I.
CAPITOL
OBSERVATIONS

THE CIVIL JUSTICE SYSTEM AND JUSTICE

Each night on the news, and in all the daily newspapers, we hear of things like runaway cars, massive vehicle recalls, coal mine collapses, exploding oil rigs, natural gas pipe line explosions, serious safety problems with prescription and over-the-counter drugs, financial institutions in trouble, and the list goes on. It has become a common occurrence to have the news dominated by the latest example of corporate misconduct. Each saga follows a similar pattern: a tragedy occurs, followed by apologies tempered by denials and claims of innocence, and evidence that profits were intentionally put ahead of the safety and well-being of the American people. This sort of thing has become so common that we almost know the script by heart.

The public is now beginning to see how federal agencies lack the resources to adequately protect and safeguard the American people. Folks have finally come to realize that powerful corporate lobbyists control Congress and that’s not good for ordinary folks and really not good for businesses. Large corporations brag about the millions of dollars saved by limiting their recalls and they ignore industry guidelines in spite of the need for consumer safety. Millions are spent on public relations efforts to make bad conduct look and sound good. A case in point is BP’s handling of the ongoing crisis in the Gulf of Mexico.

Americans are entitled to safe products, fewer preventable injuries and a restoration of checks and balances that give people a fair chance to obtain justice when a corporation is guilty of wrongdoing. Unfortunately, it’s only after tragic accidents that our government closely analyzes the agencies and systems that failed. It is only then that emphasis is put on taking the necessary steps to correct things. There is only one institution that consistently protects consumers and holds wrongdoers accountable and that’s the American civil justice system. This system has constantly been under attack with the so-called “tort-reformers” focusing on “trial lawyers” and a system they claim is “broken.” They know that the victims of corporate wrongdoing and abuse can’t be attacked, so they do the obvious—they attack the lawyers who represent them, and attack the jury system.

There is no shortage of examples of corporations letting profits override safety and basic consumer protections. The marketing arms of the companies continue to run over sound safety engineering judgment. You can list corporation after corporation that have committed massive wrongs and tried their best to get away with it. Large corporations like BP, Toyota and Massey Energy put lives at risk, expecting no real consequences. They attempt to evade accountability for their actions. Yet once the scandals of these corporations fade away, it will be telling to see whether some lawmakers continue with their fixation on “tort reform”—or hand out immunity to the very same corporations responsible for injuring and killing consumers in the first place.

The barons of Corporate America, and their hired guns at the U.S. Chamber of Commerce, have dedicated millions of dollars to demonize trial lawyers. Yet each corporate scandal and dangerous product show that when the first lines of defense fail to protect the safety of consumers, that leaves only the civil justice system to hold corporate wrongdoers accountable and restore justice. At the end of the day, it is trial lawyers—not the big corporations that put profits ahead of safety—who speak for ordinary citizens and seek justice for victims of corporate wrongdoing and abuse.

Meanwhile, the tort system is now, and always has been, a vehicle for effecting change, enhancing safety, and holding wrongdoers accountable. The next time cries of “tort reform” ring out from the usual suspects, remind those hired-guns about BP, Toyota, Wall Street, Enron, Massey Energy and the legions of corporate wrongdoers. Americans should think twice before they let Congress and state legislative bodies continue to shield corporate profits at the expense of their own safety and well-being.

Source: American Association for Justice

TVA IS FINE $11.5 MILLION BY TENNESSEE

Tennessee state officials have levied $4.5 million in fines against the Tennessee Valley Authority. The State Department of Environment and Conservation imposed the penalties after determining that the billion-gallon coal sludge spill in 2008 violated state clean-water and solid waste disposal laws. In a statement announcing the fines, Environment Commissioner Jim Fyke called them an “appropriate” response “to an unprecedented event.” TVA will not challenge the fines for an obvious reason—they are guilty as charged.

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As we have reported, the December 22, 2008, spill began when a dike collapsed at a retention pond at the TVA power plant in Kingston, about 35 miles west of Knoxville. The mixture of water and ash was enough to fill nearly 800 Olympic-sized swimming pools, spreading across more than 300 acres of land and fouling the adjacent Emory River. The spill contained toxic chemicals, such as arsenic, selenium, and lead, as well as radioactive materials like chromium and barium. About 60% of the 1.1 billion gallon spill has been removed from the river in the first phase of cleanup. The entire operation may take another three to four years, according to Commissioner Fyke and that may be a conservative estimate.

Source: CNN

**A Political Party With No Answers**

The leadership of the National Republican Party, as well as GOP Congressional leaders, are hurting the American people by opposing President Obama and Congressional Democrats on every single program they present. It’s time to find out exactly what is causing the GOP to say “No!” to everything that comes down the pike. Let’s take a look at some of the issues. On HEALTH CARE, the GOP fights for BIG INSURANCE—not the PEOPLE; on the ECONOMY, the Republicans fight for the BIG BANKS—not for the PEOPLE; on the massive OIL SPILL IN THE GULF, the GOP has defended BP—not the VICTIMS of the disaster.

It appears clear that the special interests “call the tune,” and when they do, the GOP leaders start to dance. The special interests, and especially Big Oil, Big Banks, Big Insurance and Big Pharma, call the shots and their political friends in the Republican Party do their bidding. That’s truly a sad state of affairs for the American people. The people in our great nation expect our political leaders to work together and to cross party lines when necessary to get good things done for the American people. That is especially true in times of national crisis. It’s time for the Republican leaders in Congress to step up to the plate and start cooperating with the Democratic leaders on good programs.

**The Number Of Uninsured Persons In Alabama And Mississippi Will Drop**

The ranks of low-income adult Alabamians and Mississippians without health insurance will fall by more than half in the coming decade under an expansion of the Medicaid program tied into the recently-signed health care overhaul, according to a new report. Under a standard scenario, some 244,800 previously-uninsured adults in Alabama, (53.2% of the total), will gain coverage by 2019 through Medicaid, a federal-state program, according to the report released by the Kaiser Family Foundation, a non-partisan research organization. In Mississippi, the expansion will cut the adult uninsured rolls by about 256,900, which is about 55%, the report finds.

Source: AL.com

**BP Agrees To $20 Billion Fund For Oil Spill Victims**

It was good to see BP agree to set aside $20 billion to pay victims of the massive gulf oil spill. This agreement came after President Obama put intense pressure on the powerful oil company to set up such a fund. The independent fund will be led by Kenneth Feinberg, the lawyer who oversaw payments to families of victims of the terrorist attacks on September 11, 2001. This appears to be a very good selection. President Obama announced the agreement in a news conference after winding up his meeting with BP executives at the White House.

The total costs to BP before this crisis is over will be huge. It’s being estimated that the total cost range will be as high as $60 billion. If the worst predictions about the oil spill come true, that figure could easily surpass $100 billion. For example, Goldman Sachs estimates that each barrel of oil spilled could wind up costing as much as $40,000 in cleanup and compensation.

While the $20 billion fund is a step in the right direction, it won’t be nearly adequate to cover the massive losses and damage caused by BP. While some question BP’s capacity to pay, that is simply not true. The giant oil company holds enough oil in its reserves to single-handedly supply the United States for two years. BP has little debt for a company of its size and makes more money than the corporate giants Apple and Google combined. BP posted $17 billion in profits last year from its vast operations around the globe, compared with $5.7 billion for Apple and $6.5 billion for Google. More importantly, in the past three years, the company generated $91 billion in cash flow from its operations. And, it should be noted that BP has 18 billion barrels of oil in proven reserves, twice what the U.S. consumes every year.

Source: Associated Press

**Morgan Stanley Settles With Massachusetts Over Subprime Lending**

Morgan Stanley has settled with Massachusetts in a subprime lending case. The investment bank agreed to a $102 million settlement following an investigation into subprime mortgage lending. State Attorney General Martha Coakley announced the settlement with Morgan Stanley on June 24th. The settlement calls for Morgan Stanley to provide $60 million to borrowers and the rest to the state treasury and to state agencies that had invested in securities backed by the risky loans.

Attorney General Coakley said the majority of the risky loans were made by New Century Financial Corp. And backed by Morgan Stanley. New Century filed for bankruptcy in 2008. You may recall we reported last year that the attorney general had reached a similar agreement in May 2009 with Goldman Sachs.

Source: Associated Press and USA Today

**II. A REPORT ON THE GULF COAST DISASTER**
Update On Oil Spill Litigation By Our Firm

Our firm has filed a number of lawsuits on behalf of victims of the Gulf oil spill and will file many more in the coming weeks. We are representing a wide range of clients, including fishermen, shrimpers, business owners, property owners, and many others. So far suits have been filed in federal courts in Alabama, Florida and Louisiana. Rhon Jones, who heads up the firm’s Toxic Torts Section, is coordinating the firm’s efforts in this litigation. We have dedicated an adequate number of lawyers and support staff to this effort so that we will be able to handle the volume of cases without neglecting any of our other clients. We have learned in previous litigation with giant oil companies that they fight hard and really can’t be trusted. We realize that, regardless of what BP’s public relations arm tells the public, this will be a hard battle. While we don’t expect BP to do the right thing by its victims, hopefully it will.

BP Has Paid Less Than 12% Of Claims

The House Judiciary Committee said last month that data it collected shows that BP has paid less than 12% of claims submitted by people and businesses arising from the Gulf oil spill. According to the committee, only $71 million out of an estimated $600 million had been paid as of June 15th. In addition, according to the panel, BP didn’t make any payments in the first two weeks following the explosion and oil spill. Michigan Democratic Rep. John Conyers is concerned that BP “is stiffing too many victims and shortchanging others.” It should be noted that BP hasn’t made a single payment for bodily injury or diminished home property value.

Congress Should Listen To The Deepwater Horizon Widows

Congress should repeal the 90-year-old law that limits the amount of money survivors can recover in deaths of family members killed in the Gulf of Mexico oil rig explosion. Rep. Edward Markey, (D-MA), and other members of the House Energy and Commerce committee, believe the April 20th Deepwater Horizon explosion exposed the need to reform the 1920 Death on the High Seas Act, which limits liability for wrongful deaths more than three miles offshore. On this subject Rep. Markey stated:

One way we can hurt BP is to make sure that BP stands for ‘bills paid,’ that the money for families, the money to clean up the Gulf comes out of their pocket, and that we repeal the Death on the High Seas Act.

Rep. Markey made that comment after listening to testimony from the widows of two workers killed in the tragic explosion. Natalie Roshto of Liberty, Miss., and Courtney Kemp of Jonesville, La., told an Energy and Commerce subcommittee last month that the maritime law unfairly limits how much money companies must pay in employee deaths at sea. Their husbands, Shane Roshto and Roy Wyatt Kemp, worked for Transocean Ltd., which owned the Deepwater Horizon oil rig. BP PLC operated the rig, which under maritime law was considered an ocean-going vessel and registered under the flag of the Marshall Islands, a small island chain in the Pacific Ocean. As we all know, 11 innocent men were tragically killed in the explosion.

Congress should also repeal the law on maritime deaths retroactively, which would affect the deaths in the gulf. Congress clearly has an obligation to fix the law. Rep. Markey was correct when he said Congress never intended to limit the amounts families could recover under circumstances like these. But many of the laws passed by Congress over the years favor wrongdoers and penalize their victims. Lobbyists for the special interests have pretty much had their way.

Rep. Charlie Melancon (D-LA) called the law “egregious” and said it has to be changed. According to Rep. Bart Stupak, (D-MI), chairman of the oversight and investigations subcommittee, the field hearing was intended to draw attention to the local effects of the oil spill, which still remains uncapped and is the largest spill in U.S. history. Nine lawmakers—seven Democrats and two Republicans—attended a four-hour hearing held at the St. Bernard Parish government building near New Orleans.

The two young women told the panel that their husbands had told them in the weeks before the explosion about problems they were having in controlling the well. Mrs. Roshto testified that her husband was especially worried about “all the mud they were losing” from the well. Both women said the crews were feeling the pressure to deliver oil more quickly. The members of Congress should listen to the pleas of these women and change the law.

Source: Associated Press

BP Cost-Cutting Added Significant Risks

Cost-cutting by BP added significantly to the danger of an explosion at the company’s Gulf of Mexico oil well. It appears that BP made decisions that increased the risk of a blowout to save the company time or expense. Reps. Henry Waxman of California and Bart Stupak of Michigan said in a letter sent to BP’s CEO, Tony Hayward, “If this is what happened, BP’s carelessness and complicity have inflicted a heavy toll on the Gulf, its inhabitants, and the workers on the rig.” The more we learn about the explosion, and the weeks and months leading up to it, the worse things look for BP.

The letter from committee chairman Waxman and subcommittee head Stupak listed a series of “shortcuts to speed finishing” the work. They quoted a BP engineer who called it a “nightmare well” and asked Hayward to respond in his testimony. The 14-page letter lays out the mistakes BP made in a way that is both understandable and damning. The lawmakers described five “questionable decisions” by BP before the April 20th explosion, including the use of a less robust well design, failure to anchor the well’s casing using a process recommended under industry practices and cutting short procedures to ensure cementing was sound. The decision on testing the cement was called “horribly negligent” by an expert the committee consulted.

While BP’s conduct has been very bad, we must not forget that there were other companies involved. Sometimes, companies whose conduct might not be as bad as the chief wrongdoer are virtually ignored and not looked at as carefully as they should be. We won’t let that happen. Transocean, Halliburton, and Cameron International won’t escape
paying for their share of the losses and damages caused by their wrongdoing.

A LOOK AT BP’S PAST RECORD

BP has been spending big bucks in a public relations effort designed to divert attention from its shameful conduct and to restore its tarnished image. In fact, a television ad campaign alone cost the oil giant $50 million. Even before the rig exploded in the Gulf, killing 11 people and creating the worst environmental catastrophe in our nation’s history, BP already had a very bad safety record. Let’s take a look at a part of that record.

• BP has been hit with 760 “egregious and willful safety violations” according to OSHA.
• BP paid the highest fine in history for failing to fix what was wrong at a Texas refinery.
• BP was responsible for explosions resulting in the deaths of 30 workers and the injuries of 200 more.
• BP lobbied successfully for safety waivers on the very rig that exploded in the Gulf.
• BP hired 27 people on its lobbying team who had worked in the White House or Congress.

Many believe the investigation announced by Attorney General Eric Holder referred to in this issue is likely to result only in monetary fines—fines that the highly-profitable BP will have no trouble paying—with the company not having learned its lesson. The civil litigation, which will be extensive, will compensate those who have been damaged in any manner. But I believe BP and all other wrongdoers responsible for the disaster in the gulf must be punished severely.

A CRIMINAL PROBE IS ONGOING

Federal authorities opened criminal and civil investigations last month into what is now recognized as the nation’s worst oil spill. U.S. Attorney General Eric Holder announced the criminal probe last month while he was in New Orleans. He said that the government “will closely examine the actions of those involved in the spill” and that if they find evidence of illegal behavior, the government “will be extremely forceful in our response.” Without question, the conduct of BP prior to the explosion in April had been very bad. It may rise to the level of being criminal and if it does, those who are guilty should be prosecuted and punished severely. It’s clear that BP put profits over safety and that has resulted in an unprecedented national disaster. BP must be held accountable. If any person has violated a criminal law, they should be prosecuted.

BP FAILS TO PROTECT CLEANUP WORKERS

According to the U.S. Occupational Safety and Health Administration, BP has ignored worker safety in relation to the clean up. OSHA made this known to the Coast Guard and requested help in communicating the agency’s “growing concern over significant deficiencies in BP’s oil response operations related to worker safety.” The oil giant’s failures to adequately protect workers involved in the oil spill cleanup efforts pose “potentially grave consequences” for their health. The failure by BP to look out for workers’ safety isn’t too surprising, considering its past record.

Thus far it appears BP has done nothing to seriously and systematically address OSHA’s concerns. According to reports, OSHA field representatives have witnessed “numerous deficiencies at several work sites and staging areas throughout the Gulf Coast region.” They say these problems were not isolated incidents. Another source of “grave concern and frustration” on OSHA’s part is that BP has failed to share critical health and safety information relating to the exposure and injuries of its cleanup workers.

OIL SPILL MAY COST OVER $5 BILLION IN GULF COAST PROPERTY VALUES

BP Plc’s oil spill may drive down Gulf Coast property values by 10% for at least three years, according to a forecast by CoStar Group Inc. It was estimated in mid-June that losses could total $4.3 billion along the 600-mile stretch from the Louisiana bayous to Clearwater, Fla. The property-information service’s estimates are very conservative. I fear the losses will be much higher. Falling real-estate prices are clearly another consequence of the worst environmental disaster in U.S. history. Oil washing ashore will further harm property values in an area where Moody’s Economy.com estimates prices fell as much as 34% from the peak of the U.S. residential real estate market in 2006.

The spill may cost BP almost $50 billion in cleanup and reimbursements for economic damage to the tourism and fishing industries. But that doesn’t include the very real effect on property values. Costar, based in Bethesda, Maryland, made its forecast for property prices assuming a 10% loss based on previous disasters, such as oil spills, hurricanes and the 1979 Three Mile Island nuclear accident in Pennsylvania. Its estimate relied on recent sales data of property within 200 feet of the Gulf waterfront and spanning 600 miles from Venice, Louisiana, to Clearwater, Florida. The analysis valued the property at about $3 million an acre or $43 billion for the entire coastline measured.

St. Joe Co., which owns 578,000 acres in northwest Florida, including about 130 miles on the Gulf Coast, has seen its stock fall 34% since April 29th. The company has built protective berms and taken aerial photos and soil samples as evidence in case it files damage claims with BP. This company will be one of the big losers on the coast.

Source: Bloomberg

METHANE POSES ANOTHER MAJOR PROBLEM

There is an overlooked danger in the oil spill crisis and that comes from the vast amounts of natural gas escaping that could pose a serious threat to the Gulf of Mexico’s fragile ecosystem. The oil emanating from the seafloor contains about 40% methane, compared with about 5% found in typical oil deposits. That means huge quantities of methane have entered the Gulf, according to scientists, potentially suffocating marine life and creating “dead zones” where oxygen is so depleted that nothing lives. It’s being called “the most vigorous methane eruption in modern human history.” This is
another part of the problem and one that is causing major concern.

Source: Associated Press

III. DRUG MANUFACTURERS LITIGATION

**Drug Manufacturers Settling Fraud Cases In Other States**

As we have reported previously, our firm is representing a number of states in the Medicaid fraud litigation. We have settled with a number of the drug companies on behalf of several of these states. In fact, we are still settling cases with the drug manufacturers in other states. While the Alabama Supreme Court has thus far protected the drug companies, that has not been the case in any other state where the Medicaid drug litigation is being pursued. Interestingly, the conduct in every state is identical and that has to make the situation in Alabama much more difficult to explain. In Alabama, the facts of the cases—and the admissions by the drug manufacturers—were as strong, and in some cases even stronger, than what we discovered in the other states.

**AstraZeneca Settles Class Action Lawsuit For $103 Million**

AstraZeneca has agreed to pay $103 million to settle class-action claims arising out of the company inflating the wholesale price of cancer and asthma treatments. The first settlement includes $13 million for consumers and health insurers in Massachusetts, and $90 million for claimants outside of the state. The class-action lawsuit alleged that AstraZeneca inflated the average wholesale price of Zoladex, a cancer drug, and Pulmicort Respules, a treatment used to prevent asthma symptoms in children. This is one of the fraud cases that have been labeled AWP cases and the facts should be familiar to the Alabama Supreme Court. Apparently, judges in other states take a different view on the law applicable to these cases. At least AstraZeneca must believe that they do since the company is settling cases.

Source: The News Journal

**Paxil Birth Defects Cases Settled**

GlaxoSmithKline (GSK), the manufacturer of Paxil, has agreed to settlements in nearly 200 individual cases alleging that the antidepressant caused birth defects. Most of the cases alleged that babies born to mothers taking Paxil suffered from heart defects. The leading case, brought on behalf of Lyam Kilker, contended that he was born with no fewer than three cardiac defects, including a hole between the two chambers of his heart that disrupted the aorta. That case was tried last October and resulted in a $2.5 Million verdict.

During the Kilker trial, it was proved that animal testing put the manufacturer on notice that the drug might cause problems, and that the company failed to follow up sufficiently with additional tests. Even worse, a company memo introduced into evidence talked about covering up any test results that showed a potential danger. The 1997 memo by GSK executive Bonnie Rossello, before any tests were conducted, read, "If neg, results can bury." Even though GSK still defends the drug, it’s significant that the company made a decision to settle hundreds of cases less than a year later.

In 2005, the Food and Drug Administration warned doctors about a study showing that babies born to women who took Paxil during the first trimester of pregnancy had a higher rate of major birth defects. The study, which involved 3,500 pregnant women, showed that those on Paxil were twice as likely to have a child with defects than women on other antidepressants. In the wake of the study, the FDA put out a statement warning that “[h]ealthcare professionals are advised to carefully weigh the potential risks and benefits of using [Paxil] in women during pregnancy and to discuss these findings as well as treatment alternatives with their patients.”

The terms of the recent settlements are confidential. At least 600 cases have been filed alleging that Paxil is responsible for congenital birth defects. Up to 100 other cases have already settled. GSK has also paid approximately $1 billion in settle-ments of Paxil-related cases not involving birth defects. It should be noted that Paxil, which was introduced in 1992, generates nearly $3 billion in annual sales. The drug is used to treat a wide variety of psychological maladies, including depression, anxiety, and obsessive-compulsive disorder.

If you want more information on the Paxil litigation, contact Chad Cook, a lawyer in our firm’s Mass Torts Section at 800-898-2034 or by email at Chad.Cook@beasleyallen.com.

Source: ConsumerAffairs.com

**Drug Maker Fails To Cooperate**

According to federal investigators, the Congressional investigation into the recent recall of children’s Tylenol and other pediatric medicines has been stymied by the manufacturer, Johnson & Johnson. This raises the prospect that new measures—like issuing subpoenas to compel cooperation—will now be invoked. McNeil Consumer Healthcare, the unit of Johnson & Johnson that makes the over-the-counter drugs, is now under scrutiny by the FDA for a pattern of violations in manufacturing and quality control practices that have led to a number of recent recalls.

The FDA has indicated as far back as May that it was considering criminal penalties or other actions against McNeil. Rep. Edolphus Towns, a New York Democrat, and chairman of the House Committee on Oversight and Government Reform, says Johnson & Johnson has used delaying tactics in its dealings with the committee and in some instances had provided misinformation. It’s not too surprising that the company denies these accusations. Congress should make sure Johnson & Johnson complies with all requests and the committee should be very aggressive as it looks into drug quality and safety issues raised by the recall.

The House committee opened its investigation in early May shortly after McNeil announced a voluntary recall of liquid pediatric Tylenol, Motrin, Benadryl and Zyrtec. The products, made at a company plant in Fort Washington, Pennsylvania, may have included metal particles, or too much of the active drug ingredient, or inactive ingredients that
did not meet testing standards. The FDA has referred the McNeil case to its office of criminal investigation, the agency’s law enforcement arm, which works with the Justice Department to prosecute companies accused of violating the laws governing drug manufacturing and marketing. It will be most interesting to see how the matter winds up.

Source: New York Times

**Blue Cross Blue Shield Sues Pfizer**

Blue Cross Blue Shield entities from Texas, Illinois, New Mexico and Oklahoma (hereinafter “BCBS”) have filed a lawsuit against Pfizer over its marketing of three drugs. The allegations in the lawsuit state that the company pushed off-label uses of the drugs and used “kickbacks” to persuade doctors to prescribe them. The allegations made in the Complaints resemble those in the $2.3 billion settlement between Pfizer and the United States Department of Justice. Also named in the lawsuit are four Pfizer managers and ex-managers in their individual capacities. Those Pfizer employees and former employees are not company higher-ups. One was a district sales manager who allegedly prepared misleading sales materials to present to doctors.

According to the lawsuit, Pfizer not only handed out those misleading materials for off-label uses, but sent doctors on Caribbean junkets and paid them $2,000 in honoraria in return for them listening to lectures about Bextra. More than 5,000 healthcare professionals were entertained in meetings in the Bahamas, Virgin Islands and across the U.S., according to the lawsuit. Pfizer has responded stating:

>This is a case of an insurance company seeking its money back for medicines that physicians prescribed appropriately using their best medical judgment.

Back in 2009, a former Pfizer sales manager was sentenced for off-label promotion of Bextra. The sales manager told Massachusetts officials that the company not only knew about her off-label activities, but actually encouraged them. It appears that off-label promotion of Bextra was “part of the Pfizer culture.” It should be noted that Pfizer settled with the federal government for $2.3 billion for off-label marketing regarding Bextra and Neurontin, among other drugs.

Source: Fierce Pharma

**Pfizer Receives Warning Letter From FDA**

Pfizer received a warning letter last month from the FDA because of the company’s failure to report complaints promptly. The agency warned Pfizer about its failure to promptly report complaints associated with its drugs that may have involved serious injury. According to the warning letter, Pfizer repeatedly failed to submit product complaints to the FDA within the required 15-day regulatory scheme. In some cases, Pfizer failed to report adverse events altogether, including reports of serious side effects with the cholesterol drug Lipitor and the anti-seizure drug Lyrica. These concerns were initially raised by the FDA following an inspection that concluded in August 2009. Let’s hope for safety’s sake that Pfizer will comply with the regulatory scheme in the future.

**Pfizer Spends Millions On Lobbyists Despite Chantix Warnings**

The powerful drug manufacturing industry has pretty well had its way in Congress over the years. A good example of how these companies keep things under control involves Pfizer. A recently-released expenditure report reveals that manufacturer Pfizer spent $4.3 million lobbying Congress and federal agencies in the first quarter of 2010. The drug company wanted items like smoking cessation medications included in the health care overhaul bill. That was despite the inherent risks of Chantix suicide.

While some of the funding was spent serving special interest partnerships like veterans’ health organizations, the bulk of the money was spent on aspects of the legislation that could lead to greater use of the company’s products, including insurance coverage for smoking cessation products like Chantix. This action has sent up a red flag to many health advocates, who expressed concern that increased prescription and availability of Chantix could lead to a rash of suicides.

These concerns stem from a 2007 black box warning about potentially dangerous Chantix side effects, including aggression and suicidal thoughts. The drug works by blocking nicotine receptors in the brain—a factor which can greatly exacerbate pre-existing psychiatric conditions like suicidal thoughts and aggression. The FDA has reported roughly 491 cases of suicidal tendencies or behavior directly linked to usage of Chantix. So long as the weak laws relating to lobbyists go unchanged, companies like Pfizer will continue to control what happens in Washington. Over the past few months the Obama Administration and Congressional leaders have had to focus their attention on issues like the gulf oil spill and Toyota’s safety issues. As a result, all reform efforts have been delayed and that is certainly understandable. Hopefully, the reform measures will soon get back on track.

Source: LAS Newswire

### IV. PURELY POLITICAL NEWS & VIEWS

**A Look At The Primary Results**

On June 1st there was a very low turnout of voters. For whatever reason, lots of folks made a decision to stay home. But the low turnout probably shouldn’t have been that big of a surprise. Most Alabamians were sick and tired of all the negative television ads and all the mudslinging. I believe that had lots to do with the low turnout. There were some surprises in the margins of victory in some of the races. Perhaps the biggest news has turned out to be the drama surrounding the recount in the GOP gubernatorial race. There was no change after the recount was completed. There will be a run-off between Bradley Byrne and Dr. Robert Bentley. Only 28% of registered voters turned out to vote which was a very poor turnout. This should be recognized as a sign of disgust with all of the negative campaigning that the public was subjected to by all too many candidates.
Ron Sparks Wins A Decisive Victory

I, along with all of the real pollsters, was way off base in predicting the outcome of the Governor’s race in the Democratic primary between Ron Sparks and Artur Davis. While I saw a strong momentum swing toward Ron in the race about ten days out, the polls were still showing Artur winning on June 1st by a very small margin. But all of us should have recognized that the size of the undecided vote, which at that time was over 30%, had to be bad news for Artur. At one time, Artur led in the race by over 30%. Without question, Ron Sparks ran a masterful race and deserved to win. He gained the momentum at the right time and never looked back. I have congratulated him!

Ron won an overwhelming victory, carrying all but six counties, with an overwhelming 62% of the vote. No longer will anybody underestimate his ability to campaign effectively and to get votes. Regardless of who winds up as the GOP nominee, I believe Ron will very likely be elected Governor of Alabama. I supported Artur, serving as his State Campaign Chairman, but my candidate lost. I am supporting the Democratic ticket and will vote for Ron in the fall.

The GOP Run-Off In The Governor’s Race

Even though Bradley Byrne led the ticket in the Republican primary, he had to take a backseat for a while due to the GOP recount controversy. Now that the recount is over; it’s clear that Bradley will face Dr. Robert Bentley in the run-off on July 13th. To gain the top spot, Bradley overcame what most say was a poorly-run campaign on his part. Even though he was under constant attacks by Tim James, Bradley had every opportunity to pull away from the pack, but he never did. The end result was Bradley leading the ticket by a very small margin getting only 28% of the vote. It was quite evident that the top GOP bosses, including Governor Riley, were backing Bradley, and they have to be greatly disappointed with their efforts.

I really thought Tim would lead the ticket in the primary due mostly to Bradley’s campaign slipping badly in mid-May. But Tim—who clearly had the momen-
tum at the time—made a statement about Coach Nick Saban in an apparent attempt to be funny, and it hurt him badly. Alabamians take their football seriously and it doesn’t take much to set off a fire storm. At a critical time in the campaign, Tim’s statement became a hot topic on all of the sports talk shows. In my opinion, it hurt Tim and may have been enough in itself to cost him a spot in the run-off. Lots of Bama fans took what he said seriously. Tim, as governor, couldn’t fire a coach, but most folks don’t know that.

Another factor in the reversal of fortunes between Bradley and Tim was that Bradley’s advisors finally realized that it was a mistake to run a race solely aimed at Dr. Paul Hubbert and AEA. Somebody eventually figured out that Paul Hubbert’s name wasn’t on the ballot. The resulting change in strategy may have been the real difference in why the primary vote turned around at a critical time. Bradley forgot about Paul and started to hammer Tim on a daily basis. It apparently worked.

Judge Roy Moore, who started his campaign with over 30% of the vote, slipped badly as the race progressed. He never seemed to get off the ground. Tim took some of his support and that hurt his chances to make the run-off. The Judge ended up in fourth place, but really not that far behind Bradley in votes. Judge Moore seemed to enjoy running, ran a low-budget campaign and seemed at peace when his race ended on June 1st.

Now let’s take a look at Dr. Bentley’s showing. The Tuscaloosa doctor is smart, a hard worker, and I am told an honorable man. Clearly, he ran the best campaign of any of the men who wanted to be Governor and with much less money than either Bradley or Tim. He also was able to take advantage of the negative tone of the Byrne and James campaigns. Dr. Bentley had a positive message and it paid off for him. I wouldn’t be surprised if Dr. Bentley wins in the run-off and is the GOP nominee in the fall. He will be a formidable candidate in the fall. As soon as the recount was over on June 18th, the Byrne campaign started with attack ads on Dr. Bentley. That may turn out to be a major mistake!

Jim Folsom Did It The Easy Way

Jim Folsom, the incumbent Lt. Governor, was unopposed in the Democratic Primary. It’s recognized, without much doubt, that Jim is extremely popular in Alabama and will be very had to beat in the fall. He has been a very good Lt. Governor and hasn’t made any major mistakes. As a result, the Cullman native will go into the General Election as the favorite and rightly so. The Sparks-Folsom ticket will be a good one and a team that will be especially strong in North Alabama. That’s an area of the state that is primed to elect a Governor and this may be the year.

Kay Ivey Survives The Republican Primary

Kay Ivey won her race for Lt. Governor in the Republican primary without a runoff. She spent much more in the primary than did Sen. Hank Erwin, her main opponent, and will now move on to the fall election. I believe Kay’s margin of victory was largely due to her name recognition and the fact that she is a very hard worker. It doesn’t hurt that she has the ability to finance her own campaign. Kay also will be able to raise substantial campaign money from some obvious sources. Since Kay has courted the Tea Party groups, it will be interesting to see if they become a real factor for her campaign this fall. It’s pretty well agreed that Jim can’t afford to take Kay lightly. I don’t believe he will.

James Anderson Ran Extremely Well

James Anderson came very close to winning his race without a runoff. He got over 49% of the vote against two very good candidates. Most political experts believed that Giles Perkins, who ran second, shouldn’t run it off, but apparently he has decided to stay in the race. Giles received the endorsement of the New South Coalition, which apparently gave him the encouragement he needed to stay in the race. This should make the big oil companies and the GOP nominee pretty happy. James will have to raise money and go through a run-off that shouldn’t have been necessary. Clearly, Giles has a very steep hill to climb in the run-off.

Michelle Nicrosi, the candidate who ran third, ran a very good race with little financial backing. Her support in a runoff

www.BeasleyAllen.com
The contest between Troy King and Luther Strange was the toughest and hardest-hitting race in either primary. At times things got pretty dirty. Nevertheless, a Washington lobbyist handily defeated an incumbent Attorney General by a large margin. This race was filled with accusations, a few true, but mostly false. The contest started off somewhat nasty, and got worse as it progressed. Troy was not able to raise sufficient campaign money to go on television so he could defend himself against the rough stuff that was being thrown at him. Long before the campaign officially started, malicious rumors were spread around the state about Troy that were totally false. The politically-inspired grand jury investigation, and the obvious involvement of the Riley forces in the race, hurt Troy badly. This combination of things, in my opinion, resulted in his defeat. The vote was clearly anti-King and has little to do with Big Luther.

It was rather interesting that Big Luther’s background as a Washington lobbyist, and his most interesting list of “clients,” never really surfaced in this race. While both should have been real issues in the campaign, neither issue ever developed. Troy wound up having to defend himself—causing a good record over his tenure as Attorney General to be lost in the shuffle and virtually ignored by the voters—and in reality he never really had a chance to win. When you get down to it, there were just too many things for Troy to overcome. It will be interesting to see how the GOP nominee, who has very close ties to big oil companies like BP, will fare in November.

**Democratic Candidates Were All Unopposed In The Supreme Court Races**

The three Democratic candidates for seats on the Alabama Supreme Court were nominated without opposition. I believe these candidates, Judge Mac Parsons, Tom Edwards, and Rhonda Chambers, will provide strong competition for the GOP nominees in the General Election. If real issues are discussed—which can certainly include both past records and judicial performances—the races for the Court this fall will be very close.

**Mike Bolin and Tom Parker Survive The Primary**

The two races for seats on the High Court in the GOP primary were most interesting. Justice Tom Parker was said by the experts to have no chance of being reelected. I understand the Business Council of Alabama, and the group known as AVALA, hand-picked Eric Johnston to run against Justice Parker. Most of the political experts let it be known to the world that Eric would win the race easily. But with the support of Tea Party groups around the state, and his conservative base, Parker won without a run-off.

In the other race, Justice Mike Bolin defeated Dothan lawyer Tracy Carey, a lifelong Republican and a good man, by labeling him a “trial lawyer.” That was the sole message of Bolin’s heavy television ad campaign. Most folks never got to know Tracy—a military veteran, a family man, a strong Christian, and a very good lawyer. As a result, he lost the race and probably never even had a chance to win once the Bolin attacks started on television. Both Bolin and Parker will face strong Democratic opposition in the fall. The word on the street is that Bolin, if reelected, will run for Chief Justice in 2012.

**Billy Beasley Leads In The District 28 Senate Race**

My brother, Billy Beasley, came within 300 votes of winning his Senate race in District 28 without a run-off. He will now face former Tuskegee mayor Johnny Ford in the July 13th run-off. Billy led Johnny by 20% in the first vote, but isn’t taking anything for granted. He will continue to work just as hard in the run-off as he did in the first primary.

Billy wants to be a Senator for all the folks in the counties making up the district. His main emphasis has been on creating jobs, making educational needs a top priority, and working to assure that healthcare is both available and affordable to all citizens. Those will continue to be his priorities. Billy will always be accessible to his constituents, as he has been during his three terms in the House of Representatives, and I believe that’s important. He has consistently promised the folks in all of the counties in the District that when he is elected, he will never forget them and he will never embarrass them personally or professionally while in the Senate. Everybody who knows Billy will tell you, he keeps his promises!

Billy’s run-off opponent has already leveled a number of unfounded accusations as he seeks to overcome a huge deficit. Frankly, I don’t believe any of them deserve repeating. My mother used to tell me that if you want to find out about the true character and heart of a person, talk to the folks back where they live and work because homefolks know best. Over the years, I have found that to be very true. If anybody in District 28 has any doubts about Billy, all they have to do is check with the folks in Barbour County. Homefolks do know about a person and they also know best!

**An Important Development**

Myron Penn, who has represented District 28 in the Alabama Senate, has endorsed Billy. This is a very significant and important endorsement and will definitely help Billy throughout the District. Myron has been very effective in the Senate and is well liked and highly respected both in the Senate and in his District. The following is what Myron had to say:

> For the last 8 years I have had the pleasure of serving as state senator for District 28. I have worked very hard during this time to improve the lives of the folks who live and work in all of the counties that make up this district. It is very important to me that we as a district continue to
move in this direction and build on the accomplishments and improvements we have made in recent years.

Over the last decade I have worked closely with Billy Beasley and I know he will work tirelessly for all the people of this senate district. He is a man of character who will continue to move this district forward through the issues that we will face over the next 4 years. Billy and I have discussed redistricting, which will likely come up in the Senate, and we have agreed to work together to ensure that the makeup and demographics of Senate District 28 will remain fair.

On July 13th I will vote for Billy Beasley to replace me in the Alabama State Senate and am confident that he will serve all of the people of District 28 with integrity.

Source: Associated Press

V. SETTLEMENTS OF THE MONTH

**HEAVY TRUCK CASE IS SETTLED**

Our firm recently settled another crashworthiness case involving a heavy truck or 18-wheeler cab. In this case, the driver for some unknown reason lost control of his rig and it overturned 180 degrees onto the roof in the median of I-85 between Auburn and Montgomery. The roof crushed all the way to the dash in the rollover. The driver survived the wreck and asked witnesses for help in getting out of the cab. But, only his arm would fit through the window opening due to the cab crush. Within minutes of the crash, the vehicle burst into flames and the driver, who was unable to get out of the severely crushed cab, died a tragic death.

We brought claims against the truck manufacturer for lack of crashworthiness as well as a claim for defects related to the fuel-fed fire. During the rollover, one of the unprotected fuel tanks ruptured, spilling fuel. Unfortunately, the battery cables for the engine were located in an area near the fuel tank. The cables arced, providing an ignition source. For years prior to the manufacture of this vehicle, other manufacturers have been placing batteries between the frame rails in order to move the battery cables away from fuel tanks in the event there was a collision. This company failed to do so.

Additionally, this particular model truck had never been tested in a dynamic rollover event before production so the manufacturer was unaware of how the cab would perform in a rollover event. Since the late 1960s and early 1970s, government studies have shown that there is a significant need for heavy trucks to be designed with occupant survival space. However, heavy truck manufacturers continue to ignore this need for occupants and continue to produce un-crashworthy cabs made of lightweight aluminum and fiberglass. In this case, if the roof strength had been adequate the driver would have been able to escape the cab before the fire got out of control. This case was settled for a confidential amount on behalf of the decedent’s family. Ben Baker was the lead lawyer for our firm and did a very good job for our clients.

**WRONGFUL DEATH SETTLEMENT IN CIVIL DAMAGES ACT**

Our firm settled a case recently filed under Alabama’s Civil Damages Act. It involved the death of a 19-year-old man who was killed in a motor vehicle accident. The case involved the sale of alcohol to a minor in December 2008. In the early morning hours of December 31st the young man lost control of his vehicle and crashed, which caused his death. During the investigation of the case, our lawyers discovered that the store selling the alcohol had captured the sale on December 30th on its surveillance camera.

The video clearly showed that the clerk failed to ask for the proper identification from the young man. Further, the parents of the young man had on two prior occasions gone to the store where the purchase was made and informed the clerk on duty on each occasion that their son was under the age of 21. They asked the store to not sell him alcohol.

We were able to develop a pattern and practice of this store selling alcohol to minors on a regular basis. The case was settled on behalf of the parents for a confidential amount. Mike Crow from our firm and Shane Seaborn, who is with the firm of Penn and Seaborn, represented the family. They did a very good job for their clients.

VI. LEGISLATIVE HAPPENINGS

**THERE WILL BE NEW FACES IN THE ALABAMA LEGISLATURE**

Six incumbent legislators lost on June 1st and one will face a run-off. That means there will be at least six new faces in the Alabama Legislature next year. Of course, there may be other changes after the General Election. The incumbents who lost were three Democrats and three Republicans. The Republican Party has indicated it will take over both the House and the Senate next year. While I really don’t believe that will happen, it should be an interesting General Election.

**A LOOK TO 2011**

In 2011 members of the House and Senate will face the toughest financial challenges that any group of legislators has faced in recent memory. The State of Alabama is in terrible fiscal condition and the patching job that was skillfully done this year won’t work again in 2011. As they say in Barbour County, the state is “broke as a haint,” and that’s very bad news for the next Governor and Legislature.

The Republicans claim they are going to take over both houses of the Legislature. Maybe a good question for their legislative candidates would be: “what state programs do you propose eliminating outright and which ones will you cut drastically?” I suspect the answers to that question will be most interesting. But the voters need to know the answers before November.
Public Justice has struck another blow for access to justice by arguing against federal preemption in a U.S. Supreme Court case involving vaccine preemption. The case—Bruesewitz v. Wyeth, Inc.—will decide whether the National Childhood Vaccine Injury Act preempts state-law design defect claims against vaccine drug manufacturers. The amici brief, which was filed on behalf of Public Justice, the American Association for Justice, and Public Citizen, emphasizes the important role that the tort system plays in promoting public safety and compensating victims.

The case involves the diphtheria, tetanus, and pertussis vaccine, which is manufactured by Wyeth, Inc. Tragically, Hannah Bruesewitz, then a healthy six-month-old, suffered catastrophic injuries hours after receiving an unsafe version of the vaccine. In their lawsuit, Hanna’s parents allege that at the time Hannah was injured by the dangerous vaccine, Wyeth already knew how to manufacture a much safer alternative, but delayed seeking approval from the FDA in order to cut costs.

By the time Wyeth finally decided to market the safer alternative, Hannah’s life was destroyed. Her parents pursued a timely but unsuccessful petition for compensation before the Court of Federal Claims, which was established pursuant to the federal Vaccine Act to offer monetary awards to individuals who suffer certain vaccine-related injuries. Hannah’s parents then sued Wyeth in court, seeking compensation for her terrible injuries based on a showing that less toxic vaccine alternatives were readily available and should have been administered to Hannah.

The U.S. Court of Appeals for the Third Circuit dismissed the case on federal preemption grounds, finding that the Vaccine Act expressly preempts all design defect claims related to vaccines, even in cases where the adverse side effects are demonstrably avoidable. But the Act says:

No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death... if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.

The Lower Court bought Wyeth’s argument that Congress viewed any and all side effects from vaccines as “unavoidable,” and thus that it intended the Act’s express preemption clause to wipe out all design defect claims related to vaccines. In response, Hannah’s parents argued that the risks of certain vaccines—in particular, the dangerous version of DPT marketed by Wyeth—are “avoidable,” and, as to such vaccines, there is no federal preemption under the Act.

The U.S. Supreme Court granted review in order to decide whether all vaccine manufacturers are completely immune from common-law tort liability, even in cases where the manufacturer could easily have chosen to market a safer alternative. Public Justice appeared in this case to argue for the rights of injury victims across America. Its brief emphasizes, contrary to Wyeth’s claims, that the common-law tort system plays an absolutely essential role in spurring manufacturers to make their products safer. If the tort system isn’t allowed to operate with respect to vaccines, then vaccine manufacturers will have far less incentive to improve the safety of their products. Such a result would pose a threat to the health and safety of every American.

Source: Public Justice

WEST VIRGINIA COURT UPHOLDS PUNITIVE DAMAGES AWARD AGAINST DUPTON

The West Virginia Supreme Court has refused to reconsider its decision involving DuPont and the $100 million award of punitive damages awarded in a pollution case. DuPont had asked the Court to reconsider a ruling issued in March involving pollution at a long-time zinc-smelting plant in Spelter, West Virginia. In seeking the rehearing, DuPont said the Court gave too much weight to the medical monitoring issue. The company

said the damages intended to punish DuPont for its behavior should be about $39 million, not the nearly $100 million DuPont was ordered to pay. In its decision, the Court said it rejected DuPont’s latest arguments that punitive damages should be modified.

Source: Insurance Journal

ALASKA SETTLES PENSION LAWSUIT FOR $500 MILLION

Alaska’s Attorney General, Dan Sullivan, announced last month that Alaska has settled a breach of contract and professional malpractice lawsuit against its former actuary for $500 million. The settlement between the Alaska Retirement Management Board and Mercer Inc. may be the largest of its kind. This appears to be a great result for state workers and retirees in Alaska. Attorney General Sullivan is to be commended for pursuing this matter in the courts.

Alaska sued Mercer in 2007 alleging that mistakes by the company had contributed to an $8.4 billion state pension deficit. Mercer had been the actuary for the state’s Public Employees’ Retirement System and Teachers’ Retirement System pension plans. Of the total amount to be paid, $100 million will come from liability insurance. Mercer will pay the rest.

Source: Montgomery Advertiser

SUPREME COURT REJECTS PFIZER PUNITIVE DAMAGES APPEAL

The U.S. Supreme Court has rejected Pfizer Inc.’s appeal of a ruling that ordered a retrial on the amount of punitive damages that should be awarded to a woman who developed breast cancer after taking the company’s hormone replacement therapy drugs. Pfizer argued that a retrial limited to just punitive damages had violated its constitutional right to a jury trial and that the trial judge in the case had improperly admitted the testimony of a scientific expert.

An Arkansas jury in 2008 ruled for Donna Scroggin in her lawsuit against two Pfizer units—Wyeth and Upjohn. She was diagnosed with breast cancer in 2000, after taking hormone replacement therapy drugs for 11 years. The jury awarded her compensatory damages of $2.7 million and punitive damages of

I don’t believe the American people had any idea how much money the oil companies have been making. The five companies, including BP, appearing on Capitol Hill, have a combined worth of $776 billion and earned $64 billion last year. As a matter of interest, BP paid CEO Tony Hayward $4.7 million last year, while spending only $10 million on research. That certainly seems out of balance. One report put Hayward’s total compensation package much higher.

Rep. Waxman’s committee released documents that showed BP made a series of money-saving shortcuts and blunders that dramatically increased the danger of a destructive spill from a well that an engineer ominously described as a “nightmare” just six days before the April blowout. Investigators found that BP was badly behind schedule on the project and losing hundreds of thousands of dollars with each passing day. The investigators say that BP responded by cutting corners in the well design, cementing and drilling efforts and the installation of key safety devices. “Time after time, it appears that BP made decisions that increased the risk of a blowout to save the company time or expense,” Rep. Waxman and Rep. Bart Stupak, (D-MI), chairman of the committee’s investigations panel, wrote in a letter. Hopefully, Congress will take all required steps to make sure that a disaster such as the one caused by BP never happens again. All of the victims of this disaster must be fully compensated for both their losses and damages, both in the past, and also for the future. It’s also critically important that all responsible for this disaster be punished severely.

Source: Forbes

IX. THE CORPORATE WORLD

POWERS CORPORA TIONS WORK TO DENY JUSTICE TO VICTIMS

Powerful corporations with virtually unlimited resources are endangering consumers and working openly, and also behind the scenes, to deny folks who become victims of corporate wrongdoing of their day in court. These corporations drown out the voices of American citizens in the political world and attempt to close off their access to justice. It’s become evident that the rights of consumers have to be fought for on a daily basis. When you put together a list of all of those in Corporate America who have committed massive wrongdoings over the past few years, that list will be quite lengthy. The civil justice system is definitely worth fighting for and must be defended. If the bad guys in Corporate America are successful in destroying the jury system, ordinary citizens will have nowhere else to go to seek justice. If you believe the American jury system is worth saving, join in the battle!

THE Natalee Holloway Resource Center

The Natalee Holloway Resource Center was opened last month in Washington. Its goal—a very good one—is to help families of missing persons. Beth Holloway, a most courageous woman, has been through a terrible ordeal over the past five years. She spoke at the news conference announcing the Center. Mrs. Holloway believes the Center “will serve as a point of light for all missing persons.” The Resource Center, co-founded by her, was officially opened with a public fundraiser at the National Museum of Crime and Punishment. Hopefully, the Center will prove to be helpful to families throughout the country. Few things could be worse than having a child abducted. Anything that can help a family experiencing such a terrible ordeal is most welcome. We should all commend this brave woman and pray that the Center will succeed.

Poor regulat ion HurTs The Publi c Badly

There has been a constant cry over the years by many Republican politicians for a cutback in the regulation of certain industries. If anybody believes that either poor, lax or no regulation by the federal government is the way to go and is sufficient to insure safety and good performance by big companies like BP, they haven’t been keeping up with the news over the past few months. Consider the following: we have had a tremendous number of miners killed in the mines; at
At least 89 deaths due to Toyota's sudden acceleration problems; unsafe drugs put on the market killing hundreds; millions of vehicles recalled for safety problems; unsafe foods on the market; and now the BP oil spill disaster. You can readily see that there are certain industries that must be properly regulated. When the government turns over standard-making, regulation, and monitoring to an industry, that is a recipe for disaster.

Many of the regulatory agencies suffer from a shortage of funds and staffing problems. In others the industry actually controls the regulators. Also there are agencies that lack the statutory authority to carry out their responsibilities. Consider that OSHA, which is responsible for workers' safety, doesn't have enough inspectors to visit all of the workplaces in the United States more than once every 130 years. We need to give the agencies adequate funding and staffing and pass laws necessary to give them authority to do their jobs.

**Big Oil Pours Money Out to the Politicians and Lobbyists by the Millions**

Over the years, the big oil companies have been able to control what happens in Congress and now the American people are paying for it. The companies have gained and maintained control by giving large "campaign donations" to their political friends and by having powerful and highly-influence lobbyists on their payrolls. The lobbyists make sure those who take their money follow to the letter the industry line. Lobbyists are the channel of influence in Washington and there is no real dispute about that. During the Bush years Big Oil took full advantage of its alliance with the Administration.

According to the Center for Responsive Politics, the five oil companies whose top executives traveled to Capitol Hill in Washington to testify about the gulf oil spill have spent $18.7 million lobbying so far in 2010. Those firms account for about 50% of the $38.2 million the oil industry has spent on K Street (the home of lobbyists) so far in 2010. As a point of reference consider that in 2009 the oil giants spent $175 million for lobbyists and in 2008 the total spent was $92.5 million. Unfortunately, most Americans haven't had a clue about how things are done in Washington, but they are beginning to find out. But until we figure out a way to stop the flow of money from Corporate America—and specifically the oil, drug, and insurance industries—the public will continue to have little say on what happens in Congress.

Source: Center for Responsive Politics

**FDA Fines Genzyme for Problems at a Manufacturing Plant**

Biotech drug maker Genzyme Corp. has agreed to pay a $175 million penalty to federal regulators in connection with long-standing manufacturing problems that have already cost the company millions. According to the Food and Drug Administration, the company signed a legal agreement to fix problems at an Allston facility that makes injectable biotech drugs. Under terms of the consent decree, Genzyme must map out a plan for overhauling the plant and stick to a preset timetable or face additional fines. The decree also sets a deadline for transferring Genzyme's operation for filling drug vials to a new manufacturing site. FDA principal deputy commissioner Joshua Sharfstein had this to say:

"It is critical for the safety of the drug supply that companies comply with basic manufacturing standards. FDA takes these obligations very seriously and expects manufacturers to do the same."

In June, Genzyme, located in Cambridge, shut down its plant for about three months to clean up viral contamination that had been slowing production of the drugs Cerezyme and Fabrazyme. In November, the FDA found tiny particles of trash in drugs made by Genzyme, including steel, rubber and fiber. The agency recommended that doctors closely inspect vials of four drugs made at the plant: Cerezyme, Fabrazyme, Myozyme and Thyrogen.

Since January, Genzyme has restructured its manufacturing operations, naming a new president of global manufacturing and corporate operations, along with a senior vice president of global product quality. It also contracted manufacturing for some of its key products to Hospira Inc. Prior to the problems with its Allston plant, Genzyme had been doing pretty well in the biotech industry, building a multibillion dollar business around treatments for rare diseases. Cer- zyme treats Gaucher disease, an enzyme disorder that can result in liver and neurological problems, while Fabrazyme treats an inherited disorder known as Fabry disease, which is caused by the buildup of a particular type of fat in the body's cells. Myozyme treats Pompe disease, which interferes with muscle development. Thyrogen is used to diagnose thyroid cancer. My advice to Genzyme is to clean up its plants!

Source: Associated Press

**X. Toyota Litigation**

**NHTSA Says 89 Deaths May Be Linked to Toyota**

The federal government now says the death toll from Toyota's unintended acceleration crashes are up to 89. NHTSA said it now has 6,200 reports of unintended acceleration in Toyota vehicles from 2000 through May 20th of this year. Those include allegations of 71 crashes in which 89 people are said to have died. That number of deaths is up 71% from NHTSA's previous report of 52 deaths allegedly resulting from Toyota unintended acceleration. Actually, I believe the actual numbers will be lots higher. For example, Safety Consultant Sean Kane says that incidents reported to NHTSA usually "represent only a fraction of the total" and that Congress has reports of "nearly 38,000 potential" acceleration incidents involving Toyota vehicles. That is much higher than NHTSA's 6,200. There is no telling how many people have been killed because of Toyota's unintended acceleration crashes. Many of the deaths were blamed on the driver's conduct because of the speed involved.

Source: USA Today
A U.S. federal judge has ordered Toyota to turn over the bulk of documents from previous investigations of complaints about its cars racing out of control. These doctors were sought in litigation by class-action lawyers. The discovery order by U.S. District Judge James S selna was a major defeat for Toyota. The Japanese automaker faces potential civil liability estimated conservatively at more than $10 billion. As all America knows, complaints of runaway vehicles have led to the recall of more than 8 million Toyota vehicles worldwide for repairs of what is being described as ill-fitting floor mats and sticking gas pedals the automaker blames for surging engines. Many of the lawsuits assert that at least some of the acceleration problems were caused by an electronic glitch, a problem that Toyota has denied.

The Plaintiffs’ lawyers were seeking about 125,000 pages of internal documents already submitted to Congressional panels and auto safety regulators. Those documents have remained largely confidential, except for a relatively small number cited in recent Congressional hearings on Toyota’s handling of complaints of sudden, unintended acceleration in its vehicles.

Under Judge Selna’s order, Toyota had 30 days to turn over any English-language documents it does not consider privileged—those involving communications with its own lawyers. The judge gave Toyota up to 60 days to produce Japanese-language papers among the documents, said by the automaker to number some 20,000 pages. Any documents containing trade secrets or other information that might compromise Toyota’s competitive position will be kept confidential under a protective order. Disclosure of the documents will make it easier to draft a newly-consolidated version of all legal claims seeking compensation from Toyota for economic losses—such as diminished resale value—stemming from the acceleration problems and related recalls.

The judge felt that 30 days was sufficient for the bulk of documents already delivered to Congress and the National Highway Traffic Safety Administration. Judge Selna also rejected Toyota’s recommendations for how the Plaintiffs’ lawyers should structure their revised Complaint. Currently, there are over 200 federal lawsuits filed around the country for personal injury, wrongful death and economic loss claims stemming from acceleration issues—all of them now brought together in the consolidated pretrial proceedings overseen by Judge Selna. Toyota says it faces about 100 other lawsuits filed in various state courts around the country.

Source: Reuters

Toyota waited nearly a year in 2005 to recall trucks and SUVs in the United States with defective steering rods, despite issuing a similar recall in Japan and receiving dozens of reports from American motorists about rods that snapped without warning, according to documents recently obtained by the Associated Press. The lengthy gap between the Japanese and U.S. recalls—strikingly similar to Toyota’s handling of the recent recall for sudden acceleration problems—triggered a new investigation in May by NHTSA.

It isn’t clear whether NHTSA will order a timeliness investigation. An automaker is required to notify NHTSA about a defect within five days of determining that one exists. I’m not sure what more NHTSA needs. NHTSA now has linked 16 crashes, three deaths and seven injuries to the steering rod defect. When a steering rod snaps, the driver cannot control the vehicle because the front wheels will not turn.

After the 2004 Japanese recall, Toyota claimed initially that it had very little evidence of a steering rod problem among U.S. Trucks and SUVs. But the AP found that the automaker had received at least 52 reports from U.S. drivers about the defect before vehicles were recalled in Japan. It’s interesting—and perhaps telling—that the Associated Press seems to be doing a better job than NHTSA.

Source: Associated Press

Our firm represents a family that lost its mother when the Blair robe she was wearing caught fire. Tragically, the woman burned to death. This event illustrates one of the overlooked problems with consumer safety—clothing-related burns and deaths.

On average, 120 people die and over 4,300 are seriously injured each year from clothing-related burns. Remarkably, the textile and clothing industry has done very little over the past half century to decrease the flammability of the clothes and minimize this safety issue. Instead, the industry chooses to manufacture its clothes to conform to an outdated and minimum standard. The majority of the clothing or textile products sold in this country are regulated by the Flammable Fabrics Act. The Act was passed by Congress in 1953. The vast majority of all clothing-related injuries and deaths occurred with fires involving apparel that complied with this standard.

Since 1953, the Flammable Fabric Act has essentially been unchanged. It was enacted to remove from the market only those garments that were the most highly flammable. The vast majority of textile products subjected to the standard’s test readily pass and are designated as “Class one normal flammability.” This result unfortunately implies that the textiles are safe to use in clothing. The concept of “normal flammability” in the context of this test is misleading as a measure of safety. “Normal flammability” is merely a term defined by the general wearing apparel standard. Ordinary news print paper passes this test. Consumers need to be aware that a “does not ignite” result under these test conditions does not mean that a fabric will not ignite under real world conditions. In addition, just because the fabric passes the standard does not mean that it will prevent a fairly rapid spread of flames up the fabric. Furthermore, the standard only measures the rate of flame spread up the fabric test.
specimen, but permits a rapid flame spread.

There can be no doubt that the industry can design and test its clothes to decrease the injuries and deaths caused by flammable clothing. The textile industry could utilize the more stringent Flammability Standards for children’s sleepwear. In the 1970s, Congress enacted the Children’s Sleepwear Standard which had as its goal to protect young children up to twelve years of age from the unreasonably risk of thermal burns caused by burning sleepwear. The Children Sleepwear Standards Act brought about certain changes to the materials and construction of children’s sleepwear in order to reduce the risk of cloth-related burns. The standards required the fabric, once ignited, to extinguish before burning seven inches. Those changes resulted in safer sleepwear and contributed to a reduction in burn injuries and deaths for the public at large.

Everyday in this country, people are subjected to burns and die in clothing-related fires. Many of these losses are preventable, yet, the Federal standard regulating the flammability of these products remains unchanged. Regulators could build on the proven approach of the Children’s Sleepwear Standard Act, and develop a modernized clothing flammability standard that equally protects the public. The textile and apparel industry could move towards the production of safer garments by re-designing its products. In addition, greater use of effective, visible, clothing fire warning labels would help. Historically, it’s been proven that most consumers don’t recognize or appreciate that much of the clothing they purchase can be so easily ignited.

Clothing-related causalities will undoubtedly continue unless changes are made to the way clothing is manufactured and labeled. The effects of the Children’s Sleepwear Standards demonstrate that the frequencies of deaths and injuries will decline if changes are made to the fabric and apparel. It is time that the textile, apparel, and retailing industries respond by producing safer clothing. If you need more information on this subject contact Rick Morrison in our firm at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

JURY RETURNS VERDICT IN YAMAHA CASE

In what was described as a test for similar cases pending in Gwinnett County, Georgia, a State Court jury awarded $317,002 to a north Georgia couple last month to compensate them for injuries caused when the husband’s leg was trapped under his Yamaha off-road vehicle. This case is one of the first to reach a verdict among product liability cases filed and pending against Yamaha in the U.S. And Canada alleging defects in its Rhino-model recreational-utility vehicle.

Roger McTaggart, a resident of Blue Ridge, Georgia, was injured in a 2007 accident. He was driving his Rhino, stopped the vehicle, and then started going forward again. He then turned the steering wheel to the right, and the Rhino tipped onto the driver’s side, trapping his leg under the vehicle. McTaggart sustained a “crush” injury in which the “skin exploded” and bone was exposed. The area where the incident occurred was “an uneven, relatively flat, grassy area,” according to the Complaint. Yamaha’s lawyers disputed that description.

McTaggart and his wife, Glenda, sued three separate Yamaha corporate entities in Gwinnett County State Court. Among their claims, they contended that the Yamaha Rhino should have included a barrier to contain a rider’s legs inside the vehicle. Although Plaintiffs in cases filed against Yamaha in other courts have said that there are problems with the Rhino’s stability which cause the vehicle to roll over, that contention was not made in this case.

After a two-week trial, the jury awarded $317,002 to the Plaintiffs. The award consisted of pain-and-suffering damages, medical expenses, lost wages, future lost wages and loss of consortium for Mrs. McTaggart. The jury did not award punitive damages. The jury felt it was significant that Yamaha had not performed any testing on the Rhino specific to occupant containment. The jury believed that was something the company should have tested. Had they done so, the company would have known this was a danger a lot of people would run into.

Andy Childers of the Atlanta firm of Childers, Schlueeter & Smith, along with Bob Blanchard, Troy Rafferty and Kimberly R. Lambert from the Pensacola, Florida, firm Levin, Papantonio, represented the Plaintiffs. Other cases are pending against Yamaha in federal court and in the Superior Court of Orange County, California. There is also a consolidated case in U.S. District Court for the Western District of Kentucky.

Source: Law.com

$5,661,000 VERDICT IN GOODYEAR TIRE CASE

A jury in New Port Richie, Florida, has returned a $5,661,000 verdict against Goodyear Tire & Rubber Company. The case involved a tread/belt detachment on a right front Goodyear G159 tire mounted on a Class A mobile home. The verdict was all compensatory damages. The claims against Fleetwood Motor Homes, the RV manufacturer, and the retailer were severed because of their bankruptcies. The case was tried only against Goodyear. The victim, who died of natural causes two years before the trial started, suffered the loss of both legs below the knee. His widow received severe facial injuries, but has recovered. This was the third largest verdict in the history of Pasco County. Chris Roberts, a lawyer with Smith & Fuller, located in Belleair Bluffs, Florida, represented the plaintiff and did a very good job.

COOPER TIRE INVOLVED IN TRAGIC HIGHWAY CRASH

A faulty tire is said to have caused a fatal crash involving eight high school students in Florida last year. The crash occurred on an interstate highway, and four students were killed and four more injured. The tragic accident was on the last day of school. According to the investigation by the Florida Highway Patrol, the Ford Explorer the teens were riding in rolled over the tread on its left rear tire, a Cooper Cobra, separated.

One lawsuit has been filed against Cooper Tire & Rubber Co., Ford Motor Co. And two other Defendants. It was alleged in the suit that Cooper had an “outrageously high number of tread separations.” The company’s manufacturing process was also blamed in the crash. There have been numerous lawsuits filed against the company. But Cooper still hasn’t corrected the safety issues with its tires. Folks have been dying all over the United States for a
number of years because of defective Cooper Tires. Florida Highway Patrol investigators found no indication the tires weren’t properly inflated and no nails or other objects were found that might have damaged it. The Explorer’s owners had taken the vehicle for service and replaced two tires two weeks earlier at a Cooper distributor.

Source: Jacksonville.com

MORE ON THE DANGERS OF 15-PASSENGER VANS

We have received a large number of comments and inquiries about the dangers of the 15-passenger van since the June issue was mailed and received. A number of our readers told us of safety problems involving these vans. Others had questions relating to the risks associated with the vans. It’s really hard to believe that any organization—including churches—would still use a 15-passenger van to transport people. If you want more information on the subject, you can contact Chris Glover, a lawyer in our Product Liability Section, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com. You can also go to www.vanangels.org.

RECLINING SEATS ARE A HIDDEN DANGER

In April, a federal jury in Texas found that Hyundai Motor Company’s reclining seat caused the death of a passenger in a single car accident of a 2005 Hyundai Tucson Sport Utility Vehicle. Todd Tracy, a very good lawyer from Dallas, has been warning drivers for decades that reclining seats can kill or cause severe injury to passengers in car accidents. Todd, who handled the case for the family of Sarah Goodner, made this observation:

The automobile industry and auto dealerships advertise reclining seats as an inexpensive luxury accessory for passenger comfort on the road and highway. They tell car buyers that the family can lay back, rest, and even sleep. But for dozens of years there’s been growing evidence that reclining seats kill or cause severe injury such as paralysis in car accidents.

Sarah Goodner, who was 19-years-old, was killed in a 2007 car accident when she was ejected from the reclined seat of the Hyundai Tucson SUV. Sarah was taking a nap in the front passenger reclining seat when she was thrown out of the car when it rolled over on a West Texas highway. The federal jury returned a $1.8 million verdict against Hyundai for using a defective reclining seat system. Evidence presented during the trial showed that the lap seat belt was supposed to provide the primary safety protection, but it failed to prevent the young victim from sliding out from under the lap seat belt when the seat was fully reclined. Sarah was wearing the seat belt lap and shoulder restraint.

Hyundai told the jury that its reclining seat was only supposed to be used when the car was not moving. In fact, the carmaker blamed Sarah for not reading the fine print in the owner’s manual. Hyundai has failed to use available accident safety technology that would prevent reclining seats from being tilted back at more than a 45-degree angle. A life could have been saved if Hyundai had used a system currently used by another automobile company that automatically returns a reclining seat to the upright position in the event of a car accident. Todd did a very good job for Sarah’s family and should be commended for his hard work and efforts to bring a serious safety defect to the public’s attention.

A LOOK AT WHAT THE CARMAKERS HAVE KNOWN

Let’s take a minute and think about how many times you have been in a car and have reclined your seat while wearing your seatbelt to take a nap. I believe most will agree—this is a very common practice. If a seatback is reclined, the common seatbelt becomes much less effective, if not completely useless, because the shoulder harness of the belt moves away from the body. Folks don’t realize or understand that the more space there is between the seatbelt and an occupant’s chest, the greater the risk of death or serious injury in an accident.

Automobile manufacturers have been well aware of the dangers of reclining seats for nearly four decades. At a 1964 Stapp Car Crash Conference, two safety-equipment engineers presented a report analyzing the effect of seat belts on reclined-seat occupants. The report discussed testing in which the seatback was reclined almost fully. When the sled stopped suddenly, the test dummy submarined under the lap belt almost ten inches, driving the belt into the dummy’s abdominal cavity.

In 1988, the National Transportation Safety Board conducted a safety study where one of the issues was the effect of reclining seatbacks. The NTSB examined 167 collisions involving passengers who had worn three-point restraints. The result showed that three-point restraints offered good protection only if worn properly. An occupant who wears a seatbelt while his seat is reclined is not “centered” in the belt, rendering the belt ineffective for spreading crash forces over the body.

The NTSB stated that the protection offered by any type of seatbelt is compromised when the seat is reclined presenting a “potentially dangerous combination in a moving vehicle.” It was noted by the NTSB that, “since vehicles had been marketed with reclining seats, most adults and children were tempted to combine belt use with a reclined seat.” The study concluded that, “at best, lap/shoulder belts, indeed, any type of seatbelt, offered reduced effectiveness when used with a reclined seat. At worst, a lap/shoulder belt in a reclined seat may be a potentially dangerous combination in a moving vehicle—proper fit is impossible.”

Although some vehicle owner’s manuals warn of the dangers of reclined seatbacks in moving vehicles, the warnings do not state specifically what degree of recline is dangerous. Further, the NTSB pointed out that, since the manufacturers advertised their cars by showing a passenger in a reclined seat, while wearing a seatbelt, these advertisements undermine the already limited effectiveness of owner’s manuals warnings (especially if the warnings are unclear, as in advertising not to recline the seat “any more than is needed for comfort”).

The NTSB submitted safety recommendations to NHTSA based on the findings in the study. The report recommended that manufacturers limit the angle of inclination allowable in a reclining seat to no greater than the maximum angle that can safely be used in combination with a seatbelt. The report further requested...
that NHTSA determine to what degree a seatback could be reclined and still allow an occupant to be properly and safely restrained by a lap/shoulder belt combination. In March 1989, the NTSB stated that:

- Warnings and owner’s manuals are not effective for preventing passengers from misusing lap/shoulder belts and reclining seats;
- It is not known at what point the lap/shoulder belt becomes dangerous with reclined seats; and
- Testing is required to determine the safe limits of reclined seats.

NTSB also noted that “it is likely that most people who ride with the seatback reclined are not aware of the associated risks; they are simply using the added comfort the reclining seatback affords.” In response to NHTSA's initial position and NTSB’s findings, the auto manufacturers claim that the owner’s manuals effectively “discourage” the use of reclined seats while a vehicle is in motion, and that “common sense” indicates that an upright seat is safer than a reclined one. Clearly, the industry’s response was to blame the motoring public and ignore the problem.

It is shameful that the automobile industry has taken this position. There are ways for the industry to address this dangerous problem. A simple warning that points out the danger of reclining seats can be inexpensively incorporated into a vehicle design, and yet, it would convey the needed information to alert the passengers of the danger. A warning label can be the first step towards educating the public. But a warning would be unnecessary if the industry would start designing its restraint system in such a manner to alleviate the problem.

For example, GM has incorporated into some of its current vehicles, a seat design that mounts the seatbelt system within the seat itself. Known as the “all belts to seat,” this design allows the shoulder harness to stay in position even when the occupant reclines the seat. Automakers could also add a device that would warn the vehicle passengers of the hazards of reclined seats. In fact, years ago, a major manufacturer of seatbelts patented a device that would give a visual or audible warning if a passenger were to recline his seat to a dangerous degree.

Folks are being needlessly injured and killed as a result of the automobile industry’s inaction on this subject. The industry knows that the motoring public does not understand or recognize the danger of reclining the seat while the vehicle is in motion. The industry knows that millions of families drive millions of miles on the road every year. The industry knows that occupants in their vehicles will recline their seats to take naps, and by doing so, the occupants are all at great risk of serious injury or death in an accident. But, the automobile manufacturers turn a blind eye to this danger even though there are simple approaches they could take to educate the public and prevent such needless injuries and deaths each year. If you need more information please contact Dana Tauntion at 800-898-2034 or by email at Dana.Tauntion@beasleyallen.com.

Source: Portions of the above article were taken from the PR Newswire, “Hyundai Reclining Seat Kills in Car Accident, Injury Attorney Todd Tracy Issues Car Safety Alert,” April 23, 2010.

XII. MASS TORTS UPDATE

MERCK HIT WITH $8 MILLION VERDICT IN FOSAMAX TRIAL

Merck & Co. has been hit with an $8 million jury verdict in the case of a Florida woman. Merck’s osteoporosis drug destroyed her jaw bone and has caused significant pain in the plaintiff. Merck says it will appeal the decision. The case was brought by Shirley Boles of Fort Walton, Florida, who took Fosamax for about 10 years. Merck says her dental problems were due to heavy smoking and periodontal disease. The jury awarded Mrs. Boles $8 million in compensatory damages. This was her second trial. The first ended in a mistrial last September. Merck faces more than 1,400 lawsuits alleging Fosamax harmed patients.

Source: Associated Press

BAYER CONTINUES TO MARKET BIRTH CONTROL PRODUCTS

You may have noticed a new television commercial by the drug giant Bayer in which the company appears to altruistically suggest that women should learn the facts about birth control options before choosing one. One of the “facts” Bayer states in its commercial is that its products are among the most widely used in the United States. It’s not surprising that Bayer’s products, such as Yaz and Yasmin, are widely prescribed, because Bayer has done an excellent job in marketing these products so that the risks of the products are understated and the benefits are overstated. (Readers may recall that this was a previous conclusion by the FDA regarding certain Yaz advertisements.)

Bayer’s new commercial also directs women to its website www.bayerforwomen.com, which allegedly allows women to research the risks and benefits of various birth control products before choosing one. While the site provides general information regarding the various types of birth control, the only products mentioned by name are its own products, Yaz, Yasmin, and Mirena. What is troubling about the commercial and website is that they give the impression of impartiality, but in fact they are advertisements for Bayer products. This is a perfect example of Bayer’s marketing tactics.

Our firm continues to investigate cases regarding injuries caused by Bayer’s products, Yaz, Yasmin, and Ocella. We have filed several cases on behalf of women—otherwise healthy—who have suffered injuries such as gallstones/gallbladder disease, pulmonary embolism, deep vein thrombosis, stroke and heart attack. For additional information, please contact Alyce Addison at 800-898-2034 or by email at Alyce.Addison@beasleyallen.com.

ACTRESS SUES BAYER IN YASMIN CASE

A stage actress has filed suit against Bayer, alleging that the birth-control pill Yasmin caused her to have a stroke at age 27. Brenda Hamilton, who is in the Broadway show Wicked, had been taking Yasmin for a little more than two years when she suffered a stroke in May 2007. Ms. Hamilton alleges in the suit filed in a New York court that Bayer knew Yasmin
posed a greater risk than did other birth-control pills for blood clots and strokes, but withheld that information from patients and doctors. Ms. Hamilton had no history of health problems when she was stricken. She had this to say:

I’m pretty angry that this happened to me. I was 27 at the time. I don’t think this should be happening to young women. It shouldn’t happen to any woman just because they take birth-control pills.

Women have suffered strokes stemming from the use of other types of birth-control pills, which experts said were caused by increased levels of estrogen. Bayer touts Yasmin particularly for its low estrogen levels. But in 2008, as we have pointed out, the FDA cited Bayer for overstating the safety of the product in its advertising.

Ms. Hamilton’s lawsuit is one of about 1,100 throughout the country claiming the pills caused serious or life-threatening health problems. Two class-action suits were also filed in Canada. But in 2008, the pharmaceutical giant has consistently defended the drug, which accounted for $1.5 billion in sales in 2009. Our firm is handling a number of cases for clients against Bayer. If you need more information please contact Alyce Addison at 800-898-2034 or by email Alyce.Addison@beasleyallen.com.

Simple Medical Pumps Cause Nightmares: Beware of Cold Therapy Pumps

Over the past several years, our firm has handled a number of lawsuits for clients involving simple mechanical devices that are comprise primarily of a simple pump. Our lawyers in the firm’s Mass Torts Section have found that these medical devices have caused lots of problems for persons who have used them to ease pain. More and more cases are being discovered where these simple devices cause severe injuries. We are involved in the litigation involving the pain pumps, representing a number of clients who have suffered severe injuries.

Intra-articular Use: We have previously reported on the abject catastrophes caused by the intra-articular use of pain pumps. The pump is used to inject post-operative anesthesia directly into the joint space for days after surgery. Often the result is a total loss of cartilage in the joint. This is a permanent and debilitating injury. But there are also other uses of pumps that cause problems.

Cold Therapy. Another dangerous use for very low tech pumps is in cryotherapy. Essentially, a pump is used to circulate water through an ice chest and into a cooling pad which is place on the operative/injury site. In essence, it’s a super ice pack commonly referred to as “cold therapy.” These devices are routinely prescribed by orthopedic surgeons and podiatrists after a surgical procedure. The device is sent home with the patient (who is often on pain medication) with little or no instruction. Without proper instruction, and because the devices have no temperature alarms or automatic shut-offs, the skin and underlying nerves around the affected area (typically, ankles and feet, wrists and hands, shoulders or knees) are essentially frozen. Injuries resulting from these devices can be significant.

There are three main manufacturers of these cold therapy pumps: Donjoy (Iceman); Breg (Polar Care); and Biomet (EB Ice). Interestingly, the devices cost around $46, but retail to patients for $300. It appears only one case involving a cold therapy pump has gone to trial, and it resulted in a $4.1 million verdict.

Infusion Pumps. The FDA sent a letter to Baxter Healthcare Corp. on April 30th ordering the company to recall and destroy all of its Infusion Pumps. This action is based on a longstanding failure to correct many serious problems with the pumps. The FDA believes there may be as many as 200,000 of those pumps currently in use. Infusion pumps are devices that deliver fluids, including nutrients and medications, into a patient’s body in a controlled manner. They are widely-used in hospitals, other clinical settings and, increasingly, in the home, because they allow a greater level of accuracy in fluid delivery.

The FDA has been working with Baxter since 1999 to correct numerous device flaws. Since then, its Colleague pumps have been the subject of several Class I recalls for battery swelling, inadvertent power off, service data errors, and other issues. In June 2006, the FDA obtained a consent decree of permanent injunction in which Baxter agreed to stop manufacturing and distributing all models of the Colleague pump until the company corrected manufacturing deficiencies and until devices in use were brought into compliance. Since then, Baxter has made numerous changes to the Colleague pumps but these changes have not corrected the product defect, leading to the permanent injunction.

Infusion pumps generally, including the Baxter Colleague models, have been the source of persistent safety problems. In the past five years, the FDA has received more than 56,000 reports of adverse events associated with the use of infusion pumps. Those events have included serious injuries and more than 500 deaths. Between 2005 and 2009, 87 infusion pump recalls were conducted to address identified safety concerns, according to FDA data.

An FDA analysis of these adverse events has uncovered software defects, user interface problems and mechanical and electrical failures. Problems with infusion pumps are not confined to one manufacturer or one type of device. If you need additional information please contact Russ Abney, a lawyer in our Mass Torts Section, at 800-898-2034 or by email Russ.Abney@beasleyallen.com.

Source: May 12 Update for Health Professionals

Dennis Quaid Sues Drug Maker On Behalf Of His Children

Actor Dennis Quaid has filed a lawsuit against Baxter Healthcare Corp., a drug maker, alleging similar labels for the blood thinner Heparin and a less potent drug caused a mix-up at Cedars-Sinai Medical Center threatening the lives of his newborn twins in 2007. The lawsuit seeking damages was filed in Los Angeles Superior Court on behalf of his children. Both Heparin and the lower dose version, Hep-lock, are packaged in similar vials with blue backgrounds and very small print on both labels, according to the Complaint.

The Quaid twins, who were born in November 2007, were both administered multiple near-fatal doses of Heparin to treat staph infections, according to the lawsuit. The children, Zoe Grace and Thomas Boone, were given 10,000 units of Heparin, rather than the 10 units of...
The FDA has warned that taking certain drugs to treat symptoms of heartburn, acid reflux or ulcers may increase the risk of hip, wrist and spine fractures. The drugs belong to a class of medications called proton pump inhibitors (PPIs), which work by reducing the amount of acid in the stomach. The drugs are available by prescription to treat conditions such as gastroesophageal reflux disease (GERD), ulcers in the stomach and small intestine, and inflammation of the esophagus. They are also available over-the-counter to treat frequent heartburn. The prescription PPIs are Nexium, Dexilant, Prilosec, Zegerid, Prevacid, Protonix, Aciphex and Vimovo. The over-the-counter PPIs are Prilosec OTC (omeprazole), Zegerid OTC (omeprazole) and Prevacid 24HR (lanoprazole).

The FDA has found, based on a review of several epidemiological studies, that consumers who received high doses of PPIs or used them for one year or more were at greater risk for wrist, hip and spine fractures. The majority of studies evaluated individuals 50 years of age or older. The increased risk of fracture primarily was observed in this age group.

While it’s not clear whether the use of PPIs is the cause of the increased risk in fractures, the FDA is working with the manufacturers of PPIs to further study this possible risk. In the meantime, as a precaution, the “Drug Facts” label on both the prescription PPIs and the OTC varieties, which are indicated for 14 days of continuous use, are being revised to include information about this risk. “Because these products are used by a great number of people, it’s important for the public to be aware of this possible increased risk,” according to Dr. Joyce Korvick, deputy director for safety in the FDA’s Division of Gastroenterology Products.

For patients with pre-existing osteoporosis, the FDA suggested no action other than management of bone status according to current standards for clinical practice along with adequate vitamin D and calcium supplementation. In November the FDA issued a warning about concomitant use of the PPI omeprazole (Prilosec and Prilosec OTC) and clopidogrel. The PPI was found to blunt the antplatelet effect of clopidogrel. Consumers are advised by the FDA not to stop taking PPIs unless told to do so by their health care professional. The FDA also says consumers should also be aware that OTC PPIs should only be used as directed for 14 days for the treatment of frequent heartburn. They say that no more than three 14-day treatment courses should be used in one year. Any questions or concerns about PPIs should be directed to a health care professional. If you need more on this subject, contact Ted Meadows at 800-898-2034 or by email at Ted.Meadows@beasleyallen.com.

**Proton Heartburn Drugs Linked To Wrist, Hip And Spine Fractures**

The study estimated that about 48,000 elderly patients experienced serious cardiovascular harm or death as a result of using Avandia instead of the alternative, and noted that the national impact would be much greater because the estimate didn’t account for the majority (61%) of prescriptions for patients under 65 years old. The study concluded that “[g]iven the lack of any proven, unique and medically important health benefits of rosiglitazone compared to pioglitazone, there is no rationale of its continued viability on the market or its use by prescribing physicians or patients.” The Food and Drug Administration requires a black box warning on Avandia about potential increased risk of heart attack, but has resisted efforts by health experts and the consumer group Public Citizen to pull the drug off the market.

In 2007, a study first raised concerns about the drug’s cardiovascular effects. Dr. David Graham, author of the recent paper and a known whistleblower, argued in 2007 to an advisory panel of outside experts that Avandia sales should be stopped. But the panel voted 22-1 to urge the FDA to keep the drug on the market. Avandia was given a black box warning at that time after a study concluded that people taking Avandia had a 43% higher risk of suffering a heart attack. In the newest study, Dr. Graham and other researchers looked at data on nearly 230,000 Medicare patients and found Avandia increased the risk of stroke by 27%, heart attack by 25% and death by as much as 17%. Dr. Graham drew attention to a number of other prescription drugs, including Vioxx, that were later withdrawn or saw strict new warnings. Maybe the FDA should start paying more attention to his opinions! If you need additional information on Avandia please contact Frank Woodson, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

**Avandia Increases Heart Risks And Deaths**

A draft study on the effects of diabetes medication Avandia (rosiglitazone) has concluded that given the increased risk of stroke and heart disease and the alternative medication pioglitazone, there is no rationale for continuing to prescribe Avandia. Avandia-maker GlaxoSmithKline faces thousands of lawsuits alleging that the company failed to warn about the increased risk of heart attack, stroke and other conditions. The draft, dated May 28th, was an observational study looking at the risk of heart attack, stroke, heart failure and death in 227,000 elderly patients. The study estimated that in the ten-year period from 1999 through 2009, when the drug was marketed, 82.5 million prescriptions were filled.
XIII. BUSINESS LITIGATION

THE PAST, PRESENT, AND FUTURE OF CLASS ACTIONS

Over the past several years, class action litigation has been the focus of some positive, but mostly negative, publicity. Much of this treatment has been unfair. The class action is, and will continue to be, the best tool available to allow the American public to defend its rights and keep over-reaching business interests, whether financial, product-related, or relating to securities, in check.

The history of class action litigation is over 1,000 years old. America’s present class action system was born when law and equity merged in 1937. That year the Supreme Court adopted the Rules of Civil Procedure, and Rule 23, “Class Actions,” was included. Rule 23 has been adjusted in favor of and to the detriment of Plaintiffs. In 1966, substantial changes in the process added “opt out” language that changed the landscape of class actions. Class action litigation through 2005 was generally limited to state or federal cases only; removal was difficult due to diversity limitations.

In 2005, the Class Action Fairness Act (CAFA) was enacted, relaxing the rules of diversity and removal, enabling most large class cases to be filed in, or removed to, federal court; restricted the practice of “coupon settlements”; and transformed the procedures for settling class actions in federal courts. Ever-changing interpretation and application in class actions continues to be evident even today in recent Court decisions, such as the Supreme Court’s decision in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009).

Throughout these changes, whether substantive or procedural in nature or effect, class actions have stayed true to their purpose: to provide the group of injured persons with relatively small claims with a way to come together and take action against the entities that harmed them. These injuries were real and painful to Plaintiffs, but because of their position in relation to those who harmed them, their voices were silent without class litigation. No one should be allowed to injure thousands of people without being held accountable for their actions. Often those who champion “tort reform” say that because these actions result in large awards, but are then split among many, they are only injuring businesses and helping lawyers. This is simply not true.

Big business cannot be allowed to enjoy huge profits while it injures consumers. Consumers shouldn’t be forced to take on these massive companies alone. By banding together in a “class,” consumers can force these businesses to stop their actions and repay the ill-gotten gains. In many cases, these consumers successfully punish the wrong-doers so they understand that their behavior cannot be tolerated in the future. Without this type litigation, how could individuals stand up against Big Tobacco companies? Asbestos manufacturers? Insurance companies? Financial companies, such as Enron? What about today? Could a single person take on Toyota or BP? In theory yes, but in reality no. This subtle fact is known by the large and irresponsible entities when they do harm to individuals. Folks need to be able to associate themselves with other people who have suffered common injuries and utilize the skills of experienced lawyers who can adequately represent their interests. Lawyers in our firm continue to champion the causes of individuals and groups. Through the efforts of our highly-skilled lawyers and support staff members, we continue to fight to keep the scales of justice balanced. If you need additional information on class action litigation, contact Dee Miles or Tim Fiedler at 800-898-2034 or by email at Dee.Miles@beasleyallen.com or Tim.Fiedler@beasleyallen.com.

A LOOK AT REVERSE SETTLEMENTS IN PHARMACEUTICAL PATENT CASES

In In re Ciprofloxacin Hydrochloride Antitrust Litigation, the Second Circuit Court of Appeals recently indicated that it is willing to reexamine its prior case law with respect to “reverse settlements” which arise in the context of pharmaceutical patent disputes. In a “reverse settlement,” a branded drug manufacturer files a patent infringement suit against a competitor who seeks federal approval to market a generic version of the same drug patented by the branded manufacturer. But in so doing, the Plaintiff-branded manufacturer risks that a court might invalidate the patent on its successful pharmaceutical product—the very patent that it has sued to enforce. Thus, in many cases the Plaintiff-branded manufacturer settles its claim against the Defendant-generic competitor by paying the competitor to delay its entry into the market. This practice harms consumers because it keeps cheaper generic drugs off the market.

Reverse settlements, also characterized as “pay for delay” settlements, were criticized by President Obama during his campaign when he promised to “ensure that the law effectively prevents anti-competitive agreements that artificially retard the entry of generic pharmaceuticals onto the market.” California Representative Henry Waxman has stated, “As coauthor of the Hatch-Waxman Act, I can tell you that I find these type[s] of reverse payment collusive arrangements appalling.”

Now the Second Circuit has begun to weigh in. In Ciprofloxacin, purchasers of the antibiotic Cipro sued Cipro's manufacturer, Bayer, as well as generic manufacturer Barr Laboratories, for violating antitrust laws by entering into a reverse settlement as described above. The Plaintiffs alleged that Bayer settled its patent infringement case against Barr by paying off Barr in exchange for Barr's agreement to withhold release of its generic version of Cipro.

The Department of Justice Antitrust Division joined the Ciprofloxacin Plaintiffs to argue that reverse settlement agreements in the pharmaceutical industry should be treated as "presumptively unlawful" under Section 1 of the Sherman Act. This represented a marked departure from the longstanding Department of Justice position under the Bush Administration, which essentially turned a blind eye to reverse settlements.

In an opinion released April 28, 2010, the Second Circuit noted that "there are compelling reasons to revisit [precedent]" with respect to reverse settlements, including the substantial increase in the number of reverse settlements in pharmaceutical patent cases, as well as the federal government's recent about-face on the legality of reverse settlements. The Court invited the
Ciprofloxacin Plaintiffs and the government to petition for an *in banc* hearing to consider whether prior precedent condoning reverse settlements should be overturned.

This U-turn by the federal government with respect to reverse settlements, not to mention the potential for reversal of Second Circuit precedent, represent a most interesting development in antitrust law. We expect that reverse settlements will receive increased scrutiny from the Department of Justice and also the Federal Trade Commission going forward. If the Second Circuit reverses *Ciprofloxacin*, we foresee that reverse settlements will be the subject of increased litigation in the federal courts. If you need additional information on this subject contact Archie Grubb at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com.

**XIV. AN UPDATE ON SECURITIES LITIGATION**

**New Rules Passed To Avoid Another Flash Crash**

Trading exchanges will implement rules designed to tame the volatility of individual stocks by temporarily halting trading during dramatic price changes, even as market participants are bracing for stiffer rules. The new rule will be in effect on a pilot basis for six months.

The cross-market trading pause was proposed last month in response to the May 6th “flash crash” that saw the Dow Jones Industrial Average plummet almost 1,000 points before partially recovering. All exchanges will halt trading for five minutes in an individual stock when its price moves 10% or more, up or down, in the previous five minutes. The pause is designed to give traders time to catch their breath and assess whether a stock’s price change stems from a real shift in value or an unrelated market hiccup.

SEC Chairman Mary Schapiro said that the “new rules will ensure that all markets pause simultaneously and provide time for buyers and sellers to trade at rational prices.” The SEC considers the stock-by-stock circuit breaker rule to be the first step of several to curb damage caused by unusual market fluctuations like those seen on May 6th. Regulators haven’t pinpointed a single cause for the incident and are saying it was caused by a confluence of events.

The financial industry generally supports the circuit breaker, but most observers and regulators agree that it alone won’t stop another flash crash from occurring. Right now, the circuit breaker applies only to stocks contained in the S&P 500 index. It doesn’t cover smaller cap stocks or index-based products such as exchange-traded funds, which were some of the stocks most dramatically affected on May 6th. “It is my hope to rapidly expand the program to thousands of additional publicly traded companies,” Schapiro said.

Rep. Melissa Bean (D-IL), in a letter to the SEC, said “I am concerned that by limiting the rules to the issuers in the S&P 500, other issuers will be vulnerable to continued market volatility.” The Issuer Advisory Group suggested that regulators include an “opt-in” provision that would permit non-S&P 500 companies to elect to participate.

Other people commenting about the rule are concerned about the market disruptions outside of the 9:45 a.m. To 3:45 p.m. EDT (1345-1945 GMT) window when the circuit breaker would be in effect. TD Ameritrade Holding Corp. (AMTD) said 10% to 15% of its trades on any given day are placed overnight to be executed at market open, leaving those stocks vulnerable for 15 minutes.

As a next step, the SEC is looking to ban “stub quotes,” which are placeholder prices that tend to be far from an actual market price. Normally, those trades won’t get executed. But investigators believe that on May 6th some trades were executed unintentionally at stub-quote prices. The SEC also is working with exchanges to create a unified and predictable policy for breaking erroneous trades. Regulators and exchanges alike have said they are dissatisfied with the decision to cancel hundreds of trades that occurred during the height of market volatility on May 6th. After the flash crash, the exchanges decided to cancel all trades executed at prices that were more than 60% above or below those printed before 2:40 p.m. EDT (1840 GMT).

The SEC is eyeing certain types of buy and sell orders for further regulation. Schapiro has identified two of these types: market orders (orders to buy or sell at market price without regard to fluctuations) and stop-loss orders (orders to sell when a stock falls to a certain price). Investigators of the flash crash believe those types of orders could have accelerated the market drop. If you need more information on this subject contact Scarlette Tuley in our firm at 800-898-2034 or by email at Scarlette.Tuley@beasleyallen.com.

Source: *Wall Street Journal*

**XV. INSURANCE AND FINANCE UPDATE**

**Bank Of America Settles Countrywide Charges For $108 Million**

Bank of America will pay $108 million to settle federal charges that Countrywide Financial Corp., which it acquired nearly two years ago, collected outsized fees from borrowers facing foreclosure. This is the latest evidence of gross misconduct at Countrywide, once considered an industry giant. Last year, three top executives, including former CEO Angelo Mozilo, were charged with civil fraud and insider trading by the Securities and Exchange Commission.

The settlement, which will refund money to about 200,000 borrowers, was announced last month by the Federal Trade Commission. It is the largest mortgage industry settlement for the agency, which oversees non-banking functions such as debt collection. The FTC’s chairman, Jon Leibowitz, accused Countrywide of “callous conduct, which took advantage of consumers already at the end of their financial rope.” As previously reported, Bank of America purchased Countrywide in July 2008. It should be noted that the actions in this case took place before the acquisition by Bank of America.

According to the FTC, Countrywide hit borrowers who were behind on their mortgages with fees of several thousand dollars at times. The fees were for such services as property inspections and landscaping that far exceeded market rates. Countrywide created subsidiaries

Consumer advocates don’t believe banks have done enough to prevent foreclosures because of the income they receive from these sort of fees. In a 2007 conference call with investors that was cited by FTC lawyers, a top Countrywide executive called such fees “part of our diversification strategy” as foreclosures soared. Diane Thompson, a lawyer with the National Consumer Law Center, says, “This is an ongoing problem. Those default fees are huge barriers to loan modifications.”

The FTC also alleged that Countrywide made false claims to borrowers in bankruptcy about the amount owed or the size of their loans—and failed to tell those borrowers about fees or other charges. The settlement requires Bank of America to notify bankrupt borrowers by monthly notices about what they owe, including fees. Bank of America has dealt with allegations of deceptive practices at Countrywide since acquiring the mortgage company. In October 2008, it reached a settlement with attorneys general agreeing to modify troubled mortgages with up to $8.4 billion in interest rate and principal reductions for nearly 400,000 customers. It has abandoned the tarnished Countrywide name and remains the largest collector of mortgage payments in the country.

The FTC is charged with enforcing federal laws designed to prevent abuses by companies that collect consumers’ debts. That’s because mortgage-collection activities are typically handled outside the oversight of federal banking regulators. Critics say the agency lacks the expertise or resources to enforce those laws. A sweeping financial overhaul being negotiated by Congress would create a new agency focused specifically on consumer financial protection.

Source: Associated Press

**$14.5 Million Jury Verdict Against Hartford**

A federal jury in South Carolina awarded $14.5 million in damages recently to a South Carolina printing company in a case brought against The Hartford insurance company. The insurer had denied a claim for a major fire loss in 2008 contending that the fire was caused by arson. In March 2008, investigators said someone sprinkled fuel to set 11 different fires in the building of Genesis Press. The fires damaged several printing presses, computer drives and other equipment. Two weeks earlier, the business had been vandalized with anti-Semitic graffiti, according to testimony at the trial.

Hartford said that it stopped paying on the $7 million claim after it became suspicious. The insurer alleged that the owners of Genesis Press enlisted the aid of an alcoholic family member to perform “surgical strikes” on the presses and inflict damage to computer drives to make the arson appear to be a crime of passion. The owners of the business said Hartford’s investigators failed to adequately pursue other leads in the case, including one involving a former disgruntled employee.

After Genesis Press sued Hartford for bad faith, Hartford filed a counterclaim seeking to recover $2 million paid out before denying the insurance claim. The jury found that Hartford was wrong to deny the printing company’s claim and found for the business owners. Hartford plans to appeal.

Source: Insurance Journal

**Hartford To Pay $72.5 Million To Settle Class-Action Lawsuit**

A federal judge in Connecticut has granted preliminary approval to a $72.5 million settlement in a national class-action lawsuit alleging Hartford fraudulently kept millions in fees that should have gone to accident victims. The 2005 case involves Plaintiffs who were injured and eligible for either personal injury or workers’ compensation claims from The Hartford Financial Services Group. Plaintiffs alleged that Hartford fraudulently underpaid personal injury and workers’ compensation claims. Instead of receiving a lump sum, the insurer paid “struc-tured settlements,” which are payments over time. Annuities are typically used to provide the payments. The annuities in this case were provided by Hartford Life, the property-casualty insurer’s life-insurance division. It was alleged that Hartford would tell people the value of a settlement, but would not mention that the company would take at least 15% for fees, taxes and profit.

According to the federal court, the settlement was “fair, reasonable and adequate” to the more than 21,000 claimants. The court has scheduled a hearing for September 21st to consider final approval of the settlement.

Source: Hartford Concurrent

**$250 Million In Damages Awarded Against Novartis In Bias Case**

A jury has found that drug company Novartis discriminated against women by paying them less than men, promoting fewer of them and allowing a hostile workplace and has awarded $250 million in punitive damages to the Plaintiffs. The same jury concluded later that Novartis Pharmaceuticals Corp. had discriminated against its female employees since 2002, and it awarded $5.3 million to a dozen women. The company says it will appeal.

David Sanford, who was one of the Plaintiffs’ lawyers, said the findings “sent a message to Novartis and all other corporations in America that they cannot continue to get away with the discrimination and the systemic problems that have gone on for so long. That day has come and we’re absolutely delighted.” During the trial, the Plaintiffs portrayed one district manager as particularly abusive, so much so that he showed women pornographic images and invited them to sit on his lap. Novartis admitted that it might have been slow to investigate the claims against the manager, who incidentally was fired two years after the lawsuit was filed in 2004.

A lawyer for Novartis told the jury, “he wasn’t that bad a manager. He was just terrible with women.” It was a comment
that I suspect had best not been made. The Plaintiffs’ lawyers repeatedly reminded the jury about it during closing arguments. I agree with David Sanford, who represented the women, when he told the jury, “You can’t be a good manager if you’re terrible with women.” This appears to be a verdict that will be upheld by the appeals court in the event Novartis goes forward with the appeal.

Source: Associated Press

**Tyson Foods Agrees To Pay Workers For All Work Time**

Tyson Foods Inc. has settled a decade-long dispute by agreeing to pay its workers for time they spend putting on and taking off protective clothing. Federal officials have insisted that meat and poultry processors pay employees for all hours worked. In a consent decree filed in U.S. District Court in Birmingham, Tyson also agreed to pay $500,000 in overtime back wages to nearly 3,000 workers at its Blountsville, Alabama, plant.

The Labor Department reached a similar agreement earlier this year with poultry processor Pilgrim’s Pride Corp. It had accused both companies of violating federal law by not paying workers for all work-related tasks. The consent decree affects all of Tyson’s U.S. workers. The company has 117,000 workers worldwide.

Source: Associated Press

**Bank of America Workers Sue For Overtime**

Workers for Bank of America Corp, one of the nation’s largest employers, have sued the company for allegedly failing to pay overtime and other wages. The lawsuit filed last month in federal court in Kansas City, Kansas, consolidates 12 lawsuits filed on behalf of employees in California, Florida, Kansas, Texas and Washington. It seeks nationwide class-action status on behalf of employees at Bank of America retail branches and call centers over the past three years.

It’s estimated that the case could eventually cover more than 180,000 workers, based on information provided by the bank. That could lead to a recovery in the “hundreds of millions” of dollars, assuming a typical employee was deprived of $1,000 to $2,000 in pay. According to the

Source: Associated Press

**Charter Communications Pays $18 Million To Settle Lawsuit**

Cable operator Charter Communications has agreed to pay $18 million to current and former employees who alleged the company did not adequately pay them for their work. The settlement must be approved by a federal judge in Wisconsin. If this happened, the settlement will end all of the Plaintiffs’ and class members’ wage and overtime claims in exchange for the payment. The jobs were field technicians who worked for Charter in California, Missouri, Michigan, Minnesota, Illinois, Nevada, Washington, Oregon and Nebraska. Charter is the second-largest cable operator in Wisconsin, behind Time Warner Cable.

Source: Journal Sentinel

**Many Hotels In The United States Lack Fire Sprinklers**

Lots of travelers don’t realize that a deadly fire hazard danger exists in many hotels and motels around the country. Many older hotels and motels can legally avoid installing sprinklers that stop blazes before they kill guests. Since a catastrophic fire killed 87 at the MGM Grand Hotel in Las Vegas in 1980, a national push to require sprinkler systems in new hotels and motels has helped bring fire deaths down significantly. Even so, federal officials estimate that 3,900 hotel and motel fires are reported to fire departments across the country each year, causing on average 15 deaths, 150 injuries and $76 million in property losses. The lack of sprinklers in many older facilities has to be a big problem. The National Fire Protection Association says it’s rare for a guest to die when a fire breaks out in a room with sprinklers. In fact, they say there hasn’t been a documented fire in a “sprinklered” hotel that killed more than one person.

While newer hotels must install sprinklers, older ones don’t have to. A study by the U.S. Fire Administration for 2005-2007 found that about 60% of hotels and motels reporting fires lacked sprinklers. The National Fire Protection Association also found that every single fire death from 2002 to 2005 was in a motel or hotel that lacked a sprinkler system. More recent statistics aren’t available.

In Alabama, all motel and hotel rooms must have smoke detectors, but sprinkler requirements vary by city. The Alabama Legislature should take a serious look at this safety problem next year. Persons who stay in hotels and motels need to be protected in the event of a fire, and sprinkler systems are needed for that reason. When sprinkler systems are not available, the facilities should make that known to all potential guests.

Source: Associated Press

**Premises Liability Update**

XVII.

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Source: Associated Press
LAW SUIT FILED OVER ATLANTA BRIDGE COLLAPSE

The widow of a construction worker, who was killed when a pedestrian bridge collapsed at the Atlanta Botanical Garden in 2008, has filed a lawsuit against the attraction and several construction companies. Eucelbia Lopez Carbajal, the widow of 66-year-old Angel Chupin, filed her suit in state court in Fulton County. Also, three workers injured when the elevated walkway collapsed have filed lawsuits. All four men worked for a subcontractor that pours concrete foundations. The lawsuits accuse the garden and the companies of failing to protect the workers building the “Canopy Walk,” which by the way is now open to the public.

The incident that killed Chupin and injured another 18 workers occurred during construction of a pedestrian walkway designed to give visitors a view of the garden from 40 feet above ground. The men were hurt when part of the elevated path crumbled, causing workers to fall dozens of feet to the ground. Several workers suffered fractures and spinal injuries. Mr. Chupin was killed. An Occupational Safety and Health Administration report determined the incident may have been caused by two support towers that were placed too far from each other. OSHA also referenced a failure to properly inspect the shoring equipment before the concrete pour as a factor in fines ranging from around $5,000 to $15,000 issued against three of the companies involved in the walkway’s construction. Mike Moran, a very good lawyer from Atlanta, represents Mrs. Chupin. The family wants to recover the full value of this man’s life. Hopefully, they will be successful in this case.

Source: Atlanta Journal Constitution

JURY RETURNS $82.5 MILLION VERDICT IN GAS PLANT BLAST CASE

A Texas jury has returned a verdict of more than $82 million against two natural gas plant companies after a worker in a rebuilt and refurbished plant was killed in an explosion. Joshua Wade Petrie was a plant operator at a natural gas processing plant in Cleburne, Texas. On May 25, 2007, the worker attempted to start a hot oil heater on a plant processor. After several attempts, the heater exploded. Petrie suffered trauma to his head and chest, and died of his injuries in a hospital the next day.

A lawsuit was filed against Quicksilver Resources, the owner of the gas plant, and Hanover Compression, which sold the gas processing plant to Quicksilver. Hanover Compressions is now known as Exterran Energy Solutions. It was alleged in the suit that Hanover, which owned the plant when it was located in Oklahoma, had the responsibility of relocating the plant to Texas, refurbishing and restoring the plant and its equipment, and then reconstructing the plant and reinstating the equipment at the Texas site in accordance with specific safety standards and plan specifications. The Defendants argued that Petrie’s own negligence caused the heater to explode.

Hanover failed to install purge systems and safety valves in the oil heater that would have prevented gas from building up inside and causing the explosion that killed the worker. That failure violated the National Fire Protection Association standard. Both Hanover and Quicksilver were on notice about the absence of purge systems and safety valves back in 2005. Purge systems would have gotten the gas out of the furnace.

The Plaintiffs also claimed that the heater was not properly installed. The worker went through the proper steps to start the furnace, and each time gas was introduced inside. Since it wasn’t installed properly, the furnace wouldn’t light. The Plaintiffs’ lawyers focused on OSHA records and witness testimony to explain the proper safety standards and prove their case.

The plant relocation “was a turnkey project,” meaning that Hanover had to reconstruct and transfer the plant to Quicksilver in a ready-to-use condition. Delays in the job cost the companies money. It appears the companies side-stepped safety standards in order to cut costs, despite the fact that the two companies agreed to adhere to NFPA standards in their agreement to sell and relocate the plant.

The jury found Hanover 80% at fault and Quicksilver 20% at fault for the incident. Jurors concluded that the worker was not negligent. The verdict consisted of $57.5 million in compensatory damages for the Plaintiffs’ past and future pecuniary loss, and loss of companionship and mental anguish, as well as $25 in punitive damages. Ammons said the verdict shows other gas processing companies that they will be held accountable if they fail to keep their workers safe.

Three additional Defendants who were involved in various ways with the refurbishing, relocating or installing of the heater were dismissed from the lawsuit as a result of a confidential settlement reached with each. Robert E. Ammons, a lawyer from Houston, Texas, represented the family and did a very good job.

Source: Lawyers USA Online

XVIII. WORKPLACE HAZARDS

OSHA FINES THREE COMPANIES FOR FATAL PIPELINE EXPLOSION

The Occupational Safety and Health Administration has levied fines totaling $108,000 against three companies in connection with a pipeline explosion that killed one man and injured three others last year in Smith County, Mississippi. The explosion happened on July 15, 2009 on a county road near Sylvarena. Workers were using nitrogen to pressure test the pipeline. During the tests, something caused the line to explode. According to OSHA, the lid on the separator where the pipes attached flew off, throwing portions of the massive pipe into the air.

An employee, James Lee Candler, was killed during the explosion and three of his co-workers injured. OSHA levied these fines against the companies listed: Mustang Engineering $65,000; Grand Bluff Construction Co., of Beckville, Texas $38,500; and Priority Energy Services, of Chicago $49,000. Clyde Payne, of OSHA, stated:

There were known issues employees shouldn’t have been exposed to. There should have been steps taken to protect employees.

There has been a rash of pipeline explosions over the past year. Most of them involved testing the pipelines.

Source: Associated Press
The Utah Supreme Court has ruled that the maker of a component for a laundry system may be liable for brain damage suffered by a worker due to ozone exposure. The Court reversed a summary judgment that had been entered by the trial judge. The Plaintiff alleged that she suffered brain damage as a result of exposure to ozone emitted from an ozone-laundry system installed where she worked. She filed product liability suits against a variety of installers, distributors and manufacturers of the laundry system.

The manufacturer of the ozone generator used in the system argued that it could not be held liable because its product was not defective. But the Court decided that the Plaintiff produced sufficient evidence showing that the generator was defective because it didn’t have an automatic shut off sometimes installed in other generators. Moreover, the Court adopted the “component-parts doctrine,” under which a manufacturer of a non-defective product may be liable for the design defects of a system. The Court said in an opinion:

"Liability for failure to install a safety device... depends on whether the component manufacturer was in a position to control the decision making involved in the design of the integrated product. The act of 'simply designing a component to its buyer's specifications' or 'providing ... technical services or advice' about the component does not in and of itself constitute substantial participation in the design of the integrated product. However, if the specifications provided are obviously unreasonably dangerous, the component manufacturer may be deemed to have control over the integrated product and therefore be deemed to have substantially participated."

The case was remanded to the lower court so that the Plaintiff would have the opportunity to develop the case under a component-parts theory. This case will be watched closely by safety advocates.

Source: Lawyers USA Online

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$15 million settlement for injured worker

An oil field rigger who had been severely injured in a post-Hurricane Katrina salvage job has settled his claims for $15 million. The trial in the worker's lawsuit against his employer, Longnecker Properties Inc., and several other companies had been scheduled to start July 18th in a Louisiana state court. The 35-year-old worker was crushed by a salvage pipe that was being lowered onto a barge, leaving him a paraplegic. Wild Well Control Inc. directed the salvage job on behalf of Newfield Exploration Co., which owned the damaged equipment and hired the worker's employer.

Source: Associated Press

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Construction worker is awarded $40 million

A jury awarded $40 million in damages to a Brooklyn construction worker, Matthew Falcone, who was left severely disabled after a Verizon truck struck him near his home four years ago. The truck was traveling 50 miles an hour. The award will help the Plaintiff, who suffered brain damage and is partially paralyzed, leave a Staten Island nursing home and move in with his sister. After the crash, the Plaintiff was in a coma and not expected to survive. He spent weeks in the hospital. Verizon is considering whether to appeal the verdict.

Source: New York Daily News

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New Jersey jury awards doctor $7 million in personal injury case

A New Jersey jury has awarded $7.2 million to a doctor who sued the Port Authority of New York and New Jersey after she fell and broke her elbow at a North Jersey rail station. Dr. Soma Mandal of Jersey City suffered an injury that cost her full use of her right arm and she had to stop working at New York's NYU Medical Center, where she was an attending physician.

The jury award includes $3 million for pain and suffering and $4 million for future lost earnings. Dr. Mandal was injured in March 2007 when she slipped on a rubber mat on a walkway in the Newport-Pavonia PATH station.

Source: Insurance Journal

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Jury awards $1.3 million to Metro passenger

A jury in King County, Washington, has awarded a Metro passenger $1.3 million for injuries he sustained when he slipped exiting a bus in October of 2006. In that incident Keith Knappett suffered permanent, severe leg injuries. He needs a cane to walk, and faces possible amputation. It was proved at trial that when portions of the bus stairs get wet, especially the bright yellow material on the stairs, they become very slick. Metro’s lawyers tried to prove that this was impossible, but the jury didn’t buy their argument. Lori H. Askell represented the Plaintiff in the case and did a very good job.

Source: SeattlePI.com

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XIX.

TRANSPORTATION

Rotor manufacturer settles with children of flight nurse

A lawsuit filed on behalf of two children of a flight nurse killed in a medical helicopter crash has been settled for $5.6 million. Sandra Pearson, 38, was killed, along with the pilot and a paramedic, when the rotor came off their Bell 206 Longranger before it crashed in a field outside Burney, about 40 miles southeast of Indianapolis, in August 2008. The settlement was reached with Bell Helicopter Textron, the company that manufactured the rotor blade. The National Transportation Safety Board found that the flawed main rotor blade had broken apart just after take-off.

The lawsuit, filed in Marion Superior Court, named as Defendants Rolls-Royce, the helicopter’s engine maker; Decatur County REMC, the utility responsible for maintaining power lines in the area; Rushville Memorial Hospital, which dispatched the helicopter; and Bell Helicopter Textron, the rotor manufacturer.

The lawsuit was filed on behalf of Pearson’s two young children. The settlement funds will be deposited into trust accounts for the children until they turn 18. A Hendricks County probate judge has approved the settlement.

Source: IndyStar.com

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Source: New York Daily News

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Source: SeattlePI.com

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WOMAN SUES GOOGLE AFTER PARK CITY ACCIDENT

A Los Angeles-area woman has filed suit against an individual and Google alleging that Google Maps led her onto a dangerous Park City roadway where she was struck by a car. In the lawsuit filed in U.S. District Court for Utah, the Plaintiff Lauren Rosenberg states that on January 19, 2009, she sought instruction from Google Maps on her Blackberry for directions to walk from 96 Daly Ave. To 1710 Prospector Ave. in Park City.

According to the suit, Google Maps directed Rosenberg along Deer Valley Drive, which is State Route 224, in an area “where vehicles travel at a high rate of speed and [is] devoid of pedestrian sidewalks.” The suit states: “Google undertook the duty to exercise reasonable care in providing safe directions to patrons of its Google Maps service. [But] Google failed to warn Plaintiff Rosenberg of said known dangers.”

The Plaintiff claims that a Salt Lake County resident was driving an automobile southbound in a “negligent” manner and struck her, “causing her to suffer severe physical, emotional, and more than $100,000 in mental injuries. This case will be watched closely due to the involvement of Google as a Defendant. Many people use Google for travel information.

Source: Salt Lake Tribune

JURY AWARDS $15 MILLION IN WRONGFUL DEATH CASE AGAINST ENTERPRISE CAR RENTAL

A jury has awarded $15 million to the parents who filed a wrongful-death lawsuit against Enterprise Rent-A-Car of San Francisco after their daughters, Raechel and Jacqueline Houck, died in a fiery motor vehicle crash in 2004. Enterprise, the nation’s largest rental car company, and its corporate parent, fought the lawsuit for five long years, playing hardball. Finally, just before trial of the case was to start, the Enterprise defendants admitted fault and said “their negligence was the sole proximate cause of the fatal injuries.” Up to that point, the defendants had been blaming Rachael Houck, the driver of the rented vehicle.

An Enterprise company official said in a deposition that the company had no plans to change policies regarding recalled cars in its fleets. Raechel Houck, 24, rented a 2004 Chrysler PT Cruiser at an Enterprise location for herself and Jacqueline, her 20 year old sister. Daimler Chrysler sent out safety recall notices for 435,000 PT Cruisers from 2002 through 2005 one month before this rental occurred. The notice said the power steering hose on the recalled vehicles could leak, resulting in a fire.

Enterprise records showed the PT Cruiser the Houck sisters rented had not been repaired. Neither was it grounded. In fact, the vehicle had been rented four times since the recall. The manager of Enterprise’s Northern California area, which included the location where this rental took place, claimed that before the accident, he was not aware the PT Cruiser was a recalled vehicle. But, he did admit that Enterprise rented recalled vehicle on a nationwide basis.

The Houck sisters were on a state highway and were returning from their mother’s home in Ventura when the PT Cruiser was involved in a collision with a tractor-trailer unit. The rented vehicle burst into flames and the two sisters lost their life. It was learned that Raechel Houck lost steering ability because of a power-steering fluid leak. Even though Enterprise blamed the crash on Raechel’s driving, their lawyers offered the parents $3 million to settle their case if they would keep the matter confidential. The parents refused, saying they “didn’t want Enterprise to silence” them. Sean Kane of Safety Research & Strategies in Rehoboth, Massachusetts, a company that examines vehicle safety issues, had this to say about recalls and Enterprise’s duty:

Any recall is a safety-related recall. It needs to be handled before the customer gets a car. It shouldn’t be the consumer’s responsibility. It should be the company’s responsibility. That’s what missing in this equation.

This case revealed some very bad conduct. Renting recalled vehicles to folks and letting them run the risk of being badly injured or killed is intolerable. Hopefully, this company has learned a lesson and will change its policy. Larry Grassini of Grassini and Wrinkle, represented the parents and they did a very good job. These lawyers are to be commended. They stayed the course and didn’t allow Enterprise to wear them and their clients down over the 5 year long legal battle. It’s a shame that Enterprise put this family though such an ordeal when it knew all along they were at fault and caused two young women to be tragically killed.

Source: MercuryNews.com

www.BeasleyAllen.com
U.S. SUPREME COURT GRANTS REVIEW OF CLASS ACTION WAIVER CASE

The U.S. Supreme Court has agreed to review a case that will decide whether the Federal Arbitration Act (FAA) preempts state court decisions holding that a class action waiver in a consumer arbitration agreement is unconscionable or otherwise violates state law. In the case (AT&T Mobility LLC v. Concepcion), the U.S. Court of Appeals for the Ninth Circuit affirmed the district court’s denial of AT&T’s motion to compel arbitration. The Ninth Circuit agreed with the district court’s conclusion that AT&T’s arbitration agreement was unconscionable under California law because it required customers to arbitrate small-dollar consumer claims on an individual basis. It also rejected AT&T’s argument that California’s unconscionability law was expressly or impliedly preempted by the FAA.

This action by the Supreme Court follows its ruling on April 27, 2010, in Stolt-Nielsen, S.A. v. AnimalFeeds Int’l Corp., 08-1198, that the FAA prohibits class procedures from being imposed on parties whose arbitration agreement is silent on that issue. It also closely follows the Court’s May 3, 2010, order (No. 08-1473) granting certiorari in In re American Express Merchants Litigation, 554 F.3d 300 (2d. Cir. 2009), vacating the Second Circuit opinion, which invalidated a class action waiver under the federal antitrust laws, and remanding the case to the Second Circuit for reconsideration in light of Stolt-Nielsen.

Federal and state courts throughout the country are sharply divided with respect to the validity of class action waivers. This case presents an important issue to the Supreme Court and that is whether an express class action waiver in a consumer arbitration agreement can be enforced under the facts.

ARBITRATION WILL NO LONGER BE USED TO RESOLVE NEW DISPUTES:
We are removing the Arbitration sections from your Credit Card Agreement.

While this is a welcomed change in policy, I really am not sure what brought this change on. I can only assume Bank of America now realizes that consumers don’t like forced arbitration.

XXI. HEALTHCARE ISSUES

VITAMINS SHOULD BE REGULATED

Vitamins and mineral supplements sales bring in billions of dollars annually in the United States. The industry has done a tremendous job making the consuming public believe that these supplements are both necessary and safe. Many folks take supplementary vitamins because they have been convinced these vitamins are safe ways to ensure good health. What the manufacturers and sellers of these products don’t tell the public is that some of the potential side effects associated with vitamins are very serious. Vitamins can cause toxicity when taken in excessive doses. They also can interact with prescription and over-the-counter medications. If you would like more information on this subject, I suggest you go to www.worstpills.org. Dr. Sidney Wolfe, who is with Public Citizen, is also an excellent source of Information. There is an excellent article in the February 2010 Annals of Pharmacotherapy on whether vitamins should be regulated as drugs.

LABELS URGED FOR FOOD THAT CAN CHOKE CHILDREN

The American Academy of Pediatrics, the nation’s leading pediatricians’ group, has called on the Food and Drug Administration to require warning labels on foods that are known choking hazards, and to evaluate and monitor food for safety. The group wants food to be subject to as much scrutiny as toys.

FDA REQUIRES LIVER-INJURY WARNING ON WEIGHT-LOSS DRUGS

The U.S. Food and Drug Administration is requiring a new warning about liver injury to be placed on the weight-loss drugs Xenical and Alli. Xenical is a prescription weight-loss drug made by Roche Holding AG. Alli is an over-the-counter version of the same drug marketed by GlaxoSmithKline PLC at a lower dose. The FDA said the warning is based on rare reports of liver injury associated with the products. From April 1999 to August 2009 the FDA said it received 12 reports of liver injury associated with Xenical from outside the U.S. And one U.S. report associated with Alli. Among those reports, two people died and three people needed a liver transplant.

POOR INFECTION CONTROL FOUND AT MANY SURGERY CENTERS

A new federal study finds many same-day surgery centers—where patients get such things as foot operations and pain injections—have serious problems with infection control. Failure to wash hands, wear gloves and clean blood glucose meters were among the reported breaches. Clinics reused devices meant for one person or dipped into single-dose medicine vials for multiple patients. The findings, appearing in last month in the Journal of the American Medical Association, suggest lax infection practices may pervade the nation’s more than 5,000 outpatient centers. This is the first report from a push to more vigorously inspect U.S. outpatient centers, a growing segment of the health care system that annually performs more than 6 million procedures and collects $3 billion from Medicare. Procedures performed at such centers include exams of the esophagus, colonoscopies and plastic surgery.

In the study, state inspectors visited 68 centers in Maryland, North Carolina and Oklahoma. They used a new audit tool focusing on infection control. At each site, inspectors followed at least one patient through an entire stay. Inspections weren’t announced ahead of time, but staff was notified once inspectors arrived. The new study found 67% of the centers had at least one lapse in infection control and 57% were cited for deficien-

cies. The study didn’t look at whether any of the lapses actually led to infections in patients. A few centers in the study hadn’t been inspected in 12 years. State agencies have the main responsibility for making sure centers comply with federal standards, but states often fall behind. States now are required to use the new audit tool to inspect centers participating in Medicare. Of surveys using the tool so far, 61% of centers have been cited for an infection control deficiency.

Source: Associated Press

FDA POSTS SAFETY INFORMATION ON NEW DRUGS

The Food and Drug Administration has announced that it will begin posting safety data on recently approved drugs and biologics on its website in an effort to better educate patients and health care professionals. The agency released safety summaries on 26 approved drug products based on reports from manufacturers, consumers and others who have used products since they were approved to market. The summaries include safety problems and adverse events that have been reported in association with each drug, as well as any actions or surveillance activities the FDA has undertaken in response to the reports.

The Food and Drug Administration Amendments Act of 2007 (FDAAA) requires the FDA to prepare the safety summaries within 18 months after a product’s approval or after it has been used by 10,000 patients, whichever comes later. The information that the summaries are based upon comes from reports made to the FDA’s Adverse Event Reporting System, the Vaccine Adverse Event Reporting System maintained by the FDA and the Centers for Disease Control and Prevention, periodic safety information manufacturers submit, medical literature and data from ongoing studies.

Source: Lawyers USA Online

SWIMMING POOLS CLOSED FOR A GOOD REASON

A new government report shows one in eight public swimming pools were shut down two years ago because of dirty water or other problems, like missing safety equipment. Kiddie pools were most likely to be the germiest, from fecal matter and improper chlorination. The report is based on more than 120,000 inspections of public swimming pools in 2008, including those in parks and hotels. It’s the largest study of the topic ever done by the Centers for Disease Control and Prevention. The new study is published by CDC in the Morbidity and Mortality Weekly Report.

Source: Associated Press

XXII. ENVIRONMENTAL CONCERNS

Our firm’s Toxic Torts Section has a number of very important projects ongoing relating to environmental concerns. The BP oil spill and the TVA litigation are two of our major projects. The firm has dedicated adequate resources to these two projects so we can get the job done. Rhon Jones heads up the section. In addition to Rhon, the following lawyers work in the section: Chris Boutwell, David Byrne, John Tomlinson, Meggan Huggins, Parker Miller, Rick Stratton, Brantley Fry, and Chenoa Vick. If you would like more information about the work of this section, you can contact Rhon Jones at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com.

XXIII. THE CONSUMER CORNER

MORE THAN 2 MILLION CRIBS RECALLED

More than 2 million cribs from 7 different companies were recalled last month. This came because of concerns that babies can suffocate, become trapped or fall from the cribs. Most of the cribs were drop-sides, which have a side rail that moves up and down so parents can lift children from them more easily. That movable side, however, can malfunction or detach from the crib, creating a dangerous gap where babies’ heads can become trapped, leading to suffocation or strangulation.

The companies involved in the recall were Evenflo, Delta Enterprise Corp., Child Craft, Jardine Enterprises, LaJobi, Million Dollar Baby and Simmons Juvenile Products. So far, no deaths have been linked to the recalled cribs. But there were more than 250 reports of drop-sides detaching or failing and at least 16 entrapments of infants. In one case, a child was found unconscious and later hospitalized. In the announcement from the Consumer Product Safety Commission, all seven companies recalled drop-side cribs.
Delta and Child Craft also acknowledged problems with fixed-side cribs.

These cribs and many others constructed in a manner that babies and very small children can be trapped are very dangerous. Hopefully, the CPSC will stay on top of this situation. The risks are far too great to allow the manufacturers to continue using the drop-side design without remediying the safety issues.

Source: Associated Press

**Lawmakers Should Ban Drop-Side Cribs**

We have written on crib safety in several issues over the past year. This has been a very active area of concern. Now legislative bodies are looking at the problem. Cribs with a side rail that moves up and down so parents can lift children from them more easily would be banned under legislation aimed at reducing infant deaths. Sen. Kirsten Gillibrand, (D-NY), has introduced a bill to outlaw the sale and manufacture of the cribs following the deaths of at least 32 infants and toddlers who suffocated or were strangled in drop-side cribs. Gillibrand has reassembled a crib for a second or third child with some of the screws or other hardware missing—which can also lead to detachments of the drop-side.

Source: Associated Press

**Class Action Filed Against Ford Over Minivan Defect**

Owners of Windstar minivans are suing Ford Motor Company, alleging that the rear axles of their vehicles have a design defect that can cause them to fail. It’s contended that the 1999 to 2003 models of the Ford Windstar minivan have a design defect that traps water and other corrosive agents inside the rear axle, rusting it from the inside out. The axle can then split apart during operation, putting the occupants of the car at a risk of severe injury and even death. The suit was filed in U.S. District Court for the Eastern District of Pennsylvania.

The named Plaintiff, Aaron D. Martin, contends that the axle of his 2001 Windstar minivan broke due to internal rust damage while he was driving in May. It’s alleged that more than 949,000 Windstars were manufactured with a defective axle. The law firm of Golomb & Honik of Philadelphia filed this suit, claiming that Ford breached its implied warranty of merchantability and its express warranty.

While we are not involved in the Pennsylvania case, our firm is involved in other litigation involving the very same defect.

If you need more information on this subject, contact Chris Glover at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

Source: Lawyers USA Online

**Two Hot Fuel Cases Get Class Certification Status**

Recently, two “hot fuel” lawsuits in Kansas became the nation’s first to receive certification as class actions. U.S. District Judge Kathryn Vratil of Kansas City, Kansas, ruled that the two suits meet the class standards to represent not just the few individuals named in the suits, but other, unnamed consumers affected by the hot-fuel practice. This is a significant ruling and a major step towards resolution of the entire litigation, which spans nationwide and encompasses 26 “hot” states.

As we have reported in previous issues, the oil industry transfers motor fuel within the industry based on the U.S. Petroleum Gallon—an established standard that measures motor fuel based on a temperature of 60 degrees. The purpose of the standard is to compensate for loss in energy that occurs in each 231 cubic-inch gallon as the fuel heats. However, the oil industry has consistently fought against providing the same benefit to consumers, who are purchasing fuel in hot states where the fuel’s temperature can exceed 100 degrees. Based on a series of 2006 stories and a Congressional study, it has been estimated that the industry practice of selling hot fuel costs consumers $2.3 billion annually.

Judge Vratil said if the Plaintiffs prevail on the liability and injunctive portions of their claims, she would consider whether to certify a class for damages. The Defendants in the Kansas case include BP, Casey’s General Stores, Chevron, Circle K, Citgo, ConocoPhillips, 7-Eleven, Shell Oil, Valero, Kum & Go, QuickTrip and Wal-Mart.

Beasley Allen lawyers Rhon Jones and Parker Miller, who are in our firm’s environmental section, have played a major role in the progression of the hot fuel litigation. If you want more information, please contact Rhon Jones and Parker

Source: www.JereBeasleyReport.com
A Bad Decision Relating To Pool Drain Safety Law

I really thought tremendous progress had been made in 2007 when Congress passed legislation designed to make swimming pools safer. Now four members of Congress have sent letters of protest to the federal commissioners who they say weakened that safety law which was meant to prevent deaths from pool-drain suction. The commissioners were asked in the letters to reverse their decision. The letters, which were identical, stated in part:

We are sorely disappointed to learn that [the Consumer Product Safety Commission] has chosen to interpret the law in the most egregious and narrow way possible, eliminating the requirement for pools and spas to be equipped with back-up systems. The swimming season is upon us. We are writing to urge you in the strongest possible way to reverse these rulings.

The letters, signed by Democratic Representatives Debbie Wasserman Schultz of Florida and James Himes and John Larson of Connecticut, and Republican Frank Wolf of Virginia, are the latest development in a pool-season push to get the CPSC to enforce what safety advocates consider to be the original intent of a law passed in 2007 to prevent deaths from drain suction. In March, the CPSC voted to interpret the Virginia Graeme Baker Pool and Spa Safety Act, named for a seven-year-old who died in a pool-drain incident in 2002, to no longer require back-up anti-entrapment systems in the drains of as many as 150,000 public and hotel pools and hot tubs. That action is indefensible and should be reversed.

The decision outraged pool-safety advocates and the parents of children killed by pool-drain suction. After Nancy Baker, mother of Virginia Graeme Baker, read comments from the commissioners who voted to reinterpret the law, she had this to say:

They say the problem [of pool-drain suction] is small and rare. It’s always been rare to die this way. But the bigger point is that it’s preventable and it’s a violent and horrible way for a small child to die. How many kids have to die or be maimed in that way for the CPSC?

Members of Congress aren’t the only ones putting pressure on the CPSC. On June 9th, Mrs. Baker signed a letter from the group Safe Kids to Robert Adler, one of the three commissioners who voted to interpret the law, urging him to change his vote. Paul Pennington of the Pool Safety Council has also launched an on-line petition that targets Commissioner Adler. The letters signed by the four members of Congress went to Adler and Anne Northup and Nancy Nord, the two other commissioners who voted to reinterpret the Act.

The vacuum effect in pool drains is powerful enough to hold swimmers, especially children, to the bottom of a pool. Contact between human skin and a flat pool drain can create suction equal to hundreds of pounds of pressure. In one horrific instance, four adult men were unable to pull a young girl from the grasp of a deadly drain. Swimmers can die from drowning or evisceration. From 1999 to 2008, according to CPSC data, there were 83 reports of suction entrapment, including 11 deaths and 69 injuries. Experts say the number of deaths and injuries may be much higher, however, because police and medical records don’t always list specific causes for drowning.

In December 2007, in a rare bipartisan vote, Congress passed the Virginia Graeme Baker Pool And Spa Safety Act to provide basic drain safety standards and layers of backup protection from dangerous drain suction for the nation’s public and hotel pools and hot tubs. The law mandates that drains in about 300,000 of the nation’s public and hotel pools and hot tubs be covered with larger, rounded covers that do not create suction, and that there be a back-up mechanical system installed in drains to prevent suction in those pools that have a single main drain. As many as half of the pools and hot tubs covered by the Pool Safety Act have single main drains.

New CPSC chairwoman Inez Tenenbaum asked for a review of the Pool Safety Act shortly after taking the helm of the commission last year. She called on representatives of the pool industry and pool safety advocates to make presentations to the commission. On behalf of the pool industry, pool equipment manufacturer Leif Zars argued that redesigned drain covers were enough to prevent pool suction accidents. When I learned that a majority of the CPSC commissioners agreed with the pool industry’s position I was shocked. Now public and hotel pools won’t have to install a secondary anti-entrapment system in order to be in compliance with the Pool Safety Act’s clear wording of “unblockable drain.” Pool safety advocates argue that larger, rounded drain covers are not enough and I agree with them. Rep. Wasserman Schultz, who introduced and pushed for the passage of the Pool Safety Act, had this to say:

This ruling leaves children’s lives only as safe as the first layer of protection, which leaves them vulnerable to human error and mechanical failure, with no further layer of protection.

The CPSC’s decision even went against the position of Chairman Tenenbaum, who stated:

In my role as Chairman I am not willing to gamble the safety of our children in the hope that drain covers throughout the nation that are commonly removed for maintenance always will be reinstalled correctly or that a missing or broken drain cover will be immediately noticed by an observant pool operator who will then shut down the pool before any children are at risk.

Hopefully, the Commission will reverse what I consider to be a very bad decision and will follow the law as Congress intended. The public interest—and safety concerns—in combination, should cause the commissioners who weakened the intent of the Act to change their votes. Since the summer months are here, time is of the essence.

Source: ABC News

Johnson & Johnson Faces Lawsuits and Federal Probes Over Recalls

On April 30th, Johnson & Johnson faced a recall of more than 136 million bottles
of pediatric Tylenol, Motrin, Benadryl and Zyrtec due to manufacturing problems. While so far investigators haven’t linked the defects in the medication to any health problems, the U.S. Food and Drug Administration said the division of the company responsible for quality control at the Pennsylvania-based plant, McNeil Consumer Healthcare, had a pattern of violations and delayed reporting of problems to the FDA.

While Johnson & Johnson’s troubles have drawn less attention than those of companies like BP and Toyota Motor Corp., the company is facing legal problems on several fronts. Two class actions have been filed against the McNeil division—one in the Northern District of Illinois and the other in the Eastern District of Pennsylvania—trying to force it to broaden the recall and offer cash refunds instead of coupons for new products. Shareholders filed suit against Johnson & Johnson in New Jersey, alleging that the company breached its good-faith duty by failing to act after the FDA had expressed earlier concerns about quality control and manufacturing practices at the plant.

Meanwhile, the FDA is considering criminal penalties against McNeil. The House Committee on Oversight and Government Reform, which has held a hearing on the recalls, is still checking into the issue. Edolphus Towns, (D-NY), the Committee Chair, plans to introduce legislation giving the FDA mandatory recall authority. But getting much done involving drug companies in Congress is never easy. Johnson & Johnson has a steady roster of Washington lobbyists. The company’s lobbying expenses were $2.1 million in the first quarter of 2010, before the recall, and nearly $6.4 million in 2009. Its Washington office includes 14 in-house registered lobbyists. Eleven outside lobbying firms have registered Johnson & Johnson as a client, including some of the real heavyweights. All of these lobbyists are being paid very well. Source: Law.com

**PETCO PAYS $1.75 MILLION IN OVERCHARGING PENALTIES**

Petco Animal Supplies, which has many locations throughout San Diego County, California, has paid $1.75 million in penalties to settle a case in which the company was accused of overcharging California customers and neglecting animals in its stores. The settlement has received court approval. The case was prosecuted by the San Diego County District Attorney’s Office, the San Diego City Attorney’s Office and district attorneys from Marin, Los Angeles, San Mateo and Santa Barbara counties. It was filed as a result of state and county inspections of Petco stores around the state between 2005 and 2008. According to prosecutors, an investigation revealed that Petco failed to remove expired price tags from store shelves and did not instruct its employees on weighing and charging for bulk sale items such as dog biscuits.

The court order requires each Petco store to deduct $3 from the lowest advertised or posted price of the item if a customer is overcharged, prosecutors said. If the item is $3 or less, the customer would receive one of the items free. Petco must also conduct regular pricing audits, according to the settlement. Inspections of Petco stores in Marin County by humane society officials revealed that some animal habitats were not being properly cleaned and maintained. In some instances, sick animals were not identified and removed from the sales floor, authorities said.

As a condition of the settlement, Petco agreed to conduct daily animal and habitat inspections and comprehensive employee training, and to provide prompt veterinary care for sick or injured animals. Prosecutors said Petco paid more than $850,000 to resolve a case involving similar allegations in 2004. The company operates 23 stores in San Diego County and about 160 throughout the state. Source: Signonsandiego.com

**A WARNING MESSAGE FROM THE CPSC**

The CPSC issued a warning on March 12, 2010 about sling carriers for babies. Slings can pose two different types of suffocation hazards to babies. In the first few months of life, babies cannot control their heads because of weak neck muscles. The sling’s fabric can press against an infant’s nose and mouth, blocking the baby’s breathing and rapidly suffocating a baby within a minute or two. Additionally, where a sling keeps the infant in a curled position bending the chin toward the chest, the airways can be restricted, limiting the oxygen supply. The baby will not be able to cry for help and can slowly suffocate. CPSC has determined that a mandatory standard is needed for infant sling carriers. While a mandatory standard is being developed, CPSC says its staff is working with ASTM International and concerned companies such as Infantino to quickly develop an effective voluntary standard for slings. Currently there are no safety standards for infant sling carriers. That must be changed and effective standards promulgated and enforced.

Source: CPSC Release

**BANK OF AMERICA SETTLES TELEMARKETING LAWSUIT**

Bank of America has agreed to pay the state of Missouri $195,000 to settle allegations that it violated telemarketing laws. Attorney General Chris Koster said some Missouri residents whose phone numbers are on the do-not-call list complained about receiving unwanted calls from Bank of America and its affiliates. The Attorney General said his office has reached an “assurance of voluntary compliance” with Bank of America that has been filed in St. Louis Circuit Court. Besides paying the state, Bank of America will maintain a comprehensive do-not-call program for its telemarketers.

Source: Associated Press

**FDA FINES RED CROSS $16 MILLION FOR SAFETY LAPSES**

The Food and Drug Administration has fined the American Red Cross $16 million for violating blood safety laws and other regulations. Fortunately, it appears no patients were harmed and the blood supply is still safe. The Red Cross was fined for violating federal law during collection and processing of blood in 2008 and 2009. Among the problems were mislabeling of blood, failing to record complete information about donors and potential air contamination. The FDA, which periodically inspects Red Cross operations, notified the charitable organization last October of the failure to investigate and identify problems and take
preventive action during its blood processing operations.

With four million blood donors, the Washington, D.C.-based organization is the largest supplier of blood, plasma and other blood products in the United States. The $16 million fine is only the latest penalty assessed against the organization. The FDA has already sent 12 letters to the American Red Cross and imposed over $21 million in fines since 2003, not including this most recent fine. According to the FDA, the Red Cross has taken significant steps to correct the problems.

Source: Reuters

XXIV.
RECALLS UPDATE

There have been a number of product recalls which will be reported in this issue. The following are some of the more significant recalls since those reported in our last issue.

**VOLVO RECALLS 60,000 TRUCKS**

Volvo Trucks North America is recalling more than 60,000 tractor trailer trucks to address potential steering problems. NHTSA says there have been 23 reported crashes and two injuries. The safety recall affects certain VNL and VNM trucks from the 2001 to 2006 model years. The government says a ball socket could separate in the steering system, causing the truck to completely lose steering control. The steering loss could result in a crash. Volvo dealers will inspect and repair the components in the steering if necessary. The recall is expected to begin in mid-August. Owners can contact Volvo Trucks at (800) 528-6586 or (800) 528-6586.

**CHRYSLER TO RECALL ABOUT 600,000 JEEPS, MINIVANS**

Chrysler is recalling nearly 600,000 minivans and Jeep Wranglers because of brake or wiring problems that could create safety issues. The automaker is recalling 288,968 Jeep Wranglers from the 2006 through 2010 model years due to a potential brake fluid leak. It also is recalling 284,831 Dodge Grand Caravan and Chrysler Town & Country minivans from the 2008 and 2009 model years because a wiring problem can cause a fire inside the sliding doors.

Neither problem has caused any crashes or injuries, according to Chrysler. On the Jeeps, the front inner fender liners can rub against the brake fluid tubes and cause a leak. NHTSA says the leak could lead to a partial brake loss. The minivans can have improperly placed wires that can come into contact with sliding door hinges. That could cut through the insulation and in some cases cause a fire inside the door, according to Chrysler and NHTSA.

Chrysler will notify owners and dealers about the repairs, which will be made free of charge. The recall was to start in June. The Wranglers affected by the recall were made from May 15, 2006 through August 9, 2010, according to NHTSA. The minivans were made from February 2007 through September 2007.

**NISSAN TO RECALL 48,000 TRUCKS AND SUVS**

Nissan Motor Co. is recalling 48,700 trucks and SUVs for problems with a suspension part that could lead to a rough ride. It will cover some, but not all, 2010 Nissan Armadas, Frontiers, Titans, Pathfinders and Xterras and Infiniti QX56 models. The Armada, Titan and Infiniti QX56 are produced at the company’s Canton plant. The Frontier, Pathfinder and Xterra are produced at its Smyrna, Tenn., plant. The problem centers on a lower suspension control link, which may not have been welded properly. It could cause the bushing collar to crack, leading to a rough and noisy ride. So far no accidents have been reported.

**GM RECALLING 1.5 MILLION VEHICLES OVER FIRE CONCERNS**

General Motors is recalling about 1.5 million vehicles worldwide to address a problem with a heated windshield wiper fluid system that could lead to a fire. The recall affects several pickup trucks, sport utility vehicles and passenger car models from the 2006 to 2009 model years. GM conducted a similar recall in 2008 but came across new reports of fires in vehicles that had been fixed.

GM plans to disable the heated washer fluid system module that could lead to fires. GM will pay owners and those leasing vehicles $100 since the feature is being disabled. GM says there are no known injuries or crashes reported. GM says it is aware of five fires. Nearly 1.4 million vehicles are in the U.S. More than 100,000 vehicles are in Canada, Mexico and elsewhere.

**BMW ISSUES RECALL**

BMW has recalled vehicles in the United States for defects that could cause fires. BMW recalled 1 Series luxury cars for the model years 2008 to 2011 for a flaw in front-seat safety-belt retractors that could ignite. The notice didn’t say how many vehicles are affected.

**VOLKSWAGEN RECALLS ROUTAN MINIVANS**

Volkswagen AG is recalling nearly 16,000 Routan minivans to address fire concerns involving latches on the sliding doors. The German automaker says the recall affects 2009 minivans, which are jointly developed with Chrysler LLC and built at Chrysler’s Windsor, Ontario, plant. Chrysler has recalled vehicles recently—as reported in this issue—dealing with similar problems. Volkswagen spokesman Kerry Christopher said the automaker was aware of “a couple of incidents” indicating overheating in the minivans and the company contacted Chrysler when it received the reports. No injuries or crashes have been reported.
**Pfizer Recalls IV Drugs That Could Kill Patients**

Pfizer is recalling intravenous drugs with floating matter in them, warning they could potentially kill weakened patients, after U.S. regulators had warned about the worries prior to the recall. The products—made by Claris Lifesciences and distributed in the U.S. by Pfizer—are the antibiotics metronidazole and ciprofloxacin and a drug used to prevent nausea and vomiting caused by surgery and chemotherapy, named ondansetron.

The Food and Drug Administration warned doctors and hospitals not to use the drug because of worries the floating matter meant the products weren’t sterile. Pfizer says non-sterility in intravenous drugs could be fatal for patients with weakened immune systems. In addition to the recall, Pfizer is halting its distribution of all sterile injectable products and IV bags licensed from Claris.

**Johnson & Johnson Unit Recalls Additional Over-The-Counter Drugs**

The Johnson & Johnson unit whose recall of liquid children’s Tylenol and other pediatric medicines is under Congressional investigation is recalling additional over-the-counter drugs. McNeil Consumer Healthcare, the Johnson & Johnson unit, is recalling four lots of certain Benadryl allergy tablets and one lot of Extra Strength Tylenol gel pills.

The company said in a statement that “the products were inadvertently omitted” from an earlier recall—one preceding the children’s drug recalls—involving medicines made at a company plant in Puerto Rico. Since last November, McNeil has recalled about 11.7 million bottles of various Motrin products and about 6.3 million bottles of Tylenol Arthritis Pain caplets made at that Puerto Rico plant, according to the FDA’s Web site. The company began the recall after receiving consumer complaints about a moldy odor emanating from some products.

The smell was caused by contamination from a chemical byproduct of a substance used to treat wooden transport pallets, the company said. Although risk of serious medical problems was remote, the company said, people should stop using the products. Refund requests can be made using a company Web site, mcneilproductrecall.com, or toll-free number: 888-222-6036.

McNeil is already under scrutiny by the House Committee on Oversight and Government Reform over a recall in April of an estimated 136 million bottles of liquid pediatric Tylenol, Motrin, Benadryl and Zyrtec.

**Primal Vantage Expands Recall Of Plastic Tree Steps**

Primal Vantage Co., Inc., of Randolph, New Jersey, has recalled about 17,800 Ameristep Plastic Strap-On Tree Steps. The plastic portion of the steps can break, posing a fall hazard to the user. Primal Vantage has received six complaints of step breakage, including two reports of consumers being bruised and cut. The product is a plastic tree step that attaches to a tree via a nylon strap and a large metal buckle. It is used to climb a tree in order to hunt from an elevated position. Models 105 and 155 both have either a 10/08 or 12/08 date code, which is stamped on the plastic portion of the step.

The Tree Steps were sold from December 2008 through November 2009 at various outdoor and sporting goods retailers nationwide as a 3-step package in model 105 or as a single step in model 155. Consumers should stop using the tree steps immediately. They should contact Primal Vantage for details on how to obtain a full refund. Consumers are asked not to return the product to retail stores as refunds can only be provided by Primal Vantage. For additional information, contact Primal Vantage toll free at (866) 972-6168 or visit their website at www.treestandcustomerservice.com to print a return form or for further information on how to locate the date code on your tree step.

**IKEA Recalls Blinds Due To Risk Of Strangulation**

IKEA Home Furnishings, of Conshohocken, Pennsylvania, has issued a recall of Roller, Roman, and Roll-Up blinds. This recall expands previous recalls of Roman and roller blinds and has added its name to the retailers joining the voluntary recall announced in December 2009 of ALL Roman shades and roll-up blinds. This recall includes about 3,360,000 of the blinds. About 790,000 Roman blinds were recalled in November 2008 and August 2009 and about 533,000 Roller blinds were recalled in October 2009.

**The Roller Blinds**: Strangulations can occur if the blind’s looped bead chain is not attached to the wall or the floor with the tension device provided and a child’s neck becomes entangled in the free-standing loop.

**The Roman Blinds**: Strangulations can occur when a child places his/her neck between the exposed inner cord and the fabric on the backside of the blind or when a child pulls the cord out and wraps it around his/her neck. An additional hazard exists when the Roman blind has a continuous looped bead chain that is not attached to the wall or floor, which poses a strangulation hazard to children.

**The Roll-up Blinds**: Strangulations can occur if the lifting loops slide off the side of the blind and a child’s neck becomes entangled in the free-standing loop or if a child places his/her neck between the lifting loop and the roll-up blind material.

CPSC and IKEA received a new report of a 1 ½-year-old boy in Lowell, Mass., who suffered a near strangulation in February 28, 2010. On April 4, 2008, a one-year-old girl in Greenwich, Connecticut, became entangled in the inner cord of an IKEA Roman blind and strangled. CPSC and IKEA also received a report of a two-year-old boy who suf-
fered a near strangulation. The last two incidents prompted previous recalls. No incidents have been reported for the Roll-up or Roller blinds.

This recall involves roller blinds that do not have a tension device attached to the bead chain, all Roman blinds and all roll-up blinds. The blinds were sold at IKEA stores nationwide from January 1998 through June 2009 for between $5 and $55. Consumers should immediately stop using the roller blinds that do not have a tension device attached to the chain, all Roman blinds and all roll-up blinds and return them to any IKEA store for a full refund. In a previous recall, IKEA reminded consumers who have roller blinds with a tension device attached to the bead chain to make sure the tension device is installed into the wall or floor. If the consumer has difficulty installing the tension device, contact IKEA for additional information. For additional information, contact IKEA toll-free at (888) 966-4532 anytime, or visit their website at www.ikea-usa.com.

**TARGET RECALLS STORAGE TRUNKS DUE TO STRANGULATION HAZARD**

About 350,000 woven storage trunks have been recalled by Target Corp., of Minneapolis, Minn. The lid of the trunk can drop suddenly when released, posing a strangulation hazard to small children opening or reaching into the trunks. CPSC has received two reports of injuries that occurred when the storage trunks' lids suddenly closed on children, including one report of an 18-month-old girl who reportedly suffered brain damage when the trunk's lid came down on the back of her neck and pinned her throat against the rim of the trunk. The recall involves 14 different models of the storage trunks made of woven rattan, abaca or banana leaf with standard hinges. They measure more than 1.1 feet in length, width and depth and are brown or natural color. The trunks were sold at Target stores nationwide and on the Web at www.target.com from February 2009 through April 2010 for between $50 and $130. Consumers should immediately stop using the recalled storage trunks and return them to any Target store for a full refund or replacement product. For additional information, contact Target at (800) 440-0680, or visit their website at www.target.com.

**SLINGS MADE BY SPROUT STUFF RECALLED**

The U.S. Consumer Product Safety Commission has announced the recall of about 40 Sprout Stuff infant ring slings. CPSC advises consumers to immediately stop using these slings due to a risk of suffocation to infants. CPSC and Sprout Stuff are aware of one report of a death of a ten-day-old boy in the recalled sling in Round Rock, Texas in 2007.

The Sprout Stuff infant ring sling is fabric/natural muslin and comes with or without a shoulder pad. The sling is worn by parents and caregivers to carry a child up to two years of age. “Sprout Stuff” is printed on the back side of the tail’s hem. Sprout Stuff sold the recalled infant slings, which were made in the United States, directly to consumers between October 2006 and May 2007 for between $35 and $45. Sprout Stuff is directly contacting known purchasers of the recalled infant slings.

Consumers should immediately stop using the recalled slings and contact Sprout Stuff to return the sling for a full refund. Contact Sprout Stuff toll-free at (877) 319-3103 anytime, email the company at sproutstuffrefunds@gmail.com or contact them by mail at Sprout Stuff Refunds, P.O. Box 612, Buda, Texas 78610. Do not attempt to fix these carriers.

**MAYTAG RECALLS 1.7 MILLION DISHWASHERS**

Maytag Corp. is recalling about 1.7 million dishwashers because of a fire hazard. The Consumer Product Safety Commission, says the company has received 12 reports of electrical failures in the dishwasher heating element that led to fires and damage, including one kitchen fire that caused extensive damage. No injuries have been reported.

The recall includes Maytag, Amana, Jenn-Air, Admiral, Magic Chef, Performa by Maytag and Crosley brand dishwashers with plastic tubs. The recalled dishwashers were made with black, bisque, white, silver and stainless steel front panels and sold at department and appliance stores nationwide from February 2006 through April 2010 for between $250 and $900. CPSC advises con-
Consumers to immediately stop using the recalled dishwashers and disconnect the electric supply by shutting off the fuse or circuit breaker controlling it.

Consumers can schedule a free in-home repair or receive a rebate of $150 or $250 toward the purchase of select new Maytag dishwashers. The amount of the rebate depends on the type of model to be purchased. More information on the numerous serial numbers involved in the recall can be found at the company’s website or the website for the Consumer Product Safety Commission.

**Wal-Mart Recalls ‘Toxic’ Miley Cyrus Jewelry**

U.S. retail giant Wal-Mart announced that it is recalling Miley Cyrus-brand jewelry after learning it contains high levels of cadmium—a toxic metal known to cause kidney failure. The Miley Cyrus & Max Azria jewelry which was sold in Wal-Mart stores across the country has been deemed unsafe due to the carcinogenic properties of cadmium, a statement on Wal-Mart’s website said. The jewelry is especially dangerous for children because they are more likely to touch their hands with the product and put their hands in their mouth. The cadmium in the jewelry can also be absorbed into the skin.

The Miley Cyrus & Max Azria line was not for children. It is sold in Wal-Marts ladies apparel section and it was designed for and marketed to older consumers. The giant retailer says it is “possible that a few younger consumers may seek it out in stores.” Wal-Mart has removed all of the jewelry from shelves while it investigates, the statement added.

**McDonalds Is Recalling ‘Shrek’ Drinking Glasses**

McDonalds is recalling its four “Shrek Forever After” drinking glasses because they were found to contain the toxic metal cadmium, which can pose health risks. Customers were told to stop using the glasses and visit www.mcdonalds.com/glasses beginning June 8th for instructions on how to return them and get a refund. Customers can also call McDonalds toll-free number at 1-800-244-6227. The Shrek Forever After glassware was offered in four glass designs at McDonalds restaurants beginning May 21st. The four designs include Puss n’ Boots, Shrek, Princess Fiona and Donkey.

**Some Defibrillator Battery Packs Recalled**

The U.S. Food and Drug Administration has announced the recall of battery packs used in some automated external defibrillators manufactured by Defibtech LLC. The FDA said the Guilford, Connecticut, company initiated the voluntary recall of 5,418 DBP-2800 battery packs because they might falsely detect an error condition during charging for a shock and then cancel the charge. The recalled batteries are used in the company’s Lifeline-model and Revive-model defibrillators. Officials said the recall affects all DBP-2800 units shipped prior to June 4, 2007.

The recalled battery packs were distributed worldwide to fire departments, emergency medical service units, health clubs, schools and other organizations. The company said it mailed users recommendations that allow the battery packs to remain in service until the problem is corrected. Those procedures are also available at www.defibtech.com/batteryFA1. Consumers with questions can contact the company at 877-453-4507 or 203-453-4507.

**Kiwi Industries Recalls Infant Apparel Due To Choking Hazard**

Holtrim & McIndoo LLC dba Kiwi Industries, of Albuquerque, New Mexico has recalled about 450 infant onesies and rompers. Snaps on the onesies and rompers can detach from the garment, posing a choking hazard to young children. The firm has received two reports of snaps detaching. No injuries have been reported. The onesies and rompers were sold in eight colors and prints. “Kiwi industries” is printed on a tag sewn inside the garment’s collar.

The onesies were sold at children’s specialty stores nationwide from March 2010 through May 2010 for between $24 and $28. Consumers should immediately stop using the garments and contact Kiwi Industries for an exchange. The company will provide a postage-free package.
SpaghettiOs Recall By Campbell

Campbell Soup Co. is recalling 15 million pounds of SpaghettiOs with meatballs due to possible underprocessing. The company is recalling certain lots of three varieties of the pasta product often consumed by children: SpaghettiOs with Meatballs, SpaghettiOs A to Z with Meatballs, and SpaghettiOs Fun Shapes with Meatballs (Cars). The recalled products have “EST 4K,” as well as a use-by date between June 2010 and December 2011 printed on the bottom of the can. So far there have been no reports of illnesses. These products should not be eaten. Return them to the store where you got them for an exchange or full refund.

Target Recalls Children’s Belts Due To Lead Paint Violation

Target has recalled about 105,150 boys’ and girls’ belts. The belt buckles contain excessive levels of lead, violating the federal lead paint standard. This recall involves two types of belts: The Cherokee boys’ belts and Circo girls’ belts. The Cherokee belts are black and brown reversible belts with heavy stitching in sizes M-XL. The belts came in a pack of two with the numbers 202/08/0018, 202/08/0019 or 202/08/0020 embossed on the belt. The girls’ Circo belts are pink and white with heart buckles in sizes XS-L. They were sold in a 2-pack with the numbers 202/05/0071, 202/05/0072, 202/05/0073 or 202/05/0074 listed on the product label attached to the inside of the belt. The belts were sold at Target stores and on Target.com nationwide from December 2008 through December 2009 for between $7 and $9. Consumers should immediately stop using the recalled belts and return them to any Target store to receive a full refund. For additional information, contact Target at (800) 440-0680 or visit the firm’s website at www.target.com.

Regal Lager Recalls Infant Carriers Due To Fall Hazard

Regal Lager Inc., of Kennesaw, Georgia, has recalled CYBEX 2.GO Infant Carriers. This includes about 2,700 in the United States and 400 in Canada. A shoulder strap slider buckle can break, posing a fall hazard to babies. The company has received three reports of broken buckles. No injuries have been reported. This recall involves CYBEX 2.GO infant carriers. “CYBEX” is embroidered on the fabric covering on the top of the head support. “2.GO” is printed on an orange tag near the head support. They were sold in the following colors: chili, indigo, purple and slate. Baby furniture and baby product stores nationwide sold the carriers and they were sold on various websites from August 2009 through April 2010 for about $100. Consumers should immediately stop using the recalled carriers and contact Regal Lager to receive a free replacement carrier. For additional information, contact Regal Lager at (866) 678-8940, visit the company’s website at www.regallager.com/recalls or email the company at info@regallager.com.

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

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XXV.
Firm Activities

Employee Spotlights

Sandra Walters

Sandra Walters, who has been with our firm for 18 years, currently serves as Section Administrator of our Toxic Torts Section. In this position, Sandra assists Rhon Jones, who heads up the Section, in a number of areas. For example, Sandra works to make sure all support staff have what they need to get their jobs done in toxic tort cases. Without a doubt, Sandra plays an important role in the day-to-day activities of the Section.

Sandra is married to Johnny Walters and they have three children: Melanie Seithalil, Holly Busler, who also has been employed by our firm for ten years, and Hunter Walters. She also has six grand-children. Sandra is a strong supporter of the March of Dimes, having had a premature grandson born in March 2009 weighing 1 lb. 5 oz. Her favorite activity is spending time with her family and supporting her son, Hunter, in local drag racing events. We are blessed to have Sandra with the firm. She is a dedicated employee who works very hard.

Mary Jane Smitherman

Mary Smitherman, who was with the firm as a temp for over a year and a half, became a full-time employee in January. She is now a Relief Receptionist. The firm employs six receptionists who handle the tremendous number of incoming calls each day. When Mary is not assisting the Receptionists, she works as a clerical assistant in the Personal Injury department. She assists the PI staff with any clerical duties they may need help with. Mary is a single mother of a 16-year-old son, Billy Smitherman, who will be a senior at Brewtech next year. Billy, who attends St. Luke United Methodist Church regularly, hopes to attend college at Auburn University. Mary enjoys reading in her spare time. She is a good employee and we are pleased to have her with the firm.

Scott Gunn

Scott Gunn, who has been with the firm for over five years, works as a Staff Assistant in the Mass Torts Section. He works on many different cases and is a contact person with clients. Scott helps to keep them advised and up to date on their claims. He began working on Vioxx cases in 2004 by recording intakes for potential clients. That work has continued to the present as we are now disbursing settlement payments to our clients. Scott has also helped with Bextra, Celebrex, and other Mass Torts projects. He
also has done new client intakes for Mass Torts for multiple pharmaceuticals.

Scott is married to Kathy Gunn, who is one of the firm’s Receptionists. Scott and Kathy have been married for almost 25 years and they have four children: three girls and one boy. The oldest are twin girls, one of whom just graduated from college. The others are now in college.

Scott graduated from Austin Peay State University with a B.S. in Biology and Chemistry and from Auburn University with an M.S. in Systematic Botany. He worked over 25 years as a biologist and has written or published a number of technical articles. Scott enjoys hunting, fishing, gardening, and faithfully serving in his church. He is a very good employee and we are blessed to have him with us.

CHRIS ALDERTON

Chris Alderton, who has been with the firm for two years, currently serves as a Runner. A runner’s duties at our firm are very important. The work covers a wide range of activities and I understand there is never a dull moment. Courier services, purchasing and stocking supplies, serving subpoenas and summons, filing court documents, traveling with the trial team, and providing help for miscellaneous tasks are all involved.

Chris and his wife, Kathryn, are extremely dedicated to their church, Courts of Praise in Millbrook, where Chris serves as the Music Leader. Chris enjoys music and plays the guitar, bass, piano and drums and he also enjoys singing. He spends his free time playing golf, fishing, swimming, and most of all, playing video games. We are fortunate to have Chris, a very good, dedicated employee, with the firm.

XXVI.
SPECIAL RECOGNITIONS

It seems like only yesterday when Tom Methvin from our firm was elected president of the Alabama Bar Association. But it’s been a full year when Tom completes his term as president this month. Tom has had a most successful term and he has accomplished a great deal. The following is Tom’s final message.

ACCESS TO JUSTICE: A REPORT CARD

I want to thank everyone who has worked so hard this year. In particular, I want to thank President-Elect Alyce Spruell and Vice President Phillip McCullum. Their hard work and dedication were an integral part of the success of our programs and initiatives.

Choosing a focus for our work this past year was easy. In July 2009, Alabama stood dead last in funding for Access to Justice in civil matters. As a result there have been a lot of hurting people without legal representation. Ensuring legal help for the poor in these cases was, and still is, a matter of the utmost importance.

We attacked this problem by securing additional funding for Access to Justice from Alabama lawyers and from the Legislature, and by increasing participation in our Volunteer Lawyer Program (VLP). We have made significant progress in a lot of areas. The following is a report card of our progress:

- Alabama lawyers gave their money. Lawyers agreed to make voluntary donations of $850,000 for Access to Justice.
- Alabama lawyers gave their time. More than 1,450 new lawyers have joined our VLP and agreed to represent the poor for free.
- The Alabama Legislature gave us a 12% increase in funding for Access to Justice, even though funding was cut for most other things.
- Our Mortgage Foreclosure program, which provides a free lawyer to those who need one, has helped more than 3,000 people.
- Lawyers worked 23,231 volunteer hours in 2009.
- The Huntsville/Madison County VLP completely turned around with a new executive director and Board, and helped 67% more people than last year.
- The Birmingham/Jefferson County VLP completely turned around with a new executive director and Board, and helped 38% more people than last year.

- The Montgomery County Bar started a monthly Pro Bono Clinic.
- The Mobile County Bar continued to lead the state with its VLP, and it helped 24% more people than last year.
- Legal Services helped 15,000 people in 2009, an increase of 4,000 people from the previous year.
- We hired a lawyer to work with Legal Services, to handle domestic violence cases that our VLP could not handle.
- We celebrated Pro Bono Week and drew public attention to the need for Access to Justice. Alabama lawyers were mentioned positively every day in publications, on television and radio throughout the state.
- We had the biggest Law Day celebration in recent memory, with a theme of “And Justice for All,” and again drew public attention to this area.

What a great start we’ve made in ensuring Access to Justice for all. We have not yet earned an “A” for our performance in this area. That is our goal, not just for our lawyers, but for the poor in Alabama who desperately need our help. So many lawyers have given so much to this effort. I firmly believe we can go to new heights if we keep focusing on this over the next five years. I have enjoyed being a part of this effort for Access to Justice. With your continued effort, we can achieve.

Source: This article is reprinted from the July 2010 edition of The Alabama Lawyer magazine.

It is widely recognized that Tom has done an outstanding job as State Bar President. He has brought to the public’s attention the fact that low income Alabamians have been largely shut out of the civil justice system. Tom has involved hundreds of lawyers across the state in an effort to right a wrong. Lawyers have volunteered their time to help solve this most serious problem. Tom—who is compassionate about helping folks—is to be
commended for his service. He has been a most effective spokesman for folks who generally have no real voice when it comes to obtaining justice and fair treatment.

**JOHN WOODEN WAS MORE THAN JUST A GREAT COACH**

Even those who have never kept up with sports know who John Wooden was. The very successful basketball coach at UCLA was much more than just a great coach. He was a great man and a person was.

The very successful basketball coach with sports who John Wooden described as one of the greatest coaches.

**The End of An Era In The Alabama State Senate**

Charles McDowell Lee, a native of Barbour County, has served as Secretary of the Alabama Senate since 1963. He will retire from this important position after a most distinguished career. Mac, a great person, is one of the most knowledgeable folks around when it comes to Alabama history. He especially is an expert on our state’s political history. Mac should write another book on that subject.

Many observers say Mac wrote the rules of the Senate, but that really isn’t true. But he does know them better than any Senator who has ever served in that body. It’s well known that Mac has had to bail out a number of presiding officers when they found themselves in a difficult spot, having to resolve disputes dealing with rules that might not be of the ordinary sort. I can speak from experience on that front. Mac bailed me out on more than one occasion and he has never let me forget it.

I am firmly convinced that one of the best traits any person can have is loyalty to friends. All who have known Mac over the years will tell you that he tops the list when it comes to being loyal to his many friends. Mac leaves the Senate, he will, of course, and dignity. But he will be sorely missed in my opinion, nobody will be able to replace him. His departure will be the state’s loss and that can’t be denied. I consider my friend, Charles McDowell Lee of Barbour County, to be a great American and truly a legend in his own time.

**XXVII. FAVORITE BIBLE VERSES**

Rev. Mike McKnight, who now serves as Pastor of the Fairhope United Methodist Church, sent in his favorite Bible verse this month. Mike and I became friends several years ago.

**Let brotherly love continue. Do not neglect to show hospitality to strangers for in doing so some have entertained angels unaware. Remember those in prison as though you were with them; and those who are ill-treated since you are in the body. Let marriage be held in honor and the marriage bed undefiled for God will judge those who practice unfaithfulness. Keep your life free from the love of money and be content with what you have; for He has said “I will never leave you nor forsake you.”**

**Hebrews 13:1-5**

My good friend Joyce Spear tells me her favorite Bible verse is one that gives her comfort when times get tough. Joyce and her husband, Cecil, have been our good friends for years and they attend St. James United Methodist Church with us. Joyce was originally from Crenshaw County where some of my kin folks live. She will tell you exactly what she thinks and believes and I like that trait. Joyce’s contribution to the Report this month comes from Matthew:

*Come to Me, all you who labor and are heavy laden, and I will give you rest.*

**Matthew 11:28**

Several of the youngsters who attended a summer camp in Montgomery operated by Common Ground last month furnished their favorite verses for this issue. I really appreciate Shanijer Miller (five years old), Keanete Shipper (seven years old) and Latrierra Davis (seven years old), taking time to send me their pictures. They also sent some great drawings. This verse was sent by these children:

**But Jesus said, “Let the little children come to Me, and do not forbid them; for of such is the kingdom of heaven.”**

**Matthew 19:14**

Bryan Kelly, with Common Ground, is doing a tremendous job with young folks in West Montgomery. Bryan also sent in a verse for this month:

*Ob, magnify the LORD with me, And let us exalt His name together.*

**Psalm 34:3**

I can think of no organization that does more for young folks than the FCA. Les Steckel, who is president of FCA, sent us the following verses:

**Strengthened with all might, according to His glorious power, for all patience and longsuffering with joy;**

**Colossians 1:11**
He who began a good work in you will perfect it until the day of Christ Jesus.
Phil 1:6

Larry Wilson, a very good lawyer from Houston, Texas, says he enjoys reviewing the Jere Beasley Report each month. Larry says he particularly likes this section on the Bible verses and sent in the following verse:

Then I heard the voice of the Lord saying, 'Whom shall I send, and who will go for Us?' Then I said, 'Here am I. Send me!
Isaiah 6:8

Larry says this verse shows an attitude that all Christians should have in terms of reaching out to the lost world. That is absolutely true and badly needed in these trying times.

XXVIII.
CLOSING OBSERVATIONS

An Important Message For Parents

Many parents fail to realize that young children have access to some popular video games that can do long-term damage to them. Unfortunately, most parents don’t even know anything about the content of these games. If they did, they would be shocked. Children are being emotionally and sometimes permanently scarred when they play these games. It’s not like just watching something bad or evil, children are actually participating in the event. Some of the events are murder, rape, and other violent acts. Could you imagine a very young child having access to a video game with that sort of content? Surely not in the United States.

But, children of all ages can rent these games—even though they are rated Mature (M) without the knowledge or consent of their parents or guardians. Scientific and clinical research has linked the playing of these games to a harmful and lasting impact on children. This is why the Parents Television Council is leading a national campaign to prevent video game retailers from selling these ultra-violent products to children. If you want more information, you can go to www.parentstv.org. It’s high time that folks who want to protect children from evil influences get involved and let our political leaders know this sort of thing can’t be tolerated in the Untied States.

A Monthly 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 beat their land.
2Chron7:14

The disaster in the Gulf of Mexico is affecting folks in all of the states along the Gulf Coast and it will eventually affect folks outside the region. People have lost their ability to make a living along the coast and they badly need hope. Unfortunately, there doesn’t seem to be any end in sight to this crisis. The damage done to an entire region of our country, and the losses that will be in the tens of billions of dollars, are almost impossible to comprehend. It’s difficult to get a handle on how terrible, vast and lasting the effects of this disaster are, and to fully understand what the future holds. But our Nation and its people have survived major problems of all sorts over the years and I am confident we will eventually survive this man-made disaster. We must never lose sight of the fact that God is still on His throne and always hears our prayers. Sometimes I forget this and have to be reminded. Our prayers are with all of the victims, regardless of where they are located, and we must support them in any manner possible.

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.
Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley’s law firm, established in 1979 with the mission of “helping those who need it most,” now employs 44 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.