree with the FDA since June 2006 that allowed the agency to require a recall of the pumps.

Baxter says there are just under 200,000 of these pumps in use at hospitals and other medical facilities. The Colleague pumps, which have not been sold to new customers since 2005, will be phased out, according to the company. The FDA on April 30th rejected as “unacceptable” a plan by Baxter to keep the Colleague pumps in use until 2013 and ordered the recall. Baxter expects to offer to exchange its Sigma Spectrum infusion pumps for the Colleague pumps. The pumps are used in hospitals to deliver nutrients to patients in comas, blood-thinning drugs to heart patients, and chemotherapy to cancer patients.

**CONAIR RECALLS BABYLISSPRO COMPACT HAIR DRYERS**

Conair Corp., East Windsor, New Jersey, has recalled about 291,000 compact hair dryers. The spinning fan within the hair dryer can break apart, striking the hair dryer’s plastic shell. This causes the plastic to shatter, creating a laceration hazard. Conair has received 16 reports of the fan breaking, causing the plastic shell to shatter. The company has also received reports of the hair dryers sparking and smoking. Reportedly, one person sought medical attention for a laceration to the hand; seven people reported minor cuts.

This recall involves the BabylissPro 052 Series Professional Compact Hair Dryer. The hair dryer is sold under the brand names Babyliss® Pro Mighty Mini, Babyliss® Pro Nano Titanium™, Babyliss® Pro Porcelain Ceramic, BabylissPro TT® Tourmaline and BabylissPro TT® Tourmaline Titanium. The hair dryers were sold at professional salons and various other online retailers from January 2006 to April 2010 for between $20 and $30. Consumers should immediately stop using the hair dryer and contact Conair to receive a free replacement hair dryer. For additional information, contact Conair at 800-687-6916 or visit the company’s website at www.babylissus.com/recall052.

**MORE JEWELRY RECALLED DUE TO TOXIC CADMIUM**

Another recall of children’s jewelry with high levels of the toxic metal cadmium was announced by the U.S. Consumer Product Safety Commission last month. Inspectors at ten of the nation’s largest ports are now screening children’s jewelry—typically imported from China—for cadmium. The surveillance and detection program has now been expanded through the use of special guns that shoot X-rays into jewelry to estimate how much cadmium each item might contain.

The agency announced the voluntary recall of about 19,000 “Best Friends” charm bracelet sets made in China and sold exclusively at the jewelry and accessories store Claire’s, which has more than 3,000 stores in North America and Europe.

While the CPSC does not release its results, testing done for the AP revealed that bracelets sold at Claire’s contained up to 91% cadmium by weight, and shed alarming amounts during a test that examined how much cadmium children might be exposed to if they accidentally swallow the charms. “Cadmium is toxic if ingested by children and can cause adverse health effects,” the agency said in its recall announcement. Medical research shows that cadmium in high levels is a known carcinogen and can harm kidneys and bones.

Consumers should take the bracelets away from children and return them to Claire’s for a replacement or refund, according to the announcement. The bracelets were sold for about $12. The CPSC identified the manufacturer as Dae Yeon Industries Corp., of China. The recall was the third prompted by AP’s investigation. Before this year, no consumer product in the United States had been recalled because of cadmium.

**TOY DART GUNS RECALLED AFTER TWO DEATHS**

The Consumer Product Safety Commission has announced the recall of 1.8 million toy dart gun sets. The recall came after two boys choked to death on the darts. A nine-year-old boy in Chicago and a ten-year-old boy in Milwaukee died after they chewed on the one-inch, soft-plastic darts, which slipped into their throats. The small suction cup part of the dart cut off their breathing. The dart gun sets were sold nationwide at Family Dollar stores, which says they haven’t sold the sets in more than a year. The dart gun sets were imported by Henry Gordy International in New Jersey. Henry Gordy refused to recall the dart set so Family Dollar Stores worked with the CPSC on recalling the product.

**44,000 PINK BABY BLANKETS RECALLED**

A recall of 44,000 pink baby blankets was announced by the Consumer Product Safety Commission last month. The agency said the giraffe decorations on the blankets pose a choking hazard. Importer
Rashti & Rashti is recalling the giraffe blankets, which were made in China and sold at Target stores between January and August of 2009. The agency said that pieces of the giraffe’s horns can fall off. The commission said consumers should call Rashti & Rashti for a refund. The 14-inch-by-14-inch blankets were sold for about $9 each.

**LETTUCE IN 23 STATES RECALLED OVER E. COLI CONCERNS**

Freshway Foods of Sidney, Ohio, is recalling lettuce sold in 23 states and the District of Columbia because of an E. coli outbreak that has sickened at least 19 people, three of them with life-threatening symptoms. The FDA said that 12 people had been hospitalized. The federal Centers for Disease Control and Prevention is looking at ten other cases probably linked to the outbreak.

The recalled romaine lettuce was sold under the Freshway and Imperial Sysco brands. College students at the University of Michigan in Ann Arbor, Ohio State in Columbus and Daemen College in Amherst, New York, are among those affected, according to local health departments in those states. The FDA was focusing its investigation on lettuce grown in Arizona as a possible source for the outbreak.

E. coli infection can cause mild diarrhea or more severe complications, including kidney damage. The three patients with life-threatening symptoms were diagnosed with hemolytic uremic syndrome, which can cause bleeding in the brain or kidneys. It was not immediately clear why students on college campuses were sickened. The lettuce was sold to wholesalers, food service outlets, in-store salad bars and delis.

The most common strain of E. coli found in U.S. patients is E. coli O157. The CDC said the strain linked to the lettuce, E. coli O145, is more difficult to identify and may go unreported. The recalled lettuce has a “best if used by” date of May 12th or earlier. The recall also affects “grab and go” salads sold at Kroger, Giant Eagle, Ingles Markets and Marsh grocery stores.

The lettuce was sold in Alabama, Connecticut, the District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia and Wisconsin.

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

**XXV. FIRM ACTIVITIES**

**EMPLOYEE SPOTLIGHTS**

**DAVID BYRNE**

David Byrne, a lawyer in our firm’s Toxic Torts Section, has been very busy lately and that’s actually a good understatement. He and several other lawyers in the Section are now hard at work on issues relating to the Gulf oil spill. Prior to that time, David had been heavily involved in the firm’s TVA litigation, which will continue. David’s areas of practice have included complex environmental litigation, consumer fraud litigation, business litigation, personal injury litigation, and state and federal criminal litigation.

Currently, David’s work is focused on commercial and environmental litigation in both federal and state courts throughout the United States. He is listed in the Best Lawyers Consumer Guide under the Personal Injury Law and Criminal Defense practice sections. David has assisted clients in obtaining multi-million dollar settlements or verdicts in cases involving the following: environmental contamination, food-product franchises, Federal Tort Claims Act, accounting malpractice, motor vehicle franchise disputes, consumer fraud Class Actions, the funeral services industry, premises liability, insurance agent contract disputes and defective products.

In 2003, David was involved in the largest toxic tort settlement in U.S. history. Estimated at $700 million, the settlement for PCB contamination in Anniston, Alabama, involving Solutia, Monsanto and Pharmacia, doubled the previous mark popularized by the movie *Erin Brockovich*. At present, his main areas of work will be in the TVA and BP oil spill litigation.

David has been married to Betty Bobbitt for thirteen years, and they have two children. The family attends Young Meadows Presbyterian Church in Montgomery, where David serves as a deacon. David has also served as the president of the Montgomery County Trial Lawyers Association and as a member of the Board of Governors for the Alabama Association of Justice. We are blessed to have David with the firm. He is a hard worker who is totally dedicated to serving his clients. Not only is David a tremendous lawyer, he is a good man.

**SCOTT THOMAS**

As the firm’s Director of Internet Services, Scott Thomas oversees our firm’s primary website [www.beasleyallen.com] as well as 45 additional issue-specific sites. Over the last several years, Scott has pioneered the use of social media sites like Facebook, Twitter, YouTube, Flickr, and LinkedIn as a means of reaching a much wider audience. Scott and his team also produce a weekly legal news video—Legal Briefs—with Amy Ross.

In 2010, Scott launched the industry’s first-ever iPhone application—ICE+. The free app, which is available to 45 million users nationwide, stores critical information such as emergency contacts, medications, allergies and medical conditions for use in emergency situations.

Scott is married to Taylor Thomas, who works in the firm’s Mass Torts Section. They have four beautiful children. They are members of First Baptist
Church in downtown Montgomery. It seems like we try hard to make sure Scott has very little free time, but when he does, he enjoys spending time with his children and spending time at the beach, as well as cooking out with family and friends. Scott is doing a tremendous job for the firm. He is a most valuable part of what we do and we are blessed to have him on the Beasley Allen team.

LEE McIVER
Lee McIver joined the firm in February of 2009 as a Staff Attorney in the Mass Torts Section. She had previously worked at the firm as a law clerk while attending Jones School of Law in Montgomery from November 1997 until February 2001. In her role as a Staff Attorney, Lee is working primarily on pain pump litigation for the firm. That is a most interesting and challenging area of the Section’s work load.

Lee graduated Summa Cum Laude from Jones in December, 1999, and she passed the Alabama Bar Exam in February, 2000. She is perhaps, as a single mom, most proud of raising her daughter Tara, who is now 24 years old. Lee did this, while working full-time and attending both undergraduate and law school. She says God has blessed her with a very special child who could just “roll with the punches and survive” as they “muddled through our young lives together.” Lee, who is engaged to be married in the Fall, enjoys boating and gardening, and is a rabid SEC football fan. Lee is a dedicated, hard worker and we are blessed to have her with the firm.

TINA BENZ
Tina Benz, who has been with the firm for four years, is a legal secretary for Roman Shaul. Tina has been married for four years, and between Tina and her husband, Joe, they have four children ages five, eight, nine and 12. Tina says her favorite hobby is spending time with her family, whether it’s fishing, school sports, playing in the back yard, or just watching a good movie. Tina is a very good employee and we are fortunate to have her with the firm.

BRANDON POTTER
Brandon Potter, who has been with the firm since the summer of 2005, works as a runner. In our firm, the runner’s job is very important. Brandon’s duties are all over the board and include, but are never limited to, the following: courier services, purchasing and stocking supplies, serving subpoenas and summons, filing court documents, traveling with trial teams, and providing help for miscellaneous tasks. Brandon has also worked in the Mass Torts Section where he helped in the call center assisting Vioxx, Celebrex, and Bextra clients with case related questions.

Brandon is currently a senior at Auburn University of Montgomery where he is studying Criminal Justice. He currently has a 3.5 GPA. He has made the Dean’s List twice at AUM since transferring from Troy for his junior year. He is scheduled to graduate in May 2011.

Brandon enjoys hunting, fishing, kayaking, mountain bike riding, running, wakeboarding, water skiing, and camping. He is also heavily involved with Colonel Biggs Water Ski Show team. The team members travel around the state of Alabama to perform and also travel around the southern region to compete in tournaments. Brandon works very hard and is a dedicated employee. We are extremely blessed to have Brandon, a fine young man, with the firm. I predict a very bright future for him.

XXVI. SPECIAL RECOGNITIONS

DOING IT THE RIGHT WAY SHOULD BE THE ONLY WAY

Chick-fil-A operates one of the largest and most successful fast-food chains in the United States. Not only is the business successful, it’s definitely run in the right way. The chain was started in 1946 by Truett Cathy, a Christian businessman, who insists on a policy that all Chick-fil-A restaurants be closed on Sunday. Many believed that policy simply wouldn’t work. But as we know, it did work and has worked extremely well. But just closing on Sunday is not the only manifestation of the owner’s walk with Jesus Christ in his business life.

Mr. Cathy has also insisted that all employees be treated fairly and with respect. It’s significant that the focus of the business has always been on people. Folks who know Mr. Cathy tell me that he is the same in both his public and private life. Over the years, I have found that the best way to find out what sort of person the boss of a business really happens to be is to ask the employees at his or her business. In fact, you usually don’t even have to ask them. Mr. Cathy passes the test of doing things the right way with flying colors. The employees at Chick-fil-A love and respect the man. The lesson we can all learn from all of this is that you can do things the right way and still succeed in business. Unfortunately, it’s a lesson that many never learn!

MONTHLY MESSAGE FROM THE STATE BAR PRESIDENT

The following is the monthly report from Tom Methvin, State Bar President. As you will see, Tom has been very busy during his term in office. He has also managed our law firm and hasn’t missed a beat.

Speaking Engagements Provide Valuable Insights

It has been one of the greatest opportunities of my time as Bar President to be able to travel throughout the state and talk with local Bar associations and other groups. Your feedback about how we can provide true Access to Justice for the people in Alabama has been invaluable.

I’m pleased that this year we’ve been able to promote the good work lawyers do every day. Events like Pro Bono Week and Law Day have provided an opportunity to share with the public the services you render through the Volunteer Lawyer Program (VLP). By speaking at these events, I have been given more chances to promote the great work that lawyers do. Together, we’ve created a strong
foundation for future growth of the VLP. We have a real chance to improve Access to Justice for those less fortunate in our state. I look forward to continuing to speak out about Access to Justice during the remaining part of my term.

Tom Methvin
May 12, 2010

STATE BAR TO HELP OIL SPILL VICTIMS

The Alabama State Bar Association has set up a page on its Web site to help folks impacted by the oil spill with legal representation. The page, “How to protect your rights when disaster strikes,” is available at www.alabar.org. It gives advice on how to avoid being pressured into selecting legal representation immediately following a disaster. Anyone who feels he or she has been so pressured can call the Bar at (334) 269-1515.

LIBERTY AND JUSTICE FOR ALL MUST BE OUR NATION’S GOAL

Law Day was celebrated on May 1st throughout the United States. Unfortunately, this special day didn’t seem to get a great deal of attention this year. That’s not good. Our nation is badly in need of a strong reminder that liberty and justice for citizens should be a goal for any government. Certainly, a Republic such as ours must have such a goal and strive to make it a reality. Reaching this goal depends on a strong judicial system, with independent judges, who will always follow the rule of law to the letter. When judges do that, justice will always be done.

Our elected leaders must make sure our national goal of liberty and justice for all—as guaranteed by the Constitution—is more than just a slogan and becomes a reality for all American citizens. My hope and prayer is that on May 1, 2011, we will have moved further toward being a nation whose citizens—all of them—really have access to liberty and justice.

XXVII. FAVORITE BIBLE VERSES

Freda Woodman, who attends St. James United Methodist Church with Sara and me, sent in her two favorite verses for this issue. Freda taught school for a number of years, but now works at Pickwick Antiques in Montgomery. She also is in charge of the “Blanket Ministry” at St. James, a program that provides prayer blankets to folks who have a special need, and that has been a blessing for lots of folks. These are Freda’s verses:

And we know that all things work together for good to those who love God, to those who are the called according to His purpose.

Romans 8:28

You will keep him in perfect peace, Whose mind is stayed on You, Because be trusts in You. Trust in the LORD forever, For in YAH, the LORD, is everlasting strength.

Isaiah 26:3-4

My good friend Randy Helms says his favorite verse is one that should excite any Christian, and I certainly agree with him. Randy, who grew up in my hometown of Clayton, now lives in Cecil, which is located east of Montgomery. He also is a member of St. James United Methodist Church where Randy, Lisa and his children are very active.

No eye has seen, no ear has heard, no mind has conceived what God has prepared for those who love him.

1 Corinthians 2:9

Bill Robertson, one of our lawyers, shared another verse this month from one of his daily devotionals. Bill has a daily devotional that he says he can relate to each day. He enjoys sharing them with his friends and also with our readers on occasion. Bill is submitting the verse below, and his thoughts about its content, follow:

As far as the east is from the west, so far has He removed our transgressions from us.

Psalm 103:12

Bill says, like all of us, he has sinned. But he points out that this Psalm tells us that God’s love and forgiveness are far greater than any wrong we could have ever done. God has provided a remedy for the burden we carry because of our sins, overruling sin with mercy and love. Even though it’s true that people, places and things can spur past memories, our past mistakes can become stepping stones to deeper devotion and service. Bill says he hopes this reminder will be received in the right way and will help us understand that God will forgive our sins and wipe the slate clean if we will only ask Him.

Debbie Cunningham, who works in the firm’s Consumer Fraud Section, furnished a verse for this issue.

For I am persuaded, that neither death, nor life, nor angels, nor principalities, nor powers, nor things present, nor things to come, nor height, nor depth, nor any other creature, shall be able to separate us from the love of God, which is in Christ Jesus our Lord.

Romans 8:38—39

Tim Fiedler, a lawyer in the Consumer Fraud Section, furnished a favorite verse for this issue.

May the God who gives endurance and encouragement give you a spirit of unity among yourselves as you follow Christ Jesus, so that with one heart and mouth you may glorify the God and Father of our Lord Jesus Christ.

Romans 15:5-6

Valerie Scroggins, who also works in our Consumer Fraud Section, furnished a verse for this issue.

Finally, brethren, whatever things are true, whatever things are noble, whatever things are just, whatever things are pure, whatever things are lovely, whatever things are
good report, if there is any virtue and if there is anything praiseworthy—meditate on these things.

Philippians 4:8

Parker Miller, one of our lawyers who has been busy trying to help victims of the Gulf oil disaster, furnished a verse for this issue:

Do not be anxious about anything, but in everything, by prayer and petition, with thanksgiving, present your requests to God. And the peace of God, which transcends all understanding, will guard your hearts and your minds in Christ Jesus.

Philippians 4:6-7

Tabitha Dean, another of our employees who works in the Mass Torts Section, furnished a verse for this issue:

May the God of hope fill you with all joy and peace as you trust in him, so that you may overflow with hope by the power of the Holy Spirit.

Romans 15:13

Danielle Mason, a lawyer in our Mass Torts Section, furnished a verse this month. While Danielle has been very busy, she still has time to honor her Lord and Savior daily.

He who dwells in the shelter of the Most High will rest in the shadow of the Almighty. I will say of the Lord, “He is my refuge and my fortress, my God, in whom I trust.”

Psalm 91:1-2

Since our readers might wonder why we have included so many verses from folks in our firm, I will explain why we do it. First, it’s good to know we have folks associated with our firm who love the Lord and who aren’t afraid to let folks both inside and outside the firm know about it. In addition, I also believe it’s important to share the Gospel and I believe this is a good way to do it. The fact that we get so many comments each month on this part of the Report confirms my belief. We encourage our readers to also share their favorite verses with us.

XXVIII. CLOSING OBSERVATIONS

THE NATIONAL DAY OF PRAYER

Franklin Graham prayed for our nation and all of our people during the observance of the National Day of Prayer last month. Unfortunately, this day is often just an event for political types to get some needed attention. But it must be much more than that. It should be a day where God is honored and praised. Our nation has been blessed in so many ways. Quite often we forget the real source of our blessings or just fail to acknowledge it publicly. But, all of us must pray for our nation daily and not just on one special day. Each of us must pray without ceasing to our God and encourage others to do the same. Let’s consider the prayer by Franklin Graham—one that God certainly heard—and one that we should all reflect on as we consider how blessed we are to be Americans.

Lord,

We are thankful for the abundant blessings You have bestowed on America. Our forefathers looked to You as Protector, Provider, and the Promise of hope. But we have wandered far from that firm foundation. May we repent for turning our backs on Your faithfulness.

We pray that this great nation will be restored by Your forgiveness. From bondage, You grant freedom. Through Your own sacrifice, You offer salvation. From the state of despair, You offer peace.

From the bounties of Heaven, You have blessed—not because of our goodness—but by Your grace. You have given us freedom to worship You in spirit and in truth as Your holy Word instructs. May our lives honor You in word and deed. May our nation acknowledge that all good things come from the Father above.

President Abraham Lincoln proclaimed that our nation should set apart a day for national prayer to confess our sins and transgressions in sorrow; “yet with assured hope that genuine repentance will lead to mercy and pardon…announced in the Holy Scriptures and proven by all history, that those nations only are blessed whose God is the Lord.”

“We have vainly imagined in the deceitfulness of our own hearts, that all these blessings were produced by some superior wisdom and virtue of our own…we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God who made us! It behooves us then…to confess our national sins and to pray for clemency and forgiveness.”

Help us to pray earnestly for our president and leaders who govern, that they will humble themselves and seek Your guidance so that everything we do will shine the light of Your glory in a darkened world.

May our prayers as a people and a nation be heard and blessed for such a time as this. We make this plea in faith, believing in the mighty Name of Jesus our Lord. Amen.

Franklin Graham
May 4, 2010

RAISING CHILDREN THE RIGHT WAY

Most Alabamians remember Colt McCoy as the outstanding Texas quarterback who was injured very early in the National Title game in January. While he was nationally known as an athlete, I suspect few of us really know very much about Colt’s daily walk with Jesus Christ. What we did know most likely came from the sports pages and even from ESPN on occasion. Colt was a star quart-
Quarterback at the University of Texas, but he also is a very strong Christian. Brad McCoy, who is Colt's father, spoke at a Christian Leadership Prayer Breakfast in Dallas recently and discussed how he raised Colt and his two other sons. What he had to say is certainly good advice and counsel for the parents of young children in today's world. Brad McCoy said he and his wife raised their children according to four basic principles:

• Prepare your child for the path, not the path for your child.
• Prepare to be our best.
• Be a leader.
• Prepare for open and closed doors.

His injury in Colt's last college football game had to be the biggest disappointment in all of his days on the football field. Colt had prepared himself to play for the National Championship, but things certainly didn't work out the way he had planned and expected. His dad told about how—while sorely disappointed—Colt was not bitter or even down about what happened. The last of the four principles taught by his parents—and his belief and trust in God—allowed this young athlete to accept what had happened and to get on with his life. Colt McCoy will be just fine and I am sure of that. His dad's principles for raising children worked for his boys and I believe they will work for others.

A DAILY REMINDER

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

2Chron 7:14

XXIX. PARTING WORDS

Thousands are being affected by the tragic events unfolding in the Gulf of Mexico. The massive oil spill is hurting and damaging folks from all walks of life who live in the coastal states. It's being predicted that this event will cause major problems in the area for years. The long-term damage to the economy and the environment will be tremendous. Lives will be changed—perhaps forever—and our nation will suffer as a consequence of what happened. It's the responsibility of all Americans to give hope to the victims of this tragic occurrence. The circumstances facing the states along the Gulf Coast have gotten media attention all over the world. Our responsibilities include helping those persons adversely affected cope with both the short and long range problems caused by the oil spill.

This disaster is the worst of its kind in our nation's history and will affect folks for years to come. We must pray for all of the families who have been hurt and damaged and do our part to give them hope when things may appear to them to be hopeless. My prayer is for an all-powerful God to supply the hope, peace and comfort that only He can provide. Our prayers can be a powerful tool!
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.