1. **CAPITOL OBSERVATIONS**

**CONGRESS PASSES WALL STREET REFORM**

President Obama has signed the new Wall Street Reform legislation into law after a long and highly-partisan battle. Regardless of party affiliation, every member of Congress should have realized this massive overhaul of the nation’s banking laws was necessary. This was truly an historic event. Preventing another near-collapse of the nation’s financial system had to be a top priority for the Obama Administration and for Congress. It took nearly two years of negotiations to put the final bill together and hopefully the final product will get the job done.

This sweeping overhaul of the financial regulatory system makes badly-needed changes to financial services regulation. The bill gives regulators broad authority to rein in banks, limit risk-taking by financial firms, and supervise previously-unregulated trading. It also makes it easier to liquidate large, financially-interconnected institutions. The legislation also creates a new consumer protection bureau to guard against lending abuses. This is a major victory for consumers and investors who will have new protections in their credit transactions along with closer scrutiny of risky behavior on Wall Street. The new law, while not perfect, will provide oversight, transparency and accountability to shield the American people from another economic fallout.

Source: AL.com

**ALABAMA ATTORNEY GENERAL WILL SUE BP OVER THE OIL SPILL**

Attorney General Troy King, joined by Dr. Robert Bentley and Ron Sparks, announced last month that he will file suit on behalf of the State of Alabama against BP over the Deepwater Horizon oil spill. Troy held a press conference, along with the two candidates for governor, to discuss the proposed lawsuit. Both Dr. Bentley and Commissioner Sparks announced their support and made it clear the lawsuit would continue regardless of which of them is elected governor in November.

Troy pointed out that the oil spill is not only damaging the coast’s ecosystem and economy, but is “threatening the state from top to bottom” because of lost revenue. He was absolutely correct when he said that what has unfolded in the Gulf is “unprecedented in its nature and scope.” The harmful effects will impact generations to come. It’s good to see the Attorney General take this aggressive action which is badly needed to protect the interests of the people of Alabama. The state has suffered greatly and losses will continue for years.

Sources: Associated Press, Birmingham News and Mobile Press-Register

II. **POLITICAL OBSERVATIONS**

**A CANDIDATE SUPPORTED BY ONLY THE PEOPLE WINS**

When Dr. Robert Bentley won the runoff in the GOP primary by a large margin it sent shock waves through the board room of the Alabama Republican Party. The retired Tuscaloosa physician took all of the top guns in the Republican Party and took them all out to the woodshed. The Republican leadership supported Bradley Byrne and attacked Dr. Bentley, without justification, in the runoff. I don’t recall any other primary fight where the party leadership took sides and openly supported one of the candidates. Bradley Byrne, who had been anointed by the party bosses, had all the money needed to win with ease over a field of formidable candidates. In fact, Kay Ivey, who most considered to be a pretty strong candidate, left the primary and dropped back to the race for Lt. Governor. According to sources, that decision was made because of pressure from the party bosses.

When the race for Governor started in the GOP primary, only folks in his house district even recognized Dr. Robert Bentley’s name. Within that group, only a few really believed the retired Tuscaloosa doctor had even a slight chance of becoming the Republican nominee. Have things ever changed! Dr. Bentley swept to a most impressive 62-38% win over the man who most experts believed at the outset would be the winner. Some even felt early on that Bradley Byrne would win without a runoff. It appears that Dr. Bentley had only the people and perhaps the AEA on his side and it paid off.

### IN THIS ISSUE

| I. | Capitol Observations | 2 |
| II. | Political Observations | 2 |
| III. | A Report on the Gulf Coast Disaster | 3 |
| IV. | Drug Manufacturers Fraud Litigation | 6 |
| V. | Legislative Happenings | 7 |
| VI. | Court Watch | 8 |
| VII. | The National Scene | 9 |
| VIII. | The Corporate World | 10 |
| IX. | Congressional Update | 11 |
| X. | Toyota Litigation | 12 |
| XI. | Product Liability Update | 14 |
| XII. | Mass Torts Update | 15 |
| XIII. | Business Litigation | 17 |
| XIV. | An Update on Securities Litigation | 18 |
| XV. | Employment and FLSA Litigation | 19 |
| XVI. | Predatory Lending | 21 |
| XVII. | Premises Liability Update | 21 |
| XVIII. | Workplace Hazards | 22 |
| XIX. | Transportation | 23 |
| XX. | Arbitration Update | 24 |
| XXI. | Healthcare Issues | 25 |
| XXII. | Environmental Concerns | 26 |
| XXIII. | The Consumer Corner | 28 |
| XXIV. | Recalls Update | 31 |
| XXV. | Firm Activities | 36 |
| XXVI. | Special Recognitions | 37 |
| XXVII. | Favorite Bible Verses | 38 |
| XXVIII. | Closing Observations | 38 |
| XXIX. | Parting Words | 39 |
Unfortunately, Bradley hasn’t been a very gracious loser and that has caused even more internal problems within the party.

**JAMES ANDERSON WINS THE RUNOFF**

James Anderson won the Democratic nomination for Attorney General in the runoff with relative ease. He defeated Giles Perkins getting 60% of the vote. James is a real lawyer—one having a litigation practice in Montgomery, doing mostly civil defense work. He is an excellent lawyer and is well-respected by his peers. James will be a formidable candidate and will face the GOP nominee Luther Strange in the fall.

**A VICTORY FOR THE PEOPLE IN SENATE DISTRICT 28**

My brother Billy Beasley defeated Johnny Ford in the Democratic runoff for the District 28 senate seat, getting 68% of the vote. This was a most impressive win in a hotly-contested race. Interestingly, Billy received 88% of the vote in our home county of Barbour which is most significant. He will face Dr. Kim West from Auburn in the general election. Billy ran a positive race, allowed no negative ads, and discussed the real issues facing all of the folks in the counties making up Senate District 28.

**BRADLEY BYRNE THREATENED TO BURN DOWN AEA’S HOUSE**

Dr. Paul Hubbert says he initially thought Bradley Byrne’s attacks on the AEA were just fund-raising gimmicks. But it became quite obvious very early on that this was not the Byrne campaign’s intent. AEA and Paul Hubbert were jointly targeted as political enemy number one by the man who most everybody believed would win the GOP primary with ease. Paul, explaining why AEA fought back, observed:

*If Bradley Byrne had left us alone, we would have been only slightly involved in the governor’s race. Basically be called us out. He threatened to burn our house down.*

The Byrne campaign zeroed in on AEA in an $8 million attack campaign that ended in a double-digit run-off loss to Dr. Robert Bentley. Paul told Bob Lowery, a very good reporter with the *Huntsville Times*, that AEA normally devotes its political work to the legislative arena and that the organization will return there in the general election. Paul said that the leaders at AEA “made a decision that it was time to bring Bradley’s threat to their folks to the voters’ attention.” It became obvious that Paul believed Bradley “was serious about doing damage” to the association and its members.

I would have to agree with Paul that the Republican primary, rather than involving a legitimate debate on issues, became “a referendum on Bradley Byrne’s feelings toward AEA.” That was a losing proposition with voters who were more concerned about the state’s unemployment rate and jobs than “insider politics” in Montgomery. A number of lessons should have been learned from the GOP and Democratic primaries by campaign consultants.

Sources: AL.com and *The Huntsville Times*

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

**STATE ATTORNEY GENERALS CHALLENGE BP CLAIMS PLAN**

State Attorneys General have submitted a proposal to Ken Feinberg, who is in charge of the $20 billion BP restoration fund, that would not limit the amount of time residents have to file claims and would not require them to waive their right to sue BP. The chief law enforcement officers from the five Gulf states met in Mobile with U.S. Attorney General Eric Holder in mid-July. According to Troy King and Jim Hood of Mississippi, their meeting was dominated by talk of a proposal Feinberg sent to states that would have ended claims payments 90 days after the spill is capped and require people to sign a release of liability before collecting their last check from BP. That is unacceptable to the Attorneys General and rightfully so.

Attorney General Hood says Holder recognized the flaws in the Feinberg plan. Holder apparently understands fully that the effects of the oil spill will be going on for years after the leak is stopped. I believe it will affect the region for at least 25 years and perhaps longer. Hopefully, I am wrong and the period of time will be much shorter. Holder is

putting together a panel of lawyers and officials, with heavy representation from the Gulf Coast, to draft a new proposal to submit to Feinberg. I agree with Troy that “the focus should be on protecting the Gulf states and making sure everyone is made whole.” I don’t trust BP to do the right thing by its victims based on the oil giant’s past record and our experience with the oil industry. BP must be held accountable for the full extent of losses suffered by individuals, businesses, and governmental entities.

Source: AL.com

**$20 Billion Oil Spill Fund May Start Payments In August**

Hopefully, the $20 billion fund that BP has set aside to pay for losses caused by the disaster in the Gulf will start making payments this month. Ken Feinberg told a meeting of government officials in Louisiana on July 15th that he expected “a seamless transition” from BP management to his administration. While nothing has been paid from the fund so far, Feinberg claimed that by the end of the first week of August his group would be ready to make payments. It may be that Mr. Feinberg has let BP have too much influence on how this fund is to be administered. Hopefully, I’m wrong, but we will soon find out.

So if the Feinberg projection is accurate, a few claims should have been paid by the time this issue is received. Hopefully, the process will work and all legitimate claims will be paid. However, before BP gets any full releases of liability there must be a process in place that actually pays all claims for losses to date, and provide for full payment of all future losses. I am concerned that the fund will not pay for all of the losses incurred, either past or future, and that poses a major problem. There must be a procedure built into the claims-handling process ensuring that individuals and businesses will be fully compensated for their losses. I also believe somebody with authority must monitor the man operating the fund to make sure BP is not having too much influence on who is paid and how much. Ultimately, I believe the judicial system will have to be involved to assure that individuals and businesses are treated fairly.

Source: Associated Press

**BP Is Planning Its Legal Defense**

While the victims of the massive oil spill are suffering and see little hope for their future, BP has been busy planning its defense to their victims’ claims. For the last few weeks, BP has been offering signing bonuses and lucrative pay to prominent scientists from public universities in the Gulf Coast states to work on its defense against spill litigation. Part of the defense plan is to put in a conflict situation all potential experts who might work for victims’ lawyers. For example, BP tried to hire the entire marine sciences department at The University of South Alabama. To its credit, the university declined because of confidentiality restrictions that BP sought on any research done.

The Mobile Press-Register obtained a copy of a contract offered to scientists by BP. It prohibits the scientists from publishing their research, sharing it with other scientists or speaking about the data they collect for at least the next three years. Bob Shipp, head of marine sciences at the University of South Alabama, told the Mobile paper:

*We told them there was no way we would agree to any kind of restrictions on the data we collect. It was pretty clear we wouldn’t be bearing from them again after that. We didn’t like the perception of the university representing BP in any fashion.*

There is no telling how many scientists and universities have been approached by BP. Some will accept the offers and take BP’s money. Why would the company impose confidentiality restrictions on scientific data gathered on its behalf? BP will pay tremendous amounts in an attempt to corner the market on available experts. That is an indication of the oil giant’s arrogance and its true intent when it comes to paying claims and cleaning up the mess it has caused.

The Press-Register reported that scientists from Louisiana State University, Mississippi State University and Texas A&M have already accepted BP’s proposals. Scientists who study marine invertebrates, plankton, marsh environments, oceanography, sharks and other topics have been solicited. The contract makes it clear that BP is seeking to add scientists to the legal team that will fight the Natural Resources Damage Assessment lawsuit that the federal government will bring as a result of the Gulf oil spill. Individual claims will also be affected.

Richard Shaw, associate dean of LSU’s School of the Coast and Environment, says that the BP contracts are hindering the scientific community’s ability to monitor the effects of the Gulf spill. The contract requires scientists to agree to withhold data even in the face of a court order if BP decides to fight such an order. It stipulates that scientists will be paid only for research approved in writing by BP. The contracts have the added impact of limiting the number of scientists who would be available to work with federal agencies.

Source: Mobile Press-Register

**BP Won’t Be The Only Company Liable For Oil Spill**

U.S. Attorney General Eric Holder is certainly correct that the federal government could hold other companies involved in the oil spill liable for cleanup and claims costs. He said last month in Dauphin Island that the government is “looking at all the companies involved in the spill,” and that “we’re bound and determined to hold all of them accountable.” So far BP PLC has been the only company shouldering such costs. Company officials claim the British oil giant has spent more than $3 billion on clean-up and efforts to cap the leaking well. They also say the company has spent more than $160 million paying claims.

BP is the majority owner of the well that was pouring oil into the Gulf of Mexico at an estimated rate of 2.5 million gallons of oil a day until a cap finally stopped the flow. Two other companies
also own stakes—Texas-based Anadarko Petroleum Corp. owns 25% and Moex Offshore, a subsidiary of Japanese conglomerate Mitsui & Co., owns 10%. Switzerland-based Transocean owns the rig that exploded and was leasing it to BP. Houston-based Halliburton was pumping cement slurry into the drill hole prior to the Horizon's explosion. All of these companies will have legal responsibility—in varying degrees—to the victims of the disaster.

**Dispensant Dumping Could Become A Major Issue In The Gulf Oil Spill**

Some very real and disturbing trends have come to light regarding BP’s unprecedented use of Corexit 9500, and other toxic oil dispersants, to combat the Gulf oil spill. The oil dispersants, manufactured by Nalco, Inc., are designed to act like dishwashing detergent and break up the oil into smaller droplets—thereby keeping the oil away from the shore. They are also very toxic—product evaluations of Corexit 9500 indicate it could be four times more toxic than crude oil.

In total, BP has reported dumping more than 2 million gallons of the chemicals since the spill began—both by air, boat and deep undersea. This number represents the greatest deployment of dispersants in history. As Ronald Kendall, director of The Institute of Environmental and Human Health in Lubbock, Texas, put it, “We’re watching the biggest ecological, toxicology experiment in our nation’s history... underwater pools of oil have formed that are 20 miles long.”

BP has also been unwilling to follow the EPA’s instruction regarding its dumping. In May, the EPA demanded that BP use less toxic dispersants than Corexit 9500. In fact, one dispersant, known as Dispersit, is about twice as effective in breaking oil down and far less toxic than Corexit 9500. But, BP refused to follow the EPA’s lead and continues to use Corexit 9500. Subsequently, the EPA ordered BP to cut its use of oil dispersants by 75 percent. While BP contends it has cut back on dispersant dumping, a CNN report stated “[b]ut even by the EPA’s own standards, BP still routinely exceeds the daily threshold...BP has gone over that amount 50 percent of the time since the May 26 directive was issued.”

Even more troubling is how BP has chosen to administer dispersants. As we have learned, dispersants have never been injected into oil at the depths BP has done in response to the spill. Reports along the coast suggest BP is dumping thousands of gallons of dispersants adjacent to, and sometimes actually on, the Gulf Coast. Randy Lanctot, executive director of the Louisiana Wildlife Federation, worries that dispersants are being used too close to the coast. He said, “dispersants are not supposed to be applied from aircraft within three miles of land, according to Coast Guard protocol. I’m not sure that rule is being precisely followed.”

Taken together, this may explain why so many folks are falling extremely ill in the oil cleanup, and why residents throughout the Gulf Coast are reporting severe upper respiratory and gastrointestinal issues since the oil began coming ashore—all tell-tale signs of Corexit exposure. While BP continues to dump thousands of gallons of these toxic chemicals along the Gulf Coast, our firm is investigating the potential harmful effects and property contamination claims that may be resulting. If you have any questions, please contact Parker Miller in our Toxic Torts Section at 800-898-2034 or by email at Parker.Miller@beasleyallen.com.

Sources: CNN and The Louisiana Weekly

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**BP Accused Of Violating Endangered Species Act**

A coalition of animal rights and conservation groups filed a federal lawsuit last month, accusing BP of violating the Endangered Species Act and other federal laws. The lawsuit contends that “controlled burns” in the Gulf of Mexico—which involves oil being corralled by boom and then lit on fire—are fatal to endangered sea turtles. As has been widely reported, the creatures are unable to escape the boom and are then “burned alive.” The lawsuit was filed in the U.S. District Court for the Eastern District of Louisiana by AWI along with the Center for Biological Diversity, Turtle Island Restoration Network and Animal Legal Defense Fund.

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**People In Coastal Alabama Treated For Oil Exposure**

According to Alabama Department of Public Health officials, as of mid-July, over 100 people have already gone to local emergency rooms, clinics and urgent care centers since May 14th complaining of ailments related to the oil spill. Health officials are conducting surveillance across the state to monitor effects related to the spill at more than 20 sites in Mobile and Baldwin counties. The majority of the patients complaining of oil-caused symptoms were exposed by way of inhalation. Others became sick because of contact or

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serious problems in the future. I was unaware that regulations as "temporarily abandoned." I was unaware that regulations for temporarily abandoned wells require oil companies to present plans to reuse or permanently plug such wells within a year. Oil company representatives insist that the seal on a correctly plugged offshore well will last forever. Based on our dealings with the oil companies, however, I would take what they say with "a grain of salt." Hopefully, in this instance, they are being truthful and actually have a factual basis for the statements. In any event, the fact that thousands of these wells exist came as a shock to me.

Source: Associated Press

OIL SPILL COULD COST GULF COAST
17,000 JOBS

It’s estimated that the oil spill in the Gulf may cost the region 17,000 jobs and about $1.2 billion in lost economic growth by year’s end. A report by Moody’s Analytics on the subject was released last month. The estimates assume the flow of oil will be stopped permanently. The report says economic losses could reach $7.4 billion, and that more than 100,000 jobs could be lost. Hopefully, these estimates will prove to be too high. But, without any doubt, the losses will be tremendous.

THERE ARE 27,000 ABANDONED WELLS IN THE GULF

It was reported recently by the Associated Press that there are more than 27,000 abandoned oil and gas wells in the hard rock beneath the Gulf of Mexico. An AP investigation found that nobody is inspecting any of these wells for leaks. The oldest of these wells were abandoned in the late 1940s. This takes on more importance because of the April rig disaster in the Gulf. Hopefully, the abandoned wells won’t cause more serious problems in the future.

The AP investigation uncovered particular concern with 3,500 of the neglected wells—those characterized in federal government records as “temporarily abandoned.” I was unaware that regulations for temporarily abandoned wells require oil companies to present plans to reuse or permanently plug such wells within a year. Oil company representatives insist that the seal on a correctly plugged offshore well will last forever. Based on our dealings with the oil companies, however, I would take what they say with “a grain of salt.” Hopefully, in this instance, they are being truthful and actually have a factual basis for the statements. In any event, the fact that thousands of these wells exist came as a shock to me.

Source: Associated Press

IV.
DRUG MANUFACTURERS
FRAUD LITIGATION

RISKY DRUGS PULLED FROM THE MARKET IN RECENT YEARS

There have been a significant number of drugs put on the market by the drug manufacturers that should never have been approved by the U.S. Food and Drug Administration. When a drug’s risks exceed its benefits, the FDA may ask or order a company to withdraw it from the market, or a company may do so on its own. Based on what we have learned during extensive litigation with the drug industry, I am greatly concerned about the FDA’s performance. Americans know about Vioxx and some of the other dangerous drugs that should never have been allowed on the market. But most of their information came about only because of the Vioxx litigation. The following are some drugs withdrawn since 1997.

2000

• Zelnorm
  • Use: Anti-inflammatorv
  • Manufacturer: Merck & Co.

• Mylotarg
  • Use: Acute myeloid leukemia
  • Manufacturer: Pfizer Inc.

2009

• Raptiva
  • Use: Psoriasis
  • Manufacturer: Genentech

• Bextra
  • Use: Painkiller
  • Manufacturer: Pfizer Inc.

2007

• Zelnorm
  • Use: Relieves constipation
  • Manufacturer: Novartis AG

• Permax
  • Use: Parkinson’s disease
  • Manufacturer: Valeant Pharmaceuticals International

2010

• Cylert
  • Use: Attention deficit hyperactivity disorder
  • Manufacturer: Abbott Laboratories

• Tysabri
  • Use: Multiple sclerosis
  • Manufacturer: Biogen Idec Inc. And Elan Corp. PLC

• Baycol
  • Use: Lowers cholesterol
  • Manufacturer: Bayer

• Lotronex
  • Use: Irritable bowel syndrome (women)
  • Manufacturer: Glaxo Wellcome (now GlaxoSmithKline PLC)

• Propulsid
  • Use: Nighttime heartburn
  • Manufacturer: Janssen Pharmaceuticals
running the drug companies and they have put the medical professionals in the companies on the shelf. That's part of the problem and it results in unsafe drugs being rushed to market. The FDA is far too dependent on the drug companies for information relating to new drug applications. Hopefully, Congress will upgrade the FDA and demand a better performance in the future.

Source: Forbes

V. LEGISLATIVE HAPPENINGS

CALIFORNIA COURT REINSTATES PHARMACY SUIT OVER PRICING BY DRUG MAKERS

The California Supreme Court has reinstated a lawsuit in which retail pharmacies accused major drug makers of conspiring to set prices at artificially high levels. The pharmacies’ lawsuit alleges Pfizer Inc. And AstraZeneca PLC, as well as numerous other drug makers, acted to restrain importation into the United States of their lower-priced foreign drugs and to restrict price competition from cheaper generic drugs. The suit claimed that as a result drug prices were 50% to 400% higher than for the same drugs sold outside the U.S.

The antitrust lawsuit had previously been dismissed after a trial court and appeals court concluded that the pharmacies lacked standing because they passed the alleged overcharges on to consumers and thus sustained no damages. But in a ruling on July 12, the California Supreme Court ruled that drug makers couldn’t use this defense and remanded the suit to the lower court for further proceedings. The higher court essentially concluded that the retail pharmacies would still be able to argue they suffered damages even if they passed along manufacturers’ alleged overcharges. The pharmacies that filed the suit are largely independent.

It should be noted that the Court didn’t rule on the underlying merits of the case. That will be up to the trial court after the suit is remanded. The attorney representing the retail pharmacies believes the heads of the drug makers met often and had conversations about pricing that resulted in keeping U.S. drug prices artificially high. The pharmacies are seeking several hundred million dollars from the drug companies. In addition to Pfizer and AstraZeneca, other Defendants in the suit include Merck & Co. And GlaxoSmithKline PLC.

Source: Wall Street Journal

THE BATTLE FOR POWER IN THE FALL

It appears the Republican Party will spend millions of dollars this fall in an attempt to take over the Alabama Legislature. Some say the party leaders should have learned a lesson in the primary and should now realize spending millions of dollars doesn’t necessarily result in winning a race. At the very least, it appears the party leaders may now really believe their own news releases and be guilty of a little arrogance. Personally, I believe that a legislative race is seldom affected by people and influences outside that specific district. As has been said, “most politics are local,” and I believe that certainly applies here. If a legislator is popular at home, chances are that person will be sent back to Montgomery. But if that legislator—Republican or Democratic—hasn’t done a good job and is unpopular at home, he or she will be defeated. In any event, it will be interesting to see how the legislative races turn out on November 2nd.

SPEAKER HAMMETT WILL BE MISSED

Seth Hammett, who has served ably as Speaker of the House of Representatives for several terms, didn’t seek reelection, which means there will be a new speaker in 2011. While Seth wasn’t flashy, he was a most effective leader. The retiring Speaker’s leadership style was rather unique in that he seldom had to use the power of the gavel to make things happen. Seth’s reputation for fairness was earned during his tenure. He was highly respected by the members of the House and will be missed.
The most vacancies in the Courts of Appeals are in the Ninth Circuit (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington) with four vacancies. The Second Circuit (Connecticut, New York, and Vermont) and the Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, and West Virginia) each have three vacancies. There are two vacancies on the D.C. circuit court, often considered the most powerful federal appeals court. One post has been vacant since 2005, while the other has been vacant since 2008.

The Ninth Circuit has the most vacancies on the district courts with 13. The Fourth Circuit has ten vacancies, while the Fifth Circuit (Louisiana, Mississippi, and Texas) has nine. I would like to see the Obama Administration speed up the appointment of federal judges and the Senate should do its job in a much more bi-partisan manner. The American people are sick and tired of the bitter divisions between the political parties and the partisan battles in Washington.

Source: Alabama Law Weekly

SUPREME COURT STRIKES DOWN PART OF SARBANES-OXLEY

The U.S. Supreme Court recently struck down one part of the Sarbanes-Oxley Act. The High Court ruled that Congress overstepped its authority when establishing the Public Company Accounting Oversight Board (PCAOB). As you may know this is an investigatory panel focused on enforcing the eight-year-old law. The court, in a 5-4 opinion written by Chief Justice Roberts, ruled that Congress erred when setting up the Board and allowing the U.S. Securities and Exchange Commission, which appoints Board members, to remove them only “for good cause shown.” The majority said Congress also wrongly limited the power of the U.S. President, who under Sarbanes-Oxley could not directly remove Board members.

It should be noted, however, that the Court left the rest of Sarbanes-Oxley alone. In fact, Chief Justice Roberts wrote that the 2002 law remains “fully operative as a law.” Among other things, Sarbanes-Oxley requires public companies to document their internal controls. Congress created the law partly in response to corporate accounting scandals at Enron, WorldCom and other companies. Authors of the law set out to reduce fraudulent financial dealings and provide oversight of public companies. It was a needed law and badly overdue.

In his opinion, Chief Justice Roberts focused narrowly on the appointment and removal process for PCAOB members. The Act, according to the Court, leaves the removal of Board members to the SEC, when the President should have the authority under the U.S. Constitution. The Chief Justice wrote further:

The U.S. President cannot perform his duty to enforce laws if be cannot oversee the faithfulness of the officers who execute them. Here the President cannot remove an officer ... even if the President determines that the officer is neglecting his duties or discharging them improperly. That judgment is instead committed to another officer, who may or may not agree with the President's determination, and whom the President cannot remove simply because that officer disagrees with him.

Hopefully, the Supreme Court will resist further efforts to weaken what is considered by most to be a good and badly-needed piece of legislation. We all know how powerful the corporate lobby in Washington is and that has to be a concern.

Source: SFGate.com

SUPREME COURT LETS COMPANIES LIMIT COURT SCRUTINY OF MANDATORY ARBITRATION

In a recent ruling, the U.S. Supreme Court allowed Corporate America to limit court scrutiny of mandatory arbitration. The 5 to 4 decision in Rent-A-Center, West, Inc. v. Jackson, written by Justice Scalia, holds that companies can force their employees and customers
into mandatory arbitration using form agreements with a “delegation clause” that delegates decisions on the validity of the arbitration agreement itself to the arbitrator! The majority held that courts retain the authority to determine whether the delegation clause is itself valid—and still have their historic role of reviewing the validity of arbitration agreements without delegation clauses. The decision also left open several avenues for challenging the validity of both delegation clauses and typical arbitration agreements in future cases.

Clearly, the Court’s ruling allows companies to decrease access to justice. Public Justice was co-counsel before the Court for Antonio Jackson, an African-American man who says that a Nevada Rent-a-Center store discriminated against him when it repeatedly denied him promotions and promoted non-African-American employees with less experience. The suit was filed in federal court. Rent-a-Center moved to compel arbitration under the mandatory arbitration agreement it forced Jackson to sign as a condition of working for the company. The agreement says that the arbitrator, not a court, would have “exclusive authority” to resolve any dispute, including a dispute about whether the arbitration clause itself is valid.

Mr. Jackson fought enforcement of the clause, arguing that several of its provisions—including terms requiring him to pay half of the filing fees and arbitration costs and limiting the discovery he could take to prove his case—were unconscionable under state law. He also argued that the clause was one-sided and unenforceable because it permitted Rent-a-Center, but not its employees, to pursue some claims in court. The district court granted Rent-A-Center’s motion, enforced the clause, and held that any challenges to its validity were for the arbitrator to decide. The U.S. Court of Appeals for the Ninth Circuit reversed, holding that under U.S. Supreme Court precedent, courts—not arbitrators—must determine whether an arbitration clause is valid and enforceable before they enforce the clause. The U.S. Supreme Court granted review.

The brief by Public Justice urged the Supreme Court to hold that the Federal Arbitration Act bars parties from contracting around its requirement that a court determine an arbitration clause is “valid” and “enforceable” before it enforces that clause, and that enforcing an arbitration clause by permitting the arbitrator to decide enforceability—without first determining that the clause complies with state law—would violate this basic principle. The Court agreed in part, holding that “[i]f a party challenges the validity under [the FAA] of the precise agreement to arbitrate at issue, the federal court must consider the challenge before ordering compliance with that agreement.”

But, the Court held that the “precise agreement to arbitrate at issue” in this case is the delegation clause—“an agreement to arbitrate threshold issues concerning the arbitration agreement.” Such a delegation clause, the Court held, can be severed from the remainder of the arbitration clause and separately enforced. The Court found that Mr. Jackson had challenged Rent-A-Center’s arbitration clause “as a whole” and had not argued that the delegation clause was itself invalid until the case got to the Supreme Court. Because of that, the Court held that the district court had correctly enforced the delegation clause.

Justice Stevens, in dissent, said, “Neither [party] urged us to adopt the rule the Court does today” and “whether the parties have a valid arbitration agreement ... is an issue the FAA assigns to the courts.” He noted that the decision will impose a new, higher burden on any party seeking to challenge an arbitration agreement. For those who say we don’t have an activist court, Justice Stevens’ remarks should give them some concern.

The Rent-A-Center decision will make it harder for employees and consumers in future cases to seek redress in court. Whenever an arbitration agreement contains a delegation clause, a court will be required to treat the delegation clause as a separate and distinct agreement to arbitrate threshold issues. Then, unless a Plaintiff can first persuade the court that the delegation clause itself is unenforceable, he or she will be unable to challenge the validity of the arbitration agreement in court.

Both arbitration agreements and delegation clauses will still be subject to challenge. Public Justice says it will continue to devote significant time and resources to ensuring that the best possible arguments are put forward to preserve access to justice in cases potentially affected by Rent-A-Center. Public Justice should be commended for putting up a good fight. Please encourage Paul Bland, who is Public Justice’s Senior Attorney, and all others at Public Justice to keep up their efforts to keep the court system open to victims of corporate wrongdoing and abuse.

Source: Public Justice

VII. THE NATIONAL SCENE

THE AMERICAN PEOPLE DESERVE BETTER

Over the past 18 months, the National Republican Party has opposed every single proposal of any importance put forward by the Obama Administration. That has caused many good and needed programs to be stalled. I believe most people expected a better performance in Congress. When you consider the “mess” inherited by President Obama when he took office, it’s pretty obvious that significant changes were needed. Solutions proposed to deal with the massive problems facing our nation weren’t always popular, but were certainly necessary. A bi-partisan approach to solving those problems was needed, but unfortunately the GOP had a different agenda.

As some seem to have forgotten, the Bush Administration left our economy in a free-fall and our government in deep debt. Many have forgotten that the stimulus packages and government bail-outs started during the Bush Administration. President Bush and a GOP-controlled Congress inherited a multi-billion dollar surplus from the Clinton Administration, but turned over a very large deficit to the
Obsessed with debt, Mr. Bush brought down a house of cards. Congress had an obligation to act aggressively to make sure Main Street is saved. I believe the reform measure passed last month was a major step in the right direction and hopefully will work out as planned.

Certain Industries Must Be Regulated

Over the years the leaders in the national Republican Party have fought all kinds of government regulation. There now appears to be a rebirth of the anti-government movement. If we bought the recommendations of the Tea Party movement—which are as anti-government as anything seen in years—there would be no regulation of any industry. That approach would result in total disaster. We have seen numerous examples of what happens when there is either bad regulation or no regulation. The lax regulation of the financial institutions during the eight years of the Bush Administration resulted in fiscal meltdown and that’s a fact.

We are seeing first-hand today what the weak and ineffective regulation of Big Oil is causing in the Gulf Coast states. The FDA’s inept regulation of Big Pharma has resulted in far too many dangerous drugs getting into the market place. Clearly, there are certain industries that must be regulated by the federal government and those include the automobile, oil, drug, chemical, mining and utility industries. The insurance industry must also be regulated, but that regulation is believed by most to be best left to the states. We should have learned the hard way that self-regulation simply doesn’t work.

A Better Job Of Regulation by NHTSA Is Needed

In 2009, an estimated 33,963 people were killed on our nation’s highways. Motor vehicle crashes continue to be a leading cause of death in the United States and are the number one killer of children. 2010 has turned out to be another dangerous year for passengers and drivers. Each month brings more news of unsafe and defective vehicles.

In the opinion of many, including this writer, the reason there are so many hazardous cars on the road lies, in part, with the National Highway Traffic Safety Administration. As we all know, NHTSA is the federal agency responsible for auto safety. In recent congressional testimony, former NHTSA Administrator and President Emeritus of Public Citizen, Joan Claybrook, referred to the agency as:

The poor stepchild of the U.S. Department of Transportation (DOT), responsible for addressing 95% of the transportation-related deaths with only 1% of the DOT budget.

It should be noted that NHTSA’s annual vehicle safety budget is less than $200 million. To put this in perspective, Ford’s third quarter 2009 income was $35.5 billion. NHTSA has a most important function and it’s responsibility to ensure—to the extent possible—that automobiles on our nation’s highways is very clear. Center for Auto Safety (CAS) Executive Director, Clarence Ditlow, told a U.S. Senate committee on May 19, 2010:

The National Highway Traffic Safety Administration is a wonderful agency with a vital mission but it is woefully underfunded, understaffed and outgunned by the industry it regulates. To expect today’s NHTSA to adequately regulate the trillion dollar auto industry is like asking a high school basketball team to beat the LA Lakers.

Such funding problems have severely compromised the agency’s effectiveness. NHTSA’s Office of Defects Investigation is understaffed (57 employees and 18 investigators) and without the technical expertise needed to oversee today’s vehicles. As Joan Claybrook explained in her March 2010 testimony:

Not only is there a gross imbalance in resources between NHTSA and any company whose vehicle is being investigated, there is an imbalance in knowledge and expertise which is exacerbated by lack of funding.
NHTSA information gathering and data systems are also suffering, with projects like the National Accident Sampling System (NASS)—which could expose defects like sudden unintended acceleration (SUA) much earlier—budgeted for investigations of only 4,000 crashes per year. Other shortcomings include NHTSA’s failure to establish a public repository/database for crash data from Event Data Recorders (black boxes) present in most vehicles and request specific death and injury records from auto companies where there are known major defects. In addition, the agency has yet to issue a mandatory safety standard and is slow to upgrade or issue new safety standards based on investigations and testing.

NHTSA also pays little attention to the work of its enforcement engineers and investigators, who review tens of thousands of consumer defect complaints, research problems with particular make/model vehicles and analyze all the data. It rarely exercises its authority to review companies’ recall letters to ensure they truly alert the public to product dangers and the need for repairs, relies on peer review panels to approve agency requests for voluntary recalls, and allows automakers to substitute so-called “service campaigns” for full safety recall campaigns.

Unless NHTSA makes enforcement a top priority and Congress funds the agency properly, NHTSA will never be “the government cop on the corporate beat.” The fact that there is no public record of meetings between manufacturers and NHTSA—which, according to Mr. Ditlow, often occur at the conclusion of a defect investigation “where the important decisions are made and are attended by former NHTSA employees representing the manufacturer” and “frequently include presentation of documents by either NHTSA or the manufacturer on why there should or should not be a recall”—is equally problematic. Ditlow explained to Congress:

“These meetings are not about data submissions by manufacturers. They are about secret deals to close investigations without recalls that ultimately result in deaths and injuries to consumers.”

In addition, there is a “revolving door” between NHTSA and automakers. A large number of former NHTSA officials, including Administrators, the top presidential appointee, deputy administrators, general counsels, and chiefs of the enforcement, rulemaking and research divisions, as well as technical staff, have left NHTSA over the years to be employed by vehicle and equipment manufacturers as consultants, lobbyists, lawyers or on staff. The auto industry has also used its vast resources to lobby Congress for protection. Data from the Center for Responsive Politics reveals that since 2000 the auto industry has spent more than $520 million on lobbying activities and hired thousands of individual lobbyists.

Federal campaign contributions may further explain why Congress has failed to act. Since 2000 the auto industry has given federal candidates over $93 million, more than an eighth of which comes from auto manufacturers. Sadly, it took deaths and injuries from runaway Toyotas to prompt Congress to undertake its first major review of NHTSA. As you may recall, the last time was in 2000 after rollovers from Ford Explorers/Firestone tires claimed hundreds of lives. I agree, based on NHTSA’s past record, reform is long overdue.

Source: Center JD

**Provider Of Heart Monitoring Services Settles Fraud Lawsuit**

A California company that provided heart monitoring services has agreed to pay $3.6 million to settle a lawsuit in which it was accused of defrauding government healthcare programs. The lawsuit alleged that National Cardio Labs LLC, the company’s manager, and her husband (a former manager) defrauded Medicare, Tricare and health insurance carriers contracted through the federal government.

National Cardio Labs, which had several offices in Orange County, was operating as an independent diagnostic testing facility that received, analyzed and printed out data from heart monitors and other medical devices. The individual Defendants were accused of knowingly submitting false healthcare claims for cardiac and blood pressure diagnostic testing between January 1998 and February 2004.

Source: Los Angeles Times

**SEC Creates New Divisions to Oversee Large Financial Firms**

The U.S. Securities and Exchange Commission has created three expert units to focus on big financial companies, complex securities and securities offerings. The new offices within the division of corporate finance largely mirror the industries and products that played a key role in the financial meltdown that began more than two years ago. It’s believed that the changes will help the SEC focus its resources more sharply on critically important institutions and financial products so that investors can be better protected. The SEC is still battling criticism that it missed some major investment scams in recent years and that it failed to police investment banks at the heart of the financial crisis.

One unit will provide “enhanced reviews of large and financially significant companies,” including boosting the number of companies examined. Another office will focus on asset-backed securities and other structured finance products, which many believe disconnected risk from ownership and contributed to the financial crisis. A third division will look at trends in securities offerings and capital markets to make sure rules are keeping pace and working.

Sources: Insurance Journal and Reuters

**IX. CONGRESSIONAL UPDATE**

**Tom Donohue Is Good At His Trade**

Thomas J. Donohue, who heads up the politically powerful U.S. Chamber of Commerce, has become a real factor in what happens or fails to happen in our Nation’s Capitol. As President and CEO,
Donohue makes an annual salary of $3.8 million. Based on performance, he earns his salary many times over. Donohue is among the highest paid lobbyists in the country and works very hard for those who furnish big bucks for the Chamber’s lobbying and political activities. In fact, some say those who finance the Chamber work for Donohue. Most folks are shocked to learn that the Chamber spent over $120 Million in 2009 on lobbying alone.

In the political arena the Chamber is also a very big spender. For example, Donohue has pledged $50 million for use in House and Senate races this fall. Because of its power and influence, many insiders say the Chamber views itself as a shadow-government policymaking board. Donohue has a most interesting leadership style. If you want to learn more about this man—and what motivates him—I suggest that you read the article by James Verini in the July-August 2010 issue of The Washington Monthly.

Source: Washington Monthly

**Needed Legislation Is Being Blocked**

Over the past two years, corporations and lobbyists have been working overtime to block a great deal of progressive legislation that, if passed, would bring about real change in Washington. One prime example involves insurance companies working to water down health care reform. Another is when bailed-out bankers lobbied to keep their huge bonuses and fought reform of the financial system. It’s now being reported that BP is spending over $30,000 each day to avoid legal responsibility for the huge disaster it caused. There are politicians in Washington who say one thing back home and do just the opposite when they return to our Nation’s Capitol. These elected officials need to be doing the people’s business. If they don’t, the voters should bring them home and replace them with officeholders who aren’t tied to the powerful special interests.

There are several important measures pending in Congress that should be passed. While these bills don’t get the attention that legislation like the health-care and financial system reforms do, they are critically important. These are bills that, if passed, would affect all major legislation considered by Congress in the future. Those in the Republican leadership, under the watchful eye of Rush Limbaugh, are saying no to each of these bills. There are three such bills that are of the utmost importance:

- Legislation that would negate the awful Supreme Court decision in Citizens United which allows large corporations to spend campaign money without restriction.
- The Fair Elections Now Act which would provide for publicly-financed elections.
- The Lobbyist Reform Act which would reduce the influence of corporate lobbyists.

If you agree these bills are needed, contact your Senators and House members in Washington and ask them to support them. I believe passage of these bills will make things work much better in Congress and would level the playing field. This would mean that the voice of ordinary citizens would be heard for the first time in recent memory. That would be great for our nation.

**Federal Extension Of Unemployment Benefits Will Benefit Alabamians**

Congress finally passed the needed extension of unemployment compensation benefits in late July. An estimated 37,000 Alabamians will resume getting as much as $265 a week in benefits under the extension that President Obama signed into law on July 22nd. Some laid-off workers have had benefits suspended since early June, though benefits ran out at different times for the 37,000 affected people. Benefit payments for people whose jobless benefits were suspended should see payments resume within ten days, with the first payment including a lump sum for missed weeks of benefits.

Roughly 3 million people nationwide are expected to resume getting jobless benefits under the extension, which will cost an estimated $34 billion. The extension could last through November 30th for beneficiaries, but will end sooner for folks who will have received the maximum of 99 weeks of benefits before then. Hopefully, our nation’s economy will continue to improve so folks who are unemployed can get back to work.

Source: Al.com

### X. TOYOTA LITIGATION

#### TOYOTA HAS A NEW PRODUCT

In his book, Doubt is Their Product, former Assistant Secretary of Energy, David Michaels, explains his firsthand account of how clever public relations by corporations and industry used multi-million dollar tactics to magnify scientific uncertainty and influence policy decisions related to dangerous products. Mr. Michaels quotes a cigarette executive as saying, “Doubt is our product, since it is the best means of competing with the ‘body of facts’ that exists in the minds of the general public. It is also the means of establishing a controversy.”

According to Mr. Michaels, defense consultants have increasingly worked to skew scientific literature and magnify scientific uncertainty to distort public opinion and prevent public policy changes that would require manufacturing and products to become safer. To increase public confusion, according to Mr. Michaels, the strategy is to dismiss research conducted by the scientific community as “junk science” and elevate science conducted by product defense specialists as “sound science.” It now appears that Toyota may be taking the same approach in its public relations battle to win the hearts and minds of the public as well as those in Congressional oversight positions related to the crisis over sudden unintended acceleration events (SUA’s).

A recent Wall Street Journal article claims that a number of Toyota electronic data recorders (EDR’s) have been examined from vehicles that were claimed to
have experienced a sudden unintended acceleration event. The WSJ article says that the National Highway Traffic Safety Administration (NHTSA) has examined these EDR’s and found that the SUA’s were caused by driver error not electronic design problems. According to Sean Kane, President of Safety Research & Strategies, Inc., a safety research consulting firm, this information was leaked by Toyota to the Wall Street Journal in a plan to get public opinion on its side, i.e., to create “Doubt”.

Despite the WSJ article, the Department of Transportation told the Product Safety and Liability Reporter that it has “neither drawn conclusions in the ongoing investigation of the Toyota vehicles sudden unintended accelerations, nor released data,” some of which found its way into a July 13th story in the Wall Street Journal. That article claims that data from dozens of Toyota event recorders suggested “driver error and not an electronics problem with the electronic throttle control system used by Toyota.” Oddly, it seems that the Journal article prompted a 1% rise in Toyota stock according to the Product Safety and Liability Reporter.

Kane pointed to complaints from Toyota owners about incidents of sudden unintended acceleration of lengthy duration, at highway speeds, where the driver already was using the accelerator, and multiple incidents in the same vehicle with different drivers at the wheel as evidence that floor mats and sticky pedals are not the cause for the many Toyota SUA events. According to Kane, Toyota’s reported analysis of dozens of event data recorders, out of more than 37,000 customer complaints, does not explain how driver error could be the source of incidents nor why the large jump in complaints occurred when the company began equipping its vehicles with electronic throttle control systems in 2002. Kane stated further:

*Toyotas have always stated that the accuracy of the black boxes (EDRs) has never been scientifically validated. In fact, the company (Toyota) fights to keep the data from being used in litigation because it says EDR data isn’t reliable.*

Kane also noted that many of the SUA events that have been reported would not activate the EDR system. The EDR generally only records data in crashes where the crash is severe enough to deploy or nearly deploy an air bag. Unfortunately, there hasn’t been a great deal of reporting about the Toyota SUA crisis lately. Kane believes that “advertising pressure” and increased media focus on the BP disaster in the Gulf have led to a lull in reporting on sudden acceleration events. However, Kane says that his firm “gets reports every day, so the problem is still very much out there.” The television ad campaign by Toyota—which had to cost tens of millions and is designed to repair Toyota’s tarnished image—has been effective.

In the late 1980s, Audi faced a similar problem of sudden unintended acceleration events in its cars. As a result, Audi sponsored a good bit of “scientific” research that pointed to driver error rather than vehicle design as the cause for the unintended accelerations. No doubt, Toyota is attempting to link its problems to this research and driver error. Many believe the WSJ article is just the tip of the “Doubt” iceberg.

Toyota and the public may not remember that a number of NHTSA recalls on Audi vehicles resulted from the Audi SUA crisis of the late 80’s and early 90’s. Few folks recall that Audi changed the design of its vehicles. Hopefully, NHTSA will not allow Toyota to create enough “Doubt” to escape responsibility for the safety problems in its vehicles. Probably some of the best evidence that Toyota is making an effort to create “Doubt” is the fact that Toyota told Congressional leaders that it had hired an independent company, Exponent, to evaluate its SUA events. Congressional leaders quickly discovered in documents and interviews, however, that Toyota had not in fact hired Exponent to help “independently” evaluate SUA events in its vehicles. Instead, Toyota’s lawyers hired Exponent to help it defend Toyota in litigation related to SUA events.

Even more telling, documents and testimony provided to Congressional members revealed that Exponent, as part of its analysis process, made no written notes of any research it conducted for Toyota. Neither did Exponent have any written testing or analysis protocol or plan in place to determine the cause of Toyota SUA’s. How can anything other than “junk science” masquerading as legitimate scientific research be created if the results are not written down and there is no written scientific method for analysis in place? Despite the lack of an organized plan, Exponent reported more than 11,000 man hours of work on the SUA project for Toyota. Clearly, Toyota is not trying to solve the problem, but is attempting to produce a new product—DOUBT—and that product is a clever defense strategy. So it’s quite evident that Toyota is using its old ploy of blaming drivers who are victims of their safety-related problems.

Sources: Associated Press, Wall Street Journal and Product Safety and Liability Reporter

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**TOYOTA HALTS SALES ON LEXUS HS 250H HYBRID**

Toyota Motor Corp. has stopped all sales of its 2010 Lexus HS 250h hybrid after government tests showed it could leak fuel in a rear-end collision. The Japanese automaker also has recalled roughly 13,000 HS sedans that have already been sold and 4,000 that are still on dealership lots. NHTSA said in a recall filing that the defect “could result in a fire.” A similar problem in the Ford Pinto that caused at least 27 deaths led to one of the most publicized recalls of all time, in 1979. Toyota says it isn’t aware of any incidents or accidents resulting from the defect in the HS, a model that was first introduced late last summer. The new Lexus recall is the latest in a string of safety and quality problems that have confronted Toyota since last September, when it announced a massive recall to deal with sudden acceleration. The issues have led to multiple Congressional hearings, hundreds of lawsuits and a public apology from the company’s president, Akio Toyoda. And although a recall of 17,000 sedans is small in comparison with the more than ten million
recall notices issued by Toyota since September, it is notable because it was ordered by NHTSA after the regulator spotted a defect that Toyota claimed it had not found in its own testing. It mirrors a recall of the Lexus GX 460 in April, which took place after the magazine Consumer Reports unearthed a handling problem in its testing. Toyota subsequently replicated that problem on its own and announced a recall of nearly 10,000 sport utility vehicles.

Toyota says it conducted tests to verify that the Lexus hybrid was in compliance with federal safety standards before releasing the vehicle, and that no problems with the fuel tank were found. But a crash test conducted for NHTSA by a contractor, Calspan Corp. of Buffalo, New York, found that after an impact from a barrier at 80 kilometers per hour, or about 50 mph, fuel leaked from the vehicle. Because more than 142 grams of fuel spilled, the maximum allowed under federal safety rules, NHTSA notified Toyota that it was out of compliance. This resulted in the stop sale and recall.

Source: Los Angeles Times

**TOYOTA SAYS 270,000 VEHICLES HAVE FAULTY ENGINES**

In another development, Toyota Motor Corp. says about 270,000 cars sold worldwide including luxury Lexus sedans have potentially faulty engines. This is the latest quality lapse to hit the automaker following massive global recalls of topselling models. Toyota claims it’s “evaluating measures to deal with the problem of defective engines that can stall while the vehicle is moving.” Toyota hasn’t issued a recall at this time. Of the 270,000 vehicles with engine problems, some 180,000 were sold overseas and the rest in Japan. They include the popular Crown and seven models of luxury Lexus sedans. Toyota said it has received around 200 complaints in Japan over faulty engines. Some drivers told Toyota that the engines made a strange noise. The company said there have been no reports of accidents linked to the faulty engines.

I was not surprised to learn that Toyota knew two years ago about the engine problem behind the Lexus recall. The company even changed the spring part to correct it, but failed to issue a recall until recently. In August 2008, Toyota changed that spring part, making it thicker. The company claims that’s why the latest recall does not affect vehicles produced after August 2008. Toyota, claimed it originally thought the problem was caused by a foreign substance entering during manufacturing of the valve springs. The company said it beefed up checks so that wouldn’t happen.

Sources: Associated Press and ABC News

**XI. PRODUCT LIABILITY UPDATE**

**GOODYEAR SETTLES SUIT OVER FATAL ACCIDENT**

Goodyear Tire and Rubber Co. And the families of three men involved in a 2000 motor vehicle accident, in which one of them died, have settled a lawsuit arising out of the incident. The case had been on appeal before the Mississippi Supreme Court. Previously, a jury in Copiah County found that the accident was caused by a faulty tire on the Chevrolet Camaro. The state Court of Appeals agreed last April and upheld a $2.1 million verdict against Goodyear and Big 10 Tire Co. The case was then appealed to the higher court in Mississippi.

Travis Kirby, who was 20 years old, was driving a vehicle with two teenage friends on a Mississippi road when his vehicle “left the road, rolled, clipped a tree, continued to roll, hitting another tree, and then came to rest on its side.” Kirby was killed. The two teenagers in the vehicle, Riley Strickland and Sidney Odom, were both injured. It was alleged in the lawsuit that there was a faulty back tire on the right side of the vehicle.

Kirby bought the vehicle used from a car dealership in Jackson. The tires had been replaced by the previous owner and were bought at a Big 10 store. Prior to the trial, the car dealership that sold the vehicle settled with the Plaintiffs.

Goodyear and Big 10 blamed the accident on excessive speed, the fact that Kirby had been drinking, and a puncture caused by hitting something in the road, which incidentally is a standard defense. But the jury didn’t buy any of this and returned a verdict for the Plaintiffs. The settlement that has been reached is confidential. Mike Allred, a lawyer from Jackson, Miss., represented the Plaintiffs and did a very good job.

Source: Clarion Ledger

**$32 MILLION JUDGMENT AGAINST GOODYEAR IN FATAL CRASH CASE UPHeld**

The Nevada Supreme Court has upheld a $32.2 million judgment against Goodyear Tire & Rubber Company involving a single-car crash that killed three people and injured seven. The court rejected the claim of Goodyear that the amount awarded by the jury was excessive. The majority decision, written by Justice Mark Gibbons, said there was sufficient evidence to justify the amount because of the loss of life and serious injuries and it does “not shock our judicial conscience.” The car’s occupants were traveling from Nevada to Kansas to attend a boxing match when a tire blew out and the vehicle overturned on an Interstate highway in 2004.

A suit was filed by the surviving relatives and guardians of the children against Goodyear, Ford Motor Company and Valley View Hitch & Truck Rental. Both Ford and Valley View settled the claims against them. Prior to trial, the trial judge found that Goodyear failed to produce a witness and gave improper responses to interrogatories. The judge found that Goodyear “has taken the approach of stalling, obstructing and objecting” in its pre-trial behavior. As a sanction, the court ruled that Goodyear could not present a defense of liability, but only could argue to the jury the amount of compensatory damages and if it was subject to punitive damages.

The jury returned a $32.2 million verdict, but didn’t return punitive damages. The Plaintiffs also appealed the judge’s decision that they would have to establish liability to receive punitive
The Supreme Court, however, backed the judge in her ruling on that issue. Justice Kristina Pickering dissented from the majority, saying the lower court had imposed an “excessive penalty” on Goodyear’s pre-trial conduct.

Source: Las Vegas Sun

VERDICT AGAINST GOODYEAR EXPOSES DANGEROUS RV TIRES

We wrote last month about the verdict returned by a Florida jury against Good- year Tire & Rubber Company. In that case the company sold a tire for use on recreational vehicles (RVs) even though the company was aware the tire was not suitable for RV use. The tires, Goodyear G159, were manufactured and sold for RVs between 1996-2000. Since that time, Goodyear has faced numerous claims resulting from tire failures and vehicle accidents, many resulting in serious injury and death.

This recent verdict represents the first G159 tire case to go to trial. Goodyear has quietly settled as many as a dozen G159 were resolved to take the company to death. In each case they asked for and court in hopes of finally shining a light between 1996-2000. Since that time, Goodyear’s pre-trial conduct.

Rick Morrison, a lawyer in our law firm, handled this case, to investigate Good- year G159 tires. Rich had this to say about this verdict:

The most important thing about this verdict is that finally you’ve had a jury tell Goodyear you are responsible for numerous catastrophic injuries and death as a result of these tires failure.

Unfortunately, there are still Goodyear G159 tires in use on RVs throughout the country. The tire has never been recalled. Instead, Goodyear has blamed the vehicle manufacturers, and even the user—its own customer—for the deadly accidents that happened. Rich observed:

We still get three or four calls a month from RV owners who have these tires that failed, and thankfully they have escaped injury, but they’re very, very concerned, and they want to know why Goodyear won’t even replace these defective tires or acknowledge that there is a problem with them. There will be another bad accident where someone is hurt or killed because Goodyear didn’t do what was right and get this tire off the road.

The jury in Pasco County (Florida) Circuit Court reviewed the evidence in a case in which John Schalmo was driving his RV in 2004 when the right front tire suffered a catastrophic tread separation. The RV veered off the road and crashed into a line of trees. Schalmo and passengers William and Ruth McClintock were seriously injured. William McClintock lost both his legs as a result of the crash. The G159 was originally designed for urban delivery vehicles and speed-rated for only 65 mile per hour continuous use.

In 1998, Goodyear increased the speed rating to 75 miles per hour, even though the tire design was prone to overheat on RVs that typically travel at those speeds for extended periods. The speed rating change allowed Goodyear to continue selling the tire to the RV market after speed limits increased nationwide. Excessive heat in a tire will break down its internal components over time, and is a leading cause of tread belt detachment failures, as typified by the Schalmo crash. During the course of the trial, Goodyear documents were introduced, including internal heat and speed testing and failure rate data that showed that Good- year knew the G159 was improperly approved for 75 mph continuous highway use.

In this case, the Schalmo and McClintock families refused to agree to a confidential settlement. As a result, important documents that will reveal that Goodyear knew the G159 tire was dangerous may soon come to light. There is no doubt that the company knew how dangerous this tire is when used on a RV. The Florida Sunshine in Litigation Act prohibits a court from sealing corporate documents that would conceal a public hazard. Judge Stanley Mills gave Goodyear 45 days to present arguments for sealing the confidential Goodyear materials shown to the jury. Hopefully, that effort won’t fly. If you need additional information on the Goodyear tire problems, contact Rick Morrison in our firm at 800-898-2034 or email at Rick.Morrison@beas- leyallen.com.
drugs, the first of which, Rezulin, was withdrawn because it caused liver damage. The other drug in the class, Actos, made by Takeda, has appeared relatively safe. The sales of Avandia, which was once the biggest-selling diabetes medicine in the world, abruptly declined in 2007. That came after a study by Dr. Steven Nissen, a noted Cleveland Clinic cardiologist, found that Avandia increased the risk of heart attacks. An advisory committee in 2007 decided that Avandia did not increase heart risks, but voted to keep it on the market.

Many of the same experts who decided to keep the drug on the market in 2007 voted that it should be withdrawn or restricted. Those restrictions could mean that patients would have to apply for special permission to use the drug. Reactions to the panel’s vote have been as mixed as the vote itself. The FDA generally undertakes programs to restrict a drug’s sales only when a drug offers a unique benefit, something not one study has shown about Avandia. A majority of the committee found that Avandia increased the risk of heart attacks, but a majority also said that studies had failed to prove it increased the risk of death.

A majority decided that if Avandia were to continue to be sold, the company should complete a clinical trial to prove it was safe. But several members said that the vote probably made a trial impossible because patients would not want to risk taking Avandia. You might now wonder how in the world the committee, which should put a drug’s safety at the top of its priority list, could have come up with so many different conclusions. If so, I share your concern.

It’s quite obvious that the manufacturer of Avandia has not been honest with the FDA. Marketing seems to have been the driving force when critical decisions were made by the company. It was said during the panel’s hearings that studies were not completed because the company feared that the results might hurt sales. This information came from internal company documents.

Sources: New York Times and USA Today

NEW LEVAQUIN SUITS FILED IN ILLINOIS

Two more lawsuits have been filed against Johnson & Johnson and Ortho-McNeil Pharmaceutical, a subsidiary, alleging that the popular antibiotic Levaquin caused Plaintiffs’ tendons to rupture. Levaquin is one of a class of antibiotics known as fluoroquinolones, used to treat bacterial infections of the lungs, sinus, skin and urinary tract. Hundreds of Plaintiffs across the country have filed suit alleging that the drug causes tendonitis, tendinopathy and tendon ruptures, often involving the Achilles tendon, and that the drug maker failed to warn about the risks.

The drug companies deny the allegations. The latest suits make similar complaints. Four individuals filed two suits in Illinois state court alleging that they took Levaquin and suffered severe tendon damage. The suits also name pharmacy Walgreens as a Defendant.

The suits claim that Levaquin was specifically marketed toward elderly patients, those at the highest risk of developing tendon problems. More than 40 suits have already been filed nationwide, in state courts in Mississippi, New York and New Jersey. There is also an MDL in U.S. District Court in Minnesota. The first trials are slated to begin in the MDL later this year. The parties agreed upon six cases as bellwether trials.

Source: Lawyers USA Online

WRONGFUL DEATH LAWSUIT FILED AGAINST CONTRACEPTIVE MAKERS

The estate of an Omaha woman who died while using the NuvaRing contraceptive has filed suit against its makers, claiming the device caused a deadly blood clot. The lawsuit, filed in U.S. District Court in Omaha, says 43-year-old Ann Tompkins died in February 2009, about five months after she began using NuvaRing. The lawsuit seeks damages from various pharmaceutical companies that currently, or at one time, manufactured and sold the contraceptive, including Merck & Co., which last year acquired former maker Schering-Plough. Also named are Dutch biopharmaceutical Organon BioSciences NV, its U.S. divisions and its parent company Akzo Nobel NV, all bought by Schering-Plough in 2007. The wrongful death lawsuit seeks both compensatory and punitive damages.

Mrs. Tompkins, a mother of two, was found dead in her home by a family friend on February 23, 2009. An autopsy showed that a blood clot in one of her lungs caused the death. The makers of NuvaRing are accused of, among other things, over-promoting the contraceptive while providing too little warning of the risks of blood clots to users. NuvaRing, which was launched in the summer of 2002, is a hormonal contraceptive inside a flexible ring that is inserted in the vagina and left in place for three weeks out of every month. It slowly releases two hormones into the vaginal wall: ethinyl estradiol, a type of estrogen widely used in contraceptives, and a progestin called etonogestrel.

Source: Forbes

CONGRESS TO INVESTIGATE WYETH’S MARKETING

The U.S. House Oversight and Government Reform Committee is investigating Wyeth, which was bought by Pfizer in 2009, after reports that it illegally marketed the pharmaceutical drug Rapamune for unapproved uses. In a recent letter to Pfizer, Rep. Edolphus Towns, Chairman of the Committee, requested documents showing whether the company:

- promoted the drug for unapproved uses,
- tried to convert transplant patients from their current medication to Rapamune, and
- targeted specific medical facilities for increased sales of the drug.

The investigation comes after former employees sued Wyeth, alleging that the company aggressively marketed Rapamune as an organ-rejection preventive for patients with liver, lung, heart and other transplants. The drug was approved by
FDA in 1999 for preventing rejection of transplanted kidneys.

The suit also claims that Wyeth targeted African American patients for unapproved use of the drug even though it did not have data to support the use in black patients and that it targeted hospitals that primarily serve the black community for Rapamune conversion. Conversion is switching a patient from an existing medication to Rapamune. The drug's label has had a black box warning against conversion since 2004.

The lawsuit claims doctors raised concerns with Wyeth that conversion patients were experiencing very serious side effects, but that the company did nothing about it. It also alleges that when doctors raised concerns over infections in kidney transplant patients, Wyeth repeatedly blamed the transplant surgeons. It certainly appears that is just another example of what happens when marketing overrides the opinions of the medical professionals at a drug company.

Source: Bloomberg

**RICE FARMER IS AWARDED $500,000 IN CROP CONTAMINATION LAWSUIT**

A federal jury in St. Louis awarded $500,248 last month to a farmer who claimed that he and his family had lost just over $1.5 million when genetically modified rice contaminated the U.S. rice supply. The trial is the fifth trial in federal and state courts in which farmers have been awarded damages. In all, hundreds of lawsuits filed by thousands of farmers and others against Bayer CropScience have alleged that the release of LibertyLink, a herbicide-resistant rice, into the rice supply cost farmers millions.

The release was announced in August 2006, before the rice had been approved for sale for human consumption. It has since been approved but has not been commercially marketed. Bayer claimed that the price quickly recovered and that farmers who waited suffered only small losses. The family farmer lost more than a million when the market plunged, and faced additional costs of switching crops and cleaning equipment of LibertyLink rice.

A series of so-called "bellwether" trials were initially set up to allow representative cases to proceed to trial. The outcome gives both Plaintiffs and Defendants an indication of what may happen in the other pending cases. In December, jurors awarded $2 million to farmers. A different jury, also in federal court in St. Louis, awarded $1.5 million to farmers in February. Also, in two state trials in Arkansas, jurors found in favor of farmers, awarding farmers $1 million in the first trial and $48 million in the second, including punitive damages of $42 million in the second trial. After the verdict, one of the Plaintiffs, Mr. Deshotel, observed:

*I hope that the result of this trial and the results of the previous trials opens Bayer’s eyes as to the difficulties U.S. long grain rice farmers have faced since the contamination ... And that they make things right for all other rice farmers affected.*

Don Downing, a lawyer from Lettsworth, Louisiana, represented Mr. Deshotel in this case and did a very good job. Our firm also is handling rice litigation. If you need additional information on the subject, you can contact Leigh O’Dell, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com.

Source: StLToday.com

**XIII. BUSINESS LITIGATION**

**ACTOR IS AWARDED $23.2 MILLION IN HIS LAWSUIT**

Most young folks probably won’t recognize the name Don Johnson and that’s certainly understandable. He played the role of the fictional San Francisco police detective “Nash Bridges” almost a decade ago. Johnson will now receive $23.2 million in profits from the show. That’s because a Los Angeles jury found that the actor was owed that amount from Rysher Entertainment, the production company, in profits accrued to date from the show, which is still being shown in more than 40 countries around the world.

Johnson, the former “Miami Vice” star, sued Rysher, saying he was entitled to half the profits from the show because he owned half of its copyright. The company contended during the trial that the show has yet to be profitable because it cost so much to make, and that Johnson, who also was an executive producer, already had received tens of millions of dollars during filming. Johnson disagreed and proceeded to trial on his claim.

Jurors recognized Johnson’s ownership of half of the series and found that the actor should continue to receive half of the profits from syndication in the future. During the trial, the now 60-year-old actor told of his rise to stardom and contended he was able to negotiate a favorable contract because of his success as a star of “Miami Vice.” I recall that Johnson was a hot commodity at that time. Mark Holscher, a lawyer with Kirkland & Ellis in Los Angeles, California, represented the actor and did a good job.

Source: Los Angeles Times

**RANGE SETTLES PENNSYLVANIA LAWSUIT**

Fort Worth-based Range Resources has settled a class action lawsuit in Pennsylvania under which more than 2,000 owners of royalty interests in natural gas wells could benefit by nearly $22 million. This will include $1.75 million in cash payments and lower charges for post-production costs such as gas gathering and processing. The lawsuit involved a dispute over what the various leases allow in terms of deduction from royalty payments of post-production costs for gathering, compressing and treating natural gas for sale.

Range is a major natural gas producer in the huge Marcellus Shale in the Appalachian region of the eastern U.S., where the company’s heaviest focus is in Pennsylvania. The precise level of benefits to royalty owners from the settlement is uncertain because of variable terms. For example, the amount that post-production charges to royalty owners are
lowered in coming years could vary according to the volume of gas production.

The proposed agreement, filed last month in federal court in Erie, Pennsylvania, is subject to approval by U.S. District Judge Sean McLaughlin. No hearing date had been set at press time. Royalty owners can opt out of the settlement but must sign a written statement to that effect. Many of the royalty owners are from Venango County in northwest Pennsylvania.

Source: Star-Telegram.com

XIV.
AN UPDATE ON SECURITIES LITIGATION

AIG TO PAY $725 MILLION TO SETTLE SECURITIES FRAUD LAWSUIT

American International Group Inc. has agreed to pay $725 million to settle a long-running securities fraud lawsuit led by three Ohio public pension funds. This is one of the largest class action settlements in U.S. history. AIG, which is nearly 80% owned by the U.S. government, will pay $175 million within ten days of preliminary court approval of the settlement. It was reported that the company may fund the remaining $550 million through a stock offering or other means, including cash, when it decides it’s commercially reasonable to make such an offering.

The litigation, which began in October 2004, involved allegations that AIG engaged in accounting fraud, bid-rigging and stock price manipulation. The settlement resolves allegations of AIG’s wide-ranging fraud from October 1999 to April 2005 and brings the expected recovery for AIG shareholders to about $1 billion. As you will recall, AIG was bailed out in September 2008 from near-collapse with a $182.3 billion taxpayer-funded rescue package.

The class action suit, filed in Manhattan federal court, was led by the Ohio Public Employees Retirement System, the State Teachers Retirement System of Ohio and the Ohio Police and Fire Pension Fund. As part of the overall case, the Ohio funds previously announced a $72 million settlement with General Reinsurance Corp, a $97.5 million settlement with PricewaterhouseCoopers LLP and a $115 million settlement with former AIG Chief Executive Hank Greenberg, other AIG executives and related corporate entities.

Reportedly, this is the tenth-largest securities class action settlement in U.S. history. It came a day after the SEC reached the $550 million settlement with Goldman Sachs Group Inc. That case arose out of Goldman’s marketing and packaging of a collateralized debt obligation that turned toxic during the financial crisis.

Source: Insurance Journal

CLASS ACTION LAWSUITS FILED AFTER PENSION FUND COLLAPSE

Two class action lawsuits representing 200-300 retired union and non-union retirees of the former St. Anne-Nackawic Pulp Company Ltd., located in the Town of New Brunswick, Canada, have been filed against former company officials and the province’s superintendent of pensions. The two lawsuits are seeking more than $40 million in damages. The lawsuits arise out of a series of steps taken by the officers and directors of St. Anne between 1999 and 2001, which allegedly “effectively decimated the full value of both pension plans to the detriment of the retired employees.”

One of the class action lawsuits names George Landegger and Karl Landegger as the principals of St. Anne-Nackawic and its holding company, St. Anne Industries Ltd. These two men are being sued for breach of trust, breach of fiduciary duty and breaches of utmost good faith with respect to the administration of the pension plans. George Landegger is also chairman and CEO of Parsons and Whittemore of Rye Brook, New York, which is the holding company that owned St. Anne Industries Ltd. Parsons and Whittemore was founded in 1853 and was one of the world’s largest producers of wood pulp and bleached kraft pulp until it announced the sale of its giant Alabama River and Alabama Pine pulp mills in Perdue Hill, Ala., to Georgia-Pacific last spring. Joe Broczkowski will attempt to represent non-union retired salaried employees. Abigail Paul seeks to represent unionized employees.

St. Anne-Nackawic Pulp Company Ltd. was the largest employer in Nackawic from 1970 until it declared bankruptcy and closed September 14, 2004. The lawsuits represent former employees collecting pensions before the mill closed. Each plan required an employee to reach age 55 before becoming eligible for a pension. The lawsuit alleges that on December 31, 1998, both pension plans had funding excesses and were considered solvent. The lawsuit alleges that in 1999 company officials unilaterally amended the pension plans to allow early retirement for certain employees. “Contrary to actuarial advice, the directors again unilaterally amended their pension plans in 2001 to allow more early retirement packages for additional employees, further decimating the funds’ assets and putting both plans in deficit,” according to the suit.

The provincial government loaned the company $15 million in 2002, but the mill declared bankruptcy in 2004. The end result was non-union employees over the age of 55 had their pension benefits reduced by 72% of original expectations, which reduced the value of Broczkowski’s pension by approximately $223,000. Paul’s pension value was reduced by more than $111,000 to 65 per cent of the original expected pension. This information comes from Barry Spalding, the law firm representing the Plaintiffs.

The Plaintiffs will attempt to prove that the overall effect with respect to the 200 to 300 affected employees was to reduce their pension by approximately $41 million. The class action lawsuit against the supervisor of pensions alleges the office failed to properly use its legal authority to prevent company officials from depleting the pension plans. Talia Profit, who is with the Moncton office of the law firm of Barry Spalding, represents the Plaintiffs and is acting on behalf of the retirees.

Source: dailygleaner.com
Liberty Mutual Sues Goldman Sachs Over Fannie Mae Stock

Liberty Mutual Insurance Co. filed suit last month against Goldman Sachs Group Inc. Alleging that Goldman fraudulently misled Liberty into buying preferred stock of mortgage financier Fannie Mae that would become “virtually worthless.” In the lawsuit, filed in a Boston federal court, Liberty Mutual said it deserves to be reimbursed for losses on the $62.5 million of Fannie Mae preferred stock it had bought in late 2007 through offerings underwritten by Goldman.

Liberty Mutual, one of the nation’s largest insurers, said Goldman knew of “significant problems” in subprime and other risky mortgages in late 2006 and throughout 2007, and generated large profits for itself by betting against the market. It also said Goldman falsely stated that the purpose of the offerings was to let Fannie Mae raise excess capital, when in fact Fannie Mae “was severely undercapitalized” and needed to raise money to stay in business.

Liberty Mutual said that Goldman Sachs, “as a knowledgeable and sophisticated investor in the U.S. real estate financial markets, and with access to Fannie Mae’s financial records, knew or recklessly disregarded the actual status of Fannie Mae’s capital structure.” Boston-based Liberty Mutual alleges: “As a result of plaintiffs’ reliance on Goldman Sachs’ material misrepresentations, plaintiffs’ investments are virtually worthless.”

In September 2008, the U.S. Treasury Department effectively nationalized Fannie Mae and Freddie Mac, which together owned or guaranteed nearly half of all U.S. mortgages, by putting them into a conservatorship. Preferred stock investors, including many large banks, suffered losses because the bailout ended dividend payouts and included the issuance to the government of new preferred shares that were senior to the existing preferred stock.

On April 16th, the U.S. Securities and Exchange Commission filed a civil fraud lawsuit accusing Goldman of creating and marketing collateralized debt obligations linked to subprime mortgages in early 2007, without telling investors that hedge fund Paulson & Co. helped choose the underlying securities and was betting against them. Goldman has denied any wrongdoing. At least 18 shareholder lawsuits have been filed against Goldman and its officials arising out of that arrangement, known as Abacus.

Source: Insurance Journal

Court Refuses To Dismiss Toxic Mortgages Suit Against Citigroup

A federal judge in New York has rejected Citigroup Inc.’s bid to dismiss a class-action lawsuit filed by bondholders who said the bank misled them about its exposure to “toxic” mortgages. U.S. District Judge Sidney Stein ruled that the bondholders could pursue allegations that the bank did not reveal the exposure in offering materials for 48 bond offerings from May 2006 to August 2008, in which it raised more than $71 billion.

The bondholders, led by seven pension funds and an insurer, said their holdings sank in value after Citigroup revealed its exposure in November 2008, making it apparent the bank was “insolvent” and would need a government bailout. “The core of plaintiffs’ allegations,” Judge Stein wrote in his opinion, “turn not on Citigroup’s management of its assets and liability, but instead on the manner in which they disclosed those assets and liabilities.”

The ruling is seen as a major defeat for Citigroup. Chief Executive Vikram Pandit is trying to sell unwanted assets and restore the health of the third-largest U.S. bank by assets. A series of federal bailouts starting in late 2008 left taxpayers owning one-third of Citigroup, which suffered tens of billions of dollars of losses on risky assets that became illiquid as credit markets tightened.

The ruling by Judge Stein will let the Plaintiffs pursue claims that Citigroup failed to properly disclose exposure to $66 billion of collateralized debt obligations backed by subprime mortgages, and did not reserve enough for residential mortgage losses. He dismissed some claims over exposure to $100 billion of structured investment vehicles backed largely by subprime mortgages, and $11 billion of “auction-rate” securities. It will be most interesting to see how this lawsuit progresses in view of the court’s ruling.

The Plaintiffs include pension funds in Florida, Louisiana, Minnesota and Pennsylvania, including the Southeastern Pennsylvania Transit Authority rail system, as well as New Jersey-based American European Insurance Co. Citigroup had claimed the Plaintiffs lacked standing or, in the alternative, did not deserve relief under federal securities laws.

Nearly 80 co-underwriters on the bond offerings, including Bank of America Corp., Goldman Sachs Group Inc. And Morgan Stanley, were also named as Defendants. So far 61 Defendants have been dismissed from the case. The U.S. Treasury Department has been selling some of its equity stake in Citigroup. As of July 1st, it had reduced that stake to 17.6% from about 27%.

Source: Insurance Journal

XV. EMPLOYMENT AND FLSA LITIGATION

SEC Settles Wrongful Termination Case

In a most interesting development, the SEC has settled a lawsuit in which it was a Defendant. In addition to being the nation’s top securities cop, the SEC is also an employer. The SEC has agreed to pay $755,000 to an enforcement lawyer, Gary Aguirre, who said he was fired for aggressively pursuing an insider-trading case involving the hedge fund Pequot Capital Management. Aguirre said he was fired after seeking permission to interview a senior Wall Street executive in connection with the Pequot probe. Aguirre said the executive, John Mack, received special treatment because of his powerful position and high-profile attorney. Mack at the time was under consideration to become CEO of Morgan Stanley, a job he ultimately took. The SEC denied the allegation and a review by the agency’s inspector general said it conducted a thorough
investigation. Mack was never alleged to have engaged in any wrongdoing.

In May, after new information surfaced in a divorce case, Pequot founder Arthur Samberg agreed to pay $28 million to settle allegations he engaged in insider trading of Microsoft stock. Aguirre, who expressed regret that his firing prevented him from staying on the Pequot case, observed:

_Had we not been stopped in 2005, we may have been able to enforce the law in a way that would have told Wall Street that the SEC also was looking at big fish, which was a message it needed to bear at that time._

Aguirre says that his lawsuit “wasn’t about money” and that he “felt more vindication really from the SEC’s decision to file against Pequot and their willingness to pay $28 million.” Mr. Aguirre won’t return to the SEC, but instead will re-enter private practice after a two-month vacation.

Source: Wall Street Journal

**Novartis settles sex bias case**

Plaintiffs who accused Novartis Pharmaceutical Corp. of discriminating against thousands of female sales representatives have agreed to a settlement valued at $175 million. This came two months after a jury returned a $250 million verdict in their favor. A federal judge in New York has given preliminary approval to the settlement. The judge also conditionally certified a class of up to 5,600 current and former female sales employees who worked at Novartis beginning in 2002.

A federal jury lit Novartis with the $250 million punitive damages verdict on May 19th, less than two days after it found the U.S. unit of Swiss drug giant Novartis AG liable for classwide pay, promotion and pregnancy discrimination in a sex bias case. Earlier, the jury awarded $3.36 million in compensatory damages to the 12 Plaintiffs who testified against the drugmaker at trial.

In addition to the cash payment for back pay and compensatory damages, the settlement requires Novartis to make sure its performance management process is fair to all employees and to step up its sexual harassment policies and training. An external specialist will analyze practices to identify and fix “unjustified gender disparities.” Novartis says it will revamp its complaint process to make sure employees’ concerns are properly addressed. At the trial, Judy O'Hagan, head of human resources at Novartis, admitted that employees had received no training on how to file an internal discrimination complaint.

The suit, originally filed in 2004, alleged pervasive bias against female sales representatives, including discrimination against pregnant women, disparate pay and a culture that impeded female sales representatives' promotion to management. David Sanford of Sanford Wittels & Heisler LLP, was lead counsel and Katherine Kimel was co-lead counsel for the Plaintiffs. They did a very good job for their clients.

Source: Law 360

**Novartis pharmaceutical employees entitled to overtime pay**

The U.S. Circuit Court of Appeals for the Second Circuit has ruled that current and former sales representatives for Novartis Pharmaceutical Corp. are not exempt from qualifying for overtime pay under the Fair Labor Standards Act. At the urging of the U.S. Department of Labor, the Second Circuit adopted an interpretation of the Fair Labor Standards Act that allows 2,500 Plaintiffs to sue Novartis concerning claims that the drug company giant failed to pay the Plaintiffs overtime for working in excess of 40 hours per week.

As a drug manufacturer, Novartis sells its products to wholesalers, who in turn sell them to pharmacies. Then, the pharmacies sell Novartis’ drugs to patients who have gotten prescriptions from their doctors for the drugs. The Plaintiffs in the lawsuit against Novartis are representatives who do not sell the drugs directly to the doctors but instead make regular calls on doctors in an attempt to encourage them to prescribe Novartis drugs to their patients. They are very important to any drug company’s marketing success.

As all employees know, the Fair Labor Standards Act (FLSA) requires employers to pay employees overtime pay, at a rate of time and a half, for all hours worked in excess of 40 hours per week. However, the FLSA exempts employees from receiving overtime pay if they are "outside" salespeople and if they are "administrative" employees. The Labor Department argued to the Appeals Court that because the Novartis Sales Representatives don’t make sales or obtain orders they are not salespeople and because these employees don’t exercise discretion and independent judgment, they are not administrative employees. Therefore, they shouldn’t be exempt under the FLSA, the government said.

The U.S. Circuit Court of Appeals for the Second Circuit agreed with the Labor Department and found that where an employee promotes a drug to a doctor, who may later prescribe the drug which is purchased by a patient from a pharmacy, “the employee does not in any sense make a sale.” The Second Circuit’s ruling could have a major impact on other wage and hour litigation brought by other pharmaceutical sales representatives against other drug manufacturers. According to the Plaintiffs’ attorney, “The decision is important because it is the first federal appellate ruling on both the outside sales exception and the administrative employees exception as applied to pharmaceutical sales reps.” Jeremy Heisler, a lawyer with Sanford, Wittels & Heisler, a firm with offices in New York, Washington and San Francisco, represented the Plaintiffs in the Novartis suit and did a very good job.

Currently, our firm represents pharmaceutical sales representatives in similar FLSA litigation and we are in the process of filing additional overtime lawsuits on behalf of employees doing this sort of work. Also, in an effort to help workers who have been wrongly denied their overtime compensation, the firm routinely pursues class action litigation under the FLSA to recover unpaid overtime wages. For more information, contact Larry Golston at 800-898-2034, by email at Larry.Golston@beasleyallen.
CLASS ACTION CERTIFIED AGAINST DOMINO’S PIZZA

A federal judge has granted conditional class certification to a lawsuit alleging Domino’s Pizza under-reimbursed its delivery drivers for automobile expenses, causing them to receive less than minimum wage. Judge Donovan Frank’s order says the group could include all Domino’s delivery drivers who worked in any state except New York and California from March 4, 2006, to now. More than 20,000 drivers could be included. The lawsuit was filed last year on behalf of two Domino’s drivers in Minnesota. Domino’s claims the situation of each driver is different so the case should not be designated a class action. The company contends that the reimbursement for automobile expenses is separate from compensation and is communicated to all drivers that way.

COURT APPROVES SUN’S $5 MILLION SETTLEMENT

A California judge gave preliminary approval last month to a $5 million settlement for 152 technical writers who sued Sun Microsystems for not paying them for working overtime or during meal breaks. The suit, filed in 2006, challenged the Santa Clara computer company’s policy of classifying the writers who produce technical documents and information manuals as professionals exempt from state overtime laws.

State law in California expressly makes these employees eligible for overtime and meal breaks. The writers often worked 60 hours a week or more on new products and should have been paid time-and-a-half for every hour over 40. Since the suit was filed, several high-tech companies, including Oracle Corp., have changed their policies and started paying overtime to technical writers. Oracle bought Sun for $7.4 billion in February. Employees who disagree with the settlement can present their objections to the court. A hearing has been set for October 8th to determine if final approval should be given.

Source: New York Law Journal

XVI. PREDAＴORY LENDING

GOLDMAN SACHS SETTLES WITH SEC FOR $550 MILLION

Goldman Sachs Group Inc. Agreed last month to pay $550 million to settle civil fraud charges over how it marketed a subprime mortgage product. The settlement came after months of negotiations. According to the U.S. Securities and Exchange Commission, the penalty was the largest ever for a financial institution, and leaves the door open for future civil suits. But unfortunately everybody isn’t satisfied with the outcome. Many investors viewed the $550 million settlement as a “slap on the wrist” for a bank that earned more than $13 billion last year.

Interestingly, after the settlement was made public, the company’s shares rose greatly, bringing the total gain in Goldman’s market value on July 15th to about $6.6 billion. In the months after the SEC pressed charges on April 16th, Goldman’s market value fell by more than $25 billion. Goldman said “it regretted failing to disclose information in marketing materials.” The company agreed to require two internal committees to vet complex deals linked to residential mortgages. It also agreed to run by its legal or compliance department all marketing materials used in connection with mortgage securities offerings.

The SEC accused Goldman of creating and marketing a debt product linked to subprime mortgage bonds without telling investors that hedge fund Paulson & Co helped choose the underlying securities and was betting against them. The transaction in question, known as ABACUS 2007-AC1, yielded about $1 billion of profit for Paulson, which was not accused of wrongdoing. But investors on the other side of the deal—including Germany bank IKB and Royal Bank of Scotland—lost about $150 million and $840 million, respectively.

In an unusual part of the settlement, Goldman acknowledged that its marketing materials were incomplete. Goldman’s acknowledgement can be sued against the company in other lawsuits. Without any doubt, there will be other lawsuits by shareholders and other interested parties. Of the $550 million settlement, $150 million will go to Germany’s IKB, $100 million to the Royal Bank of Scotland and $300 million will go to the U.S. Treasury. The settlement has been approved by a federal judge.

Source: Insurance Journal

XVII. PREMISES LIABILITY UPDATE

AIR SHOW LAWSUIT SETTLED

The family of three children injured in the 2008 Air Show at the Huntsville International Airport has reached a settlement with a tent provider and the local airport authority. It’s contended on behalf of the children of Wanda Cross that the children, now ages 12, 8 and 7, were injured due to negligence in the installation of tents at the air show. All three children were hurt by parts from collapsing tents.

The settlement is between the family and All Needz Rental Inc. (which provided the tents and tent installation) and the Huntsville-Madison County Airport Authority (the air show organizer). The air show was hit by two thunderstorms on June 29, 2008, with winds that reached as high 48 miles an hour. The winds caused a row of hospitality tents to come loose, blowing debris, turning tables and, in one case, leading to an air conditioner striking and killing a five-year-old boy.

There is another wrongful death lawsuit, which is a separate suit filed by the family of Josiah Miller. In the Cross case, one of the children was struck across the face by a tent support pole and suffered the most serious injury. The
children have all recovered from their injuries.

The confidential settlement was satisfactory to all the parties involved. The family said despite the injuries, their case was never about money. Instead, it was about bringing awareness to safety concerns at the 2008 air show. They had to file a lawsuit to address those concerns. They said it was their hope that “as a direct result of this lawsuit, future air shows here in Huntsville will be made more safe for everybody.” Jefferson County Circuit Judge Joseph L. Booher, who is presiding over the case, must still approve the settlement. Brent H. Jordan, a lawyer with Jordan & Green, located in Huntsville, Alabama, represented the family and did a very good job.

Source: Al.com

**JURY AWARDS MAN $380,000 IN TURKEY HUNTING ACCIDENT**

A jury in Vermont has awarded $380,557 to a turkey hunter hit by 52 shotgun pellets fired by another hunter. The state court jury returned the award last month against the Defendant for the May 2008 incident that occurred in Woodstock, Vermont. The Plaintiff suffered a collapsed lung and other injuries. At the time of the shooting, the Defendant told game wardens he thought he was shooting at a turkey. He pleaded no contest to criminal charges arising from the shooting and he was given a suspended sentence.

Source: Insurance Journal

**OSHA SETTLES CLAIM AGAINST IMPERIAL SUGAR**

The Occupational Safety and Health Administration has ended its litigation against Imperial Sugar. OSHA announced last month that Imperial Sugar has agreed to pay $4,050,000 for the 124 violations that OSHA found at the Port Wentworth plant after an explosion in February 2008 and an additional $2 million for the 97 violations found at its Gramercy, La., plant in March 2008. The citations said that the company failed to properly address combustible dust hazards along with other workplace safety and health hazards. Secretary of Labor Hilda L. Solis stated in a news release:

The 2008 explosion took the lives of 14 people and seriously injured dozens of others. Clearly, health and safety must become this company’s top priority. This agreement requires Imperial Sugar to make extensive changes to its safety practices, and it underscores the importance of proactively addressing workplace safety and health hazards.

Imperial Sugar has already corrected some of the violations and will correct more, according to a schedule. OSHA says that Imperial Sugar has put preventive maintenance and housekeeping programs in place. Imperial Sugar will identify and map locations where combustible dust could be present. It will also conduct regular internal safety inspections and hire a safety professional at the Georgia plant.

Outside consultants will perform safety audits for a three year period, which include managing combustible dust hazards, preventative maintenance and protective equipment for workers. OSHA says it will approve all safety, health and organizational experts hired by the company. OSHA says it will regularly monitor Imperial Sugar’s progress and compliance with the agreements and conduct regular inspections of their facilities.

Source: WTOC.com

**XVIII. WORKPLACE HAZARDS**

**WORKPLACE TRAGEDIES MUST BE PREVENTED**

It’s apparent, based on historical data, that more regulatory enforcement is essential in order to protect workers and avoid workplace tragedies. For example, in February, a natural gas plant explosion in Connecticut killed six workers; in April, a refinery explosion in Washington state killed seven workers; and an explosion at the Massey coal mine in West Virginia killed 29 miners. We all know about the 11 workers who were killed when BP’s oil rig exploded in the Gulf of Mexico. These are among the 5,000 workplace fatalities that occur each year.

The Mine Safety and Health Act would strengthen federal worker safety agencies so they can hold operators of unsafe mines accountable and protect workers. Congress should pass this legislation without further delay. Miners aren’t the only workers who would benefit from the bill. The Act would significantly diminish workplace injuries, illnesses and fatalities by raising fines against corporations in all sectors that break safety laws. These fines for safety violations have not been increased—not even to adjust for inflation—for 20 years!

If energy companies and other industries where workers are put in harm’s way are to take seriously the threat of fines for breaking the law, the fines must be increased. Public Citizen has advocated a transition toward a clean-energy economy and that is badly needed. We must strengthen the Mine Safety and Health Administration and the Occupational Safety and Health Administration and that should be a high priority. No matter where our energy comes from, the workers who produce it should be safe. Congress must act to keep workers safe and hold corporations that put lives at risk accountable.

Source: Public Citizen

**WHISTLEBLOWER SUES BARGE COMPANY**

A lawsuit has been filed by a former employee of a Chattanooga-based barge company. It is alleged that the Plaintiff was fired for refusing to perform and remain silent about illegal activities that compromised the safety of the general public. The Plaintiff, Kelly O’Connor, is a licensed boat pilot who lost his job for shining a light on Serodino Inc.’s practices and eventually reporting the company to the U.S. Coast Guard.

Had Serodino taken Mr. O’Connor’s complaints seriously two fatal collisions
between the company's barges and small fishing boats on Tennessee waterways wouldn't have happened, according to the lawsuit. Three men died, two of them locally on June 19th when a set of nine Serodino barges being pushed by a tugboat crashed into their fishing boat on the Tennessee River. A third man died barely a year earlier in June 2009 when barges being pushed by the same tugboat plowed into a fishing boat on Watts Bar Lake in Loundon County.

As a former employee, the Plaintiff is suing Serodino under the federal whistleblower's act. He is asking for back pay and compensation for "humiliation and embarrassment," as well as for punitive damages. It's alleged that all the Plaintiff's complaints, including repeated notices to his bosses that Serodino was violating federal law by forcing crew members to work more than 12 hours during their shifts, fell on the deaf ears of superiors, who made it clear his opinions were unwelcome. The lawsuit says the Plaintiff was "instructed by Defendant to be quiet about the 12-hour violations and to continue working in excess of 12 hours if he wished to keep his job." Other complaints, which began in early 2008, included the Plaintiff's belief that Serodino had a habit of insufficiently manning its vessels and that the company failed on "numerous occasions" to maintain a proper lookout for small boats in the vessels' paths. In the June 2009 collision, the captain of the tugboat was cited by the Tennessee Wildlife Resources Agency for failure to keep a proper lookout.

The Plaintiff says he notified his bosses that they were failing to perform regular drug tests on employees despite the well-known practice of crew members drinking and smoking marijuana while aboard working vessels. He says Serodino also failed to provide mandatory security and safety training drills, all in violation of federal law. The complaints led to retaliation, first in the form of constant "nit-picking" of the Plaintiff's performance, the lawsuit states. The Plaintiff received systematic admonitions in writing while other employees, who "ran barges aground while asleep," snapped propellers off on rocks, ran out of fuel and collided with recreational boaters, were never questioned, according to allegations in the lawsuit.

The fatal collisions with two boats in the past 12 months will cause other problems for Serodino. While families of the two men who died June 19th have not filed suit so far, the widow of the man who died on Watts Bar Lake has sued the company. In her federal lawsuit, the widow claims the tugboat pushing the barges that crashed into her husband's boat was "manned by an incompetent and poorly trained crew."

Source: New York Daily News

XIX.

TRANSPORTATION

STATE LAWS TARGET SAFETY OF TOWED TRAILERS

States are beginning to address a very serious highway safety issue and it's one that previously had received scant attention. It involves motorists killed in accidents involving passenger vehicles towing trailers. An average of more than one person a day dies in such crashes, according to federal data. The collisions often occur when poorly secured trailers break loose and careen into traffic. This time of year involves an increase in moving and recreational boating.

A Virginia law that took effect in late June requires that any vehicle towing another vehicle or trailer have a trailer hitch or similar device strong enough for the weight of the vehicle or trailer being towed. At least four other states, Alabama, Hawaii, Louisiana and Tennessee, considered similar measures this year, and legislators expect to revisit the issue next year. Also, the issue is expected to come up in Wisconsin.

Regulations on passenger vehicles towing trailers vary widely from state to state. From 1975 through 2008, 15,211 people were killed in crashes involving passenger vehicles towing trailers, according to the National Highway Traffic Safety Administration. If you need additional information on the subject, contact Kendall Dunson, a lawyer in our firm, at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

Source: USA Today
**PG&E Settles Wrongful Death Lawsuit**

After a lengthy legal battle against PG&E, a San Jose mother whose daughter was killed in a fiery crash with a utility company driver has finally settled her wrongful death lawsuit. It was reported that Lisa Bernstein was so heartbroken by her tragic loss at the hands of a diabetic driver, whom prosecutors said blacked out after not testing his blood sugar, that she actually hauled the twisted carcass of her daughter’s truck up to PG&E headquarters in San Francisco.

Mrs. Bernstein says her first priority was to hold PG&E accountable for the 2006 crash that killed 20-year-old Mary Bernstein and her boyfriend Robert Conway in an attempt to make sure a similar tragedy never happens to another family. The driver of the PG&E truck, John Mayfield, who was a diabetic, has pleaded guilty to vehicular manslaughter for the crash. Conway’s family settled its lawsuit against the company for an undisclosed amount years ago. But Mrs. Bernstein took on PG&E and held its corporate feet to the fire.

When PG&E refused last month to support legislation to make companies more accountable for errant drivers, Mrs. Bernstein insisted on going to trial even if it meant she was awarded only $1. She was unwilling to let her daughter’s death go “unnoticed,” and refused to back down. Under the terms of the settlement agreement, PG&E must enter a judgment for $5 million, rather than pay by way of a confidential settlement as is quite often the case. Refusing to accept confidentiality means future accident victims will be able to look up the case and see what happened. This mother’s goal was to make PG&E “take safety a little more seriously.” She should be commended for her battle with this corporate giant.

PG&E also agreed not to oppose legislation that Mrs. Bernstein plans to seek requiring every company in the state with a fleet of 25 cars or more to be notified automatically when an employee is ticketed or in an accident, as happens now with truckers and other commercial drivers. Despite the judgment, Mrs. Bernstein said she isn’t quite finished with her crusade against PG&E and for safety. First, she will try to find a lawmaker who will sponsor the fleet-monitoring legislation and support another measure that would require diabetics to test their blood sugar before driving.

Source: *Mercury News*

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**Jury Awards $12.2 Million in Crash That Left Girl in Coma**

The California Department of Transportation (Caltrans) and a driver who ran her car into a girl walking across a street were ordered by a jury to pay a now-comatose woman $12.2 million in damages. The San Mateo County jury found the Defendants responsible for the March 2006 collision in a crosswalk in the city of Millbrae that left then-17-year-old Emily Liou with permanent brain injuries. Millbrae is located near the San Francisco International Airport.

It was contended that the crosswalk Liou used was dangerous. It was proved that the crosswalk was placed on top of a small rise where drivers couldn’t see pedestrians. Three walkers have been struck and killed by cars in the same spot since 1991. Aggravating the situation is a lack of traffic lights or stop signs to slow drivers. The result was a crosswalk that gives pedestrians a sense of security, though there is nothing to protect them. Caltrans created the problem and took no action to improve safety at the intersection. Liou was walking across the road in the early evening on her way home from singing karaoke with friends. She had made it across six of seven lanes when she was struck by a Toyota sedan.

Although the impact was at a relatively low speed—20-25 mph—Liou was knocked to the ground and hit her head. The driver told investigators that she didn’t see the girl until just before the impact. Liou, now 21, is in China seeking treatment because medical costs are lower there. Douglas Saelzter, a lawyer in the California firm Walkup, Melodia, Kelly & Schoenberger, represented the Plaintiff and did a very good job.

Source: *Mercury News*

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**State To Pay Man $2 Million In Lawsuit**

The Washington State Department of Transportation has settled a lawsuit with a man injured at a highway intersection. It was alleged that the DOT failed to fix a dangerously designed roadway at the intersection of two highways near Shelton, Washington. The Plaintiff was seriously injured at the intersection in 2006 and almost died. He was riding his motorcycle on U.S. 101 when a car that was attempting to turn left from one road into the southbound lanes of 101 cut him off. The motorcycle crashed into the driver’s side of the vehicle. The Plaintiff received serious injuries. More than four years after the crash, he can’t use his right arm, and has limited use of his left hand.

The lawsuit alleged that DOT failed to fix the intersection, despite an April 2001 DOT study that recommended the closure of the left-turn lane from Lynch Road onto U.S. 101. In late 2006, the Plaintiff’s hospital bills totaled more than $600,000. There had been some real concerns about the intersection, described as “a scary intersection to deal with.” The cost for a fix was “minimal”—as low as $50,000—and that was a factor in the case. There have been 55 collisions at the intersection since 1996, including two fatalities. Since 1998, DOT has made “stop gap improvements” at the intersection to make it less dangerous.

Source: *The Olympian*

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**XX. ARBITRATION UPDATE**

**New Federal Agency Will Protect Against Abusive Forced Arbitrations**

The newly-created Consumer Financial Protection Bureau (CFPB) is a positive step toward protecting consumers. The just-passed Wall Street Reform Act will help limit the use of abusive forced arbitration clauses in financial contracts. The new CFPB will help address the abusive forced arbitration practices used by banks against consumers. Congress must
now pass the Arbitration Fairness Act to ensure these predatory clauses are banned once and for all.

The new law addresses forced arbitration by giving the CFPB power to limit forced arbitration in financial service contracts if the bureau determines, after conducting a study, it’s in the best interest of the public and for consumer protection to do so. The Securities and Exchange Commission is given the authority to limit forced arbitration in investment contracts, a practice that has been found to be grossly unfair to investors. The new law also includes a statutory ban on forced arbitration in residential mortgage agreements.

Two other bills have been introduced in Congress to stem the abusive practice of forced arbitration. The bipartisan Arbitration Fairness Act (S. 931 / H.R. 1020), sponsored by Sen. Russ Feingold (D-WI) and Rep. Hank Johnson (D-GA), would ensure that the decision to arbitrate is made voluntarily and after a dispute has arisen, so corporations cannot manipulate the arbitration system in their favor at the expense of consumers and employees. The bipartisan Fairness in Nursing Home Arbitration Act (S. 512 / H.R. 1237), sponsored by Sen. Herb Kohl (D-WI) and Rep. Linda Sanchez (D-CA), would eliminate forced arbitration clauses in nursing home contracts.

Source: Justice.org

XXI.
HEALTHCARE
ISSUES

OIL SPILL CLEANUP WORKERS REPORTING ILLNESSES

Since the oil spill in the Gulf began in April, there have been thousands of workers deployed to aid in cleanup efforts. At least 200 of these workers have been hospitalized as a result of exposure to the oil and dispersants. The symptoms the workers are experiencing are typical of those associated with chemical exposure and include headaches, nausea, gastro intestinal distress, respiratory problems, and the like. While these symptoms tend to subside once the exposure to the oil and dispersants ends, many of the workers and health officials worry about the long-term effects of exposure.

To date, there is little information on the long term effects of the dispersants, especially given the large quantities being pumped into and sprayed in the Gulf. The New York Times has reported that the “EPA’s testing has yet to examine the toxicity of dispersants when mixed with crude oil,” EPA Administrator Lisa Jackson told Senators that she is “unaware of any research” on the effects of applying the chemicals in the massive volume that has entered the Gulf region. She said further that “It’s not the body of testing you would want, given the historic nature of the ongoing oil leak.” There are some studies that reveal the constituents of the oil and the dispersants are cancer causing. For example, 2-butoxyethanol is a component of Corexit, the dispersant being used in the Gulf. This chemical is a pesticide that is highly toxic to humans and wildlife, causing cancer, liver and kidney damage, birth defects and other reproductive side effects. The dispersant also contains arsenic, cadmium, copper, lead and mercury, among other chemicals.

As a result of the unprecedented volume of oil and dispersants in the Gulf, the people and the environment in the region are now part of a giant science experiment where the long-term effects will not be known for some time. Our firm’s Toxic Tort Section is actively investigating claims for clean-up workers and others who have become ill after exposure to the oil and dispersants.

If you need additional information regarding illnesses associated with the oil spill cleanup, contact Rhon Jones, Parker Miller or Brantley Fry in our firm at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Parker.Miller@beasleyallen.com or Brantley.Fry@beasleyallen.com.

Sources: New Orleans Times Picayune, U.S. CDC, NY Times

OIL SPILL EFFECTS ARE MORE THAN PHYSICAL

In contrast to the obvious physical damage to the Gulf of Mexico and its coastline caused by the BP oil spill disaster, there have been less visible effects of the spill on the emotional well-being of those living and working along the coast. In June, an Orange Beach, Alabama charter boat captain committed suicide due to the stress of lost income from the closure of fishing areas due to the spill. This sad incident was definitely caused by the extreme stress relating to the disaster in the Gulf.

Coastal mental health professionals have observed stress-related mental health conditions in people whose lives and livelihoods have been impacted by the spill. They are holding counseling sessions with local fishermen and others to assist those struggling to cope with the loss of income, and in some cases, loss of a way of life. Some predict that the need for these services may persist long after the visible signs of the spill’s impact are gone.

In response to these concerns, State officials along the Gulf coast have requested that BP fund mental health programs for area residents. The Alabama Department of Mental Health and the Baldwin County Mental Health Center have established an oil spill hotline that people can call for help during this difficult time. The number is 1-800-558-8295.

Source: Mobile Press-Register

STUDY SHOWS NO BENEFITS WITH AVASTIN

Federal health advisors have said unanimously that a follow-up study of the Roche drug Avastin failed to show meaningful benefits for breast cancer patients. A Food and Drug Administration panel of experts voted 13-0 that the risks and side effects of Avastin outweighed its benefits when used alongside the chemotherapy drug docetaxel.

The FDA in 2008 approved Avastin for breast cancer patients based on a trial showing it lengthened the amount of time until the disease worsened by more than five months. As a condition of
Breast cancer is the second most common cause of cancer death among U.S. women, according to the Centers for Disease Control. Last year more than 40,000 deaths in the U.S. were attributed to the disease.

Additionally, patients taking Avastin reported significant side effects, including high blood pressure, fatigue and abnormal levels of white blood cells. Roche scientists argued that patients taking Avastin experienced improved quality of life as tumor growth and other symptoms slow—but panelists were not convinced. “The study shows there’s very little benefit to patients with significant toxicity risks and no clear survival benefit,” said Natalie Compagni Portis, the panel’s patient representative.

The FDA panel of cancer experts is reviewing the results of the two Roche studies and voting on whether they show a clear benefit for patients. The FDA is not required to follow the advice of its panelists, though it often does. The panel will vote on whether Avastin’s approval in breast cancer should be withdrawn. Avastin is also approved for colon, lung, kidney and brain cancer. Avastin was Roche’s top-selling cancer treatment drug last year with global sales of $5.9 billion. Breast cancer is the second most common cause of cancer death among U.S. women, according to the Centers for Disease Control. Last year more than 40,000 deaths in the U.S. were attributed to the disease.

Source: Associated Press

XXII.
ENVIRONMENTAL CONCERNS

TVA Coal Ash Disaster Update

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

In January 2009, our firm filed a class action suit on behalf of property owners affected by the disaster. Two other class actions suits were filed subsequent to our filing and we asked the court to combine the three suits in order to more efficiently prosecute the claims against TVA. The court recently granted our motion to consolidate the three cases. In addition, the court recently ordered that discovery be consolidated in all 57 of the cases filed as a result of the 2008 coal ash disaster.

We continue to move forward with discovery and will depose TVA CEO, Tom Kilgore, this month. TVA tried to prevent the Plaintiffs from deposing Mr. Kilgore, but the court agreed with our position that he should be subject to deposition.

In addition to discovery, we are responding to TVA’s motion for summary judgment. In March, the court partially granted and partially denied TVA’s claims that it is immune from suit as a federal agency. Trying to use that order, TVA now argues that there is no issue of material fact. We completely disagree and believe there are significant issues of fact which should be brought to trial. We are briefing the matter accordingly.

While the court has been very active in issuing orders since our last update, there have also been significant developments in the clean-up, coal ash regulations, enforcement actions, and property valuations. EPA recently approved TVA’s plan for the next phase of the cleanup in Kingston. The approved plan will leave about 2.5 million cubic yards of ash in a re-engineered coal ash disposal area on the Kingston site. TVA will construct a new dike that will surround the disposal area and the disposal area will be closed and capped once cleanup of the ash in the Swan Pond embayment is complete. Environmental sampling of drinking water, river water, and groundwater in the area will continue on a routine basis.

EPA also issued proposed coal ash regulations. The proposed regulations include two options for federally regulating coal ash waste for the first time. Neither of the proposed options would classify coal ash waste as hazardous despite high levels of heavy metals in the ash. EPA is seeking public comment on the proposed regulations and will issue a final version after reviewing public comments.

EPA is not the only regulatory agency overseeing the TVA cleanup. The Tennessee Department of Environmental Conservation (TDEC) issued an $11.5 million fine to TVA for violations of state and federal environmental regulations as a result of the spill. Even though these penalties are the largest in Tennessee history, they amount to about 1% of TVA’s annual electricity revenues and TVA officials have stated that the utility will not appeal the penalties.

At the local government level, the Roane County Tax Assessments were issued in late spring and many tax assessments surprisingly included an increase in property value. According to the Tax Assessor, the sales analysis did not include any foreclosures or properties that TVA bought after the ash spill. The Tax Assessor also stated that there were fewer properties to compare during the 2010 assessment and that may have skewed some appraisals. As a result, several parts of Roane County will be reassessed, including the Swan Pond Circle area. The Swan Pond Circle area was heavily hit by the coal ash disaster.

If you need additional information on this subject, contact Rhon Jones or David Byrne in our firm at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or David.Byrne@beasleyallen.com.

Sources: Knoxville News Sentinel, U.S. EPA

FDA Sued Over Failure To Ban BPA

The Natural Resources Defense Council has filed a lawsuit against the Food and Drug Administration over its
failure to act on a petition to ban bisphenol A in food packaging and other materials. The NRDC petitioned the FDA to ban the chemical which is often found in baby bottles, sippy cups and other plastic products in October 2008, but the agency has failed to respond.

During the eighteen months since the petition was filed, the FDA has voiced its concerns about BPA, reversing its prior assertion that the chemical was safe. Also, the Environmental Protection Agency has listed BPA as a “chemical of concern.” BPA-free alternatives are already available on the market. Dr. Sarah Janssen, a senior scientist in the Environmental Public Health program at the NRDC, said in a statement: “The FDA has no good reason to drag their feet banning it.”

Many states have already enacted laws banning BPA in products intended for young children. The NRDC’s petition seeks to ban BPA from all products and materials that involve food being exposed to the chemical. Studies have linked bisphenol A to neurological disruption, obesity, cancer and other serious health problems. Aaron Colangelo, an attorney at NRDC, observed:

The FDA has failed to safeguard the food supply and protect the public from harm. The FDA’s failure to regulate this chemical in food packaging is unjustified, and so we are forced to ask the court to intervene and order the agency to take action.

I believe that the FDA should ban BPA and hope this lawsuit, which is pending in the D.C. Circuit, will be successful. I believe the federal government should take the necessary action to ban BPA and not leave individual decisions on the subject to the states.

Source: LawyersUSAOnline.com

$60 Million Settlement In Premcor Case

Residents who live in close proximity to a Blue Island refinery have reached a settlement in a lawsuit. This came almost 15 years after the lawsuit was filed against the owners. Residents living in the shadow of the now-shuttered plant reached a $60 million settlement. Valero Energy Corp.—which in 2005 bought the property formerly known as Clark Oil and later Premcor—settled in May with a handful of residents, who claimed the refinery was a nuisance that showered them with noxious dust and particles.

Lawsuits first were filed against Premcor after an accidental release of 15 tons of catalyst dust that sent about 50 high school students to nearby hospitals in October, 1994. The students complained of breathing problems. Residents had catalogued a long list of safety and environmental complaints against Clark Refinery.

In November 2005, a Cook County jury awarded $100,000 in damages in that case and $120 million to the Plaintiffs who were part of a class action lawsuit. But Valero Energy appealed the jury’s findings. An appeals court sent the case back to the county court. The Plaintiffs and Valero were than able to negotiate a settlement.

Now people who lived in the refinery’s footprint between October 1993 and January 31, 2001, may be eligible for a portion of the money once the settlement is finalized. A fairness hearing has been scheduled by the court for September 17th. Cook County Circuit Judge Cheryl L. Starks must approve the settlement before it becomes final.

Source: southtownstar.com

Environmental Groups Accuse Exxon Mobil Of Clean Air Act Violations

Environmental groups are claiming that ExxonMobil, the largest U.S. oil refinery, violated federal air pollution laws thousands of times during the last five years, releasing 10 million pounds of illegal pollution, including cancer-causing toxins, without facing proper fines or being forced to fix equipment. Exxon Mobil Corp., which owns the refinery, is being sued by Sierra Club and Environment Texas.

The environmental groups have not yet sued Exxon but have notified the Irving-based company, the Environmental Protection Agency and the Texas Commission on Environmental Quality of plans do so—a requirement under the Clean Air Act. The Associated Press obtained copies of the groups’ two 60-day notices, which outline violations Exxon measured and reported itself. Among other complaints, the notices accuse Exxon of violating emissions limits on sulfur dioxide, one of the components of acid rain; hydrogen sulfide, a toxic, flammable gas characterized by a rotten egg smell; cancer-causing agents such as benzene and butadiene; carbon monoxide; and the smog-causing agent nitrogen oxide.

The environmental groups’ legal maneuvers are part of broader accusations by the organizations and the U.S. Environmental Protection Agency that Texas regulators are failing to properly monitor, control and enforce federal emission standards. Exxon reported all of the incidents and claimed in some cases they were “not considered deviations” because they did not violate the limitations in the air operating permit for the refinery, which is in Baytown, about 35 miles southeast of Houston.

Sierra Club and Environment Texas hope that by investigating suspected violations by the dozens of refineries and petrochemical plants that line the Houston Ship Channel and filing suit against polluters, it will force the companies to act responsibly and push the Texas Commission on Environmental Quality to more closely monitor and maintain pollution standards. It’s contended that the TCEQ is not enforcing the Clean Air Act in Texas and that these cases are clear evidence of the agency’s failure to carry out its mission of protecting public health in Texas.

About 70,300 people live in Baytown, which is home to the Exxon refinery and two accompanying petrochemical plants. The refinery, founded in 1919 with 100 employees, now has 4,000 workers on a complex stretching across five square miles. It can process nearly 570,000 barrels of crude daily. The environmental groups’ letters to Exxon and regulators are official notice that a lawsuit will be filed if a settlement isn’t reached with Exxon to pay millions of dollars in fines and update equipment causing the thousands of incidents at the plant.
Sierra Club and Environment Texas reached a $5.8 million settlement with Shell in April 2009 after filing a similar lawsuit against that petroleum giant. Shell also is required to make several costly fixes to its Houston-area facility to ensure it meets standards. A similar lawsuit filed against Chevron Phillips Cedar Bayou plant in Baytown is ongoing.

Source: WHNT.com

**McWane To Pay $4 Million To Settle Environmental Violations**

McWane Inc. has reached a settlement with U.S. regulators over more than 400 environmental violations at 28 plants in 14 states. Some of the violations go back a dozen years. The Birmingham-based maker of cast-iron pipe agreed to pay a fine of about $4 million and pay for seven eco-friendly construction projects valued at $9.1 million. The $4 million civil penalty will be divided among the federal government as well as Alabama and Iowa.

The settlement resolves civil violations during the past decade of the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation and Liability Act, as alleged by the United States, Alabama and Iowa in a civil complaint. Ignacia Moreno, assistant Attorney General for the Environment and Natural Resources Division, observed:

> This is a comprehensive settlement that brings McWane into full environmental compliance at 28 facilities nationwide, and imposes a penalty on the company for its civil environmental violations at those facilities over the past decade. As a result of this agreement, McWane has completely re-engineered its environmental management systems to ensure that it remains in compliance and has committed over $9 million to environmental projects that will remove significant amounts of pollutants from the environment and benefit the surrounding communities.

Hopefully, McWane has really improved its environmental management and realizes that it must obey the rules and regulations designed to protect our planet. That’s certainly not too much to ask.

Source: AL.com

**XXIII. THE CONSUMER CORNER**

**BMW AND MAZDA FACE FEDERAL PROBE DUE TO STEERING PROBLEMS**

More than 342,000 cars made by BMW AG and Mazda Motor Corp. are under investigation by the National Highway Traffic Safety Administration for possible steering defects that could lead to loss of vehicle control. NHTSA opened probes into 293,787 Mazda3 cars from the 2007 to 2009 model years, and 48,764 BMW Z4 sports cars from 2003 to 2005. In both cases, NHTSA is in the earliest stages of a formal review that could lead to recalls. It appears the agency has stepped up its probes into possible vehicle defects after the massive safety crisis at Toyota Motor Corp.

According to NHTSA, it has received 33 complaints about Mazda3 models that alleged a loss of power steering assist while driving, requiring excessive force by the driver to maintain control. Three of the complaints alleged that the loss of steering control caused crashes. The vehicle uses an electrically-actuated hydraulic power steering system, the agency said.

NHTSA has received 107 complaints on the BMW Z4s, alleging a loss of power-assisted steering. The complaints stated that the steering wheel sticks, binds or locks up, requiring increased steering effort to maintain control and increasing the potential to over-steer the vehicle. The failures typically occurred at higher vehicle speeds over 45 miles per hour (about 73kph) and at temperatures above 75 degrees Fahrenheit (24 Celsius). One complaint involved a crash, and several complaints reported loss of vehicle control or "near-miss incidents.”

There were no fatalities reported among the Mazda3 and BMW Z4 complaints, according to NHTSA. Since the defects involve serious safety issues, NHTSA should conduct a thorough investigation. We will watch this matter closely.

Source: home.autonews.com

**TYLENOL RECALL PROMPTS FEDERAL LAWSUIT FOR FRAUD AND RACKETEERING**

Johnson & Johnson, which was forced to recall children’s Tylenol and other over-the-counter pediatric medicines, has been sued in federal court by consumers unhappy with the company’s plan to offer coupons or replacement products to those who bought the affected drugs. In five lawsuits filed last month in an Illinois federal court, six consumers accuse J&J of fraud and racketeering for not recalling all of its children’s drugs and for not offering consumers an opportunity to fully recover their out-of-pocket payments.

The suits, all filed against J&J’s McNeil Consumer Healthcare unit, seek class-action status. As has been widely reported, J&J took more than 40 nonprescription products off store shelves in late April, including Children’s Tylenol, in what the Food and Drug Administration has characterized as the largest recall of children’s medicine in the agency’s history. The recalls came after FDA inspectors found multiple problems at the company’s Fort Washington, Penn., plant, including bacterial contamination of ingredients and filthy equipment. The inspectors also found that some medications made at the plant were overly concentrated and had, in the words of Congressional staffers, “the potential to be superpotent.” This plant was shut down by J&J.

Sources: CSmonitor.com and Associated Press

**ANOTHER J&J CONSUMER DRUG PLANT UNDER FDA SCRUTINY**

In a related matter, a second Johnson & Johnson medicine factory is now under scrutiny from federal regulators. The FDA
sent the company a critical report last month after a recent inspection found problems at another Pennsylvania plant in Lancaster. J&J says that it’s addressing the FDA’s concerns as quickly as possible. Two months ago an FDA official told Congress the agency had broadened its investigation beyond the Fort Washington plant and also had turned the case over to its Office of Criminal Investigations. The Lancaster plant is operated by a joint venture called Johnson & Johnson/Merck Consumer Pharmaceuticals. The business sells products, including the heartburn medicine Pepcid, that originally were sold as prescription drugs and now are available in over-the-counter, lower-dose versions. Merck, of Whitehouse Station, New Jersey, is J&J’s partner in the operation.

Source: USA Today

CPSC Urges Parents and Caregivers To Consider Safety

On occasion we all ignore existing safety issues. But in many of those instances, we simple don’t recognize or appreciate the danger. For example, opening windows in your home, and leaving them open may seem harmless, but windows have proven to be sources of injury and death for young children. In recent weeks, several children have fallen from windows and U.S. Consumer Product Safety Commission data indicate that on average, about eight deaths occur yearly to children five years or younger while an estimated 3,300 children five and younger are treated each year in emergency rooms at hospitals in this country. Hospitalization was required for about 34% of these children after falling from a window.

These deaths and injuries frequently occur when young children push themselves against window screens or climb onto furniture located next to an open window. CPSC Chairman Inez Tenenbaum observed:

“The deaths and life-altering injuries we have seen here at CPSC are heart-breaking and in many cases preventable. We want parents and caregivers to think safety before opening the windows where young children are present.”

Parents and caregivers of young children should exercise proper safety precautions. It’s important to realize that window screens aren’t safety devices. Don’t be lulled into a false sense of security by window screens, but properly install window guards and follow other safety measures. Chrissy Cianflone, Director of Programs for Safe Kids USA, stated:

“...It takes active supervision on the part of the parent or caregiver, and a device called a window guard. Screens are meant to keep bugs out, not kids in. Window guards are easy to install and have a release mechanism in the event of an emergency.”

There are a number of things parents can do. To help prevent injuries and tragedies, CPSC recommends the following safety tips:

• Safeguard your children by using window guards or window stops.
• Install window guards to prevent children from falling out of windows. (For windows on the sixth floor and below, install window guards that adults and older children can open easily in case of fire.)
• Install window stops so that windows open no more than four inches.
• Never depend on screens to keep children from falling out of windows.
• Whenever possible, open windows from the top—not the bottom.
• Keep furniture away from windows, to discourage children from climbing near windows.
• Some jurisdictions require landlords to install guards. Check your local regulations.

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of serious injury or death from thousands of types of consumer products under the agency’s jurisdiction. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard. The CPSC’s work to ensure the safety of consumer products—such as toys, cribs, power tools, cigarette lighters, and household chemicals—contributed significantly to the decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

Source: CPSC

A Security Breach By BlueCross BlueShield

A major security breach has occurred that involves tens of thousands of Georgians. BlueCross BlueShield of Georgia has warned 70,000 customers that their personal information may have been accessed. The information includes Social Security numbers and credit card accounts. The problem occurred after a website upgrade in October.

Pastors Win $400,000 In Scam Lawsuit

Pastors from 21 churches across southern Michigan were awarded $400,000 last month in a civil lawsuit involving what Michigan Attorney General Mike Cox has called a nationwide scam aimed at black churches. In a default judgment against United Leasing Associates of Brookfield, Wis., and Willie Perkins and Michael Morris, both from Maryland, the Defendants were charged with criminal racketeering and fraud, Wayne County Circuit Judge Prentis Edwards awarded triple damages to the churches under Michigan’s Debt Collection Practices Act. Church leaders were duped into signing leases for video terminals they thought were free. Willard Ducharme, a lawyer from Huntington Woods, represented the churches.

Source: Freep.com

Beware Of Cramming Scams

An old scheme is popping up again. Last year alone, the Federal Trade Commission got more than 3,000 complaints about cramming charges on land lines, cell phones and VOIP accounts. That’s when companies add small fees, usually
on behalf of third parties, to your phone bill. Typically, it’s for services like voice mail, collect calls, web hosting, and sometimes even software downloads, online games and subscriptions.

Sometimes the charges are legitimate, but in many cases if you didn’t ask for it, experts say the charges could violate federal law as unfair and deceptive billing practices. To stop it, first, block your account. You can actually ask your provider to put a cramming block on your account to stop third party charges. Then, scrutinize your bills, even check last year’s bills for unnoticed charges. FTC officials say crammers make a lot of money, because only half of consumers ever catch the charges.

You can also demand a refund. If you catch a cramming charge, ask for your money back. It’s important to complain to state and federal authorities including the Attorney General’s office, the Federal Communications Commission or the Federal Trade Commission. Most have either a hotline or a section set up on their websites where you can launch a cramming complaint.

Source: WSFA

**CLASS ACTION STATUS GRANTED IN LAWSUIT AGAINST APPLE AND AT&T**

A federal judge will allow a lawsuit filed against Apple and iPhone wireless carrier AT&T to proceed as a class action. At issue is Apple’s control over what applications can be installed to the iPhone, as well as Apple’s exclusivity deal with AT&T. The lawsuit alleges actions taken by the two companies are hurting competition.

It’s alleged that “Apple secretly made AT&T its exclusive iPhone partner in the U.S. for five years. Consumers agreed to two-year contracts with the Dallas-based wireless carrier when they purchased their phones, but were in effect locked into a five-year relationship with AT&T.”

The lawsuit seeks an injunction to stop Apple from selling iPhones locked into AT&T’s network and more freedom for installing software to the smartphone.

Source: USA Today

**TAXMASTERS TARGET OF TEXAS ATTORNEY GENERAL AND CUSTOMERS**

Texas Attorney General Greg Abbott has filed suit against TaxMasters, a Houston-based company. The suit was filed as a result of hundreds of complaints and was substantiated by an extensive internal investigation. It calls for a permanent injunction to stop some of the company’s business practices and claims the company has repeatedly violated the Texas Debt Collection Act and the Texas Deceptive Trade Practices Act. The suit also asks for financial penalties and restitution of funds to certain complaining clients. A steady stream of TV advertising, combined with a nationwide economic downturn, resulted in an explosive growth for TaxMasters. The company saw revenues grow from $6.5 million in 2007, its first year, to more than $36 million last year.

There was also a class-action lawsuit filed on behalf of former clients last month against TaxMasters in Pennsylvania. Many of the complaints in that suit are much like those in the Texas lawsuit, but in addition violations of federal and Pennsylvania laws are also alleged. Both the class-action suit and the Texas Attorney General’s action include allegations from TaxMasters customers that:

- the company would do no work on any IRS issue until it was paid in full, even if that meant crucial IRS deadlines were passed;
- their attempt to cancel agreements failed to net a refund; and
- TaxMasters would demand to be paid in full, even if it did no work and did not even have a signed contract.

It will be interesting to see how these two lawsuits work out. It’s good to see the judicial process at work protecting consumers.

Source: Houston Chronicle

**CPSC ANNOUNCES POOL AND SPA KIDS SAFETY EDUCATION EFFORT**

At the halfway mark in the summer swimming season, the U.S. Consumer Product Safety Commission had seen news reports of more than 210 child drowning and non-fatal submersion incidents in pools and spas around the country since Memorial Day Weekend. In an effort to reduce these preventable incidents, CPSC joined with Safe Kids USA and the National Drowning Prevention Alliance (NDPA) to introduce a new kids safety education program. The centerpiece of the program are a multi-part educational video and an online activity, which are part of CPSC’s national Pool Safely campaign. Inez M. Tenenbaum, Chairman of the CPSC, had this to say:

*Just one incident is one too many. These statistics are a wake up call and a reminder that these tragic incidents are preventable. Our kids safety program is designed to teach parents and children simple water safety steps so that everyone will Pool Safely this summer.*

The educational video highlights individual experiences and uses seven simple Pool Safely steps to encourage safe and responsible behavior in and around pools and spas. The video series is available to view at www.youtube.com/poolsafely and on the websites of Safe Kids (www.safekids.org) and the NDPA (www.ndpa.org).

The new Pool Safely interactive online activity is designed for parents and young children. It highlights unsafe behaviors around the pool in a variety of real-world settings such as backyard, hotel and community pools. Game players are encouraged to identify the trouble spots and behaviors. The online activity is aimed at children seven and under.

The Pool Safely campaign had released a series of public service announcements in late June that remind the American public how to stay safe in and around pools and spas. Those can be viewed by visiting www.youtube.com/poolsafely. Safe Kids USA is a member of Safe Kids Worldwide, a global network of organizations whose mission is to prevent accidental childhood injury, a leading killer of children 14 and under. More than 600 coalitions in 19 countries bring together health and safety experts, educators, cor-
The National Drowning Prevention Alliance is a 501(c)(3) nonprofit organization devoted to the advancement of drowning prevention efforts at the national and community levels and exists to be a catalyst in drowning prevention. The NDPA recognizes that drowning is a complex public health issue, requiring a multi-faceted approach. You can learn about the National Drowning Prevention Alliance at www.ndpa.org.

Source: CPSC News Release

XXIV.
RECALLS UPDATE

We will report a number of product recalls in this issue. It appears that serious safety-related recalls have become rather commonplace which is not good news for consumers. The following are some of the more significant recalls since those reported in our last issue.

**TOYOTA TO RECALL ANOTHER 270,000 VEHICLES**

Toyota Motor Corp. will recall 270,000 Lexus and other vehicles worldwide to fix faulty engines in the latest quality lapse at the world’s No. 1 automaker. Flaws in valve springs, a crucial engine component, could make the vehicle stall while it’s moving. Contaminated materials had been used for valve springs during manufacturing, according to Toyota. The carmaker has admitted it knew about the engine problem in the Lexus and Crown vehicles two years ago but didn’t think a recall was warranted at the time. The company says it changed the spring part to correct the problem. A global recall is now under way to repair some 270,000 vehicles to replace engine components that could cause stalling.

The world’s top automaker claims it previously thought the problem was caused by a foreign substance entering during manufacturing of the valve springs, and beefed up checks so that wouldn’t happen. When the complaints started climbing, Toyota decided there was a design defect.

**2010 SUZUKI KIZASHI RECALL**

Suzuki has issued a recall for 5,107 Kizashi sedans from the 2010 model year. The recall affects models built between October 13, 2009, and May 31, 2010, due to a problem with a door. The hinged door of the center lower box on the dashboard doesn’t meet federal Motor Vehicle Safety Standard No. 201, “Occupant Protection in Interior Impact.” In the event of an accident, the door may swing open, which could injure a vehicle occupant. You can find out when your car was manufactured by checking the label on the driver’s doorjamb. Dealers will inspect and replace the instrument panel center lower box with a new part for free. Owners may contact Suzuki at 714-996-7040 or NHTSA’s hot line at 888-327-4236.

**CHRYSLER IS RECALLING SUVS AND VANS**

Chrysler is recalling about 22,000 sport utility vehicles and trucks to fix brake tubes that could lead to the loss of brake fluid.

Chrysler says its recall affects certain 2010 Dodge Nitro, Dodge Ram, Jeep Liberty and Jeep Wranglers that could have defective brake tubes. The problem could lead to the loss of brake fluid, making it difficult to brake and posing the threat of a crash. Chrysler says owners should be notified in August.

**FORD RECALL**

Ford Motor Co. is recalling more than 30,000 2010 Transit Connect vans to replace pushpins holding the liners above the driver’s head. The company says government testing found it failed to meet federal standards protecting the head. This recall was to have started last month.

**NISSAN RECALLS 46,000 CUBES OVER FUEL SPILLAGE**

Nissan is recalling 46,000 of its Cube model over possible problems with fuel spilling during rear end collisions. In documents filed with the federal government, Nissan says tests conducted by NHTSA found more fuel spilled than federal standards allow. Nissan says its own earlier tests did not show any fuel leakage, but it issued a voluntary recall. Nissan notified dealers in late July and will contact owners on the 30th of this month. The recall covers some model year 2009 and 2010 Cubes. Dealers will attach a special protector to prevent future leaks.

**BAJA MOTORSPORTS RECALLS MINI BIKES AND GO-CARTS**

Baja Inc., d/b/a Baja Motorsports, of Phoenix, Arizona, has recalled about 308,000 Baja Motorsports Mini Bikes and Go-Carts. The gas cap can leak or detach from the fuel tank on the recalled mini bikes and go-carts, posing a fire and burn hazard to consumers. In addition, the throttle can stick due to an improperly positioned fuel line and throttle cable, posing a sudden acceleration hazard to consumers. The firm has received at least nine reports of the gas caps leaking and detaching, including one report of a serious burn injury to a child. The firm has also received 25 reports of stuck throttles possibly due to the fuel line and throttle cable being improperly attached with injuries to the face and other parts of the body reported.

This recall involved Baja Motorsports mini bikes with model numbers beginning with HT65, MB165, WR65,
Christy is Recalling Women's Robes

Christy, of Charlotte, North Carolina, has recalled about 8,600 women's bathrobes. The bathrobes fail to meet the federal flammability standard for clothing textiles and pose a risk of burn injury. The firm says it has received one report of a robe igniting. No injuries have been reported. This recall involves women's wrap bathrobes with long sleeves and a belt. They are made from 100% cotton terry cloth in aqua, ivory, white and porcelain pink. A woven label at the neck edge of the robes read “Collection Fifty Nine.” The bathrobes were sold exclusively at Bloomingdale's department stores nationwide and www.bloomingdales.com from January 2008 through March 2010 for about $80. Consumers should stop using the recalled bathrobes immediately and return them to the Domestic Sales Department in any Bloomingdale's store for a full refund. If the Bloomingdale's store does not have a Domestic Sales Department, the robe should be returned to the Customer Service Department. For additional information, contact Christy's at (800) 261-6326 or visit Bloomingdale's web site at www.bloomingdales.com.

Tylenol Recall Widens

Johnson & Johnson is expanding its recall of over-the-counter drugs including Tylenol and Motrin IB because of a musty or moldy smell. The McNeil Consumer Healthcare business is recalling 21 lots of over-the-counter drugs sold in the U.S., Puerto Rico, Fiji, Guatemala, the Dominican Republic, Trinidad and Tobago, and Jamaica. The drugs that are being recalled include Benadryl, Children's Tylenol, Motrin IB, Tylenol Extra Strength, Tylenol Day & Night, and Tylenol PM.

The New Brunswick, New Jersey, company has already made a large recall of those drugs and over-the-counter products, saying about 70 people noticed the smell. Some of them got sick, with symptoms including nausea, stomach pain, vomiting and diarrhea. The odor was linked to a chemical in shipping pallets and traced to a facility in Puerto Rico. The company had planned to stop shipping those products on wooden pallets treated with the chemical, and asked its suppliers to do the same. Johnson & Johnson said the latest recall applies to products made before the January recall.

Johnson & Johnson, the world's biggest maker of health care products, has dealt with several product recalls since late last year. It withdrew over-the-counter drugs in November and December 2009 before issuing a much larger recall in January. Federal regulators said McNeil was told about the problem in early 2008 but made a limited investigation and failed to tell the FDA quickly. The original withdrawal also included other types of Tylenol, Benadryl, Rolaids, Simply Sleep, and St. Joseph's aspirin. In late April, McNeil recalled more than 130 million bottles of children's medicines like Tylenol, Benadryl, and Motrin because of manufacturing problems at a plant in Fort Washington, Pa. Some of the drugs had the wrong ingredient levels, and others contained tiny particles of metal.

Pottery Barn Kids Recalls 82,000 Drop-Side Cribs

Thousands of drop-side cribs from popular retailer Pottery Barn Kids are being recalled over safety concerns. The Consumer Product Safety Commission says the 82,000 cribs on recall could pose a suffocation or entrapment risk to young children if the drop-side rail on the crib detaches because of faulty hardware.

The recall involves all Pottery Barn Kids drop-side cribs regardless of model number. CPSC says there have been 36 reports of drop-side rails that have malfunctioned or detached. Seven children sustained minor injuries when they fell out of the cribs or got their legs caught between the mattress and side rail. CPSC urges parents to immediately stop using the cribs. Pottery Barn Kids is offering free kits to immobilize the drop-side rail.

8,400 Baby Walkers Recalled

Suntech Enterprises, Inc. is recalling approximately 8,400 baby walkers because the walkers can fit through standard doorways and “fail to have sufficient stair-fall protection to prevent falls down stairs.” So far, according to the company, no injuries have been reported. As of December 21, 2010, all baby walkers will be required by law to be either too wide to fit through standard doorways or “have features, such as a gripping mechanism, to stop the walker at the edge of a step,” according to a mandatory rule the CPSC issued in May 2010.
The baby walkers have a plastic frame supported by four wheels and eight brake pads, according to the CPSC. The walkers were sold in blue, pink, and green with a white activity tray and patterned, vinyl seat. Item number WK110 or WK112 is printed on the side of the packaging. The recalled walkers were manufactured in China and were sold at children's product stores in California, Illinois, New York and Texas from January 2007 through December 2009 for between $25 and $30. Suntech and the CPSC are advising consumers to immediately stop using the recalled walkers and bring them to the store where purchased for a full refund.

PORTABLE PLAYYARD TENT BY TOTS IN MIND RECALLED

Tots in Mind Inc., of Salem, New Hampshire, is recalling 20,000 (and 85 in Canada) Cozy Indoor Outdoor Portable Playard Tents Plus Cabana Kits. Clips that attach the tent to the top of the playyard can break or be removed by a child. A child can lift the tent and become entrapped at the neck between the rigid playyard frame and the metal base rod of the tent, posing a strangulation hazard.

CPSC is aware of a death of a two-year-old boy in December 2008 in Vinalhaven, Maine. The boy was found hanging with his neck entrapped between the playyard frame and the metal base rod of the tent that had been partially tied by pieces of nylon rope and partially attached by clips. The tent was tied to the playyard because the child was able to pop off the clips. Apparently, the child became entrapped while attempting to climb out of the playyard. In three other incidents, children were able to remove one or more clips and place their necks between the tent and the playyard. The children were not injured.

The dome-shaped white-colored mesh tent is designed to fit over playyards as small as 28 inches by 40 inches or as large as 31 inches by 44 inches to contain a child. There are 12 plastic clips to secure the base of the tent to the top rail of the playyard through button holes along the bottom of the tent. The tent has a zippered side for putting in and taking out the child.

The cribs were made in China and sold at Walmart, Amazon.com and various baby and children's stores nationwide from January 2005 through February 2010 for about $60. Consumers should immediately stop using the playyard tents and contact Tots in Mind to get free replacement clips. Replacement clips will be available in late August or early September 2010. Contact Tots in Mind toll-free at (800) 626-0339 or visit its website at www.TotsinMind.com.

Radio Systems Corporation Recalls Power Adapters

About 20,000 Power Adapters for heated pet beds have been recalled by Radio Systems Corporation of Knoxville, Tennessee. When the metal connector is removed from the bed, it can cause arcing between the coil spring and the connector, posing a fire and burn hazard to consumers. The firm has received three reports of connectors melting. No injuries or fires have been reported. This recall involves the Class 2 Transformers that were sold with PetSafe Heated Wellness Sleepers. The power adapters are identified by the markings “PLUG IN CLASS 2 TRANSFORMER,” “MODEL NO: K12-800” and have a spring coil covering the length of the electrical wire that goes from the sleeper.

Power adapters without spring coils are not affected by this recall. The adapters were sold at Pet specialty stores, catalog and online retailers nationwide from September 2006 through April 2010 for between $70 and $110. Consumers should immediately stop using the recalled power adapter and contact the firm to receive a free replacement adapter. For additional information, contact Radio Systems Corporation at (800) 732-2677 or visit its website at www.petsafe.net.

Aqua Lung America Recalls Inflators Due To Drowning Hazard

About 1,380 Power Inflators have been recalled in the United States, as well as 530 in Canada by Aqua Lung America of Vista, California. The oral inflator button is not properly bonded to the oral stem and can fall off during use, posing a leak of the buoyancy compensator contents. This poses a drowning hazard. Aqua Lung America says it has received one report of a consumer's oral inflator button falling off during use. No injuries have been reported. The power inflator is the black mouthpiece with the two brass buttons at the end of the corrugated hose. The recall involves all models of the Apeks WTX power inflators. Some of the recalled components were included on complete air cells.

Those model numbers are: 388032, 388060, 388080, 388145, 388260, and 4277S. The model number of the air cell can be found on the tag sewn on the center of the air cell or bladder. The inflators were sold at diving stores in the U.S. And Canada from November 2006 through March 2010 for between $53 and $70 for the component and between $280 and $520 for the air cells. Consumers should stop diving with their recalled power inflator and bring it or send it to an authorized Apeks dealer. The dealer will apply a free fix. Consumers may also ask for and receive a free replacement product. For additional information, contact the firm toll-free at (877) 253-3483 or visit its website at www.aqualung.com.
**Antonio Flores Pacifiers Recalled**

The U.S. Consumer Product Safety Commission announced a voluntary recall of Antonio Flores pacifiers that fail to meet federal safety standards. The Karino Baby Pacifiers imported from Mexico include nipples that can detach from the base, have small mouth guards and lack ventilation holes, the commission said in a statement.

About 44,900 pacifiers were sold at independent grocery stores in California and Texas from October 2009 through March 2010 for about 25 cents each. No injuries have been reported, but consumers were advised to take the pacifiers away from children and contact Antonio Flores of San Ysidro, California, for a refund or an exchange. Consumer can call 619-395-4543 for information.

**Children's Jewelry Recalled by Smilemakers**

Toy Network, of Indianola, Iowa and Fun Express Oriental Trading Company, of Omaha, Nebraska has recalled Children's Happy Charm Bracelets and Football Rings. They were distributed by SmileMakers Inc., of Spartanburg, South Carolina. The metal substrate in the jewelry contains high levels of cadmium. Cadmium is toxic if ingested by young children and can cause adverse health effects. This recall involves “Happy” charm bracelets and football rings. The “Happy” charm bracelet is comprised of colorful beads on a small elastic band to which a metal charm in the shape of a butterfly, moon or sun is attached. The football ring is a small adjustable metal band to which a football charm (made of metal) is attached. The toys were distributed at doctor and dentist offices nationwide from June 2005 through March 2010 for free. Consumers should immediately take the recalled jewelry away from children and discard the product. For additional information, contact SmileMakers toll-free at (877) 390-5470, visit the company’s website at www.smilemakers.com, or send email to product.questions@smilemakers.com.

**Children's Jewelry Recalled by Star Asia USA**

Consumers can also attempt to twist the cap open. If the cap can be twisted off without squeezing the tabs on the cap, the package is not child-resistant. Consumers should keep this product out of the reach of children. Consumers who purchased the product with the expectation that it would be in child-resistant packaging can contact Procter & Gamble for a full refund or a replacement coupon. Adult consumers can continue to use the product as directed. For additional information, contact Procter & Gamble toll-free at (877) 340-8825 or log on to their website at: www.scopemouthwash.com.

**VAIO Laptop Computers Recalled**

Sony VAIO laptop computers are being recalled due to a burn hazard. About 233,000 VAIO notebook computers made in China and the United States for Sony Electronics of San Diego were sold nationwide from January 2010 through April 2010 for between $800 and $1,500.

The computers can overheat, posing the risk of a burn, according to the commission. The recall involves VPCF11 Series and VPCCW2 Series laptop computers, which were sold in a variety of colors and have “VAIO” on the front outside panel. Consumers were advised to go to http://esupport.sony.com/US/f1cw2update for instructions on how to update BIOS firmware for the recalled products. Consumers were also advised to contact a Sony retail outlet for help upgrading the BIOS firmware. Consumers can call 866-496-7669 for information.

**Scope® Original Mint Mouthwash Recalled By Procter & Gamble**

The Procter & Gamble Co., of Cincinnati, Ohio has recalled about 35,000 bottles of Scope® Original Mint Mouthwash, 1 Liter Size. The mouthwash contains ethyl alcohol and certain bottles have malfunctioning child-resistant closures. Ethyl alcohol is toxic and can cause serious injury or death if ingested by children. This recall involves some bottles of Scope® Original Mint Mouthwash in 1 liter sizes. The recalled bottles have the number 4 on the bottom of the bottle. The bottles with the 4 on the bottom may not be child-resistant. Consumers can continue to use the mouthwash as directed. For additional information, contact Procter & Gamble toll-free at (877) 390-5470, visit the company's website at www.smilemakers.com, or send email to product.questions@smilemakers.com.

**Wire Feed Welders Recalled by Star Asia USA Due To Burn Hazard**

About 9,000 wire feed welders have been recalled by Star Asia USA, LLC doing business as Titan, of Kent, Wash. The wire welder's torch does
not have a cold contactor as erroneously stated on the packaging and instruction manual. Without this feature, the welder generates an electrical arc immediately upon contact with the welding material, posing a burn hazard to consumers. The recall involves the Vaper 90 amp flux wire feed welders with model number 41181. The wire welders are red and black. “Vaper” and “90 amp flux wire welder” can be found on the product’s operation panel. The model number can be found on the top right hand corner of the package and on the first page of the users manual. They were sold by Pep Boys, Auto Zone and various other auto parts and tool centers nationwide from October 2006 through March 2010 for about $170. Consumer should immediately stop using the wire welders and contact Star Asia to obtain a corrected instructions manual and packaging or for instructions on returning the product for a full refund. Consumer Contact: For additional information, contact Customer Service at (800) 386-0191.

JEWELRY FROM POPULAR TWEEN STORES RECALLED OVER CADMIUM

About 137,000 pieces of children’s jewelry sold at two stores popular with pre-teen girls—Justice and Limited Too—have been recalled for high levels of the toxic metal cadmium. It was the sixth recall of cadmium products since early June, including about 12 million “Shrek” movie-themed drinking glasses distributed at McDonald’s. Other recalls targeted jewelry, mostly for children. The latest involved 19 different styles of necklaces, bracelets and earrings distributed by Tween Brands.

BAGGED BABY SPINACH SALADS RECALLED

Ready Pac Foods, Inc. is recalling 702 cases of bagged baby spinach that were sold in California, Washington and Arizona after the FDA confirmed a positive result of E. coli bacteria in a random sample of the spinach. The mention of a spinach recall brings consumers back to September 2006, when bagged baby spinach tainted by E. coli bacteria sickened some 200 people and left three dead in 26 states.

Spinach with the Ready Pac label was among dozens of brands pulled from store shelves in 2006 after federal authorities traced a nationwide E. coli outbreak to a San Juan Bautista processing plant that bags its spinach. The Ready Pac Baby Spinach, Spinach Temptations 6 oz. bagged salads included in the recall have use-by dates of July 4th with the product code 11707B, IR127121 and July 8th with the product code 12007B, IR130373. The FDA said some recalled bags might still be on store shelves, so this recall extends to retailers, as well as consumers.

The FDA is advising consumers to immediately dispose of the recalled product and contact Ready Pac Consumer Affairs to obtain a full refund. The FDA is asking retailers who receive the recalled product to confirm with their distribution centers and individual stores that no recalled products remain in their inventories or at their store locations. Ready Pac Consumer Affairs phone number: 800-800-7822 (Mon.-Fri., 8 a.m.-5 p.m. (PT))

PERDUE FARMS RECALLS CHICKEN NUGGETS

Georgia-based Perdue Farms has recalled almost 92,000 pounds of frozen chicken nuggets. There was concern that the nuggets might contain plastic. The chicken product, Great Value Fully Cooked Chicken Nuggets, is sold at Wal-mart stores nationwide. The company discovered small pieces of blue plastic after receiving consumer complaints, according to the U.S. Agriculture Department’s Food Safety and Inspection Service. So far, Food Safety has not received any reports of injury at this time. Anyone concerned about an injury from consumption of this product should contact a physician.

ROMAN AND ROLLER SHADeS BY SMITH+NOLe RECALLED

Smith+Noble, of Corona, California, have recalled about 1.3 million Roman and Roller shades. This includes 1,160,000 Roman shades and 115,000 roller shades. Strangulations can occur when a child places his/her neck between the exposed inner cord on the Roman shades and the fabric on the backside of the shade or when a child pulls the cord out and wraps it around his/her neck. Strangulation can occur if the roller shade’s continuous loop cord is not attached to the wall with the tension device provided and a child’s neck becomes entangled in the free-standing loop. CPSC and Smith+Noble have received a report of a five-year-old boy in Tacoma, Wash. who became entangled in his/her neck.

The FDA is advising consumers to immediately dispose of the recalled product and contact Ready Pac Consumer Affairs to obtain a full refund. The FDA is asking retailers who receive the recalled product to confirm with their distribution centers and individual stores that no recalled products remain in their inventories or at their store locations. Ready Pac Consumer Affairs phone number: 800-800-7822 (Mon.-Fri., 8 a.m.-5 p.m. (PT))

The shades were sold exclusively at Smith+Noble online at www.smithandnoble.com and through catalog sales nationwide from 1998 through April 2010 for between $100 and $1,600, depending on custom size and options. Consumers should immediately stop using the Roman shades and contact the Window Coverings Safety Council (WCSC) for a free repair kit at (800) 506-4636 anytime or visit www.windowcoverings.org. Consumers should check the roller shades to make sure the tension device pro-
vided is attached to the continuous loop cord and installed into the wall. If not attached, consumers should attach the tension device securely to the wall. If they no longer have the tension device, consumers should immediately stop using the roller shades and contact WCSC to receive a free replacement tension device. For additional information, contact Smith+Noble toll-free at (877) 228-7683, or visit its website at www.smithandnoble.com/productrecall information.

**PRESCRIPTION CAT FOOD RECALLED**

Proctor & Gamble has recalled Iams prescription dry cat food due to possible salmonella contamination. This product may also cause health concerns in humans handling the pet food. Two lots of the food, which is for cats with kidney disease, tested positive during an FDA analysis. People who have the food should not use it and should contact the place of purchase to get information about refunds.

Codes that will be on the recalled Iams Veterinary Formula are on the sides of the bags. These lots include numbers 01384174B4 0 1901421405 1 and 101384174B2 0 1901405 1. Customers can call 1-877-894-4498 to get more information on the recall. No other Iams products are affected by the recall.

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

**XXV. FIRM ACTIVITIES**

**EMPLOYEE SPOTLIGHTS**

**RHON E. JONES HEADS UP THE FIRM’S TOXIC TORTS SECTION**

Rhon E. Jones, who joined our firm in 1994, manages the Toxic Torts Section. Rhon has been involved in cases for the firm where the settlements or verdicts have totaled over $1.1 billion dollars. Among his notable cases is the settlement of the largest toxic tort claim in U.S. history in Anniston, Ala., regarding PCB contamination by Solutia, Monsanto and Pharmacia. That total federal court settlement exceeded $700 million.

Rhon is currently leading our firm’s involvement in claims of personal and property damage related to the BP oil spill in the Gulf of Mexico. As all Americans now know, on April 20, 2010, a massive offshore oil rig known as the Deepwater Horizon, owned by Transocean and operated by BP, exploded and caught fire in the Gulf of Mexico, about 50 miles from Louisiana’s coastal wetlands, killing 11 workers and injuring 17 others. Since the rig sank, the spill site has continued to leak oil into the Gulf, creating an environmental and economic disaster affecting the entire Gulf Coast region. This will be the largest disaster of this sort in our nation’s history.

At the time of this writing, almost 200 million gallons of oil have spilled into the Gulf, according to estimates, and approximately 35% of Gulf waters were closed to commercial and recreational fishing. Delicate wetlands were clogged with oil, harming ecosystems essential to the seafood industry and endangered ocean wildlife, birds and fish. Oil spill damage and fears caused tourism along the Gulf Coast to plummet, leaving hotels, rental properties and restaurants empty at what is traditionally the busiest season for these businesses. Our firm has filed a number of lawsuits in federal district courts in Alabama, Florida and Louisiana to help protect businesses and individuals harmed by the oil spill.

Rhon earned his J.D. from the University of Alabama in 1990, after earning his B.A. from Auburn University in 1986. He has taught Torts at Jones School of Law in Montgomery, and he is a regular speaker at national, regional and state seminars on various subjects for both Plaintiff and Defense counsel. In July 2007, Rhon received a Certificate of Recognition from the Alabama State Bar Committee on Volunteer Lawyers Program in tribute to his nomination for the 2007 Alabama State Bar Pro Bono Award. Rhon is also a board member of Public Justice Foundation, a national public interest law organization. He has been selected to Alabama Super Lawyers 2009 and 2010.

Rhon is an Advisory Board Member of the Family Sunshine Center, whose mission is to prevent domestic abuse. Rhon is also a former member of the Board of Directors of the Janice Caplouto Center for the Deaf, which fills special needs for the hearing impaired. He continues to actively support both. He is a member of the First Baptist Church in Montgomery, where he teaches Sunday School. Rhon is married to the former Deanne Rawls, and they have four children.

Rhon is doing a tremendous job for the firm's clients in the Gulf oil spill disaster. He, as well as other lawyers and section staff, put in long hours each day on this project. All agree that Rhon’s leadership has been the key to our getting the job done. We are blessed to have a person such as Rhon to head up such an important project.

**RITA EMBRY**

Rita Embry came to the firm in March of 2008 as a temporary employee and was hired full time in January of this year. She currently works as a Clerical Assistant in our Mass Torts Section. In this position, she handles the intake of new Mass Torts cases by taking phone calls from potential clients and receiving information on referrals from other law firms. Once Rita has gotten the new client information, she opens a case for the client in Prolaw. Rita and her husband have two daughters, five grandchildren and three great-grandchildren, including a set of twins. Rita is
retired from Regions Bank with 30 years employment. She enjoys her grandchildren, flower gardening, and trips to beach. Rita is a very good employee who does very good work. We are blessed to have this dedicated employee with the firm.

MAUREEN MANNO

Maureen Manno came to the firm in August 2003 as a temporary employee and was hired full-time in September 2004. She currently serves as a Clerical Assistant to Frank Woodson in the Mass Torts Section. In this position, Maureen contacts potential clients and completes client questionnaires, and handles mass mailouts for pain pumps, propulsid and zyprexa litigation. However, she also prepares case open sheets, performs scanning and filing tasks and performs any other duties required of her.

Maureen resides in Prattville with her 24-year-old son Jesse. She is a native of Toms River, N.J., which is located on the “Jersey Shore.” Maureen graduated from Toms River North, served as a member of St. Joseph’s Catholic Church and worked as an Administrative Secretary at Ocean County Utilities Authority for a little over 20 years before moving to Alabama. Maureen is a movie buff, a Dallas Cowboy football fan, enjoys decorating, stenciling, cooking and spending time outdoors. Maureen is a good employee who is dedicated to her work. She is an asset to the firm and we are fortunate to have her with us.

Laurie Little came to work at the firm in March of 2008 as a temporary employee and worked in that capacity until January of 2010 when she was hired full-time. She currently serves as a staff assistant to Roger Smith, a lawyer in the Mass Torts Section. Laurie has worked on various important projects related to the massive Vioxx settlement. This project has been one of the largest that our firm has even been involved with. It has been extremely labor- and time-intensive. Laurie, who has four children and three beautiful grandchildren, enjoys spending time with her family, cooking for them, and gardening. She works hard and does a very good job. We are pleased to have Laurie with the firm.

XXVI. SPECIAL RECOGNITIONS

Gibson Vance Assumes The Role As President Of AAJ

Gibson Vance assumed the role of President of the American Association for Justice (AAJ), the world’s largest trial bar, at the organization’s annual convention on July 14th. As President, Gibson will spearhead AAJ’s mission of making sure people have a fair chance to receive justice through the legal system, even when it means taking on the most powerful corporations. Gibson says “its an honor to lead AAJ at a time when the importance of the civil justice system has never been more obvious.” As President, he will continue AAJ’s efforts to strengthen the civil justice system and ensure all Americans have access to justice.

Gibson has practiced law for more than 17 years and currently focuses in our firm on personal injury litigation and consumer fraud cases. He has served as President of the Montgomery County Bar Association, Montgomery Trial Lawyers Association, the Alabama Civil Justice Foundation, and the Alabama Association for Justice.

Access to the civil justice system is critical to making sure that ordinary folks stand a chance against powerful corporations with equal footing. Ensuring those rights is an essential part of what AAJ works for, and it has been a cornerstone of our firm. Gibson is the only person from Alabama to serve as President of the national association. We’re proud to see Gibson embodying our motto of “helping those who need it most.” I am convinced Gibson will do an outstanding job in this tremendous undertaking.

Tom Methvin Ends His Term As State Bar President

Tom Methvin had a tremendous year as President of the Alabama State Bar. He has worked hard and did an outstanding job. At the annual meeting of the Alabama State Bar in July, Tom officially ended his term as President of the organization, passing the gavel both literally and figuratively to new President Alyce Spruell. Throughout his year as Bar President, Tom has worked to emphasize Access to Justice. His goal was to increase awareness of this important initiative, to increase funding for the program, and to increase participation in the Volunteer Lawyers Program (VLP).

In 2009-2010, the Alabama Legislature agreed to a 12% increase in funding for Access to Justice, even though funding was cut for most other things. Alabama lawyers also agreed to make voluntary donations of $850,000 to help fund Access to Justice. Also since January 2009, more than 1,450 new lawyers have joined the VLP and agreed to represent the poor for free. Tom had this to say:

“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 few years. I have enjoyed being a part of this effort for Access to Justice.

Much has been accomplished on the project started by Tom, but there is much left to do. Ensuring legal help for the poor in civil matters is of the utmost importance. Hopefully, this effort to help those who badly need help will continue.

First Female Lawyer To Head The Alabama State Bar

Alyce Manley Spruell, a member of the law firm of Spruell & Powell in Northport, has been named President of the Alabama State Bar. Alyce, who becomes the first woman to hold this important position, will do an outstanding job. Many, including this writer, believe the election of a woman to this position was long overdue. Promoting the need for increased civics education will be one of
Alyce’s goals as President of the 16,000-member organization. Alyce is a 1983 graduate of the University of Alabama School of Law and she is an outstanding lawyer. Her firm primarily handles general civil litigation, employment and business representation. Alyce also has an alternative dispute practice, serving as both a mediator and arbitrator in the same areas as her practice. All of us at Beasley Allen wish Alyce the very best as she takes over as President.

XXVII.
FAVORITE BIBLE VERSES

Bible Verses For The Month

Pastor Rick Warren, in a recent newsletter, discussed what it means to be a servant. He says real servants pay attention to needs and are always on the lookout for ways to help others. When servants see a need to help others, they seize the moment to meet it. That is just as the Bible commands us so, whenever we have the opportunity, we must do what is good for everyone, especially for the family of believers. The following verses came from Pastor Warren.

Never tell your neighbors to wait until tomorrow if you can help them now.

Proverbs 3:28

Therefore, as we have opportunity, let us do good to all, especially to those who are of the household of faith.

Galatians 6:10

Dr. Lester Spencer, who is Senior Pastor at St. James United Methodist Church, sent in two verses for this issue. It’s absolutely true that we can rely on God to take care of us and provide our needs regardless of our circumstances. Lester wants to encourage all of us by sending in the verses he selected. He reminds us that—despite the disaster on the Gulf, the weak economy, the wars in the middle East, the prospects of summer storms brewing in the tropics and any other problems that might arise—God is still in control. We can all praise God and be thankful that we have a Creator and a Savior who is bigger than all of our problems, regardless of how big or how seemingly impossible to solve. We can trust Him, and we can be optimistic, hopeful and positive because of our mighty God.

Trust in the LORD with all your heart, And lean not on your own understanding.

Proverbs 3:5

These things I have spoken to you, that in Me you may have peace. In the world you will have tribulation; but be of good cheer, I have overcome the world.

John 16:33

My son, Jere Locke Beasley, Jr., sent in a verse that just happens to be one of my favorites. Jere is with Boosters, Inc., a Montgomery firm specializing in the sale of promotional materials of all kinds. Commercial screen printing service is one of the firm’s specialties. The company’s website is www.boostersinc.net. Jere also is affiliated with Service Printing Company, a firm owned by my good friend Bob Meredith, that has been in business since 1958.

But thanks be to God, who gives us the victory through our Lord Jesus Christ.

1 Corinthians 15:57

XXVIII.
CLOSING OBSERVATIONS

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

2 Chron 7:14

Others Share The Blame With BP

With all the media attention regarding BP’s responsibility for the Gulf oil spill over the past several months, other corporations involved with the Deepwater Horizon drilling operations that led to the largest environmental disaster in U.S. history have largely been ignored. The most obvious is Transocean, the owner of the rig. But there are others. BP has gotten so much media attention, and that, combined with its massive public relations campaign costing hundreds of millions, has caused folks to forget about other companies which share blame with BP.

Anadarko Petroleum Corporation and Mitsui & Co., Ltd. were partners with BP in the ownership and exploration of the Macondo well location where the spill occurred and Transocean owned and operated the drilling rig that exploded. Halliburton Energy Services performed crucial operations in connection with constructing the well that failed and Cameron International Corporation supplied the safety device that failed to stop the flow of oil from the well after the explosion.

Not surprisingly, each of these companies has been pointing fingers of blame at one another for causing the spill. Despite the publicity directed BP’s way, we can’t lose sight of the fact that many companies other than BP had a direct hand in the operations that led to the environmental and economic devastation of the Gulf Coast. These companies share the blame with BP and must be required to participate in the payment of claims.

The Crisis In The Gulf Makes Clear The Importance Of Our Judicial System

The crisis in the Gulf has made very clear to the American people how vitally important our judicial system is for them. The multiple causes of the disaster in the Gulf could have been avoided if the companies responsible had simply implemented the necessary safety requirements that necessarily accompany drilling offshore. Unfortunately, not only did the companies reduce the level of safety
in order to save money, but they also
failed to act responsibility during the
weeks leading up to the explosion of the
Deep Water Horizon Rig in April. During
the drilling of the well, BP failed to stop
the drilling when it was obvious that a
significant risk of danger was present.

Certainly, those in Corporate America
who fought regulation and pushed legis-
lation that protected corporate wrongdo-
ers have been silent in the aftermath of
the explosion and resulting oil spill. It’s
quite apparent that the judicial system
will be critically important in the weeks,
months and even years ahead to make
sure that justice is done both for the
victims and for the wrongdoers involved
in this unprecedented disaster.

Bankruptcies By General Motors &
Chrysler

I have been very surprised that the
national media found it necessary to give
two automakers a virtual pass on some-
thing that hurt thousands of U.S. citizens.
When General Motors and Chrysler filed
for bankruptcy in 2009, each company
sought immunity from past and future
product liability lawsuits involving the
tens of millions of GM and Chrysler cars
on the road. Facing mounting pressure
from victims, state Attorneys General,
lawyers, and consumer groups, the com-
panies finally agreed to accept responsi-
bility for defect-related injuries suffered
by consumers who bought their GM and
Chrysler vehicles post-bankruptcy. Unfor-
tunately, the automakers will not com-
parse anyone injured or killed by
defective cars if the accident occurred
before the bankruptcies. This unprece-
dented event results in victimizing over
1,000 consumers—some with cata-
strophic injuries, many of whom are chil-
dren—and that’s very sad indeed.

XXIX.
PARTING WORDS

Over the years, I have had to battle
impatience and on occasion that caused
me to make mistakes or miss opportuni-
ties that would have developed had I
simply waited and not rushed things. This
has been a most difficult trait for me to
t tolerance over the years. I have learned
though, that God’s timing is always
perfect. God looks for people who will
believe Him—trust Him—obey Him—
and act according to His timetable. On
too many occasions I wanted God to
adopt my timetable and that’s not the
proper course of action.

All of us need to have patience and to
trust in God and make sure that we are
sensitive to His timing. As we wait for
God’s Word to come to pass, we must
never give up. Keep trusting, because His
Word is true, and He keeps His promises.
We must continue to seek God’s guid-
ance and wisdom. I know that God is
always faithful and that He loves us. That
is an assurance that gives us eternal hope.
God will help us to be sensitive to His
timing. When we commit our lives and all
decisions to God, things will eventually
work out regardless of the circumstances.

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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of “helping those who need it most,” now employs 44 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.