I. CAPITOL OBSERVATIONS

STATE OF ALABAMA SUES OVER OIL SPILL

Two separate lawsuits were filed last month on behalf of the State of Alabama by Attorney General Troy King against BP and several other Defendants. The suits, filed in federal court, seek damages and injunctive relief against those companies responsible for the massive oil spill in the Gulf of Mexico. Both cases will be transferred to the MDL judge in New Orleans. Our firm has been asked to represent the State, along with the firms of Maynard, Cooper from Birmingham and Prince Glover from Tuscaloosa. Our goal in these cases is to hold all Defendants fully responsible for the massive losses and damages suffered by the State of Alabama and its citizens.

Both candidates for governor are backing the Attorney General’s filing of the state’s lawsuit. Democratic nominee Ron Sparks says people were tired of waiting for someone to hold BP accountable and he commended the Republican Attorney General for filing the suit. Republican nominee Robert Bentley believes BP and the federal government failed Alabama citizens. He says it’s the right of the Attorney General to file suit against BP. It’s most significant that the two men support the lawsuit since one of them will inherit the many problems caused by BP and the other Defendants. The effects of this disaster won’t be fully known for a long time and our state won’t get over this disaster any time soon. It will be our job to make sure the State receives full compensation for its losses.

COALITION OF ALABAMA GROUPS TO GRADE ADEM

A coalition of statewide environmental groups will rate the Alabama Department of Environmental Management’s progress on addressing air and water pollution and the overall enforcement of environmental laws. Representatives of the coalition—which includes groups such as Conservation Alabama, the Alabama Rivers Alliance, Mobile Baykeeper and the Cahaba River Society—met with ADEM’s new director, Lance LeFleur, and briefed him on the areas that will be evaluated relating to the agency’s performance. This will be good for ADEM if it will take this in the right way. It will be beneficial to have the agency’s past performance evaluated.

The priorities presented by the environmental groups include improving ADEM’s enforcement of the Clean Water Act. Earlier this year, several of the same groups asked the EPA to take over water pollution monitoring and enforcement, charging that ADEM has been ineffective. The groups also will grade the agency’s performance on permitting, inspecting and monitoring storm water runoff from construction and urban development. ADEM’s performance as it relates to overall enforcement action against polluters will also be considered. ADEM has long been accused of not being consistent or aggressive with polluters. Hopefully that has changed, because the agency has a duty to protect the environment in our state.

The groups also plan to evaluate state progress on limiting the release of toxic chemicals into the air, which in many cases are concentrated in particular neighborhoods. The groups say that in 12 to 18 months, they will evaluate the progress or the lack thereof of ADEM under its new leadership.

Source: AL.com

ALABAMA NOT QUALIFIED FOR JOBLESS BENEFITS

I was shocked to learn that Alabama is one of only six states that has failed to update any part of its unemployment program to qualify for extra jobless benefits through the federal stimulus program. The National Employment Law Project reported that Alabama, Florida, Kentucky, Mississippi, Missouri and North Dakota are the only states that have not modernized at least part of their programs.

That failure has cost the state an additional $100.5 million in extended benefits for jobless Alabamians. Republicans in the Alabama Senate killed bills in 2009 and 2010 that would have allowed the state to receive an extra $100.5 million in stimulus money for jobless benefits. The legislation would have authorized Gov. Bob Riley to extend jobless benefits 26 weeks while providing payments to part-time workers, those who are forced to leave work for personal reasons, such as victims of spousal abuse and those in job training programs. The unemployment rate in Alabama was 9% when the legislation failed in 2009. In July, it was 10.3%. Nearly 25,000 additional jobless Alabamians would have been assisted had the state accepted the stimulus money.

Source: AL.com

IN THIS ISSUE

I. Capitol Observations .......................... 2
II. A Report on the Gulf Coast Disaster .... 3
III. Drug Manufacturers Fraud Litigation .................................................................. 6
IV. Purely Political News & Views ........................................................................... 7
V. Court Watch ........................................................................................................ 7
VI. The National Scene ............................................................................................. 8
VII. The Corporate World .......................................................................................... 9
VIII. Congressional Update ....................................................................................... 9
IX. Toyota Litigation ................................................................................................ 11
X. Product Liability Update .................................................................................... 12
XI. Mass Torts Update .............................................................................................. 12
XII. Business Litigation ........................................................................................... 14
XIII. An Update on Securities Litigation .................................................................. 15
XIV. Insurance and Finance Update .......................................................................... 16
XV. Employment and FLSA Litigation ....................................................................... 17
XVI. Predatory Lending ............................................................................................ 17
XVII. Premises Liability Update ............................................................................... 18
XVIII. Workplace Hazards ......................................................................................... 20
XIX. Transportation ................................................................................................. 21
XX. Nursing Home Update ....................................................................................... 23
XXI. Healthcare Issues .............................................................................................. 24
XXII. Environmental Concerns ................................................................................ 25
XXIII. The Consumer Corner .................................................................................... 26
XXIV. Recalls Update ................................................................................................ 30
XXV. Firm Activities .................................................................................................. 33
XXVI. Special Recognitions ...................................................................................... 34
XXVII. Favorite Bible Verses ..................................................................................... 37
XXVIII. Closing Observations ................................................................................... 38
XXIX. Parting Words .................................................................................................. 39

www.BeasleyAllen.com
I received some information recently from MADD concerning law enforcement officers that was most disturbing. While I knew that many officers are killed each year in the line of duty, I had no idea that so many of these deaths were caused by car crashes. On average, according to Laura Dean-Mooney, who serves as president of MADD, a law enforcement officer is killed in the line of duty every 53 hours. She says the leading cause of death is car crashes. I thought guns would have been the biggest problem. Last year, the number of officers killed in traffic crashes accounted for almost half of all deaths in the line of duty. While that number was 21% less than the previous year, it's still a high number.

I have always believed that people should strongly support the law enforcement community in every possible way. Officers put their lives on the line daily for the public and that's very important for each of us. Proper funding of law enforcement at every level is essential and that should be a top priority for our elected officials. I wonder how my GOP buddies react to their elected officials, who talk about strong law enforcement but refuse to properly fund law enforcement programs. That’s especially true when it comes to providing funds so that adequate personnel and equipment are available to get the job done. Also, low pay scales must be raised for those officers already working on a daily basis to protect folks. Hopefully, we will see more “walking the walk” instead of just “talking” about supporting law enforcement in the future.

Source: MADD

II. A REPORT ON THE GULF COAST DISASTER

NEW ORLEANS PROPER LOCATION FOR MDL IN OIL SPILL LITIGATION

The Judicial Panel on Multi-District Litigation has decided that more than 300 suits filed since the April 20th oil rig explosion will be heard in New Orleans. U.S. District Judge Carl Barbier was selected by the panel to preside over the MDL. Lawsuits include personal injury claims that resulted from the deadly blast on the oil rig Deepwater Horizon, damages to those who have experienced illness from contact with the oil dispersant, as well as loss of income and property value.

The U.S. government and most lawyers representing the spill victims wanted the cases consolidated in New Orleans, which is the largest city near the spill site. But BP sought to have the Judicial Panel on Multi-District Litigation consolidate the cases in Houston, home to the oil giant’s U.S. headquarters. Other suggested consolidation sites included Miami, Mobile, and Gulfport. The MDL process is designed to streamline the exchange of evidence and avoid duplication. Once pretrial proceedings are completed, the individual cases are sent back for trial in the courts where they were first filed.

The selection of New Orleans and this judge represent a victory for the folks who have been damaged as a result of BP’s reckless disregard for safety and the tragic consequences of its actions. In my opinion, the MDL panel made a good decision. Louisiana was the logical choice because of its central location, the tremendous damage done there and the continued damage we expect to see for years to come along the Gulf Coast. Judge Barbier, a very good Judge, is more than capable of handling the complex nature of the litigation and the tremendous volume of cases that will go to his court. He will be fair to all parties to this litigation.

Our firm has filed a number of lawsuits in District Courts in Alabama, Mississippi, Florida and Louisiana to help protect businesses and individuals harmed by the oil spill. Within the next three to four weeks our lawyers will be filing a good number of additional cases. We currently represent over 1,000 individuals, businesses, and governmental entities. Our client base includes commercial fishermen, shrimpers, retail establishments, the restaurant industry, real estate management companies, property owners, persons suffering personal injuries and others. Our goal is to help bring BP and other entities responsible for the losses and damages to justice. I have never trusted BP to do the right thing by its victims. There is very little in BP’s past that gives me any real hope that the oil giant will treat spill victims fairly. That is why the MDL is so important for all victims.

FEINBURG RELEASES CLAIMS PROTOCOL

The so-called emergency protocol for BP oil spill claims was released by Ken Feinberg on August 20th and it leaves lots up in the air for Claimants. Even a casual reading of the document makes it abundantly clear that it’s much too favorable to BP. First, only BP’s American production company, BP Exploration and Production, Inc., is responsible under the $20 billion fund. No other BP company is involved at all in the protocol. Neither are any of the other companies, which share responsibility for the Gulf oil spill disaster, involved in any respect in the Feinberg protocol. No assets are pledged by BP other than future oil and gas product by the production company.

In fact, if a Claimant receives a final payment from the fund, a complete release of liability will be required. This would mean that neither any other BP company, nor any other potential Defendants, would remain liable to the Claimants for damages, past or future. This would shut off access to the courts for the Claimants.

There is also a question as to why those who have legal exposure for the damages caused now and in the future by the chemicals dumped in the Gulf were left out. This could wind up being a major omission and very much detrimental to Claimants. You will see why that is true in another section of this issue. The damages from the combination of oil and the chemicals could wind up being the biggest long term culprit.

Clearly, the emergency claims protocol leaves many unanswered questions about the claims process for future and final claims. It’s obviously detrimental for Claimants to be forced to accept a final payment before they can possibly know the full impact of the oil spill. The setting of a November deadline for emergency payments is also premature since the full extent of the spill is far from being determined.

Ultimately, a final claims process must ensure that all potential Claimants are
fully compensated and that their access to the civil justice system is preserved. All BP companies and the other responsible corporations must be held fully accountable for their wrongdoing. Based on everything I have seen so far it appears BP is literally running this show. I believe the Feinberg protocols are much too favorable to BP in a number of areas.

Even though I have wondered why it took so long for BP to fund the claims account, at least it was finally done. But the bottom line is that the Claimants are getting the short end of the stick from both BP and Feinberg. I seriously doubt that BP will ever live up to its commitment to voluntarily pay all legitimate claims in full. BP will have to be made to do so in a court of law. The oil giant has done all in its power to make sure that it pays substantially less than full value on claims, while requiring full releases in return for payments. As I have said on numerous occasions, and will repeat here for emphasis, I don’t trust BP and don’t expect it to do right by its victims. I am also beginning to wonder who Mr. Feinberg is really working for. I thought his role was to be an independent claims administrator.

**BP IS BETTER AT PUBLIC RELATIONS THAN IT HAS BEEN ON SAFETY**

BP is very good at the game of public relations and over the past weeks has put its efforts on that front into overdrive. Have you wondered why there is a slick television commercial appearing just about every 30 minutes on both commercial and cable television networks? Also, some may question why every single day BP has a full page advertisement in every newspaper in the country. Those are questions that should be answered by the oil giant, especially when you consider BP is stalling the payment of claims to victims of the massive oil spill. It’s pretty obvious that BP is trying to gain favor with the media outlets, using them to change the public’s opinion on the company’s bad conduct, and that can’t be allowed to happen.

Thus far, the advertising cost to BP has to be in the hundreds of millions of dollars. Its message is, in a nut shell, “we are a good, caring company, run by men from the Gulf Coast who are concerned about the situation folks on the coast have found themselves in.” It’s a “feel good message” that is costing BP a small fortune, but it is doing absolutely nothing for BP’s victims. Somehow, that just doesn’t seem right.

**POLITICIANS HAD BEST REMEMBER LESSONS LEARNED FROM EXXON**

BP with the help of the federal government, is selling the impression that the worst is over for the victims of the worst environmental disaster in our nation’s history. While there was a major breakthrough when the oil leak was finally stopped, after over 100 days, the effects of this huge disaster are far from over. Each of us, and especially our elected officials—both nationally and locally—should remember the problems caused by the Exxon Valdez oil spill in Alaska some 21 years ago. If you go back and read the statements made by Exxon officials after that disaster occurred, and then compare them with the statements now being made by BP officials, you will find them to be virtually identical. The two messages were basically, “it’s all our fault, we will clean up the oil and take care of the victims.” In fact, Exxon said the victim’s were “lucky” because it was Exxon that caused the disaster.

We should then examine how Exxon actually treated the victims when they asked to be compensated for their losses, and compare that with the current claims-paying by BP along the Gulf Coast. The reality was that Exxon fought its victims for over 20 years and tried its dead-level best to keep them from getting what they were entitled to. The long-term effects of the oil spill in Alaska have been devastating to the people in that area. Hopefully, our public officials have learned from Exxon’s treatment of its victims in Alaska and will not let BP get away with the same tactics.

**SINKING AGENTS SHOULD NOT BE USED IN THE GULF**

The National Contingency Plan provides that in actions taken to recover oil, or to mitigate its effects, “sinking agents” can’t be used. It doesn’t say shouldn’t—it clearly says they can’t be used. Sinking agents are those additives applied to oil discharges to sink floating pollutants below the water surface. Never before had dispersants been used at the depth of BP’s well. As a result nobody really knows for sure how that chemical mix will interact physically and chemically under pressure with oil, water and gases. It is believed by many experts that the damage done—both short and long term—will be devastating.

As BP had its public relations campaign going full blast in an attempt to convince folks that oil and chemicals in the Gulf aren’t so bad, Congressional investigators were reporting that too much toxic chemical dispersant had been used by BP. The investigators said the U.S. Coast Guard routinely approved BP requests to use thousands of gallons of chemicals every day to break up the oil in the Gulf, despite a federal directive to use the dispersant rarely. For example, it was reported that the Coast Guard approved 74 waivers over a 48-day period after the EPA order. Only in a few instances did the government scale back BP’s requests.

Rep. Edward Markey, (D-MA), released a letter last month that said instead of complying with the EPA restriction, “BP often carpet bombed the ocean with these chemicals and the Coast Guard allowed them to do it.” While the chemical dispersant appears to be effective at breaking up the oil into small droplets to more easily be consumed by bacteria, the long-term effects to aquatic life are largely unknown. That environmental uncertainty has led to several disputes between BP and the government over the use of dispersants on the water’s surface and deep underwater when oil was flowing unchecked out of the well. I fear that the chemicals used by BP may wind up being more of a long term problem than the oil. More will be said on this aspect of the disaster in a separate section of this issue.

Source: Associated Press

**BP AUDIT DETAILED RIG’S SAFETY FLAWS BEFORE DISASTER**

Many in the media seem to have forgotten that there are entities other than BP with legal responsibilities for the disaster. An internal audit conducted by BP PLC on the Deepwater Horizon oil rig detailed severe safety flaws months before the Gulf of Mexico oil spill. The audit details how the drilling rig, owned
by contractor Transocean, failed to fully comply with BP’s standards. Seven months before the April explosion, auditors found 390 maintenance tasks that were more than a month overdue on the rig. These included maintenance work on parts of the blowout preventer, the safety device atop the well that failed to trigger on the day of the accident.

BP and Transocean, each of whom should face heavy penalties, have disagreed on which company should take responsibility for the spill and have been pointing fingers at each other on a regular basis. For example, it was reported by the Associated Press on August 19th that Transocean was accusing BP of “withholding critical evidence” relating to the cause of the oil spill. It will be interesting and probably most revealing to see what BP has been hiding. The truth is both companies were at fault and contributed to cause the disaster in the Gulf. They must be made to pay for what they did.

Sources: Associated Press and The Sunday Times

**Transocean Had Safety Issue At Three Other Wells**

It should be noted that Transocean had widespread safety concerns about several of its other rigs in the Gulf before the April explosion. A month before the disaster, the company commissioned a broad review of the safety culture of the company’s North American operations, according to confidential internal reports. In response to “a series of serious accidents and near-hits within the global organization,” Transocean, the world’s largest offshore drilling company, commissioned Lloyd’s Register, a risk management company, to investigate its Houston headquarters and three other Gulf rigs besides the Deepwater Horizon to assess its safety culture. It’s abundantly clear from these reports that Transocean has had widespread safety issues.

Transocean has 14 rigs now operating in the Gulf of Mexico, and 139 worldwide. The new documents also shed light on one of the lingering mysteries of the disaster: “Why did the rig sink?” Apparently there were problems with the Deepwater Horizon’s ballast system that was responsible for keeping the rig afloat and stable. It’s being speculated by some that if the rig hadn’t sunk, the leak might not have occurred. Federal investigators have questioned whether deferred maintenance and other factors had played a role in the sinking of the rig. A previous set of worker-safety reports provided to The Times were specific to the Deepwater Horizon.

The safety concerns cited in the company’s assessment of its North American division are supplemented by newly-released internal reports concerning the Deepwater Horizon’s equipment. These equipment reports identify dozens of deficiencies, including some relating to the rig’s blowout preventer, and some that are categorized as “critical equipment items that may lead to loss of life, serious injury or environmental damage as a result of inadequate use and/or failure of equipment.”

The summary report should get the attention of those who say the federal government “over-regulates” the off-shore drilling operations. The report reads: “Without a doubt, previous incidents and near-hits experienced throughout the organization were a result of multiple causes and many contributory factors.” An overview is given in the report of the company’s North American Division and draws from investigations of Transocean’s Marianas, Discoverer Clear Leader, GSF Development Driller II and Deepwater Horizon drilling rigs.

But this is not the first report of the Deepwater Horizon experiencing problems with its ballast system. In May 2008, federal records show that Transocean was forced to evacuate more than 70 workers after problems with the ballast system flooded part of the rig, causing it to list to its side. It appears that a lack of hands-on experience for workers and managers has contributed to safety concerns at the company. The investigation also found a stifling bureaucracy imposed by onshore management has led to widespread resentment among rig workers.

These new documents obtained by The Times refer to at least 36 pieces of equipment in bad repair on the Deepwater Horizon that “may lead to loss of life, serious injury or environmental damage as a result of inadequate use and/or failure of equipment.” The new equipment documents indicate that an inspection of the Deepwater Horizon rig conducted just days before the April 20th accident found various problems with hydraulic relays that controlled the rig’s watertight doors, two of which had to be opened and closed by hand.

Source: New York Times

**British Press Turning The Tables On BP’s Victims**

I was shocked to learn that boat owners who have been devastated by the oil spill disaster are now being called “Spilionaires.” Well in fairness, it’s the British press—and not BP directly—that coined this phrase, saying that Bayou La Batre has become home to “a new breed of men known as the ‘Spilionaires.’” The press said the boat owners have “prospered hugely” from the “millions of pounds handed out by BP.” This is about the dumbest assessment of the effects of the oil spill disaster that I have heard so far. Everybody on the Gulf Coast, including fishermen and shrimpers, is in bad need of help. BP and its public relations blitz needs to back off and start telling the truth about what has happened on our Gulf Coast and what it really expects the future to be like.

**The Massive BP Cover-Up**

It appears that some of our elected officials, as well as many in the media, are buying BP’s claims that most of the oil spilled has miraculously vanished and that the disaster really isn’t so bad after all. The spin put out by BP’s public relations campaign since the April disaster in the Gulf, at a cost of about $100 million, seems to be working. But the truth is that BP and its partners have transformed themselves into modern-day “pirates,” operating beyond law or conscience. When BP announced that over 75% of the oil it had spilled into the Gulf had miraculously vanished, the federal government and many in the media appeared to accept it without question. Let’s take a look at what BP has said over the past months.

When the spill first became public, BP said only 1,000 barrels of oil were escaping. Then the oil giant changed its estimate to 5,000 barrels and then it suddenly stopped talking publicly about the massive volume of oil being released. We now learn that BP had internal docu-
ments that indicated it knew almost 60,000 barrels per day was being spilled into the Gulf.

Despite an ever-expanding estimate of the volume of the spill, relatively little oil washed ashore at first, and only a small portion ever will. Instead, trapped below the surface, the oil fouls the ocean’s deep depths. There is a toxic mix of oil, methane, chemical dispersants, and drilling mud below the surface of the Gulf. Nobody with walking around sense would believe that the threat from the oil spill is anywhere close to being under control. The relatively small amounts of oil washing ashore, and the “relief” felt when the surface oil began to dissipate, hardly account for the devastation being done at the bottom of the Gulf and in the waters below the surface. Recent reports by independent scientists indicate there are plumes of oil beneath the surface throughout the Gulf that are 20 miles long.

I have been surprised that many in the media have virtually ignored the chemicals used by BP. I believe the 2 million gallons of Corexit poured into the oil spill has created a calamity in the Gulf. The effects of the chemicals dumped in by BP won’t be known for years. The effect of the chemicals was to keep the oil about 50-100 feet below the surface where it couldn’t be accounted for. Then much of the oil sank to the bottom because of the chemicals. I am told by experts that the chemicals turn the oil and chemical mix into a neutrally buoyant emulsion, which will stay down deep and go anywhere and everywhere over time.

It’s difficult to understand how the EPA and Coast Guard could allow these misconceptions to exist and linger on. The lack of a plan by either BP or the government to deal with a massive spill of this sort is impossible to comprehend. Maybe somebody in authority should have asked BP why the United Kingdom banned Corexit. By the way, it should be noted that Corexit is owned indirectly by BP and Exxon. BP had to know that Corexit is hazardous to health. By its own internal reports, Corexit can cause red blood cell, liver, kidney and respiratory malfunctions or failure in humans and sea life.

III. DRUG MANUFACTURERS FRAUD LITIGATION

OTHER STATES SETTLING MEDICAID FRAUD CASES

As we have written in previous editions, our firm currently represents eight states, other than Alabama, in the Medicaid fraud litigation. Thus far we have settled claims in several of those states with a number of drug manufacturers. In fact, we are still being hired by states to represent them in their claims against the drug manufacturers. Some Alabamians might wonder why other states are being successful against the drug companies on facts virtually identical to those in Alabama. I must confess the very thought has crossed my mind.

Our Supreme Court has ruled in favor of several drug companies in cases with facts that were as strong as any case I have ever tried. Our Supreme Court’s decisions cost Alabama citizens hundreds of millions of dollars. Medicaid, even with the huge amount of federal funds being sent in from the Obama Administration, now has a short fall of about $64 million. The money from the state’s lawsuits would surely have come in handy.

POTENTIAL VIOLATIONS OF ANTI-BRIBERY LAWS BEING INVESTIGATED

Two federal agencies are probing drugmaker Merck to see if it has violated anti-bribery laws in multiple foreign countries. Merck, the world’s second-biggest drugmaker by revenue, has received inquiry letters from both the Department of Justice and the Securities and Exchange Commission. The letters “seek information about activities in a number of countries and reference the Foreign Corrupt Practices Act,” according to Merck. The Act bars U.S. companies from bribing government or corporate officials in other countries to win business, among other things.

Merck and most other large pharmaceutical companies for the past couple years have been in tough competition for sales in emerging markets including China, Russia, India and Brazil. Government health programs in such countries often control the prices allowed for prescription drugs and decide which brands they will buy for millions of hospital and other patients. It’s being reported that the drug industry views high-volume sales in emerging markets as its best hope for growth. Companies have been adding thousands of salespeople and building factories staffed by low-paid workers in those countries.

Merck has a history of trouble regarding promotion of its products. Our firm was heavily involved in the Vioxx litigation that resulted in Merck paying out $4.85 billion to settle roughly 50,000 lawsuits brought by patients or survivors of people who took the painkiller. As we know all too well, Merck downplayed Vioxx’s dangers and misled both the FDA and the public about Vioxx. We know that Vioxx actually doubled the risk of heart attacks and strokes, including fatal ones. Currently, Merck is operating under a Corporate Integrity Agreement with the U.S. government covering its promotional practices and price reporting. The agreement runs through February 2013 and is similar to two earlier, five-year corporate integrity agreements with the U.S. Department of Health and Human Services Office of Inspector General.

The agreements in general all require Merck and its Schering-Plough unit to maintain an ethics training program, as well as “policies and procedures governing promotional practices” and reporting of prices for its drugs to the Medicaid health program. Merck bought Schering-Plough for $41 billion last November.

Medicaid is entitled to the lowest discount Merck, or any drugmaker, gives to other customers, such as hospitals or prescription benefit managers. Major drugmakers have repeatedly been investigated for allegedly overcharging Medicaid by reporting inflated drug prices to the government. That’s resulted in numerous multimillion-dollar settlements paid by the pharmaceutical companies.

Source: USA Today

www.BeasleyAllen.com
IV.
PURELY POLITICAL
NEWS & VIEWS

A POLITICAL LOOK TOWARD THE FALL IN ALABAMA

The Governor’s Race

It appears there are two good candidates for the general election in the Governor’s race. From all accounts, both Ron Sparks and Robert Bentley fully intend to keep their commitments and run positive campaigns. If that happens—and I believe it will—candidates will discuss the real issues that face Alabama citizens. In comparing the platforms of the nominees for their respective parties, there don’t appear to be any major differences. Each is for creating good-paying jobs, improving public education at every level, dealing with the BP oil spill disaster and making sure that all responsible entities clean up the mess and compensate all of the victims promptly and fully. The next step, however, will be in providing solutions for all of Alabama’s many problems.

One major difference that I can see relates to the gambling issue that has taken far too much time and effort in the Legislative, Executive and Judicial branches of our state’s government over the past several years. Ron wants to allow the current gaming operations, properly regulate them and tax them. Dr. Bentley wants the voters to have an opportunity for an up or down vote on the gambling issue. I really don’t have a big problem with either position. I am convinced that most Alabamians want the public debate over gambling to end and the issue resolved one way or the other. Personally, I favor a vote on the issue so that our elected officials can get down to the business of running state government and tackling the monumental problems facing our state. My initial assessment is that we have two good candidates running in the general election for a change. The one who is able to communicate with the voters and give straight answers to direct questions will have a definite advantage. The public is looking for candidates who really believe what they say and who will act on those beliefs. We have had too many broken promises and ignoring problems over the years. Hopefully, those days are over.

The Lt. Governor’s Race

The race between Jim Folsom and Kay Ivey has been very quiet so far. This one will heat up after Labor Day and that’s a certainty. While Jim is one of the best campaigners around today, he realizes that he will have to work harder this fall. Many believe Jim may have to utilize his best asset—his wife Marsha—in this race. Marsha may actually be the best campaigner of the two. In any event, this race will get underway fairly soon. Jim Folsom has done an outstanding job as Lt. Governor and it will be interesting to see if the GOP will be able to find ways to attack him.

The Attorney General’s Race

The race for Attorney General this fall will have two very different candidates on the ballot in James Anderson and Luther Strange. On one hand, we have James, who has been a very successful lawyer and who has tried hundreds of cases before juries. On the other hand, Luther has been a Washington lobbyist who has had almost no trial experience. One significant thing to consider is that the GOP nominee won’t be able to label his opponent as a “trial lawyer” since James has worked for years as a very good defense lawyer and has had a long and successful career. Hopefully, this race will stay out of the gutter and the candidates will address real issues that affect the office of Attorney General.

The Legislative Races

The Republican Party is making plans to take over the Alabama Legislature. While I don’t believe that will happen, some of the races will be hotly contested this fall. Many political observers believe that the arrogance of the Republican Party leadership will eventually turn off independent voters who are sick and tired of negativity and attack-style politics. We have major problems in Alabama and it’s time to get down to the business of solving those problems. We have seen very little in the past that would indicate that the Republicans in the Legislature are capable of solving our state’s problems. These are the same Republicans who now say they want to take over and run the Legislature.

V.
COURT WATCH

Senate Confirms Elena Kagan As 112th Supreme Court Justice

The Senate on August 5th confirmed Elena Kagan as the 112th Justice and fourth woman to serve on the U.S. Supreme Court. The vote was 63-37 for the President’s nominee to succeed retired Justice John Paul Stevens. Five Republicans joined all but one Democrat and the Senate’s two independents to support the new member of the Court. It was reported that in a rarely-practiced ritual reserved for the most historic votes, Senators sat at their desks and stood to cast their votes with “ayes” and “nays.” This was a historic moment and one that I believe was good for the American people.

The naysayers in the Senate put up a pretty weak fight in their opposition to Justice Kagan. Partisan opposition—without any real basis for opposing a nominee—can never be good in my opinion. Yet that is exactly what we have seen in the last two Justices to be confirmed by the Senate. Some of the attacks on Elena Kagan were off-base, totally unfounded and reflected poorly on the attackers. I suspect their motives were more political than based on the nominee’s qualifications.

While Ms. Kagan is the first Supreme Court nominee in nearly 40 years with no experience as a judge, I predict that she will be an outstanding Justice. Her swearing-in marked the first time in history that three women are serving on the Court together. In my opinion that is a very good thing.

Source: Associated Press

Most Chief Justices In The South Are Female

Alabama Chief Justice Sue Bell Cobb was featured, along with her counterparts from Georgia and Florida, on the cover of the ABA Journal. An article in the Journal examined the growing number of female
judges leading state supreme courts. The magazine, published by the American Bar Association, reported the trend seemed prevalent in the South, where eight of 13 states have women serving as chief justice. Nationally, there are 20 states where a woman serves as chief justice, more than at any time in U.S. history. Chief Justice Cobb told the magazine:

_I ask people if they know how many women chief justices there are, and they answer two or three. When I tell them, they are shocked. But it really blows them away when I tell them how many there are of us in the South._

Overall, more women are becoming lawyers and judges, the Journal reported. Citing a recent report entitled "The American Bench: Judges of the Nation," the article stated women compose 26% of state judiciaries and 22% of the federal judiciary. Women now make up 48% of law school graduates and 45% of law firm associates, the article stated. I believe it's a healthy thing to have women not only serving on the courts, but holding positions of leadership.

Source: AL.com

---

_A Judge Who Did Justice And Shaped History_

The Honorable Frank M. Johnson, Jr. served with distinction as a federal judge in Montgomery. He was appointed as a district judge in 1955 by President Dwight Eisenhower. At that time, at age 37, he was the youngest federal judge in the country. Judge Johnson was a tremendous jurist who was instrumental in bringing about significant social and economic changes in this country. His distinguished career on the federal bench continued when President Jimmy Carter appointed the Winston County native to the Court of Appeals for the Fifth Circuit in 1979. Judge Johnson continued to serve on the federal bench until his death in 1995.

I can say without reservation that Judge Johnson helped make the promises of the Constitution a reality for all Americans. That is something, in my humble opinion, which made him a great man! Judge Johnson said when he was inducted in 1978 to the Academy of Achievement: "I wasn't hired to be a moral judge or a preacher or an evangelist. I'm hired to apply the law." I would encourage all of our readers—and especially those who weren't around during the period between 1955 and 1975—to do a little research and learn all you can about Judge Johnson's distinguished career and his many significant contributions to making our nation a better place for all of us.

---

**Appeals Court Upholds $65 Million Verdict For Woman In 2007 Crash**

A Florida Appeals Court has upheld a $65 million verdict for a woman injured in a 2007 traffic crash. Kendra Lymon, then 19, was driving her Dodge Neon back in 2007, when a tractor-trailer struck her car on a state highway. Before the crash, Ms. Lymon was attending South Florida Community College, majoring in psychology. She could speak six languages and was working as a residential aide for Florida Institute of Neurologic Rehabilitation. She was badly injured in the crash and was left with extensive disabilities. She was unable to care for herself. Her condition requires constant supervision.

During a normal day, Ms. Lymon requires assistance to bathe, to dress, to eat, to go to the bathroom and to do other routine tasks of daily living. She has trouble walking and uses a wheelchair. In March of 2009, a jury found in favor of Ms. Lymon and returned with the multi-million-dollar verdict. The lawyers for the defendants, Bynum Transport and its part-time truck driver, argued on appeal that the amount should be reduced because it was excessive and a new trial granted.

The appeal specifically challenged $41,443,401 being awarded for ‘pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of disease or physical defect, or loss of capacity for the enjoyment of life.’ But the Court of Appeal for the Second District affirmed the lower court’s decision and left the jury’s verdict of $65 million intact.

Isaac Ruiz-Carus, the Tampa lawyer who represented Ms. Lymon in the appeal, said the money will help to provide the 24-hour care that she needs to live. He did a very good job in her case.

Source: theledger.com

---

**VI. THE NATIONAL SCENE**

**COMPANY WARNED ABOUT OIL PIPELINE MONITORING**

While folks across the country have been preoccupied with the massive disaster on the Gulf Coast, and rightfully so, there was another oil spill crisis in Michigan. Enbridge, Inc., a Canadian company whose pipeline leaked hundreds of thousands of gallons of oil into a major Michigan river, was warned by government regulators in January that its monitoring of corrosion in the pipeline was insufficient. The U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration told Enbridge Energy Partners Chairman Terry McGill in a letter dated January 21, 2010 that its corrosion monitoring did not comply with federal regulations.

As a result of the Kalamazoo River spill, more than 1 million gallons of oil leaked from a pipeline into Talmadge Creek, which feeds the river. Enbridge estimated that 819,000 gallons spilled on July 26th before it could stop the leak. By July 28th the oil had traveled at least 35 miles downstream from where it leaked in Calhoun County’s Marshall Township, killing fish, coating other wildlife and emitting a strong, unpleasant odor. It had passed through Battle Creek, a city of 52,000 residents about 110 miles west of Detroit, and was headed toward Morrow Lake, a key point near a Superfund site upstream of Kalamazoo, the largest city in the region.

Enbridge-related companies have been cited several times in recent years for violations in the Great Lakes region. Houston-based Enbridge Energy Co., spilled almost 19,000 gallons of crude oil onto Wisconsin’s Nemadji River in 2003. Another 189,000 gallons of oil spilled at the company’s terminal two miles from Lake Superior, though most was contained. In 2007, two spills released about 200,000 gallons of crude in northern Wisconsin as Enbridge was expanding a 320-mile pipeline. The company also was accused of violating Wisconsin permits designed to protect water quality during work in and around wetlands, rivers and streams, the Wiscon-
The Michigan leak came from a 30-inch pipeline, which was built in 1969 and carries about 8 million gallons of oil daily from Griffith, Indiana, to Sarnia, Ontario. An 80-mile segment of the river that begins at Morrow Lake and five miles of a tributary, Portage Creek, have unsafe levels of PCBs and were placed on the federal Superfund list of high-priority hazardous waste sites in 1990. The Kalama-zoo site also includes four landfills and several defunct paper mills.

Source: Associated Press

AMERICANS BELIEVE THERE IS TOO MUCH INDECENCY ON TV

The American people should be outraged over what is being shown by both commercial and cable television networks and it appears they are. In the age of slick sitcoms, reality shows and cable television, 57% of American adults think there is too much inappropriate content on television and radio. A new Rasmussen Reports telephone survey finds that just 31% disagree, and another 12% are not sure. Thirty-nine percent (39%) say the biggest problem on TV is violence, while nearly as many (36%) say it’s sexual content. Nine percent (9%) say profanity is the biggest problem area.

Attitudes have changed somewhat in the last few years. In June 2007, Americans were very concerned with sexual content and profanity on television, but the concern with profanity seems to have waned. Americans are closely divided when asked who is responsible for the level of objectionable content on television, but they blame television viewers the most.

Twenty-nine percent (29%) feel those who watch programs with objectionable content are most responsible. Twenty-five percent (25%) say the makers of the television shows are primarily responsible, while another 25% hold the television networks chiefly to blame. Just 9% blame the advertisers of the programs.

Sixty-three percent (63%) of adults say they watch television every day or nearly every day. But only 8% say they rarely or never watch television. Older Americans watch television more regularly than those who are younger. Women and married adults are more likely than men and unmarrieds to think there is too much inappropriate content on television.

Those with children in the home are slightly more likely to think television has too much inappropriate content than those without children living with them. Just over half of African-Americans feel sexual content is the biggest problem on television, while whites and adults of other ethnicities tend to feel violence is the biggest problem. Americans are concerned about violent video games, too, with over half who say they lead to more violence in society. The survey of 1,000 adults was conducted on July 27-28, 2010 by Rasmussen Reports. Field work for all Rasmussen Reports surveys is conducted by Pulse Opinion Research, LLC.

Source: Parents Television Council

WE NEED A NEW COP ON THE OIL DRILLING BEAT

The Minerals Management Service (MMS)—the agency with responsibility for regulating oil drilling—has been totally ineffective and has to share some of the blame for the oil spill disaster in the Gulf of Mexico. In fact MMS, which now has a brand new name, has literally been in bed with the oil industry. Government investigators found that MMS regulators were partying and actually sleeping with oil company representatives. The failures to promulgate strong regulatory measures and to monitor and inspect the deep water drilling operations are inexcusable. BP, and I suspect all other companies drilling in the Gulf, have pretty much operated without any real regulation for years.

We badly need an entirely new regulator and it will take more than a name change. The regulators must be independent and willing to do the job of regulating a powerful industry. Local communities also must be given a role in ensuring the safety of oil drilling operations. But change is never easy when Big Oil is involved. The power and influence of the giant oil companies is vast and far reaching and, as a result, they have pretty much had their way in Washington. It’s evident that Big Oil’s lobbyists have ways of getting to public officials in all branches of government at both the state and federal levels. It’s time to curb their influence.

VII.
THE CORPORATE WORLD

TOBACCO COMPANIES PAY $30 MILLION IN BRIBERY SETTLEMENT

Two American tobacco companies are paying nearly $30 million to settle charges that they bribed foreign officials to get lucrative overseas tobacco sales contracts. The companies, Universal Corp. of Richmond, Virginia, and Alliance One International of Morrisville, North Carolina, face civil and criminal charges from the Securities and Exchange Commission and Justice Department.

Universal was accused of bribing officials in Thailand, Malawi and Mozambique. Alliance One is accused of bribing officials in Thailand, China, Greece, Indonesia, and Kyrgyzstan. To settle the charges, Alliance One has agreed to pay a criminal fine of $9.45 million and return $10 million in profits. Universal has agreed to pay a criminal fine of $4.4 million and return $4.5 million in profits.

Universal says it will use an independent corporate monitor to look over its accounting practices and will change or take up new policies as needed. It was reported that the Justice Department won’t prosecute Universal if it follows terms of an agreement between the Department and the company for the next three years.

Source: CBS News

VIII
CONGRESSIONAL UPDATE

THE AWESOME POWER OF LOBBYISTS MUST BE CURBED

Much has been said in the Report in previous issues about how powerful cor
porate lobbyists are in our Nation’s Capitol. A recent poll by SurveyUSA about corporate influence over our democracy shows that voters want their leaders to stand up on this critical issue. Here’s what the pollsters found:

An overwhelming 73% of voters, including 67% of Republicans and 71% of independents, are more likely to support a candidate for Congress who works to reduce the influence of corporate lobbyists in Washington. And almost two out of three voters (60%) disagree with the Supreme Court’s decision in the Citizens United case.

There is an ongoing movement by Public Citizen to get Congressional candidates to make a pledge to reduce the influence of lobbyists in our Nation’s Capitol. So far, over 475,000 people have endorsed the Fight Washington Corruption pledge. If you agree with Public Citizen on this issue, ask your Congressional candidates to sign this pledge.

It could be the most important issue in Congressional races this fall.

Source: Public Citizen

CONGRESS SHOULD REJECT TAX CUTS FOR THE RICH

Treasury Secretary Timothy Geithner is catching lots of flack these days from the National Republican Party. Secretary Geithner says extending tax cuts for the wealthiest Americans—families making more than $250,000 annually—would be a mistake and would cost the country $700 billion over the next decade. He believes that Congress should allow tax cuts for the wealthiest households to expire on schedule at the end of the year. But the Secretary believes the tax cuts provided to the 95% of households making less than $250,000 annually should be extended.

Republicans are calling for all of the Bush Administration tax cuts passed in 2001 and 2003 to be extended. This sets up a big Congressional battle over the fate of the tax cuts in coming months. I agree with Secretary Geithner that it makes no sense to give huge tax cuts to the rich. With our economy still struggling to right itself, the tax cuts will only make things worse. The rich already get enough tax breaks, but that’s another story for another day.

The taxpayers who really need tax-cuts are those persons making less than $250,000 annually. Unfortunately, folks in that income range don’t have highly-paid and influential lobbyists working for them in our Nation’s Capitol. So they must depend on support from around the country—not from Washington. If you agree with Secretary Geithner on this issue, let your House members and Senators in Washington know how you feel.

Source: Associated Press

CAPS ON PAYDAY LOANS ARE NEEDED

It appears that the sweeping oversight reform of the country’s financial industry is missing a key component that would have protected low-income consumers. At least that’s the opinion of Steven Stetson, a policy analyst for Alabama Arise, an advocacy organization for the poor, based in Montgomery. As we all know, President Obama has signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law. It’s the biggest overhaul of the financial industry since the Great Depression and one that was badly needed. If there are any problems with the Act, Congress has a duty to correct them without undue delay.

Alabama Arise is correct. At least one major change is needed. Missing from the law are stricter interest rate limits and caps on the number of payday loans consumers are allowed each year. Mr. Stetson had this to say about the problem:

As the economy limps along, people resort to payday loans to pay their bills when they run short of money and don’t think about the interest they pay over the long term. We see the loans as threats to family stability that are enriching big businesses. These are big contributors but they present themselves as small mom and pop operations that loan money to a single mother who needs to fix her car to get to work.

There was a great deal of intense lobbying by the special interest groups as the reform package made its way through the legislative process. Alabama Arise believes that folks who want payday loan reform need to make a stronger case with lawmakers and also do a better job of educating consumers. While there may be a place for quick loans to bail consumers out of a tight spot for a short time, the problems come when consumers can’t pay back the loans when due and have to roll them over. A new borrowing cycle with more interest added on the previous one can result in interest rates as high as 400%, according to Alabama Arise. The resulting vicious cycle is why reform advocates push for more regulation.

Clearly, the payday lending industry has done a better job of making its case with lawmakers.

Consumer advocate Jean Ann Fox, testifying in hearings before Congress on the issue for the Consumer Federation of America, said the average payday loan rolls over eight to 12 times. She says that averaged annually, the interest rate is close to 400%. The effectiveness of the payday loan industry lobby means there is more work to do, not only in Washington, but also in Montgomery. Bills to tighten payday lending also have run into roadblocks in the Alabama Legislature. Our state should study reforms made in some nearby states, including Arkansas, Georgia and North Carolina. Alabama’s leaders need to take a strong stand and do whatever is necessary to regulate the payday lending industry in our state. We can’t expect to get much done in Washington, it appears.

Source: Timesdaily.com

FEDERAL JOBS BILL WILL PROVIDE NEEDED FUNDS TO ALABAMA SCHOOLS AND FOR MEDICAID

The $26 billion jobs bill passed by Congress and signed into law by President Obama last month will provide $133 million for Alabama’s Medicaid program and $149 million for public schools. The $149 million can be used to hire teachers and support workers in Alabama’s public schools. Interestingly, State Finance Director Bill Newton says the new state budget taking effect October 1st had been based on getting $197 million for Medicaid, which means adjustments must be made due to less available money. Fortunately, the state education budget had not counted on the $149 million. The extra money must be used for salaries and ben-
efits in K-12 schools during the school year just now beginning. Clearly, the federal money again came at a very good time. I don’t believe the state will send the money back—even though it came from Washington.
Source: Associated Press

IX.
TOYOTA
LITIGATION

It’s now evident that Toyota’s safety problems are much worse than first thought. The initial assessment when the unintended sudden acceleration problems first surfaced was bad enough, but it’s now become evident that the company has been hiding its safety problems from the public and also from the federal government. Some of Toyota’s biggest problems are just coming to the surface. The tremendous number of recalls and the information coming to light about what Toyota knew and when it knew it should be of major concern to NHTSA and to the American people. Hopefully, Toyota’s massive public relations campaign—utilizing both television and newspaper ads—won’t cause the public to give the automaker a pass on safety.

TOYOTA CONCEALED ACCELERATION
DEFECTS

A recently-filed lawsuit alleges that Toyota knew about the sudden acceleration problems in its vehicles as far back as 2003, but concealed the defects from consumers and regulators. It is alleged that the Japanese automaker has gotten tens of thousands of complaints from consumers who say their cars suddenly speed out of control. The suit alleges that the electronic throttle is a cause of this unintended acceleration, and says that rather than disclosing the concern, Toyota “concealed the existence of this defect.” Internal documents revealed that Toyota also received evidence that the likelihood of unintended acceleration increase “substantially” in cars with electronic throttle systems.

The lawsuit, which is seeking class-action status in the U.S. District Court in California, seeks to represent consumers and businesses that bought or leased Toyota vehicles manufactured in the U.S. That have an electronic throttle control system. Toyota has admitted that two mechanical issues cause sudden unintended acceleration:

- a “sticky pedal,” which is an accelerator that gets stuck half way down, and
- the gas pedal getting stuck on thick floor mats.

Nevertheless, Toyota continues to defend the electronic throttle. The Plaintiffs contend in this case that Toyota should be held responsible for the drop in resale value in cars that are afflicted with this problem and that consumers and businesses should be allowed to return their defective cars to Toyota.

“Toyota rejects claims that Plaintiffs suffered economic damages because of the recent recalls,” the company said. It’s also requested that Toyota install a brake over-ride system in all cars with an electronic safety throttle and also pay a fine.

Internal Toyota documents reveal that some at the company were aware as far back as 2003 of the problem of unintended acceleration in cars the company made. In a revised Complaint against the automaker filed on August 2nd in U.S. District Court in California, the Plaintiffs’ attorneys say that in a 2003 field report a company technician wrote up a case of sudden, unintended acceleration. The author of this report requested immediate action due to the “extremely dangerous problem;” and said “we are also much afraid of frequency of this problem in near future.”

Sources: Washington Post and CNN

FLOOR MAT SAID TO HAVE CAUSED CRASH

A wrongful death lawsuit has been filed against Toyota Motor Corp. And a Toyota dealership arising out of a December car crash. It was alleged in the Complaint that the death of Jeffery Levine was the result of a faulty accelerator and floor mat. The suit accuses the company of intentional misconduct and negligence in connection with the crash and resulting death that occurred on December 17, 2009.

Mr. Levine, who has two children, was coming home from work at 5:30 a.m. northbound on U.S. 95 when the gas pedal of his 2009 Toyota Tacoma, a company vehicle, became lodged beneath the truck’s floor mat. The vehicle then accelerated to speeds exceeding 90 mph, slammed into the back of a motor home and veered off the highway. Mr. Levine died at the scene. His body’s position suggested he was trying to dislodge the accelerator.

Mrs. Kim Levine, the widow, is seeking unspecified compensation for the emotional trauma experienced by her and the couple’s two sons, and the economic loss resulting from her husband’s death. The two boys, ages six and 13, are struggling to cope with the loss of their father. The strain on Mrs. Levine’s schedule as a single parent has affected her ability to work as a skin care specialist.

Toyota delayed extending a factory recall to the United States in 2009—focused on gas pedals and floor mats—that already was taking place in Europe. Mrs. Levine said her husband had the truck serviced at Findlay Toyota about a month before his death. The lawsuit alleges the dealership was aware of the possible risk and the recall in Europe, and inspected the floor mat and gas pedal, but made no mention of the problem to Mr. Levine. The recall reached the U.S. About a month after this death and listed 2005-2010 Toyota Tacomas. Toyota President Akio Toyoda apologized to Congress in February for the defects, which have been tied to 38 lawsuits against the company.

Source: Las Vegas Sun

MAN JAILED OVER TOYOTA CRASH IS FRED

Koua Fong Lee, the 32-year-old Minnesota man who was jailed after the Toyota he was driving was involved in a fatal crash, has been released from prison. He has served over two years on his sentence. The judge who presided over the man’s criminal trial ruled that the case should get a retrial after new evidence came to light. The county prosecutor has since said that Fong Lee will not face any further charges. The accident occurred in 2006 when the car Lee was driving hit a vehicle as he left the St. Paul freeway. Three people in the car died. Mr. Lee always insisted that he tried to brake, but his case didn’t get reviewed until it

began public knowledge that Toyota was facing acceleration problems with a number of its later models.

Mr. Lee was charged and convicted of criminal vehicular homicide and received an eight-year sentence. The family of the three people killed in the accident came out in favor of Lee’s efforts to be granted a new trial. Toyota’s safety problems obviously played a major role in Mr. Lee being released from prison. When you consider how the accident occurred, it’s clear that the Toyota vehicle had some type of problem. Mr. Lee’s lawyer, Brent Schafer, had this to say:

*This never seemed right. A man with his family in the car—his pregnant wife—goes on a suicide mission? Then, the recalls started, and the complaints sounded just like what happened to Mr. Lee. It sounds just like a case of unintended acceleration.*

It’s very sad that an innocent man was not only charged with vehicular homicide, but that he served time in prison. For years, Toyota has successfully blamed victims for causing sudden accelerations that resulted in crashes. This is one example and it cost a man two years of his life.

Source: DigitalJournal.com

**WIDOW OF HIGHWAY PATROL TROOPER SUES FORD MOTOR CO.**

The widow of a Florida Highway Patrol trooper who died in a fiery crash on a Florida Turnpike has filed a wrongful death lawsuit against Ford Motor Co. And others. The officer, Patrick Ambroise, 35, died when his parked Ford Crown Victoria cruiser was rear-ended and burst into flames on May 15th. According to the lawsuit, Ford negligentely sells poorly-designed vehicles with improperly placed gas tanks that are prone to rupture and explode in rear-end collisions. The widow and her two young daughters are seeking unspecified damages in the lawsuit.

A number of law enforcement officers have been killed in these Ford vehicles. This was a tragedy, made all the worse because it was preventable. Also named in the suit are the driver and owner of the Lexus that, according to the lawsuit, veered onto the shoulder and slammed full speed into the back of the trooper's parked cruiser. The lawsuit was filed last month in Miami-Dade Circuit Court.

Source: Miami Herald

**MORE ESCALATOR INJURIES TO CHILDREN**

Every day in retail stores, malls, airports and vacation spots across America, children are exposed to unnecessary dangers while riding defectively designed and poorly maintained escalators. Our firm is currently investigating a case that involves a four-year-old child who suffered serious hand injuries on an escalator while on vacation in Washington, D.C. The victim was on a vacation trip with her family and they were using an escalator to exit a Metro Station as they began their day sightseeing. Although her mother was holding her hand, as they began to ride up the escalator the child apparently stumbled and instinctively put her hand down to steady herself. Unfortunately, the defective escalator caught her hand and trapped it, resulting in severe lacerations. This child and her family have suffered greatly as a result of this incident and will continue to do so as she adjusts and undergoes future medical procedures.

Unfortunately, because our firm has handled many of these cases before, our lawyers are aware that this was not an isolated incident. Experts in the escalator and elevator business have testified that there are approximately 8,000 serious escalator-related injuries reported each year. Incredibly, they also state that 18 to 20 deaths are caused each year by defective escalators. Our research and experience has shown that escalator manufacturers are aware of the dangers but in many cases have taken no action to make their products safer.

In fact, several manufacturers have had to pay significant jury verdicts because of injuries that could have been prevented. Amazingly, according to a Washington Examiner news article reporting on our client’s incident, Washington Metro experiences an average of 10.8 injuries on its escalators each month.

Although adults are occasionally injured, the overwhelming majority of escalator injuries are inflicted upon children. Parents should never allow unsupervised children to ride on or play around an escalator, but this tragic incident underscores the fact that even close parental supervision cannot prevent an injury caused by such a dangerous device. If you want additional information, contact Mike Andrews, a lawyer in our Personal Injury Section, at 800-898-2034 or by email at Michael.Andrews@beasleyallen.com.

Source: Associated Press

---

**X. PRODUCT LIABILITY UPDATE**

**SAFETY ADMINISTRATION QUESTIONS STEERING PROBLEMS IN 2010 KIA SOUL**

The National Highway Traffic Safety Administration has opened an investigation into possible loss of steering control in the 2010 Kia Soul. The agency said that it has received one complaint alleging complete steering loss. The complaint said the steering shaft also interfered with the driver’s ability to hit the brakes. NHTSA says it is “very concerned” about the incident because the vehicle was only two months old and had low mileage. The preliminary investigation covers more than 50,000 vehicles. We will monitor this situation closely.

Source: Associated Press

---

**VISSOX SETTLEMENT PROGRAM WRAPS UP**

Last month at the monthly MDL status conference, the conclusion of the Vioxx Settlement Program was announced. Judge Fallon highlighted the efficiency and timeliness of this remarkable achievement. The enormity of the achievement is revealed in the numbers. The settlement program was available to 58,022 potentially eligible Claimants, of which 99.9% chose to participate in the voluntary settlement program. For eligible Claimants, proof of Vioxx usage records and medical records were submitted as a claims package and individually evaluated according to objective criteria, such as:

www.BeasleyAllen.com
age at the time of the heart attack, stroke or sudden cardiac death; length of stay in the hospital; type of procedure (e.g., stent, bypass surgery); and risk factors. Claims package material was received electronically or by hard copy. In the claims process, 598,830 records were received for evaluation.

To ensure correctness and fairness, several layers of review were built into the settlement process. Initially claims were reviewed by Brown Greer, the court-appointed Claims Administrator. Then, another layer of review was provided by the Gates Committee, which was comprised of Plaintiff representatives and Merck representatives. Finally, a third layer of review by a court-appointed Special Master was available, at a Claimant’s request. After all claims were evaluated to ensure that all legitimate claims were paid, 33,075 Claimants received compensation for a Vioxx-related injury.

The settlement agreement was signed and announced on November 9, 2007. In less than one year, initial payments began. In less than two years, all payments from the $4 billion heart attack fund were made. Approximately two and one-half years from the announcement of the settlement, all payments were completed including heart attack claims, stroke claims and extraordinary injury claims. In sum, the $4.85 billion settlement program provided payments to over 33,000 Claimants in less than three years!

Many much smaller settlement programs have taken as much as three times longer to get victims’ claims paid. The efficiency and fairness of this litigation and settlement program should serve as a model for future mass torts cases. While it is tragic to anticipate future cases where thousands of victims will suffer injury or death as result of a dangerous drug, medical device or other product, this is the unfortunate reality that we face. Until it is no longer profitable for companies to ignore or downplay safety signals, we will continue have tragic cases such as Vioxx. Our firm will continue to fight for victims, seek to hold companies accountable, and obtain reasonable compensation for injuries.

**Paxil Lawsuits Settled By Glaxo**

GlaxoSmithKline P.L.C. has agreed to pay $1 billion to settle more than 800 cases involving the antidepressant Paxil. The company had previously set aside $2.4 billion to settle pending and expected lawsuits over its drugs Paxil and Avandia. The settlements leave more than 100 cases pending on claims that the antidepressant Paxil caused birth defects in some users’ children. Hundreds of the Paxil cases were filed in Philadelphia. GlaxoSmithKline, based in the United Kingdom, has major operations in the United States. Avandia is, of course, a diabetes drug that has faced intense scrutiny at the FDA.

There are still about 100 Paxil birth defect cases still pending in the U.S. courts. The settlements have averaged in excess of $1.2 million for each family that brought a lawsuit against the manufacturer for alleged heart defects and other side effects suffered by their children. In October, a jury in Philadelphia ordered the drug manufacturer to pay $2.5 million to settle a claim that Paxil caused severe heart defects in a three-year-old boy.

Sources: Philly.com and LawyersandSettlements.com

**Former Prempro Scientist Working on A Safer Alternative**

Bionovo, Inc. has announced the appointment of Dr. James Pickar to the company’s medical advisory board. Until Pfizer’s recent takeover of Wyeth, Dr. Pickar was Wyeth’s head of Prempro science and research. Dr. Pickar says he is excited to join Bionovo where he will be working on Menerba, a drug claimed to be a safer alternative to Prempro which has been linked to breast cancer.

When I last wrote on the subject of Hormone Therapy, our firm was preparing to try the case of Pauline Lescinski v. Wyeth, along with two other cases—Buxton and Henry—who were represented by other law firms. I am pleased to report the parties reached a resolution of the Lescinski case. Unfortunately for Ms. Buxton and Ms. Henry, their cases went to trial and ended in a Defense verdict on the question of whether Prempro caused their breast cancers. This is quite surprising as we hear that their attorneys did a very good job of putting on their cases and even elicited testimony from none other than Dr. Pickar who admitted, under oath, that Prempro promotes breast cancer by making it “bigger” and “worse.” The Buxton and Henry attorneys have said the verdict was against the weight of the evidence and they will be seeking a new trial.

So far, juries have found in favor of Plaintiffs in 11 of 16 Hormone Therapy trials with compensatory awards averaging about $5 million. This is not surprising given the seriousness of the injuries in these cases. Also, punitive awards are averaging around $30 million. Again, this too is not surprising, given evidence showing Wyeth’s callous indifference to the safety and welfare of women.

Philadelphia Judge Sandra Moss has recently ordered that, starting in December, at least one consolidated trial will commence each month. Our firm represents the four women who will have their cases heard in December 2010. We look forward to the opportunity of presenting their cases to jurors. If you need additional information on this subject, contact Ted Meadows, a lawyer in our firm’s Mass Torts Section, at 1-800-898-2034 or Ted.Meadows@beasleyallen.com. Ted is our firm’s lead lawyer in the HT Litigation.

**Levetiracetum—Generic Keppra Litigation**

We continue to receive reports from folks who have suffered breakthrough seizures after being switched from the name brand antiepileptic drug Keppra to generic levetiracetum. Because most health plans encourage the use of generic drugs over higher cost name brand drugs, and most states allow pharmacies to substitute generic drugs for name brand drugs if the generic is considered equivalent, many patients whose seizures are well-controlled on Keppra are being switched to generic levetiracetum unaware of the considerable risks of breakthrough seizures. For those individuals who have been seizure free on Keppra, the results can be devastating—lost jobs and revoked drivers’ licenses. Individuals in remission for long periods are especially at risk as they are more likely to be engaged in potentially dangerous activities such as driving a car or operating machinery. Deaths resulting from breakthrough seizures have already been reported.
In contrast to FDA regulations for new drug applications (NDAs), which require submission of clinical trials and a description and analysis of any other data or information relevant to an evaluation of the safety and effectiveness of the drug, the regulations for abbreviated new drug applications (ANDAs), the process required for generic equivalents, only require that the submission include information that shows that the generic is bioequivalent to the name brand drug. However, generic drugs are pharmaceutical equivalents only with respect to their active ingredients, and current regulations allow for up to a 20% variation in the bioavailability of the drug once ingested. The binders, diluents, and fillers in the formulation of the drug, as well as the method of manufacture, vary from brand name to generic to generic.

Numerous medical studies have reported the dire consequences of switching epilepsy patients from name brand drugs to generics. The American Epilepsy Society issued a Position Statement in 2007 opposing the substitution of antiepileptic drugs without patient and physician approval. Unfortunately, the generic manufacturers of levetiracetum are not warning patients that their products are not identical to the name brand Keppra, and the dire consequences seen in the past with switching epileptic patients from name brand to generic are now being seen with Keppra, the most recent drug to have gone off patent. Our patients from name brand to generic are now being seen with Keppra, the most brand Keppra, and the dire consequences ingested. The binders, diluents, and fillers in the formulation of the drug, as well as the method of manufacture, vary from brand name to generic to generic.

and physician approval. Unfortunately, at Roger.Smith@beasleyallen.com if you contact Roger Smith, a lawyer in our Mass Keppra to generic levetiracetum. Please contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com if you have any questions.

AstraZeneca settles Seroquel suits for $198 million

Pharmaceutical company AstraZeneca will pay about $198 million to settle over 17,000 lawsuits filed by individuals who developed diabetes after taking the atypical antipsychotic drug Seroquel. As you may know, Seroquel is used to treat schizophrenia and bipolar disorders. The settlements are the result of court-ordered mediation. In March, AstraZeneca won the first trial over Seroquel when a New Jersey court held that the company properly warned a veteran’s doctors about the drug’s diabetes risk. AstraZeneca had previously paid $520 million to the federal government in April and has paid over $50 million to settle almost 6,000 civil cases. Source: Lawyers USA Online

FDA warns of brain problem with Glaxo seizure drug

Federal health regulators are warning doctors and patients that Lamictal, an anti-seizure drug from GlaxoSmithKline PLC, can cause rare inflammation of the brain and spinal cord. The Food and Drug Administration said on August 12th that it is working with the British drugmaker Glaxo to add new warnings and labeling information to the drug.

The FDA said it has received reports of 40 cases of aseptic meningitis between 1994, when Lamictal was approved, and last November. Thirty-five patients needed to be hospitalized, the agency said in a statement. Aseptic meningitis is a dangerous inflammation of the brain and spinal cord that can cause headache, fever, chills and vomiting. The symptoms usually emerged within the first six weeks of treatment. The problem can be caused by viruses, toxins and certain medications. Treatment for the illness, which usually resolves itself in two weeks, generally involves pain medications.

Lamictal is part of the anti-seizure family of medications. The drug, which had sales of $778 million last year, is also approved by the FDA to treat manic depression. GlaxoSmithKline says it will add language about the risk to a medication guide distributed to patients. Even though the company says aseptic meningitis is a “very rarely reported event,” it is a very serious illness. We will continue to monitor this situation.

Source: Associated Press

XII.
BUSINESS LITIGATION

Ocean spray files suit against competitor

Ocean Spray Cranberries Inc. has filed a lawsuit in U.S. District Court in Boston claiming the company is the victim of a deceitful campaign by rival Decas Cranberry Products Inc. Ocean Spray, the largest cranberry manufacturer, says it generated $2 billion in sales in 2009. At the heart of the suit are allegations involving a website, www.scamberry.org, and various social media tools that Ocean Spray contends are part of a surreptitious smear campaign orchestrated by Decas to hurt Ocean Spray’s business relationships and dealings. Both companies are based in Massachusetts.

The “Scamberry” campaign contends that Ocean Spray is harming the cranberry industry by using fewer berries to make its “Choice” sweetened dried cranberry product, which the company introduced in March 2009 as a lower-cost alternative to its other offerings in the same category. Ocean Spray claims the “Scamberry” concept first emerged in June when Decas hired Boston-based InkHouse Media + Marketing to develop a “false and misleading social media campaign.” Ocean Spray alleges that hiring InkHouse to launch a “Scamberry” website was a ploy by Decas to hide its role in the campaign.

After InkHouse said it would stop doing work for Decas, Ocean Spray claims, Decas announced that it had launched a new “Scamberry” site on July 22nd. Ocean Spray claims that Decas purposely hid its involvement in related online activities, including the creation of a fictitious Facebook identity to publish “Scamberry” information under the guise of consumer advocacy, according to the Complaint.

The suit is the second in nearly two years between the two companies. In 2008 Ocean Spray filed a patent infringement suit against Decas. Decas responded by countersuing. Those actions are pending. Decas denies that it has done anything wrong and says that Ocean

www.BeasleyAllen.com
Countrywide Financial Corp. has agreed to pay $600 million in the largest settlement so far of shareholder lawsuits arising out of the mortgage meltdown. The agreement, given preliminary approval on August 2nd by a federal judge in Los Angeles, would end several class actions brought on behalf of investors in Countrywide stock. Countrywide, once the nation’s largest mortgage lender, offered a full range of loans to customers whose credit varied from top flight to subprime. It was near failure when Bank of America Corp. Acquired it in 2008. Countrywide had fraudulently concealed its mounting risks as it and other lenders embraced ever-looser standards during the housing boom.

Countrywide’s outside accounting firm, KPMG, which signed off on the lender’s financial statements at the height of the boom in 2005 and 2006, has also agreed to pay an additional $24 million under the settlement. The settlement actually benefits a number of former Countrywide executives and directors who were also named as Defendants in the litigation and who won’t have to help fund the payments to shareholders. The settlement also would clear the liability of a list of financial firms that underwrote the Countrywide stock offerings and were named as Defendants. The settlement was the result of long mediation by my good friend Eric Green, a Boston University law professor, and A. Howard Matz, a federal district judge in Los Angeles. This is the largest settlement of any shareholder case to come out of the subprime crisis this far.

It should be noted that the settlement doesn’t cover investments in mortgage-backed securities sold by Countrywide. The company also is still defending several other lawsuits and investigations, including a Securities and Exchange Commission civil lawsuit accusing Countrywide officers of misleading investors. Countrywide and Angeles Mozilo, longtime CEO, also are under criminal investigation by the Justice Department and are targets of lawsuits brought on behalf of borrowers by the Attorneys General of California and other states. I’m not sure how many individual investors will benefit from the pending settlement. If the court gives final approval at a hearing in November, payments should go out within six months to a year. Joel H. Bernstein, a lawyer with the firm of Labaton Sucharow, located in New York City, represented the New York state and city pension funds that were the lead Plaintiffs in the case. He and his firm did an outstanding job in this case.

Citigroup to Pay $75 Million to Settle SEC Charges

Citigroup, one of the nation’s largest banks, has agreed to pay $75 million to settle a Securities and Exchange Commission complaint that it misled investors about $40 billion of its holdings in subprime mortgage investments that sent the bank to the edge of collapse. After its $550 million settlement with Goldman Sachs, the SEC’s settlement with Citigroup represents a third major Wall Street institution this year agreeing to regulatory sanctions for behavior that was at the core of the financial crisis. As you may recall, Citigroup received one of the largest taxpayer bailouts. On August 16th, the trial judge in the case told Citigroup’s lawyers more justification was needed before the settlement would be approved. That may pose a problem for this settlement.

The settlement also marks the first time a major Wall Street bank has faced regulatory punishment from the SEC for hiding from investors its exposure to the subprime mortgage market. The SEC complaint named two senior Citigroup executives—former chief financial officer Gary L. Crittenden and former investor relations head Arthur Tildesley—and alleged that the two officers concealed important information from investors in regulatory disclosures in the second and third quarters of 2007. Crittenden agreed to pay $100,000 and Tildesley agreed to pay $80,000. As a matter of interest, previous complaints against major financial firms had failed to charge high-level executives. This may be a significant development. If so, it could have a good effect.

The design of the Citigroup settlement is very much like the case brought against Bank of America last year. It was settled earlier this year for $150 million. In that case, Bank of America was accused of concealing from investors details of mounting losses at Merrill Lynch, the investment bank it acquired in the fall of 2008, and billions of dollars in bonuses paid to Merrill Lynch employees.

In 2007 and 2008, Citigroup suddenly reported billions of dollars of losses tied to its investments in sub-prime mortgage-backed securities. According to the SEC, Citigroup responded in summer and fall 2007 to requests by investors for information about its exposure to the sub-prime mortgage market. The SEC said that Citigroup told investors on at least four occasions that its exposure in its investment banking unit was $13 billion or less, when it was actually $50 billion, including earnings calls and periodic financial filings overseen by Crittenden and Tildesley.

The SEC says that $13 billion figure omitted the super senior tranches of “collateralized debt obligations” and “liquidity puts,” both investments whose value rose and fell with that of the housing market. This was despite the fact that internal documents describing the investment bank’s subprime exposure explicitly included these investments. Citigroup ultimately disclosed that these investments were losing value in November 2007.

It’s apparent that companies such as Citigroup, Goldman, and Bank of America played fast and loose with the SEC and investors. Hopefully, those days are over—but we will see! For now, it will be interesting to see what the judge does with Citigroup’s proposed settlement. I won’t be surprised if it fails to be approved.

Source: Washington Post

XIII.
AN UPDATE ON SECURITIES LITIGATION

Countrywide Settles Shareholder Lawsuits For $600 Million

Source: Law.com

Citigroup To Pay $75 Million To Settle SEC Charges

Source: Los Angeles Times

Citigroup, Goldman, and Bank of America played fast and loose with the SEC and investors. Hopefully, those days are over—but we will see! For now, it will be interesting to see what the judge does with Citigroup’s proposed settlement. I won’t be surprised if it fails to be approved.

Source: Washington Post

**XIV. INSURANCE AND FINANCE UPDATE**

**The SEC Continues To Investigate Morgan Keegan**

The Securities and Exchange Commission’s Enforcement Division has launched a second probe of Morgan Keegan regarding proprietary bond funds. This subsequent investigation began just a week after the SEC in April started a high-profile administrative proceeding against Morgan Keegan’s asset management unit and two of its senior employees, accusing them of fraudulently overstating the value of certain mortgage-backed securities. Morgan Keegan, which is contesting the SEC’s charges, complained to an administrative law judge that, among other things, the SEC’s case would continue to evolve if there was a supplementary investigation, forcing them “to shoot at a moving target” while working on the SEC’s already strict time limits.

The SEC was not ordered to stop its second investigation into Morgan Keegan. Instead, the judge ordered them to call off this investigation from the initial case, prohibiting lawyers or staff from working on both cases. The initial case is slated to get underway in September. The judge did allow the staff to share documents and transcripts from the second investigation with the staff preparing the initial case, provided that they grant Morgan Keegan simultaneous access to the same information.

Despite these restrictions it is doubtful the SEC will give up its second probe. It appears that Morgan Keegan may be forced to answer two rounds of charges from the SEC. This is good news for damaged investors who are desperate for restitution of their lost savings. If you need more information on this subject or on the Morgan Keegan litigation, contact Scarlette Tuley, a lawyer handling this litigation for our firm, at 800-898-2034 or by email at Scarlette.Tuley@beasleyallen.com.

**MetLife And Prudential Face Probe Over Soldiers’ Death Benefits**

In a most significant happening recently, New York’s Attorney General subpoenaed MetLife Inc. And Prudential Financial Inc. As part of a probe into whether life insurers are defrauding families of deceased military personnel. The investigation is looking into the companies’ siphoning off millions of dollars of death benefits for themselves. Attorney General Andrew Cuomo, had this to say in a statement:

*It is shocking and plain wrong for these multinational life insurance companies to pocket hundreds of millions in profits that really belong to those who have lost family members and have already suffered immensely.*

These subpoenas of the largest U.S. life insurers came one day after the U.S. Department of Veterans Affairs said in a published report that it had begun its own investigation into the issue. Prudential has confirmed that it is in talks with the Department. At issue is whether the insurers, rather than paying out lump sums to military families upon the deaths of policyholders, instead would keep money in potentially risky accounts they controlled, known as “retained-asset accounts.” Low yields on these accounts would be paid to surviving families. That certainly seems like a bad practice and one that badly hurts the intended beneficiaries but benefits the companies.

The insurers reportedly earned upward of 4.8% annually on these accounts, but paid families interest as low as 0.5%. That would be less than the rates the families could have received from their local banks. To make matters worse, the insurers’ accounts are not guaranteed by the Federal Deposit Insurance Corp. The settlement documents describe significant benefits that participants will have in their 401k plan going forward. The payout will come from insurance, and will be deposited into the 401k accounts after costs and fees are deducted. As part of the settlement, General Dynamics agreed to use an outside consultant to review parts of the 401k plans and “enhanced disclosure” of fees and expenses for the accounts, among other agreements.

The settlement bars FAMCO from recommending itself as investment manager for the accounts or recommending investment into accounts it manages. At press time, the settlement still required approval of a number of parties, including a federal judge and a representative of the account holders. A hearing in federal court in East St. Louis was held on August 9th to begin that process.

FAMCO was founded in 1994 by pension fund managers at General Dynamics. In 2007, the company was purchased by Piper Jaffray Cos., a Minneapolis investment banking firm. Jerome J. Schlichter represented the plan participants and did a very good job.

Source: StLToday.com

**Class Action Lawsuit Over 401K Plans Settled For $15 Million**

A class-action lawsuit that alleged that tens of thousands of participants in two General Dynamics 401K plans were charged excessive fees has been tentatively settled for $15.15 million. The lawsuit, representing current and retired employees who participated in the plans, was originally filed in federal court in 2006 against General Dynamics Corp. And Fiduciary Asset Management LLC of Clayton (FAMCO), as well as against executives of both companies.

The suit alleges, among other things, that billions of dollars worth of 401k business was handed to FAMCO without a competitive bidding process and that costs and fees for plan participants were inflated. In addition to the money, the settlement documents describe significant benefits that participants will have in their 401k plan going forward. The payout will come from insurance, and will be deposited into the 401k accounts after costs and fees are deducted. As part of the settlement, General Dynamics agreed to use an outside consultant to review parts of the 401k plans and “enhanced disclosure” of fees and expenses for the accounts, among other agreements.

The settlement bars FAMCO from recommending itself as investment manager for the accounts or recommending investment into accounts it manages. At press time, the settlement still required approval of a number of parties, including a federal judge and a representative of the account holders. A hearing in federal court in East St. Louis was held on August 9th to begin that process.

FAMCO was founded in 1994 by pension fund managers at General Dynamics. In 2007, the company was purchased by Piper Jaffray Cos., a Minneapolis investment banking firm. Jerome J. Schlichter represented the plan participants and did a very good job.

Source: StLToday.com

---

www.BeasleyAllen.com
Wells Fargo Fined $200 Million

In the latest of bad and embarrassing news for the big banks, Wells Fargo & Co. has been ordered to pay more than $200 million for manipulating and multiplying overdraft fees. U.S. District Court Judge William Alsup, sitting in Northern California, found that Wells Fargo used “a bookkeeping device” that turned one instance of overdrawn into as many as ten, allowing the bank to multiply the number of fees it could collect from a single mistake. Judge Alsup heard the case without a jury. There have been several federal decisions that have put overdrafts—a huge source of revenue for most banks—into harsh focus. Wells Fargo, like many other banks, routinely processes a customer’s largest purchases first, rather than running each transaction in the order in which it occurred. Judge Alsup ruled that by doing so, Wells Fargo unfairly created situations in which a customer could be charged up to ten overdraft fees of $35 for going over the limit by only a few dollars.

Judge Alsup wrote further that “the bank went to considerable effort to hide these manipulations while constructing a facade of phony disclosure.” The ruling is a fraction of the $1.8 billion in overdraft fees that the bank collected in California from 2005 to 2007. Overall, the banking industry makes up to $38 billion a year in overdraft fees, according to the Federal Reserve. Finally, Judge Alsup wrote:

Internal bank memos and emails leave no doubt that, overdraft revenue being a big profit center, the bank’s dominant, indeed sole, motive was to maximize the number of overdrafts and squeeze as much as possible out of [customers].

In spite of the judge’s ruling, Wells Fargo still claims its “method of processing transactions has been appropriate and consistent with customer’s interests and the laws and rules of governing regulatory authorities.” With a show of typical corporate arrogance, the bank announced it had “no intention of changing the way that it processes transactions.” That’s most disappointing, but not a total surprise. Wells Fargo is very powerful and politically influential.

Sources: American Banking and Market News

XV.
EMPLOYMENT AND FLSA LITIGATION

Caterpillar Settles ERISA Class Action For $16.5 Million

Caterpillar, Inc. has reached a $16.5 million settlement with employees. The parties have asked for court approval of the settlement. The U.S. District Court for the Middle District of Tennessee had granted class certification to retired employees and a surviving spouse of a retired employee seeking enforcement of the employer’s alleged promise to pay lifetime retiree health benefits at no cost. Caterpillar Inc., was sued, alleging that the company breached its promise to pay lifetime health benefits at no cost to its retirees and their spouses. Caterpillar had identified 4,480 potential class members. Source: Allbusiness.com

XVI.
PREDATORY LENDING

Some Answers On Predatory Lending

I have been asked by lots of folks to explain exactly what is meant by the term “predatory lending.” I suspect some of our readers may be asking the same question. Simply put, predatory lending is a term used to describe unfair and abusive loan terms placed on borrowers. Unfair or abusive loan terms or conditions are sometimes achieved through aggressive sales tactics. On all too many occasions, banks and other lenders take advantage of a borrower’s lack of understanding of very complicated terms. Also, loans or unfair loan terms are sometimes imposed on a borrower through deception, misrepresentation or fraud. Predatory loans can turn the dream of homeownership into a nightmare. Regrettably, many predatory loans result in default and foreclosure.

The impact on the victims of predatory lending usually leads to money or home loss. The injury inflicted on victims by predatory lenders is underscored by the fact that predatory lenders often target poor, minority and elderly individuals where better standard loans may not be as readily available to them. Unfortunately, predatory lending may result in default, foreclosure (foreclosure is a judicial process by which borrowers may lose their property), financial loss, and other serious economic and emotional injury to borrowers and their families. The following are 12 questions to ask that could be signs of possible predatory lending:

- Did any lender promise you one set of terms and give you another?
- Did any lender tell you to sign incomplete or blank forms?
- Did any lender falsely information on a loan application?
- Were you pressured into accepting monthly payments you cannot afford?
- Were you told it is not important to read the fine print?
- Were you told you cannot have documents you signed?
- Were you not told your interest rate may go up?
- Were you not told about fees?
- Were you solicited through mail, telephone or door to door?
- Were you promised loan approval regardless of credit?
- Were you rushed to sign papers before you were ready?
- Were you offered unwanted services such as life or health insurance?

If you have any questions about predatory lending or feel that you might have been a victim of predatory lending, you can contact Bill Robertson, a lawyer in our firm’s Consumer Fraud Section. Bill, who handles predatory lending claims, can be reached at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com.

Sources: Allbusiness.com
$150 Million Settlement by New Century

Thirteen former officers and directors of New Century Financial Corp., the largest publicly-held lender that focused on subprime mortgages, have agreed to pay more than $90 million to settle claims arising out of the company's collapse. Nearly all the payments will be made by insurers under policies bought to protect New Century's officers and directors. In addition, KPMG has agreed to pay nearly $45 million to settle claims related to New Century, whose books the accounting firm also audited. Wall Street firms that underwrote New Century stock will pay $15 million toward the settlement, bringing the total to be paid to more than $150 million. The New Century agreement, which requires federal court approval, will cover shareholder class actions, a Securities and Exchange Commission lawsuit, a bankruptcy trustee’s claim, and a suit by a private equity firm.

The Federal Reserve Changes The Rules

The Federal Reserve Board has announced final rules to protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan originator compensation practices. The new rules apply to mortgage brokers and the companies that employ them, as well as mortgage loan officers employed by depository institutions and other lenders. Since we haven’t had a chance to really study the new rules in any detail, I will defer writing on them until next month. The final rules are effective April 1, 2011.

Source: Federal Reserve News Release

XVII.
PREMISES LIABILITY UPDATE

$34 Million Awarded In Carbon Monoxide Poisoning Lawsuit

A Baltimore jury has awarded nearly $34 million to 20 restaurant workers who suffered carbon-monoxide poisoning in early 2008. In addition, another $500,000 was awarded to the spouses of three of the workers. The owner and operator of the downtown waterfront hotel where the Plaintiffs worked conceded responsibility at trial for the leak at a Ruth's Chris Steak House. But their lawyer said the Plaintiffs should only receive “fair and reasonable compensation” for “temporary” symptoms.

The jury found hotel owner TPOB Pier Five LLC and operator Meyer Jabara Hotels LLC each liable for negligence and creating an intentional public nuisance. It also found the operator liable for battery, which is an intentional tort. The trial judge had thrown out claims for punitive damages at the end of the Plaintiffs' case before the jury got the case.

The damages to each Plaintiff ranged from about $11,000 to $1 million for future medical expenses; from zero to $1.147 million for future lost earnings; and from $285,000 to $3.75 million for pain and suffering. Three spouses of the Plaintiffs were also awarded damages for injuries to their marital relationship, $385,000 for one couple and $75,000 for the other two. The damages will not be capped because they were based on intentional torts.

It was contended that the Defendants' hot-water boilers spewed exhaust into the Ruth’s Chris property and that it could have been prevented if the hotel walls had been properly sealed or a required safety interlock system had been in place. The other Defendants sued Ruth's Chris, but that case was dismissed. According to the Plaintiffs, firefighters detected carbon monoxide levels of nearly 700 parts per million—several times the 100 parts per million that compels building evacuation. William H. Murphy and Mary V. McNamara-Koch, both Baltimore lawyers, represented the Plaintiffs. They did a very good job.

Source: Denver Post

Sports Bar Settles Wrongful Death Lawsuit

A sports bar in Austell, Georgia, has agreed to pay $1 million to the widow of a 36-year-old man killed by a patron who drove while intoxicated. The Sports Grill agreed to a settlement in the wrongful death lawsuit after a Cobb County judge sanctioned the bar for destroying four hours of videotape that showed the patron drinking at the facility.
Cuneyt Erturk, a Turkish immigrant, was driving home from a local Domino’s Pizza where he worked as a night manager on Oct. 25, 2008 when he was struck and killed by a car driven by the drunk driver. His widow filed a lawsuit claiming that staff members overserved the patron when they should have known he would drive home. The parties reached a settlement on July 15th.

The trial judge sanctioned the bar in May for destroying over four hours of videotape that might have proved the Plaintiff’s case. The judge also found evidence that The Sports Grill destroyed the tabs for two customers who were at the bar with the drunken driver and the “spill sheet” that recorded complimentary drinks to patrons that night. The court’s order read in part:

*It is particularly disturbing that The Sports Bar would permit the destruction of the subject evidence after it became aware that a patron to whom it bad been serving alcohol was involved in a fatal crash after leaving its premises.*

The judge sanctioned The Sports Grill by restricting its lawyers from introducing any evidence to contradict the claim that bartenders served alcohol to the patron while he was already drunk. The drunk driver is awaiting trial on charges of driving without headlights, driving under the influence of drugs and alcohol and first-degree vehicular homicide. Lloyd Bell, an Atlanta lawyer, represented the Plaintiff and did a very good job.

Source: Atlanta Journal Constitution

**South Carolina Court Upholds $10 Million Award Against Bar**

The South Carolina Supreme Court has affirmed a $10 million jury award against a bar and its owners for selling alcohol to an intoxicated man who later, while driving his car, crashed and injured a man and his father. Under South Carolina law, liquor stores, bars and their owners may be liable for injuries caused by a patron they “knew or should have known” was intoxicated even if the customer does not appear drunk.

Source: Insurance Journal

**Lawsuit Filed Over Texas Refinery’s Toxic Discharge**

A lawsuit has been filed against BP in Texas involving the people of Texas City. As has been reported, BP leaked toxic fumes into the community. The lawsuit filed in federal court is over an equipment malfunction at BP’s Texas City refinery that released roughly 500,000 pounds of pollutants—including high levels of benzene—into the air between April 6th and May 16th. The lawsuit, which seeks $10 billion in damages, was filed last month in the Southern District of Texas on behalf of refinery workers and residents who claim that BP did not inform city officials of the “scale of the release” until after it was over. About 2,200 people are part of the lawsuit. The Plaintiffs include contract workers who were at the refinery and residents who live within a mile of the refinery. Another 4,000 persons could be added as Plaintiffs in the lawsuit. The lawsuit was filed in the federal court in Galveston.

The Plaintiffs have experienced “the typical exposure symptoms, sinus and eye issues, coughing, feeling nauseous, feeling lethargic—all the common benzene exposure symptoms.” According to BP’s filings with state regulators, about 17,000 pounds of benzene were released—about 400 pounds a day. Benzene has been linked to some forms of cancer, according to U.S. Health and Human Services records.

BP maintains the emissions did not harm the community. It has been estimated that the number of people affected could be about one-fourth of Texas City’s population. BP estimated 37,519 pounds of nitrogen oxides, 17,000 pounds of benzene, 189,000 pounds of carbon monoxide, 61,000 pounds of propane, 34,645 pounds of isobutane and about 160,840 pounds of other emissions were released between April 6th and May 16th. The daily release of benzene was 40 times the state allowable levels.

The Texas Commission on Environmental Quality issued a report on August 4th finding a pattern of poor operation and maintenance practices at BP’s Texas City refinery. The findings were released after the commission investigated the 46-day release of toxic chemicals from the plant this spring—the same release that is the subject of this lawsuit. The commission delivered its findings to Texas Attorney General Gregg Abbott after concluding that BP’s violations are “egregious.” Tom Kelley, a spokesman for the Attorney General’s office, stated:

*Since we first received the referral from the TCEQ, we have been working diligently to prepare an enforcement action against BP The Texas Attorney General’s Office will take all necessary action to hold BP accountable for additional unauthorized emissions at its Texas City facility.*

The Attorney General’s office is looking into 77 air quality violations at the refinery. BP’s Texas City oil refinery—the third largest in the country—has been the subject of a number of lawsuits and investigations over the years. In March 2005, an explosion at the refinery—the highest-profile BP disaster before the Deepwater Horizon drilling rig explosion—left 15 people dead and 170 injured.

BP was fined $50 million for violating the Clean Air Act over the accident, and last year the Occupational Safety and Health Administration fined the company an additional $87 million—four times greater than any other OSHA fine—for uncorrected safety hazards. Four years of private litigation in state court ended in confidential settlements in 2006 and 2007 for the families of those killed and for those who were injured. More recently, in December 2009, a federal jury in Galveston, Texas, awarded $100.3 million to ten workers who became ill after being exposed to toxic fumes at BP’s Texas City plant in 2007.

Anthony Buzbee, a Houston lawyer, represents the Plaintiff in the recently-filed civil lawsuit. This case will be followed closely for a number of reasons. It will give us even more insight into BP’s sorry safety record.

Sources: Law.com and Galveston Daily News

**Wrongful Death Lawsuit Filed Over Fire at Gas Pump**

A lawsuit has been filed against Toyota Motor Corp., BP America Inc. And others, claiming their actions contributed to a March fire at a gasoline pump that killed a young man. The wrongful-death and product liability action filed in Philadelphia by Lisa Rickenbach claims that
defects in the gas pumps and the Toyota vehicle, a Yaris that her son, Luther David Byers, was driving, contributed to his death.

It’s also alleged that the gas station in a Harrisburg, Penn. suburb should not have been operating without an attendant on duty. The fire occurred at about 3 a.m. The coroner says that the 19-year-old Harrisburg, Penn. suburb should not have been operating without an attendant on duty. The fire was sparked by static electricity. There is security camera footage of the fire which should help clarify exactly what happened.

Among the other 13 Defendants are entities associated with Toyota and BP, the gas station franchisee and the company that manufactured the gas pump nozzle. The victim, who planned on a career in law enforcement, had been working at FedEx. Stewart Eisenberg, a lawyer with Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C., located in Pennsylvania, who represented the Plaintiff, had this to say:

*There have been hundreds of similar fires in the United States. The oil and gas industry, and the automotive industry, are well aware of this phenomenon that’s been going on for many years. It’s certainly something that they know about and they don’t warn people about or warn them sufficiently.*

Our firm has handled several lawsuits involving deaths and serious injuries resulting from fires caused by defective gasoline pumps. But we have never had a case where an automobile was also a contributing factor in a fire. It will be interesting to see how this case develops.

Source: Associated Press

**XVIII. WORKPLACE HAZARDS**

**WORKERS MUST BE PROTECTED IN THE WORKPLACE**

On average, 14 American workers are killed on the job each day. They are killed by explosions, trench cave-ins, electrocutions, falls, suffocations, fires, poisonings, mangling and the list goes on. Another 50,000 die each year from cancers, black lung, and other diseases caused by their jobs. Sadly, a tremendous percentage of these deaths are preventable. But it will take proper equipment, work rules, and solid regulatory enforcement to improve safety in the workplace. Workplace safety has to be made a top priority for the employers and that is not always the case in some companies. Taking shortcuts on worker safety and health has become all too common in some board rooms in Corporate America.

Profits over safety may make a company’s bottom line look good for a while, but that will eventually catch up with them. A prime example is BP and the disaster in the Gulf. The 11 lives lost back in April have pretty much fallen off the nightly news. This is because of all the other problems caused by the massive oil spill that followed the explosion that killed the employees on the rig. It must be remembered that it was lax safety at the rig that caused these deaths. The bottom line is that workers must be protected regardless of their workplace.

**BP TO PAY $50.6 MILLION FOR TEXAS SAFETY LAPSING**

British oil giant BP PLC will pay a $50.6 million fine for failing to fix safety hazards at its Texas City, Texas, oil refinery after an explosion in 2005. BP will have to spend $500 million for safety improvements at the facility. BP also agreed to establish a liaison between its directors and the Occupational Safety and Health Administration, which enforces U.S. workplace-safety laws. OSHA said the arrangement was a first for the agency.

BP agreed to hold regular meetings with OSHA officials, allow frequent site inspections and submit quarterly reports for OSHA’s review. The agreement is said to represent an “unprecedented level of oversight of BP’s safety program.” BP and the Labor Department are still discussing how to resolve about $31 million of remaining fines proposed for subsequent violations found at the refinery, where 15 workers were killed in the explosion. This settlement resolves 270 of the 709 citations OSHA issued in October 2009.

OSHA also identified 439 new violations that led to additional penalties of nearly $31 million. Those are the penalties that are still under discussion. OSHA’s inspectors expressed anger that many of the problems identified during the investigation concerned pressure-relief systems—equipment whose failure had contributed to the 2005 blast. BP contested the citations and spent months negotiating with OSHA on the fines. BP and OSHA are now discussing settlement of the nearly $31 million in fines.

Remember, this is the same BP that is telling folks on the Gulf Coast to “trust” the company to “do the right thing” by them. I certainly don’t trust BP and neither should anybody who deals with them.

Source: Wall Street Journal

**OSHA ISSUES $16 MILLION FINE IN POWER PLANT EXPLOSION**

OSHA has levied $16.6 million in fines against companies involved in a power plant blast that killed six workers and injured 50 others. The fines, the third-highest imposed for a single accident, stem from 371 alleged safety and workplace violations at the Kleen Energy Systems natural gas power plant in Middletown, Conn. The companies “blatantly disregarded well-known and accepted industry procedures and their own safety guidelines,” the U.S. Occupational Safety and Health Administration said in announcing the fines on August 5th. U.S. Labor Secretary Hilda Solis had this to say concerning the fines:

*They simply and tragically refused to use common sense. The deaths and injuries could have been prevented had the companies placed safety first.*

The under-construction facility exploded February 7th when something ignited natural gas and air that had accumulated in tight quarters during a “gas blow,” a procedure in which high-pressure gas is forced through pipes to clean them. The ignition source hasn’t been identified, but welders were working nearby and gas and diesel heaters were left running during the gas blow on that chilly Sunday. OSHA officials said this defies safety rules and common sense.

The largest proposed fine levied in the case is $8.3 million against O&G Indus-
tries of Torrington, the general contractor. Keystone Construction & Maintenance of Rowley, Massachusetts, which oversaw the gas blow, was fined almost $6.7 million. Sixteen other companies also face potential fines, ranging from $7,000 against several small contractors to more than $896,000 against Bluewater Energy Solutions of Acworth, Georgia, which was supposed to oversee the safety and training for the gas blow. Keystone and O&G Industries said in separate statements that they will contest the proposed citations, and that they strongly disagreed with OSHA’s conclusions.

The fines represent the third-largest total imposed by OSHA for a single accident; the first two were both against oil giant BP for a 2005 explosion that killed 15 workers at a Texas refinery. OSHA officials said that the large companies involved in the construction project were rushing to complete the plant and that some of the companies stood to collect millions of dollars in bonuses for an early finish. The rush was not specifically pinpointed as the cause of the ill-fated gas blow, but according to Secretary Solis some victims’ family members raised concerns about it when she talked with them. In this regard, she observed:

They were alluding to the fact that (the workers) were exhausted and that they were overworked, and there wasn’t a good explanation except to hurry up with the work. In some instances, I was led to believe that safety may not have been the highest priority.

OSHA is also sending warning letters about the dangers of gas blows to companies involved in the 125 gas-fired turbine power plants currently planned or under construction, according to OSHA head David Michaels. OSHA can’t immediately ban the procedure permanently, according to Mr. Michaels, because it would take years to change federal standards that govern those workplace practices. An emergency ban could only last for six months—and only if OSHA could show that a moratorium is the only option.

Most experts agree that gas blows can be performed safely, but only if done correctly. When they aren’t done properly, tragic consequences can result. OSHA hopes the warning letter and publicity about fines in the Kleen Energy case motivate other power plant builders to use safer pipe-cleaning procedures. Workplace safety groups say air or nitrogen would be safer than natural gas. The U.S. Chemical Safety and Hazard Investigation Board, which also reviewed this blast, said gas blows are inherently unsafe and has urged companies to use other practices.

Civil lawsuits are being filed for ten injured and deceased workers against those responsible for the blast.

Source: Associated Press

JURY AWARDS $3.7 MILLION TO FORMER BNSF WORKER

A man who worked for BNSF Railway for nearly 30 years has been awarded $3.7 million in damages by a Yellowstone County, Mont. jury. The 72-year-old Plaintiff, Edward Roger Jolley, received the verdict last month after a week-long trial. Mr. Jolley suffers from chronic lung disease caused by years of inhaling diesel fumes, silicone dust and asbestos while working as a BNSF engineer. He was diagnosed with pulmonary fibrosis in 2006, and is on oxygen to help him breathe. His condition is chronic and progressive and will result in his death.

Mr. Jolley began work with the railroad company in 1970 and retired in 1999 after working mostly as an engineer. The damage award is believed to be the largest against BNSF by a Montana jury. It was reported that in 2007, a former BNSF engineer who suffered injuries to his back and neck was awarded $1.7 million in damages by a Billings, Mont. jury.

In Mr. Jolley’s case the jury found that BNSF was negligent and had violated federal regulations regarding the maintenance and operations of locomotives. The jury said the negligence and violations caused Jolley’s injuries. Testimony at the trial included medical experts who said heavy metals, silicone dust, and asbestos particles were found during microscopic biopsies of the Plaintiff’s lung tissue. Diesel fumes contain thousands of irritants, including heavy metals such as those found in the man’s lungs. The silicone dust probably came from sand used by the railroad on the tracks, and the asbestos from locomotive brake shoes and thermal wrap tape. Fred Bremseth, a Minnesota lawyer who specializes in rail-

road injury cases, represented Mr. Jolley and did a very good job.

Source: Billings Gazette

MASSEY CITED FOR FAILING TO REPORT MINE ACCIDENTS

Government investigators have cited Massey Energy for failing to report more than 20 accidents at its Upper Big Branch coal mine in the two years before an April explosion killed 29 miners there, according to documents released by the Mine Safety and Health Administration. Just four of the alleged violations directly involve the explosion. The rest occurred between January 2008 and early this year. Among other things, they involve unreported roof collapses, assorted injuries and two instances of miners exercising their right to move out of dusty areas of the mine because they’ve contracted black lung disease. Massey operates dozens of coal mines in West Virginia, Kentucky and Virginia.

Source: Wall Street Journal

XIX.

TRANSPORTATION

SUIT FILED IN JET CRASH IN HOUSE THAT KILLED FOUR PE0

Four people, including two infants, were killed on December 8, 2008, when a Marine Corps jet crashed onto a home. A lawsuit has been filed against the government and Boeing. Plaintiffs allege in the lawsuit that the United States violated many of its own policies and procedures for maintaining and operating the aircraft. Plaintiffs also allege that defects in the fuel systems, which were designed and manufactured by Boeing, led to the crash. The Complaint, filed in San Diego federal court, alleges that the Boeing F/A-18D Hornet “had a history of warnings and system failures” known to the government and manufacturer.

The Complaint states that the Plaintiff’s wife, Youngmi Lee Yoon, 36; his daughters Grace Yoon, age 15 months, and newborn Rachel Yoon; and his mother-in-law, Seokim Kim, 59, were “burned alive and perished” when a “disabled, out of control” jet crashed into the Yoon family
their minivan. The driver of the truck had stopped at a traffic light in Columbia City, set this vehicle on cruise control and then watched her daughter die. The driver, wrecked vehicle while her adult daughter—once hired—be kept as a driver. Kenneth Allen, an Indiana lawyer, represented Mrs. Rhenwick and did a very good job.

Source: NWI.com

**MAN SUES AIRPORT OVER CROSSING WALK DEATH OF HIS WIFE**

The husband of a woman who was killed in a crosswalk at the Salt Lake City International Airport is suing the city and airport administration, claiming leaders ignored an airport employee who warned them of the dangers of the cross-walks. Patricia Jordan was walking toward the car rental area when she was hit by a car and killed. The wrongful death lawsuit is based on the driver’s negligence and the airport officials’ “ignoring a dangerous traffic situation.” The Complaint alleges that “Salt Lake City and Salt Lake City International Airport were expressly warned of this danger before Jordan’s accident and chose to ignore this warning.”

Source: SLTRIB.com

**JURY AWARDS $2.1 MILLION TO CRASH VICTIM WHO SAW HER DAUGHTER DIE**

An Indiana jury awarded $2.1 million to a mother who was trapped in a wrecked vehicle while her adult daughter died next to her. Mattie Rhenwick, an 85-year-old Gary, Ind. resident, was stopped at a traffic light in Columbia City, Indiana, with her daughter, Jacquelyn Gates, when a semitrailer smashed into their minivan. The driver of the truck had set his vehicle on cruise control and then slammed into the van at 60 mph.

Mrs. Rhenwick was stuck in the wreckage with a fractured leg and watched her daughter die. The driver, who worked for Schneider National Inc., had a history of panicked stops and driving violations. Schneider should have realized the driver would inevitably cause a serious wreck, yet the company allowed him to drive company trucks. Trucking companies large and small have a duty to monitor their high-risk drivers and should never run the risk of putting a bad driver on the roadways. Neither should a bad driver—once hired—be kept as a driver. Kenneth Allen, an Indiana lawyer, represented Mrs. Rhenwick and did a very good job.

Source: NWI.com

**NEW LOOK AT SCHOOL BUS SEAT BELTS AFTER CRASH**

The National Transportation Safety Board has been investigating the horrific interstate crash in Missouri that killed a 15-year-old girl on a school bus and the driver of another vehicle. Investigators are trying to determine what factors may have caused the wreck and how to prevent similar accidents, NTSB Vice Chairman Christopher Hart had this to say about one aspect of the investigation:

“We’ve been interested for some time in school bus safety. We’re also interested in construction zone safety.

The accident happened on August 5th on an interstate highway about 40 miles from St. Louis. A truck slowed for road construction and was struck by a GMC pickup. Two buses carrying high school band students then crashed into that wreck, killing a 15-year-old student and the driver of another vehicle.

Among other issues, the NTSB will examine whether seat belts on the bus could have prevented injuries or deaths. Investigators will also consider the possible benefits of accident-avoidance technology for vehicles such as school buses that would provide some warning to drivers about impending slowdowns and would apply brakes automatically. Although every state has laws requiring seat belts or restraints for children in passenger cars, only six states (New York, New Jersey, California, Florida, Louisiana and Texas) have laws requiring lap or three-point seat belts on large school buses.

In some cases only newly-purchased or recently manufactured buses fall within the requirement. In Louisiana and Texas, seatbelts are only required if school districts can get funding for them. Current federal standards on school bus safety from the National Highway Traffic Safety Administration only require three-point belts on smaller school buses (those weighing less than 10,000 pounds).

In Missouri, where the deadly crash occurred, seat belts are not required in large school buses, but are recommended if school districts can obtain funding. Whether the buses in the crash had seat belts is not known. According to a 2006 study in the journal Pediatrics, there were, on average, 17,000 school bus-related injuries treated in U.S. emergency rooms annually from 2001 to 2003, with motor vehicle crashes accounting for 42.3% of them. A 2009 report by the Transportation Research Board of the National Academies states that data from 1991-1999 indicates that, on average, five children are killed each year while riding in a school bus; 15 more pedestrian children are killed annually in school bus-related accidents.

Source: CBS News

**TEEN DRIVER SAFETY PROGRAM IN ALABAMA**

The Alabama Department of Public Health started a campaign last month designed to inform people about risky behaviors that can lead to fatal crashes for teen drivers. Richard Burleson, director of the Alabama Child Death Review System, made the announcement of the program. Distracted driving, not wearing seatbelts, and driving under the influence of drugs or alcohol are the three targets of the campaign. Most Alabamians are shocked to learn that our state currently has the second highest per capita rate of teen driver fatalities in the nation.

A recent study backs up a need to push for bans on the use of cell phones and texting while driving. More than 1,400 wrecks involving drivers distracted by cell phones and other electronic devices have been reported in Alabama in the past 13 months. Those numbers, collected by the University of Alabama’s Center for Advanced Public Safety, are the first look into the statewide effects of dis-

www.BeasleyAllen.com
tracted driving. Drivers can be distracted by anything from eating behind the wheel or arguing with a passenger to changing the radio. While the 1,466 wrecks account for a fraction of the state’s crashes, the Alabama Department of Economic and Community Affairs—which has a traffic safety program—warns that the number paints an incomplete picture.

The UAB Transportation Center has completed a year-long study examining the risks of teens driving distracted. The study put young drivers behind the wheel of a driving simulator and had them talk on the phone and text while virtual drivers slammed on their brakes, and simulated pedestrians ran into the street. Results of the study was to have been compiled by the end of August.

We must all recognize that younger drivers have grown up with cell phones and started sending and reading text messages long before they learned to drive. As a result, the youngsters mistakenly believe they can safely use handheld devices while driving. It took a while to convince folks—both young and old—that they need to wear seat belts. Public education and the passage of laws were able to change that perception. The same can happen relating to the issue of distracted drinking. I believe it’s critically important and hope all of our readers do too.

Source: AL.com

MONTGOMERY APPROVES DISTRACTED DRIVING ORDINANCE

The City of Montgomery has passed an ordinance making hand-held cell phone use, including texting, while driving a secondary criminal offense. The City Council’s approach mirrors what the state did years ago with seatbelts. Initially, failing to wear a seatbelt was a secondary offense, but now it is a violation. A police officer can pull someone over simply for not wearing a seatbelt.

A driver will have to violate one of the “rules of the road,” such as running a stop sign while texting or holding a phone to talk, before the driver can be cited for distracted driving. The City Council passed the ordinance with a 6-1 vote after weeks of tough debate on this matter. Based on studies and our firm’s experience in litigation, I am convinced that talking on a cell phone and texting while driving a motor vehicle are major distractions. City Council Vice President Tracy Larkin, who sponsored the ordinance, said the Council’s decision was a “historic opportunity” to send a “clear statement about the importance of public safety.” I agree with Tracy, who had this to say about the measure passed:

There is no question as to whether this is the most common-sense issue before us today: Distracted driving, and texting while driving in particular, is a practice that we need to curtail and we need to do it immediately before any other lives are lost.

Like all other misdemeanor offenses, a police officer would have to witness the act before he or she could issue a citation for it. The punishment for violating the new ordinance is as follows: the first violation will be punishable by a fine of up to $50 or imprisonment in the city jail for ten days or less; a second violation will be punishable by a fine of up to $100 or imprisonment in the city jail for ten days or less; a third or subsequent violation within a 12-month period will be punishable by a fine of up to $500 or imprisonment in the city jail for three months or less.

The new ordinance is coupled with an educational/public relations campaign that is intended to motivate people to make the personal decision to change their cell phone habits while driving. Signs, stickers and billboards carrying the City’s message will start appearing before the year is over, according to Mayor Todd Strange. The mayor and City Council members—and especially Tracey Larkin—should be commended for taking this important first step.

Source: Montgomery Advertiser

XX.
NURSING HOME UPDATE

JURY AWARDS $114 MILLION IN NURSING HOME LAWSUIT

A Florida jury handed down a $114 million verdict recently in a nursing home abuse case that resulted in an elderly woman’s death. It’s believed to be one of the largest verdicts ever in Polk County. The family of Juanita Jackson, a 76-year-old homemaker and mother of four, had to place her in a nursing home for rehabilitation in March 2003. Their plan was for Mrs. Jackson to regain her strength at IHS of Florida at Auburndale (now known as Auburndale Oaks Healthcare Center) so her children could resume caring for her at home. But that was not to be.

Trans Healthcare, Inc. And Trans Healthcare Management operated the nursing home at the time of Jackson’s residency. During that period, the company also operated more than 200 nursing homes in 22 states and was the largest private nursing home chain in the United States.

The nursing home staff knew when Mrs. Jackson was admitted that she was at risk for falls, but they did not put proper preventative measures in place. Within two weeks of her admission, they allowed her to fall. It was a catastrophic injury. She suffered a closed head trauma and fractured her upper arm. She never fully recovered from her injuries and became more dependent on the nursing home staff than ever before. Moreover, the nursing home was chronically short-staffed with overworked employees. As a result, patients including Mrs. Juanita Jackson suffered. The nursing home staff didn’t turn her enough or elevate her heels to prevent the development of bedsores. She got multiple bedsores, including at least one that rotted to the bone. She wasn’t given enough to eat and drink, causing her to become malnourished and dehydrated. Mrs. Jackson was also overmedicated during her stay. She was left to lie in bed so long that she developed contractures, where the muscles shrivel up, making movement even more difficult.

Mrs. Jackson’s family removed her from the nursing home on May 30, 2003, but it
was too late. Her health continued to deteriorate, and she died on July 6, 2003. During the trial, the jury heard from former caregivers, including a staffing coordinator, a certified nurse’s assistant and a nurse. All of them testified that the home maintained terrible conditions, such as not enough staff or supplies, and that the patients suffered as a result. Jurors also heard testimony from a doctor and a medical expert about how Mrs. Jackson’s terrible injuries resulted from the poor treatment and led to her death. Blair Mendes and Lance Reins, lawyers with Wilkes & McHugh, a Tampa, Fla. law firm, represented the family in this case. The lawyers did a very good job and Blair had this to say:

*We hope this verdict will send a message to nursing home operators, especially big corporations, that it is not acceptable to put profits before people. Nursing home residents deserve attentive, dignified care.*

Source: News Release

XXI.
HEALTHCARE ISSUES

**FDA Moves Toward Tighter Medical Device Oversight**

Makers of X-ray machines, drug pumps and other medical devices would have to submit more safety information to win federal approval under a proposal designed to tighten regulation of thousands of products reviewed each year. The Food and Drug Administration released recommendations last month designed to improve oversight of the U.S. device industry, including the government’s ability to revoke approval for products that prove unsafe or ineffective.

The FDA’s report comes nearly a year after the FDA’s medical devices division endured a storm of criticism from public health advocates and lawmakers. Last August, the head of the device division resigned, months after scientists under his leadership alleged they were pressured to approve certain products. Last year began with Congressional investiga-
tors saying the FDA should take immediate steps to make sure more devices are reviewed through the most stringent process.

The recommendations came from two internal FDA panels that were selected to draft changes in the wake of the outside criticism. As we have reported, the FDA is not bound by the reports. The FDA will accept public comments for 90 days. FDA devices chief Dr. Jeffrey Shuren observed:

*Taken together, these preliminary reports show a smarter FDA, an agency that recognizes both sides of our mission to protect and promote public health.*

The FDA’s critics said the recommendations are a positive first step, but that they hoped for bolder action from regulators. Dr. Diana Zuckerman, president of the National Research Center for Women & Families, had this to say:

*The good news is that I think the agency is admitting there are loopholes in the system that have allowed products to be sold that aren’t safe; the bad news is they haven’t yet figured out what to do about it.*

At the center of the overhaul is the nearly 35-year-old system the FDA uses to grant speedy approval to devices that are deemed similar to products already on the market. The so-called 510(k) system is popular among manufacturers because it is a faster, cheaper path to market than the review process for novel devices, which must undergo rigorous medical testing. Hip replacements and drug pumps are among the devices cleared under the system.

About 4,000 devices are cleared every year under the 510(k) system, while about 50 devices are approved under the more stringent system. But FDA critics say that high-risk devices, such as heart pacemakers, are increasingly slipping through the 510(k) process without thorough testing and scrutiny.

The FDA’s panel recommends that the agency clarify when a device is sufficiently similar to those already on the market to receive 510(k) clearance. The group also recommends that manufacturers are required to submit a summary of all available safety information about their devices, instead of just the basic information required under current regulations.

FDA officials said they would likely pursue another recommendation that would make it easier to revoke approval for devices on the market that appear unsafe or ineffective. The FDA has rescinded approval for about 100 devices cleared under the 510(k) system since 1976, but Dr. Shuren said a clearly defined rule would help the agency better police the industry. He stated in a press briefing:

*We have been able in the past, when there are issues, to take appropriate action and to have those products come off the market. But having clear rescission authority will make it easier for us to do so.*

Dr. Shuren said the changes should not affect the number of devices cleared by the FDA each year. Wall Street analysts have predicted companies will have to submit more data to win approval—taking a larger toll on their bottom lines. But industry observers note there are aspects of the proposal that could also smooth the regulatory process for companies. The FDA’s panel suggests issuing regular guidance letters to update the industry on changing submission requirements for various devices. Dr. Larry Kessler, a 13-year veteran of the FDA’s device center who is now a professor at the University of Washington, says:

*I think this will be very positive and creative if they can actually create these guidance documents; it will allow industry more predictability and spur innovation.*

FDA officials said some of the changes to its approval system could be made in coming months, but more sweeping changes could require new legislation from Congress. The Institute of Medicine is expected to weigh in on these reforms in a report due out next summer. The bipartisan institute advises the federal government on medical issues.

Source: Associated Press

**Dry Pet Food Linked To Salmonella In Children**

A government report released last month warns that children can get sick from dog food. This report details the first known salmonella outbreak in
humans, mostly young children, linked to pet food. The outbreak sickened 79 people in 21 mostly eastern states, between 2006 and 2008. Almost half of the victims were children age two and younger.

Dry pet foods are an under-recognized source of salmonella infections in humans, and it’s likely other illnesses are unknowingly caused by tainted pet food, according to Dr. Casey Barton Behravesh, the report’s lead author and a researcher at the federal Centers for Disease Control and Prevention. Food and Drug Administration data shows that at least six unrelated pet food recalls have been issued this year by manufacturers because of possible salmonella contamination. According to the FDA there have been no reported salmonella illnesses linked to pet food since the 2006-08 outbreak.

A report about the outbreak was published online on August 9th by the medical journal Pediatrics. There have been no known cases of human salmonella linked with wet pet food. The outbreak was blamed on salmonella bacteria found in several brands of dry dog and cat food produced at a Mars Petcare plant in Pennsylvania, including Pedigree and Special Kitty brands.

While young children were most often affected, there’s no evidence that they got sick by eating pet food. They probably became infected by touching affected animals or dirty pet food dishes, and then putting their hands in their mouths. Symptoms included bloody diarrhea and fever. At least 11 people were hospitalized, but fortunately, none died. There were no reports of sick animals, but investigators found salmonella bacteria in stool samples from pets, without symptoms, that had eaten tainted food.

The company recalled pet food made at the plant and permanently shuttered the plant in 2008 after an investigation failed to identify how the contamination occurred. Mars subsequently improved training and testing practices at its 17 U.S. plants, according to the company regulatory director, Jill Franks.

Heating during pet food manufacturing generally kills salmonella germs. Contamination may have occurred during a later process when food pellets were sprayed with flavor enhancers. The study authors advise pediatricians to ask about contact with pets at doctor visits and when evaluating infectious disease symptoms. To reduce infection risks at home, it was recommended:

• Hands should be washed after contact with pets, pet food and pet bowls.
• Pet food bowls and feeding areas should be changed regularly.
• Children younger than age five should be kept away from pet food and feeding areas.
• Pets’ food and water dishes should be cleaned in a separate sink or tub, not in the kitchen or bathtub.
• Avoid bathing infants in the kitchen sink.

Sources: Associated Press and CBS News

FDA MOVES TO WITHDRAW UNPROVEN BLOOD PRESSURE DRUG

The Food and Drug Administration is pushing to withdraw a blood pressure drug that has been on the market for 14 years in spite of the manufacturer’s failure to submit evidence that it actually helps patients. The agency approved Shire Laboratories’ drug ProAmatine in 1996, based on promising early results in treating low blood pressure. But the company never conducted a mandatory follow-up study to actually prove the long-term benefits of the drug. While this drug may be safe if used as directed, the FDA’s failure to follow up and monitor the drug’s use is hard to understand. This appears to be the first time the FDA has threatened to pull a drug off the market due to missing follow-up data, even though it has long held that power.

For nearly 20 years, the FDA has granted accelerated approval to drugs based on so-called surrogate endpoints, or initial measures that suggest the drug will make real improvements in patient health. Drugmakers favor the program because it helps them get products to market sooner. But that doesn’t excuse the FDA’s actions or inactions.

Last fall the Government Accountability Office issued a report saying the FDA should do more to track whether drugs approved based on preliminary results actually live up to their promise. The report singled out ProAmatine as a particularly egregious example of missing follow-up data. The government watchdog said that ProAmatine has generated more than $257 million in sales even though “the clinical benefit of the drug has never been established.” According to the GAO, the FDA has never once pulled a drug off the market due to missing or unimpressive follow-up data. The GAO’s September 2009 report found that the FDA had requested 144 follow-up studies for drugs since 1992. Of those about 64% had been completed and more than one-third were still pending.

Source: MSNBC

XXII. ENVIRONMENTAL CONCERNS

OIL SPILL LITIGATION

Rhon Jones and lawyers in his section have been very busy over the past three months dealing with the Gulf oil spill litigation. Our firm currently has over 1,000 clients and we are busy preparing their cases and getting them ready to file. We have dedicated sufficient personnel—both lawyers and non-lawyers—to this complex and labor-intensive litigation. If you have any questions about any facet of this work, contact Rhon Jones, David Byrne or any of the lawyers in our firm’s Toxic Tort Section. Our toll free number is 800-898-2034.

PIPELINE COMPANY SETTLES WITH THE FEDERAL GOVERNMENT OVER OIL SPILLS

The U.S. Environmental Protection Agency and the Justice Department announced that Houston-based Plains All American Pipeline and several of its operating subsidiaries have agreed to spend approximately $41 million to upgrade 10,420 miles of crude oil pipeline operating in the United States. The settlement resolves Clean Water Act violations by Plains for ten crude oil spills in Texas, Louisiana, Oklahoma, and Kansas. It requires the company to pay a $3.25 million civil penalty. Cynthia Giles, assistant administrator for EPA’s Office of
Enforcement and Compliance Assurance, observed:

In the last year alone, transportation pipelines released more than two million gallons of oil into the environment, posing a serious threat to human health and natural habitats. These spills—and the recent pipeline spill in the Kalamazoo River—remind us that we must be diligent in our enforcement efforts and work to ensure that companies are meeting their environmental obligations.

Between June 2004 and September 2007, more than 273,000 barrels of crude oil were discharged from various pipelines and one tank owned and operated by Plains, some of which entered navigable waters or adjoining shorelines, according to the EPA. The ten spills ranged in size from 2.5 barrels to 4,500 barrels and most were caused by pipeline corrosion.

As part of the agreement, Plains must take steps to replace or install corrosion control equipment, perform pipeline inspections, assess the integrity of newly-acquired pipelines, improve leak detection practices and capabilities, and provide proper training for personnel. In addition, Plains must ensure that all breakout tanks used to replace or substitute existing tanks that relieve pipeline surges have adequate capacity to contain such surges and are properly located within secondary containment.

The Clean Water Act makes it unlawful to discharge oil or hazardous substances into waters of the United States or adjoining shorelines in quantities that may be harmful to the environment or public health. The $3.25 million penalty will be deposited in the federal Oil Spill Liability Trust Fund. The funds will be used to finance federal response activities and provide compensation for damages sustained from future discharges or threatened discharges of oil into water or adjoining shorelines.

According to recent pipeline spill reports, in the last year, more than 50,000 barrels (2.1 million gallons) of oil spilled from transportation pipelines across the nation. EPA’s enforcement responses to spills that affect waters of the United States under the Clean Water Act are critical to ensure that responsible companies are penalized for the spills and are required to take appropriate actions to reduce the potential for future spills. The consent decree, filed in the U.S. District Court for the Southern District of Texas, on August 12th, is subject to a 30-day public comment period and approval by the federal court.

Source: Claims Journal

XXIII. THE CONSUMER CORNER

TOP TEN INVESTOR TRAPS NAMED BY THE ALABAMA SECURITIES COMMISSION

Economic problems have made many Alabamians more vulnerable to investment scams, according to Alabama Securities Commissioner Joe Borg, the state’s top securities cop. The Commission released its Top Ten Investor Traps for 2010 last month, and like in past years, religious-related scams and oil and gas schemes are at the top of the list. Joe says fraudsters have found a ripe target in investors looking to rebuild nest eggs damaged by 2008’s market collapse.

Joe says investors must familiarize themselves with the warning signs of fraud, and independently verify any investment opportunity, as well as the background of the person and company offering the investment. Joe said in a prepared statement, which included the list of scams:

Investors should do business with licensed brokers and advisers and should report any suspicion of investment fraud to their securities regulator. One call can protect your financial security and might prevent others from becoming victims.

GREEN SCHEMES

Investment opportunities tied to “green” technologies are growing ever more popular with investors and scammers alike. Smart scammers also exploit headlines to target unsuspecting investors, pitching investments related to the clean-up of the Gulf of Mexico oil spill or rising interest in so-called “clean” energy innovations. With the ongoing issues of the oil spill, the Commission is seeing a growing number of companies promising new technology and targeting people wanting to cash in.

GOLD AND PRECIOUS METALS

Gold prices around $1,200 an ounce have lured some investors into bullion scams in which a scam artist pledges to buy the metal at a low price and sell it after a surge in value. Investors have also been burned by fraudsters and promoters pitching “investment pools” in precious metals and gold mines.

AFFINITY FRAUD

Given Alabama’s location in the heart of the Bible belt, this type of religious-related rip-off has been common across the state for years. The scam uses the legitimacy of a group to persuade a potential investor to hand over his or her money. Typical affinity groups include religious, ethnic, professional, and educational organizations.

CURRENCY TRADING SCHEMES

Trading in foreign currencies is really beyond the ability of most individual investors. Promoters profit by charging high commissions or selling investment strategies, leaving the investor poorer. In some cases, these are actually Ponzi schemes in which there are no trades and the money is simply stolen.

EXCHANGE-TRADED FUNDS

ETFs resemble mutual funds in many respects and are perfectly legal. But some of them may contain hidden traps and consist of highly-leveraged and exotic financial instruments, including options and derivatives. Also, given their potential volatility, many ETFs may not be suitable for most ordinary investors. Many are primarily designed for short-term traders.

www.BeasleyAllen.com
UNDISCLOSED CONFLICTS OF INTEREST

Investors need to know an ugly fact: Not all investment advice is given with the client’s best interest at heart. Some salespeople can receive fat commissions when selling a product that is risky or inappropriate for an investor—though they don’t have to disclose their financial incentive. Investors should demand that anyone giving advice or recommendations disclose how they are compensated.

OIL AND GAS SCHEMES

High gasoline prices unsettle ordinary folk and provide an opportunity for swindlers. They continue to capitalize both on the commodity’s high profile and the fact that oil and gas can be easily advanced as investment alternatives to a volatile stock market. But oil and gas investments tend to be highly risky and unsuitable for ordinary investors who really cannot afford the risk or prices that spike up only to collapse. Gas prices remain high, so that has made these type frauds popular in recent years.

UNSOLICITED ONLINE PITCHES

E-mail scams are yesterday’s curse. Promoters of investment schemes are now turning to social media—Facebook, Twitter, Craigslist and YouTube to trap unsuspecting investors. Some rip-off artists may use these sites to spread misinformation to artificially inflate the value of stock before selling in a “pump and dump” scheme. Others simply dangle the promise of rich, tax-free returns from offshore investments.

OFF THE BOOKS DEALS

This scam, which is growing in frequency, involves so-called “brokers” who offer an investment on the side instead of one sold directly through his or her employer. These “off the books” investments may be illegal and especially risky since they are made without the oversight and supervision of the broker’s employer.

PRIVATE OR SPECIAL DEALS

Some investors are seeing investment opportunities or deals described as “private” or “only for special clients.” While securities laws do offer businesses limited opportunities to raise capital by selling securities to a relatively small number of investors in a non-public offering, these securities are not subject to the same review as others, making them risky.

The Alabama Securities Commission has done a very good job of protecting Alabama citizens. However, all Alabama citizens can help them do an even better job. Folks should report any suspected fraudulent activity to the Commission. To report a fraud, call 800-222-1253 or go to asc.alabama.gov.

Source: Al.com

LOTS OF BAD DRUGS ON THE MARKET

Each year more than 100,000 people die from adverse drug reactions and another 2 million people are seriously injured. Dr. Sidney M. Wolfe, who is with Public Citizen, points out that by the time the FDA banned Rezulin, it had caused hundreds of cases of liver damage, including 63 reported deaths. Dr. Wolfe had warned about this drug and its potential danger about 18 months before the FDA final decided to take Rezulin off the market.

There are several reasons why the FDA is unable to really do a good job of regulating the drug manufacturers. One of them is that Congress has failed to fund the agency properly. Most folks are shocked when they learn that the FDA receives nearly $400 million from the drug industry. That amounts to 20% of the agency’s total budget. You might ask, “does that make it difficult for the FDA to perform its oversight duties and to challenge questionable safety reports?”

Another problem with the FDA is that it has to deal with the “fast track” approach to new drug approvals. Since the FDA sped up the approval process to accommodate Big PHARMA, one in five new drugs have had to be removed from the market or receive a black box warning after FDA approval.

If you don’t know about Public Citizen and the work that Dr. Wolfe and his folks are doing, I encourage you to go to www.citizen.org for more information. I also recommend that you consider subscribing to Worst Pills, Best Pills News. This publication, put out by Dr. Wolfe, contains valuable information on drugs and is dedicated to keeping dangerous drugs off the market.

Source: Public Citizen

DRUG RECALLS SURGE IN THE U.S.

Recalls of prescription and over the counter drugs are surging, raising questions about the quality of drug manufacturing in the United States. The Food and Drug Administration reported more than 1,742 recalls last year, up sharply from 426 in 2008, according to the Gold Sheet, a trade publication on drug quality that analyzes FDA data. One company, drug repackager Advantage Dose, accounted for more than 1,000 of those recalls. Even excluding Advantage Dose, which has been shut down, recalls jumped 50% last year. Bowman Cox, managing editor of the Gold Sheet, observed:

“We’ve seen a trend where the last four years are among the top five for the most number of drug recalls since we began tallying recalls in 1988. That’s a meaningful development.

The fast pace of drug recalls seems to be continuing in 2010. Drug recalls totaled 296 from January through June of this year. If this trend continues there could be 600 or more recalls by the end of the year, which is a very high rate of recalls. High-profile recalls of Tylenol and other products by McNeil Consumer Healthcare, a unit of Johnson & Johnson, have drawn attention to quality concerns in manufacturing.

The mounting problems over recalls have also drawn attention from lawmakers. Two bills introduced this year would impose stricter regulations on the industry and give the FDA authority to mandate recalls. The increase in recalls, especially of generic and over-the-counter drugs, is being driven by manufacturing lapses. Some of the biggest culprits: the quality of raw materials, faulty labeling and packaging and contamination.
A number of factors appear to be fueling the recall surge. The stampede by drugmakers to be first to bring generic versions to market, after drugs lose patent protection, is one of these factors. Generic drugs account for about three quarters of all prescription drug sales, according to industry group PhRMA.

Source: CNN

**ORACLE SUED FOR FRAUD OVER SOFTWARE CONTRACTS**

The U.S. Justice Department is suing Oracle for fraud over software contracts worth hundreds of millions of dollars. Oracle failed to offer government customers the same discounts on its software that it offered commercial customers, as it was required to do. The contract in question ran from 1998 to 2006. Oracle executive Paul Frascella filed the original lawsuit under the False Claims Act.

Source: USA Today

**SPRAY CLEANERS POSE POISON HAZARD TO BABIES AND TODDLERS**

Spray cleaners send thousands of babies and toddlers to the emergency room each year, according to the results of a new study. Nearly 12,000 children under age five go to the emergency room each year because of injuries caused by household cleaning products, according to a study in Pediatrics. About 40% of those injuries—or nearly 4,800 cases—are caused by spray bottles, which typically don’t have child-resistant caps, according to the study of 267,269 children.

Although some spray nozzles can be turned to an ‘off’ position, parents often leave them in spraying mode, says study author Lara McKenzie of Nationwide Children’s Hospital in Columbus, Ohio. Nimble children can turn the nozzles themselves. Spray cleaners can contain a range of hazardous chemicals, from ammonia to bleach. More than 740 small children injured by cleaning supplies in 2006 had symptoms that were life-threatening or caused long-term disabilities, the study says. Carl Baum of Yale-New Haven Children’s Hospital observed:

People don’t realize that the handle can be activated by a small child. Kids will put their mouths on the nozzle and drink it in.

Dr. McKenzie says spray bottles naturally attract children. They usually have bright packaging, with fruity or flowery scents and bright colors, and the spray handles make them feel like squirt guns. It must be remembered that toddlers’ curiosity and climbing skills usually outstrip their judgment. So it’s easy to see why children younger than age five account for more than half of all poisonings each year. Poison control centers handle calls for about 1 million children under age six each year, says pediatrician Jamie Freishtat, a spokeswoman for Safe Kids USA, an advocacy group, which wasn’t involved in the new study.

Although she’s concerned about the risk from spray bottles, Dr. Freishtat says she’s encouraged that other safety improvements—such as less hazardous ingredients—have helped to cut the overall number of children who are injured by cleaning products by 46% since 1990.

Source: USA Today

**BILL WOULD MAKE SOME FOOD SAFETY VIOLATIONS FELONIES**

Legislation introduced in the U.S. Senate would impose criminal penalties of as much as ten years in prison for knowingly violating food safety laws. The Food Safety Enforcement Act, introduced by Sen. Patrick Leahy, would allow prosecutors to seek higher sentences for those who knowingly allow contaminated food to enter the nation’s food supply, and it would make such offenses felony violations.

Senator Leahy said such a measure is necessary to prevent future outbreaks, such as the 2009 incident stemming from the Peanut Corporation of America’s sale of salmonella-contaminated peanut products that resulted in the death of nine people and the hospitalization of dozens more. According to the Senator from Vermont, evidence demonstrated that the company knew that some of its products tested positive for salmonella, but decided to sell the products anyway. Sen. Leahy had this to say when introducing the bill:

The bill I introduce today would increase sentences for people who put profits above safety by knowingly contaminating the food supply. It makes such offenses felony violations and significantly increases the chances that those who commit them will face jail time, rather than a slap on the wrist, for their criminal conduct.

Sen. Leahy also has requested that the Department of Justice conduct a criminal investigation into the Peanut Corporation salmonella outbreak. I’m not sure this will happen, but hopefully the Senator’s bill mentioned above will pass.

Source: Lawyers USA Online

**HARMFUL SUBSTANCE IN CEREAL CAUSES RECALL**

The Washington Post has reported that a chemical—possibly a carcinogen used in mothballs—may be the reason Kellogg recalled millions of boxes of cereal. The recall this summer involved 28 million boxes of Corn Pops, Froot Loops, Apple Jacks and Honey Smacks after dozens of people reported a chemical smell in the packaging and complained of nausea and diarrhea, the Post said in its August 2nd edition.

Kellogg reported there were no harmful substances in the recalled boxes, but the chemical suspected of causing the recall, 2-methylnaphthalene, a natural component of crude oil, is used in the manufacture of mothballs and toilet sanitizers and “is not supposed to be in food,” the newspaper said. The Environmental Protection Agency says 2-methylnaphthalene is structurally related to naphthalene, which is listed by the EPA as a possible human carcinogen.

It isn’t known just how the compound got into the product, or how much was actually even in the cereal, although one packaging expert said it might be as a result of the manufacturing of the foil lining used in the cereal bags. Kellogg provided the Food and Drug Administration with an assessment of potential health risks of the contamination, but neither would provide copies of the report, the paper said.

Source: UPI.com

www.BeasleyAllen.com
**Price-Fixing By LCD Suppliers Cost Consumers Millions**

New York Attorney General Andrew Cuomo has sued several major suppliers of liquid crystal display screens used in computers, televisions and cell phones, claiming consumers paid too much because of price fixing. Previously, some of the companies settled federal charges. The New York suit was filed in state court in Manhattan.

The suit seeks damages and restitution to state and local governments, along with penalties for actions from 1996 to 2006 by companies in Japan, Korea, and Taiwan and their U.S. divisions. It claims the cartel dominated the $70 billion market, company representatives met regularly, and the scheme cost New Yorkers “hundreds of millions of dollars.”

Defendants are Samsung Electronics, Sharp, Toshiba, Hitachi Displays, LG Display, AU Optronics, Chi Mei, CMO and U.S. Affiliates.

*Source: USA Today*

**South Bay Sex-Abuse Lawsuit**

The following is a sad, tragic story that deals with a sexual predator who of all things was a foster parent. Had anyone bothered to check, it would have been obvious that John Hardy Jackson should never have been a foster parent. Jackson’s first wife found the man fondling their one-year-old son and filed for divorce. He overdosed on drugs and was arrested for drunken driving. Jackson beat his own son with a belt and kicked his pregnant wife in the stomach, causing her to lose that baby. Nevertheless, Jackson’s Mountain View home was licensed as a foster home.

The sex acts this man forced the children in his care to perform sent him to prison for 220 years. And now Jackson’s behavior has resulted in a civil court jury in San Jose awarding $30 million to one of his male victims, who is now 25 year old. Starting when he was 11 years old, the victim was forced into more than 600 acts of sexual abuse from December 1995 to March 1999, according to testimony in the case. The victim finally left the home when his father was able to take him back.

The jury found the Giarretto Institute, the private foster family agency responsible for licensing and monitoring foster homes including Jackson’s, was negligent and liable for 75% of the abuse that was inflicted on the victim. Jackson was found to be liable for the balance. Giarretto, founded in San Jose decades before as a sex abuse treatment program for incest victims and their families, was then a small sex-abuse treatment and foster family agency. The institute was acquired by EMQ FamiliesFirst in March 1999, but EMQ is not liable for any of the $30 million judgment. The sex abuse was said to have occurred over a long period of time before its acquisition of the Giarretto Institute.

At the time, the Giarretto Institute had a contract with Santa Clara County to recruit, certify and monitor some foster homes. The state had outsourced much of its foster care oversight to private agencies, which were paid by the county. Because of problems with that system, the state claimed foster care responsibilities in 1999.

When children in Jackson’s care said he was sexually abusing them, the Giarretto Institute was responsible for investigating the allegations. All of them were dismissed as untrue. The investigator was said to have told the children they “were lying.” Jackson had access to the children by himself from 8 a.m. until about 5 p.m. every day. During that time, he had sex with the children. He made the children have sex with each other and filmed it. He made the children fix him drinks, and sometimes he beat them, according to the children.

In 2006, Jackson was convicted in Santa Clara County of nine counts of lewd or lascivious acts on a child by force, violence, duress, menace and fear, and seven counts of lewd or lascivious acts on a child under 14. The conviction included abuse that occurred when Jackson moved from Santa Clara County to Colorado. One of the girls was five years old at the time of the abuse. Three other foster children who also were in the Jackson home and suffered similar abuse have lawsuits pending. Steven Estey, a lawyer from San Diego, represented the Plaintiff and did a very good job. This sort of thing can’t be tolerated and it takes the court system—both criminal and civil—to make sure it doesn’t.

*Source: Mercury News*

**380 Million Eggs Involved In Massive Recall Due To Salmonella**

Hundreds of people have gotten sick after millions of eggs contaminated with salmonella reached consumers. The outbreak is linked to eggs sold in at least four states. Initially, the egg producer, Wright County Egg of Galt, Iowa, recalled about 228 million eggs in early August. Now that recall has expanded to include 380 million eggs. The company is working with the Centers for Disease Control and Prevention and various state health departments to investigate illnesses.

According to a report by the Associated Press, states reporting illnesses with possible links to the contaminated eggs include Minnesota, California, Colorado, and North Carolina. Eggs from Wright County Egg were packaged under a wide variety of brand names including Lucerne, Albertson, Mountain Dairy, Ralph’s, Boomsma’s, Sunshine, Hillandale, Trafficanda, Farm Fresh, Shorland, Dutch Farms and Kemp. Eggs affected by the expanded recall were distributed to food wholesalers, distribution centers and foodservice companies in California, Arizona, Missouri, Minnesota, Texas, Georgia, Washington, Oregon, Colorado, Nevada, Iowa, Illinois, Utah, Nebraska, Arkansas, Wisconsin and Oklahoma. These companies distribute nationwide.

Eggs included in the original recall are packed in varying sizes of cartons (six-egg cartons, dozen egg cartons, 18-egg cartons, and loose eggs for institutional use and repackaging) with Julian dates ranging from 136 to 225 and plant numbers 1026, 1413 and 1946. Eggs falling under the expanded recall are packed in varying sizes of cartons (six-egg cartons, dozen egg cartons, 18-egg cartons, and loose eggs for institutional use and repackaging) with Julian dates ranging from 136 to 229 and plant numbers 1720 and 1942.

As we have previously written, salmonella is an organism which can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. Healthy persons infected with Salmonella often experience fever, diarrhea, nausea, vomiting and abdominal pain. In rare circumstances, infection with Salmonella can result in the organism getting into the bloodstream and pro-
ducng more severe illnesses such as arterial infections, endocarditis or arthritis. As you can see, this is a most serious matter.

Consumers who believe they may have purchased these shell eggs should not eat them but should return them to the store where they were purchased for a full refund. This recall is of shell eggs only. Other egg products produced by Wright County Eggs are not affected. Consumers with questions should visit www.egg-safety.org or call Wright County’s toll-free information number (866-272-5582), which contains a message outlining recall instructions for consumers.

Sources: Associated Press, New York Times, and CNN

XXIV.
RECALLS UPDATE

Again, there are a number of product recalls in this issue. As pointed out in our last issue, serious safety-related recalls have become rather commonplace. The following are some of the more significant recalls since those reported in our last issue.

TOYOTA RECALLS 412,000 CARS TO FIX STEERING

Toyota has recalled nearly half a million cars, most of them large sedans sold in the U.S., for problems that can cause the steering wheel to lock up. It’s the latest indication that the automaker is still struggling with vehicle problems. The recall affects 412,000 vehicles in the U.S.—373,000 Avalon sedans and 39,000 Lexus LX 470 SUVs. The recall is Toyota’s largest since announcing it would fix 600,000 Sienna minivans over rusting spare tire holders in April.

Toyota has been embroiled in its recall crisis since October, when it announced a recall of 5.3 million cars and trucks to fix floor mats that can trap pedals and cause unintended acceleration. A number of recalls have followed, from sticky gas pedals to braking problems with the Prius hybrid to rusting frames in the Tacoma pickup.

This last recall brings the size of Toyota’s recalls to about 9.5 million cars and trucks in the U.S. since October. Some of the recalls affect models as old as the 1998 model year. That means of the 24.1 million vehicles Toyota has sold in the U.S. since 1998, as tracked by Wards AutoInfoBank, Toyota has recalled about 39% of the vehicles sold.

The Avalons recalled in the U.S. range from the 2000 model year through to 2004 and have improper casting of the steering lock bar—the component that locks the steering wheel when the vehicle is shut off—that can cause a crack to form on the surface. Over time, the crack can expand, which can cause the steering wheel to become difficult to unlock when stationary. In some circumstances, the problem can cause the steering wheel to lock up during driving, according to Toyota. Three unconfirmed accidents with no injuries have been reported because of the problem. Toyota will fix the Avalon steering problem by replacing the part called the steering column bracket, which houses the lock bar.

For the Lexus LX 470, Toyota is recalling the 2003-2007 model years to fix a different steering shaft problem, which could cause loss of steering control. No accidents have been reported from the problem, the company said. For both repairs, customers will begin receiving letters in August asking them to bring their cars to dealers.

The LX 470 problem also affects 9,670 Land Cruiser models sold in Japan. Toyota is recalling another 6,750 sedans called the Pronard, also sold in Japan, for a problem similar to that experienced by the Avalon.

HONDA RECALLING NEARLY 400,000 VEHICLES

Honda Motor Co. is recalling the popular Accord and Civic passenger cars to address problems with an ignition switch that could allow the key to be removed without the transmission being shifted into park. This is Honda’s third recall over the problem since 2003. Honda said the most recent recall involved 384,220 vehicles and includes 2003 model year Accord and Civics and 2003-2004 versions of the Honda Element. The National Highway Traffic Safety Administration said that the defect with the automatic transmissions could lead to a vehicle rolling away and increase the risk of a crash.

The recall would involve about 197,000 Accords, 117,000 Civics and 69,000 Elements. The company says it has received several complaints about the ignition interlock and “is aware of a small number of related incidents, including one that resulted in a minor injury.”

According to Honda, the ignition interlock mechanism could be damaged or worn during use and “it may become possible to remove the ignition key when the shift lever is not in park.” Unless the parking brake is set, the vehicle could roll away under those circumstances and lead to a crash.

The three related recalls have involved about 1.4 million vehicles since 2003. Honda recalled more than 560,000 minivans and sedans, including the 1998-99 Accord, to correct the ignition park-shift interlock defect in October 2003. In January 2005, Honda recalled nearly 490,000 passenger cars, including certain 1999-2002 Accords, because of the ignition switch problem.

The latest recall followed an investigation opened by NHTSA in January 2009 after the government received 16 complaints about the failure of the ignition interlock in 2002 and 2003 Accords. Eleven of the complaints alleged that the failure of the interlocks led to rollaway crashes. The recall of the Accord, Civic and Element is expected to begin in late September. Dealers plan to remove an interlock pin and lever within the ignition switch and replace them at no charge.

www.BeasleyAllen.com
Daimler Trucks is recalling certain model year 2011 business class M2 106V trucks manufactured from April 12, 2010 through July 16, 2010, for failing to comply with the requirements of Federal Motor Vehicle Safety Standard No. 108, “Lamps, Reflective Devices, and Associated Equipment.” These trucks may have headlamps which measure higher than 54 inches from the road surface. Improper height of headlamps may not fully illuminate road surfaces or may inhibit the ability of motorists to see vehicles, increasing the risk of a crash.

Dealers will measure the headlamps on these vehicles and those with headlamps that are above 54 inches from the ground will receive new headlamps that lower the bulb center to be at or below 54 inches from the ground. This service will be performed free of charge. The safety recall is expected to begin on or before October 25, 2010. Owners may contact Daimler Trucks at 1-800-547-0712.

General Motors is recalling a total of 243,403 of its popular large crossover SUVs for a problem that could damage the rear seatbelt buckles. Most of the recalled vehicles are in the United States. In some of the vehicles, the seatbelt buckle can be damaged when the second row seat is returned to its normal position after being folded down. If this happens the seatbelt may not latch completely even when it seems to be securely buckled. The seat belt also may not latch or unlatch or may seem to be jammed, according to GM.

Because of the potential for a false-latch condition, GM wants customers to return their vehicles to have the recall repair performed as soon as possible. The vehicles involved are the Chevrolet Traverse, GMC Acadia, Buick Enclave and Saturn Outlook.

Owners of the affected vehicles should have received letters this month asking them to schedule an appointment at their dealership. The seat belt buckles will be inspected and replaced if needed. Also, the plastic cover surrounding the seatbelt will be replaced on all the vehicles with new ones designed to avoid this problem.

Mazda Motor Corp. is recalling 215,000 Mazda3 and Mazda5 vehicles to fix problems with the power-steering system that could lead to a crash. The Japanese automaker told the government the recall involved model year 2007-2009 Mazda3 and Mazda5 vehicles built from April 2007 through November 2008.

According to Mazda the vehicles could have a sudden loss of power-steering assist, making it more difficult for the driver to steer the vehicle. The automaker says that could increase the risk of a crash. The government had opened an investigation into steering problems in the vehicles in June. At the time, NHTSA had 33 complaints alleging steering problems, including three crashes.

Mazda3 and Mazda5 Recalled for Steering Problems

Mazda Motor Corp. is recalling 215,000 Mazda3 and Mazda5 vehicles to fix problems with the power-steering system that could lead to a crash. The Japanese automaker told the government the recall involved model year 2007-2009 Mazda3 and Mazda5 vehicles built from April 2007 through November 2008.

According to Mazda the vehicles could have a sudden loss of power-steering assist, making it more difficult for the driver to steer the vehicle. The automaker says that could increase the risk of a crash. The government had opened an investigation into steering problems in the vehicles in June. At the time, NHTSA had 33 complaints alleging steering problems, including three crashes.

Bridgestone America is recalling certain Bridgestone R192 Truck/Bus Tires, Size 275/70R22.5 used on intra-city transit buses. These tires feature a sidewall wear indicator that is used by technicians to monitor sidewall wear. The specified depth of the subject tire’s dimples may result in exposed body ply cord.

Over time, this condition could result in the deterioration of the body ply cord, creating the potential for air loss at the location of the dimple. Air loss in the tire will increase the risk of a crash. Bridgestone will replace the affected tires free of charge. The safety recall began on June 27, 2010. Owners may contact Bridgestone toll-free at 1-800-342-6453 or visit its website at www.bridgestoneamericas.com.

Baby Matters recalls Nap Nanny® Recliners

Baby Matters LLC, of Berwyn, Pennsylvania, is recalling 30,000 Nap Nanny® portable baby recliners. The CPSC is investigating a report of a four-month-old girl from Royal Oak, Michigan who died in a Nap Nanny® that was being used in a crib. According to preliminary reports, the infant was in her harness and found hanging over the side of the product, caught between the Nap Nanny® and the crib bumper.

According to the CPSC and Baby Matters, there has been one other incident in which an infant became entrapped when the Nap Nanny® was used in a crib, contrary to the product instructions. In that incident, the infant fell over the side of the Nap Nanny®, despite being harnessed in, and was caught between the baby recliner and the side of the crib. The infant sustained a cut to the forehead.

But the CPSC and the company have received 22 reports of infants, primarily younger than five-months-old, hanging or falling out over the side of the Nap Nanny® despite most of the infants being placed in the harness. Infants can partially fall or hang over the side of the Nap Nanny® even while the harness is in use. This situation can be worse if the Velcro™ straps, located inside the Nap Nanny® cover are not properly attached to the “D”-rings located on the foam, or if consumers are using the first generation model Nap Nanny® that was sold without “D”-rings.

In addition, if the Nap Nanny® is placed inside a crib, play yard or other confined area, which is not a recommended use, the infant can fall or hang over of the side of the Nap Nanny® and become entrapped between the crib side and the Nap Nanny® and suffocate. Likewise, if
the Nap Nanny® is placed on a table, countertop, or other elevated surface and a child falls over the side, it poses a risk of serious head injury. Consumers should always use the Nap Nanny® on the floor away from any other products.

The Nap Nanny® is a portable recliner designed for sleeping, resting and playing. The recliner includes a foam base with an inclined indentation for the infant to sit in and a fitted fabric cover and a three point harness. The first generation model of the Nap Nanny® can be identified by the absence of “D”-rings in the foam base. In second generation models, the harness system has “D”-rings in the foam base and Velcro™ straps inside the fitted cover.

The recalled Nap Nannies® were sold at toy and children’s retail stores nationwide and online, including at www.napnanny.com, from January 2009 through July 2010 for about $130. The recalled product was manufactured in the United States and China.

Consumers with a first generation Nap Nanny® model, without “D”-rings, should stop using the recalled baby recliners immediately and contact the manufacturer to receive an $80 coupon towards the purchase of a new Nap Nanny® with free shipping. Consumers with a second generation Nap Nanny® model, with “D”-rings, should immediately stop using the product until they are able to visit the manufacturer’s website to obtain new product instructions and warnings. Consumers may also view an important instructional video online to help consumers ensure the harness is properly fastened. Consumers who are unable to view the video or new instructions online, should contact the company to receive free copies by mail. For more information, contact Baby Matters toll-free at (888) 240-4282 or visit the company’s website at www.napnanny.com/recall.

**Bed Bath & Beyond Recalls Solar Lighted Cantilever Umbrellas**

About 7,600 Solar Lighted Cantilever Umbrellas have been recalled by Bed Bath & Beyond Inc., of Union, New Jersey. A plastic connector which attaches to the arm of the umbrella can break, causing the umbrella to collapse. This poses a risk of injury to the user. The firm has received 21 reports of units collapsing. Minor injuries were reported in three of those incidents including a bruise, abrasion and nausea. The recalled product is a 13-foot Solar Lighted Cantilever Umbrella. The umbrella has tan or chocolate colored material, lights and a black supporting pole. The UPC numbers are 44444550439 (tan) and 44444583963 (chocolate) and can be found on the product packaging.

The model numbers are 8070C-S and 8070C-L and can be found on the assembly and operating instructions that were enclosed with the product packaging. The umbrellas were sold exclusively at Bed Bath & Beyond stores and online at www.bedbathandbeyond.com and www.bedbathandbeyond.ca from February 2010 through June 2010 for about $300. Consumers should immediately stop using the recalled product and return it to any Bed Bath & Beyond location for a full refund. For additional information, contact Bed Bath & Beyond toll-free at (800) 462-3966, 24 hours a day, seven days a week or visit the company’s website at www.bedbathandbeyond.com.

**Fisher-Price Recalls Little People Play ’N Go Campsite™**

Fisher Price has recalled the Little People Play ‘N Go Campsite™. The plastic Sonya Lee figure in the play set can break at the waist, exposing small parts that pose a choking hazard to young children. The firm has received eight reports of the Sonya Lee figure breaking. No injuries have been reported. The seven-piece plastic play set includes Sonya Lee, a tent and other accessories. Product number R6935 is printed on the toy’s packaging. The name Sonya Lee is printed on the underside of the figure. Only Sonya Lee figures that bend at the waist and have a green sweater and purple camera around the neck are included in this recall. No other Sonya Lee figure is affected. The remaining pieces of the Little People Play’n Go Campsite are not affected. Consumers should immediately take the Campsite’s Sonya Lee figure away from children and contact Fisher-Price to arrange for the figure’s return in exchange for a free replacement figure. For additional information, contact Fisher-Price at (800) 432-5437 anytime or visit the company’s website at www.service.mattel.com.

**LG Electronics Dehumidifiers Recalled**

The U.S. Consumer Product Safety Commission announced a voluntary recall of Goldstar and Comfort-Aire portable dehumidifiers due to a fire hazard. The recall involves 98,000 dehumidifiers exported from China by LG Electronics Tianjin Appliance Co. of China. The dehumidifiers have power connectors that can short circuit, posing a fire risk, according to the commission.

The company has received four reports of fires involving dehumidifiers, including Goldstar model No. GHD30Y7, which were sold at Home Depot outlets, model No. DH30Y7, sold at Walmart stores, and Comfort-Aire BHD-301-C dehumidifiers, sold at Heat Controller Inc. They were sold from January 2007 through June 2008 for about $145. Consumers were advised to stop using the dehumidifiers and contact LG to schedule a free repair at an LG service center. Consumers can call 877-220-0479 for information.

**Circus World Recalls Wireless Video Baby Monitors**

About 800 Levana Wireless Video Baby Monitors have been recalled by Circus World Displays Limited (CWD), of Niagara Falls, Ontario,
The recall covers all packages of Veron Hot Smoked Sausage, Veron Mild Smoked Sausage, Martin Hot Smoked Sausage, Martin Mild Smoked Sausage, Veron Andouille Sausage, Martin Andouille Sausage, and Veron Hog Head Cheese. They have the establishment number LA 22 inside state inspection mark as well as date codes of 010110 through 111310, and were distributed to retail establishments and institutions within Louisiana.

**Salmonella Outbreak Prompts National Egg Recall**

An outbreak of salmonella illnesses linked to shell eggs has prompted a nationwide recall of 13 popular egg brands produced by an Iowa company and triggered a multi-state investigation that is growing. We wrote more on this recall in the Consumer Section.

**3,700 Zooper Strollers Recalled For Latch Failure**

About 3,700 Zooper strollers have been recalled for a frame latch failure that can result in the high-end stroller unexpectedly collapsing. The Zooper Tango double strollers were sold in 2007 and 2008 at retailers including Babies “R” Us, and cost between $400 and $430.

Lan Enterprises, the manufacturer of the stroller, has received 185 reports of the problem, according to the U.S. Consumer Product Safety Commission. In one incident, a 13-month-old boy and a three-year-old boy received scrapes and bruises when their stroller hit a sidewalk curb and then collapsed. When the frame latch comes undone, “the stroller basically just collapses on your children.”

The CPSC says owners of the SL808B and SL808F models should stop using the strollers and contact Zooper USA or visit its website, www.zooper.com, for a repair kit. The repair kit contains straps, which can be attached around the frame latch, to keep it from coming undone.

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**

**GREG ALLEN**

Greg Allen grew up in Georgia and attended West Georgia College before moving to Montgomery to work for a railroad company. While growing up in Georgia, Greg saw what he believed to be a double standard of justice. It was obvious the wealthy had complete access to justice, while the poor were being virtually left out. Greg always had a desire to go to law school, but believed he couldn’t afford it. When he got to Montgomery, Greg found out there was a night law school in Montgomery. Greg jumped at the opportunity and enrolled in Jones Law School while continuing to work full time for the railroad.

During Greg’s last two years of law school, he started working at my then two-man law firm. I had opened my office in 1979 on South Hull Street and Frank Wilson joined the firm in 1980. Greg came to work with us in 1981 as a law clerk and investigator. In fact, he did anything else that was needed. One of his jobs was to keep my 1954 Ford pickup running. Once Greg came on board, he wouldn’t leave. He passed the bar in 1983 and the rest is history. Greg is still very involved with Jones Law School, which is now fully ABA accredited and attracts students from all over the Southeast.

When Greg graduated from Jones, he stayed on to work as a lawyer with the firm. He started handling difficult cases immediately upon passing the bar. He enjoys taking on large corporations on behalf of persons who have been seriously injured or have lost loved ones. He is most proud of the fact that due to the recoveries he has secured for his clients, some of the clients who were told they...
Greg’s influence on the community is also evident. Folks visiting downtown Montgomery today can see the impact of his—and the firm’s—commitment to the city’s heart. Greg was instrumental in the development of the new downtown entertainment district, as an early and enthusiastic supporter of returning minor league baseball to the Capital City. The brand new Biscuits stadium was constructed on land owned by our law firm. Construction included renovation and preservation of a large section of the historic building that occupied part of the property.

Greg also worked with the City of Montgomery over the past few years to help create the new Alley Entertainment District area, which connects Commerce Street across from the Renaissance Hotel & Spa with Tallapossa Street. Greg created the Alley Station development as an anchor for the alley. Alley Station houses SaZa’s, a very popular Italian restaurant, a special event venue with a large ballroom, a unique rooftop garden, and 16 loft-style apartments.

Greg is married to the former Jane Anne Howell of Lafayette, Alabama, and they have two children. Their daughter, Tracy, is married to T. J. Williford, and resides in Montgomery. Tracy and TJ have a daughter, Averi, who I understand already gets whatever she wants from Greg. Tracy and TJ are actively involved in the development and marketing of the Alley Station project, making it a true family business. Greg’s son Evan is following in his dad’s footsteps and currently attends Jones Law School. The Allens attend Eastern Hills Baptist Church and Frazer United Methodist Church in Montgomery.

Without any doubt, Greg Allen is the very best product liability lawyer I have ever been around. He is always well-prepared and totally understands the technical issues involved in all product liability cases. Greg has no equal when it comes to dealing with tough discovery issues in tough cases involving companies in the auto industry. I have learned a great deal from Greg over the years and fortunately I am still learning. We are blessed to have Greg in the firm.

STUART TINDAL
Stuart Tindel, who has been with the firm for almost six years, is a staff assistant to Frank Woodson and Matt Munson working on the Pain Pump Litigation. His duties include maintaining communication with clients, ensuring files are current and continuously updated with new information, preparing and organizing records, documents and radiographs for experts, informal supplements, and initial disclosures. He states: “Working as a team, each one of our staff members play a vital role in preparing our cases for trial and making sure our clients remain the top priority.” Stuart worked diligently with our Vioxx litigation team from 2004 until the end of 2009. He has also assisted with Celebrex/Bextra and Zypreza cases.

Stuart grew up in a small farming community in Honoraville. He is a 1994 graduate of Greenville High School and in 2001 obtained his Bachelor of Science degree from Troy University. Stuart enjoys family events, working out, running, fishing and just being outdoors. He is a very good, dedicated employee and we are fortunate to have him with us.

NIALL DAVIES
Niall Davies serves as a staff assistant in the Mass Torts Section in our firm. He has been with us for almost three years. Niall is currently reviewing documents in preparation for an upcoming Fosamax trial. Prior to this assignment, he was part of the litigation team that dealt with claims being processed through the Vioxx Settlement Program.

Niall is married to Penny, who also works at a staff assistant at the firm. He has one step-son, Benjamin. Before moving to the United States, Niall received a Bachelor of Commerce in Management, specializing in Human Resource Management, from the University of Otago in Dunedin, New Zealand. Niall enjoys spending time with his family, reading, hiking, walking and playing with his dogs. Niall is another good, dedicated employee and we are fortunate to have him with the firm.

FRANNITA MCCALL
Frannita McCall, who has been with the firm for over two years, is a staff assistant to Alyce Addison. She is currently working on the Yaz/Yasmin/Ocella cases. Frannita has two children, DeVonte and Destinee. She currently attends Virginia College majoring in Criminal Justice. Frannita also is the owner of a hair salon and boutique, “Fabulez Stylz.” She has always wanted to make a difference in the lives of people, making them look and feel good about themselves. Frannita enjoys serving God, spending time with her family, doing hair, reading, walking, working and shopping. It’s obvious that she is a busy lady. Frannita is a very good, dedicated employee. We are fortunate to have her with the firm.

XXVI.
SPECIAL RECOGNITIONS

ATTICUS STILL INSPIRES LAWYERS TODAY
I have said on numerous occasions that every lawyer in America should be required to read To Kill A Mockingbird and also see the movie on an annual basis. If those were requirements, I am confident we would have better lawyers practicing in the courtrooms of this country. I can think of no better way to really learn how a “real lawyer” should approach his or her work. All of our firm’s lawyers attended a special play at the Alabama Shakespeare Festival in Montgomery and we all came away with a renewed commitment to represent folks who really need our help. It made each of us realize—some perhaps for the first time—what it means to be a real lawyer.

The following article written by Teri Greene appeared in the Montgomery Advertiser. We were given permission to include the article in this issue. It’s quite good and timely, especially as To Kill A Mockingbird celebrates its 50th anniversary.

For devotees of the novel “To Kill a Mockingbird,” the name Atticus Finch has become synonymous with the word “hero.” As the lawyer protagonist of the book, he stood up for what he believed was right, even in the face of widespread opposition. His influence seems especially strong among those in the field of law. In fact, one facet of the Alabama Law Foundation is “The Atticus Finch Foundation.” Its primary goal is “to
make access to justice a reality for all Alabama citizens.”

Many of the state’s most prominent leaders in law see Finch as a composite of the best people in their profession—past and present—a beacon of truths that are at the core of their mission. We asked a few of them just how the book, and the character of Atticus Finch in particular, affected their decision to enter the field of law and whether the values he has come to represent affect them even to this day as they practice.

**MORRIS DEES, CO-FOUNDER, SOUTHERN POVERTY LAW CENTER**

After launching a Montgomery law practice in 1960 (the year “To Kill a Mockingbird” was published), Dees won a series of groundbreaking civil rights cases that helped integrate government and public institutions:

“To Kill a Mockingbird” didn’t influence me to go to law school, but it had a tremendous influence on my decision to sell my publishing company that I had founded, and to engage full-time in civil rights law. It was a pretty powerful influence, along with Clarence Darrow’s book about his life as a lawyer, “The Story of My Life.” With both of them, I saw someone who had the courage to stand up against the popular opinions of the community without fear of retribution.

Obviously, the book is fiction, but you have to realize that there were a lot of white Southerners who also took principled stands in the ’40s, ’50s and ’60s—lawyers who were willing to say that the way black people were treated in the South was wrong, and there was no reason they should not have equal rights. That exhibited itself as a lawyer, when you went to court and a black person did not get a fair trial, was not allowed to serve in a jury, not allowed to participate in the things we took for granted.

There have been people who criticize the book because they say Harper Lee was very careful not to step on a lot of the mores of the day. Atticus kept within the accepted approaches of the day, even though he did put up a defense for Tom Robinson. There are those who say it was interesting how during the trial Atticus Finch, called the reprobate father of the girl “Mr. Ewell,” but called Tom Robinson “Tom.” I don’t agree with those criticisms. You have to look at the time in which the story is set. He had great respect among the black community because he was willing to stand up against a mob in front of the courthouse.

One thing I can say with pride: There is a long history of lawyers in Alabama standing up for the underdog, even before the civil rights movement, who believed that everyone deserved a vigorous defense, though it was very rare for juries to take the word of a black person. The most despicable courts of appeals had judges who would never go against the attitudes of the white community. Laws were passed in Alabama aimed strictly at blacks—it was a death penalty offense to break into an occupied dwelling in the nighttime. That was a law designed to protect white women in their homes at night. Our judicial system and legal system had a lot of very prejudicial and biased laws in them, which I’m glad to say now, because of a more enlightened attitude among lawyers and judges, have been eliminated.

**ALYCE M. SPRUELL, PRESIDENT-ELECT, ALABAMA STATE BAR**

In July, Spruell will become the first woman to serve in that position, after 133 men have preceded her. Her practice is Spruell & Powell LLC in Tuscaloosa:

I have been blessed in my life and professional career with real-life mentors who are embodiments of the Atticus Finch character. My father, Rick Manley, who has practiced law in Demopolis, Alabama, for over 50 years, is an example of the caring, professional counselor of law that the Atticus Finch character personifies and celebrates.

In an “Atticus-like” fashion, my father served as the local city schools board chairman, as a member of the state Legislature, and as a State Bar leader, serving the public in ways that were sometimes unpopular and that cost him clients, elections and career aspirations. As a small child and even today, I have watched lawyers, like my father, help others for little or no pay because, like Atticus, it was the right thing to do. For devotees of the novel “To Kill a Mockingbird,” the name Atticus Finch has become synonymous with the word “hero.” As the lawyer protagonist of the book, he stood up for what he believed was right, even in the face of widespread opposition.

**BOBBY SEGALL, MONTGOMERY LAWYER, PAST ALABAMA STATE BAR PRESIDENT**

I think I already wanted to be a lawyer when I first read “To Kill A Mockingbird,” but I loved the book and the movie, and I loved Atticus Finch. When I was in junior high school, I thought Atticus was the ultimate hero, and I still do. I found everything about him inspiring, but the scene from the movie that has inspired me most over the years is the one where Atticus walks out of the courtroom and the Rev. Sykes tells Scout, “Stand up, your father is passing.”

Nothing to me is as important as having the love and respect of your children, and no scene or words ever dramatized respect for another person more powerfully or emotionally. In the practice of law, I often think of that scene and of those words, and they have always been my guiding light—try to make your children proud.

I think Atticus’s inspiration carried over to my view of lawyers who I considered role models—people like Judge Frank Johnson Jr. And lawyers Truman Hobbs Sr. And Albert Copeland. They were Atticus-
like, and I wanted to be like them. I don’t believe I’ve ever reached the standard Atticus, and they, set, but it’s important to me to keep trying.

JUDGE JOHN L. CARROLL, dean, CUMBERLAND SCHOOL OF LAW, ex-U.S. magistrate judge in Montgomery

Atticus Finch was a definite inspiration to me to seek a career in law. I was in college when the book and movie came out, and I entered law school six years after I graduated from college. I went to law school because I wanted to emulate the values that Atticus Finch embodied.

He was a servant leader and skilled lawyer who understood the importance of the rule of law. More importantly, he knew that a lawyer’s highest and best calling is to represent individuals in unpopular causes. Atticus Finch continues to inspire me today to use the power that my law degree has given me to help those in our society who are powerless.

TOM METHVIN, CURRENT ALABAMA STATE BAR PRESIDENT

There is no question that the character of Atticus Finch in “To Kill a Mockingbird” has influenced generations of people in the way they perceive lawyers and in thinking about a career as a lawyer. He is portrayed as a strong and true crusader for justice, someone who stands up for what is right even if it might cost him a lot, personally and professionally.

That’s definitely a portrait of what the law is meant to be. The law is meant to be a voice for those who otherwise wouldn’t be heard. The law is an avenue for the weak to be able to stand up against the strong. The character of Atticus Finch embodies these ideals and creates a positive image not only of the law, but of lawyers and the job we do.

I hope the above account of the novel will have the desired effect on each of our readers. Hopefully, we will all recommit ourselves to working harder to stamp out any lingering racist attitudes that are still around today. We all need to simply be more like Atticus.

MORRIS DEES IS A MODERN-DAY ATTICUS

I can think of no better example of Atticus in today’s world than Morris Dees. Morris, who has achieved legendary status, has dedicated his life to protecting folks who are victims of hate and intolerance. It’s my belief that his hard work and that of others at The Southern Poverty Law Center have made America a better place for all of us. When I think of Atticus I also think of my good friend Morris Dees.

TWO MOTHERS CHAMPION POOL SAFETY

Karen Cohn and Nancy Baker watched their children die after they were entrapped by powerful suction in a swimming pool and hot tub. These two ladies, unified in their grief, joined forces to fight for tougher pool safety laws and to resist efforts to weaken them. One of the mothers, Karen Cohn, said in an interview with the Associated Press, her first since her six-year-old son, Zachary, drowned three years ago:

“It’s not something we’ll ever get over, but we’re hoping to make a difference so other families don’t have to suffer the same fate. The laws are trying to be rolled back by the pool industry and we really want to make sure that we’re there to protect the children.

An annual average of 385 pool- or spa-related fatalities involving children under the age of 15 were reported to the U.S. Consumer Product Safety Commission from 2005 to 2007. Approximately 4,200 children are treated annually in emergency rooms for injuries ranging from minor cuts to near drowning.

Zachary Cohn was swimming in his family’s pool with his brother and sister on July 28, 2007, when his arm got trapped in an intake valve on the wall in the pool’s deep end. Water entering an intake valve is pumped through the filtering system under suction before being pumped back into the pool. Zachary was a strong swimmer, but he was no match for the powerful suction of the drain. Zachary’s death was caused because a company failed to install a required safety device that would have prevented the boy’s arm from getting stuck in the drain.

As we have reported previously, Mrs. Baker’s seven-year-old daughter, Virginia Graeme Baker, drowned in June 2002 after being trapped by the suction in a hot tub in McClean, Virginia. A 2007 federal law named for Baker’s daughter required anti-entrapment devices in public pools. In a shocking development, the Consumer Product Safety Commission voted 3-2 in March to interpret the law as not requiring a backup anti-entrapment device on certain pools that have an anti-entrapment drain cover.

Critics said such covers are not enough protection to prevent entrapments if they are improperly installed or inadvertently removed. The Association of Pool and Spa Professionals advocated that interpretation of the law. The commission’s vote angered Mrs. Cohn, Mrs. Baker and Representative Debbie Wasserman Schultz, (D-FL), who sponsored the law in Congress. The three vowed to fight it and the Florida lawmaker said that what the Commission did was “absolutely irresponsible” and that it “incorrectly interpreted the federal law.”

Rep. Schultz believes these two women can play a key role in pool safety changes by speaking from the heart about what happened to their children. She was correct when she said, “They’ve been heroic. The courage that these two women have shown, their desire and passion to never let what happened to their children happen to any other child, their selflessness, it’s truly amazing.”

Mrs. Cohn and her husband, Brian, formed The ZAC Foundation in their son’s memory to advocate for pool safety. Mr. Cohn said, “There’s not a real voice representing the families out there.” The Cohns are working to create a model law that would require multiple drains to reduce the suction power in pools and a safety vacuum release system that prevents suction entrapment by detecting sudden suction pressure obstruction and shutting down the filtration system. They hope to raise awareness about pool safety just as earlier efforts led to seat belt and bicycle helmet requirements.

Drownings and injuries from pool drain suctions are a long-running concern. Since 1985, there have been
more than 150 reported cases of swimming pool drain entrapments, leading to at least 48 deaths and many serious injuries, including disembowelment, of children and adults.

Source: Associated Press

**DR. DAVID BRONNER RECEIVES LIFETIME ACHIEVEMENT AWARD FOR TOURISM**

David Bronner, CEO of the Retirement Systems of Alabama, received Alabama Tourism’s 2010 Lifetime Achievement Award during the Governor’s Conference on Tourism last month. Dr. Bronner, who has been CEO of RSA since 1973, is responsible for the development of the Robert Trent Jones Golf Trail, a nationally-known collection of 26 championship golf courses at 11 sites. I remember when I told Dr. Bronner that his vision of a golf trail would never make it in Alabama. He has reminded me on a few occasions that I was dead wrong!

The award is among 14 for 2010 that comprise the Alabama Tourism Awards. The awards were first presented in 1998 and honor outstanding achievements in the state’s tourism industry. Each award winner is recognized as a key player in making tourism a strong economic force in Alabama, according to the Governor’s Conference on Tourism. It has been reported that tourism contributed $9.3 billion to Alabama’s economy in 2009 and supported 162,000 jobs statewide. More than 21 million people visited the state last year. Lee Sentell, who heads up the state’s tourism efforts, has done a tremendous job selling our state to the world. Lee, too, should be commended for his excellent work. The awards banquet was held at the Renaissance Hotel and Spa in Montgomery.

Source: AL.com

**XXVII. FAVORITE BIBLE VERSES**

Willa Carpenter, who serves as the Human Relations Liaison Director for our firm, and who may just be our most important employee, has been drawn lately to Psalm 37 which deals with “The Heritage of the Righteous.” Willa, who does a tremendous job for the firm, says this Psalm offers so much encouragement and hope to God’s people in these very difficult times.

**Trust in the Lord, and do good; Dwell in the land and feed on His faithfulness. Delight yourself also in the Lord and He SHALL give you the desires of your heart. Commit your way to the Lord, Trust also in Him, and He SHALL bring it to pass. Rest in the Lord, and wait patiently for Him**

Psalm 37:3-7:

*They (God’s children) shall not be ashamed in the evil time, and in the days of famine they shall be satisfied.*

Psalm 37:19

Susan Decker Bunce, who serves as executive director of Sav-A-Life, sent in her favorite verse. Her organization is a good one that works tirelessly to encourage women to make life-affirming decisions about their unborn children.

*I can do all things through Christ who strengthens me.*

Phil 4:13

My longtime friend Ray Warren, who serves as president of AARP in Alabama, sent in his favorite verse this month. Ray says the Book of Proverbs has great contemporary advice and that he especially likes the 14th chapter of Proverbs. Ray asked to include the following verse.

*He who oppresses the poor reproaches his Maker, But he who honors Him has mercy on the needy.*

Proverbs 14:31

Alan Worrell, president of Sterling Bank in Montgomery, sent in one of his favorite verses for this issue. Alan, a strong Christian, has been very active in the Fellowship of Christian Athletes and is involved in many worthwhile projects in the River Region. He is also my good friend.

*Be joyful always; pray continually; give thanks in all circumstances, for this is God’s will for you in Christ Jesus.*

1 Thessalonians 5:16-18 (NIV)

My very good friend Myron Penn says that for years a certain Bible verse has been a source of strength and inspiration to him. Myron, who is winding up a stint in the Alabama Senate, says, “All my life I’ve referred to Psalm 27:1 prior to events, that at first glance, seemed insurmountable, whether they were high school sporting events, the bar exam, my Senate race, or even courtroom trials.”

*The LORD is my light and my salvation; whom shall I fear? The LORD is the strength of my life; of whom shall I be afraid?*

Psalm 27:1

It’s real good to see a prominent public servant such as Myron acknowledge God’s power and authority. Myron is also an outstanding lawyer with the firm of Penn & Seaborn, with offices in Clayton and Union Springs. More importantly, Myron and his wife, Karen, celebrated the birth of their first child, Lawrence Cordell Penn, who was born on August 13th. From all reports the mother and baby are doing fine, but Myron is still trying to get some sleep.

Amy Bowers Creel, who is a friend from Wetumpka, sent in her favorite verse. Amy says this verse reassures her that she belongs to God and that there is nothing that happens in her life that does not in the end work out for the purpose and plan God has for her life. She added that it also reminds her of who is in control and that is not mankind—but God and God alone! In the end, those who love Him will be victorious.

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

Romans 8:28

Judith Redmond Henton, who lives in Eufaula, Alabama, sent in her favorite verse for this issue. It was real good to hear from her and I appreciate her sending this verse.

*The heavens declare the glory of God; the skies proclaim the work of His hands. Day after day they pour forth speech; night after night they display knowledge. There is no speech or language where their voice is not heard. Their voice goes"*
out into all the earth, their words to the ends of the world. In the heavens be has pitched a tent for the sun,

Psalms 17:1-4

Rev. Carmen Falcione, pastor of The Gathering in Montgomery, sent in the following verse. Carmen gives our firm’s devotion on the fourth Thursday of each month. He is a true man of God in every respect. Carmen is an avid fan of all sports, but especially of those teams located in Pittsburgh, Pennsylvania.

Yet indeed I also count all things loss for the excellence of the knowledge of Christ Jesus my Lord, for whom I have suffered the loss of all things, and count them as rubbish, that I may gain Christ and be found in Him, not having my own righteousness, which is from the law; but that which is through faith in Christ, the righteousness which is from God by faith; that I may know Him and the power of His resurrection, and the fellowship of His sufferings, being conformed to His death,

Philippians 3:8-10

XXVIII.
CLOSING OBSERVATIONS

Dr. John Ed Mathison, who pretends to be semi-retired, wrote a good message last month that I am including in this issue. For the record, John Ed is still working hard and “doing good” for lots of folks. Let’s take a look at what he had to say about volunteering.

Time—Problem or Possibility

A major emphasis of my ministry has always been the concept of volunteering. Part of the DNA of Frazer United Methodist Church is the fact that every member is expected to volunteer to serve someplace in the ministry of the church.

Many churches function on the process of recruitment. People are recruited to do certain things. I believe people serve more effectively when they volunteer rather than are recruited. The people who volunteer tend not to “burn out.” People who are recruited figure that they have some task to perform until they can get somebody else to replace them.

Let me share some current reports that show the importance of volunteering. The International Journal on Epidemiology reported an article that asserts that bored people die sooner than people who are excited about life. 7,500 were studied by a group from the University of London. Those who reported they were bored were 2.5 times more likely to die of a heart attack than those who were not bored.

The Bible is very clear that “If we try to save our life, we will lose it, but if we lose our lives in His service we will find life.” Read Matthew 10:39; 16:25; Mark 8:35; Luke 9:24, 25. The excitement and meaning to life comes when we invest our life in serving Christ. I believe that volunteering is the best vehicle for doing this.

This month the news services reported that the number of people volunteering is up in both the Montgomery area and the United States. 63.4 million Americans volunteered in 2009, rising by 1.6 million since 2008! This was also the largest increase in volunteering since 2003!

Anne Halls of the Volunteer and Information Center, which serves Montgomery, Autauga, Elmore, Lowndes, and Macon counties said the number of volunteers referred to agencies rose 30% in the past year! She acknowledges that some of these were one-time projects, but feels that those volunteers would also be involved in ongoing opportunities.

The rise in volunteers also is being recognized statewide in Alabama. 24.6% of Alabamians volunteer! They give about 102.7 million hours of service. This equated to about $2.1 billion of service contributed. It is also good to acknowledge that more young people are volunteering.

Time is precious. It is the best commodity we have. Use it wisely. An unwise use of our time could put us in greater danger of heart problems. Good use of our time as we volunteer to serve in Christ’s name will create heart possibilities. When our hearts give out to other people, the size of our hearts increase— and an oversized heart is not a spiritual problem!

Volunteer to serve in some area where your volunteering will be an expression of your God-given gifts and the result of your volunteering will make a difference in the lives of people. You not only will live longer, but more abundantly!

Dr. John Ed Mathison
Montgomery, AL
August 12, 2010

A WARNING FROM THOMAS JEFFERSON

We are seeing today how giant corporations have become so powerful and influential that many believe they are more powerful than even the federal government. That’s rather ironic, when you consider the government has a duty to regulate and control their activities. Thomas Jefferson warned American citizens years ago about the dangers associated with unchecked power of large corporations. Mr. Jefferson had this to say:

I hope we shall crush in its birth the aristocracy of our monied corporations which dare already to challenge our government to a trial by strength, and bid defiance to the laws of our country.

Thomas Jefferson
18th Century

It’s too bad Mr. Jefferson’s warning hasn’t been sufficiently heeded by our elected leaders. Several of our Presidents have recognized the dangers he warned about, including Abraham Lincoln, but few have done anything about it. But it’s not too late to curb the undue power and
influence of Corporate America and the place to start is with their lobbyists.

**A Timely Reminder For All Of Us**

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 bear from heaven and will forgive their sin and will heal their land.

2Chron7:14

XXIX.

PARTING WORDS

It has been my experience over the years that lots of folks deal with worry and fear on a recurring basis. Some have not been able to cope very well with these problems. It’s been said that as long as we put our faith in God, we don’t have to worry about our future. God will help us make the right decisions and find the good in difficult situations. I have found that trusting God is the most freeing and amazing feeling in the world. It took me a few years to accept that simple truth, but once I did, it made a tremendous difference in my approach to life. I learned that worrying never helps and in most cases only makes matters worse.

Fear is an entirely different matter. I have a few friends who have difficulty in making it every day because fear sometimes creeps in and literally takes over. Fear can cause a person to give way to panic, turmoil and even worse. Many people in today’s world have troubled hearts and live in a state of fear.

As we all know, fear can involve health issues, financial difficulties, world events, marital problems, bad work situations, the effects of climate change and the list goes on. All of us have most likely experienced fear in some fashion, and to some degree, at some point in our lives. I have known folks who had a great fear of failure in business, sports, and even in meeting responsibilities of being a parent.

The question is this: How do we deal with fear? Jesus said to his disciples on the eve of his crucifixion, “Let not your heart be troubled, neither let it be afraid.” Those words were meant to give them comfort and reassurance in the darkest hour of their faith. Jesus’ message to his followers can sustain us today regardless of what the situations are that cause us to be in fear and unable to cope. One of the primary reasons Jesus came to earth and died for sinful humankind was so that we might walk with God without fear, enjoying His peace all the days of our lives. One might ask, “How do I stay in peace when all around me seems totally out of control?” The answer is as clear as a bell.

I have found that in my life when worry and fear seem to be raising their ugly heads, God is always there to calm me and give me the assurance that He can handle my situation. When I yield to Him, things always settle down and the worry or fear that could have caused me great difficulty slips away. My prayer for all of our readers and their families is that they will turn over all of life’s problems, trials, and tribulations to a loving, caring, and powerful Savior. That my friend is the answer!

To view this publication on-line, add or change an address, or contact us about this publication, please visit our Website: BeasleyAllen.com

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