how much it would cost to correct a serious design problem. On all too many occasions, a decision was made by the manufacturer's bosses to run the risk and put a defective product on the market. In those instances, it was felt by the bosses that it would be cheaper to litigate rather than fix the problem.

Events such as those described in the movie are why we have seen the so-called tort reform movement start up back in the 1980s and continue right up to the present. A takeover of the legislative and judicial branches of government in the United States was an essential part of the tort reformers plan. It was also very important for Corporate America to have great influence in the executive branch. In many states that has become a reality. Because of those successes, many meritorious claims are either not pursued or are lost at some stage of the judicial process. When cases are sent to mediation, the mediator often tells the lawyers representing a victim with a good claim that they had better settle cheaply because even if they win their case, the Alabama Supreme Court will take their verdict away. This makes one realize how important it is to fight to keep our courts open, independent and fair.

The thing that motivates me as a lawyer representing folks who have been injured, or who have lost a loved one because some corporate boss put profits over safety and ran a safety risk by putting a defective product on the market, is that I know that I am "on the right side!" That's enough to keep me going, and for that reason, I will never give up the fight.

**ANGER AND APATHY THREATEN OUR COUNTRY**

There is a great deal of anger being exhibited all over the country these days by lots of folks and that’s not good. Many of them are just mad and really don’t know exactly why. In this setting, folks generally look for somebody or something in government to blame. The easy target for most of the unrest today is the federal government and some of that is understandable. But another troublesome aspect concerning the mood of the public is that all too many people are apathetic when it comes to being involved in

The Tea Party movement, which is financed primarily by a number of billionaires, including Rupert Murdoch and the Koch brothers (David and Charles), is taking full advantage of the discontent. This movement has already enjoyed...
some success in political races around the country. But at the end of the day the Tea Party crowd will have had little success with the actual problem-solving. It’s sort of interesting that the National Republican Party doesn’t seem to know exactly what to do about the Tea Party movement. I don’t see it going away, at least not until the general election is over. That will present problems for the GOP on November 2nd.

There is no doubt that Sarah Palin and her advisors, with the help of two talk-show hucksters, Rush Limbaugh and Glenn Beck, are driving this train. But the National Democratic Party is partly to blame for allowing the movement to take center stage. The Democrats simply failed to put the blame where it belongs and ignored some important issues. For example, the Obama Administration took over a government on the verge of fiscal collapse and immediately started trying to fix things. Unfortunately, discussion of the huge list of inherited problems was overshadowed by the new President and Congress having to push programs designed to tackle one of the biggest problems, the collapse of Wall Street. That severe problem was caused by lax or no regulation of the financial institutions. People soon forgot that the Bush Administration had inherited large surpluses when Bill Clinton left office, and after eight years left a government badly in debt and with huge budgets deficits. That seems to have been forgotten.

Hopefully, the anger and apathy around the country will soon be replaced with a spirit of national unity and optimism that is so badly needed. We must work to heal our nation’s wounds and start solving the economic problems that are hurting lots of folks. A combination of anger and apathy won’t get the job done!

**The GOP Congressional Pledge**

I really haven’t paid too much attention to GOP Congressional Boss John Boehner and the so-called Pledge to America. It’s nothing but politics as usual. But I do remember when the same bunch, with a former leader named Newt, had a Contract with America. We all know how that one worked out and we are still paying for it. This latest political maneuver has some similar promises. They now pledge:

- To cut taxes for the super rich.
- To roll back regulations on Big Oil and Wall Street.
- To strike down rules reining in the credit card lenders and the big insurance companies.
- To increase the deficit by trillions of dollars.

Their agenda is another windfall for the Big Corporations, including drug companies, oil companies and other special interests. Their plan for governing is designed to help big folks and push little folks further down economically. A friend who listened to the pledge presentation observed, “I now know what GOP stands for, ‘Get Our Paychecks!’” The sad thing is that lots of folks who would be hurt if the GOP takes over Congress will still vote for them. Many GOP Congressional candidates who support the pledge talk about helping “small businesses.” It might help to find out how they define a “small business.” Would you be surprised to learn that some of the biggest corporations in the U.S. fit their definition?

**Alabama Is Tops On Secret List Of States With Soaring Poverty Rates**

An investment news website, Business Insider, has released what it says is the U.S. Census Bureau’s “secret list” ranking states by poverty level. Unfortunately, the list places Alabama No. 1 as having the highest poverty rate compared to the national average. According to Business Insider, Alabama’s poverty rate is 3% above the national average. We apparently are in worse shape than even Mississippi, which came in second on the list.

Business Insider calculated the poverty level using the Census Bureau’s “complicated public use files.” To calculate poverty rates by state, the website adjusted household incomes by government benefits and used poverty thresholds that are adjusted for the geographic cost of living. The website, which claims its method of calculating poverty rates is superior to the method used by the federal government, also took medical, housing, energy and clothing costs into account. Business Insider wrote:

**BP Refuses To Pay Alabama’s Initial Claim**

A great deal has been written about the refusal last month by BP to pay the State of Alabama’s initial claim of $148 million. It should also be noted that BP has not paid the initial claims filed by Florida, Mississippi or Louisiana. I don’t believe Texas has yet filed its initial claim, but should do so very soon. So the bottom line is that Alabama was treated no differently than any other state. Our state is not standing alone in dealing with BP. In fact, BP isn’t paying legitimate claims to the thousands of oil spill victims, both individuals and businesses, who are hurting badly. All one has to do is check the Mobile Press Register each day and it will be very clear that BP isn’t paying claims.

When you consider that Florida filed an initial claim of $1.1 billion with BP, and with less damage than Alabama, it’s quite obvious that our state’s initial claim should have been much higher. In fact, $148 million isn’t even a drop in the bucket. Louisiana’s initial claim was over $8 billion, according to lawyers repre-
senting that state. BP has consistently lied to the people in all of the coastal states on a number of subjects, including the payment of claims. In my opinion, the bosses at BP never had any intention of paying $148 million to Alabama. Anybody who trusts BP to voluntarily do the right thing when it comes to paying full value on claims has never dealt with this oil giant.

**BP Shifts Blame In Gulf Disaster**

BP PLC’s report on its investigation into the Deepwater Horizon disaster, released last month, is clearly designed to shift blame and create doubt as to the cause of the explosion. While BP has accepted some of the blame, the main thrust is an attempt to shift much of the blame to other companies responsible for the various decisions that led to the explosion and subsequent massive spill. It’s real difficult to understand exactly how much of the blame BP is accepting in the report. But let there be no doubt—BP can’t escape a major portion of the blame. BP’s report is not only largely self-serving, but is another slick public relations move.

There is one thing for certain and that is BP’s Deepwater Horizon oil disaster in the Gulf of Mexico was not caused by any single factor. There will be plenty of fault to go around between the “multiple companies and work teams,” mentioned in the report coming from the oil giant’s internal investigation. BP’s report concludes that a sequence of failures involving a number of different parties including BP, Transocean, Halliburton, and Cameron International Corporation led to the explosion and fire which killed 11 people and caused widespread pollution in the Gulf of Mexico.

According to the report, decisions made by “multiple companies and work teams” contributed to the accident which it says arose from “a complex and interlinked series of mechanical failures, human judgments, engineering design, operational implementation and team interfaces.” The BP internal report found that:

- Shoe track barriers did not isolate the hydrocarbons.
- The negative-pressure test was accepted although well integrity had not been established.
- Influx was not recognized until hydrocarbons were in the riser.
- Well control response actions failed to regain control of the well.
- Diversion of the mud gas separator resulted in gas venting onto the rig.
- The fire and gas system did not prevent hydrocarbon ignition.
- The BOP emergency mode did not seal the well.

The BP report concluded that “a complex and interlinked series of mechanical failures, human judgments, engineering design, operational implementation and team interfaces came together to allow the initiation and escalation of the accident.” In laymen’s terms BP is simply saying all of the companies were at fault and caused the disaster, and don’t blame us too much.

This report will not halt the blame shifting that has been going on and neither will the litigation arising out of the disaster slow down. If anything, the lawsuits will increase dramatically. In testimony before Congress, several workers on the Deepwater Horizon blamed BP management for the spill, maintaining they cut corners and neglected safety issues in order to increase profits. Drilling company Transocean, which BP has argued is largely responsible, has attempted to distance itself from the disaster and limit its liability. It quickly took issue with the findings by BP in the self-serving report.

Another BP partner on the rig, Anadarko Petroleum, has accused BP of “willful misconduct” and said BP is entirely to blame for the disaster. Halliburton was involved in the cement work on the rig and has been named in several lawsuits, including one by the State of Alabama. We must never forget that all of the parties mentioned in BP’s report were at fault and contributed to cause the explosion that killed 11 workers and damaged the well, which unleashed nearly five-million barrels of crude oil into the Gulf of Mexico. There was also significant fault to be assigned to the various corporations after the explosion and fire. Clearly firms other than BP played instrumental roles, such as Transocean Ltd., which owned the rig and was hired by BP to do drilling work. The rig’s cementing work, done by Halliburton, is a key component in stabilizing a well when exploration drilling is finished but production hasn’t started. Cameron International appears to have some serious design issues, but that will have to be further developed by way of pretrial discovery in the MDL. Other companies such as Anadarko will also have significant liability.

BP’s safety culture in the United States has been under heavy regulatory scrutiny in recent years because of other accidents with its operations, including the 2005 explosion at its Texas City, Texas, refinery that killed 15 people. That troubled past has resulted in charges that recent cost-cutting at BP played a role in the disaster. If those charges are proven in court BP will be on the hook for penalties and fines of an excess of $20 billion for violations of the U.S. Clean Water Act for all the crude spilled in the Gulf.

Sources: Wall Street Journal and Insurance Journal

**BP Simply Won’t Tell The Truth**

BP has continuously lied about the amount of oil in the Gulf of Mexico and its effect on the Gulf’s environment. Despite numerous reports of recent sightings of oil in Gulf Coast waters and on beaches, and various scientific studies indicating giant plumes of oil found under the surface of the water, one of which was a staggering 22 miles long, BP has denied knowledge of any oil in these areas. The public relations campaign by BP, with the help of the federal government, has been busy selling the notion that all of the millions of gallons of oil that poured into the Gulf have either been cleaned up by BP or eaten by oil-digesting bacteria and microbes. Meanwhile, local fishermen, government workers, and even BP’s own crews, continue to pull up thousands of pounds of weathered oil. Putting things in perspective, we had an Exxon Valdez-size spill every five days in the Gulf. Most of that oil is still in the Gulf.
A research team from Columbia University found six inches of oil on the floor of the Gulf in late September. For some reason, the media has ignored this report. Despite the common knowledge of oil-contaminated water and sand throughout the region, BP is still lying about the situation. In addition to the Columbia University report, there was also a report by other scientists. It was reported on September 14th by one group that at least two inches of oil is lying on parts of the floor of the Gulf. This oil is mixed with the toxic chemicals used by BP. This disturbing information also has largely been ignored by the national media.

Scott Piggott, a BP employee who heads up cleanup in that area, claimed that reports from fishermen who were finding oil weren’t reliable. So far, BP representatives are consistently following the company line of “out-of-sight, out-of-mind.” They have managed to keep the truth about how much oil remains in the Gulf out of the mainstream media altogether.

Apparently, the truth about how much leaked oil still remains in the Gulf waters, and both the short and long-term effects of this environmental disaster, for some reason, are not fully understood by the media. As a result, folks outside the Gulf Coast states really don’t realize how bad things are. Hopefully, the media owners haven’t been overly influenced by the massive public relations efforts by BP. For example, BP’s public relations efforts have put over a hundred million dollars in the pockets of TV stations across the country for the misleading ads being aired.

In addition, BP has had a full page ad in every daily newspaper every single day for months. It’s time for BP to quit spending millions in television and newspaper ads and to stop lying about the Gulf. It’s also time for the media to start asking for and getting the truth.

Sources: Pensacola News Journal and Associated Press

**BP HAS NO INTENTION OF PAYING FOLKS**

With the BP oil spill finally stopped, it’s now time to make sure all Gulf Coast residents who suffered losses are appropriately compensated for their immediate and long-term losses. While some of the terms and conditions of the claims process put together by BP and Ken Feinberg are still unclear, there have been numerous reports that its creation is helping BP more than the Gulf Coast community. I happen to share this belief. As of September 22nd, the BP-Feinberg team was still not paying claims. In fact, Feinberg has been just as bad as BP and that’s very bad. But when you consider BP is paying Feinberg, and Feinberg won’t disclose his compensation agreement, it’s sort of easy to figure out why victims are getting the short end of the stick.

When first conceived, the fund was supposed to be an adjunct to the civil justice system, not an obstacle to prevent people from holding BP and other corporations fully accountable for losses that are enormous and evolving. Thus far that doesn’t appear to be the case. Feinberg operates sort of like a snake oil salesman selling his wares to an unsuspecting audience, and laughing all the way to the bank. As they say where I come from—“this fella bears watching!”

Now that emergency payment protocols for the fund are known, there are still many questions that need to be answered about the future and final claim protocols. So far, Feinberg is continuing what BP started and that is, paying as little as possible on valid claims. Claimants should not be forced to accept final payments before the full impact of the spill is realized. Neither should the final protocols require Claimants to waive their future legal rights in order to receive a final payment from the fund. There is even speculation that these waivers sought by BP would apply not just to BP, but to all the corporations responsible for the disaster. To continue letting BP call the shots on claims is unacceptable. We run the risk of essentially letting all of these bad actors off the hook for the worst environmental disaster ever in this country.

While all of the media attention has been largely on BP, there are others who share blame for the disaster. It’s crucial that Claimants not be required to sign these waivers which are really complete releases of all liability. The world now knows that the involved companies are all pointing fingers at each other on who bears responsibility for the spill. In reality, these companies have shown nothing but contempt towards the Gulf Coast community—distorting or hiding the full impact of the disaster to avoid accountability—and delaying needed payouts to victims. To force Gulf Coast residents and businesses to grant them blanket immunity, in exchange for a potentially insufficient settlement, is unconscionable and morally wrong.

As of mid-September, only about 3,300 people and businesses in Alabama who had filed claims with BP over the oil spill had actually received payments. It’s being reported that $19.6 million has been paid. Most of the payments have gone to Claimants in Baldwin and Mobile counties. Many local officials, including Orange Beach Mayor Tony Kennon, have let it be known that they are disappointed with Ken Feinberg, the claims chief, who took over handling of claims from BP on August 23rd. For example, Mayor Kennon told the Mobile Press-Register that claims were being paid too slowly and the checks too small. He said multimillion-dollar claims are outstanding and that no businesses have been “made whole.”

Feinberg, who is a master at both public relations and political spin, is being paid by BP. Thus far he has refused to let the public know what his compensation package from BP is. That may wind up being a big time problem for Feinberg, BP and the federal government, when the claims boss is finally forced to disclose this information. Based on what we have seen, there can be no doubt where Feinberg’s real allegiance lies!

It’s also important to remember that BP is not showing magnanimity by participating in this compensation program. Fund or no fund, the oil giant is legally obligated to pay all of the claims. Even if folks on the Gulf Coast decide the fund will provide the fairest and quickest compensation, nobody should give up legal rights they now have under current law. It’s very clear that the adverse effects of this disaster will last for years. BP and the others responsible to compensate the victims of the oil spill will try to get out as cheaply as possible. Regardless of BP’s $100 million television advertising campaign, none of the wrongdoers, including BP, have any real feelings for the tens of thousands of folks they have hurt and will continue to hurt.

Sources: Associated Press, Mobile Press Register and Bloomberg
THE GCCF AND FEINBERG MUST BE MADE TO FOLLOW THEIR OWN GUIDELINES

Ken Feinberg, with help from BP, developed a plan which was supposed to compensate individuals and businesses who have suffered losses as a result of the BP oil spill. Section 3 of the official claims protocol specifically restricts contact between the Gulf Coast Claims Facility (GCCF) and Claimants who have hired legal counsel. On August 23rd, our lawyers began filing claims on behalf of our clients with GCCF in hopes of obtaining prompt emergency payments. The claims filed were accompanied by all of the documentation required by GCCF. Everything needed for claims to be processed and paid were filed with GCCF. Our lawyers were clearly identified on each claims application for our clients.

Within 48 hours after filing, our clients began receiving personal contacts by GCCF staff requesting new claim forms and other information. This conduct clearly violates ethical standards, is outrageous, and is unacceptable. Feinberg and the GCCF created the protocol and contend they have a system in place to manage claims. But Claimants are having to contend with lots of confusion and delay brought on by the GCCF. We are concerned that legitimate claims aren’t being processed properly. It’s quite obvious that the claims process was designed with input from BP and is primarily for BP’s benefit and gives the oil giant an advantage over individuals and businesses who have been devastated economically.

These contacts violate Section 3 of the protocol and will not be tolerated. We put the GCCF on notice that the protocol must be followed and our clients’ claims handled promptly, in a fair manner, and paid. Not only is the GCCF delaying payments to persons in need, they are wasting time, effort and money.

Each of our clients who were contacted, numbering over 200, had previously been assigned Claimant identification numbers by BP which were in the GCCF system. Additionally, each client had filed the required claims with supporting information with GCCF. At the time of filing, our clients were assigned a claim identification number. GCCF had on file the names of each lawyer from our firm handling claims for a client. This would have been known to GCCF at the times of the improper contacts. Nevertheless, improper contacts were made by GCCF and our clients were told to fill out new claim forms and send them in to GCCF. It appears that many of our clients now have at least two claim identification numbers, which is very confusing to say the least.

These contacts are an interference with the contractual relationship with our clients. Feinberg and GCCF were put on notice to make no further contact with any client represented by our law firm. We attempted to cooperate fully with Feinberg and GCCF and were shocked at his allowing this conduct. Lawyers from our firm had met with Feinberg personally and discussed the claims process with him. Our desire was to first file emergency claims on behalf of clients who elected to first deal with BP’s claims process and then file with GCCF once Feinberg took over the claims process from BP.

Our goal is to represent our clients and obtain for them all which they are legally entitled to. But our experience with BP, and now with the GCCF, has not been very good. On September 8th, Feinberg denied that GCCF knew our clients were represented by our firm which is simply not true. The firm name and lawyer handling each claim were on each claim form. So it’s impossible for GCCF not to have known the claimants were represented by our firm. I wrote Feinberg on September 13th and let him know that he was wrong about the contacts with our clients. Our job is to make sure our clients are fully and adequately compensated for their losses, both those to date and in the future. That’s exactly what we will do.

III.

PURELY POLITICAL NEWS & VIEWS

STATEWIDE RACES

A Look At The Governor’s Race

According to all of the legitimate polls done recently, Dr. Robert Bentley enjoys a commanding lead over Commissioner Ron Sparks. That probably shouldn’t come as a big surprise for a number of reasons. The Tuscaloosa doctor comes across as a non-politician and appears to be a good man. At this juncture, Dr. Bentley has very low negatives according to all of the polls and that’s very important.

But, Montgomery insiders say that Ron shouldn’t be counted out at this stage. Ron is a hard worker and has an issue that many people appear to agree with him on—and that’s the claimed need for a statewide lottery. So far that has been Ron’s main message. I watched the first televised debate between the candidates on September 16th and it was generally a good discussion of the issues. But I doubt that many folks watched it. This race will likely tighten up considerably, but a lead of over 20 points will be hard for Ron to overcome.

The Lt. Governor’s Race

All of the polls are showing that Jim Folsom will defeat Kay Ivey in the race for the number two spot. Jim enjoys strong support with independent voters and that is extremely important. He is also getting strong financial support from the business and medical communities. The first two television advertisements run by the Folsom campaign are very good. The message in both ads is positive and the public has to appreciate that. I don’t look for things to change much in this race.

The Men Wanting To Be Attorney General

The voters will have a clear choice in the race between the two men wanting to become Alabama’s top cop. On one side you have an experienced and well-respected lawyer from Montgomery who has tried hundreds of lawsuits as a civil defense lawyer. On the other side, the candidate is a Washington insider who has been a lobbyist for powerful special interests for his entire career. James Anderson, the Democratic nominee, is the lawyer and Luther Strange, the Republican nominee, is the Washington lobbyist. It will be interesting to see if the voters will elect a lawyer over a lobbyist. It will depend on how much attention the media pays to this important race. I was surprised to read on September 24th that Luther called James a “trial lawyer,” which is totally false. In any event, it’s clear that Luther will outspend James by a very large margin.
The Supreme Court Races

So far the races for the three Supreme Court seats haven’t received a great deal of attention. The only public excitement came when it was reported that two GOP Justices contributed money to a Democratic nominee. That seemed to upset a number of editorial writers for state newspapers. It would be refreshing if those writers would pay as much attention to the qualifications of the candidates. Based on recent polling, few potential voters can even name any of the candidates. To make the candidates feel a little better, few of those polled could name any of the Justices now on the Court. That doesn’t speak very well for how we select members of the highest court in our state. Hopefully, that will change one of these days.

IV. LEGISLATIVE HAPPENINGS

THE COST OF CHILD ABUSE IN ALABAMA

Hopefully, the Alabama Legislature will take action next year to deal with a serious problem in Alabama. The cost of child abuse is typically measured in broken bones and broken lives, in the number of horrifying tales and images found on the airwaves and in the morning newspaper pages. But abuse also has an economic cost. A report released last month by the University of Alabama suggests that the cost may be larger than expected. This is an area of concern that must be addressed.

Child abuse costs Alabamians more than $520 million each year, according to the report prepared by the university’s Center for Business and Economic Research. Marian Loftin, director of Alabama Children’s Trust Fund, which commissioned the study, said the large figure came as a surprise to her, too. She stated that they knew it was “very, very costly,” but that nobody thought it would be that high. The report divided the economic impact of child abuse into direct costs such as hospital bills and costs to the judicial and welfare systems, indirect costs that include adult criminality and lost productivity to society. UA researchers drew on data from various national studies. Then applied those figures to state demographics to come up with the estimates.

Paul Smelley, deputy director of the Department of Child Abuse and Neglect, which oversees the Children’s Trust Fund, said the new information will help advocates by providing easy-to-grasp figures to cite in literature and when talking to legislators about budgeting needs. The report stops short of making specific recommendations on how to address the problem. The intent of the report apparently was to raise awareness, not propose solutions. Dr. Carl Ferguson, professor at the University of Alabama who was a consulting economist on the report, said: “This study simply says wake up, there’s an issue.” Hopefully, the legislators will recognize how serious the child abuse issue is and deal aggressively with real solutions. There will be legislation again this year addressing this problem.

Source: Associated Press

V. COURT WATCH

FOLKS WANT SPECIAL INTERESTS OUT OF JUDICIAL RACES

A new national poll shows that voters in both major parties believe campaign donations affect judges’ rulings and want greater transparency, if not a complete overhaul in states like Alabama that elect the top jurists. More than two-thirds of the respondents in the nationwide poll expressed distrust in how campaign money from special interests affects justice. The judicial watchdog group, Justice at Stake, commissioned the poll. Bert Brandenberg, executive director of Justice at Stake, had this to say about how folks feel:

The American mainstream wants courts to be off-limits to special interest money and partisan politics. The desire for impartial courts is broad and bipartisan.

Our court system was not designed to be political in nature but it sure looks like we now have a system run by politics. There can be little doubt, however, that folks expect judges to be non-political and independent. The Harris Interactive poll, conducted in June, revealed that:

• Both Democrats (71%) and Republicans (70%) said they believed campaign donations have a significant effect on courtroom rulings. Nearly one-fourth disagreed.
• Republicans (82%) and Democrats (79%) said judges should not preside in cases involving donors who gave $10,000 or more. Eight percent disagreed.
• Republicans (88%) and Democrats (86%) called for transparency in disclosing donors and the amounts they give judicial candidates. Eight percent disagreed.

It has been widely recognized that Alabama is the poster child for special interest spending on state Supreme Court campaigns. Alabama has long been the most expensive state in the nation to run for the High Court. Alyce Spruell of Tuscaloosa, who serves as Alabama State Bar president, says that “(w)e are number one in a category in which we should not be number one.” That puts it about as well as it can be said.

Candidates for the Alabama Supreme Court often get at least one-third of their cash from single sources, according to a recent study by Justice at Stake, the Brennan Center for Justice and the Institute for Money in State Politics. In the Harris poll, 69% called for alternatives such as a system in which judges are appointed by a committee and periodically face voters for retention. But the poll failed to take into consideration the hundreds of millions that are put into judicial races nationwide by groups using 527 committees. These committees spend their money for candidates directly, but don’t have any reporting to worry about. This has been the reason Republican candidates in Alabama have done so well in the past several elections.

Alabama is one of seven states that hold partisan elections for Supreme Court, while 14 states have nonpartisan elections. Appointment-retention systems are used in 24 states. Chief Justice Sue Bell Cobb and the Alabama State Bar have pushed for an appointment-retention system. Each has submitted bills calling for incremental changes. The legislation
was killed every time the bills were introduced. Alyce says the State Bar is changing tactics, combining public education and consensus-building and that "the business sector, political parties, our profession and the public must find a unified approach." I totally agree with Alyce and will support any legislation offered that will fix a broken system.

Source: AL.com

VI.
THE NATIONAL
SCENE

JUSTICE DEPARTMENT WILL SOON SUO BP

The Justice Department said last month it may sue BP for damages from the Deepwater Horizon oil spill. The government said in a pleading filed in the U.S. District Court in New Orleans that "The United States expects that it may file a civil complaint related to the Deepwater Horizon disaster." The Justice Department requested that the Court establish a track separate from the many private lawsuits for the government’s claims. The government says its claims, “may involve complex scientific and economic expert testimony” that may not be needed to quantify claims from private parties. But putting the government’s claims on a separate track is not likely to happen. When the Justice Department files suit, the lawyers will seek claims for the government under the Oil Pollution Act and the Clean Water Act.

The Clean Water Act authorizes the United States to seek civil penalties from various entities for oil spills, in amounts potentially up to $1,100, and in some circumstances up to $4,300, per barrel of oil spilled. The government will likely seek compensation for the cost of removing oil; economic damage such as the cost of increased public services and loss of tax revenue; and destruction of natural resources and assessment of that damage. Based on how BP has treated other Claimants, I fully expect the Justice Department to file suit fairly soon. The only thing that could possibly stop a suit would be a settlement with BP or strong lobbying by the oil giant. The first option is possible, but the second is more likely to be the route BP would take.

Source: CNN

ABANDONED WELLS IN GULF MUST BE PLUGGED

The Obama Administration will require oil and gas companies operating in the Gulf of Mexico to plug nearly 3,500 non-producing wells and dismantle about 650 production platforms that are no longer used. Interior Secretary Ken Salazar said a formal notice to the companies would make energy production in the Gulf safer and prevent potentially catastrophic leaks at wells that in some cases have been abandoned for decades. There are more than 27,000 abandoned oil and gas wells in the Gulf of Mexico. Additionally, there are more than 1,000 oil rigs and platforms that are not being used. An Associated Press investigation showed that many of the wells have been ignored for decades, with no one checking for leaks, and that’s real scary. The order requires wells that have been inactive for the past five years to be plugged. In my opinion, this should have been done long ago.

Source: Associated Press

SOLDIERS CAN SUE MILITARY CONTRACTORS OVER TOXIC EMISSIONS

Military contractors can be sued by soldiers and others who allege they were harmed by improper waste disposal while serving in Iraq and Afghanistan, a federal judge in Maryland has ruled. U.S. District Judge Roger W. Titus ruled that Houston-based military contractors Halliburton Co. And KBR are subject to lawsuits alleging the contractors exposed soldiers to toxic emissions and contaminated water when they burned waste in open pits without proper safety controls.

Judge Titus is overseeing 43 lawsuits filed in 42 states on the issue. The Plaintiffs claim the waste disposal methods used by the contractors caused serious physical injuries, including cancer and permanent respiratory damage. The contractors sought to have the lawsuits dismissed, saying it would require the courts to evaluate sensitive military decisions without the necessary knowledge or expertise. Judge Titus agreed the courts must treat such lawsuits with caution to protect military missions abroad. He wrote in his order:

Courts must be careful not to pass judgment on matters outside their realm of competence, and especially in national security matters entrusted to other branches of government.

Judge Titus ultimately concluded, however, that the courts should hear the cases so that people who may have been harmed have a chance to make their case. He said both sides should proceed in such a way that the military would not have to deal with intrusive requests for information.

Source: Law.com

OREGON MEN SETTLE BOY SCOUT SEX ABUSE CASES

Six men who alleged they were sexually abused by an Oregon Boy Scouts leader in the 1980s have settled their lawsuits against the group’s national organization for undisclosed amounts. The settlements include the case of one man, Kerry Lewis, who was awarded nearly $20 million in damages from Boys Scouts of America in a trial that ended in April. It was believed to be the largest such award against the national organization. A jury found the Texas-based group negligent for allowing a former assistant scoutmaster, Timur Dykes, to associate with Scouts after he admitted to a Scouts official in 1983 that he had molested 17 boys. The verdict came as the Boy Scouts, a Congressionally-chartered organization, marks its centennial.

Secret files kept by the Boy Scouts were used in the Lewis trial to demonstrate that the organization dismissed or ignored allegations of sex abuse by Scout leaders for nearly two decades. It was the first time the so-called “perversion files” had been used in a trial. After the jury’s verdict, the Boy Scouts of America still faced lawsuits from five other men who alleged Dykes molested them. Those trials had been scheduled to begin this fall. But all of the cases have been settled.

The Boy Scouts have settled sex abuse lawsuits out of court before, although the exact number is not known because not all are announced. But an expert on the

Source: Associated Press

www.BeasleyAllen.com
subject, Patrick Boyle, has said that from 1984 through 1992, the Scouts were sued at least 60 times for alleged sex abuse, with settlements and judgments totaling more than $16 million.  
Source: Associated Press

VII. THE CORPORATE WORLD

CORPORATE PROFITS SOAR AND WORKERS SUFFER

According to a report by The New York Times, corporate profits are soaring. At least that’s the case for the biggest companies that report earnings. The Times said that profits of 175 of America’s biggest corporations have soared by a whopping 42% this year. Even with all of the economic woes in the U.S., the 500 largest corporations now have an all-time record $1 trillion in cash. It’s rather strange that while profits are rising by leaps and bounds, and tremendous sums of cash are being hoarded, corporate bosses are not hiring employees.

Instead they are firing or laying off existing workers. You might want to check out a few of these companies. You can start with these: Ford Motor Company; Alcoa; Harley Davidson; United Technologies and even General Motors. Each of these companies—with the exception of GM—had record profits and yet cut payroll. For example Ford had $2.6 billion in profits during the period April, May and June, but cut its workforce in half during the past decade and recently announced it would not be hiring any new workers. I understand the code word for not hiring is “keeping capacity in check.”

Source: New York Times

CORPORATIONS SPREAD INFLUENCE THROUGH CONGRESSIONAL CHARITIES

Lawmakers are mixing charitable and political agendas which create yet another loophole that ultimately allows more corporate influence in Congress. The New York Times found that “at least two dozen charities that lawmakers or their families helped create or run routinely accept donations from businesses seeking to influence them.” Among these corporations making donations are AT&T, Chevron, General Dynamics, Morgan Stanley and Eli Lilly.

A provision to rules imposed in 2007 allows these businesses to make unlimited gifts to the lawmaker’s charities. It’s a win-win for business executives who claim they want to give to a “good cause,” when they actually are seeking to influence politicians’ positions on legislation or policy. For example, the cigarette maker, Altria, quickly donated at least $45,000 over a six-week period to four House members’ charitable programs. This so-called good deed conveniently coincided with the company’s attempts to seek “approval of legislation intended to curb illegal Internet sales of its cigarettes.” Surely the bosses at these companies knew what the indirect effect of their gifts would be. Craig Holman, who is Public Citizen government affairs lobbyist, said:

“It’s plain and simple influence peddling. These are the same businesses that have maxed out in giving campaign contributions. They find other ways to keep throwing money at these members of Congress.

These charities may be helping those in need, but without members of Congress getting the benefits of corporate giving that isn’t regulated by campaign finance laws. While some good results, it’s wrong for both the corporations and lawmakers to operate in this manner.

Source: wordpress.com

FOREST PHARMACEUTICALS PLEADS GUILTY

Forest Pharmaceuticals, a Forest Laboratories Inc. unit, has agreed to plead guilty to distributing its Levothroid thyroid drug before it was approved by the Food and Drug Administration. The company will pay $313 million to the federal government. The charges also involved illegal promotion of Celexa for use in treating children and adolescents suffering from depression. The Forest Pharmaceuticals unit also agreed to settle allegations it caused false claims to be submitted to federal health care programs for Lexapro, Celexa and Lexapro. All told, the company will pay a $150 million criminal fine, will forfeit $14 million, and pay more than $149 million to settle the False Claims Act allegations.

U.S. Attorney Carmen Ortiz, located in Boston, said in the statement:

Forest Pharmaceuticals deliberately chose to pursue corporate profits over its obligations to the FDA and the American public. The company knew that it did not have FDA approval to distribute Levothroid.

Forest Laboratories and Forest Pharmaceuticals are Defendants in all but one of our Medicaid fraud lawsuits, where we allege that Forest made false statements to the Medicaid agencies. Contrary to what the CEO of Forest is saying, Forest obviously disregarded these principles of integrity, honesty and ethics when it systematically defrauded our Medicaid agency clients. Furthermore, it appears this tendency to mislead the federal and state governments was a widespread problem within the Forest corporate family. If you need additional information on this subject, contact Clay Barnett, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

Source: Bloomberg

OMNICARE SETTLES STATE MEDICAID CASES WITH TWO STATES

Covington-based Omnicare Inc. has entered into settlement agreements valued at more than $21 million with Michigan and Massachusetts. The settlement came in cases involving charges that the firm overcharged the states’ Medicaid programs. The settlement by Omnicare, the nation’s largest provider of pharmaceutical care for the elderly, arose from a whistleblower lawsuit filed in federal court in Chicago in 2003 by a former Omnicare financial analyst.

Omnicare failed to follow “usual and customary” pricing regulations when charging Medicaid for prescription drugs supplied to residents of skilled nursing facilities in Massachusetts and Michigan. In one instance, the whistleblower complaint alleged that in 2001 Omnicare’s North Shore Pharmacy in Massachusetts
was paid by private insurers an average of $27.75 per prescription, while its payments for Medicaid patients averaged $47.15 per prescription—roughly 67% higher.

Under the settlement, Omnicare will pay $9.45 million to Massachusetts and $11.6 million to Michigan. The settlement also requires Omnicare to comply with pricing regulations, which include billing the lowest price the company charges a private third-party customer for the same drug. Vogel, Slade and Goldstein, a Washington D.C. law firm, represented the former financial analyst in this case and did a very good job.

Source: Cincinnati.com

**Government Joins Pfizer Suit Over Drug’s Marketing**

The Justice Department has joined a whistle-blower lawsuit against Pfizer and its subsidiary Wyeth Pharmaceuticals that accuses Wyeth of illegal off-label marketing of Rapamune, a drug used to prevent rejection of kidney transplants. This claim seeks recovery of hundreds of millions of dollars in inappropriate billings to public health programs. Nineteen states, including New York, and the District of Columbia also joined the filing.

There is also a criminal investigation into the marketing by Wyeth. The whistle-blower suit was filed in 2005, four years before Pfizer bought Wyeth for $68 billion. Pfizer could be in violation of a corporate integrity agreement it signed a year ago in a separate case if it was involved in further illegal sales. In that case, Pfizer paid $2.3 billion, including a $1.3 billion criminal fine, the largest in United States history, to settle investigations into illegal marketing of the painkillers Bextra and Lyrica, the schizophrenia drug Geodon and Zyvox, an antibiotic.

Source: New York Times

**Drug Company Overcharged State By $27.6 Million**

A Pennsylvania Court judge has ordered pharmaceutical company Bristol-Myers Squibb Co. To stop inflating the wholesale price of its drugs purchased by Pennsylvania’s pharmaceutical drug programs for the poor and for the elderly. Commonwealth Court Judge Robert E. Simpson said in his order that Bristol-Myers, headquartered in New York City, violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law with unfair or deceptive practices. The judge said Bristol-Myers owes $27.6 million to the State of Pennsylvania for the price of drugs charged in violation of fair trade practices.

The State of Pennsylvania filed suit against 13 pharmaceutical companies in 2004, alleging that the companies inflated the wholesale prices of drugs purchased by state-funded prescription drug programs, including the state Medicaid program for the poor, the state prescription drug program for senior citizens, the Pharmaceutical Assistance Contract for the Elderly, and a medical-prescription plan for state employees, the Pennsylvania Employees Benefit Trust Fund.

Source: Law.com

**H-P Settles Kickback Case For $55 Million**

Hewlett-Packard Co. will pay $55 million to settle allegations that it paid kickbacks to win U.S. government business and other charges related to government contracts. Separately, H-P will add $10 billion to its share-buyback program. The Justice Department alleged that H-P knowingly paid ‘influencer fees’ to systems-integrator companies in return for recommendations that federal agencies purchase H-P products.

It also alleged that H-P’s 2002 contract with the General Services Administration for computer equipment and software was defectively priced because the company provided incomplete information to contracting officers during negotiations. The developments came about as the Palo Alto, California, computer maker struggled through some turbulent times that included the resignation of its chief executive officer and a 17% slide in its share price. As expected, H-P denied that it engaged in any illegal conduct.

Source: Wall Street Journal

**West Virginia Mine Failed To Meet Safety Standards**

It appears Massey Energy Co. failed to meet safety standards at its mine where 29 miners died in April. Federal safety officials investigating the explosion said 79% of the dust samples from the mine showed insufficient levels of crushed limestone that miners are required to spread on surfaces to neutralize combustible coal dust and prevent major explosions. The findings by the Mine Safety and Health Administration reveal another example of just how some powerful corporations believe they are above the law. This explosion at Massey’s Upper Big Branch Mine in Montcoal, West Virginia, was the deadliest coal mine accident in
40 years. The Justice Department should take the strongest action possible if in fact Massey has violated safety standards.

Source: Wall Street Journal

VIII. TOYOTA LITIGATION UPDATE

TOYOTA SETTLES SAYLOR FAMILY LAWSUIT

Toyota Motor Corp. has settled the lawsuit brought by relatives of four family members killed in a high-speed crash near San Diego that first brought attention to the safety problems at Toyota. That led to the recalls of millions of Toyota cars. Mark Saylor, a California Highway Patrol officer, had borrowed the Toyota-made sedan from the dealer in August 2009. He was killed along with his wife, his daughter and his brother-in-law, as they drove on a California freeway. Their car reached speeds of more than 120 mph, hit a sport utility vehicle, launched off an embankment, rolled several times and burst into flames. A 911 call captured the brother-in-law telling the others to pray before the car launched off the embankment. The experienced law enforcement officer couldn’t slow the car down as it sped down the highway.

Shortly after the crash, Toyota recalled millions of cars to replace floor mats that it said could cause the accelerator to jam. The carmaker later recalled millions more vehicles to replace gas pedals that it said could stick. The case was considered the strongest of hundreds of lawsuits over claims stemming from sudden acceleration in several Toyota models, and brake glitches with the company’s Prius hybrid. Los Angeles County Superior Court Judge Anthony Mohr said he would probably sign a sealing order that would keep the settlement confidential.

Toyota badly wanted this lawsuit to go away as quietly as possible since it couldn’t afford for the media and the public to find out what really happened to cause the crash. Simply put, this is a lawsuit that Toyota couldn’t afford to try. Tim Pestotnik, a San Diego lawyer, represented the family. He and his firm should be commended for their good work.

Source: Associated Press

TOYOTA’S CRASH RECORDERS ARE SUSPECT

A top Toyota executive claims the crash data boxes in Toyota vehicles are reliable, but that a bug in the software that reads the information can provide inaccurate vehicle speeds. That disclosure came as NHTSA continued its investigation into unintended acceleration of Toyota models. The Japanese car maker had acknowledged previously that the event data recorders were not accurate. Toyota is now claiming that the problem only involves speed. That is most interesting to say the least.

The event data recorder, known as an EDR, also records such information as throttle position and braking pressure. Frankly, I have difficulty believing anything Toyota says now; based on its past history of withholding critical information from NHTSA and the American people, and I am not the only person who feels that way.

RECENT RULING HAS TOYOTA SCRAMBLING

Dimitrios Biller, a lawyer who is in a hotly-contested battle with his former boss, Toyota Motor Sales, U.S.A., Inc., will be able to introduce documents in his arbitration hearing that the company had claimed were privileged. And if that news was not bad enough for the car manufacturer in the Biller case, the ruling will likely affect other cases. I believe this ruling may influence judges to allow the same documents into evidence in other cases against Toyota.

The arbitrator, retired federal judge Gary Taylor, said in his ruling that Biller had made a prima facie showing that the documents, which ordinarily would not be available for him to use in discovery or during the arbitration hearing, qualify under the “crime-fraud” exception. In fairness, the ruling doesn’t mean that Toyota has lost—nor does it assure Biller a victory. The arbitrator didn’t rule “that a crime or a fraud has taken place,” and that was made clear in his order. Judge Taylor wrote in the order:

The ruling is simply that a prima facie showing has been made, so otherwise-privileged materials may be used in discovery and arbitration.

The ruling does not mean that all of the documents Biller possesses, or even the more than 100 documents that Judge Taylor reviewed, can be released to the public. Though Plaintiffs’ lawyers involved in the many lawsuits Toyota faces have long sought access to them, Judge Taylor wrote that his decision only allows Mr. Biller to use the documents in this limited context. Judge Taylor added that until he rules otherwise the “materials will remain confidential within this arbitration, with no public disclosure.”

It seems obvious that Toyota will have to convince other judges that these documents, which deal with safety issues and Toyota’s conduct on safety issues, should remain a “secret.” The Biller arbitration hearing is expected to begin on November 15[th], with a final ruling possibly coming in early January. It will be watched closely by our firm.

Biller, who worked for Toyota from 2003 to 2007, was its national managing counsel in charge of defending litigation brought in rollover accidents. I suspect he is a person Toyota wishes would simply go away or at least keep his mouth shut. If the many things the man has said about how Toyota has operated in rollover litigation are true, the public should have access to information that would verify his claims. In addition, Toyota should be severely punished for its conduct.

Source: Law.com

JUDGE MAY ALLOW ADDITIONAL CLAIMS AGAINST TOYOTA

Additional claims for economic damages may be allowed against Toyota Motor Corp. in the multidistrict litigation over its sudden unintended acceleration recalls. The temporary order by U.S. District Judge James Selna, who is in charge of the MDL, came after the Plaintiffs’ steering committee in the MDL filed its first consolidated Complaint for economic damages. In the Complaint it is alleged that Toyota knowingly hid defects associated with unintended acceleration beginning in 2002 while falsely assuring
consumers about the safety of its vehicles.

The committee actually brought two Complaints: an economic loss master consolidated complaint (MCC) filed on behalf of some 50 named consumers and four businesses nationwide; and a first amended consolidated complaint filed by ten consumers and two businesses in California. Each rely on claims under California consumer-protection laws, including the California Legal Remedies Act and the California Unfair Competition Law.

According to the committee, the MCC was filed to handle pleadings, the merits of the case, and discovery issues that are part of the MDL. The first amended consolidated Complaint is a “vehicle for class certification and trial” because it simplifies the process by applying only California law, rather than a hodgepodge of various state laws.

As of September 20th, 186 class actions had been filed for economic damages associated with unintended acceleration in 39 states, the District of Columbia and Puerto Rico. Of those, more than 120 state claims associated with the recalls of accelerator pedals and floor mat defects not asserted in the MCC, which alleges a defect in the electronic throttle control system of the vehicles. The MCC also omits certain other claims that were brought against Toyota, such as violations under the Racketeering Influenced and Corrupt Organizations Act, negligence and lemon law claims.

Cases with claims omitted from the Complaints would be “essentially in limbo” until the MDL wraps up. Furthermore, Toyota would be forced to address additional claims after litigating the claims in the existing Complaints. Judge Selna, in his order, said claims omitted from the MCC must be brought by October 12th, or they will be dismissed. Under the judge’s order, proposals on how to incorporate those claims in the MDL are due by October 26th. A hearing on those motions is scheduled for November 8th. In his temporary order, Judge Selna ruled that those with claims omitted from the MCC are entitled to due process and wrote:

While it might make sense to treat a MCC as a superseding Complaint that effectively dismisses unasserted claims with prejudice when there is no meaningful legal distinction between plaintiffs’ asserted and unasserted claims, that is not the case when there are meaningful distinctions among the underlying Complaints. Here, as both parties recognize, the MCC omits several claims, allegations, and parties that are entirely distinct from those asserted in the MCC.

Judge Selna also allowed Defendants not named in the consolidated Complaints to respond by the October 12th deadline. Toyota and its subsidiary, Toyota Motor Sales USA Inc., are the only Defendants named in the Complaints. Dee Miles, who heads up our firm’s Consumer Fraud Section, serves on the Plaintiff’s steering committee in the MDL. Dee has been very impressed with the manner in which Judge Selna has handled this complex litigation. It’s quite obvious that he demands lots from lawyers on all sides, and won’t put up with delays or excuses, and that’s good.

Source: Law.com

IX. PRODUCT LIABILITY UPDATE

INADEQUATE FEDERAL STANDARDS DO NOT MAKE CARS SAFE FOR THE PUBLIC

Before any automobiles in the United States can be sold to the public, the manufacturer of that car must certify that the car passes all of the Federal Motor Vehicle Safety Standards (FMVSS) applicable to passenger vehicles. Congress’ desire in passing these standards was “to specify only the minimum standards for motor vehicle safety, with the expectation that market forces would encourage manufacturers to develop higher safety performance.” FMVSS do not establish the state of the art or an optimal level of performance, but rather a minimum level of performance that the manufacturer must meet to sell its product. The standards do not govern all aspects of design and manufacture of a vehicle. Most design aspects are left to the discretion of the manufacturer. FMVSS covers only a limited number of items on a car and only a limited number of aspects of the car’s performance.

The standards, and the process by which they are adopted, are deeply flawed. Joan Claybrook, the former Administrator of the National Highway Traffic Safety Administration, summed up the problem in a November 28, 1980 letter to the then-President of General Motors:

Our Federal safety standards are and were intended by Congress to be minimum standards. The tragedy is that many manufacturers have treated the standards more like ceilings on safety performance rather than floors from which to improve safety.

That is a sad commentary on the attitude of car manufacturers—to design cars just to meet the bare minimum requirements of performance. Yet that is exactly what has become commonplace in this country. NHTSA has failed to do the job required to protect the public from unsafe vehicles.

Many of the current FMVSS standards applicable to cars today were issued in the late 1960s or 1970s. Think about that. There have been great technological advancements made in this world since the late 60s—cell phones, internet, and computers the size of dimes. Despite all of these advancements, the federal government still only requires car manufacturers to make its cars pass certain performance requirements founded on technology from over 30-40 years ago. It is a scary thought. Yet, those are the standards that exist.

The reason standards from the 60s and 70s are still applicable to cars today is because the rule-making process to upgrade and improve the standards is a painfully slow process that is influenced greatly by the ever-changing political winds. FMVSS are issued by NHTSA through a rule-making process. The rule-making process proceeds at a glacial pace. It typically takes several years from the initial notice of a proposed rule change to final rule. Rule-making through NHTSA is also a quasi-legislative power. The head of the agency is a political appointee. Major rule-making proposed by NHTSA must be approved by the Office of the Secretary of Transportation and also by the Office of Management and Budget, which is part of the Executive Office of the President. When
there is a change in the White House, there is a change most times in the direction of any proposed changes, upgrades, or improvements to the standards. Major controversial decisions on issuing, amending, and/or rescinding FMVSS standards are generally made by political appointees, not by NHTSA's expert career technical staff. These political appointees are obviously influenced by the favored “constituents” of the White House. And, for the most part, history reflects that the most important constituency unfortunately is the motor vehicle industry itself. The car manufacturers greatly influence NHTSA’s rule-making. In fact, NHTSA has been considerably dependent upon the industry for technical information. The cozy and close relationship between NHTSA and the automobile industry is highlighted by the fact that many former employers of the regulatory agency, upon leaving their position with NHTSA, go to work for the car manufacturers.

Another problem with the reliance on FMVSS is that NHTSA does not approve the safety of the products before they are sold. The process of certification with the FMVSS is one of self-certification. The manufacturer or distributor itself certifies that its vehicle is compliant with FMVSS by a label or tag permanently fixed to the vehicle. NHTSA does not “approve” or “certify” that vehicles and equipment meet FMVSS, or that they are “safe.” This is unlike the FDA which must approve pharmaceuticals before they can be sold.

Clearly, defective vehicles have been sold in the history of auto making, despite the fact that they were self-certified to meet applicable FMVSS standards. At times, recalls have been issued on vehicles that were certified to meet all applicable FMVSS requirements due to the discovery of a safety-related defect. FMVSSs are not intended to define what a safe product is under all circumstances, or to relieve a manufacturer from its responsibility to design a safe product.

As mentioned earlier, most of the FMVSS were initially issued in the late 1960s and 1970s. Many NHTSA safety standards are very lenient in terms of the state of the art, and in terms of the ability of the industry to provide higher levels of safety to avoid or ameliorate crashes and injuries and deaths resulting from crashes. They do not cover every aspect of performance of motor vehicles. Thus, NHTSA has stated that, although the safety standards meet the need for safety, they do not necessarily attempt to solve the full extent of a particular safety problem.

NHTSA has repeatedly urged manufacturers to design their products to do more than merely meet the minimum “floor” required in NHTSA’s standards. Former NHTSA Administrator, Dr. Ricardo Martinez, wrote that “mere compliance with the minimum requirements of the standard is not enough; minimum standards should not be the most in safety design that manufacturers provide.” The message here to the public is don’t be deceived by manufacturers who boast of how their vehicles meet and exceed the federal standards. The standards are weak and are the results of a political process designed to water them down. If you would like more information on this subject, contact Dana Taunton, a lawyer in our firm who is extremely well-versed in this area of law. She can be reached at 800-898-2034 or by email at Dana.Taunton@beasleyallen.com.

**15-PASSENGER VANS ARE VERY DANGEROUS**

Two recent rollovers involving 15-passenger vans in different parts of the country have brought more attention to the public on how dangerous these vans really are. One of the most dangerous vehicles on the road, the 15-passenger van is widely used by churches, schools, scout troops, day care centers and hotels. These vehicles look like any other van except they have been lengthened to hold more riders. The trouble is, when you put those extra passengers onboard, the van is three times more likely to rollover in an emergency. The problem is also accelerated when luggage and other items are put on board along with the passengers.

Ford, GM and Dodge all make a version of the 15-passenger van. The vans roll over even when they do not collide with another vehicle. After several well-publicized crashes involving these vans, the National Highway Traffic Safety Administration took the unprecedented step of noting:

These crashes have raised the question as to whether 15-passenger vans, especially loaded 15-passenger vans, are unusually susceptible to rollover. Fifteen-passenger vans differ from most light truck vehicles in that they have a large payload capacity and the occupants sit fairly high up in the vehicle. Therefore, when loaded the vehicle may have a much worse rollover propensity than when unloaded.

NHTSA found that the risk of rollover increases as the number of occupants increases by as much as 85% with ten or more passengers. Car manufacturers agree that vehicles should be designed to slide out on flat smooth pavement instead of rollover. However, the 15-passenger van fails this standard. Hardest hit have been groups who use 15-passenger vans to transport the young. There have been numerous incidents of 15-passenger vans tragically altering lives and families of young people across the country.

Lawyers in our firm have been aware of the problems with these vehicles for many years, but were recently reminded of the dangers this vehicle possesses when a church van rolled over right here in our home town. This event involved a Dodge 15-passenger van that rolled over carrying a youth group from First Baptist Church Montgomery to a lake outing. Fortunately, none of the occupants were killed. But this incident spotlights that something must be done to either get these vehicles off the road or make them safe. There were several miracles that occurred that day to save the lives of the youngsters in the van.

In a second 15-passenger van rollover which took place in New York, the occupants weren’t as fortunate. In that incident, six people were killed. This too involved a van being used by a church. There were 14 passengers in the van when a rear tire blew out. The van predictably rolled over several times. In addition to those killed, the other eight passengers were injured.

Electronic Stability Control is being offered for certain types of these vehicles and will help. A fix originally contemplated by Ford engineers, but rejected for costs reasons, involves placing dual rear wheels on the vehicles to increase the stability and lessen the risks associated with rear tire blow outs. However, the

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safest alternative is to not drive these vehicles at all. There are small buses available on the market much safer than these vans. If you have any questions concerning 15-passenger vans, please contact Chris Glover, a lawyer in our firm’s Product Liability Section at 800-898-2034 or by email at Chris.Glover@beasleyallen.com. Chris has handled a number of cases involving rollovers of these vans.

**Another Look At Tire Litigation**

Lawyers in our Product Liability Section are seeing an increase in the number of tire failure cases coming into our firm for review. The reason for this is two-fold: one is the failure of tire manufacturers to correct known deficiencies in their tires; the other is the increase in certain foreign-made tires that are making their way onto U.S. highways.

The leading cause of tire failure accidents is the separation of the tread and top steel belt from the carcass of the tire. This often results in the driver being unable to control the vehicle due to a change in the steering properties that result as a loss of the tread and belt. While tire manufacturers have known for years of several design features that prevent tread separations, they have routinely failed to implement the changes due to increased cost and lost productivity. These design features include: nylon cap plies, belt edge wedges and robust anti-aging compounds. All of these features increase a tire’s durability and make it less susceptible to tread-belt separation. Both government and industry research have shown the safety benefit of these features. But the tire industry has refused to implement the measures across all tire lines.

Our firm is also investigating several cases involving the failure of tires which have been imported from China and Taiwan. One of these cases involves an accident resulting in serious injuries to a mother and her young child. The tire that separated was manufactured and imported from Taiwan. An expert we retained to examine the tire has identified numerous problems with the tire. For example, a U.S.-made tire is typically spliced together at one location—two at the most. This tire was spliced together in six different areas. The manufacturing quality of the tire is poor to say the least. A judge in Florida recently sanctioned this very same manufacturer for failing to produce discovery documentation. The judge, as part of the sanction, precluded the tire manufacturer from presenting any expert or company testimony as to the existence, or lack thereof, of any defects in the tire at issue in the case.

Tire failure events are sudden and unexpected and, unfortunately, often lead to tragic results. Some of the tire cases our firm is currently evaluating are:

- **Recalled Tires**—failure of tires which have been recalled as defective;
- **Aged Tires**—tire failures involving tires that have good tread depth, but are six (6) years old or older;
- **Mobile Home Tires**—failures involving mobile home tires which were not designed to withstand the load and speed requirements for mobile home use;
- **Tire Service**—improper repair, service and/or placement of tires by tire service centers; and
- **Motorcycle Tires**—failure due to improper sidewall design.

If you need more information on the bad tire litigation, contact J.P. Sawyer or Rick Morrison at 800-898-2034 or by email at JPSawyer@beasleyallen.com or Rick.Morrison@beasleyallen.com.

**A NEW Tire LAW That SHOULD IMPROVE Highway Safety**

Lawyers in our firm who handle tire cases are encouraged by a new law that has been enacted in the State of California. The law requires retail tire dealers to properly check and inflate the tires of the vehicles they are repairing or servicing. Studies by the federal government have shown that it is virtually impossible for the average consumer to “eyeball” their tires and determine if they are properly inflated. Many times consumers go into service centers and the tires are completely overlooked. We have even handled tire failure cases where spare tires were put on the vehicle for use even though the tire had been recalled.

There is no waiting period, so the law went into effect immediately. The law applies to all automotive service providers, but not to auto parts distributors or retailers. The law will require automotive service providers to check and inflate each vehicle’s tires to the recommended tire pressure rating at the time of performing any automotive maintenance or repair service, as well as to indicate on the vehicle service invoice that a tire inflation service was completed. The law also requires maintaining the invoices for at least three years, and having tire pressure gauges with an accuracy of at least plus or minus 2 psi.

Most consumers expect and trust service centers to inspect and identify potential safety hazards related to their tires. Hopefully, this law will bring attention to a most important safety issue and cause other states to follow with similar legislation.

**Family WINS Lawsuit Against Ford Motor Company**

A jury in Arkansas has awarded a family over $7 million in a lawsuit against Ford Motor Company, including $2.5 million in punitive damages. Arkansas resident Johnny Washington was killed in August of 2000 when his 1994 Ford Explorer rolled over twice. He was partially ejected from the vehicle, even though he was wearing a seatbelt.

The lawsuit claimed that Ford knew the Explorer had defects that could kill drivers in a rollover crash but sold the vehicles anyway. The man’s family had been in litigation with Ford for ten years. The jury found the Explorer to be a “defective and unreasonably dangerous product.” The jury’s total award to the Washington family is $7,152,125. The trial took place in Pine Bluff, Arkansas. Since 2004, juries have awarded Ford Motor accident victims $580 million dollars in damages. In all 13 cases, juries agreed Ford vehicles were defective and unreasonably dangerous at the time of an accident.

Source: HULIQ.com

**Ford SETTLES Death Case IN Mississippi**

Ford Motor Co. has settled a Mississippi lawsuit over a 2001 accident in which Brian Cole, a top New York Mets prospect, was killed when his SUV crashed in
the Florida Panhandle. The settlement came shortly after the jury in Jasper County had awarded $131 million in actual damages to the victim’s family and before it was to consider awarding punitive damages. The settlement amount and terms are confidential.

Cole, then 22, died from injuries he suffered when his Ford Explorer overturned as he drove home on March 31, 2001, from spring training in Port St. Lucie, Florida, to Meridian, Mississippi, with his cousin, Ryan Cole. Brian Cole was ejected from the SUV. He was taking his Explorer home and was to fly to Binghamton, New York, to join the Mets’ Double-A team for its season opener. The one-car accident occurred on Interstate 10. Brian Cole, who was single and the youngest of five children, was pronounced dead at Jackson Memorial Hospital. Ryan Cole, then 17, was treated and released. The family made two claims: the Explorer was unstable and its safety belts didn’t work in rollovers, which allowed Brian Cole to be thrown out of the car during the rollover despite being belted.

Brian Cole went to Meridian High School and was Baseball America’s junior college player of the year in 1998 at Navarro Junior College in Texas. He was selected by the Mets in the 18th round of the 1998 amateur draft and turned down a football scholarship to Florida State. Tab Turner, a very good lawyer from Little Rock, Arkansas, represented the Plaintiff and he did a very good job.

Source: HULIQ.com

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**Hitachi Recalls Defective Nail Gun**

On March 11, 2010, Hitachi issued a product recall through the Consumer Product Safety Commission (CPSC) and Health Canada for one of its nail guns sold in the United States. The Japanese manufacturer issued the recall after receiving dozens of complaints of nails being ejected sideways. The users’ eyes are the primary region of injury and unfortunately, at least five individuals have sustained permanent partial blindness. Our firm is reviewing a claim for a client who sustained an eye injury after using one of the defective guns.

Our client’s eye injury occurred in early 2009, almost a year before the recall. Although the recall only applies to nail guns manufactured from October 2002 to September 2005, consumers should be wary of using any nail gun manufactured by Hitachi, as manufacturers who participate in recalls often attempt to limit the scope of the recall even when they know the recall should be much broader. According to information published by the CPSC, about 50,000 units were sold in the United States and about 15,000 in Canada. CPSC’s website has additional information about the recalls. If you need additional information on this subject, contact Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

Source: CPSC

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**X. MASS TORTS UPDATE**

**Woman Blinded By Drug Wins Her Case**

A federal jury in New Hampshire awarded $21 million last month to a woman blinded and scarred by a prescription drug she took for shoulder pain. Karen Bartlett, 51, suffered extreme burns to her skin, mucus membranes and eyes after taking the anti-inflammatory drug Sulindac. The jury found Philadelphia-based Mutual Pharmaceutical Co. liable for her injuries. The jurors found that the company should have known the drug was unreasonably dangerous to consumers.

This was the largest award in a New Hampshire product liability case. The largest previous award was $13 million in a 1993 case involving a construction site accident. Ms. Bartlett said her goal in filing the lawsuit was not for the money, but to educate others about the dangers of prescription drugs. She added:

“That was my biggest thing—getting the word out. Before this happened to me, I never knew something like this could happen just from taking medication. The verdict was a source of consolation, and the road to reach it has been very nerve-wracking, very emotional and very long.

Mrs. Bartlett began taking Sulindac in January 2005 to treat shoulder pain. Two weeks later, she noticed red spots on her face and irritation around her eyes. She was admitted to the hospital on February 2, 2005, complaining of feeling like there were “pebbles” under her eyelids and in her throat, and suffering from a worsening rash. She was diagnosed as having Stevens-Johnson Syndrome and toxic epidermal necrolysis (SJS/TEN)—potentially fatal skin diseases that inflame the mucus membranes and eyes and are marked by a skin rash that burns off the outer layer of skin. She spent 112 days in five hospitals, including the Massachusetts General Hospital Burn Unit. The disease also scarred her throat, stomach and lungs, causing permanent disabilities. She has undergone 12 eye operations and is legally blind.

Evidence presented during the 14-day trial included graphic photographs of ulcerated burns on her body and of her disfigured eyes. Sulindac has the highest reported incidents of SJS/TEN of any non-steroidal anti-inflammatory drug on the market. The drug’s dangers clearly outweighed any benefit it offered. Many believe that this drug should never have been put on the market and should be recalled. I totally agree!

In 2005, Mutual changed the warning label accompanying Sulindac to elaborate on its possible side effects, including SJS/TEN. Clinoril, which Ms. Bartlett’s doctor prescribed, is the brand name commonly associated with Sulindac. Keith Jensen, a lawyer from Ft. Worth, Texas, represented Ms. Bartlett and he did a very good job for her.

Source: MSNBC

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**A Closer Look At Stevens Johnson Syndrome**

As we have written on numerous occasions, Stevens Johnson Syndrome (SJS) is a most serious health problem. It results in lesions and blisters all over the body and skin that sloughs off and these are just some of the symptoms patients experience. SJS doesn’t discriminate in its targets and that’s a scary thought. It’s not fully understood why patients develop SJS. It is known, however, that the condition is a very rare, yet severe, allergic reaction to medications. The condition often starts as a painful rash, sometimes accompanied with blisters. By the time the
patient is finally diagnosed, the person's skin may start sloughing off, exposing large areas of flesh. It's a very painful condition.

In addition to losing the outer layer of skin, patients may also experience sloughing of their mucous membranes and of the lining of their internal organs. Those who survive their experiences often have permanent scarring. There can also be damage to their eyesight and damage to their tear ducts, and some patients fall into a coma. Some die from their injuries. Patients may have no idea they are allergic to a specific medication until the reaction occurs. Folks have developed SJS after taking a wide variety of medications, including medications as seemingly harmless as headache remedies. If you need additional information on SJS, contact Frank Woodson at 800-898-2034 or by email at Frank.Woodson@beasleyallen.com.

**JURY RETURNS VERDICT IN SECOND BELLWETHER HERNIA PATCH TRIAL**

A federal jury in Rhode Island awarded $1.5 million to a North Carolina man and his wife in the second bellwether trial in the Kugel mesh hernia patch litigation. The jury awarded $1.3 million in compensatory damages to Christopher Thorpe for severe abdominal injuries caused by broken hernia patch rings, and $200,000 to his wife, Laure, for loss of consortium. The judge did not allow punitive damages to go to the jury. Jurors concluded that while the device was defective, the drug more than doubled the risk of renal failure, and suspended sales in November 2007. Trasylol had been on the market for 14 years.

Lawsuits involving Trasylol have consolidated and are pending in the MDL. According to Jim Ronca, co-lead counsel of the Plaintiff's steering committee, Bayer is settling the suits on a case-by-case basis. Bayer reviews each case, one by one, on the relative strengths, merits and weaknesses of the case. They apparently try to settle the cases that appear to be certain losers for the company. Jim says the settlement framework devised by Bayer involves a "detailed, almost line-by-line analysis of the medical records of each case." For example, he says a younger patient who had simple surgery, spent little time on a heart bypass machine and experienced no infections would have a stronger case than someone older whose surgery was longer and more complicated. Over 4.5 million patients worldwide, including 1.5 million patients in the U.S., are estimated to have been given Trasylol before sales were suspended. Nationwide, approximately 1,600 of the original 2,000 cases are still pending.

Source: Lawyers USA Online

**PFIZER SETTLES PREMPRO CASES**

Pfizer Inc. has agreed to settle an Arkansas woman's claims that the company's Prempro menopause drug caused her breast cancer, avoiding a second trial on the issue of punitive damages trial in the case. Pfizer faced a retrial this month of Donna Scroggin's claims that the world's largest drugmaker should pay millions of
dollars as punishment for mishandling its Prempro hormone-replacement medicine. An appeals court overturned a $27.1 million punitive award last year and ordered a new trial on damages.

The company has now agreed to settle Ms. Scroggin’s case. Judge William Wilson is overseeing more than 8,000 cases involving the medicine, consolidated in federal court in Arkansas. Wyeth has lost seven of the 12 Prempro cases juries have considered since the cases began going to trial in 2006. The drug maker got some of those verdicts thrown out at the post-trial stage or had awards reduced. It has now settled some of the other cases, including Ms. Scroggin’s lawsuit. Pfizer also has won dismissals of more than 3,000 cases at either the pretrial stage or after the cases have been set for trial.

More than 6 million women took the hormone-replacement pills to treat menopause symptoms including hot flashes, night sweats and mood swings. The medicines are still on the market. Pfizer bought Wyeth last year for $68 billion. Ms. Scroggin and other women contend company executives ignored studies raising questions about the link between hormone-replacement drugs and breast cancer to pump up sales. Annual sales of Wyeth’s hormone-replacement drugs topped $2 billion before a 2002 study sponsored by the U.S. National Institutes of Health suggested women using the medicines had a higher breast cancer risk.

In March 2008, a jury in federal court in Little Rock, Arkansas, ordered Wyeth to pay a total of $29.8 million in damages to Ms. Scroggin, including $2.7 million in actual damages. The U.S. Court of Appeals in St. Louis threw out the punitive award in November 2009, saying the trial judge allowed jurors to hear inadmissible evidence in the punitive-damages phase of the first trial. It left Ms. Scroggin’s actual-damage award intact.

Pfizer also has agreed to settle another woman’s claims over the company’s menopause drugs that resulted in a $1.5 million jury award. A Philadelphia jury found in May 2007 that Merle Simon’s breast cancer was caused by Provera, a hormone-replacement drug made by Pfizer’s Pharmacia & Upjohn unit. A judge later threw out the $1.5 million actual-damage award. An appeals court reinstated the award in December.

James A. Morris and Steve M. Faries represented the Plaintiffs in both cases. These lawyers fought hard, never gave up and finally received justice for their clients.

Source: Bloomberg

**OTHER HRT LITIGATION CONTINUES**

The hormone replacement therapy litigation is turning into one of the longest-running mass torts in U.S. history. Zoe Littlepage, a partner at Littlepage Booth in Houston, and lead Plaintiffs’ counsel in the federal multi-district litigation, believes “this is now the longest-running MDL with no inventory settlements and no mass settlements in sight.” This means the Defendants are taking a case-by-case approach in this litigation.

The current wave of litigation began after a study in July 2002, known as the Women’s Health Initiative, found that using Prempro for five years increased the risk of breast cancer by 26%, heart attacks by 29%, strokes by 41% and blood clots by 113%. There are about 1,500 HRT suits in Philadelphia and 12,000 nationwide, including about 8,000 consolidated in federal multi-district litigation in U.S. District Court in Little Rock, Arkansas.

The suits name Wyeth Pharmaceuticals, which sold Premarin and Prempro, and Upjohn, a division of Pfizer, which sold Provera. Pfizer acquired Wyeth in 2009. The next jury trial, involving claims by three Arkansas women, is scheduled for October 1st. It will be heard in U.S. District Court in Little Rock, Arkansas. Two other trials are slated to take place before the end of the year. In November, Zoe Littlepage will represent Georgia Torkie-Tork in U.S. District Court in Alexandria, Virginia. A resident of Virginia, Torkie-Tork developed breast cancer in 2002 after taking Prempro for six years. And in December, Ted Meadows, a lawyer in our firm’s Mass Torts Section, will be the lead Plaintiffs’ counsel for claims by four women in a consolidated trial to be held in state court in Philadelphia. We look forward to trying those claims for our clients.

Source: Lawyers USA Online

**PREMPRO CLAIMS ARE NOT TIME-BARRED**

A Pennsylvania appellate court has ruled that product liability Plaintiffs should have been allowed to have juries decide when it was reasonable for them to discover that their breast cancer may have been the result of taking the Defendants’ hormone replacement drugs. The decision reversed the dismissals of product liability lawsuits brought by fourteen post-menopausal women who were diagnosed with breast cancer between 1998 and 2002.

Each of the Plaintiffs claimed that their illness was the result of taking the hormone replacement therapy (HRT) drugs Prempro, Premarin or Provera. The drugs’ manufacturers argued that the Plaintiffs’ claims accrued when they were diagnosed with breast cancer and claimed the cases were therefore barred by Pennsylvania’s two-year statute of limitations. But the appeals court ruled that a jury must decide when the Plaintiffs should have realized the causal connection between HRT and their breast cancer. The court wrote in the order:

*Knowledge of an injury alone is not sufficient to trigger such inquiry. One must have some reason to suspect that the injury was caused by a third party to impose a duty to investigate further. Where the injury is one that may result from non-tortious conduct, such as a disease, that point may be difficult to discern without resolving factual issues. Subjective differences among persons and the situations in which they find themselves are relevant in making that determination.*

This is a significant ruling. It is a correct one and will help lots of women.

Source: Lawyers USA Online

**PLAINTIFF CAN BRING NEGLIGENT DESIGN DEFECT SUIT**

A plaintiff who alleged her daughter died as a result of taking Redux, a drug manufactured by Wyeth can pursue a negligent design defect claim, a Pennsylvania appellate court has ruled in reversing a summary judgment. The plaintiff’s daughter died in 2004, shortly after being
diagnosed with primary pulmonary hypertension. The plaintiff alleged that her daughter’s condition was caused by her taking Redux for three months in 1997. The plaintiff filed various product liability claims against Wyeth, including a negligent design defect claim.

Wyeth argued that, under state law, prescription drugs like Redux are exempt from strict liability design defect claims, and that the exemption should likewise extend to negligent design claims. The court disagreed, saying:

Pursuant to Pennsylvania law, a negligent design defect claim is considered to be distinct from, and not subsumed within, a strict liability design defect claim. Consequently, [the plaintiff’s] negligent design claim is not precluded … and is a valid cause of action upon which relief may be granted.

But, the court concluded that Wyeth could not be liable under state law for negligently marketing Redux or negligently failing to withdraw the drug from the market. The claim will proceed only on the negligent design theory.

Source: Lawyers USA Online

**PROTECT YOUR TEENAGERS FROM COUGH SUPPRESSANTS**

An FDA advisory panel recently reviewed and recommended that the FDA not make over-the-counter cough syrups containing dextromethorphan prescription medications. As we have reminded our readers in prior issues, the FDA is free to accept or reject the panel’s recommendation.

Dextromethorphan (“Dex”) is the active ingredient in about 125 over-the-counter cough and cold medicines like Nyquil, Robitussin and TYLENOL Cold. In a recent survey, 8% of teens reported abusing these cough suppressants. The DEA reports that this epidemic has led to a 70% increase in emergency room visits between 2004 and 2008. More than 8,000 people were treated in emergency rooms as a result of abusing Dex.

All too many teenagers take excessive doses of Dex, or more often, mix it with other prescription medication or marijuana in order to get high. This is a practice called “robotripping.” In addition to bringing on euphoric highs, the practice can cause a spike in heart rate, blood pressure and body temperature, and in some cases death. As we learned in the Meridia litigation, Dextromethorphan is a serotonin reuptake inhibitor, and when combined with any serotonergic medication (or when taken in excess), it may lead to Serotonin Syndrome which is a potentially life-threatening condition.

It’s imperative that parents accept the fact that just because these medications are sold over the counter, that does not mean they are benign. We should take the same care with these medications as we do with controlled substances and alcohol. If you need additional information on this subject contact Russ Abney, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Russ.Abney@beasleyallen.com.

Source: CNN

**DEPUY HIP IMPLANT RECALL**

Johnson & Johnson, and its DePuy Orthopaedics subsidiary, recently announced it is recalling parts used for hip replacements. At issue is the high rate of repeat surgeries needed by people who have received the parts. An estimated 93,000 people will be affected by this product recall. Affected hip replacement parts involved in the recall include the DePuy ASR XL Acetabular System and the DePuy ASR Hip Resurfacing System. Patients who reported problems in the first five years of the original hip implant and had revision surgery reported a variety of symptoms, including pain, swelling and problems walking. Other symptoms that may indicate a serious problem with the hip replacement parts include:

- **Loosening**—when the implant does not stay attached to the bone in the correct position;
- **Fracture**—where the bone around the implant may have broken;
- **Dislocation**—where the two parts of the implant that move against each other are no longer aligned; and
- **Metal debris**—where metal particles from the component parts moving together spread around the hip area.

In an effort to limit its liability, DePuy has offered to reimburse patients with the DePuy implants for potential future surgical revisions in exchange for patients signing a consent form. However, consent forms signed by patients would allow DePuy to have access to the patients’ doctors and protected medical information, which DePuy would not otherwise have. It would also require that the implanted hip device be returned to DePuy in the event that a revision is necessary. Patients should be very cautious about such consent forms. It would be wise to seek a lawyer’s advice to fully understand what is at stake before signing.

Lawyers in our firm’s Mass Torts Section are reviewing cases involving individuals who have had a DePuy hip device implanted. We will look at potential cases where an individual is unsure of the type of hip device implanted if the person has had revision surgery, or the person is experiencing hip pain, hip swelling, or difficulty walking. If you need more information on these claims, contact Navan Ward at 800-898-2034 or by email Navan.Ward@beasleyallen.com.

**NEW FEDERAL RESERVE RULES APPROVED TO PROTECT BORROWERS**

As we mentioned last month, the Federal Reserve Board approved new rules to protect mortgage borrowers from unfair, abusive, or deceptive lending practices that can arise from loan origina- tor compensation practices. Scarlette Tuley, a lawyer in our Consumer Fraud Section, has taken a close look at the new rules. She has some more information for this issue on the rules, as we promised. The new rules apply to all persons who originate loans, including mortgage brokers and the companies that employ them, as well as mortgage loan officers employed by depository institutions and other lenders. The final rules, which apply to closed-end loans secured by a consumer’s dwelling, will:

- Prohibit payments to the loan origina- tor that are based on the loan’s interest rate or other terms. Compensation that
is based on a fixed percentage of the loan amount is permitted.
• Prohibit a mortgage broker or loan officer from receiving payments directly from a consumer while also receiving compensation from the creditor or another person.
• Prohibit a mortgage broker or loan officer from “steering” a consumer to a lender offering less favorable terms in order to increase the broker’s or loan officer’s compensation.

The rules provide a safe harbor to facilitate compliance with the anti-steering rule. The safe harbor is met if the consumer is presented with loan offers for each type of transaction in which the consumer expresses an interest (that is, a fixed rate loan, adjustable rate loan, or a reverse mortgage); and the loan options presented to the consumer include the following:

1. the lowest interest rate for which the consumer qualifies;
2. the lowest points and origination fees, and
3. the lowest rate for which the consumer qualifies for a loan with no risky features, such as a prepayment penalty, negative amortization, or a balloon payment in the first seven years.

The final rules go into effect April 1, 2011. If you need additional information contact Scarlette Tuley at 800-898-2034 or by email at Scarlette.Tuley@beasley allen.com.

**Travelers Wins $262 Million Judgment Over Asbestos Reinsurance**

Travelers Insurance has won a $262 million judgment against a group of reinsurers that refused to pay a portion of a nearly $1 billion settlement in asbestos claims the insurer paid in 2002. The award by a New York Supreme Court means American Re-Insurance Co., part of Munich Reinsurance Co., will pay $202.5 million, plus interest. The remaining $59.8 million will be paid by a second group of reinsurers—ACE, Century Indemnity and OneBeacon—all part of a reinsurance coalition known as the Excess Casualty Reinsurance Association.

Since the reinsurance lawsuits began seven years ago, Travelers has previously reached settlements with nine other reinsurers that were part of the litigation. It’s been estimated that interest on the judgment will bring it to more than $420 million. The long-fought decision stems from liability insurance policies written just after World War II by United States Fidelity & Guaranty Co. (USF&G) for California-based Western Asbestos Co. That company, a distributor of asbestos-containing materials and products, was acquired in 1967 by MacArthur Co. and renamed Western MacArthur.

In 1993, following a decades-long explosion of asbestos-related lawsuits, Western MacArthur sued USF&G, claiming that it was obligated to provide product coverage. In 2002, USF&G, then owned by the St. Paul Cos., settled with Western MacArthur for $987 million. Following the settlement, USF&G—which became part of Travelers following its merger with St. Paul in 2004—suited its reinsurers after the companies refused to pay part of the claims.

Source: Insurance Journal

**Louisiana Citizens Insurance Settles Homeowner Claims**

Louisiana Citizens Property Insurance Corp., Louisiana’s property insurer of last resort, has reached a $23 million settlement with thousands of homeowners who say they were not properly compensated after hurricanes Katrina and Rita for work needed to coordinate storm repairs. The dispute centered around the use of a general contractor.

When repairing a home takes three or more types of specialists, insurers are supposed to pay extra money to cover the cost of a general contractor to coordinate the work—typically 20% of the repair bill—even if the homeowner acts as his own contractor. The settlement must be approved by a judge in state district court in New Orleans. A hearing has been set for November 18th.

The settlement underscores that people are entitled to overhead and profit when three or more trades are involved. That’s not something that insurance companies are necessarily running around telling people. The deal creates a $23 million settlement fund for all parties. The settlement proceeds, after fees and expenses, will be distributed to the Plaintiffs, with payments depending on the amount of damage homeowners had. Citizens is Louisiana’s third-largest property insurer. Alan Canter, a New Orleans lawyer, was lead counsel for the Plaintiffs and he did a very good job.

Source: Insurance Journal

**$350 Million UnitedHealth Class Action Settlement Approved**

Last month, Southern District of New York Judge Lawrence M. McKenna gave final approval to a $350 million class action settlement with UnitedHealth Group Inc. The settlement resolves claims that the health insurer colluded with others to underpay doctors outside of its network. The judge pointed out in his order that the case involved complicated issues and that the settlement was a good result for members of the class.

The settlement came in a suit commenced in 2000 by the American Medical Association and other medical groups, providers and patients seeking relief for physicians who were harmed by UnitedHealth’s use of a database to determine payments for out-of-network doctors.

An investigation by New York Attorney General Andrew Cuomo resulted in UnitedHealth agreeing in January 2009 to a $50 million settlement and the closure of the database, which Cuomo at the time said resulted in “unfair reimbursements” to patients. The class action settlement, announced two days later, also required the end of the database on a national basis. Judge McKenna unsealed his preliminary approval of the settlement in December. Another $12 million will be added in interest.

The law firm of Pomerantz Haudek Grossman & Gross represented the Plaintiffs and did a very good job for the class members.

Source: Law.com

**Blue Cross To Refund $156 Million In North Carolina**

Health insurance regulators in North Carolina have identified nearly $156 million in refunds owed to Blue Cross...
policyholders because of changes coming under the nation's new health law. Consumers with policies at other companies around the country also may deserve refunds, according to North Carolina Insurance Commissioner Wayne Goodwin. The Commissioner plans to urge other states to probe potential overcharging for a type of reserve fund.

The health care law will dramatically change how health policies are sold in 2014, and many plans in effect now will cease to exist that year in their current form. Yet state regulators who scrutinized a recent rate increase request by Blue Cross and Blue Shield of North Carolina say they discovered the insurer was collecting reserves to pay claims beyond their worth about a month and a half's premiums. For an average policy holder, that's $690, according to Blue Cross.

Blue Cross has agreed by year's end to send refunds to more than 215,000 North Carolina policyholders with individual plans in force on March 23rd—the date the new health law was enacted. The refunds in North Carolina will vary depending on premiums paid, but will be worth about a month and a half's premiums. For an average policy holder, that's $690, according to Blue Cross.

The reserves being refunded are portions of consumers’ premiums that the insurer set aside in the early years of a policy to keep monthly payments more stable over the life of the policy, as the person’s medical expenses increased. It appears that Blue Cross' group policies may not have used this kind of reserve.

It's unclear what percentage of health policies nationwide use similar “active life reserves” formulas in setting rates and whether policyholders in other states also deserve refunds. According to Steve Larsen, who heads insurance oversight at the U.S. Department of Health and Human Services, there may be others. He said in an interview with USA Today that he thinks “there may be a bigger issue at work here.” It will be most interesting to see exactly how this situation in North Carolina will play out in other states. The North Carolina Insurance Department did an outstanding job in this matter.

Source: USA Today

**THE HARTFORD AGREES TO $73 MILLION LEGAL SETTLEMENT**

The Hartford Financial Services Group Inc. has agreed to a $72.5 million class-action settlement ending a dispute over structured settlements in personal injury and workers compensation cases. The settlement which has been approved in U.S. District Court in Bridgeport covers 21,600 people nationwide. It was alleged in the lawsuit that The Hartford’s property and casualty companies purchased annuities from its life insurance subsidiary and deducted as much as 15% in undiscovered costs from the promised value of the annuity. The Hartford’s life insurance subsidiary was accused of paying a kickback to the property and casualty companies each year of a portion of the 15%.

Source: Associated Press

**XII. EMPLOYMENT AND FLSA LITIGATION**

**LEE IACCOCA AND OTHER CHRYSLER RETIREES SUE OVER PENSION LOSSES**

Lee Iacocca and about 450 other Chrysler white-collar retirees have filed a class-action lawsuit in a Michigan court. The Plaintiffs, who say they lost a big chunk of their pensions when Chrysler went bankrupt, want their money back. The retirees lost more than $100 million in supplemental pension payments because of the 2009 bankruptcy. The lawsuit was filed against Daimler and Cerberus, former owners of old Chrysler. The new Chrysler was not named as a Defendant.

The lawsuit claims that neither former Chrysler owner Daimler nor Cerberus, which bought the company from Daimler and lost it in bankruptcy, properly safeguarded the funds for retirees—known as “Rabbi Trusts.” Such funds are not regulated by the federal Employee Retirement Income Security Act. Daimler or Cerberus could have switched the retired workers funds to annuities, the lawsuit argues, as Daimler did in 2005 for white-collar employees still working for Chrysler. Cerberus also did nothing to protect the accounts, the lawsuit says. Sheldon L. Miller, a Michigan lawyer, is handling this case for the Plaintiffs.

Source: USA Today

**WAL-MART’S SEX DISCRIMINATION CLASS ACTION GOES TO SUPREME COURT**

The nearly ten-year legal battle over the class action lawsuit alleging sex discrimination at Wal-Mart stores is now before the U.S. Supreme Court. Wal-Mart is challenging the class certification of more than 1 million female former and current workers. The giant retailer challenges the certification and the claims for monetary damages, saying they violate due process and federal rules of civil procedure. The class certified by the district court was estimated to include over 1.5 million former and current female Wal-Mart employees who held different jobs in different stores in different states under the supervision of different managers. This is the largest employment class action in history.

The U.S. Court of Appeals for the Ninth Circuit ruled in April in favor of class certification, agreeing with the district court that “it would be better to handle some parts of this case as a class action instead of clogging the federal courts with innumerable individual suits litigating the same issues repeatedly.”

The Plaintiffs claim that the retail chain, with more than 3,400 U.S. stores and a million employees, has paid women less than men and has given promotions to women less frequently than men, and that the women are similarly situated enough to form a class. Joseph Sellers, a Cohen Milstein Sellers & Toll lawyer, who is part of the team representing the proposed class of Wal-Mart employees, says that Wal-Mart has taken “the kitchen sink approach to challenging the pursuit of civil rights class actions.” Some of the issues raised, he said, including whether punitive damages are allowed, are premature. Hopefully, the Court will deny review and send the case back for trial.

Source: Law.com

**AT&T SETTLES OVERTIME CLASS ACTION LAWSUIT FOR $17 MILLION**

A federal judge has given preliminary approval to a $17 million settlement in a
class action accusing AT&T Services Inc. of misclassifying its senior analysts and database administrators in California as exempt from overtime laws.

Source: Law360

OLAN MILLS INC TO PAY $3 MILLION IN SETTLEMENT OF LABOR LAWSUIT

A federal court judge in Tennessee has approved a $3 million class action settlement agreement between Olan Mills Inc. and employees—past and current—in four states as compensation for the company's violations of the federal Fair Labor Standards Act. The alleged violations by the portrait studio chain occurred between 2003 and 2009. Olan Mills, which is based in Tennessee, was sued earlier this year by 18 current and former employees—all of them women—from Tennessee, California, Florida, New York, North Carolina, Georgia and Michigan. Most of the Plaintiffs are employed as studio photographers or were previously employed. All were paid on an hourly basis. In their lawsuit, the Plaintiffs allege that Olan Mills, Inc. violated federal law by forcing employees to work off the clock.

Source: pdnonline.com

XIII.
PREDA TORY LENDING

GMAC MORTGAGE FILED FALSE AFFIDAVITS ON FORECLOSURES

GMAC Mortgage, a unit of Ally Financial Inc., has halted evictions in 23 states as the result of mishandled affidavits. Company employees submitted affidavits containing information they didn't personally know was true and signed the affidavits without a notary present. In fact, this is an industry-wide problem and there will be more said on that in the coming weeks.

State officials are investigating allegations of fraudulent foreclosures at the nation's largest home lenders and loan servicers. Mortgage borrowers have accused GMAC and other lenders of foreclosing on homeowners without verify-
If you have any questions about Litton Loan Servicing or you have any questions about predatory lending in general, contact Bill Robertson, a lawyer in the firm’s Consumer Fraud Section. Bill handles cases involving predatory lending, and he also currently has filed several cases against Litton Loan Servicing for alleged fraud involving the servicing of its loans. You can contact Bill at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com.

**PAYDAY LENDER SETTLES CONSUMER LAWSUIT IN NORTH CAROLINA**

Spartanburg, South Carolina-based Advance America Cash Advance Centers Inc., a major payday lender, will pay nearly $19 million to settle a North Carolina lawsuit accusing it of violating state consumer finance laws. The settlement will affect 144,000 consumers who got a payday loan at Advance America or National Cash Advance in North Carolina after March 2003. Advance America’s short-term loans carried annual percentage rates of as much as 400%, much higher than the state limit of 36%. The settlement must be approved by a judge in Hanover County, North Carolina.

Public Justice lawyers, along with lead counsel Jerry Hartzell of Raleigh; Mona Lisa Wallace and John Hughes of Salisbury; Richard Fisher of Cleveland, Tennessee; Mal Maynard of Wilmington; Carlaene McNulty of Raleigh; and Paul Bland should be commended for their very good work in this case.

Source: Associated Press

**XVI. PREMISES LIABILITY UPDATE**

**ELECTROCUTION CASE SETTLES**

Our firm recently settled a case for one of our clients whose husband was electrocuted and killed while working on the premises of Sims Property in Florence, Alabama. The decedent was performing maintenance work and painting awning supports on the front of the Sims Property building. He was electrocuted when his paint pole came into contact with the casing of a florescent sign which was also affixed to the front of the building. The casing was dangerously energized because it was not properly grounded.

This case illustrates a most serious problem that exists across the state. Owners of buildings, which have aged, often ignore safety issues with their buildings and expose tenants and people working in and around these buildings to risk of injury and even death. In this case, the florescent sign’s energy source was a two prong wiring system that was not properly grounded. The hazard posed by electrical systems which are not properly grounded has been recognized for over 60 years. In fact, the first National Electric Code, which was released in 1957, required that all electrical systems and signs be grounded to prevent electric shock injuries and fatalities.

In this case, the owner of the building, who is an electrician, was aware that the florescent sign on the front of the building was improperly grounded. He was also aware that it posed a safety hazard to those who might come in contact with it. However, the safety hazard was not corrected until after the death of our client’s husband, and only after the City of Florence ordered the property owner to eliminate the safety hazard. The only reason the building’s owner did not eliminate the hazard before our client’s husband’s death was the cost involved.

The case was pending in Lauderdale County, Alabama before Judge Gil Self when the settlement was reached. The amount of the settlement, at the request of the Defendant and the liability insurance company involved, is confidential. Rick Morrison from our firm, along with Leslie Johnson, a very good lawyer from Florence, Alabama, represented the family and did a tremendous job.

**$6.8 MILLION JURY AWARD IN ALCOHOL-RELATED CRASH**

A jury has found a Pennsylvania restaurant liable for continuing to serve alcohol to an intoxicated man who later caused a car accident that severely injured Ryan Fell. The jury awarded $6.8 million in damages to Ms. Fell, who was driving home after visiting a friend on March 15, 2007, when the crash occurred.

Omar Villalava-Martinez had stopped at the Famous Mexican Restaurant & Bar, located in Coatesville, after work. In the course of two hours, the man drank 12 beers and topped that off with a shot of liquor. By his own testimony, he became very drunk and the bar continued to serve him. The man—in a drunken state—left the bar in a Ford Explorer about 9:30 p.m. He had traveled about four miles down the road when his Explorer crossed the center line and crashed into Ms. Fell’s vehicle.

Ms. Fell was seriously injured in the crash which crumpled her Nissan. The 22-year-old received broken legs in the crash. Even though her ankle bone was ejected from her body, fortunately, doctors saved her foot. More than three years after the accident, walking is still painful for Ms. Fell. She lost her job as an administrative assistant for a trucking company and remains unemployed.

Villalava-Martinez, an illegal immigrant, has been deported to Mexico, and the restaurant has closed. Under state civil law in Pennsylvania, establishments can be held liable for serving visibly intoxicated customers who later kill or seriously injure another person. Dawson R. Muth, a lawyer, with Goldberg, Meanix, & Muth, located in West Chester, Pennsylvania, represented Ms. Fell and did a very good job.

Source: Philly.com

**BRIDGE COLLAPSE SETTLEMENT COMPLETED**

A $52 million legal settlement will help Minneapolis bridge collapse victims cover lost wages and pay medical bills. The settlement was reached with engineering giant URS Corp. There were 145 people injured and 13 killed in the incident that occurred in August 2007. The Interstate 35W bridge over the Mississippi River broke apart and collapsed during a steamy rush hour. Settlements were previously reached with the state and a paving contractor. All told, Minnesota and two contractors will have paid out $100 million. This incident has caused lots of pain, grief and suffering over the past three years for those injured and relatives of those killed.

This last settlement averts a trial next spring that could have opened URS to punitive damages. Lawyers for the victims
claimed that URS overlooked critical deficiencies that led the 40-year-old bridge to fail. URS had argued that its engineers didn’t know about a design flaw in the bridge that made it vulnerable. Hennepin County District Judge Deborah Hedlund had not ruled on the Plaintiffs’ demand for punitive damages when the settlement was reached. The settlement terms called for $48.6 million of the settlement to go to victims, and $1.5 million to be set aside for a memorial to those who died in the collapse.

URS was the last of the major players to agree to a settlement for victims. The state distributed $37 million from a special fund in exchange for an agreement that it wouldn’t be sued. Progressive Contractors Inc., a paving company that had been resurfacing the bridge, reached a $10.5 million settlement last fall with about 130 victims and survivors. PCI also agreed to pay $1 million to settle the state’s claims. URS previously agreed to pay the state $5 million to settle a negligence claim. This latest settlement won’t end the bridge collapse litigation entirely. URS and the state have pending claims against Jacobs Engineering Group Inc. of Pasadena, California, which acquired the now-defunct firm that designed the original 35W bridge.

Source: Associated Press

**REPORT FAULTS UTILITY AND CONTRACTOR IN FATAL FIRE**

A series of mistakes made by Xcel Energy Inc., a large utility company, and a California painting contractor led to a 2007 fire that killed five workers in Colorado, according to a report released by the federal Chemical Safety Board. The men suffocated after a chemical flash fire broke out in a tunnel at the Cabin Creek hydroelectric power plant in the Rocky Mountains, about 45 miles west of Denver. At the time, crews were giving the tunnel a fresh coating of watertight epoxy. The board faulted the firms for a “lack of planning for hazardous work, inadequate contractor selection” and for use of flammable chemicals in tight quarters. Cabin Creek is owned by Denver-based Public Service of Colorado which is owned by publicly traded Xcel, based in Minneapolis, owner of utilities in eight states. Public Service of Colorado, says it has changed the way it manages contractors and claims it does a better job analyzing hazards, in an attempt to prevent accidents. The company disagreed with some of the report’s findings and conclusions, including that Xcel exercises poor oversight.

In its report, the chemical safety board also urges the federal Occupational Safety and Health Administration to set more explicit limits on use of flammable substances in confined industrial spaces. The board cited 53 serious fires in confined spaces from 1993 to April 2010 that killed 45 people and injured 54 more. It should be noted that the chemical safety board investigates chemical accidents, but doesn’t levy fines.

OSHA is currently studying the report. The Agency’s investigation of the Cabin Creek accident led to criminal indictments last year against Xcel, Public Service Co., the painting contractor, RPI Coating Inc., of Santa Fe Springs, California, as well as two RPI executives, accusing them of willful violations of OSHA rules. Prosecutors alleged the companies didn’t assess the hazard involved in the job, take steps to prevent an accident, or respond to the accident quickly enough. The companies and individuals have pleaded not guilty and a trial is expected next year.

The first mistake that led to problems, according to the report, was Xcel’s selection of RPI. The contractor had scored low on Xcel’s internal safety rankings for prospective contractors, and it picked as a cleaner a common, but highly flammable solvent—methyl ethyl ketone, commonly referred to as MEK.

The second problem was when workers used an epoxy that was poorly suited to the job because temperatures were too cold for that material to work well. As epoxy gummed up spraying machinery, workers used large quantities of solvent to unplug their sprayers. Solvent became airborne and a flash fire erupted. Fire then spread quickly to open buckets of solvent and epoxy. Some workers escaped, but five men were trapped behind flames and retreated into the tunnel, more than 1,500 feet from fire extinguishers and the exit. They died about an hour after the fire erupted, before they could be reached by rescue workers.

**FRATERNITY LAWSUIT PARTIALLY SETTLED**

The parents of a college student from Austin, Texas, who died in a California hazing incident have settled their lawsuit against a former Sigma Alpha Epsilon fraternity member for $500,000. Carson Starkey, an Austin High School graduate, was an 18-year-old freshman at California Polytechnic State University when he died of alcohol poisoning in December 2008.

His parents sued the fraternity and nine fraternity members, including their son’s designated big brother, Haithem Ibrahim, also a member. Ibrahim has pleaded no contest to a misdemeanor charge of hazing causing death. The insurance carrier for Ibrahim settled his case with the family, but the suit against the other Defendants is pending. The national fraternal organizations on college campuses—as well as a good number of the colleges’ administrator’s—have let the abuse of alcohol by fraternity members get way out of hand.

It’s time for all concerned to get control over a most serious problem. For example, Northwestern University recently paid $2 million to the family of a student who died on campus in an alcohol-related incident. The school also agreed to review and change its alcohol policies on campus. I believe you will see more of this sort of thing in the near future.

Source: The Statesman

**TRENDS CONCERNING LITIGATION AGAINST FACTORY FARMS**

After years of very little success, lawsuits against factory farms, also known as concentrated animal feeding operations
Iowa factory farms gained a large verdict for their nuisance suit. The lawsuit claimed that the factory farms caused a blight on the local neighborhoods by emitting noxious odors. The jury awarded the plaintiffs $4.5 million for their damages. This was a significant victory for the plaintiffs, who had sued a factory farm for years. The case was noted for its innovative approach to nuisance law, which had previously been不太 developed.

Other states, such as Alabama and Oklahoma, have also enacted laws dealing with nuisance lawsuits against factory farms. These laws allow plaintiffs to seek damages for the negative impact that factory farms have on their quality of life. In the case of Alabama, a lawsuit was filed against a factory farm that was emitting noxious odors into a nearby neighborhood. The plaintiffs argued that the odors were causing them physical and emotional harm. The court ultimately ruled in favor of the plaintiffs, awarding them $4.5 million in damages.

In Oklahoma, a similar case was filed against a factory farm that was emitting noxious odors into a nearby neighborhood. The court ruled in favor of the plaintiffs, awarding them $4.5 million in damages. These cases demonstrate the growing trend of nuisance lawsuits against factory farms, as more people are becoming aware of the negative impacts of these farms on their communities.

**References:**


**Further Reading:**

averted.” Robert Shull, program officer for workers’ rights at the Public Welfare Foundation, had this to say:

Workplace safety should be a constant concern. Given the importance that workers themselves place on this issue, we should not have to mourn the loss of people on the job before government and employers take more effective measures to ensure that employees can go home safely after work.

The U.S. Department of Labor reported on August 19th, in a preliminary count, that the number of workers who died on the job in 2009 fell 17% from the previous year, as workers clocked in for fewer hours because of the recession. Despite a decrease in workplace fatalities, the study found that reports of workplace injuries remained high.

The study done for the Public Welfare Foundation found that about 12% of workers reported an on-the-job injury during the past year. Thirty-seven percent said they have required medical treatment at one time for a workplace injury. While unsafe working conditions wind up costing the public, the workers and their families pay the highest price. The Public Welfare Foundation is a national foundation that supports workers’ rights, health reform and criminal and juvenile justice. The General Social Survey is supported with grants from the National Science Foundation.

Source: Claims Journal

WIDOW OF EXPLOSION VICTIM TO RECEIVE $3.2 MILLION

The widow of a Texas man who was killed in a tanker truck explosion at the Port of Brownsville in 2006 has reached an out-of-court settlement with RTW Properties L.P., one of the companies involved in the case. Live Lara Gutierrez is the widow of Juan Perez, who was killed in the explosion. The parties settled for a $3.2 million payment to the widow and the decedent’s heirs. The lawsuit named RTW and 14 other Defendants. The decedent, a truck driver, died on February 27, 2006, when a tanker truck that was being loaded with motor oil at the RTW Terminal at the Port of Brownsville exploded. He was thrown off the truck and died from his injuries.

On the day of the explosion, the tanker had a strong smell of gasoline, but was filled with the oil-based compound. The truck had gasoline fumes, which run the risk of igniting during the filling process by static electricity. A normal procedure to avoid that occurring is to ground the tanker to prevent any sparks from lighting the fumes. That wasn’t done with this tanker. Marc Rosenthal, an Austin-based lawyer, represented the widow and two children in this case and he did a very good job.

Source: Brownsville Herald

JURY AWARDS $30.4 MILLION IN POPCORN LUNG CASE

In what is believed to be the largest individual verdict in a popcorn lung disease case, a Chicago jury awarded $30.4 million to a plant worker who was exposed to the butter flavoring chemical diacetyl, causing irreversible lung damage. The verdict was against diacetyl supplier BASF Corp. The Plaintiff, 45-year-old Geraldo Solis, was diagnosed with bronchiolitis obliterans in 2006. After working in butter flavor processing plants for nearly 20 years, he now has only 25% of normal lung capacity. His illness is incurable, and the man is currently awaiting a lung transplant.

BASF knew back in 1993 that diacetyl would cause significant lung disease, but it refused to tell anyone. Mr. Solis worked at a number of flavoring companies throughout his life. He was working at a Chicago processing plant when he was diagnosed with bronchiolitis obliterans. He filed suit against more than a dozen companies, including the factories where he was employed and the suppliers of the chemicals used to manufacture the butter flavoring. Settlements were reached with all Defendants except BASF Corp. And the case was tried against that Defendant.

During the trial, the testimony of medical experts on the dangers of diacetyl was very important. The key piece of evidence was a study conducted by BASF AG, the Defendant’s German parent company, back in 1993. It was found in that study that rats exposed to diacetyl developed severe lung disease. The company failed to disclose the results of that study. That failure put workers like Mr. Solis in danger from exposure to the chemical. The defense lawyers argued that there was no proof that the man’s illness was caused by diacetyl, and that he was already suffering with respiratory problems before he was exposed to the chemical.

I understand a $500,000 settlement offer from the Defendant was rejected by the Plaintiff before the trial began. The jury found in Mr. Solis’ favor, assessing compensatory damages of $32 million. The jurors found him 5% at fault for his injuries because he continued to work in butter flavoring plants after he first began suffering symptoms. $1.6 million was deducted from the total verdict as a result. Kenneth B. McClain of Humphrey, Farrington & McClain, a law firm from Independence, Missouri, represented the Plaintiff and he did a good job.

Source: Lawyers USA Online

A LOOK AT FORKLIFT SAFETY IN THE WORKPLACE

Nearly 5,000 workers are injured or killed by forklift accidents each year. We have found that many employers pay very little attention to forklift safety training for their employees. As a result, forklift safety is a critical industrial problem. There are some essential principles that will help ensure a safer working environment wherever forklifts are used. Any worker required to operate a forklift must be properly trained and be qualified to operate the forklift for the worker’s specific job. This must include the workers being trained on the specific piece of equipment they will be operating. The following are safety recommendations for workers using forklifts:

• Check the equipment and load before use. Always check that the load is within the forklift load limit listed on the load capacity plate. If the load isn’t placed correctly, reload it. Stability is Critical for Safe Operation.

• Be aware of stability issues. A forklift can become dangerously unstable when being driven with a raised load or a raised empty load carriage. Dual wheeled forklifts provide an extra margin of safety in lateral stability

Source: Claims Journal
when lifting loads above 15 feet. Another important point is that loads attached to a forklift or suspended from a jib attachment are more likely to result in a full forward tip over when braking.

- Keep loads uphill. It’s easy to tip over on ramps and sloping surfaces, whether the forklift is loaded or unloaded. When driving a loaded forklift on ramps with a grade of 10% or more always keep the load uphill, even if this means driving in reverse down the ramp.

- Stay with the forklift if it begins to tip over. Experience from around the world has shown that staying in the vehicle is the safest way to go. The most common cause of death with these vehicles is when an operator attempts to jump clear of an overturning forklift and is crushed by either the overhead protective guard structure or the mast. The operator should remain in the forklift with the seatbelt fastened, grip the steering wheel firmly, brace both feet on the floor, and lean their body away from the direction of the fall.

- When forward visibility is obstructed or blocked, always drive in reverse. Don’t try to see around the load.

- Forklifts are dangerous and must be treated with care. Lifting people on the forks is unsafe and should never be allowed.

- Exclusion zones must be established in the workplace that are for forklifts only. Safety officers must ensure that all workers recognize and respect these zones.

- Level floors are important: Uneven flooring, particularly with a height difference in excess of 1.6 inches across the front wheels, can seriously affect a forklift’s stability when carrying its rated load at full height.

If you need additional information on forklift safety and litigation, contact Kendall Dunson or Mike Andrews, lawyers in our Personal Injury/Product Liability Section, at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

XVI. TRANSPORTATION

AGENCY PROPOSES MANDATORY SEATBELTS ON BUSES

The National Highway Traffic Safety Administration has proposed requiring all new commercial motorcoach buses to install seatbelts. A greater danger of multiple casualties resulting from a single bus crash exists, particularly if passengers on a bus are ejected. The proposed rule would require that all newly-manufactured commercial buses have lap-shoulder belts to help prevent ejections in a collision. The rule will take effect three years after the final version is issued. The agency is accepting public comments on the rule at www.regulations.gov through October 18th. Hopefully, the rule will become final.

Source: Lawyers USA Online

TWO SETTLEMENTS IN COLGAN AIR-CRASH LITIGATION

Two families have agreed to settle wrongful-death lawsuits arising out of the crash of Continental Airlines Connection Flight 3407, which killed 50 people. The families of John G. Roberts III and Darren Tolsma reached what I believe are the first settlements. The February 12, 2009 crash occurred outside Buffalo, New York, killing all 49 people aboard and one on the ground. Regional carrier Pineapple Airlines Corp. operated the flight through its Colgan Air unit.

Tolsma, 45, was an engineer at Northrop Grumman Corp. on classified military projects. He and his wife, Robin, had two children. Roberts, 48, was a vice president at Deloitte Consulting India in Mumbai. The settlement terms are confidential. A trial in the other cases is set for March 2012 in federal court in Buffalo. The families claim corporate decisions caused the pilot and co-pilot to make a series of mistakes that doomed the flight from Newark, New Jersey.

The families of Tolsma and Roberts also sued Bombardier Inc., maker of the Dash 8 Q400 plane. Judge William Skretny, who is overseeing the litigation, signed an order on August 19th sealing the terms, saying “confidentiality is a fundamental component of the accord” and “financial terms of the settlement are of no value to the public.” The judge wrote on this issue:

Disclosure of the settlement agreement would not advance public understanding of the crash of Flight 3407 nor serve any other public interest sufficient to outweigh the parties’ interests in confidentiality. Failure to seal the terms would likely hinder other accords, undermining the long-recognized policy of favoring negotiated settlements.

After the Colgan crash, the National Transportation Safety Board held hearings that focused on the actions of the pilot, who had two failed flight tests, and the co-pilot, who only made $16,000 in 2008. She had received a raise 11 days before the crash to $23,400. The NTSB concluded its investigation in February by blaming the pilot for the crash, citing his incorrect response to a cockpit stall warning. He pulled back on the control column after the warning, sending the plane’s nose up, putting the aircraft into a stall that led to the crash, according to the Board’s report.

The crew’s failure to monitor airspeed, which slowed enough to trigger the stall warning, also contributed to the accident, the NTSB found. It was found further that unnecessary conversations between the pilots, and the pilot’s failure to manage the flight, also were contributing factors. Colgan’s lack of standard procedures to help pilots select and manage airspeed for airport approaches in icing conditions contributed, the NTSB found. The Board said that fatigue “likely impaired” the pilots, and Colgan didn’t “proactively address” fatigue for pilots who commute from other cities to their home airports, as both the pilot and co-pilot on the flight did.

Allan Lewis, a lawyer with Lewis & Lewis in Buffalo, represented the Roberts family. James Kreindler of Kreindler & Kreindler LLP, represented the Tolsma family. Each of those lawyers did a very good job for their clients.

Source: Bloomberg
Three crew members were killed on August 31st when the medical helicopter they were aboard crashed in central Arkansas. The Air Evac Lifeteam helicopter was flying to pick up a traffic accident victim when it went down in Van Buren County at about 4:30 a.m. They were flying under visual flight rules and it doesn’t appear they were talking to any air traffic controllers at the time. No patients were aboard the Bell 206 aircraft. The helicopter, built in 1978, was registered to Air Evac EMS Inc., based in West Plains, Missouri.

Air Evac Lifeteam President and CEO Seth Myers said in a news release that the helicopter was equipped with night vision gear. Investigators from the FAA and the National Transportation Safety Board are investigating the crash. Apparently there was no distress call and at press time, the cause of the crash hadn’t been determined. The crash site is about 80 miles north of Little Rock in central Arkansas.

As we have reported previously, Air Evac has experienced several fatal crashes in recent years. In 2008, an Air Evac helicopter crashed in an Indiana cornfield killing three people. In 2007, another three-member crew was killed when an Air Evac helicopter crashed in Colbert County, Alabama. In 2006, an Air Evac helicopter crashed in northwest Arkansas, killing the three-member crew. An Air Evac helicopter made a forced landing recently near Tulsa, Oklahoma, after the aircraft’s hydraulics failed. Fortunately, no one was hurt in that incident.

Over the past year, there have been 14 accidents involving air ambulance helicopters with eight fatalities. As pointed out above, since June, four crashes have killed ten people. Advocates for safety improvements are not pushing for stiff new requirements on medevac flights. The National Transportation Safety Board (NTSB) has issued numerous suggested safety improvements for the industry in recent years. The agency has no regulatory authority.

The FAA, which oversees the industry, is writing new rules, but will not unveil them until later this year. Congress has several bills addressing safety, but all of them have stalled in a deadlock over funding for the FAA. The NTSB wants new requirements for equipment that can help prevent pilots from getting disoriented in poor visibility, better pilot training and improved internal monitoring for safety lapses. There are safety issues that must be addressed both by the FAA and by Congress. Sources: USA Today and Claims Journal

FAA Proposed $24.2 Million Fine Against American Airlines

The Federal Aviation Authority has proposed a $24.2 million civil penalty against American Airlines, related to the April 2008 grounding of some 300 American planes, a move that led to 3,000 canceled flights in one week. The proposed penalty is the largest in the FAA’s history. As part of its investigation, the FAA determined that 286 of American’s MD-80s flew a combined 14,278 passenger flights while not in compliance with an airworthiness directive that required operators to inspect and repair wire bundles in wheel wells. FAA officials said abrasion on the wires could have led to fires and fuel-tank explosions.

Source: Associated Press

Jury Awards $14 Million To Employee Burned In Explosion

A jury has awarded a Plaintiff, Carl Cotright, $14 million in his lawsuit, which arose out of the explosion of a tanker that blew up three years ago. Mr. Cotright was on that tanker and was burned over much of his body. He was on the tanker in April of 2007 just before it exploded. He was loading it with a flammable liquid when it ignited. By the time the Plaintiff realized what was happening, it was too late. Flames had already reached him and he was on fire.

The tanker was not grounded, which would have prevented the fire. The Plaintiff suffered second- and third-degree burns on his torso, arms and legs. He sued the Transport Company C & G Hot Shot Service. The company had offered to settle for $15,000 which was rejected. Jason Gibson, a lawyer based in Houston, represented the Plaintiff and did a very good job.

Source: ABC

U-haul Still Has Serious Safety Problems

We have written on numerous occasions about the dangers of towing U-haul trailers and tow dollies. Numerous deaths and serious injuries have resulted from the practice due either to mechanical issues or weight distribution issues that cause the towed unit to sway, leading to loss of control of the towing vehicle. This often results in serious accidents including rollovers. Our law firm is now investigating a claim on behalf of a client who was involved in an accident on a major interstate in Georgia while driving a U-haul rental truck. The front left tire failed causing the truck to crash into an interstate barrier. Although the client sustained serious injuries, fortunately, the median wall prevented the U-haul truck from crossing into oncoming traffic. Interestingly enough, we are also investigating a claim where a U-haul unit caused a vehicle to cross into oncoming traffic to strike a tractor trailer leading to the death of the driver towing the U-haul trailer.

With respect to U-haul trailers, it’s best not to tow them unless the towing vehicle is heavy enough to absorb the swaying of the U-haul trailer. If anyone must rent a U-haul truck it is wise to take the pre-trip inspection very seriously, focusing especially on the tires. Most conditions that cause tires to fail are not noticeable to a non-expert; however, tread depth of the tires is observable. The evidence we have reviewed so far reveals that the tread depth of at least two of the tires were unacceptable. Renters of U-haul equipment should carefully examine the unit being rented, including the tires, and if anything out of the ordinary is noticed, bring it to the attention of the rental specialist and if any safety issues are identified, refuse to rent that unit. If you need additional information on this subject, contact Kendall Dunson, a lawyer in our firm’s Personal Injury/Product Liability Section at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.
A Georgia jury has returned a $435 million verdict against a nursing home operator in a wrongful death lawsuit. The verdict was in favor of the estate of a man who died as the result of negligent care. The nursing facility located in Rome, Georgia, had been cited for repeated state and federal violations. The verdict against George D. Houser, the operator of the nursing home, is believed to be among the highest in state history against a nursing home operator. Prior to the trial, Houser filed for bankruptcy protection, listing total assets of between $20 million and $100 million.

Houser, who operated Forum Group Corp. And its subsidiary, Forum Group at Moran Lake Nursing Home and Rehabilitation Center in Rome, faces federal charges filed in April in which he is accused of bilking the Medicare and Medicaid programs of more than $30 million. According to the federal indictment—in which his wife is also charged—those Medicare and Medicaid payments were supposed to go toward care of residents at Houser’s three nursing homes. Instead, federal prosecutors allege the Housers funneled the money to purchase luxury cars and real estate, including a $1.3 million Atlanta home for George Houser’s ex-wife.

Loretta Terhune, whose 80-year-old father, Morris Ellison, died on April 17, 2007, charged that the nursing home failed to provide adequate care. Her father, who was admitted to the facility a year earlier, fell numerous times, breaking his hip in one instance, according to the lawsuit. The nursing home also failed to notify the resident’s doctors or family of his injuries.

It appears that Houser, through his companies, systematically drained the money and resources from his nursing homes. There were also all sorts of shortages of food, water, medicine, and basic supplies. It appears the resident was severely neglected at the time of his death. He was malnourished and severely dehydrated.

Over a period of several years, the Georgia Department of Human Resources’ Office of Regulatory Services conducted numerous inspections of the facility. The agency closed it and terminated all federal funding after a May 23, 2007, inspection found that “Moran Lake’s deficiencies constituted violations of state and federal regulations, nursing home regulations, Georgia state health regulations, and National Fire Protection Association Life Safety Code Standards.” Two Georgia lawyers, Steve Lowry from Savannah and Mike Prieto whose practice is in Cartersville, represented the resident’s family. They did a very good job.

Source: ASC.com

Our firm recently settled a lawsuit against the owners of an underground storage tank (UST) system located at a Beeline convenience store in Eufaula, Alabama. In this case, a 30-year-old UST located at Defendant’s convenience store leaked gasoline into the soil and groundwater near our client’s property. The toxic gasoline constituents migrated from Defendant’s property onto our client’s property contaminating it with dangerous chemicals, including benzene, at concentrations above the regulatory screening levels established by the Alabama Department of Environmental Management.

Our clients first suspected their property was contaminated when they detected gasoline odors coming from the soil on their property while conducting excavation work. Our environmental experts conducted extensive testing of the soil, groundwater and air on our client’s property and confirmed the existence and extent of the gasoline contamination. Because of the contamination, our clients suffered a significant loss in the value of their property.

Rhon Jones and Chris Boutwell, lawyers in our Toxic Torts Section, handled this case and they did a very good job for their client. The terms and amount of the settlement are confidential, but our client is well pleased with the outcome. The case was referred to us by Bob Methvin, of McCallum, Methvin & Terrell, P.C. If you would like more information on this subject or believe that your health or property has been harmed by a leaking UST, you can contact Chris Boutwell, a lawyer in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com.

As most of our readers know, our firm filed a class action lawsuit on behalf of property owners affected by TVA’s December 22, 2008 coal ash disaster in Kingston, Tenn. The coal ash disaster spilled 5.4 million cubic yards of coal ash over nearly 300 acres and into adjoining waterways. Currently, our case is in pretrial discovery with certification motions due this fall. As part of discovery, Plaintiffs took the deposition of TVA CEO, Tom Kilgore, in late August and TVA has completed depositions of the nine named class representatives in our case. Additional depositions of TVA officials are scheduled for the fall.

The coal ash issue is not limited to the pending litigation. As previously reported, EPA has issued proposed coal ash regulations. The proposed regulations include two options for federally regulating coal ash waste for the first time. Neither of the proposed options would classify coal ash waste as hazardous despite high levels of heavy metals in the ash.

EPA is seeking public comment on the proposed regulations and will issue a final version after reviewing public comments. As part of the public comment process, EPA is holding town-hall type meetings in five locations across the country. Until recently, those locations did not include Kingston or the surrounding area, but public pressure on EPA forced the agency to reconsider and agree to hold a public meeting in Knoxville—approximately 40 miles east of Kingston and also home to TVA headquarters. EPA declined to hold meetings in Kingston despite the fact that the Kingston disaster helped propel the issue of
coal ash regulation into the spotlight nearly two years ago. At press time, EPA had not announced a timeframe for issuing the final coal ash regulations.

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

Sources: Knoxville News Sentinel, U.S. EPA

**BIG OIL LOSES HOT FUEL APPEAL**

A string of victories continue for consumers in the Hot Fuel Multi-District Litigation (MDL) consolidated in Kansas City, Kan. After District of Kansas Judge Kathryn Vratil granted class certification for the bell weather Kansas class, big oil companies appealed the certification ruling to the Tenth Circuit. On August 31st, the Tenth Circuit struck down the oil companies’ appeal, ensuring that the litigation would move forward. To say these are significant rulings would be an understatement.

The Hot Fuel litigation seeks to hold big oil companies accountable for cheating consumers out of the gasoline they pay for. As the temperature rises in motor fuel, the fuel expands but its energy stays the same. In intra-oil industry transfers, oil companies adjust for the effects temperature has on gasoline and diesel. However, when selling to consumers, oil companies do not compensate for temperature. The result is more gallons of fuel for the big oil companies to sell, albeit with less energy per gallon for consumers had the oil companies adjusted for temperature.

The oil companies have had the technology to resolve the motor fuel temperature issue for decades. In fact, they are using it as you read this article at every level of the fuel distribution process—except at retail. In Canada, where the volume of motor fuel shrinks and consumers actually gain as a result of the cool temperatures, the oil companies retrofitted over 90% of their pumps in just a few years. However, the same companies argue that the technology doesn’t exist to retrofit pumps, would require years of studies to determine whether it even works, and is simply too expensive to implement in the United States.

Rhon Jones, who heads up our firm’s Toxic Torts Section, is a member of the Plaintiffs’ steering committee and serves as offensive discovery chair of the litigation. He and Parker Miller, who is also in this section, are playing pivotal roles in the litigation. Currently, the parties are awaiting the Court’s order to reopen discovery and proceed towards trial. While this is a difficult and complex case, we are fighting to make a difference. If you have questions regarding the litigation, you can contact Rhon or Parker at Rhon.Jones@beasleyallen.com and Parker.Miller@beasleyallen.com, or by telephone at 800-898-2034.

**XIX. THE CONSUMER CORNER**

**3 MILLION JEEP GRAND CHEROKEES INVOLVED IN SAFETY PROBE**

Federal safety regulators have opened an investigation into gas tanks that could pose a fire danger on an estimated 3 million older Jeep Grand Cherokees. The National Highway Traffic Safety Administration launched the preliminary investigation in late August in response to a petition it received in October from the Center for Auto Safety (CAS). It should be noted that the probe doesn’t mean the vehicles are being recalled. That could come later depending on what NHTSA finds.

CAS claims that Jeep Grand Cherokees made between 1993 and 2004 have defective fuel tank storage systems that present a fire hazard in crashes. The consumer watchdog said federal records indicate that the Cherokees in question were involved in 172 fire crashes where 254 people died. According to CAS, the plastic gas tank on the Jeep Grand Cherokees from those model years was placed behind the rear axle and below the bumper, where it could be ruptured in a rear-impact collision. The tanks in question also had inadequate shielding, according to the group. In response, NHTSA says it reviewed the records going back to 1992 and identified ten crashes where the alleged defect may have been a factor. Those crashes resulted in 13 deaths, according to the agency. This investigation will be watched closely.

Source: CNN

**NHTSA INVESTIGATING STEERING IN 2011 SONATA**

The federal government has opened an investigation into possible steering problems in the 2011 Hyundai Sonata, which is made in Montgomery. The National Highway Traffic Safety Administration says it has received field reports alleging the separation of a joint that led to a complete loss of steering in the sedan or a loosening of a joint connection in the steering.

NHTSA says the vehicles cited in the reports were manufactured during the same month and had fewer than 600 miles on them at the time. The investigation involves an estimated 16,300 Sonatas. A Hyundai spokesman says the company received two reports citing steering problems and the two vehicles were repaired.

According to Hyundai, there have been no injuries or crashes reported and the company is cooperating with the investigation.

**AL.com**

**BOTOX MAKER TO PAY $600 MILLION IN SETTLEMENT**

Allergan Inc., the maker of wrinkle-smoothing Botox, has agreed to pay $600 million to settle a year-long federal investigation into its marketing of the top-selling, botulin-based drug. The Justice Department says the company will plead guilty to one misdemeanor charge of “misbranding.” It appears the company’s marketing led physicians to use Botox for unapproved uses. Those included the treatment of headache, pain, spasticity and cerebral palsy in children.

As we have previously reported, manufacturers are prohibited from promoting drugs for unapproved, or “off-label,” uses. Allergan will pay $375 million in connection with the plea, which includes the forfeiture of $25 million in assets. Additionally, the company will pay $225 million in civil fines—$210 million to the federal government and the rest to several states—related to the investigation.

Allergan, based in Irvine, California, also reached an agreement with the Department of Health and Human Services’ Office of the Inspector General that requires the company to submit compliance reports, and to post on its website any payments to doctors, such as honoraria, travel or lodging.

Assistant Attorney General Tony West said Allergan “paid kickbacks to induce physicians to inject Botox for off-label uses and Allergan also taught doctors how to bill for off-label uses, including coaching doctors how to miscode Botox claims leading to millions of dollars of false claims being submitted to federal and state programs.” The settlement is not final until approved by a federal judge. Sally Yates, U.S. Attorney for the Northern District of Georgia, had this to say:

"The FDA had approved therapeutic uses of Botox for only four rare conditions, yet Allergan made it a top corporate priority to maximize sales of far more lucrative off-label uses that were not approved by the FDA. Allergan further demanded tremendous growth in these off-label sales year after year, even when there was little clinical evidence that these uses were effective."

The investigation was started by a whistle-blower complaint. Allergan’s product sales topped $4.4 billion in 2009, with Botox accounting for more than $1.3 billion of that total. The Justice Department’s investigation covered Allergan’s marketing of Botox from 2001 through at least 2008. In recent years, federal investigators have reached multi-billion dollar settlements with Pfizer, Eli Lilly and other drug companies over their marketing practices.

Source: Associated Press

The Resurgence of Bedbugs

A resurgence of bedbugs across the U.S. has homeowners and apartment dwellers taking desperate measures to eradicate the tenacious bloodsuckers. Some folks are relying on dangerous outdoor pesticides and fly-by-night exterminators. The problem has gotten so bad that the Environmental Protection Agency has warned against the indoor use of chemicals meant for the outside. The agency also warned of an increase in pest control companies and others making “unrealistic promises of effectiveness or low cost.”

Bedbugs, infesting U.S. households on a scale unseen in more than a half-century, have become largely resistant to common pesticides. As a result, some homeowners and exterminators are turning to more hazardous chemicals that can harm the central nervous system, irritate the skin and eyes or even cause cancer. A number of states are asking the EPA for an emergency exemption which will allow the indoor use of the pesticide Propoxur. EPA rejected the request in June and has pledged to find new, potent chemicals to kill bedbugs, which can cause itchy, red bites that can become infected if scratched.

Bedbugs, a common household pest for centuries, all but vanished in the 1940s and ’50s with the widespread use of DDT. But DDT was banned in 1972 as too toxic to wildlife, especially birds. Since then, the bugs have developed resistance to chemicals that replaced DDT. Also, exterminators have fewer weapons in their arsenal than they did just a few years ago because of a 1996 law that requires older pesticides to be re-evaluated based on more stringent health standards. The re-evaluations led to the restrictions on propoxur and other pesticides.

Though propoxur is still used in pet collars, it is banned for use in homes because of the risk of nausea, dizziness and blurred vision in children. Steven Bradbury, director of the EPA’s pesticide program, said the problem is that children crawl on the floor and put their fingers in their mouths. Critics in the pest control industry say that the federal government is overreacting and that professional applicators can work with families to prevent children from being exposed to harmful levels of the chemical, which

**WAL-MART SETTLES IN DVD RENTAL ANTI-TRUST SUIT**

Wal-Mart Stores Inc. has reached a preliminary settlement in a putative class action brought by customers who claim the retail giant and Netflix Inc. illegally carved up the market for online DVD rentals and sales. Wal-Mart and the Plaintiffs filed a joint motion in the U.S. District Court for the Northern District of California asking the judge to bifurcate the suit and stay all Wal-Mart-related deadlines while the settlement awaits court approval. Wal-Mart was facing a class certification hearing in the multidistrict litigation when the settlement was reached.

The Plaintiffs, customers of Netflix and Blockbuster Inc., say the agreement between Wal-Mart and Netflix affected millions of customers who would have paid lower online DVD-rental fees had competition continued. Netflix will remain as a Defendant in the lawsuit. The Plaintiffs claim that Wal-Mart and Netflix came up with a scheme to drive up prices. According to the Complaint, Netflix CEO Reed Hastings and former Walmart.com CEO John Fleming met to discuss eliminating competition in the DVD rental and DVD sales markets in January 2005. This came about at a time when the two were direct competitors for online DVD rentals. The two allegedly reached an agreement under which Wal-Mart would withdraw from the online DVD rental market and Netflix would stop selling DVDs and promote Wal-Mart as a shopping destination for new DVDs. Prior to the alleged deal, Netflix and Blockbuster had been involved in a price war, according to the Plaintiffs. It’s claimed that the deal substantially reduced competition in the rental market. In July, Northern District Judge Phyllis J. Hamilton denied a motion by Wal-Mart and Netflix to dismiss an amended Complaint from the Blockbuster customers. Those Plaintiffs did not sue Blockbuster, but claim the alleged deal drove up their prices too. Netflix and Wal-Mart contended that the basic conspiracy claims at the heart of the case are “conjectural and unsupported.”

Judge Hamilton had previously dismissed the Blockbuster customers’ first amended Complaint with prejudice, ruling that the Plaintiffs had failed to satisfy three necessary factors of antitrust standing: directness of the injury, speculative nature of the harm and complexity in apportioning damages. The Blockbuster Plaintiffs filed their second amended Complaint in March after Judge Hamilton granted their motion for reconsideration.

Source: Law360

**BEDBUGS HAVE BECOME A BIG PROBLEM**

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The salmonella outbreak resulting in a massive recall of eggs has caused many safety experts to question the federal government’s regulatory role. The criminal division of the Food and Drug Administration and the Justice Department have joined the probe of the Iowa farm at the heart of the egg recall linked to an outbreak of salmonella. There appears to be a formal investigation going on that extends beyond the FDA inspections that are focused on farm practice. The FBI has visited facilities of Wright County Egg, a major egg producer that recalled 380 million eggs in mid-August, and Hillandale Farms, the second producer involved in the recall.

As of mid-September, over 1,500 cases of salmonella had been reported to federal health authorities since late spring. The FDA has said that the strain of salmonella found in the patients was identified in samples of Wright’s chicken feed and in a few places on the farm. It released a report detailing numerous sanitation problems at Wright County Egg and its parent company, Quality Egg LLC, which makes feed for Wright and another company involved in the recall, Hillandale Farms of Iowa. The FDA says it is working with the companies to make sure that they clean up the subpar practices, and that eggs do not go back into the marketplace that are not safe. The agency is also trying to make sure that there aren’t further recalls that will need to be taken “in order to fully ensure that the public is protected.”

Government reports on conditions at the two Iowa egg producers at the center of a recall of 550 million eggs paint a grim picture. One report described Wright County Egg as filthy; rat and fly-infested and so overflying with manure that in several cases doors could not be closed. The other, Hillandale Farms, had multiple unsanctioned rodent holes into its henhouses, liquid manure leaking from a manure pit and as many as 50 escaped hens tracking manure into the henhouse. This serious safety problem concerning eggs sold commercially should make Congress do all that is necessary to make sure that the food we eat on a daily basis is as safe as possible. It’s most obvious that there is much work to be done.

Source: Wall Street Journal

The Investigation In The Massive Egg Recall Is Far From Over

Foreign Manufacturer Legal Accountability Act

Recently, the safety of foreign products has caused great concern among American consumers. Chinese companies have sold lead-based toys, poisonous food and defective tires, all causing great harm to hundreds in this country. Since 2005, the Consumer Product Safety Commission has reported between 400 and 500 recalls a year. Over half of the recalled products were “made in China.” In response, federal lawmakers are considering a bill that would allow U.S. consumers to effectively hold all foreign product manufacturers responsible for the dangerous products they import to this country.

H.R. 4678, the Foreign Manufacturer Legal Accountability Act of 2010, will soon be before Congress. The proposed bill was approved by the House’s Subcommittee on Commerce, Trade and Consumer Protection this past July. The Act is intended to provide greater protection for consumers from foreign manufacturers, which operate in countries with less strict safety standards and regulations than in the U.S. When you consider how weak U.S. standards are, these foreign countries have to be mighty bad.

The Act would require all foreign manufacturers and producers of products covered by the Act to establish a registered agent in the U.S. This agent must consent to jurisdiction and must be authorized to accept service of process on behalf of the manufacturer or producer of products for the purpose of all civil and regulatory actions in State and Federal courts. Any manufacturer or producer who fails to register an agent within the U.S. will be prohibited from importing its products into this country. The act is important for a number of reasons, including these two:

• The Act would simplify service of process by requiring every manufacturer to have an “agent” located in at least one state where the manufacturer does business that would accept service of process for any civil and regulatory claims. This will be a welcomed change. Holding foreign manufacturers accountable today often requires service of the Defendant manufacturer abroad. This can be a cumbersome, costly, and time-consuming process.

• More significantly, the Act would subject the manufacturer to the jurisdiction of state and federal courts in the U.S., where it might previously have been beyond such jurisdiction. No longer will manufacturers be able to escape responsibility for their defective products by confining operations to overseas and asserting that they cannot be held accountable in our country.

The Act will apply to products such as children's toys and clothes, consumer electronics and medical devices. Consumer advocates are hopeful this bill will pass and provide much needed protection from foreign manufacturers who continue to make products that cause harm. If you need additional information on this subject contact Rick Morrison, a lawyer in our Personal Injury/Product Liability Section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

Safety Organization Releases Automobile Booster Seat Ratings

The Insurance Institute for Highway Safety has released the results of tests on 72 models of child safety “booster” seats, designed to keep older children properly restrained in automobiles. The booster seats are the next step after a traditional car seat for infants and young children. Booster seats are generally produced for youngsters ages four to eight. Booster
seats are designed to simply raise children to the proper height so that an automobile’s standard safety belt will properly restrain them in the event of a crash.

Booster seats have not typically fared well in safety reviews. In past years, the majority of booster seats reviewed by the IIHS have failed, receiving “poor” ratings. This year, 21 of the reviewed booster seats performed well enough to earn a “bestbet” rating from the organization, which indicates a high level of confidence in the product. An additional seven seats received a “goodbet” rating. Eight seats were placed on the “not recommended” list.

The recommendations came just before National Child Passenger Safety Week, which was observed September 19-25th. The week, developed and promoted by the national Highway Traffic Safety Administration, promoted awareness about the importance of using proper child restraints in vehicles. “Seat Check Saturday” wound up the weeklong observance, with many cities and towns offering an opportunity for parents and caregivers to have a professional make sure their car seat is properly installed.

Our law firm sponsored a Seat Check Saturday event on September 25th from 9 a.m. to noon in Montgomery, Alabama. The free event was held at The Shoppes at EastChase, in the parking lot across from Storkland and The Name Dropper. A list of the booster seat ratings from the IIHS is available from our firm. You can get it on our website or by contacting Shanna Malone at Shanna.Malone@beasleyallen.com.

**CPSC AND HSC RELEASE SUMMER FIGURES ON CHILD DROWNINGS**

As children across America go back to school, the U.S. Consumer Product Safety Commission (CPSC) and the Home Safety Council (HSC), a Pool Safety campaign partner, released a report on drowning incidents for the 2010 summer swimming season. On average, more than 200 children younger than 15 drown in pools or spas between Memorial Day and Labor Day. It appears from media reports that this year has been no different.

The report, “The 2010 Pool Safely Summer Snapshot on Pool Safety in the United States,” indicates that at least 172 children younger than 15 have drowned since Memorial Day weekend. In addition, there have been more than 180 non-fatal incidents involving children in pools and spas, according to media accounts. With such a high number of child drownings and non-fatal incidents, CPSC and HSC called for added vigilance at pools and spas during the Labor Day weekend. That call extends past that popular family holiday.

Source: CPSC

**U.S. WARNS OF FATAL SIDE EFFECT WITH MRI IMAGING DRUGS**

U.S. government health regulators are warning doctors that a class of injectable drugs used in MRI medical imaging scans can cause a rare and sometimes fatal condition in patients with kidney disease. The Food and Drug Administration says that it is adding its strongest warning label to imaging agents that contain the chemical gadolinium, indicating they should not be used in patients with kidney problems. “These label changes are intended to help ensure these drugs are used appropriately,” the FDA said in a posting to its website.

The warning language will appear in a bolded box at the top of the drugs’ labels. The agency said in a statement that use of the drugs can lead to a rare syndrome that causes hardening of the skin and tissue growth along joints, eyes and internal organs. The ailment, which is sometimes fatal, is called nephrogenic fibrosing dermopathy and has been reported in patients with weakened kidney function.

Even though kidney transplant appears to slow disease, and even reverse it in some cases, there is no known treatment for the condition. Known as contrast agents, the products are used to improve clarity in medical scans of the heart, liver and other internal organs. The FDA has approved five such agents since 1988. While the nephrogenic syndrome has been reported with all five drugs, the FDA said three have greater risks than the others: Bayer Healthcare’s Magnevist, General Electric Healthcare’s Omniscan and Covidien’s Optimark.

According to an FDA spokeswoman, those three drugs are “chemically more unstable” than the others in the class and “thus more likely to release gadolinium.”

Gadolinium is a metal with distinctive magnetic properties that increase its visibility during MRI scans. It’s known to be toxic to the liver. The new FDA labels instruct physicians to screen patients for kidney disease before administering the agents. According to the FDA, there haven’t been any reports of the syndrome in patients with normal kidney function.

There are two non-gadolinium-based imaging agents on the market, but the FDA has approved them only for liver scans. GE Healthcare said in a statement that the FDA’s labeling reinforces physician guidelines that already stress the importance of screening for patients with kidney problems. The company said MRI contrast agents “continue to be a valuable diagnostic tool with a proven safety record for the overwhelming majority of patients to whom they are prescribed.” That’s certainly true, but the drugs used must be as safe as is reasonably possible.

Source: MSNBC

**MANUFACTURERS HAVE A DUTY TO CONSUMERS**

There are some basic rules that apply to manufacturers of consumer products. When products are engineered, manufactured and placed into the stream of commerce, the products must be reasonably safe. Companies have a responsibility to eliminate all foreseeable hazards from their products, if possible. If hazards can’t be eliminated without jeopardizing the utility of the product or making the product prohibitively expensive, then the hazards must be guarded. The guards must effectively prevent accidents and not introduce other types of accidents into the product. For those hazards that cannot be properly guarded, consumers must be warned of all dangers associated with use of the product.

**XX. RECALLS UPDATE**

Once again, we are listing a number of product recalls in this issue. Unfortunately, as we pointed out, serious safety-related recalls have become rather commonplace. The following are some of
the more significant recalls since those reported in our last issue. Our readers are encouraged to contact our firm if more information is needed on a recall.

### Toyota Recalls 1.1 Million Corollas And Matrixes

Toyota Motor Corp. has recalled 1.13 million Corolla sedans and Matrix hatchbacks from the 2005-2008 model years because their engines may stall. Three accidents and one minor injury may be related to the recall. Toyota has recalled more than 10 million vehicles worldwide over the past year for a range of quality problems. Federal regulators have been investigating the Corolla and Matrix engine issue since December. Toyota alerted owners and is fixing the engine problem for free. Many vehicle owners don’t realize that stalling in traffic is a most dangerous event.

### Ford Recalls 575,000 Windstar Vans

Ford has recalled 575,000 older model Windstar vans in the United States and Canada over concerns that the rear axles can corrode and potentially break. The recall covers vehicles in the model years 1998 to 2003 sold in states where the heavy use of road salt can cause more corrosion. That includes Canada, New England, the Mid-Atlantic states and the Great Lakes region. Ford has notified owners of the problem. The National Highway Traffic Safety Administration opened a preliminary investigation of the problem on May 13 after receiving 234 reports of rear axle fractures and two minor crashes.

NHTSA said the design of the axle appears to allow it to collect road salt slush, leading to rust. The recall affects vans in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia and Wisconsin.

### GM Recalls Cadillacs For Potential Leg Injuries

General Motors is recalling 20,224 model year 2009 and 2010 Cadillac CTS all-wheel-drive cars and CTS-V performance sedans because of the potential for leg injuries in some crashes. The vehicles don’t comply with federal safety requirements in terms of how well they protect smaller, unseatbelted passengers from leg injuries in crashes, GM said in a letter alerting safety officials to the problem.

“In the event of a crash, if a small occupant is in the front passenger seat and is not wearing a safety belt, the risk of injury to the femur is higher than permitted under federal law,” GM said in a September 13th letter to NHTSA. The problem was apparently discovered during crash tests conducted by GM.

To rectify the problem, GM dealers will replace the cars’ glove compartment assembly and, in some cases, will modify the structure of the instrument. The work will be performed at no charge to the cars’ owners. The recall does not apply to two-wheel drive Cadillac CTS models.

### Goodyear Recalls Tires

Goodyear is recalling certain Dunlop SP193 commercial trailer tires, size 295/75R22.5, produced from January 24th through May 29, 2010. These tires could experience air loss and, if gone undetected, the tire could be driven while under-inflated. Driving a vehicle with under inflated tires increases the risk of a crash.

Goodyear will notify owners of record and will visually inspect the tires for the defect. If the defect is present, Goodyear dealers will replace the tires free of charge. If the defect is not present at the time of inspection, the tire is ok and will not need to be replaced. The safety recall is expected to begin on or about September 30, 2010. Owners may contact Goodyear at 1-800-321-2136.

### J&J Unit Recalls 93,000 Hip Implant Systems

Johnson and Johnson unit DePuy Orthopaedics has recalled two hip aid systems after finding that more people than expected suffered pain following the implant surgery which required additional surgery. DePuy, which has sold about 93,000 units of its ASR XL Acetabular System and the ASR Hip Resurfacing System, said recent data received by the company showed an increase in the number of people who have had a second hip replacement surgery, also called a “revision surgery.”

Both products were discontinued late last year. The company said the information showed that five years after implantation, approximately 12.5% of patients, or one in eight, had received the ASR resurfacing device, and 12.5% of patients, or one in eight, who had received the ASR total hip replacement, needed a second surgery. Pain, swelling, and problems walking are among the symptoms that patients complained about, the company said. If those symptoms continue, they could lead to more significant complications, including loosening of the implant, fracture of the hip bone and dislocation of the implant, the company said.

DePuy said it will cover “reasonable and customary costs of monitoring and treatment for services,” including additional surgery costs associated with the recall of ASR systems. This recall marked the second problem for the Johnson & Johnson unit in a week. The FDA issued a warning letter to DePuy for selling hip and other joint products without the agency’s approval. The FDA said the medical devices maker has been selling its TruMatch Personalized Solutions System, which makes artificial knee products, and the Corail


**Char-Broil Recalls Vertical Gas Smokers Due To Injury Hazard**

Char-Broil LLC, of Columbus, Georgia, has recalled about 18,450 Char-Broil vertical gas smokers. When the temperature setting is on “low,” the smoker’s hose/valve/regulator (HVR) assembly does not allow sufficient gas to flow, causing the flame to extinguish. Gas continues to flow and build up inside the smoker. If the smoker is reignited, the build-up of propane gas can cause an explosion that bursts the smoker’s door open, posing an injury hazard. The company has received five reports of doors bursting open and hitting consumers. Injuries reported include burns to face and head, head concussion and cuts.

This recall involves the Char-Broil vertical gas smokers with model number 07701413. The model number is printed on a metal tag located on the right rear leg of the smoker. The smoker measures 21.5” x 19.5” x 45.5” and weighs 75 pounds. A “G” inside a triangle is created on the regulator. The gas smokers were sold at Walmart and various other retailers nationwide from March 2008 through June 2010 for about $140. Consumers should stop using the recalled smokers and contact Char-Broil for a free replacement hose/valve/regulator assembly and installation instructions. For additional information, contact Char-Broil toll-free at (866) 671-7988 or visit their website at www.charbroil.com.

**Television Wall Mounts Recalled By Milestone AV Technologies**

About 131,000 flat screen television wall mounts have been recalled by the manufacturer Milestone AV Technologies LLC, of Savage, Minnesota. The elbow joint components on the wall mount’s arm do not fit together properly, causing the attached television to tilt and possibly fall when the television is adjusted. This could pose an injury hazard to a consumer. This recall involves the Sanus Vision Mount model LF228-B1 wall mounts and Simplicity model SLF2. The wall mounts were sold for flat screen televisions. The model numbers can be found on the UL sticker on the wall plate. The Sanus Vision Mount model LF228-B1 was sold through independent television mount dealers nationwide from June 2009 through July 2010 for about $450.

The Simplicity model SLF2 was sold through Costco from June 2009 through July 2010 for about $200. Consumers should immediately inspect the wall mount to determine if the elbow joint fits properly and contact Milestone for a free replacement wall mount arm. Instructions for visual inspections are located at www.milestone.com/recall. For additional information, contact Milestone toll-free at (877) 894-6280 or visit their website at www.milestone.com/recall.

**Garmin Recalls GPS Devices Over Batteries**

Navigation device maker Garmin Ltd. has recalled about 1.3 million Nuvi GPS devices worldwide because their batteries have the potential to overheat and create a fire hazard. About 796,000 of the GPS units were sold in the U.S. Garmin said that certain batteries provided by a separate company have overheated in some Nuvi models. The company said it has identified fewer than ten cases of overheating, none of which produced any property damage or injury. Garmin said the battery supplier has agreed to share the cost of replacing the battery packs and that the recall will not have a material effect on its financial results.

**Slow Cookers Recalled By Sensio Due To Fire Hazard**

Sensio Inc. of Montreal, Quebec, Canada, has recalled about 25,000 slow cookers. The slow cooker’s control panel can overheat and melt, posing a fire hazard. Sensio has received 60 reports of the control panels of the slow cookers smoking, melting and sparking and three reports of panels catching fire. Fourteen incidents resulted in minor damage to countertops. No injuries have been reported. This recall involves the Bella Kitchen 5-qt programmable slow cookers. Only slow cookers with model number WJ-5000DE and date codes 0907 or 0909 are included in this recall. The slow cookers are black and “Bella Kitchen” is marked on the control panel. The model number and the four-digit date code are printed on a label on the underside. The slow cookers were sold at Kohl’s Department stores from July 2009 through December 2009 for between $20 and $40. Consumers should stop using the slow cooker immediately, unplug it and contact Sensio for information on receiving a full refund. For additional information, contact Sensio toll-free at (888) 296-9675 or visit their website at www.acbpromotions.com/sensiorecall.

**Swing Sets Recalled By Kompan Inc. Due To Fall Hazard**

Kompan Inc., of Tacoma, Washington (from January 1998 through December 2003); and BigToys Inc., of Olympia, Washington (from January 2004 through December 2008) have recalled about 700 swing sets. The joint connection between the horizontal top beam and the vertical end bracket and support post system can crack and break, posing a fall and impact hazard to users. Kompan received 19 reports from BigToys of swings that have had the end brackets replaced due to both actual or potential for cracking or breakage at the joint of the top beam and the support posts. Kompan has received three reports of minor injuries to users; however, the company has
been unable to verify the cause or nature of these injuries. The recalled swing sets include the “To Fro” models listed below with any numbers in the series of model number codes listed. For example, for the first entry, S1-8, all single bay, eight foot swings beginning with the model number S1-8 would be included in the recall. Kompan has not manufactured the swing since December 31, 2003 and has not sold it since December 31, 2008.

The swing sets were sold by Kompan, Inc. from January 1998 to December 31, 2008 for about $700-$3250. The units were sold to customers through third-party sales representatives throughout the United States. Third-party sales representatives are individuals and companies who market and sell Kompan playground equipment business to business. Consumers should immediately stop using the recalled swing sets and remove the chains connecting the seats to the top beam. A retrofit kit will be provided to all affected customers with installation instructions. Kompan is contacting swing owners directly by telephone and mail to advise them to stop using the swing and to remove the chains connecting the seats to the top beam and advising customers that retrofit kits will be delivered with installation instructions. Kompan will follow up by telephone and email after the retrofits are delivered to confirm installation by customers. For additional information, contact Kompan representative Joed Rice at (800) 624-4869 between 9 a.m. And 5 p.m. PT Monday through Friday, visit the company’s website at www.kompan.com, or e-mail the company at joeric@kompan.com.

**Toshiba Recalls T Series Notebook Computers Due To Burn Hazard**

Toshiba America Information Systems Inc. of Irvine, California, has recalled about 41,000 Satellite T135, Satellite T135D and Satellite Pro T130 Notebook Computers worldwide. The notebook computers can overheat at the notebook’s plug-in to the AC adapter, posing a burn hazard to consumers. Toshiba has received 129 reports of the notebook computers overheating and deforming the plastic casing area around the AC adapter plug, including two reports of minor burn injuries that did not require medical attention and two reports of minor property damage. This recall involves certain Toshiba Satellite T135, Satellite T135D and Satellite Pro T1350 notebook computer models.

“Toshiba” is printed on the top of the notebook computer. The model name and number are printed on a label on the bottom of the notebook computers. The notebooks were sold at electronics stores and other retailers nationwide and online, including at www.Toshibadirect.com and other websites, from August 2009 through August 2010, for between $600 and $800. Consumers should immediately download the latest version of Toshiba’s BIOS computer program to their notebook computer at http://laptops.toshiba.com/about/consumer-notices. This new computer program will detect whether the notebook computer is overheating, and if so, disable the notebook computer’s external power and display a message directing the consumer to contact Toshiba for a free repair. Consumers who do not have Internet access should contact Toshiba to arrange for installation of the updated BIOS. For additional information, contact Toshiba at (800) 457-7777 anytime or visit their website at http://laptops.toshiba.com/about/consumer-notices.

**Black & Decker Recalls Random Orbit Sanders Due To Laceration Hazard**

Black & Decker (U.S.) Inc. of Towson, Maryland, has recalled about 192,000 Black & Decker Random Orbit Sanders. The black plastic disc (called the platen) that holds the sandpaper can fly off or break apart during use and the disc, or pieces of the disc, can hit the user or those nearby, posing a laceration hazard. Black & Decker has received 73 reports of incidents involving the sander’s black plastic disc (platen) breaking or falling apart, including 15 reports of injuries from flying pieces, one of which involved a serious facial laceration. This recall involves Black & Decker random orbit sanders with model numbers RO400, RO400G, RO410, RO410K, RO410LW and FS3000ROS and date codes between 200701 and 200929. The sanders are orange and black. “Black & Decker” is printed on the sanders. The model number is printed on a label on the sander. The date code is stamped on the underside of the sander where the dust bag is inserted. The sanders were sold at home center, hardware and discount stores and by authorized Black & Decker dealers nationwide from January 2007 through July 2009 for about $40. Consumers should immediately stop using the recalled sanders and contact Black & Decker for a free replacement platen to hold the sandpaper. For additional information, contact Black & Decker toll-free at (866) 220-1767 or visit their website at www.blackanddecker.com.

**Rechargeable Spotlights Recalled By Innovage Due To Burn Hazard**

Innovage LLC of Foothill Ranch, California, has recalled about 1.4 million FIXIT One Million Candlepower Rechargeable Spotlights. The spotlight’s charging adapter can overcharge the battery, forcing it to rupture and leak battery acid. This poses a chemical burn hazard to consumers. The company has received 13 reports of incidents involving minor skin chemical burns and battery acid burn holes in upholstery, clothing and carpeting. This recall involves the One Million Candlepower Spotlight, a rechargeable halogen light. The hand-held spotlight is made of yellow plastic and has a black label that reads, “FIXIT Tools UP TO 1,000,000 CANDLE POWER” or “FIXIT Rechargeable Spotlight.” The spotlight is sold with an AC power charger and a 12-volt car utility adapter. The spotlights were sold at Walgreens, Rite Aid, Bealls, Tuesday Morning, Ace Hard-
ware, Boscov’s and Winn-Dixie stores nationwide from October 2003 through October 2009 for about $10. Consumers should immediately stop using the spotlights and contact Innovage for a full refund of the regular retail price. For purchases made above the regular retail price, additional refunds will be offered with valid receipts. Consumers are asked to return the product, via a self-addressed stamped envelope or box that will be provided. Instructions for returning the product are posted at www.spotlightrecall.org and are also available from the Innovage call center. For additional information, contact Innovage toll-free at (888) 408-1140 or visit their website at www.spotlightrecall.org. Consumers can also email them at info@spotlightrecall.org.

**Light-Up Rings and Star Glasses Recalled Due To Ingestion Hazard**

CEC Entertainment, Inc., of Irving, Texas has recalled Chuck E Cheese’s Light-up Rings and Star Glasses. If crushed or pulled apart, the plastic casing can break into small pieces and possibly expose the batteries, posing an ingestion hazard to children. If ingested, the batteries may be damaging to either the stomach, intestine, esophagus or nasal mucus membrane.

There have been two reported incidents involving the Light-Up Rings. One involved a child swallowing a battery, the other involved a child inserting a battery into his nostril. There are no reported incidents involving the Star Glasses. Light-Up Rings were distributed as part of a promotional product offering and during parent-teacher association conventions. The ring measures 1 1/8 inches across and is made of plastic with a black elastic band. The ring comes in several colors—blue, green, purple, yellow, and pink. The back of the ring is fastened either with screws or glue.

Star Glasses were distributed as part of a birthday package. The glasses measure about 5 1/2 inches across by 2 1/2 inches tall and are made of red translucent plastic and have the words Chuck E. Cheese’s painted on the side. Chuck E. Cheese’s Restaurants sold the rings and glasses from April 2009 through June 2010 and April through August 2010.

Consumers should immediately take the Light-Up Rings away from children and return them to any Chuck E. Cheese’s to receive their choice of either a refund of $1.00 plus four Chuck E. Cheese’s tokens or a Soccer Promo-Cup plus four Chuck E. Cheese’s tokens.

Consumers should immediately take the Star Glasses away from children and return them to any Chuck E. Cheese’s for their choice of either a refund of $4.99 or a Flashing Hands prize product. For additional information, contact Chuck E. Cheese’s at (888) 778-7193, email the company at guestrelations@cecentertainment.com or visit their website at www.chuckcheese.com.

**Fun Stuff Recalls Children’s Toys Due To Choking Hazard**

Fun Stuff Inc. of Newport News, Virginia, has recalled Click Armband Bracelets, Klick Klick Balls and BoBo Balls. The small balls on the end of the toy’s arms can detach, posing a choking hazard to young children. The toys were marketed for children age three and over. CPSC staff has designated these toys for children between the ages of 19 and 35 months. The Commission has received one report of a ball detaching in a 21-month-old girl’s mouth in Charlotte, North Carolina. The recalled bracelets and balls are made of stretchy, rubber material with hard plastic, colorful balls attached at the end of the toy’s arms.

The toys were sold with orange, green, pink, purple and blue colored balls. The BoBo balls have a flashing lighted ball encased in the stretchy material. The item number is located on the product packaging. The toys were sold at beach resort stores nationwide from January 2009 through August 2010 for between $2 and $5. Consumers should immediately take the recalled toys away from young children and return them to the place of purchase or contact Fun Stuff to receive a full refund. For additional information, contact Fun Stuff toll-free at (888) 386-7833 or visit their website at www.funstuffinc.net.

**The Coleman Company Recalls Water-Activated Spotlights**

Sky City Holdings International LTD, China, has recalled about 50,000 Coleman® WaterBeam™ 4D Water-Activated Floating Spotlights. The lens assembly can come apart from the main housing of the spotlight with force and pose a risk of impact injuries to consumers. Coleman has received 33 reports of the lens assembly coming apart, 18 of which resulted in reports of impact injuries such as bruising, lacerations and minor burns. The recalled spotlights are Coleman® water-activated handheld spotlights, model number 5338-782 (orange) UPC 76501 222733, model number 5338-792 (yellow) UPC 76501 222753 and model number 2000000153 (blue/white) UPC 76501 226683. A white label is affixed to the inside of the spotlight lens with the model number and production date information printed on the label. The spotlights were sold by various sporting good stores and retail outlets nationwide from January 2005 through June 2010 for between about $20 and $25. Consumers should immediately remove the batteries and stop using the spotlights. Visit www.coleman.com for additional instructions on how to obtain a replacement light. For additional information, contact Coleman at (800) 835-3278, or visit their website at www.coleman.com or via e-mail at colemanrecall@colemancr.com.

**Beetle-Tainted Baby Formula Recalled**

Abbott Laboratories has recalled millions of containers of its best-selling Similac infant formula that may be contaminated with insect parts. The
Amgen Inc. has recalled some lots of its blockbuster Epogen and Procrit anemia treatments because the injected drugs may contain glass flakes that could cause blood clots, swelling of veins, immune system reactions, and other problems. The biotechnology company says the flakes are barely visible in most cases. Amgen says it has had no complaints or reports about problems that can be directly tied to them. Patients experiencing problems should contact their doctor.

Amgen says the flakes are caused by the interaction of the drug with glass vials over the product’s shelf life. The affected lot numbers and expiration dates can be found on websites for the products, and patients can call 1-800-77-AMGEN to ask questions. Patients harmed by the recalled products, or their doctors, should notify the Food and Drug Administration and either Amgen or Johnson & Johnson’s Centocor subsidiary.

Epogen treats anemia in patients with chronic renal failure who are on dialysis. Procrit also treats anemia for cancer patients on chemotherapy and some HIV-infected patients. Amgen makes both products at plants in Puerto Rico.

Again, 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.

XXI.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

SANDRA MOATES
Sandra Moates first came to the firm in 2004 as a temporary employee to help out with Vioxx cases. She was hired shortly thereafter and worked on the Vioxx litigation until August of 2009. Sandra currently works as a clerical assistant for Frank Woodson, Lee McIver and Matt Munson. She assists in obtaining clients’ medical records, Bates stamping documents, and other duties as needed. Sandra and her husband Roger have been married for 32 years and have one son, Richard, who was recently married Amanda Barnes on July 4th. Sandra enjoys sewing, gardening and reading and is really looking forward to having grandchildren. She is a very good employee and we are fortunate to have her with the firm.

LAUREN THOMPSON
Lauren Thompson, who has been with the firm since July of 2009, currently serves as Administrative Assistant to Executive Director Lisa Harris. In this position, Lauren has a number of duties. She works with our public relations folks, handles all sponsorship requests and donations made by the firm, and also assists with special events, conferences, and advertising projects. Lauren also manages and uploads the Jere Beasley Report to the web each month. You can read it at www.jerebeasleyreport.com! Lauren had previously worked in the Web Department and Toxic Torts.

Lauren is married to Jason Thompson and they have two wonderful boys. Lauren enjoys attending her seven-year-old son Gavin’s baseball games, and stays busy keeping up with one-and-a-half-year-old son, Mason. The Thompsoens also have a two-year-old Yorkie named Grady.

Lauren is a graduate of The University of Alabama. Her hobbies include spending time with her family, and she says watching Alabama Football every Saturday is a must! She also enjoys putting her creative talents to use by making hand-painted picture frames and artwork. The family attends Liberty Baptist Church in Deatsville. We are most fortunate to have Lauren, a good and dedicated employee, with the firm.

MATTHEW YAREMA
Matthew Yarema, who has been with the firm for over four years, currently serves as a Staff Assistant working with Frank Woodson, Lee McIver and Matt Munson on the Pain Pump litigation in our Mass Torts Section. Matthew’s duties include communicating with clients as needed, assisting in drafting discovery responses, assisting in the drafting and filing of pleadings on Pacer and Lexis/Nexis, calendaring scheduling orders, and coordinating with other staff members to ensure that all tasks are completed properly and in a timely manner. Matthew also assists Matt Munson by communicating with experts and providing materials they need to prepare expert reports. Matthew also helps to make sure the lawyers meet deadlines in a timely manner.

Matthew and his wife, Alyson, have been married for two years. They have three dogs: two boxers, Mya and Lily, and a Vizsla named Barney. Matthew has a Bachelors Degree in Justice and Public Safety with a concentration in Legal Studies and Paralegal Certification from Auburn University of Montgomery. He enjoys riding his Harley Davidson with his wife, traveling, grilling out with friends and family and watching Auburn Football. He is known to let out a War Eagle on occasion. Matthew is a good employee who works very hard and we are fortunate to have him with us.

FAVORITE

XXIII.

SPECIAL
RECOGNITIONS

XXII.

DOING THE RIGHT THING FOR FOLKS WHO NEED HELP

I hope all of our readers already know about Alabama Arise. If not, this is a group that everybody should learn about. They work hard for folks who need help in Alabama. Kimble Forrister serves as Executive Director of the Arise Citizens' Project. The folks helped by Alabama Arise are citizens who have little if any influence on what goes on in government at any level in our state. These are low income citizens who are on the bottom of the totem pole when it comes to the priorities set by many who set policy for state government. Kimble and his staff give these folks hope because they work hard for them both in the Legislature and in other branches of our state government. ACP pushes programs that are designed to help folks and I commend them for it.

XXIII.

FAVORITE
BIBLE VERSES

Tom Sexton, president of Pickwick Antiques, Inc. located in Montgomery, sent in two of his favorite Bible verses. The first is from the Old Testament. Tom says this verse reminds him of his relationship to God and to others.

He has shown you, O man, what is good; And what does the LORD require of you But to do justly, To love mercy, And to walk humbly with your God?

Micah 6:8

Tom also sent in some verses from the New Testament. He says these verses pose the most powerful question found in the Bible. After all the theology—Tom says a person’s faith boils down to this one question.

When Jesus came into the region of Caesarea Philippi, He asked His dis-

iples, saying, "Who do men say that I, the Son of Man, am?" So they said, "Some say John the Baptist, some Elijah, and others Jeremiah or one of the prophets." He said to them, "But who do you say that I am?" Simon Peter answered and said, "You are the Christ, the Son of the living God.

Matthew 16:13-16

Ginger Avery, who is the Executive Director of the Alabama Association for Justice, sent in her favorite verse. Ginger says when she and her husband Jack are preparing for tailgating or entertaining, or to enjoy Thanksgiving and Christmas, they will keep this verse in their hearts and minds and act on it.

Then Jesus said to his host, "When you give a luncheon or dinner, do not invite your friends, your brothers or relatives, or your rich neighbors; if you do, they may invite you back and so you will be repaid. But when you give a banquet, invite the poor, the crippled, the lame, the blind, and you will be blessed. Although they cannot repay you, you will be repaid at the resurrection of the righteous.


Gibson Vance, a lawyer in our firm who is currently serving as president of AAJ, a national trial lawyers association, furnished this verse:

If you have any encouragement from being united with Christ, if any comfort from his love, if any fellowship with the Spirit, if any tenderness and compassion, then make my joy complete by being like-minded, having the same love, being one in spirit and purpose. Do nothing out of selfish ambition or vain conceit, but in humility consider others better than yourselves. Each of you should look not into your own interests, but also to the interests of others.

Philippians 2:1-4 (New International Version)

Wes McCollum, a lawyer from Auburn, Alabama, (who happens to be my son-in-law), sent in the following verse. Wes is married to my youngest daughter Bee. They have one daughter, Maggie, who is a sophomore at Auburn High School. Maggie is a very good student and athlete.

Therefore confess your sins to each other and pray for each other so that you may be healed. The prayer of a righteous man is powerful and effective.

James 5:16

XXIV.

CLOSING OBSERVATIONS

My good friend Walter Albritton, who is one of the pastors at St. James United Methodist Church, wrote the following last month and I felt it was worth passing his message on to our readers. Walter has a way of communicating so that you can understand exactly what he is saying. In Barbour County, where I come from, some would say Walter “puts the hay down where the goats can get it!”

You can live only one day at a time so enjoy it

Some days I catch myself singing the song that begins “One day at a time sweet Jesus, that’s all I’m asking from you.” The simple tune is easy to remember. Singing the song is really a way of praying, for the song is actually a prayer, and one worth praying daily.

To ask Jesus for “one day at a time” is like saying, “Lord, life is so hard that I can handle only one day at a time. So please just give me the strength to do everyday what I have to do.” To make that request of Jesus is to admit that without divine assistance there is no way I can make it through the night, or through the day.

I like the song, what it says and how it feels in my soul. But I realize that one day at a time is all any of us will ever get. Singing that song will not change the reality that life comes at us one day at a time. Each
new day is a gift and we must decide bow to use it morning by morning.

The song acknowledges that yesterday is gone, “and tomorrow may never be mine.” The mature person soon realizes that there is no way to change the past. To fret about past mistakes is to waste energy that could be applied to today’s opportunities. We can learn from our mistakes but we simply cannot live in the past.

Tomorrow is also beyond our grasp. To daydream about what we might do tomorrow is to fail to make the most of today. If we are to live well we must realize that today is all we have and we must make the most of it before the sun goes down.

Defeats and failures can wound our ego. They can also rob us of our willingness to make the most of each new day. Depression and discouragement can cause us to sit and stare. Uncaring staring allows self-pity to sap our energy and enthusiasm. But while we sit and stare time does not stop to wait on us. The clock keeps ticking. Sunset follows sunrise. Life goes on.

At the end of the day, the only question that matters is, “Have I lived this day to the fullest or have I let it slip away?” A day that is lost is a day that can never be regained. Once lost, it is gone forever. When that happens, we can only resolve to “sleep it off” and rise the next morning to live that day to the fullest.

A chest freezer taught me a great lesson. We had one for many years in our garage. One day I realized that we were making little use of it. We kept a bag of ice in it, or a loaf of bread. Finally I had to admit that to keep that freezer running was a waste of money. My wife agreed and we gave it away.

Storing food may be done wisely of course. Many people make good use of a freezer I have no quarrel with that. But the truth is, all we really need is food for today. If tomorrow never comes, what good will it do to have a freezer full of food? Perhaps that is why Jesus said when we pray we should say, “Give us this day our daily bread.” We need have more faith in God’s power to provide daily bread than in a freezer we have provided for ourselves.

While we have no choice but to live one day at a time, we do have a choice about the attitude we may embrace with each new day. We can live with passion and compassion, joy and enthusiasm. We can dismiss our regrets about yesterday. We can refuse to waste time daydreaming about tomorrow.

We can live today to the fullest, thankful for every precious hour, and squeeze it like an orange until there is not a drop of joy left in it. We can live with passion and compassion, joy and enthusiasm. We can refuse to waste time daydreaming about tomorrow.

We can live today to the fullest, thankful for every precious hour, and squeeze it like an orange until there is not a drop of joy left in it. So relax and enjoy today!

A Monthly Reminder

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

2Chron7:14

XXV.

PARTING WORDS

As a follow up to what I have written in the last few issues, I will wind up this theme in this issue. Too often we let our circumstances, and the attitude of folks around us, determine our own attitudes. We tend to move with the flow so to speak and really don’t always stand up for what’s right and often fail to state our true feelings on matters of importance. When life is good and things are going smoothly, we generally feel good about our situation and ourselves. When things get tough and hard, however, some of us tend to let our moods drop. We then begin to take on a negative tone in our dealings with family, friends and co-workers.

This is why it’s critically important to not only believe in God, but to trust Him in all things and at all times. It was said recently by a person much smarter than I, that we need to adopt an attitude that says “I can through Jesus Christ handle all things.” That means learning to bring God’s power into play in our everyday lives. That will allow us to both accept and adapt to changing circumstances. I learned the hard way—as many do—that I am not capable of handling either success or adversity on my own. I seemed to always mess things up when I took that route.

Submission and trust are needed and there is no substitute. Once that is done, we will always obey God in all that we do. But the first and perhaps hardest thing to do is to first surrender our will to God’s will. We can then trust an awesome God to oversee and control our specific situation. The obeying will then come easy for even the most strong-willed and hard-headed amongst us. In a recent devotion, it was written that the Apostle Paul submitted his life to God—trusted Him—and never failed to obey Him. There are many examples in the New Testament where Paul could have taken the easy way out in crisis situations, but he never once wavered and he kept the faith regardless of what often appeared to be a hopeless situation. The basic question we all must answer is: “Who is really in charge of my life?” If you had to answer that question, right now; what would your answer be?
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.