



THE  
**JERE BEASLEY REPORT** DECEMBER 2010

## Beasley Allen

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# I. CAPITOL OBSERVATIONS

## A NEW DAY IN ALABAMA

A new day politically has dawned in Alabama and the landscape is firmly “Red” without any doubt. For the first time in 136 years both houses of the Alabama Legislature are now under Republican control. All but two officials elected statewide are Republicans. This success offers both opportunities and challenges. The people of Alabama have very high expectations for a successful beginning in state government, in my opinion. It sort of reminds me of the old tale about the dog finally catching the big truck he had been chasing for a very long time. When he finally caught it he realized it was a very big truck and he really didn’t know what to do with it. Hopefully, that won’t be the case with the Alabama Legislature.

Now that the GOP is firmly in control of the Legislature, the obvious question is: What will it be able to accomplish? State government in Alabama is “broke as a haint,” to borrow a phrase from my home county of Barbour. That presents a major problem right off the bat for those in charge. There will either be huge cuts in 2011 in all departments and in all segments of public education, or there will be new revenues. The prospects of any new revenues, however, are unlikely. The federal stimulus money—quietly accepted by the Governor and Legislature—kept the ship of state afloat for two years. Lots of folks don’t realize it but that money won’t be available next year. The new Governor is inheriting a real mess.

The job of governing is going to be extremely difficult and it will take a bi-partisan approach to problem-solving in dealing with the multitude of serious financial problems facing the state. I wish Dr. Bentley, the Governor-elect, and the GOP-controlled Legislature the very best. Hopefully, they will come up with some new and innovative ways of funding state government and public education. They certainly won’t be able to patch the old tire again—as has been the case for at least the last ten years—and get away with it. Those days are over and the state’s fiscal problems must now be faced head on and dealt with in a fiscally-responsible manner.

## TALKING AND ACTING PAYS BIG BUCKS

I read an article in Newsweek recently entitled “Power 50” which was very interesting and quite revealing. It appears that it pays very well these days to be a national figure who also has a national talk show. *Newsweek* calls it “the commercialization of political personality.” Wealth-X, an intelligence and research firm, furnished some interesting facts to *Newsweek* in the form of the top 50 highest-earning political figures of 2010. So-called conservatives dominated the list, having four of the top five spots, and that shouldn’t be very much of a surprise. Those four are Rush Limbaugh who was the top earner at \$58.7 million, followed by Glenn Beck at \$33 million, Sean Hannity at \$22 million, and Bill O’Reilly at \$20 million rounded out the foursome. The closest “liberal” commentator is Jon Stewart who collected \$15 million.

The top “politician” on the list was none other than Sarah Palin who collected \$14 million as an author, speaker, and political wanna-be—and that’s not too shabby! The money she is pulling in may well explain why she left her day job in Alaska. The amounts furnished to *Newsweek* were estimates of pretax income received between September 1, 2009 and September 1, 2010. It might be interesting to see how all of these folks got their start. We know a good bit about Ms. Palin, and how she has learned to climb the money tree, but little has been said as to how the others made a living in their early days.

## ALABAMA EMPLOYEES TO RECEIVE \$16 MILLION IN NATIONWIDE SETTLEMENT

A civil lawsuit involving Alabama state employees and Nationwide Retirement Solutions has been settled. State employees who relied on a deferred compensation plan from Nationwide will receive \$16 million in the settlement over fees that were paid to a lobbying group for state workers. Both the Alabama State Employees Association and the State Personnel Board have approved the agreement.

The settlement will cover claims made over the lobbying fees and other issues. More than 18,000 active and retired state employees who participated in Nationwide’s plan between 2000 and 2009 will share in the settlement. The amounts to be received will depend on how much they had in the program. Nationwide is paying \$15.5 million of the settlement and a consulting firm, Aon, is providing the remain-

der. Attorney General Troy King handled this claim and did a very good job.

Source: Associated Press

## SENATOR SHELBY DOESN’T LIKE THE EARMARK BAN

Richard Shelby has been very good at bringing federal dollars to Alabama during his time in the U.S. Senate. He has been responsible for the steady flow of federal earmarks that have benefited Alabama institutions to the tune of hundreds of millions of dollars a year. But these dollars will dry up under a two-year ban adopted on November 16<sup>th</sup> by Senate Republicans.

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Senator Shelby opposed the moratorium, saying it would permanently end the state's ability to finance major road, construction, research and infrastructure projects with extra federal dollars. As expected, Senator Jeff Sessions likes the ban and supported it. I agree with Senator Shelby who has directed thousands of earmarks back to the state during his 24 years in the Senate. I believe Alabama will suffer greatly if the ban stays in place.

Some of the folks who "cuss" earmarks may not even know what they are. As I understand it, earmarks refer to line items inserted into the federal budget by individual lawmakers to direct money to special projects in their states. Senator Shelby has been very good to our state as a result. Alabama always has ranked high in earmark dollars per capita. Typically, the earmarks have financed water and sewer projects, new roads and bridges, historic building renovations, museums, university research, private defense contractors doing work for the military, and upgrades of equipment for local law enforcement.

Source: Birmingham News

## II. A REPORT ON THE GULF COAST DISASTER

### **BP OIL SPILL COST ALABAMA ECONOMY ALMOST \$2 BILLION**

It has been estimated that the BP Deepwater Horizon oil spill could cost Alabama a minimum of \$1 billion and 13,600 jobs this year. An economic impact study released by the University of Alabama came as somewhat of a shock to many who apparently had bought the public relations spin put out by BP, at a cost of over \$200 million. The report by Dr. Samuel Addy, the Director of UA's Center for Business and Economic Research is preliminary as it estimates the damages to tourism and the fisheries in Mobile and Baldwin counties for the year. Dr. Addy has stated "people living in other countries should not think they are not affected when something happens to Baldwin and Mobile counties. Our economy is very much interrelated." Estimates will simply be much higher once the full impact up to date is known.

A worst case scenario in the report, co-written by Ahmad Ijaz, an economic researcher at the University, estimates the

spill could result in losses of \$3.3 billion and nearly 49,000 jobs this year. The report states:

*The motivation for this work comes from the need to understand somewhat the effect of the disaster on Alabama and to facilitate claims to recover losses due to the oil spill's ongoing adverse effects on the state economy.*

It is quite evident that the losses in Alabama were much greater than the public has been led to believe. That's why it would have been a huge mistake for anybody—including the state and local governments—to settle too early and much too cheaply with BP. The full extent of Alabama's damages won't be determined for years. BP and the other wrongdoers must be held fully accountable to all of their victims.

Source: Birmingham News

### **FEINBERG CHANGES RULES AGAIN**

On November 24<sup>th</sup>, Ken Feinberg laid out two new options for individuals and businesses who want permanent relief from the Gulf Coast Claims Facility. The rules from Feinberg have changed almost daily. In the latest change, Claimants can now accept Feinberg's offer for a lump sum payment to cover all past and future losses from the oil rig disaster. In exchange, applicants would have to give up their right to sue BP or any of its business partners. The alternative is that Claimants can seek quarterly payments, while keeping open their lawsuit options. It should be noted that Feinberg's emergency claims process expired on November 23<sup>rd</sup>.

In the latest announcement, Feinberg also laid out an appeals process. After 90 days, a Claimant can appeal his decision to the U.S. Coast Guard and then to federal court. People and businesses with claims exceeding \$250,000 also can appeal to a three-judge panel that Feinberg says will be set up. BP also can appeal claims exceeding \$500,000. It's very clear that both Feinberg and BP want to keep claimants out of the courts and also want to give BP the sole right to make claims against the other wrongdoers.

Source: Mobile Press Register

### **CONFLICTING VIEWS ON THE FEDERAL GOVERNMENT'S BP REPORT**

At first blush, it appeared that the early findings of the President's independent

commission into what caused BP's Gulf oil spill supported many of the conclusions the oil company made in its own internal investigation. Fred H. Bartlit Jr., the panel's chief investigator, told the media that he agreed with about 90% of BP's findings. But he did admit there were some areas where the panel's probe conflicted. As you may recall, BP's report tried to shift some of the blame to its contractor Halliburton on its cement job and to faulty maintenance performed by rig owner Transocean Ltd.

BP's report was largely self-serving and in my opinion designed to help defend lawsuits. Bartlit said his group's findings weren't meant to assign blame or liability, but to get to the root cause "without a lot of bickering and self-serving statements." While I don't want to be overly critical of the Commission's work, I have been concerned about the government's cozy relationship with BP. I believe there has been too much of a cover up of the true state of affairs on the coast by both BP and the government. Turning things over to BP from the outset, in my opinion, was a mistake.

It was interesting to note that the leaders on the President's commission had to clarify and actually contradict some of what Bartlit originally stated. The heads of the oil spill commission took issue with Bartlit. The heads of the Commission made it clear that complacency at BP, as well as at Transocean Ltd. And Halliburton, led to serious missteps prior to the rig explosion that unleashed millions of barrels of oil into the Gulf of Mexico over the summer. Obviously, these comments were much more critical than the previous statements by Bartlit that the companies involved did not place cost cutting over safety. Commission co-chair Bill Reilly, a former head of the Environmental Protection Agency, had this to say:

*BP, Halliburton and Transocean are major respected companies operating throughout the Gulf and the evidence is they are in need of top-to-bottom reform.*

Reilly said that the BP oil spill demonstrated the need for sweeping and systemic safety changes to the oil industry. He reiterated his call for the creation of a self-regulating entity that would set and enforce standards. Both Reilly and his commission co-chair, Bob Graham, sought to clarify comments made earlier by Bartlit, the commission's chief counsel, that workers for the companies did not cut corners on safety to save money. Both Reilly and Graham said the panel's investigators were not concluding that the companies involved placed

enough emphasis on safety. Graham, a former U.S. Senator from Florida, said: "The problem here is that there was a culture that did not promote safety...leaders did not take risks seriously enough."

Since Bartlit had to backtrack, he now says his team was not saying BP never acted out of its financial interests. Commission investigators are considering whether any of the decisions made regarding the BP well focused on saving money to the detriment of safety. Now Bartlit says that "issue is still open." The commission's final findings and its recommendations are scheduled to be released by January. President Barack Obama created the seven-member commission in the aftermath of the BP drilling accident. Its ultimate charge is to develop proposals to prevent and respond to major spills in the future.

Source: *Insurance Journal*

### **BP AND HALLIBURTON KNEW OF FLAWS IN CEMENT**

Prior to the Commission's initial report being released, it had been reported that tests performed before the deadly blowout of the BP oil well in the Gulf of Mexico should have raised doubts about the cement used to seal the well. But according to the president's oil spill commission, the company and Halliburton Co., BP's cementing contractor, failed to act on the information. Halliburton has said tests showed the cement mix was stable. But this is totally inconsistent with the panel's findings. The cement's failure to prevent oil and gas from entering the well has been identified as one of the causes of the accident. According to the panel, only one test of four by Halliburton on the cement's stability showed that it would hold.

In the report on the incident issued by BP on September 8<sup>th</sup>, the company admitted that "weaknesses in cement design and testing, quality assurance and risk assessment" contributed to the explosion. But BP attempted to put the blame fully on Halliburton. In response, Halliburton said that it had noticed "a number of substantial omissions and inaccuracies" in the report. While Halliburton has admitted that it failed to do a critical test on the final formulation of cement used to seal the well, it isn't taking full blame for the problem and is shifting lots of blame back to BP.

Cementing failures are a known hazard in the oil industry, with specific tests such as a "negative pressure test" and "cement evaluation logs" designed to identify cementing problems. It's evident that workers at BP

and very likely Transocean, the company that operated the Deepwater Horizon rig, misinterpreted or ignored the tests and other available information. It should also be noted that Chevron conducted independent tests of similar cement slurry materials supplied by Halliburton and found the mix to be unstable.

While the cementing issue is very significant, it's important not to ignore the many areas where one or more of the companies involved were at fault and responsible for both worker deaths as well as tremendous economic and environmental losses.

Of course other factors contributed to the explosion, among them a faulty blowout preventer and BP's decisions to use fewer stability rings on the well piping and seawater instead of heavier mud to plug the well until it was to be used for production.

Source: *CNN* and *Associated Press*

### **ANOTHER REPORT SAYS BP IGNORED WARNING SIGNS**

Another report reveals that BP and its contractors missed and ignored warning signs prior to the massive oil well blowout in the Gulf of Mexico. The report says the companies showed an "insufficient consideration of risk" and questions are being raised about the know-how of key personnel. A group of technical experts revealed these conclusions in its report released last month. An independent panel convened by the National Academy of Engineering said the companies failed to learn from "near misses," and neither BP, its contractors, or federal regulators caught or corrected flawed decisions that contributed to the blowout.

Donald Winter, a professor of engineering practice at the University of Michigan and chair of the 15-member study committee, said in a statement that plugging of the well to seal it off for future oil and gas production continued "despite several indications of potential hazard." Those hazards included several tests that indicated the cement at the bottom of the hole would not be an effective barrier to an influx of oil and gas.

While the panel's interim findings—the second from an independent entity—are still in progress, they echo much of what has been discovered in prior investigations by BP, lawmakers and the president's oil spill commission. The panel is still reviewing technical data. Forensic testing on the blowout preventer, which failed to halt the gusher as designed, got under way on November 16<sup>th</sup>. The report said it may not be possible to ever establish exactly what

happened because much of the evidence was lost when 11 workers died and the rig sank in April. Interior Secretary Ken Salazar asked in May for the investigation by the academy, saying he wanted "an independent, science-based understanding of what happened." A final report is due in June 2011.

Source: *Associated Press*

### **OFFICIALS DISCUSS FEDERAL DAMAGE ASSESSMENT OF OIL SPILL**

It was reported last month that BP will be forced to cover all ecological losses in Alabama resulting from the Gulf spill. Both state and federal officials expressed that view at a presentation on the ongoing Natural Resources Damages Assessment last month. The assessment forms the basis of the government's pending lawsuit against BP and is broad in scope, encompassing everything from dead birds to the months the public was unable to fish or enjoy sunset walks on a clean and oil-free beach. The goal of the effort is to restore the natural world and compensate humans for the loss of the use of Gulf resources during the spill and the recovery period.

It will take years to determine the full extent of damages seen in the wild, particularly subtle problems, such as weakened immune systems or impaired reproductive success in fish, birds and other creatures. But, it will be necessary to put a dollar value on problems of that sort. That is now at the heart of the NRDA process. The proceeds of the government's lawsuit will be for enhancing the ecosystem and people's enjoyment of it.

A major source of oil spill recovery money largely restricts spending to environmental projects, even though the program gets some of its money because of economic damage. This comes from statements made by officials with the National Oceanic and Atmospheric Administration (NOAA). They said those rules are mandated in the law governing the Natural Resource Damage Assessment (NRDA). Federal law mandates a review and restoration process following environmental disasters. In the wake of the Gulf oil spill, assessments are being conducted, both onshore and offshore, in Alabama, Mississippi, Florida, Louisiana and Texas. Once the damage is quantified, BP, majority owner of the leaking well, along with all other responsible parties, must pay to fix the damage.

Trustees are supposed to work together to make those decisions relating to restora-

tion, as no double recovery is permitted and the NRDA guidelines carry a rebuttable presumption in court. Trustees include federal government agencies and representatives of each Gulf state. To ensure full restoration is achieved, the trustees act jointly to determine how the money is spent.

There will also be oil spill money available from fines assessed under the Clean Water Act. The law currently sends such money to a trust fund for future oil spills, not to the affected states. Sending the money to states will require legislation in Congress. That action will ultimately determine who controls the funds. Clean Water Act fines against BP and other parties responsible for the massive oil spill could range from \$5.4 billion to \$21.1 billion. That will not include the funds available under the NRDA.

The Oil Pollution Act of 1990 calls for NRDA to study the “injury to, destruction of, loss of, or loss of use of, natural resources” as a result of incidents such as oil spills. Economic damage is tallied under the “loss of use” provision. The section of the law authorizing recovery projects makes no mention of economic restoration, saying only that officials “shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources.” According to reports, the closest thing to economic recovery that NRDA money can be used for is increasing public access to natural resources. That would include such things as fishing piers and boat ramps.

Source: *Mobile Press Register*

### **BP WANTS CLAIMANTS' RIGHTS TO SUE OTHER OIL SPILL FIRMS**

If BP gets its way, Claimants to the oil giant's \$20 billion oil spill fund may soon be required to transfer to the company their right to sue other Defendants. This move would help BP's efforts to collect billions of dollars from its business partners. The proposal is part of a final set of rules being circulated by none other than fund administrator Kenneth Feinberg. This is the man who has been making it so hard on shrimpers, hotel owners, restaurateurs and others on the Gulf Coast seeking compensation. The proposed rule, according to a report by Reuters, would offer victims an opportunity for full payment for documented damages. But full payment would be determined by Feinberg.

Such a document would give BP a powerful tool in its efforts to get contributions to the compensation fund from other corpo-

rate wrongdoers, including Halliburton Co. And Transocean Ltd. “I think the most significant thing about this is it reconceptualizes the fund as not just BP's share but BP trying to settle all the claims with whoever accepts it and then being able to go after the others for a contribution,” said Bob Percival, a professor at the University of Maryland School of Law in Baltimore. Language in the draft proposal requires that Claimants transfer, or subrogate, their legal rights to BP. Claimants would sign over their right to sue those responsible for the spill. BP would then go after its partners for a portion of the claims it paid. That could be worth billions of dollars if BP is successful. This is a clever attempt to shift the loss to other companies.

Halliburton has moved to defend itself against BP. In a court filing, the company said it did not intend to waive a \$75 million legal cap on its liability from the spill and said that cap would apply toward efforts by others to get a contribution toward their settlements. BP has waived the cap and has encouraged its partners to do the same. It should be noted that the cap does not apply in cases of gross negligence or when federal safety regulations have been violated.

Source: *Insurance Journal*

## **III. DRUG MANUFACTURERS FRAUD LITIGATION**

### **LOUISIANA ATTORNEY GENERAL SUES DRUG COMPANIES**

Louisiana Attorney General Buddy Caldwell has filed a lawsuit alleging that 18 drug companies have ripped off state taxpayers by overcharging the Medicaid program. The companies misreported their drug prices in a deliberate effort to increase the payments they receive from the Louisiana Medicaid system. Under federal law, Medicaid payments to drug providers are derived using a series of pricing levels—wholesale acquisition cost, average wholesale and non-wholesale price—that the companies disclose to reporting services that in turn provide the information to state governments. There will be additional companies added to the suit as Defendants.

As part of the joint state-federal Medicaid program, the state of Louisiana paid pharmaceutical providers more than \$850

million last year. The drug coverage typically comprises about 15% of the total Medicaid budget. Some average wholesale prices were as much as 6,000% higher than the drugs' true cost. The inflationary pricing practices reach back as far as 1991. Attorney General Caldwell said in a written statement:

*This is an egregious abuse of the Medicaid reimbursement system. We believe Louisiana has lost hundreds of millions of dollars as a result of these...fraudulent pricing schemes.*

Similar lawsuits have been filed by the federal government and 27 other states, and the issue has attracted the attention of Congressional investigators and the federal government's Government Accountability Office. The Defendants effectively reported one set of price points then used undisclosed discounts, rebates and other inducements for its non-government customers. It would be impractical, if not impossible, to list in this petition for the entire time period that the inflated pricing scheme has been in effect. That will be proven at trial.

The following companies are Defendants in the lawsuit: Abbott Laboratories Inc.; Baxter Healthcare Corp.; Covidien Inc.; Lupin Pharmaceuticals Inc.; Watson Pharma Inc.; Baxter International Inc.; Mallinckrodt Brand Pharmaceuticals Inc.; Forest Laboratories Inc.; King Pharmaceuticals Inc.; Monarch Pharmaceuticals Inc.; Ranbaxy Pharmaceuticals Inc.; Ranbaxy Laboratories Limited; Tap Pharmaceutical Products Inc.; United Research Laboratories Inc.; Watson Pharmaceuticals Inc.; and Watson Laboratories Inc.

The conduct by the Defendants violates the state's Unfair Trade Practices and Consumer Protection Law, the Medical Assistance Programs Integrity Law, and state antitrust laws. Earlier this year Louisiana made a \$20 million settlement with drug giant Eli Lilly. In that case, Louisiana, echoing 12 other states that filed separate suits, alleged that the Indianapolis-based firm illegally marketed the anti-psychotic drug Zyprexa for uses that had not been approved by federal regulators. Our firm, along with the Block Law Firm of Thibodaux, Louisiana, is working with the Attorney General on this important case.

Source: Release from Attorney General's office

## HAWAII SUES DRUG WHOLESALER AND DRUG DATA PUBLISHER FOR INFLATED DRUG PRICES

The State of Hawaii has filed suit against McKesson Corporation and First DataBank, Inc., as part of an ongoing effort to recover for prescription drug overcharges to the State. The State's previous related lawsuit had recovered more than \$82 million for the State from prescription drug manufacturers. Defendant McKesson Corporation is a wholesaler of pharmaceutical products. Defendant First DataBank, Inc. compiles and publishes pricing information regarding pharmaceutical products. This information is used by Hawaii's Medicaid program, among others. Attorney General Mark Bennett made the announcement of the latest lawsuit filing.

The Defendants violated various statutes and common law in connection with the reporting and publication of average wholesale prices for certain brand-name pharmaceutical products. The Defendants entered into a scheme to inflate, and in fact inflated, the AWP's published by First DataBank for certain brand-name pharmaceutical products, despite there being no increase in the actual prices retail providers paid to acquire them. As an intended consequence of the scheme, the State overpaid Medicaid providers when reimbursing them based on these inflated AWP's. Attorney General Bennett said:

*Manipulation of average wholesale prices has cost Hawaii and the federal government millions of dollars. We are bringing this second phase of this litigation as part of an ongoing effort to recover overcharges and restore transparency and fairness. The first phase of the litigation, against the drug manufacturers, was very successful, and this second phase of the litigation continues our efforts.*

Lillian Koller, Director of the Department of Human Services, said that "the State and federal government have overpaid for Medicaid prescription drugs. We bring this lawsuit to continue our efforts to protect taxpayers and the integrity of our Medicaid program." Our firm, along with the Miner Barnhill law firm of Chicago, Illinois, and the Price Okamoto law firm in Hawaii, joined with Attorney General Bennett in filing the lawsuit. Dee Miles, Roman Shaul, and Alison Douillard, lawyers from our firm, will be involved in this litigation. We are honored to have been selected to work with the Attorney General on this important case.

## GLAXO TO PAY \$750 MILLION TO SETTLE CLAIMS

GlaxoSmithKline PLC has agreed to pay \$750 million and plead guilty to a criminal charge to settle a U.S. government investigation of manufacturing deficiencies at its former plant in Puerto Rico. The probe was sparked by a whistle-blower suit filed by a former employee. Glaxo agreed to settle a U.S. investigation of manufacturing problems. Glaxo previously disclosed in July that an agreement in principle had been reached to settle the probe. The government had been looking into the manufacture of defective pills including the Paxil antidepressant at Glaxo's plant in Cidra, Puerto Rico, between 2001 and 2005. They found that some tablets could split apart or had inappropriate amounts of active ingredient, posing safety risks. Glaxo has since closed the facility.

U.S. Attorney Carmen Ortiz in Boston announced the final settlement, saying that although there was no evidence of patient harm, it was critical to pressure companies to follow the rules. Tony West, assistant attorney general for the Civil Division of the Department of Justice, said in a Justice Department press release:

*Adulterated drugs undermine the integrity of the FDA's approval process, can introduce substandard or ineffective drugs onto the market and, in the worst cases, can potentially put patients' health at risk.*

This was the fourth-largest amount a drug company has ever paid to resolve a government probe. Last year, Pfizer Inc. paid a record \$2.3 billion to settle allegations it had improperly promoted drugs for unauthorized uses. In 2004, a former quality-assurance manager at Glaxo, Cheryl Eckard, filed a lawsuit against the company in federal court in Boston, alleging that the company submitted false claims to government health programs because drugs manufactured at the Puerto Rico plant weren't safe and effective, and thus shouldn't have been covered by government programs. The suit had been filed on behalf of the U.S. under the federal law that was designed to encourage people with knowledge of suspected wrongdoing to notify the government. Ms. Eckard raised the concerns internally before being terminated by Glaxo in mid-2003. The government hopes that this lawsuit and resulting settlement will force drug makers to improve their manufacturing processes.

Taxpayers Against Fraud spokesman Patrick Burns said the case signals that the Justice Department is willing to pursue

manufacturing violations. Big-ticket health-care fraud settlements in recent years have largely centered on allegations that drug makers have promoted drugs for unapproved uses and paid kickbacks to health-care providers. The U.S. Attorney's Office in Boston subpoenaed Glaxo for documents related to Cidra in 2005. Some \$600 million of the settlement amount will go to the federal government and participating states to resolve the civil false-claims allegations.

Source: *Wall Street Journal*

## FOREST LABORATORIES SETTLES LAWSUITS OVER DRUGS TIED TO SUICIDES

Forest Laboratories has settled a number of wrongful death and personal injury lawsuits filed by the parents of children who took the drugs Celexa and Lexapro. Fifty-four lawsuits, mostly involving suicides and attempted suicides by teenagers in various parts of the country, accuse the New York-based pharmaceutical company of concealing a negative pediatric study on Celexa, misleading physicians about the drug's clinical trials, and targeting children in aggressive promotions of Celexa and a sister drug, Lexapro. These settlements came about a month after Forest's Earth City subsidiary pleaded guilty to illegally marketing antidepressants to children and adolescents.

I have reason to believe there will be more settlements in the months ahead. The pharmaceutical company is trying hard to get the controversy surrounding its marketing of antidepressants to children behind it. It's quite evident that the company can't afford to litigate these cases. The company's subsidiary—Forest Pharmaceutical—agreed to plead guilty to criminal charges involving its marketing and manufacturing practices and also to pay more than \$300 million in criminal and civil penalties. The U.S. Attorney's office in Boston is continuing to investigate the potential criminal liability of Forest officers and employees. According to federal regulators, Forest waged an aggressive campaign from 1999 through at least 2005 to promote the use of Celexa and Lexapro in children and teenagers, although neither drug was approved for pediatric use.

Source: *St. Louis Today*

## IV. PURELY POLITICAL NEWS & VIEWS

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### ***A FINAL LOOK AT RESULTS IN STATEWIDE RACES IN ALABAMA***

#### **The Governor's Race**

Dr. Robert Bentley won the Governor's race in Alabama with little difficulty. He survived some negative attacks that came late in the campaign and wound up winning by a landslide. At a point when few Alabamians knew very much about the two-term Legislator from Tuscaloosa, I asked my brother to tell me about Dr. Bentley. Billy, who had served with him in the House of Representatives, described him this way: "Robert is honest, straight-forward, a hard worker, keeps his word and is a good man. I really like him." That would be a pretty good recommendation for anybody "looking for a job." I trust my brother's judgment and opinion of the Governor-elect.

I believe Dr. Bentley is a perfect choice to lead our state at this time. He inherits a state government that is flat broke and in deep financial trouble. It will take a chief executive who both cares for the people of Alabama and who also understands how the Legislature is supposed to operate in order for the Governor and Legislators to work through the massive problems facing our state. I can't overemphasize how important it is for a Governor to fully understand how the Legislature really works. It will take both the governor and the legislative leaders being willing to work together in order for the governor's programs to get through the process. Hopefully, full cooperation will become a reality during the next four years.

#### **The Lt. Governor's Race**

I must admit that the outcome in the Lt. Governor's race was a real surprise to me. I really believed that Jim Folsom's record and his name recognition would keep him in office, even though he obviously was in a very close race. But considering that public opinion polls showed that at least one-third of potential voters planned to vote a straight Republican ticket, with only 15% pulling the Democratic lever, I probably shouldn't have been surprised at the outcome. In any event, I wish for Kay Ivey, the winner, a successful term as Lt. Governor.

#### **Other Alabama Races**

The Republican landslide put another person with a solid record out of office when Susan Parker lost her race for reelection to the Alabama Public Service Commission. Her loss was to a candidate who reportedly spent less than \$3,000 in his race. Susan had done an excellent job, but apparently that really didn't matter to the voters. She became a victim of the voters' overall discontent and as a result lost her race.

Luther Strange was elected Attorney General, a most important position in state government, by a large margin. I supported James Anderson, who I have known since 1978, because I felt he would have been an excellent Attorney General. But since James couldn't raise any money, he really never had a chance. Folks who know Luther all say he's a good man and they believe he will do a good job as Attorney General. I wish him well.

#### **Supreme Court Races**

The Republican candidates won all three Supreme Court races in Alabama with little difficulty. I never believed that any of the Democratic candidates were ever in the running and as it turned out I was correct. It was evident that Justices Mike Bolin and Tom Parker took full advantage of the GOP sweep and they will return to the Court. Judge Kelli Wise, who has been serving on the Criminal Court of Appeals, will join the High Court. Hopefully, all of the members of the Court realize that ordinary folks should be treated fairly when they have cases before the High Court. As I have stated on numerous occasions, all a party with a case before the Supreme Court is entitled to is a fair hearing where both the law and evidence really matter. Is that asking too much?

#### **A Change In The Election Of The Lt. Governor**

Governor-elect Bentley has said that in the future he wants to see the Governor and Lt. Governor run as a team. That would be like the President and Vice President do on the national level. This change really makes sense for a number of reasons, one being the problems that arise when the two top officials are from different parties. Another good reason for making the change is the tremendous cost of running separately. The Lt. Governor should be a person who shares the Governor's political philosophy and is a person who will work with the Governor. I believe a change in the

existing law would be good for Alabama citizens.

#### **My Brother Wins His Race**

My brother, Billy Beasley, was elected to the Alabama State Senate, winning his race with 70% of the vote. Billy ran a positive campaign, stayed on the issues important to his district and never went negative at anytime. In my opinion that was a good thing. I am proud of all that Billy has accomplished in his three terms in the House of Representatives and know that he will be a good Senator. He will represent the people in District 28 well and I can guarantee that Billy will never do anything to let them down.

## V. RECENT VERDICTS AND SETTLEMENTS BY THE FIRM

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### ***COURT AWARDS \$5.25 MILLION TO FAMILY OF WOMAN KILLED ON THE JOB***

Our law firm represented the family of Beverlyn Wingard in a wrongful death that was tried last month in the Circuit Court of Montgomery County, Ala. Ms. Wingard was killed in January 2008 while working for Albany International located in Montgomery. Ms. Wingard was crushed by machinery while she was operating a warper at the textile plant. The equipment she was operating failed to have the proper guards to protect workers, resulting in dangerous operating procedures. County Circuit Judge Charles Price found on behalf of the family and awarded \$5,250,000 in damages.

Warpers are used in the textile industry to uniformly roll a number of lines adjacent to each other onto a spool called a canister. The S-roll drive maintains these lines at a constant tension, allowing them to be uniformly placed onto the canister. The evidence was undisputed during the trial that the warper was not properly guarded. As a result, Ms. Wingard's body was pulled into the rotating parts of the machine, causing her death. Additionally, modifications made to the warper by the manufacturers caused workers to have to clean the equipment while it was running, instead of when the machine was turned off. They had been unable to do the latter prior to the modifications. With the modifications, this proce-

dure was much more dangerous, with a risk that a worker could be pulled into the running machine.

Greg Allen and Kendall Dunson from the firm represented the estate. Greg says the sad thing about this case is that Ms. Wingard, who took care of two young children, was going to lose her job as a result of the Montgomery Albany plant closing. Ms. Wingard had been notified shortly before her accident that she would be laid off after six years at the plant. The suit was brought by Walter Wingard on behalf of the family. Defendants in the case included Guillot Textilmaschinen GmbH, a German corporation; TEXO Inc.; and TEXO AB, a Swedish corporation.

#### **PARTIAL SETTLEMENT IN CHURCH WORKER ELECTROCUTION CASE**

One of the Defendants in a case set for trial in March 2011 recently settled with two workers who were severely shocked while working as painters at a church in Bessemer, Ala. Our clients were working for the Abyssinia Missionary Baptist Church and were painting the woodwork on the outside of the multi-story church building. Although scaffolding and hydraulic lifts were utilized by church parishioners who were also painting, our clients were provided aluminum ladders to access upper windows and woodwork. When the two men raised the ladder to get to the upper floors, the ladder contacted a power line adjacent to the church building. As a result of the ladder contact with the power line, both men were severely shocked and required extensive hospitalization and treatment for their injuries.

Although the men were clearly working for the church on church property, using paint and ladders provided by the church, and were paid directly by the church, the church denied that the two men were employed to work and have refused to accept any responsibility for their injuries. Interestingly, the utility company settled with the men and will not be at trial in March. It is unusual and certainly a very sad commentary for a church to so blatantly turn its back on the injured or needy—particularly ones who were injured working for the church. Mike Andrews, who is in our Personal Injury Section, is the lead lawyer handling this case for the firm. We look forward to presenting the case to a Bessemer jury in March.

#### **BOILER EXPLOSION CASE SETTLES**

Our firm recently settled a very important death case. In April 2006, Steve Thrasher was employed at the Rock Tenn paper mill in Demopolis, Ala. He was sent to check the operation of one of the mill steam boilers. The subject boiler, roughly 30 feet square and 60 feet tall, was built and installed in the mid-1950s and had been in continuous operation for over 50 years. Although the ASME boiler code specifies that tubing of steam power boilers should be inspected regularly, portions of the subject boiler tubing were encased in a concrete-like material known as a refractory and were never inspected during the life of the boiler. The boiler inspection company hired to perform the annual inspections is recognized as a leader in boiler technology but it never utilized its own ultrasound or x-ray inspection technology on the boiler. Rather, the company simply relied on visual inspections of the portions of the boiler that were readily accessible. As a result, dangerously thin sections of steam tubing encased within the refractory were never discovered.

Unfortunately, as Steve Thrasher walked by the boiler one of the internal tubes failed and violently ruptured. The force of the tube failure blew a hole in the steel outer casing of the boiler and spewed superheated steam directly onto Steve. Somehow Steve managed to walk to the mill control room and was first transported to the local emergency room and then to the burn trauma unit at South Alabama in Mobile. Despite world class burn care, Steve Thrasher died from his burns. After extensive case preparation which included multiple depositions of experts in metallurgy, boiler operation, inspection techniques and burn care, this case settled a week before we were set to select a jury. The amount and terms of the settlement agreement are confidential. Mike Andrews handled this case for the family. He and his staff did a tremendous job in working this case up.

#### **DROWNING DEATH CASE SETTLES**

We were able to settle a case last month involving the drowning death of a six-year-old boy. As part of the settlement agreement, at the defendants' request, the amount of the settlement and the names of the parties are confidential. The child was attending a birthday party of a classmate at an Alabama country club on the last day of school. The club manager knew there would be 20-25 children attending the pool

party and informed the person having the party there was no need to hire additional lifeguards because the club would have a sufficient number of lifeguards. Although there had been as many as four lifeguards on duty earlier in the day, there was only one lifeguard in the lifeguard stand watching the deep end when the child drowned. There were no lifeguards watching the shallow end although many children were in that area, including the child who drowned. The pool was open to other swimmers during the pool party. Witnesses estimated that between 20-25 people were in the pool. Approximately 15 of those were children.

The pool manager, who was new on the job and responsible for scheduling and supervising lifeguards, was not present at the time. The club failed to make the pool reasonably safe for children. The pool manager was at fault in that he failed to schedule an adequate number of lifeguards to watch and monitor the children. This was a very sad case involving the death of a small child. All commercial swimming pools—including those at country clubs—have a responsibility for safety. Julia Beasley represented the family for the firm and did a very good job in getting this case settled.

## **VI. LEGISLATIVE HAPPENINGS**

#### **REPUBLICANS CONTROL 53% OF STATE LEGISLATIVE SEATS**

Republicans were victorious last month in state house races across the country. The GOP power will give the party its largest number of seats in state legislatures since the Great Depression, according to the National Conference of State Legislatures (NCSL). As you may know, NCSL is a bipartisan organization that provides research for state legislators and their staffs.

Republicans now hold about 3,890, or 53%, of the total state legislative seats in the country. This will be the most seats in the Republican column since 1928. The GOP will now control at least 54 of the 99 state legislative chambers, its highest number since 1952. It will be interesting to see how the GOP handles this situation when the bodies convene around the U.S. in 2011. Tim Storey, elections specialist with NCSL, observed:

*2010 will go down as a defining political election that will shape the national political landscape for at least the next ten years. The GOP, in dramatic fashion, finds itself now in the best position for both congressional and state legislative line drawing that it has enjoyed in the modern era of redistricting.*

There can be little doubt that all of the problems in our Nation's Capitol—and the belief around the country that very little was being done to make things better—contributed to the GOP takeovers on the local level. Democrats were blamed to a larger degree than Republicans and you know the rest of the story.

Source: NCSL

### **DON'T EXPECT ANY NEW TAXES OR ANY GAMBLING LEGISLATION IN ALABAMA**

There are now 62 Republicans and 43 Democrats in the Alabama House of Representatives. The state Senate will now have 22 Republicans, 12 Democrats and one independent. The GOP planned to take over the Legislature and it certainly did and by a landslide. It's fairly safe to predict that there will be no new taxes passed by the Alabama Legislature next year. Neither do I believe we will see any bills pushed to expand gambling in Alabama. Those two predictions are safe to make since all GOP legislators—without exception—are on record as opposing both taxes and gambling.

Newly-elected lawmakers took office in early November and are scheduled to meet on January 11<sup>th</sup> to formally elect their leaders. The 15-week regular session of the Legislature starts on March 1<sup>st</sup>. But the Legislature could meet sooner if Governor Riley calls a special session on ethics legislation. It appeared at press time that he would.

Governor-elect Robert Bentley, who is to be inaugurated on January 17<sup>th</sup>, and all of the top Republican legislators, have stated that a huge issue they will face right off the bat in the regular session is passing balanced budgets for the 2012 fiscal year, which starts on October 1<sup>st</sup>. In my opinion, that will be a most difficult task and that is an understatement. Among other problems, Alabama's education budget and the state's operating budget for non-education agencies had as much as \$895 million in federal stimulus money to spend this year, but will have none in fiscal 2012. That creates a huge problem for the new Governor and the GOP-controlled Legislature. I know that

Dr. Bentley is well aware of the magnitude of the financial problems.

The Legislature is also supposed to redraw Alabama's seven Congressional districts in time for the 2012 elections and all the Legislative districts in time for the 2014 elections. Redrawing lines to include some areas and exclude others can change party leanings in a district. It will be most interesting to see how this works out. Other GOP priorities that key legislators say they will push next year are set out below. It appears bills will be introduced and pushed hard to:

Expand tax incentives for businesses that hire people who are unemployed.

Expand tax credits for small businesses that provide health insurance to employees.

Let state voters rewrite the state constitution to say that individuals, employers and health-care providers in Alabama could opt out of the federal health care law passed by Congress in March.

Create a new state trespass law that would let law enforcement officers arrest illegal immigrants "for simply setting foot in Alabama." It could be enforced only if someone first was stopped on suspicion of another crime.

Limit the change in state Education Trust Fund spending for an upcoming year to the average percentage change in revenues over the preceding 15 years. If tax collections exceeded the spending cap, the extra money would go into rainy day reserves.

Require the reporting of all spending by lobbyists on legislators and other state officials.

Give the state Ethics Commission the power to issue subpoenas.

Ban "double dipping" by legislators.

The political experts are saying people in our state will hold Republicans, who are now in total command, accountable. If the legislators fail to address the issues they ran on, things will change for them and very quickly. Folks in Alabama—along with the rest of the nation—are generally mad and upset. This accounts for lots of incumbents being voted out of office. The legislative chambers are always a good target for the public's discontent, and with all of the problems facing our state, next year will be no different.

Source: Associated Press

### **ARISE CITIZENS' POLICY PROJECT SETS PRIORITIES**

Arise members have targeted the wage gap between males and females and between white and minority workers as their top legislative priority for the 2011 Regular Session of the Alabama Legislature. They are calling for a permanent Equal Pay Commission, which in my opinion would be a good thing. I don't believe anybody can say that we have anything close to equal pay at present for those who would be affected. In addition to equal pay, their goals for 2011 are: constitutional reform, public transportation, worker savings incentives, and a moratorium on the death penalty. Two other issues—tax reform and adequate state budgets for health care, child care and other human services—are permanent priorities. It will be interesting to see how the Legislature responds on these issues.

## **VII. COURT WATCH**

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### **U.S. SUPREME COURT HEARS CASE OVER MINIMUM STANDARDS**

A very important case that deals with consumer rights and vehicle safety is now before the U.S. Supreme Court. The case involves Mazda Motor Corp. During arguments, several Justices indicated that accident victims should be able to sue even when automakers meet minimum federal standards set by NHTSA. It will be interesting to see how the Justices vote on this important case. It's also very important to realize that NHTSA regulation sets only minimum standards. It was the view of Justice Sonia Sotomayor that "a minimum by definition gives manufacturers options." But others, including Chief Justice John Roberts, suggested they would vote to limit lawsuits. Frankly, that shouldn't come as a big surprise to Court watchers.

There has been speculation that the Court would likely deadlock 4-4 because Justice Elena Kagan, the newest member of the Court, has disqualified herself. As the Obama Administration's Solicitor General earlier this year, Justice Kagan urged the Court to take the case. A tie vote would leave intact a lower court victory for the automakers, but would not set a national precedent. That would be very important.

As expected, the automobile industry is asking the Court to limit lawsuits. The U.S.

Chamber of Commerce, food producers and makers of children's products have weighed in on Mazda's side. NHTSA has 59 safety standards that set minimum standards for automotive components. The standards set minimum performance guidelines that manufacturers must follow, but some of the standards are very weak and are not up to the state of the art in the automobile industry.

Mazda, based in Japan, was sued by the family of 32-year-old Thanh Williamson, who died in 2002 in Utah. She was riding in a rear aisle seat in the second row of a 1993 MPV minivan. When the minivan was manufactured, seat belts that buckled only over the lap, without a shoulder harness, were permitted for some back seat passengers. The current regulations took effect in 2007 and require new cars to have shoulder restraints in all forward-facing seats, including rear aisle seats. The Williamson van struck a Jeep Wrangler that had become detached from a motor home that was towing it. The collision forced Ms. Williamson's body to jackknife around her seat belt, causing severe abdominal injuries and internal bleeding.

Mazda argues that NHTSA "specifically gave manufacturers the option of installing one type of seat belt or the other." A California state appeals court barred the suit from going forward, ruling it was preempted by federal law. The U.S. Supreme Court last year, ruling on preemption in another case, said consumers can sue drugmakers for failing to provide adequate safety warnings. That ruling said drug companies aren't shielded from suit by the FDA's approval of a treatment and the drug's packaging information. Martin Buchanan, a lawyer located in San Diego, California, represented the family in the case now under consideration by the High Court.

Source: *Bloomberg*

### **CSX LAWSUIT AGAINST ALABAMA IS BEFORE U.S. SUPREME COURT**

The outcome of a case pending in the U.S. Supreme Court will have a marked impact on the funding of public education on Alabama. Millions of education dollars for Alabama and tax policies nationally are on the line. This case was brought by CSX Transportation against the Alabama Department of Revenue. The rail company sued the State for exempting its non-rail competitors from a tax levy on diesel fuel. CSX contends that this violates federal law, which prohibits discriminatory taxes against railroads. But the State argues that the tax

breaks are legal because railroads pay the same tax rate as everyone but those few competitors.

Source: *Mobile Press Register*

## **VIII. THE NATIONAL SCENE**

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### **SETTLEMENT FOR 9/11 RESPONDERS**

A settlement reached by New York City and workers exposed to toxic dust that blanketed Ground Zero after the September 11<sup>th</sup> terrorist attacks will resolve an overwhelming majority of the lawsuits over the city's failure to provide protective equipment to the responders. More than 10,000 construction workers, police officers and firefighters who cleared the World Trade Center site have joined a settlement worth at least \$625 million. Among the thousands who claimed soot at the site got into their lungs and made them sick, more than 95 percent of those eligible for the settlement agreed to take the offer. Only 520 said no or failed to respond.

The settlement, which has been on the table since the spring, won approval by a very small margin. Under terms of the settlement, it would only become effective if at least 95 percent of eligible Plaintiffs signed on. That requirement was met with 95.1 percent agreeing to the proposal.

A related settlement with other Defendants, including the Port Authority of New York and New Jersey, which owns the Trade Center site, would boost the total to \$725 million and perhaps more. A majority of the money will come from a special \$1 billion fund set up by Congress and paid for by the American taxpayers. The U.S. Senate is considering legislation, already passed in the House, that would authorize as much as \$7.4 billion in medical care and payments to the sick. Thousands of people believe they have illnesses caused by Trade Center dust. The lawsuits cited hundreds of different ailments, with the most common being a respiratory problem similar to asthma. Scientists have documented elevated rates of asthma among Ground Zero workers and a decline in lung capacity among many firefighters, but appear to be undecided about other diseases.

People who are not now sick but are worried they might become so in the future will qualify for small amounts. Some very sick people, or the relatives of people who have died, could get more than \$1 million

under the settlement. A group of court-appointed administrators will set the amount each Plaintiff is to receive over the next few months.

Source: *Insurance Journal*

### **WHISTLE-BLOWER LAWSUIT AGAINST LOCKHEED MARTIN TO PROCEED**

Reversing an earlier decision, a federal judge has ruled that a whistle-blower lawsuit against Lockheed Martin over the company's work on the F-35 can go forward. U.S. District Judge Terry Means ruled last month that he had erred in his earlier decision when he dismissed the suit by former Lockheed software engineer Sylvester Davis. He has now reinstated the case. Judge Means ruled on an appeal by Davis and said that dismissing the case "was erroneous and would result in injustice" to Davis. He ordered Lockheed and Davis to hold a settlement conference in February and a mediation conference in April. The judge also set a series of procedural deadlines that could lead to a trial.

The lawsuit was filed by Davis in 2006, alleging that Lockheed violated the federal False Claims Act by charging the government for developing flight control software for the F-35 that was potentially unsafe because it did not follow guidelines and practices adopted by industry and the Defense Department. Sam Boyd, a Dallas lawyer, is representing Mr. Davis.

Source: *Star Telegram*

### **SETTLEMENT TO AID KATRINA VICTIMS IN MISSISSIPPI**

Plaintiffs who sued the U.S. Department of Housing and Urban Development over Hurricane Katrina relief payouts in Mississippi have reached a \$132 million settlement with HUD and the state. The settlement calls for Mississippi to allocate \$132 million in federal disaster money to lower-income south Mississippi residents whose homes were damaged by wind, as opposed to flooding. In December 2008, the Mississippi State Conference NAACP, the Gulf Coast Fair Housing Center and four individual Plaintiffs sued HUD and its former secretary, Steven Preston, in federal court in the District of Columbia.

Source: *Law.com*

## IX. THE CORPORATE WORLD

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### ***THE U.S. CHAMBER IS A BONA FIDE HYPOCRITE***

Tom Donohue, who runs the U.S. Chamber of Commerce, has called litigation “one of our most powerful tools for making sure that federal agencies follow the law and are held accountable.” Ironically, about the same time the Chamber held its annual Legal Reform Summit—an event underwritten by its multinational corporate members that promotes undermining the civil justice system to weaken the basic legal protections of American workers and consumers.

The Chamber’s hypocrisy—blocking justice for ordinary Americans while using the courts liberally for its own pro-corporate agenda—was the subject of a new report released by the American Association for Justice (AAJ) that exposes the Chamber as one of the most aggressive litigators in Washington, entering lawsuits at a rate of more than two per week. AAJ President Gibson Vance, who is a lawyer in our firm, observed:

*The Chamber’s ‘one rule for corporations, another rule for everybody else’ motto has come at the expense of ill-treated workers, defrauded investors and injured consumers. It readily spends millions of dollars to prevent Americans from holding wrongdoers accountable in the courtroom, and then aggressively uses the very same legal system to advance the agenda of its multinational corporate membership.*

In almost every case, the Chamber’s litigation on behalf of corporations has come at the expense of Americans’ health or financial security. For example, the Chamber has:

justified the actions of Wall Street banks that drove the country’s economy into turmoil;

defended the most conceited and worst-behaved CEOs and their most extravagant excesses;

tried to force workers, instead of employers, to pay for their own safety equipment;

filed numerous actions opposing any move to combat climate change;

sought to shield pharmaceutical executives who skirted safety procedures that ultimately killed 11 children;

opposed measures allowing workers to receive a rest period during a full work day;

fought on behalf of lead paint manufacturers found to have poisoned thousands of children;

defended corporations that discriminated on the basis of race and disability; and

spent years defending big tobacco, asbestos companies and chemical companies found to have contaminated water and air.

The Chamber has every right to seek what it believes to be justice in a court of law, even if representing the most deplorable corporate interests. But it must learn that this right to justice belongs not just to their organization or big business generally, but to all Americans. Thus far the Chamber has only looked out for its own selfish interests and has consistently worked to deny access to the civil justice system to ordinary folks.

Source: AAJ News Release

## X. TOYOTA LITIGATION UPDATE

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### ***AN UPDATE ON THE MDL***

As we have reported previously, more than 200 lawsuits filed against Toyota after the automaker recalled millions of vehicles because of acceleration problems have been consolidated before U.S. District Judge James Selna in California. In September, Toyota settled a lawsuit over a fatal crash near San Diego, one that got a tremendous amount of media attention. Off-duty California Highway Patrol Officer Mark Saylor, his wife, daughter and brother-in-law died in August 2009 when their 2009 Lexus ES350 crashed as a result of a runaway vehicle. The accident prompted Toyota to recall more than 6 million cars to replace floor mats that it said could cause the accelerator to stick or replace accelerator pedals it said could stick. But, as we have learned, the floor mats haven’t been the only thing causing the Toyota vehicles to run wild.

As we previously reported last Spring, our law firm was appointed by Judge Selna to the Toyota Sudden Unintended Acceleration Multidistrict Litigation currently pending in the United States District Court for the Central District of California. Dee Miles, who heads up our firm’s Consumer Fraud Section, was appointed by Judge Selna to the Liaison Committee. Dee and several members of our law firm have been working very hard on the first phase of discovery in the litigation with such things as depositions, document production, OSIs (other similar incidents) and the very technical investigation of Toyota’s Electronic Throttle Control System (ETCS). The first phase of discovery is coming to a close and the second phase of discovery has been charted out and ordered by Judge Selna. This second phase of discovery is on a fast-track and is critical to the cases.

This Phase II discovery plan is certain to accelerate the pretrial discovery for both the class cases and the personal injury/wrongful death cases. In what may be the most efficiently run MDL ever conducted, Judge Selna is to be commended for his enormous command of the issues in this case, insightful recognition of the discovery needs of the parties and the expedited manner that he has demanded of the MDL leadership to complete the discovery order. Because of the Court’s efficiency, the Toyota Sudden Unintended Acceleration (SUA) cases will soon be ready for trial in both the federal and state courts. Our law firm has filed five Toyota Consumer Class Actions and several individual cases, one of which could be the first Toyota SUA case in the country to reach a jury in Oklahoma City, Okla. Graham Esdale, a lawyer in our firm, is taking the lead in that case. All cases in the nation, whether they be filed in federal or state court, will benefit from the efforts in the MDL by way of “trial packages” offered to all Plaintiffs who are prosecuting Toyota SUA cases.

While a great deal of information that has been developed in discovery has been uncovered thus far in the SUA litigation, much of this discovery is protected from public disclosure until a trial occurs. But rest assured, the entire leadership in the Toyota MDL is making the most of the discovery process. We will keep our readers posted of any new developments that occur in the Toyota SUA Multidistrict Litigation. If you need additional information on this subject you can contact Dee Miles at 800-898-2034 or by email at [Dee.Miles@beasley-allen.com](mailto:Dee.Miles@beasley-allen.com).

## **AN IMPORTANT RULING IN TOYOTA CONSUMER LAWSUIT**

Judge Selna ruled on November 19<sup>th</sup> that he was leaving intact the bulk of a consumer class-action case against Toyota. The lawsuit is seeking damages for economic losses arising from complaints about cars that raced out of control. This was a most significant ruling. The judge ruled that Toyota car owners stand to recover any compensation awarded under the lawsuit for lost resale value regardless of whether they personally experienced sudden unintended acceleration. That ruling, if finalized in a written order as expected, would leave the size of the prospective consumer class at roughly 40 million individuals. But it should be noted that the lawsuit has yet to be certified as a class.

Toyota Motor Corp. has admitted that the number of actual unintended acceleration complaints it was aware of runs in the thousands. Judge Selna also tentatively ruled that Plaintiffs need not identify a specific defect in vehicles' electronic throttles to claim that some flaw in those systems triggered sudden acceleration problems. Toyota still claims its electronic throttles are not the problem. Toyota has tried to sell the story that just two defects are the root cause for its vehicles speeding out of control—ill-fitting floor mats and sticking gas pedals. Both problems were addressed earlier this year in safety recalls encompassing 5.4 million U.S. vehicles.

The claims for economic losses are based on the premise that Toyota customers overpaid for their vehicles, made lease payments that were too high or sold their vehicles at a loss once the problems with unintended acceleration came to light. Toyota has long had one of the industry's highest resale values for its vehicles. We will keep our readers up to date on this phase of the Toyota litigation.

Source: Reuters

## **TOYOTA SAFETY PROBLEMS BACK IN SPOTLIGHT**

Law enforcement officers who investigated a crash involving a Toyota Camry suspect problems with the Camry's accelerator or floor mat caused a Utah crash that killed two people and injured two others. This incident raises new concerns about the safety of the Toyota vehicles. The 2008 Camry crashed into a rock wall in Wendover, Utah, on November 5<sup>th</sup>, killing the driver and a passenger. It was reported the Camry was subject to at least three

recalls. Apparently, the recall and repair for a sticking accelerator had been completed for the involved vehicle.

The crash occurred in an isolated area of western Utah. Tire skid marks at the crash site showed the driver tried to stop the Camry as it exited an interstate highway. The car went through a stop sign at the bottom of the ramp and through an intersection before hitting the rock wall, according to the police report. It was reported that the Camry's brakes appeared to be in working order. Two other passengers in the vehicle were injured. Authorities are investigating whether the recalls and repairs for a short accelerator pad and a sticky floor mat were also completed. It was reported that investigators believe that one of those problems caused the crash.

## **TOYOTA'S OWN DRIVERS HAD PROBLEMS IN SUDDEN ACCELERATION CASES**

The National Highway Traffic Safety Administration says it has received about 3,000 reports of sudden acceleration from Toyota drivers in the past decade, including 93 deaths. But it now appears that Toyota has secretly repurchased a number of vehicles whose owners reported unintended acceleration. The automaker also forced the owners to sign confidentiality agreements promising not to discuss their complaints. Toyota company documents reveal that its own drivers were behind the wheel in two separate cases when the vehicles experienced sudden acceleration. In one of the cases a Toyota vehicle unexpectedly accelerated from 71 mph to 95 mph with "no pedal contact" while being evaluated by a Toyota service manager. Toyota claims it reported the cases to NHTSA in a timely manner.

Source: ABC News

## **XI. PRODUCT LIABILITY UPDATE**

### **EJECTION AND PARTIAL EJECTION IN A ROLLOVER IS PREVENTABLE**

Many vehicles are designed with an unreasonable risk of rollover. You may be thinking about the Ford Bronco II, Ford Explorer or a 15-passenger van made by anybody. From experience, I certainly can. Yet, while there are many things automobile

manufacturers can do to prevent a vehicle from rolling over in the first place, it is inevitable that vehicles will roll over. So even in cars that aren't normally seen as having a rollover problem, car manufacturers have a responsibility to make vehicles that reduce the likelihood of injury and death in rollovers.

Rollovers constitute between 1.74% and 6.3% of all accidents depending on the type of vehicle involved. Despite the low percentage of all accidents, rollovers account for 33% of all serious injuries and death. Very few government standards directly pertain to rollovers and none require the automobile manufacturer to actually roll over a vehicle. This results in many vehicles lacking the available protections necessary to protect occupants in a rollover. Protecting occupants starts with holding them tight in the vehicle. Statistics show that an occupant is much more likely to be injured if ejected or even partially ejected from the vehicle. Occupant protection starts with the seatbelt and these belts must be designed not to allow webbing to be introduced into the system during a rollover. Unfortunately, many conventional retractors do just that and this problem isn't caught because the belts aren't tested for a rollover. One major automobile manufacturer recently had an engineer testify that their belts weren't made for rollovers. This is unacceptable considering such a large percentage of injuries occur in these accidents.

Many times, belts aren't enough to fully protect the occupant. The vehicle's doors must stay closed and not open the occupant up to the environment during the rollover. Rollover airbags must be provided and deploy in order to keep the occupant from being ejected or partially ejected out the window. The roof must maintain its integrity to stop from crushing the occupant or removing the safety cage that offers critical protection. A lot can and should be done to stop the rollover from ever happening. That is the greatest protection to all occupants. However, it isn't possible to stop all vehicle rollover accidents. But it is possible to stop occupants from being injured in most of these accidents. Automobile manufacturers must put an emphasis on protecting occupants in this type collision. If you want more information on the matters discussed above, contact Chris Glover, a lawyer in our firm, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

## **NEW DATABASE WILL BE GOOD FOR CONSUMERS**

In 2007 and 2008, during the discussions of the Consumer Product Safety Improvement Act, as the bill was named in the end, consumer advocates repeatedly raised the issue of secrecy at the Consumer Product Safety Commission (CPSC) pointing to the human cost of keeping injury data secret from consumers using the products.

Advocates had hoped to remove Section 6(b) of the Consumer Product Safety Act—which is an effective gag order on much safety information. Under Section 6(b) of the Act, manufacturers controlled what negative information the CPSC could disclose. It required the CPSC to gain prior approval of a manufacturer before releasing any information. It also allowed manufacturers to prevent the release of any information it deemed “inaccurate” and allowed a manufacturer to sue the agency to prevent the release of such information. Instead of removing Section 6(b), it was amended to require the establishment of a database. Under the amendment, the Commission shall “establish and maintain a database on the safety of consumer products, and other products or substances” regulated by the Commission. The provision further clarifies that the database must be publicly available, searchable, and accessible through the CPSC website. This requires the CPSC to develop a user-friendly format that will encourage submissions and inquiries.

The Amended Act statute also clarifies how the dataset should be organized. The database should be searchable by date of report, the name of the product as well as model and other names given by the manufacturer. Also, anything else the CPSC deems to be in the public interest should be included. In addition, the database cannot disclose the name of or contact information for an individual consumer using the database, in order to protect consumer privacy.

Safety Research and Strategy’s President, Sean Kane, who testified before the CPSC at a public hearing on the database, urged the agency to build a public database by fusing sufficient detail on the product and problem and the public availability of the data in a timely fashion. He said:

*The success of the database to meet the public interest goals and facilitate ease of use requires the agency to balance what is absolutely necessary for a minimal level of information to qualify as a “complaint,” against the detailed information demands of the agency and other stakeholders. Like the NHTSA consumer complaint data-*

*base, the consumer product database will add to the tools available for surveillance and for educating consumers who often have little viable information on the potential hazards associated with products they purchase.*

According to the dedicated website at the CPSC, the database should be a reality in March 2011. The Commission has been briefed by staff. The final vote is expected on November 17, 2010. CPSC staff has done yeoman’s work in creating a process that encourages use of the database as well as the accuracy of the information. Consumers, businesses, academic researchers and CPSC staff will be able to access crucial safety information. In many cases this will be possible before a recall or serious injury or death occurs.

Public access to information is vital to safety. Allowing consumers access to the safety record of products will increase the level of safety and will encourage the speedy removal or redesign of unsafe products. Allowing consumers to report problems they encounter with products will also help the CPSC to do its job of protecting the public from unsafe products. Removing the veil of ignorance that has kept consumers in the dark will be a good thing. Consumers have been using unsafe products when manufacturers and the CPSC knew about the hazards. Hopefully that will now end. If so, consumers will be the real winners!

## **AN UPDATE ON EXPLORER AND FIRESTONE ISSUES**

Many serious injuries and deaths continue to occur from wrecks involving the Ford Explorer and Firestone tires. In 2000, Firestone began the first of several tire recall campaigns due to excessive tread separations that were occurring on the Firestone tires sold with Ford Explorers. As a result of the excessive tire tread separations and Explorer crashes, Congressional hearings were held that ultimately led to the passage of the TREAD Act. Unfortunately, many of the original defective Firestone spare tires included on these Ford Explorers were not replaced during the recall campaigns. As a result, accidents continue to occur when unsuspecting consumers place these defective spare tires on the ground to replace other tires on their Ford Explorers.

Many consumers did not receive recall information regarding these defective Firestone tires. In some cases, Firestone sent out

notices with third class postage which were not forwarded to consumers who had moved. Since third class postage does not allow notices to be forwarded, many consumers were unaware of the defective tires.

Additionally, Firestone conducted its own research and testing related to Explorer wrecks that occurred after tread separations. Firestone established that the Explorers had a handling defect which would cause Explorers to become uncontrollable during a tire tread separation event. While Ford officially denies that there are any handling defects associated with the Explorer during tread separations, its corporate representative and litigation expert, Don Tandy, has testified under oath that an Explorer is defective from a handling standpoint for all foreseeable uses in a tread separation event.

Since these dangerous defects have come to light, Ford has made no effort to recall any Explorers that are on the road. However, engineers with Ford’s Venezuela facility suggested that a recall campaign be conducted to replace shocks on the Explorer. Ford engineers in Venezuela determined that placing stiffer shocks on the Explorer would help the driver maintain control during these foreseeable tread separation events.

Beginning in model year 2002, Ford changed the rear suspension of the Ford Explorer which has greatly enhanced the handling of the vehicle during tread separation events. However, there are hundreds of thousands of Explorers still on the road with the old suspension that is susceptible to a handling defect during a tread separation event, even when the tire that separates is not a Firestone tire. The handling capabilities could be greatly improved by adding stiffer shocks and moving the shocks as close to the wheel as possible. Ford engineers even published a paper years before these incidents describing these exact design changes for suspensions like the Explorer.

Ford should recall the Explorers as suggested by its engineers in Venezuela. Additionally, Ford and Firestone should make greater efforts to make sure that the existing Firestone tires that were included on these vehicles when originally sold are reclaimed so as to prevent any additional injuries or deaths associated with these defective products. If you need additional information on this subject contact Ben Baker, a lawyer in our Product Liability Section, at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

## **JURY AWARDS UTAH FAMILY \$6 MILLION IN INFANT'S DEATH**

A federal jury has ordered an Oklahoma company to pay \$6.1 million to the family of a two-year-old girl who died from burn injuries following a gas can explosion and fire in 2005. The settlement for the pain and suffering experienced by Hailey Parish's family followed a ten-day trial in Utah's U.S. District Court. But jurors on Thursday said gas can-maker Blitz USA was only 70% responsible for the explosion and held Hailey's father also responsible. The family was in a Uintah County trailer in December 2005 when the father attempted to add gasoline to a wood-burning stove fire. The flames crept into the gas can, causing the explosion. Jurors said the can should have had a flame arrester.

Source: Associated Press

## **XII. MASS TORTS UPDATE**

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### **AN UPDATE ON THE MASS TORTS SECTION**

Andy Birchfield, who heads up the firm's Mass Torts Section, furnished an update on activity in his section. The following are drugs and medical devices that lawyers and support staff in the Section are currently working on.

#### **DEPUY HIP REPLACEMENTS**

Johnson & Johnson, in conjunction with its DePuy Orthopaedics subsidiary, announced at the end of August 2010 that 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 Johnson & Johnson's latest 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 and had revision surgery reported a variety of symptoms, including pain, swelling and problems walking. These symptoms are normal for patients following a hip replacement, but can be a sign that something is wrong if they continue or come

back frequently. Additionally, metal debris spreading in the hip area has been reported due to the metal on metal friction involved from the metal components moving together.

We are reviewing any cases involving individuals who have had a DePuy hip device implanted as well individuals who are 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.

Lawyer: Navan Ward  
Primary Contact: Janet Pair

#### **DARVOCET AND DARVON**

The U.S. Food and Drug Administration has announced that Xanodyne Pharmaceuticals, Inc., the maker of prescription pain medications Darvon and Darvocet, has agreed to withdraw the medications from the U.S. market. The move comes after the results of an FDA study in which new clinical data shows the drug, which goes by the generic name propoxyphene, puts patients at risk of potentially serious or even fatal heart rhythm abnormalities. The FDA determined the new data shows the risks of the drug outweigh any benefits.

The FDA has informed the generic manufacturers of propoxyphene-containing products of Xanodyne's decision to remove its medications from the market and has requested they voluntarily remove their products as well. The FDA is advising health care professionals to stop prescribing propoxyphene to their patients, and patients who are currently taking the drug should contact their health care professional as soon as possible to discuss switching to another pain medication therapy.

Propoxyphene is an opioid used to treat mild to moderate pain. First approved by the FDA in 1957, propoxyphene is sold by prescription under various names both alone (Darvon) or in combination with acetaminophen (Darvocet). After safety concerns were raised in 1978, and again in 2009, the FDA formed an advisory committee to review available data. In July 2009, a boxed warning was added to the drug, alerting patients and health care professionals

of the danger of overdose. At that time, the FDA also required Xanodyne to conduct a new safety study assessing unanswered questions about the effect of propoxyphene on the heart.

Results of the study show that even when taken at recommended doses, propoxyphene causes significant changes to the electrical activity of the heart. These changes can increase the risk for serious abnormal heart rhythms that have been linked to serious adverse effects, including sudden death.

We are investigating cases involving sudden death or hospitalization with an abnormal heart rhythm while taking either Darvocet or Darvon.

Lawyer: Melissa Prickett  
Primary Contact: Christi Bryant

#### **EBICE® COLD THERAPY CASES**

These cases involve injuries caused by cryo-therapy devices typically prescribed by orthopedic surgeons and podiatrists after a surgical procedure. "Cold Therapy" is used by a physician or podiatrist in order to minimize pain and swelling related to the surgery. With no or very little instruction and essentially no warnings, a patient uses the device by placing the pad on the affected area, fills the ice chest with ice and water and the circulating pump inside the ice chest circulates cold water through the tubes and cooling pads. Without instruction the patient, thinking that more cooling is better, will subject the skin and underlying nerves around the affected area to very cold temperatures. Injuries resulting from these devices can be dramatic and typically fall into two categories: nerve only damages and skin injury with nerve damage. The skin injury with nerve damage cases will have visible injuries like frost bite.

Lawyer: Russ Abney  
Primary Contact: Amy Brown

#### **FOSAMAX®**

Fosamax® (alendronate sodium), manufactured by Merck, is in a class of drugs called bisphosphonates. Fosamax® is commonly used in tablet form to prevent and treat osteoporosis in postmenopausal women. Recently the

*Journal of Oral and Maxillofacial Surgeons* reported a link between bisphosphonates and a serious bone disease called Osteonecrosis of the Jaw (ONJ). Osteonecrosis is a disfiguring and disabling condition of the jaw bone that causes infection and rotting of the jaw bone. Typical presentation of Osteonecrosis is pain, soft-tissue swelling and infection, loosening of teeth, drainage, and exposed bone. Symptoms may occur spontaneously, or at the site of previous tooth extraction. Recently, Fosamax has been linked to low-energy femur fractures in people taking Fosamax for three or more years.

Lawyers: Chad Cook, Leigh O'Dell and Russ Abney  
Primary Contact: Tabitha Dean

### **GADOLINIUM**

The U.S. Food and Drug Administration recently asked manufacturers of all Gadolinium-based contrast agents to include a new boxed warning on the product label. These contrast agents are used to enhance the quality of magnetic resonance imaging (MRI) and can place patients at risk for developing a potentially fatal disease known as Nephrogenic Systemic Fibrosis (NSF) or Nephrogenic Fibrosing Dermopathy (NFD). People who develop NSF or NFD may experience a thickening of the skin and other organs, which can limit their ability to move, extend joints and can lead to significant pain and even death. Other problems may include dark patches on the skin that appear rough and hard with raised plaques or papules, which are elevations of the skin. Joint and bone pain, as well as swelling of the feet and hands, have also been reported. The FDA first warned about NSF and NFD associated with Gadolinium in June of 2006 and again in December of 2006. As of April of 2007, the FDA had received a considerable number of additional cases involving these conditions.

There are five Gadolinium-based contrast agents which are FDA-approved. One is the Omniscan Contrast Dye, manufactured by GE Healthcare. It is designed for intravenous use in MRI for the brain and the spine. In a recent study, five of the nine patients diagnosed with NSF received an MRI involving Omniscan Contrast Dye.

Other studies have shown similar results. The other Gadolinium-based agents include OptiMARK, Magnevist, MultiHance and Prohance. Manufacturers of these products include Bayer Schering Pharma, GE Healthcare, Tyco Healthcare and Bracco Diagnostic, Inc. We are currently evaluating these Gadolinium-based contrast agents involving patients who have developed nephrogenic systemic fibrosis or Nephrogenic Fibrosing Dermopathy.

Lawyer: Roger Smith  
Primary Contact: Linda Reynolds

### **GARDASIL®**

Gardasil, manufactured by Merck Sharp & Dohme Co., is aggressively marketed as a vaccine that prevents cervical cancer. In fact, it is a vaccine to prevent four types of the sexually transmitted disease, HPV (human papillomavirus). Gardasil is said to protect against four types of HPV, two of which are associated with cervical cancer. These two types of HPV are present in only 1.6% of the cases. At this time, Gardasil has not been proven to prevent cervical cancer. Scientific data indicates that the vaccine may not last longer than five years, if that long. The drug is indicated for young women and men from the age of nine years old up to 26 years old, though the vaccine is primarily given to girls. The Vaccine Adverse Event Reporting System has over 16,000 reports of adverse events related to the administration of this vaccine including 50 deaths. Serious adverse events include multiple sclerosis, blindness, Guillain-Barré Syndrome, lupus, rheumatoid arthritis, paralysis, blood clots and death. The vaccine is recommended to most young girls in their early teens. Parents should proceed with caution before allowing their daughters (and sons) to be vaccinated. We are currently investigating cases with documented use of Gardasil and a diagnosis of multiple sclerosis, Guillain-Barré Syndrome, blindness, lupus, paralysis, rheumatoid arthritis and death.

Lawyer: Leigh O'Dell  
Primary Contact: Melisa Bruner

### **HORMONE THERAPY**

For years, women have taken Hormone Therapy (HT) to reduce the symptoms of menopause. Studies now show that HT medications such as Prempro and Premarin can increase the risk of breast cancer, ovarian cancer, stroke and heart disease. We are currently investigating potential claims against the manufacturers of HT medications.

Lawyers: Ted Meadows, Melissa Prickett, Russ Abney, Navan Ward and Danielle Mason

Primary Contact: Katie Tucker and Gwyn Harris

### **KEPPRA GENERIC**

Keppra (generic name levetiracetam) is an anti-epileptic drug. It is used to treat seizures in adults and children. There is growing evidence that switching from the brand-name Keppra to the generic form of Keppra (levetiracetam) can cause an increased rate of seizure. Many individuals report going seizure-free for years and then having a seizure shortly after switching to the generic drug. For anticonvulsant drugs, small variations in concentrations between the brand-name formulation and the generic formulation can cause toxic effects and seizures when taken by patients with epilepsy. A single breakthrough seizure due to a change in the amount of medication that is delivered can have devastating consequences, including loss of driver's license, injury, and even death. We are currently investigating cases where individuals have suffered breakthrough seizures, injury or death after switching from the brand-name Keppra to the generic (levetiracetam) form of Keppra.

Lawyer: Roger Smith  
Primary Contact: Linda Reynolds

### **PAXIL®**

Paxil® (paroxetine) is an anti-depressant manufactured by GlaxoSmith-Kline. Public Health Advisories have recently been issued for Paxil® regarding an increased risk of heart birth defects, persistent pulmonary hypertension (PPHN), omphalocele (an abnormality in newborns in which the infant's intestine or other abdominal

organs protrude from the navel) or craniosynostosis (connections between sutures-skull bones, prematurely close during the first year of life, which causes an abnormally shaped skull) in children born to mothers exposed to Paxil®. We are handling cases involving children born with birth defects to a mother who has documented use of Paxil® during pregnancy.

Lawyer: Chad Cook  
Primary Contact: Tabitha Dean

### **PAIN PUMPS**

Pain pumps are portable and often disposable pain management devices which continuously administer local anesthetic through a catheter to a surgical wound site for several days following surgery to decrease post-operative pain and assist in earlier rehabilitation. A “Y-connector” accessory is sometimes available so that the pain pump can be used on multiple wound sites. Examples of pain pump manufacturers include Stryker, I-Flow, CME McKinley, Breg, Medical Flow Systems, Baxter and Sgarlato Labs.

Recently, the use of pain pumps to administer medication directly into the glenohumeral joint space following shoulder surgery has been linked to a severe condition called Postarthroscopic Glenohumeral Chondrolysis (“Chondrolysis”), in which the cartilage of the humeral head and the glenoid space of the shoulder process has been destroyed and lost. The destruction of the shoulder cartilage can be attributed to the application of anesthetic medication directly into the joint space via the pain pump catheter. In 2003, it appears that some pain pump manufacturers may have increased the anesthetic dosing capacity of their pain pumps, which may have hastened the onset of Chondrolysis in some patients.

Chondrolysis symptoms usually present between six weeks and six months following surgery and include increased shoulder pain and stiffness, loss of cartilage, decreased range of motion, loss of shoulder joint space, crepitus in the shoulder and loss of strength. Patients suffering from Chondrolysis are usually unable to complete their post-surgical physical therapy due to pain. Whatever the patient’s condition was prior to his or her should

er surgery, the post-operative diagnosis of Chondrolysis is typically much worse. Ultimately, complete shoulder replacement surgery (acromioplasty) could become necessary in order to eliminate the painful and debilitating symptoms of Chondrolysis.

Lawyer: Frank Woodson  
Primary Contact: Cathy Perry

### **REGLAN®**

Reglan is used to treat gastrointestinal disorders such as heartburn caused by reflux. The FDA recently required a black box warning linking Reglan and Tardive Dyskinesia. Symptoms of Tardive Dyskinesia include involuntary and repetitive movements like tongue thrusting, eye blinking and head jerking as well as involuntary movements of the fingers. These symptoms are rarely reversible with no known treatment. Those at increased risk for developing Tardive Dyskinesia are the elderly, especially older women, and people who have taken the drug for a long period of time. The FDA has advised physicians to avoid long term use of Reglan and recommends treatment not exceed three months. Reglan is available in formulations including tablets, syrups and injections.

Criteria: Documented use of Reglan with a diagnosis or symptoms of Tardive Dyskinesia.

Lawyers: Chad Cook and Danielle Mason  
Primary Contact: Tabitha Dean

### **STEVENS- JOHNSON SYNDROME**

Stevens-Johnson syndrome is an immune complex hypersensitivity reaction that can be caused from an infection or immune response to drugs. It is a severe expression of a simple rash known as erythema multiforme. SJS is also known as erythema multiforme major. It affects all ages and genders including pediatric populations. The most severe form of SJS is toxic epidermal necrolysis (TENS). SJS occurs twice as often in men as in women. Most cases of SJS appear in children and young adults under age 30. Females with SJS are twice as likely as males to develop TENS, and have an even higher chance if taking a category

of drugs known as NSAIDs, non-steroidal anti-inflammatory drugs.

Lawyer: Frank Woodson  
Primary Contact: Cathy Perry

### **YAZ, YASMIN, OR OCELLA**

Yaz is a combination birth control pill containing drospirenone and ethinyl estradiol. It is marketed not only as a contraceptive pill, but as a proven treatment for premenstrual dysphoric disorder (PMDD), a condition with severe emotional and physical premenstrual symptoms. Yaz is also marketed as an effective treatment for moderate acne. However, studies indicate that Yaz poses a particular health hazard because one of its two primary ingredients, drospirenone, is a diuretic, which can cause an increase in potassium levels in the blood and lead to hyperkalemia, which causes heart rhythm disturbances that can cause blood clots leading to sudden cardiac death or pulmonary embolism or strokes. Diuretics can also cause significant problems with the gallbladder, leading to gallbladder removal. Criteria: Documented use of Yaz with a diagnosis of heart attack, stroke, pulmonary embolism, DVT, or gallbladder removal.

Lawyer: Roger Smith  
Primary Contact: Amy Ross

### **ZITHROMAX**

Zithromax (azithromycin), manufactured by Pfizer, is a popular antibiotic used most often to treat respiratory infections, while also used to treat skin infections and some sexually transmitted diseases. Zithromax is taken once daily, usually two to five days under normal dosage. The most serious types of health problems that have been attributed to Zithromax include liver damage resulting in death or liver transplant surgery. The symptoms for liver damage may include yellow eyes, abdominal pain, nausea, clay colored stools, and dark urine. Recent warnings have been added to the label regarding abnormal liver function, jaundice, necrosis, hepatic (liver) failure and death, which have been associated with persons taking this drug.

Lawyer: Chad Cook  
Primary Contact: Tabitha Dean

If you need additional information on any of the above, contact Andy Birchfield or Genie Pruett at 800-898-2034.

### **FDA FALLS SHORT ON MEDICAL DEVICE MONITORING**

Few consumers are aware that many medical devices are not required to undergo clinical trial testing prior to being sold on the open market. Some devices claiming to be substantially similar to previously-marketed devices can be approved through the FDA's 510(K) approval process. These require little safety information and only some information concerning the product's or the devices' efficacy. Once approved, the FDA may or may not require additional studies to be performed. As all the lawyers in our Mass Torts Section know from litigation experience, adverse event reporting for devices has never been very good. In fact, it can be described as being pretty weak.

Most medical devices currently available for sale are backed by studies that are "under-powered" to pick up on potential harmful or fatal events, placing large numbers of patients at risk if such devices are widely used according to a paper published November 3<sup>rd</sup> in the *British Medical Journal*.

The *British Medical Journal* report, written by Lenzer and Brownlee of the Dartmouth Institute for Health Policy and Clinical Practice, states that running large scale clinical trials before the FDA approves every medical device and drug is impractical, which makes the agency's post-marketing monitoring of the product's safety even more important. Post-approval performance is especially vital for devices, according to the paper, because they are less likely than drugs to be supported by clinical studies before being placed on the market. These studies are not conducted or are "conducted so poorly as to be meaningless," according to the report.

In their paper, Lenzer and Brownlee suggest that device manufacturers be required to submit data for the number of patients using a given medical device and to provide surgeons or patients with a website where they can report when a device has been removed or deactivated. Another recommendation in the paper is that the FDA should appoint an independent review board to determine whether adverse outcomes could be due to the device.

A good example of this is seen with the shoulder pain pump litigation. These

devices had been used for many years before the manufacturers began to market the products for shoulder surgeries around 2000. The companies did no studies to determine whether or not it would be safe to use these devices by using pain medications in the shoulder joint itself. It turns out this was not a safe use. However, severe damage has now been done to hundreds if not thousands of individuals' who may be required to have shoulder replacements. The failure to do a study to determine toxicity to the shoulder cartilage prior to this new use was the reason the FDA denied this new indication. The FDA denial was not communicated to the surgeons by the manufacturers.

Source: *Law 360*, Report Dated 11/5/10 by Megan Stride

### **FDA CONSIDERS CRIMINAL CHARGES FOR OFF-LABEL PROMOTION**

We have been asked to write on how drugs are tested before being approved for sale. I will attempt to explain the process. Before medications are approved by the FDA for use in the general public, they are tested in three phases of clinical trials. These trials are done to prove that the drug works to treat the medical condition, works the way it is supposed to work, and is safe when used as directed. If the drug is shown to be safe and effective, the FDA and the drug manufacturer agree on specific language to be included on the drug's label, including the list of indications, or medical conditions, for which the drug has been approved.

Off-label use is the practice of prescribing pharmaceuticals for an unapproved indication. FDA regulations allow doctors and other healthcare practitioners to prescribe medications in ways besides their approved indication. But, pharmaceutical companies are not allowed to promote a drug for any other purpose without formal FDA approval. Between 2003 and 2008, more than a dozen lawsuits were brought against pharmaceutical companies by the government for off-label marketing. Those cases resulted in more than \$6 billion in criminal and civil settlements. In September 2009, Pfizer paid \$1.3 billion, the largest criminal fine ever imposed in the United States, for off-label marketing.

Because the fines seem to have little effect on pharmaceutical companies, the FDA has signaled its intent to bring criminal charges against top executives of those companies that engage in off-label marketing. Earlier this month, Eric Blumberg, FDA

litigation chief, singled out companies that have paid multiple penalties in recent years. He had this to say:

*I don't know when, where or how many cases will be brought, but if you are a corporate executive—or counsel advising such a client—I would not wait for the first case to decide now is the time to comply with the law. They won't get a mulligan on their conduct.*

In a subsequent interview, Blumberg stated, "We need to put something else on the scale to make people think twice, three times, before they promote drugs for unapproved uses." Using the Park Doctrine, a successful prosecution could result in imprisonment. If you need additional information on this subject you can contact Melissa Prickett, a lawyer in our Mass Torts Section, at 800-898-2034, or by email at [Melissa.Prickett@beasleyallen.com](mailto:Melissa.Prickett@beasleyallen.com).

Source: *The Philadelphia Inquirer*

### **LAWYER CHARGED WITH OBSTRUCTION AND MAKING FALSE STATEMENTS**

A lawyer for GlaxoSmithKline, which as you know is a major pharmaceutical company, has been charged with obstruction and making false statements, according to the Justice Department. The lawyer was charged with one count of obstructing an official proceeding, one count of concealing and falsifying documents to influence a federal agency, and five counts of making false statements to the Food and Drug Administration.

According to the indictment, in October 2002 the FDA asked for information about the company's promotion of a prescription drug, as part of an inquiry into whether the drug was being promoted for uses that had not been approved by the FDA. The indictment says that, in response to the FDA's inquiry, the lawyer signed and sent a series of letters from the company to the agency that falsely denied that the company had promoted the drug for off-label uses, even though the lawyer knew, among other things, that the company had sponsored numerous programs where the drug was promoted for unapproved uses. The indictment states that the lawyer knew that the company had paid numerous physicians to give promotional talks to other physicians that included information about unapproved uses of the drug.

The charges were filed in the District of Maryland, where the FDA is located. The case is being prosecuted by the Civil Divi-

sion's Office of Consumer Litigation and U.S. Attorney's Office for the District of Massachusetts. Dara Corrigan, the Associate Commissioner for Regulatory Affairs at the FDA, had this to say:

*This indictment demonstrates that those who purposely subvert the regulatory functions of the FDA through false statements and misleading information will be held accountable for their deception.*

No lawyer should be allowed to do what this lawyer allegedly did and get away with it. Conduct of this sort simply can't be tolerated by the courts. Nor should the bar associations close their eyes to this type conduct. If the allegations are true, this lawyer should be held accountable. If it can be proved that the conduct was required by the Defendant then that conduct should be dealt with.

Source: Justice.gov

#### **DEFENSE VERDICT IN SHOULDER PAIN PUMP LAWSUIT**

On October 15<sup>th</sup> a federal jury in the U.S. District Court for the District of Oregon returned a verdict in favor of the Defendants in a pain pump case involving three Plaintiffs. In that case the Plaintiffs alleged that the Defendants' marketed the pain pump device for intra-articular use following shoulder surgery even though the FDA had specifically denied approval for that purpose. Over several years physicians have found that the intra-articular use of shoulder pain pumps to deliver pain medication directly into the joint space can lead to the development of shoulder chondrolysis. As we have reported, chondrolysis is a diffuse destruction of the articular cartilage in the shoulder. There are several manufacturers of these pumps which have been named in lawsuits including I-Flow, Stryker Corporation, Breg, and McKinley.

In November 2009, the FDA required manufacturers of pumps to add new warnings about the risk of chondrolysis from shoulder pain pumps. Most doctors knew about this danger by 2009. Unfortunately, the knowledge came as a result of the numerous lawsuits that had been filed against the Defendants rather than from warnings from the manufacturers. Trials involving the pain pumps will continue against the manufacturers. In a previous trial, an Oregon jury awarded over \$5 million to a Plaintiff and his wife against I-Flow Corporation for the damages caused

to the Plaintiff's shoulder from the pain pump.

Source: aboutlawsuits.com

#### **NEVADA SUPREME COURT UPHOLDS HORMONE DRUG VERDICT**

The Nevada Supreme Court has upheld a \$57.7 million judgment against Wyeth in a lawsuit filed by three women who got breast cancer after taking hormone pills manufactured by the firm. The court found the judgment to be supported by "substantial evidence" in the cases. As previously reported, Wyeth manufactured an estrogen pill known as Premarin that was combined with a progestin pill made by a different pharmaceutical firm. Wyeth also made a combination hormone pill known as Prempro. Evidence was presented at trial by the three women "about the various post-surgery treatments, such as chemotherapy or radiation and the projected years of medication necessary to prevent the recurrence of cancer."

The company said the drug was approved by the Federal Drug Administration and punitive damages should not be awarded in the case. The company says it put a warning on the drug labels to comply with regulations. But the Supreme Court rejected all of Wyeth's arguments. The court noted that Wyeth added \$40.4 million to its large yearly marketing budget to counter rising consumer awareness about the relationship between breast cancer risk and hormone replacement therapy. The court in the opinion stated that: "Wyeth also began promoting Prempro's unproven and later debunked heart and mental health benefits in television advertisements and informational pamphlets, guides and textbooks" and that "the promotional materials failed to mention any breast cancer risk."

Wyeth argued at trial that the cause of the breast cancer of the women was unknown and that the prescribed hormone therapy drugs didn't cause their cancer. The original jury verdict was \$134.6 million, but it was reduced by the trial judge to \$57 million, plus \$1.8 million for attorneys' fees and costs. This was a most significant decision in the ongoing litigation over these drugs.

Source: Los Vegas Sun

## **XIII. BUSINESS LITIGATION**

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#### **WELLS FARGO PAYS CITIGROUP \$100 MILLION IN SETTLEMENT OVER WACHOVIA**

Wells Fargo & Co. has agreed to pay \$100 million to settle its dispute with Citigroup Inc. The dispute arose out of the takeover of Wachovia Corp. by Wells Fargo during the depths of the financial crisis. The payment to Citigroup will settle "all claims related to this dispute." Citigroup was seeking as much as \$80 billion in damages after alleging breach of contract in its 2008 attempt to acquire Wachovia. Interestingly, Wells Fargo has reported more than \$20 billion in profits since it bought Charlotte, N.C.-based Wachovia, while adding about \$450 billion in deposits and the bank's branch network along the East Coast.

Wells Fargo paid \$12.7 billion in 2008 for the entirety of Wachovia, which was much higher than Citigroup's \$2.16 billion bid for the lender's banking operations in a proposal that included backing from the Federal Deposit Insurance Corp. Wells Fargo's purchase, originally for \$15.1 billion, required no FDIC guarantees. Citigroup later needed a \$45 billion government bailout and is still partly owned by U.S. taxpayers. Wells Fargo accepted \$25 billion in U.S. bailout funds, but that has since been repaid. Citigroup had named Wachovia and Wells Fargo in a lawsuit alleging breach of exclusive contract and interference.

Source: Bloomberg

#### **KINDER-MORGAN SETTLEMENT APPROVED**

A Kansas judge has approved a \$200 million settlement and distribution plan in a class-action lawsuit filed by shareholders of Kinder-Morgan Inc., which is an energy company. The decision is expected to resolve the class-action suit brought when Kinder-Morgan shareholders objected to the share price offered when company officials sought to take the firm private. The lawsuit alleged that Kinder-Morgan managers had breached their fiduciary duty by offering an "inadequate and unfair" price when they took the company private in a \$13.4 billion deal four years ago.

The case was consolidated and heard in Kansas because the gas pipeline company was incorporated in the state, although it is headquartered in Houston. The \$200 million settlement will be divided among

shareholders on a pro-rata basis and is in addition to the \$107.50 share price initially offered by the company. In his decision approving the settlement price and distribution method to which both sides agreed, the judge noted that only 11 shareholders asked to be excluded from the class-action settlement prior to an October 26<sup>th</sup> deadline established by the court. He also noted that only four formal objections to the settlement had been received with none objecting to the amount of the settlement.

The proposed settlement will most likely be the “largest common fund recovery in a merger acquisition case.” Kinder-Morgan, which was founded in 1936 as Kansas Pipeline and Gas Co., has 43,000 miles of pipelines operating in the United States and Canada. This was a very good result.

Source: CJOnline.com

## XIV. INSURANCE AND FINANCE UPDATE

### **ISSUES INVOLVED IN MORTGAGE SERVICING CLAIMS**

Real estate lending runs on volume and repeat business. The more homes that move into and through the system, the more money the system will make. A single property can be financed many, many times, and each time the system makes money. When a system is as complex as the lending industry, there are opportunities for thousands of businesses to operate and they create hundreds of thousands of jobs.

At the front end, or where loans are originated, there have been a number of well-publicized lending practices that have come to be categorized as “predatory lending.” These scams set people up to enter into loans that were knowingly fraudulent and, in many cases, illegal. However, what has not yet been addressed are the more covert acts of businesses that operate in the loan servicing industry, which has come to be labeled “mortgage servicing fraud.”

A relatively new term, but rapidly becoming standard, mortgage servicing fraud refers to a variety of abusive servicing practices that may occur individually or collectively to a loan after it has closed. Mortgage servicers are usually third-party companies hired/contracted by the lender/note holder to perform the day-to-day tasks associated with collecting loan payments. Some of

these practices include, but are not limited to:

Manipulating the accounting of a loan to appear in default despite being current.

Refusing to accept properly tendered payments.

Charging fees for collection letters, inspections and BPOs.

Charging interest in excess of that actually owed.

Placing payments into suspense accounts without cause.

These activities appear to be more commonly encountered by borrowers with equity in their property, regardless of their prime or sub-prime status. When it comes to mortgage servicing fraud, these wrongs are usually committed by third-party companies that hold neither title nor interest in the properties whose loans they service. Most commonly these days, servicers are employed by owners of Residential Mortgage Backed Securities or RMBS trusts. Mortgage Servicing Fraud stems from fairly boilerplate language used in the Pooling & Servicing Agreements that govern the relationship between the trust and the mortgage servicer.

For instance, many Pooling & Servicing Agreements allow servicers to keep assumption fees, modification fees and basic late fees for what is known as “additional servicing compensation.” Language such as this simply removes any incentive for a mortgage servicer to keep borrowers current in their monthly payments because to do so potentially cuts the servicer’s profit margin. There are additional means for servicers to make additional profit in servicing securitized loans, but this is the most basic means of profit after the relatively small monthly servicing fees that servicers contractually agree to as a rule.

Many people wonder why a bank would do this sort of thing to a borrower. First, you have to understand that it’s not a bank/lender doing this to the borrower, but instead it’s the entity the bank/lender has hired/contracted to service the loans. The answer is both simple and complex—it all comes to down to money. For years consumers have been duped into believing that defaulted loans and foreclosures aren’t profitable for “the bank.” Actually, in some instances, it’s much more profitable than allowing the borrower to pay off his/her loan. That is especially true when taking into consideration the various manners of

insurance and/or investment “shorting” and/or “hedging” in which both note holders and servicers are allowed to engage. Thus, the more lawsuits that are filed on this type of fraud, the more likely it is that we can put an end to these practices.

If you have any questions about mortgage servicing fraud or any questions about predatory lending, please contact Bill Robertson, one of our lawyers in the firm’s Fraud Section. Bill handles cases involving predatory lending and mortgage servicing fraud. He can be reached at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com.

Source: Margot Saunders—NCLC Conference

### **BANKS ESCAPING BIG FORECLOSURE CLASS ACTIONS**

As we’ve seen in media reports over the last few months, banks have been exposed for cutting corners in the foreclosure process by using so-called “robo-signers” of legal documents to justify taking people’s homes. The offending banks appear to have forced many borrowers right out of their homes, without the appropriate documentation or proof to do so. Those banks are being sued for shoddy U.S. foreclosure procedures and have so far avoided national class action lawsuits, apparently because some borrowers have had trouble calculating their economic injuries. And borrowers who have fallen behind on their payments face additional challenges proving economic injury in court—which is especially troubling because the banks appear to be completely getting away with the wrongful conduct in these particular cases.

The nation’s banks are sophisticated and familiar with our court system, which means they know that getting a judge to certify a national class action is a difficult task. However, because these banks appear to have used the same wrongful conduct to foreclose homeowners across the country, class actions are sure to be the best method to resolve the majority of these claims. Finally, in a rare piece of good news for the nation’s borrowers, some of the offending banks halted their foreclosures and evictions after various states and the federal government began looking into these actions. If you need additional information on this subject you can contact Clay Barnett, a lawyer in our firm’s Consumer Fraud Section, at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

Source: Reuters

## **LAWSUITS AGAINST BANKS OVER MORTGAGE PRACTICES PILING UP**

Even with the slow-down in class action litigation, other lawsuits against banks over their mortgage lending and foreclosure practices continue to pile up. There have been a number of new suits filed against JPMorgan, PNC Financial Services and Ally Financial recently. JPMorgan Chase & Co. faces two possible class action lawsuits related to foreclosures. The suits allege “common law fraud and misrepresentation, as well as violations of state consumer fraud statutes.” Banks, under investigation by state and federal officials for sloppy or even fraudulent foreclosure paperwork, face suits from both borrowers and investors in mortgage-backed securities. U.S. Attorneys General for all 50 states are jointly investigating whether banks failed to review documents properly or submitted false information to evict delinquent borrowers.

Source: *Insurance Journal*

## **FORMER COLLEGE PLAYER SUES LLOYD’S OVER INSURANCE POLICY**

Ciron Black, a former Louisiana State University offensive lineman, has filed suit against Lloyd’s of London. He claims that underwriters at the insurance company did not pay an insurance policy he bought before a career-ending knee injury. In the lawsuit filed in federal court, Black said he was projected as a first-round NFL pick before the 2009 season. After the season, he was a first-team All-Southeastern Conference selection. He also received the Jacobs Blocking Trophy, which is given to the SEC’s top offensive lineman.

The player hurt his knee in a game against Alabama late in the season. He was not drafted by any NFL team and was told by doctors in April that his career was over and that he can’t play football again. Patrick Jackson, a lawyer from Bossier City, Louisiana, who is representing the Plaintiff, says “to suddenly not be able to play football, you can imagine how devastating that is for any young man who had his sights on a career in the NFL.” The suit is aimed against underwriters that were supposed to insure Black against a career-ending injury. The player in this case paid \$14,758 in premiums for a \$2 million policy. His suit also seeks \$2 million in additional damages for failing to act in “good faith and fair dealing.”

A spokesman for Lloyd’s America Inc. in New York, said neither Lloyd’s of London nor its American subsidiary sold insurance to the player. Lloyd’s provides a market-

place for 85 insurance syndicates and the company’s position is that the ultimate discussion will have to be between the Plaintiff’s lawyer and the syndicate that provided the policy. It will be interesting to see how this case works out.

Source: *The Advocate*

## **XV. PREMISES LIABILITY UPDATE**

### **\$3.2 MILLION AWARDED TO CHURCH AFFECTED BY MUDSLIDE**

A California jury has recommended awarding \$3.2 million in damages to a church who had members killed in a 2003 mudslide. Fourteen people were killed in the mudslide while they were spending Christmas at St. Sophia Greek Orthodox Church’s mountain resort in Waterman Canyon. Still to be decided in this case is a determination of the extent of liability Caltrans, a governmental agency, has in a wrongful death case filed by families of the victims. The lawsuit alleges that poor highway design on the part of Caltrans contributed to the deadly mudslide.

The trial judge will rule on whether Caltrans should pay its share of all the damages or just pay economic damages. The church had previously settled a lawsuit brought by victims’ families for \$13 million in 2008. Jurors had found Caltrans partially liable for the fatal mudslide, which killed five adults and nine children.

According to reports, Caltrans has since redesigned Highway 18 in the area where the mud slide occurred. The mudslide was caused by heavy rains that followed a disastrous wildfire season. But many believe that the mudslide was a disaster just waiting to happen. It appears that the government agency, in this case Caltrans, did not take the necessary action to redesign the highway for the safety of the public, and especially for campers. The church did not consider canceling the camp given the torrential downpour and the danger the campers were in at the time.

In California, government entities such as Caltrans can be held liable for a dangerous condition of public property. Under that state’s law a public entity can be held liable for personal injuries or wrongful death caused by a dangerous condition of public property. In this case, it appears that Caltrans knew about the design issues on the highway and the hazards they posed, espe-

cially in light of the wildfires and impending rainy season. Caltrans should have taken measures to protect the victims against the dangerous condition that was created.

Source: Associated Press

## **SOUTH CAROLINA DEADLY SOFA STORE FIRE WAS PREVENTABLE**

If modern model building codes and sprinkler requirements had been enforced, the fire that took the lives of nine firefighters and destroyed the Sofa Super Store in Charleston, S.C. in 2007 could have been prevented. This was the determination of a federal study. The U.S. Commerce Department’s National Institute of Standards and Technology (NIST) study found that major factors contributing to a rapid spread of the fire on June 18, 2007 included large open spaces with furniture providing high fuel loads, the inward rush of air following the breaking of windows, and a lack of sprinklers.

The fire trapped and killed nine firefighters, the highest number of firefighter fatalities in a single event since 9/11. Based on its findings, the NIST technical study team made 11 recommendations for enhancing building, occupant and firefighter safety nationwide. The team urged state and local communities to adopt and strictly adhere to current national model building and fire safety codes. If today’s model codes had been in place and rigorously followed in Charleston in 2007, according to the study authors, the conditions that led to the rapid fire spread in the Sofa Super Store “probably would have been prevented.” NIST study leader Nelson Bryner observed:

*Furniture stores typically have large amounts of combustible material and represent a significant fire hazard. Model building codes should require both new and existing furniture stores to have automatic sprinklers, especially if those stores include large, open display areas.*

Specifically, the NIST report calls for national model building and fire codes to require sprinklers for all new commercial retail furniture stores regardless of size, and for existing retail furniture stores with any single display area of greater than 190 square meters (2,000 square feet). Other recommendations include adopting model codes that cover high fuel load situations (such as a furniture store), ensuring proper fire inspections and building plan examinations, and encouraging research for a better understanding of fire situations such as

venting of smoke from burning buildings and the spread of fire on furniture. The study team found that the addition of automatic sprinklers inside the loading dock could have significantly slowed the fire (which began just outside the dock area), prevented it from spreading beyond the dock, and eventually, extinguished it completely. The model also showed that sprinklers on the loading dock likely would have maintained what firefighters call tenability conditions, the ability for individuals in a fire event to escape unassisted. Factors identified as contributing to the fire's progress include:

the high fuel loads—especially furniture—present throughout the building;

the lack of sprinklers throughout the Sofa Super Store;

the open floor plan of the facility;

the hidden build-up of combustible smoke and gases in the area between the drop ceiling and the roof of the main showroom;

the non-fire-activated roll-up door that was open between the loading dock and the holding area;

the four fire-activated roll-up doors (out of seven) that activated but did not close during the fire;

the metal walls in the warehouse and west showroom that allowed heat from the fire to ignite items next to the walls; and

the breaking of windows at the front of the store that supplied air to the fire.

In my opinion, all commercial buildings and public buildings should be required to meet building code and sprinkler requirements. Cities that do not have the modern codes and standards should be required to update their codes.

Source: *Insurance Journal*

### **UTILITY SETTLES DEADLY HOUSE BLAST CASE**

Public Service Electric & Gas will pay \$450,000 to settle a wrongful death lawsuit brought by the family of a man who was killed in a 2008 house explosion in New Jersey. The 66-year-old man, who lived alone in the three-story home, died after leaking natural gas ignited inside. The July 2008 blast leveled the house and damaged five other homes. Residents had reported a

strong natural gas odor about two weeks before the blast occurred, but it was never determined exactly what caused the leak or how the gas was ignited. The incident is still under investigation by state and utility officials. The settlement agreement prohibits Kenneth Berkowitz, the lawyer for the man's estate, from discussing anything related to the settlement.

Source: *Insurance Journal*

### **JURY AWARDS FOR MEN INJURED IN PIPELINE EXPLOSION**

A jury returned a verdict last month in favor of the families of three men badly burned in a 2008 Vanderbilt pipeline explosion. The jury awarded Luis Moreno, Meliton Lerma and Genaro Castillo \$19.9 million for injuries they sustained as a result of the incident. In June 2008, the three victims were performing demolition work at a Hilcorp Energy-operated gas plant located on the West Ranch south of Vanderbilt. Hilcorp contracted with Austin-based A&R Demolition to perform demolition work on a decommissioned portion of the plant. In turn, A&R hired RCS Demolition of Midland to remove flange valves from the gas plant. The three victims worked for RCS. During their second week of work, the RCS crew members came across a pocket of residual hydrocarbons while using their cutting torch, which caused an explosion and fire.

During discovery, Hilcorp admitted it did not properly vent, purge and clean all the lines prior to the commencement of the demolition project. But it never warned its contractor or subcontractors of the hidden danger. During the trial, A&R's lawyers claimed Hilcorp and A&R told its contractors and subcontractors that this was to be a "no fire project," and cutting torches were prohibited. Despite this warning, A&R's own crew used cutting torches during the entire project. If that was in fact A&R's policy, it systematically abused its own rules.

The jury found that both A&R and Hilcorp were at fault in causing the fire. They also apportioned some responsibility to RCS and a small percentage to the Plaintiff. Moreno suffered second and third-degree burns to 57% of his body, while Castillo had burns over 10% of his body. Lerma, who received burns over 50% of his body, died from his injuries. The verdict was split three ways, with Moreno receiving approximately \$13 million to compensate for his \$536,000 in past medical bills and an expected \$1.2 million in future medical

bills, as well as compensation for injuries sustained. Houston-based lawyer John C. Ramsey represented the Moreno family.

Source: [Victoriaadvocate.com](http://Victoriaadvocate.com)

### **EXXON TO PAY \$25 MILLION IN SETTLEMENT OVER NEW YORK CITY OIL SPILL**

Exxon Mobil Corp. has agreed to pay \$25 million to settle complaints over its handling of a huge underground oil spill in New York City. The settlement made with Attorney General Andrew Cuomo and the environmental group Riverkeeper will resolve several years of litigation over spills from refineries that once lined the Brooklyn waterfront. Exxon began extracting about 17 million gallons of oil from the ground 20 years ago using a network of wells. The pace of the cleanup frustrated neighborhood residents. Oil has leaked continuously into Newtown Creek, which separates Brooklyn from Queens. Some people living above the oil plume had complained about fumes in their basements. The settlement will require Exxon, which has pledged to complete the cleanup as rapidly as possible, to adhere to a definite timetable.

Source: *Forbes*

### **JURY AWARDS \$15 MILLION TO TRUCKER WHO SLIPPED AND FELL ON ICE AND GREASE AT WAL-MART**

A Colorado jury has awarded \$15 million to a truck driver who said she slipped and fell on ice and grease while making a delivery to a Wal-Mart in Greeley, Colo. City documents were introduced at trial showing that some grease from the store's deli didn't get trapped in a device designed to keep it from getting into the sewer. The Plaintiff had to undergo three spine surgeries, was unable to return to work and lost her truck. Wal-Mart says it is considering an appeal.

Source: Associated Press

### **SETTLEMENT IN FAIR RIDE ACCIDENT**

The family of five children injured in a carnival ride collapse have reached a settlement of nearly \$3.4 million with ride owners and the manufacturer. Robert and Deena Milligan settled with Brass Ring Amusements, Chance Rides Manufacturing and North American Amusements over the May 2008 accident at the Calaveras County Fair. One of the children suffered permanent brain damage and orthopedic inju-

ries. The settlement has received court approval.

The collapse of the Yo-Yo chair ride injured 21 children when the metal arms of the spinning ride collapsed. California regulators found that the ride was not properly maintained. The California Department of Industrial Relations issued a report saying a damaged washer failed to hold a pair of nuts in place, causing the arms to crash. Chance Rides issued a bulletin five months after the accident ordering Yo-Yo ride owners to install a metal plate to prevent the washer from failing.

Source: Modbee.com

### **CONSOL MUST PAY INJURED WORKERS \$7.8 MILLION**

A \$7.8 million jury verdict was returned last month against Consol Energy Inc. in Allegheny County, Pennsylvania. The case involved two subcontractors who were injured when a metal stairway collapsed. One of the injured men, Clifford Decker, and his wife, were awarded \$5 million. The other man, David Gillingham and his wife, were awarded \$2.8 million.

The case arose out of a 2007 accident at a Consol-owned building. The stairway was bolted to a wall with four bolts, and they did not hold when the two men stepped onto it. Mr. Gillingham suffered a permanently frozen right shoulder that was not improved by rotator cuff surgery. Mr. Decker suffered a severely fractured left hip and leg. The primary issue was whether Consol had adequately inspected and maintained the staircase over the four decades prior to its collapse. Consol had a duty to inspect and maintain this stairwell.

Source: *Pittsburgh Post-Gazette*

## **XVI. WORKPLACE HAZARDS**

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### **TWO WORKERS AWARDED \$12.7 MILLION FOR EXPLOSION INJURIES**

A jury awarded \$12.7 million in damages recently to two men who were severely burned in an industrial accident seven years ago. The verdict was returned in favor of Rudolph Andrew Paci and James Clyde Sutch, and their wives, after a nine-day trial. The men and their wives sued the manufacturer of a specialty metals furnace

after it exploded while the men were overseeing melting operations in 2003 at Ametek Specialty Metal Products located in North Strabane, Penn.

Source: *Pittsburgh Post-Gazette*

### **LAWSUIT FILED OVER WORKPLACE SHOOTING**

The fiancée of Otis Beckford, a man who was killed in a downtown Orlando shooting at the Gateway Center last year, has filed a lawsuit against a security company and the engineering firm where the shooting occurred. The lawsuit was filed in the Orange County Clerk of Courts. The shooting took place inside the Reynolds, Smith and Hills offices on the eighth floor of the Gateway Center. The lawsuit named RS&H Inc. and Allied Barton Security Services LLC. as Defendants. The lawsuit names Daneicka Coley, Beckford's fiancée, as personal representative for his estate. A disgruntled former employee of RS&H is accused of opening fire on the firm's workers November 6, 2009. The attack injured five people and killed Beckford, an AutoCAD technician. The shooter faces a first-degree murder charge and five counts of attempted murder. He has been found incompetent to assist in his own defense. It is uncertain whether he will stand trial in the criminal case because of his mental state. It was reported that RS&H has upgraded security at its downtown office.

Source: *Orlando Sentinel*

### **SAFETY OFFICIALS WARN 13 MINES IN SEVEN STATES**

Federal regulators have warned 13 mining operations in seven states, including two owned by Massey Energy Co., to show improvement on safety or face stricter enforcement. The Mine Safety and Health Administration says a 14<sup>th</sup> mining operation, Massey's Upper Big Branch mine in southern West Virginia, also meets the criteria for inclusion on the list that might qualify as having a pattern of serious violations. But the agency says actions against Upper Big Branch and a Massey subsidiary, Performance Coal Co., are on hold until the completion of an investigation into an April blast that killed 29 men.

The 13 sites identified as potentially having a pattern of serious violations include four coal mines in Kentucky, three in West Virginia and two in Tennessee. Alabama, Illinois, Montana and Nevada each have one such location. The operations are the first to be considered for the

status under new screening criteria designed to make it easier to crack down on mines with a history of safety problems.

Source: *Insurance Journal*

## **XVII. TRANSPORTATION**

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### **HELICOPTER CRASH PROMPTS FAA TO CONSIDER CHANGES**

The National Transportation Safety Board has recommended redesign and modification of some elements of the Sikorsky S-76C helicopter. This is the type involved in the 2009 helicopter crash that killed both pilots and six of seven passengers aboard. Our firm is involved in that litigation. The NTSB sent 12 safety recommendations to the Federal Aviation Administration as part of its report on the January 4, 2009 crash of the dual-engine helicopter, operated by PHI, Inc., that was en route to an oil platform in the Gulf of Mexico.

The NTSB recommended that the FAA prohibit operators of helicopters with installed bird-strike resistant windshields from replacing those windshields with ones that have not been tested to withstand such strikes. The agency also suggested that the company redesign the model to ensure that fire extinguishers do not inadvertently dislodge due to any external force on the canopy or windshields. The board recommended evaluating other helicopter models with engine control quadrant designs similar to the S-76C model and requiring modifications as necessary. Other recommendations made include evaluating the feasibility of retrofitting helicopters manufactured before 1996 and requiring manufacturers to equip new helicopters built under the old certification requirements with windshields that meet the current bird-strike requirements. This was a very important development and will be a factor in the ongoing litigation.

Source: Associated Press

### **UNITED STATES BEHIND IN REDUCING HIGHWAY FATALITIES**

The United States is lagging behind nearly every other high-income country in reducing annual traffic fatalities, according to a report released on November 16<sup>th</sup> by a federal research panel. But there was some good news: U.S. Traffic fatalities fell 9.7% in 2009 to 33,808, the lowest number since

1950. In 2008, an estimated 37,423 people died on the highways, a decline of 9.3% from the previous year. But it should be noted that dramatic declines in traffic fatalities in the U.S. over the last several years are most likely due to a bad economy which causes people to drive less. The report suggests that lasting changes in behavior are not the real case. As the economy improves, researchers believe fatalities are likely to rebound. It was said that the "experience of the past three years is not grounds for concluding that sustainable progress has been made on traffic safety."

In the 1970s, the U.S. fatality rate was the lowest in the world. But because safety efforts have improved more slowly in the United States than elsewhere, most high-income countries have now matched or gone below the U.S. rate, according to the report by the Transportation Research Board. Countries with comparable living standards where fatality rates per mile of travel were substantially higher than in the United States 15 years ago are now below the U.S. rate. Those countries include Australia, New Zealand, Canada, the Netherlands, Germany, Sweden, Finland, Norway, France and the United Kingdom. "The United States can no longer claim to rank highly in road safety by world standards," the report said.

From 1995 to 2009, fatalities dropped 52% in France, 38% in the United Kingdom, 25% in Australia, and 50% in 15 high-income countries for which long-term fatality and traffic data are available. But, according to the report, they dropped only 19% in the U.S. The dramatic declines in fatalities in other nations have been achieved in part through the kinds of programs that have sometimes generated opposition in the U.S. Thousands of lives in this country could be saved each year if governments at every level would adopt all available safety programs that have been effective in other countries.

Americans should strive for zero fatalities on the road. We should be leading, rather than following the international community when it comes to roadway design and safety measures. We should never be satisfied to lag behind the rest of the world when it comes to highway safety. Clinton Oster, an environment and public policy professor at the University of Indiana-Bloomington, was chairman of the committee that wrote the report. He pointed out that transportation safety authorities in other countries have been successful at reducing fatalities by taking a different overall approach, with an emphasis on demonstrating and documenting programs that

work and then aggressively making their case for those programs with political leaders and the public. Dr. Oster believes that we need to be much "more systematic in developing clear goals, measuring results and making that information public."

Source: Associated Press

### **JURY AWARDS \$35 MILLION TO FAMILY OF CRASH VICTIM**

A jury awarded \$35.25 million recently to the family of a woman killed four years ago on a Kansas interstate highway. Anita Gibbs was one of four Kansas City women who died in the 2006 crash while on their way to celebrate a family wedding anniversary. While they were stopped for another accident, a tractor-trailer rig slammed into the rear of their car. At the time of her death, Ms. Gibbs was principal of Askew Elementary School in Kansas City. The verdict was returned against the Michigan-based CenTra Trucking Company, which employed the 61-year old truck driver, George Albright, Jr.

It was contended during the trial that Albright, who was tired as he drove, had falsified his trucking logs to indicate that he had rested an adequate amount. Interestingly, his cell phone records showed that he was in Illinois when his log said he was in Columbia. The other family members killed in the wreck were Beverly Garrett, who was head of the local federal government employees union and a United Way board member; her mother, Beulah Hunter; and an aunt, Elois Jeans. The immediate families of those women settled their cases in April 2008, receiving a total of \$18 million.

The jury in the Gibbs trial returned a \$5.25 million compensatory verdict in the first phase of the trial and then awarded \$30 million in punitive damages in the second phase. Danny Thomas and Ken McClain of the Humphrey Farrington & McClain law firm, located in Independence, Missouri, represented the Gibbs family in the case, which was heard in the circuit court of Boone County, Kansas. They did a very good job for the Gibbs family.

Source: *Kansas City Star*

### **\$12 MILLION SETTLEMENT IN LAWSUIT OVER 2008 CRASH**

The family of a toddler who suffered a severe brain injury in a traffic accident has settled its lawsuit for \$12 million. The settlement will cover a lifetime of care for a 4½-year-old girl who now functions at the level of a two-year-old after she was struck

in the head by a pipe that came loose from a truck during a minor collision with her mother's van. While the crash was minor, the girl suffered severe and permanent injuries, including blindness and traumatic epilepsy.

A pipe rack on the truck owned by a New London well-drilling company failed and scattered several pipes, including one that hit the child in the head. The pipes let loose because of a defect in the manufacturing of the truck's rack. The pipe rack was missing a front stop and straps alone could not hold the pipes in place. The girl's medical expenses totaled \$850,000 for the first two years. The settlement should be adequate to cover her medical and physical needs even though she will need 24-hour care the rest of her life. The settlement has been approved by the court.

The settlement assigns payments from several parties based on their responsibility. On October 2, 2008, the truck was headed west on a state highway approaching the U.S. 41 southbound ramp. The family's van was in the left lane of the U.S. 41 off-ramp about to turn left to head east on State Highway 15. The truck ran a red light and when the driver applied the brakes before striking the van a number of pipes came loose from the pipe rack located on top of the truck. One pipe smashed through the left rear window of the van, striking the girl in the head.

The driver's insurance carrier will pay \$1 million of the settlement. The manufacturer of the pipe rack, Smeal Manufacturing of Nebraska, will pay \$300,000. The balance—\$18.7 million—will come from the rack distributor, Boart Longyear Company of Wausau, and its insurers. Of that total, \$5 million will be used to purchase an annuity for the child that is guaranteed to generate \$1 million a year for five years. Daniel Rottier, a lawyer from Madison, handled the case for the girls' family.

Source: Postcrescent.com

### **\$11 MILLION VERDICT IN COLORADO MOTOR VEHICLE CRASH**

A Colorado couple was awarded an \$11 million verdict recently in a case arising out of a crash in 2007. The jury awarded James Dye \$6.4 million and Sheila Dye \$4.6 million. They were severely injured in a collision with a tractor-trailer combination driven by Donald Pedrini. The Dyes were driving their 2002 Toyota Tundra on May 26, 2007, in a construction zone near the Middle Bear intersection and were forced to stop in traffic. The 2002 Freightler class

tractor-trailer was behind them and the driver failed to slow and stop the truck. It collided with the rear end of the Dye vehicle. Pedrini was employed by Cooney's Farm Service, a trucking company out of Alberta, Canada, at the time of the incident. Pedrini breached his duty to drive a safe distance behind other vehicles, maintain control of his truck and see what was plainly visible.

As a result of the collision, the Dyes suffered serious injuries and will continue to incur medical and hospital expenses, loss of time, loss of earnings, loss of earning capacity, loss of enjoyment of life, physical and mental pain and suffering, and temporary and permanent disabilities. The couple sued Pedrini for his negligence and the company for vicarious liability and negligent training, hiring and supervision. The Dyes also requested relief for loss of consortium, or the companionship and support provided by marriage. Pedrini and Cooney's Farm Service denied responsibility for the crash and its consequences until the morning of the trial. Patrick DiBenedetto, the lawyer who represented the Plaintiffs, had this to say about the verdict:

*This verdict tells truckers and trucking companies who choose to hire poor drivers that they better be careful in Wyoming because its citizens take their safety seriously and are not afraid to hold them accountable for their actions. This verdict may help keep the citizens of Wyoming safer when traveling on the highways by forcing truckers and trucking companies to self-regulate their driving and driving conduct.*

It's very important that trucking companies hire competent drivers, have good training and safety programs for drivers, and monitor their performance.

Source: Wyoming News

### **FRESNO JURY AWARDS \$9 MILLION IN HIGHWAY CRASH**

A California jury awarded more than \$9 million in damages recently to Ms. Susan Lutz and Ms. Clarice Brewer, two motorists who were seriously injured in a rear-end collision that took place on Highway 180 in Fresno in April 2008. The two women sued Hussmann Corp., which manufactures and repairs refrigeration equipment. Jason Mudford was driving a company truck east on Highway 180 when he made an unsafe lane change and rear-ended Ms. Lutz's

pickup at 55 mph. The impact pushed the pickup into the rear of Ms. Brewer's van.

The collision occurred on a clear day in the middle of the afternoon. Mudford's truck left no skid marks before impact. An issue in the trial was whether Ms. Brewer was wearing a seat belt. If she wasn't, it would have reduced Hussmann Corp.'s financial liability. But after two days of deliberations, the panel determined on a 9-3 vote that she was wearing a seat belt.

Ms. Susan Lutz was organizing a church event and was heading to a store to purchase supplies when the collision occurred, leaving her unconscious for a few minutes. Ms. Lutz suffered a brain injury in the collision and will have vertigo for the rest of her life. Before the collision, she worked for the Fresno Unified School District as a clerical employee. But because of her injuries, she can no longer work. The panel awarded Ms. Lutz about \$981,770 for medical expenses and past and future wage loss and \$1 million for pain and suffering.

Ms. Brewer also was active in her church. She had just purchased a prom dress for her daughter and was heading to the dentist when the accident occurred. Ms. Brewer can no longer walk and has to use a wheelchair. The jury awarded her about \$2.36 million for past and future medical expenses and \$5 million for pain and suffering. Rene Sample, a lawyer in Fresno, California, represented the Plaintiffs and did a very good job.

Source: fresnobee.com

### **JURY AWARDS HIGHWAY CRASH VICTIM \$1.275 MILLION IN DAMAGES**

A Lee County jury awarded a crash victim \$1.275 million in damages last month after a four day trial. Allen Walker, a bee farmer, was injured in a 2005 accident while driving on a street in North Fort Myers. A truck driven by David Humphrey swerved over the line and hit the vehicle Mr. Walker and his wife were riding in. Mr. Walker sued the truck driver and his employer, Eagle Engineering. Mr. Walker suffered severe and permanent injuries in the crash.

Source: News-Press.com

### **DIVER LEFT AT SEA AWARDED \$1.68 MILLION**

A jury in Los Angeles recently awarded a scuba diver accidentally abandoned in the Pacific Ocean 12 miles off the coast \$1.68 million in damages. The jury returned the verdict in favor of Daniel Carlock and

against Ocean Adventures Dive Co., located in Venice, and Sundiver Charters of Long Beach. The trial lasted for 23 days. The jury was told Carlock had suffered post-traumatic stress disorder and got skin cancer from exposure.

The Sundiver was staging a dive near the oil rig Eureka in 2004 when Carlock, then 45, surfaced 400 feet away after having difficulty equalizing the pressure in his ears. He tried to swim back to the boat, but got leg cramps. No one noticed his absence and a dive master for Ocean Adventures marked him as present. The boat moved to a second site some seven miles away, and there Carlock was mistakenly recorded as taking a second dive. More than three hours after he had been left behind at the first dive site, the crew realized he was missing and radioed the U.S. Coast Guard. Carlock was eventually rescued miles away by the Argus, a tall ship carrying a group of Boy Scouts.

Source: UPI.com

### **EU FINES AIRLINES \$1.1 BILLION FOR CARGO CARTEL**

The European Union fined 11 airlines last month a total euro799.4 million (\$1.1 billion U.S.) for fixing prices on international cargo shipments, leading to higher prices for businesses to move their goods. According to the European Commission, the EU's competition watchdog, "the carriers coordinated their action on surcharges for fuel and security without discounts" between December 1999 and February 2006, when the EU's investigation stopped the cartel. It was reported that the commission's intervention ended the cartel in 2006. Air France-KLM received the largest fine and has to pay euro310.1 million, while British Airways PLC was fined euro182.9 million.

The other airlines were Air Canada, Cathay Pacific, Cargolux, Japan Airlines, LAN Chile, Martinair, SAS, Singapore Airlines and Qantas. Lufthansa escaped a fine because it blew the whistle on the cartel. "It is deplorable that so many major airlines coordinated their pricing to the detriment of European businesses and European consumers," Competition Commissioner Joaquin Almunia said. "With today's decision the Commission is sending a clear message that it will not tolerate cartel behavior." The U.S. Department of Justice has already charged 18 airlines and several executives in its investigation of the cargo cartel and imposed more than US\$1.6 billion in fines.

Source: Forbes

## **ALABAMA STUDY FINDS THAT SCHOOL BUSES ARE SAFE ENOUGH WITHOUT SEAT BELTS**

The State of Alabama has released the long-awaited school bus safety study. The study found that school buses are safe enough without seat belts. It was stated in the report that students in many cases ignore a requirement to wear the seat belts. The study also found that the straps would save the life of about one child every eight years. This study was ordered by Governor Bob Riley after four students were killed in 2006 in a school bus crash in Huntsville. We were involved in the litigation that rose from the crash and as a result know about what happened. The bus was not equipped with seat belts.

Following that accident, federal transportation officials required new, smaller school buses to be equipped with lap-and-shoulder belts by 2011. Larger buses are to have higher seat backs. The three-year study showed putting belts on most buses is expensive—about \$11,000 to \$15,000 per bus, and requires larger seats, reducing the number of students who can sit on the bus. In many cases, the study found that students don't put on the belts and drivers complained they couldn't see the children. Dan Turner, a retired University of Alabama professor, led the study. It's being reported that the study was expected to guide school transportation officials around the country. Georgia officials had said following a recent accident they were waiting for the Alabama study's results before deciding on whether to recommend seat belts on buses.

The study provided buses with seat belts for ten Alabama school systems and determined school buses were the safest way for students to get to school, partly because of the vehicles' height, size and design. In effect, students are compartmentalized in their seats. In Alabama, there are 7,341 buses on the road, driving more than 457,000 miles a day. The study said there have been five deaths since 1977. Researchers said it would be more cost-effective to spend money making the process of loading students on and off the buses safer.

I believe that seat belts on all school buses would make them safer for children. It seems sort of strange to say that even if available children wouldn't use them. Hopefully, the cost versus safety issue didn't dictate the outcome of the Alabama study. Knowing the reputation of the author, however, I have to believe it didn't. In any event, don't expect to see seat belts on Alabama school buses anytime soon. The companies that manufacture school buses have opposed requiring seat belts for years

and I suspect they like the outcome of the Alabama study.

Source: Associated Press

## **XVIII. HEALTHCARE ISSUES**

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### **MEDICAL GROUP SAYS SPECIALIST SHOULD REVIEW CONCUSSIONS**

Athletes of all ages who are suspected of suffering a concussion should be evaluated by a specialist before they return to sports, according to a major doctors group. There has been a great deal of concern over potential lasting damage from head injuries. The statement by the American Academy of Neurology follows rules already adopted in college sports and pro football aimed at preventing and better treating blows to the head in competition. Research involving NFL players has suggested repeated concussions may have long-term consequences, such as dementia and Alzheimer's disease.

Doctors want to get the message "to the athletes, their parents and their coaches that a concussion is not just a ding, or getting your bell rung, but it is an injury to the brain," according to Dr. Mark Halstead of Washington University. He says that concussions "need to be treated as if they are a big deal." The neurology academy is the most authoritative medical group when it comes to concussions. And its new advice sweeps across all ages and types of athletes. The academy also calls for a certified athletic trainer at every sports event and even practices where there is risk of concussion, something that would be a dramatic change in youth sports.

Dr. Jeff Kutscher, chair of the Academy's sports neurology section, said the Academy's current guidelines on managing concussions and when to return to play were written in 1997, and experience since then has shown they are inadequate. Experts hope to publish new guidelines by 2012, following a careful review of published studies, he said. The group's new statement was meant to offer guidance in the meantime for child and adult athletes. Key points include:

An athlete suspected of suffering a concussion should be removed from competition until evaluated by a doctor trained in assessing and treating sports concussions. Symptoms like

unconsciousness, unsteadiness, problems with memory or concentration, dizziness or headache are warning signs, Kutscher said.

No athlete with symptoms should be allowed to take part in sports.

After a concussion, a neurologist or another physician with proper training should be consulted before the athlete is allowed to return to sports.

A certified athletic trainer should be present at all sports events, including practices, where athletes are at risk for concussion. This recommendation is especially crucial for middle school and younger children, for whom such trainers are rarely used, Kutscher said.

In September, the U.S. House voted to have experts draw up federal guidelines on handling concussions in school-aged children. The bill awaits further action. Kutscher pointed to recent studies that suggest long-term consequences like decreased mental ability, dementia, depression, anxiety and changes in personality as helping draw attention to the risk of concussions.

Source: Associated Press

### **FDA LOOKS TO SOLVE PROBLEMS WITH DEFIBRILLATORS**

Health regulators are taking a closer look at ways to solve the many problems found with external defibrillators. These are the life-saving medical devices located in emergency rooms, airports and other public places. It's recognized that automated external defibrillators (AEDs) can save the lives of patients who have suffered sudden cardiac arrest if used in the first few minutes after their collapse. The devices work by delivering electrical energy to the heart to restore its normal rhythm. But the industry has conducted dozens of recalls in recent years, affecting hundreds of thousands of devices, according to the U.S. Food and Drug Administration.

The FDA released a report on the subject on November 15<sup>th</sup>. Health regulators said they had received thousands of reports of malfunctions—some during rescue attempts—which may have contributed to patient harm or death. It was stated in the report:

*While the FDA continues to advocate use of these important life-saving devices and is not recommending any change to current clinical prac-*

*tices, we believe the devices can be improved in ways that materially improve patient safety.*

Top manufacturers of AEDs include Cardiac Science Corp, Philips Medical Systems, Defibtech, Welch Allyn, HeartSine Technologies Inc, Zoll Medical Corp and Physio-Control. The FDA said a variety of problems were identified in all kinds of external defibrillators from all manufacturers.

From January 1, 2005, to July, 10, 2010, there were 68 recalls. The FDA conducted multiple inspections of all external defibrillator manufacturers throughout this period. Many of the types of problems identified are preventable and correctable, according to the FDA. One example, FDA officials said, was that a button that activates the electrical charge was covered. That is a design flaw that is easy to fix. As part of the initiative, the FDA said it would promote innovation to improve safety and effectiveness, help the industry identify and resolve problems more quickly, and designate an appropriate premarket regulatory pathway for automated external defibrillators that promotes best practices for design and testing.

The review is part of a larger move by the agency to look at categories of medical devices thought to have systemic problems. The FDA said in April it was looking at infusion pumps, saying chronic issues with the widely-used devices were preventable. To date, the FDA has addressed defibrillator problems on a case-by-case basis. But it has conducted an industry-wide review and has identified several practices that have contributed to these persistent safety risks, including methods of designing and manufacturing, handling user complaints, conducting recalls and communicating with users. About 200,000 automatic AEDs are sold each year in the United States and an estimated 1 million devices are in public and private places available for use. The FDA is collaborating with the University of Colorado's Department of Emergency Medicine to develop a multi-city AED registry.

Source: Reuters

### **FDA RAIDS RODENT-INFESTED WAREHOUSE**

Federal authorities seized more than \$700,000 worth of rice and other items from what regulators described as a rodent-infested warehouse located in Atlanta. U.S. Marshals, acting on a court order sought by the Food and Drug Administration, seized the products from the warehouse operated

by Sun Hong Kai Holding Inc. That company does business as United Food Service.

An FDA inspection of the facility revealed a "widespread rodent infestation" that included live and dead rodents where food products are stored. It was reported that 28 live rodents, one dead rodent and four rodent nesting sites were found by the government. State regulators banned any of the food in the warehouse from being sold.

Source: WTVM.com

### **FDA TESTS CONFIRM LISTERIA AT TEXAS PRODUCE PLANT**

Tests by federal health authorities have found listeria bacteria at a Texas food processing plant. State health officials had linked four deaths to contaminated celery from the plant. The Food and Drug Administration says results match testing by the Texas Department of State Health Services at the SanGar Produce & Processing Co. plant in San Antonio. The tests found listeria bacteria in multiple locations in the plant. State health authorities closed the plant on October 20<sup>th</sup> and ordered SanGar to recall all produce that had passed through the plant since January.

Source: USA Today

### **DISTURBING CONDITIONS REVEALED AT LARGE EGG FARM**

A new undercover video investigation by the Humane Society of the United States shows disturbing conditions at a Texas farm operated by the country's largest egg producer and distributor. An investigator for the group documented a range of filthy, unsanitary conditions while working at a Cal-Maine Foods operation in Texas over a five-week period this fall. A five-minute video produced by the group shows hens confined in overcrowded cages with rotting corpses, dead and injured birds trapped in cages, eggs covered in feces, and escaped hens floating in manure pits.

The images are a stark contrast to the clean white birds and eggs featured in the video on the Cal-Maine corporate website. Paul Shapiro, the director of the Humane Society's Factory Farm program, observed: "A lot of these conditions seem to be pretty uniform throughout the industry. It's not a matter of just a few rotten eggs."

Battery cage systems allow for large-scale egg operators to house tens of thousands of hens in one barn. It was reported that the

Cal-Maine facility in Waelder, Texas includes 18 barns with more than 180,000 cages and 1,000,000 hens. Cal-Maine is the largest egg producer in the U.S., selling approximately 778 million dozen shell eggs last year. That's about 18 percent of the entire domestic market. The Humane Society released videos in April showing similar scenes at operations owned and run by the nation's second and third largest producers—Rose Acre Farms and Rembrant Enterprises.

The massive salmonella outbreak over the summer connected to other large-scale producers' operations, which resulted in the recall of over a half-billion eggs, has caused a great deal of concern over conditions at the nation's large-scale egg producers. The FDA found "significant deficiencies" at the Iowa farms implicated in the massive recall. Agency inspectors found the presence of large piles of manure, fly and rodent infestations, and cited significant problems in the producers' efforts to mitigate cross-contamination. Scientific research shows that a complex set of factors influence the risk of infection from Salmonella Enteritidis. These factors include flock size, the presence of rodents, the age of the facility, cleaning methods between flocks, and vaccination rates of chickens.

It's quite evident that a great deal of work must be done in order to insure that the egg industry "cleans up" as my friend Mark Bullock says on WSEA-TV in Montgomery. Mark reports on health department grades for food-service facilities in Montgomery and always instructs those who fall short to "clean up!"

Source: ABC News

## **XIX. ENVIRONMENTAL CONCERNS**

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### **TVA COAL ASH DISASTER UPDATE**

December 22, 2010 will mark the two year anniversary of one of the largest industrial accidents in U.S. history—the escape of one billion gallons of coal ash sludge from TVA's Kingston Fossil Plant. The sludge poured out onto the once beautiful landscape and contaminated the surrounding waterways with toxic chemicals. Hundreds of cleanup workers still remain on-site, even after trains have hauled away 40,000 rail cars of coal ash dredged from the Emory River. The \$1.2 billion cleanup is projected to continue until at least 2014.

As we have previously reported, soon after this unprecedented disaster our firm filed a class action lawsuit on behalf of property owners affected by the spill. The now-consolidated complaint in the lawsuit names TVA and its engineering contractors, WorleyParsons Corporation and Geosyntec Consultants, as Defendants. The litigation currently is in the discovery phase, which means that Plaintiffs are exchanging information with the Defendants by way of documents and depositions. Plaintiffs recently submitted to class representative depositions and our lawyers have taken depositions of Geosyntec and WorleyParsons representatives, as well as additional TVA employees. In addition, we recently filed our motion for class certification. The class certification hearing will take place this month, and we anticipate that the judge will issue a ruling sometime in early 2011.

The Kingston ash spill disaster exposed the dangers of coal ash to the public and pushed the regulation of coal ash to the forefront of EPA's rulemaking agenda. Coal ash, a byproduct of coal-burning power plants, contains harmful chemicals like mercury, cadmium and arsenic, which are associated with cancer and numerous other health conditions.

EPA recently hosted several public hearings to address two proposals to regulate the management of coal ash. One proposal regulates coal ash as a special waste under the same section of laws that address hazardous waste, while the other option categorizes coal ash as a non-hazardous solid waste. EPA hosted the final public meeting in Knoxville, Tennessee, which is the location of TVA headquarters and about 40 miles east of Kingston. During the public hearing in Knoxville, over 300 people made statements to the panel. Despite the tremendous pressure on EPA to regulate coal ash, the agency has not set a firm timetable for a final decision on these proposed regulations.

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

Sources: Knoxville News Sentinel and the EPA

## XX. THE CONSUMER CORNER

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### **FDA PULLS DARVON PAINKILLER DUE TO SAFETY RISKS**

Xanodyne, the maker of the painkiller Darvon, has pulled the drug off the market because it causes dangerous heart rhythms. The U.S. Food and Drug Administration says the drugmaker will halt marketing of Darvon and related brand Darvocet. The FDA has also called on generic drugmakers to stop marketing low-cost versions of the drug. This action by the FDA puts the U.S. in line with Britain, which banned Darvon several years ago due to suicides and accidental overdoses.

Darvon, first approved in the 1950s, is an opioid used to treat mild to moderate pain. Darvon is still prescribed for chronic pain, mostly in generic form, although it doesn't appear to be ordered very often. Many medical professionals say that these types of drugs are in a class of their own. Public Citizen, the consumer watchdog group, had petitioned the FDA to ban the drug. The basis for Public Citizen's request was that the drug's benefits didn't justify a risk that added up to several hundred deaths a year. In my opinion, the pulling of the drug was long overdue.

Source: Associated Press

### **VERIZON AGREES TO \$25 MILLION SETTLEMENT WITH FCC**

Telecom giant Verizon Wireless has agreed to pay a record \$25 million to settle allegations that it charged customers millions of dollars in "mystery fees," according to the U.S. Federal Communications Commission (FCC). Verizon Wireless will also refund at least \$52.8 million to more than 15 million affected customers. The settlement was the largest ever reached in FCC history. FCC's Enforcement Bureau Chief Michele Ellison said in a statement:

*Today's settlement requires Verizon Wireless to make meaningful business reforms, prevent future overcharges, and provide consumers clear, easy-to-understand information about their choices.*

The FCC began investigating Verizon Wireless in January after large numbers of consumers complained of unexplained data

charges. The investigation focused on "pay-as-you-go" data fees—charges of \$1.99 per megabyte that apply to Verizon Wireless customers who do not subscribe to a data package or plan. The investigation found that approximately 15 million "pay-as-you-go" customers may have been overcharged for data usage over the course of three years, from November 2007 to the present.

Source: Fox News

### **RENTAL CAR COMPANY URGED TO FIX RECALLED VEHICLES**

The rental car industry should have to live by the same rule that requires automobile dealers to fix vehicles under recall notice before they can be sold. Two consumer groups and Sen. Charles Schumer (D-NY) asked the Federal Trade Commission to force the country's largest rental car company, Enterprise Holdings Inc., to fix vehicles under recall before renting them out. Enterprise Holdings is the parent company of rental car companies Enterprise, National and Alamo. Safety groups say most business travelers or those renting cars for long trips don't know whether the vehicle they pick up at the rental lot has been the subject of a recall, posing a potential safety threat. The issue has taken on more significance this year following a series of safety recalls by Toyota Motor Co. And several large recalls involving other automakers.

The government responded and is now reviewing how quickly rental car companies are moving to fix recalled vehicles included in rental fleets. The National Highway Traffic Safety Administration says it wants to know whether many rental car fleets get repaired as part of a recall. The review will cover nearly 3 million cars built by General Motors, Chrysler and Ford. The Federal Trade Commission is considering a petition to force Enterprise Holdings to fix vehicles under recall before renting them out. Safety groups say most consumers don't know whether the vehicle they pick up at a rental lot has been the subject of a recall, posing a potential safety threat. Enterprise has said it declines to rent out recalled vehicles when automakers make that recommendation to them.

Congress should also get involved next year and correct this safety problem. The practice should be ended across the industry. Clearly, automotive dealers are not allowed to sell recalled vehicles without first fixing the safety issues. Rental car companies should be held to the same standard. If a car is not safe enough to be bought and

driven off the lot, then it is not safe enough to rent.

You may recall that a \$15 million jury verdict was returned in California earlier this year against Enterprise. The jury found the company's failure to fix a recalled Chrysler PT Cruiser led to the deaths of two sisters. The PT Cruiser they rented had been recalled for a defective power steering hose that could cause engine fires. The car caught fire while the sisters traveled on a California highway in 2004, causing them to lose steering. The vehicle then struck a semitrailer truck head-on, killing the two women. Enterprise later admitted to liability in their deaths and the jury reached a verdict of \$15 million in June.

Source: Associated Press

### **TENNESSEE HOMEOWNERS CAN SUE HOME APPRAISER FOR FRAUD**

The Tennessee Supreme Court has ruled that home appraisers who overestimate the value of homes may be liable for fraudulent misrepresentation. The state's High Court overruled an appellate court that held that because an appraiser's estimate is an opinion, it cannot be the basis of a claim for misrepresentation. In a case involving a Nashville couple who got less than the 2002 appraisal amount when they sold their home three years later, the High Court said that even though it is an opinion, an appraisal can form the basis of a claim.

In 2002, Joseph and Kimberli Davis sought an appraisal on a home they were having built. The appraiser was a person the Davises' bank, SunTrust, regularly used. Using best estimates of what it would cost to build the home, the appraiser came up with a figure of \$731,000. However, using data on what similar homes were selling for, he came up with an appraisal of \$735,000. The final appraisal report estimated the market value of the home as \$735,000. It reconciled the differences in value resulting from the cost approach and the sales comparison approach by stating that "[b]ecause buyers rely heavily on comparisons, the direct sales comparison approach is considered the best indicator of market value" but that "[t]he cost approach supports the sales comparison approach."

Mr. and Mrs. Davis were approved for a \$580,000 mortgage for construction of the home. In 2003, after living in the home for only a year, they sought a home equity loan. But SunTrust declined, based on a new appraisal of the home of \$510,000. They then decided to sell the house and were

told by real estate agents that the home would sell for between \$590,000 and \$625,000. The Davises listed the property for sale at \$679,000 on November 30, 2004. They accepted an offer on the home from the first prospective buyer and, on April 8, 2005, closed on the sale of the property for \$660,000.

On April 20, 2005, Mr. and Ms. Davis filed suit asserting that the appraiser had intentionally or negligently misrepresented the market value of their home when he appraised it in June 2002 and that he had also violated the Tennessee Consumer Protection Act. They alleged that the appraiser, who was hired by the bank financing the construction, recklessly overestimated the value of their proposed construction and that they reasonably relied on the appraisal value to their detriment.

The Court of Appeals affirmed the trial court's ruling that an appraisal is an opinion that cannot form the basis for a fraudulent misrepresentation claim. But, the state Supreme Court ruled that an opinion can form the basis of a fraudulent misrepresentation claim. The Court further said that genuine issues of material fact preclude summary judgment as to the claims against the appraiser. The Court of Appeals was reversed and the case was remanded to the trial court for further proceedings. In my opinion, this is a very important decision for homeowners.

Source: *Insurance Journal*

### **LAWSUIT AGAINST CREDIT-COUNSELING AGENCY IS SUCCESSFUL**

Twenty states will share a \$4.5 million settlement with a Maryland-based debt-management company that was accused of deceptive marketing practices. AscendOne Corp. and several of its subsidiaries will pay the settlement which comes in lawsuits filed by Attorneys General across the country. The company had been accused of misleading consumers into believing that services would be provided by non-profit credit-counseling agencies. AscendOne, which is a for-profit company, performed the services instead.

### **TOXIC METALS FOUND IN CHILDREN'S DRINKING GLASSES**

Drinking glasses depicting comic book and movie characters such as Superman, Wonder Woman and the Tin Man from *The Wizard of Oz* exceed federal limits for lead in children's products by up to 1,000 times,

according to laboratory testing commissioned by The Associated Press. The decorative enamel on the superhero and Oz sets—made in China and purchased at a Warner Brothers Studios store in Burbank—contained between 16 percent and 30.2 percent lead. The federal limit on children's products is 0.03 percent. The same glasses also contained relatively high levels of the even-more-dangerous cadmium, though there are no federal limits on that toxic metal in design surfaces.

The testing for AP, conducted by ToyTestingLab of Rhode Island, found that the enamel used to color the Tin Man had the highest lead levels, at 1,006 times the federal limit for children's products. It should be noted that every Oz and superhero glass tested exceeded the government limit ranging from 617 to 827 times the limit. Federal regulators will decide whether the superhero and Oz glasses are "children's products" and thus subject to strict lead limits. AP should be commended for its work which hopefully will prod the federal government to do its job!

Source: Associated Press

## **XXI. RECALLS UPDATE**

Once again, we are listing a number of product recalls in this issue. Unfortunately, as we have 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 any of the recalls.

### **BMW RECALLS 150,800 VEHICLES FOR FUEL PUMP PROBLEMS**

BMW of North America has issued two recalls for potential fuel pump failures. BMW is recalling about 130,000 of its 2007-2010 vehicles with the twin-turbo inline six-cylinder engines for potential failure of their high-pressure fuel pump. Separately, the recall will include about 20,800 of its 2008 X5 crossovers with the normally-aspirated inline six to replace the low-pressure fuel pump. The recalls came the same day an ABC News morning report aired charging that the company has dragged its feet on a fuel pump recall despite years of owner complaints to

the company and government regulators. NHTSA conducted a preliminary investigation in 2008. BMW claimed it was not a safety defect. The probe was closed without a finding.

*Consumer Reports* noted in presenting highlights from its latest reliability survey: "BMW takes a big hit—turbo-charged engines in the 1, 3 and 5 series caused a drop in reliability—fuel system failures." The company said symptoms indicating a problem with the twin-turbo's fuel pump include: "long-crank engine starting times along with the illumination of the "Service Engine Soon" light. In certain cases, the driver may experience reduced engine performance in a Safe Mode accompanied by a tone and the illumination of the "Engine Malfunction" light." It said that in some cases the high-pressure fuel pump issue can be fixed with a software update, but that 40,000 vehicles are expected to need a pump. Affected models: 2007-10 335i; 2008-10 135i, 535i and X6 xDrive35i; and 2009 -10 Z4 sDrive35i.

Symptoms of the 2008 X5 problem are more dramatic. According to BMW: "Should the fuel pump experience a failure, the engine will stop running and the driver will lose power assist for the steering and brakes although both the steering and the brakes remain operational."

BMW sent a letter to owners of the vehicles alerting them that the fuel pump could cause performance issues. While it did not recall, after developing a fixed pump last March, it let owners get a new pump if the old one failed.

Owners can direct more questions to BMW Customer Relations at 1-800-563-4269 or email CustomerRelations@bmwusa.com.

### ***NISSAN RECALLS 2 MILLION VEHICLES WORLDWIDE***

Nissan has recalled 2.14 million vehicles worldwide including the popular March and Mycra subcompacts for an ignition problem that may stall the engine. This is said to be Nissan's third-largest recall ever. No accidents have been reported that are suspected of being caused by the defect, according to Nissan Motor Co. The recall affects cars in the United States, Europe and Japan.

A problem was found in an ignition-system part called the relay for vehicles produced from August 2003 through July 2006, including small cars like the March, Cube and Note, and about a dozen other models, such as the Tiida sedan, Titan pickup and Infiniti QX56 luxury model. In extreme cases, the engine will stall and won't be able to start, according to a Nissan spokesman.

Of the recalled vehicles, nearly 835,000 were produced in Japan, 762,000 in North America, and 354,000 in Europe. Nissan, which is allied with Renault SA of France, did not disclose a cost for the recall. The cars were produced in Japan, the U.S., Great Britain, Spain, China and Taiwan.

### ***NISSAN RECALLS 600,000 VEHICLES FOR STEERING AND BATTERY PROBLEMS***

Nissan Motor is also recalling more than 600,000 vehicles in North and South America and Africa due to steering or battery cable problems. The Japanese automaker said Thursday that the steering recall affects 303,000 Frontier pickups and 283,000 Xterra sport-utility vehicles in the U.S., Canada, Mexico, Argentina, Brazil and other Latin American countries. Nissan said a corrosion problem with the lower steering column joint and shaft can limit steering movement, making the vehicles difficult to steer. In some cases the corrosion can cause the joint to crack. Nissan also is recalling 18,500 Sentra sedans because of a battery cable terminal connector problem that can make the cars difficult to start or stall at low speeds. The company says no injuries or accidents have been reported because of either issue.

The Frontiers covered by the recall are from the 2002 through 2004 model years and were made from July 9, 2001, to October 20, 2004, in Smyrna, Tennessee, for the North American market, Nissan said in a statement. Frontiers made from November 30, 2001, to June 26, 2008, in Curitiba, Brazil, for South and Central American markets also are in the recall. The 2002-2004 North American Xterras in the recall were made from July 9, 2001, to January 6, 2005, also at the Smyrna plant. Xterras made from February 17, 2003, to June 13, 2008, in Curitiba, Brazil, for South

and Central American markets also are affected.

Nissan also said it will replace the positive battery cable terminal on affected Sentras. The vehicles were built at the Aguascalientes, Mexico, plant from May 22, 2010 to July 8, 2010. The automaker will notify owners in early December when parts are available, and dealers will fix the problem at no cost to the owners. Nissan said the steering problem was discovered from cases in Brazil and Canada, and there have been no field reports in the U.S. 240,000 Frontiers, 261,000 Xterras and 14,000 Sentras are affected in the U.S.

### ***SUZUKI RECALLS VEHICLES TO FIX SIDE MIRRORS***

Suzuki has recalled 69,587 SX4 hatchbacks and sedans for defective side mirrors. The three screws that hold each mirror in place can loosen over time due to vibration, leading to the mirrors falling off completely. The recall includes the 2007-10 Suzuki SX4 hatchbacks and 2008-10 Suzuki SX4 sedans. American Suzuki Motor, in a statement, said "replacement screws are on their way to Suzuki dealers, and customer vehicles will be refitted as quickly as the parts arrive and customers make appointments with their dealers to have their vehicles serviced."

### ***VOLVO RECALLS 113,600 CARS FOR AIR-BAG AND STEERING FLAWS***

Volvo Cars, the Swedish automaker owned by China's Zhejiang Geely Holding Group Co., has recalled 113,600 cars in 80 countries for potential faults with air bags and power-steering hoses. Volvo is asking owners of 100,100 vehicles worldwide to visit dealers or authorized repair shops to fix a wiring connector that poses what the company describes as a "tiny risk" that an air bag won't function. A separate recall targets 13,500 S80L cars, sold only in China, to repair a hose leak that may make steering difficult. Both recalls began in October.

The models affected by the air-bag wiring fault are the S80, S80L, S60, V70 and XC70 as well as the XC60, the crossover that's Gothenburg-based Volvo's best-selling model. The market with the biggest number of air-bag

related recalls is Sweden, with 19,273, while 11,400 cars in China and 9,753 cars in the U.S. Are affected. The air-bag fault will take about a half-hour to check and fix and the power-steering repair may take two hours, according to the company.

### **MERCEDES-BENZ TO RECALL CERTAIN DIESEL-POWERED MODELS**

Mercedes-Benz says it is recalling certain E-Class, ML-, GL- and R-Class vehicles with diesel engines to fix a potential problem that could lead to fuel leaks. The problem lies in the fuel filters of vehicles with an integral fuel-heating feature. An O-ring that may not be properly lubricated can allow fuel to leak in some cases. The main danger, according to NHTSA, is that diesel fuel dripped on roads can make the surface slippery and increase the chance of crashes. Mercedes says the recall affects about 2,297 vehicles, mainly 2011 model year diesel-powered M-, GL- and R-Class vehicles built between November 2009 and October 2010. The fault can also occur in diesel E-Class vehicles built from December 2009 to October 2010.

The announcement may mean more to motorcyclists than to people driving cars, because spilled diesel fuel and oil are among the road hazards riders fear most. Mercedes is notifying affected customers in writing and dealer service technicians will replace their fuel filters. The car maker says it isn't aware of damage or personal injury related to the defect.

### **CHRYSLER RECALLS JEEP SUVs**

Chrysler is recalling about 16,000 Jeep Liberty SUVs to fix faulty windshield wiper systems. Chrysler's recall involves certain 2008 model year Jeep Liberty SUVs. Water could get into the windshield wiper motor and stop the wipers. That could reduce a driver's visibility and lead to a crash.

### **GM RECALLS CADILLAC AND BUICK SEDANS**

General Motors is recalling nearly 14,000 sedans to address potential problems with power steering. GM's recall involves certain 2010 and 2011

model year Cadillac DTS and Buick Lucerne sedans with V8 engines. An alternator cable could wear through a power steering line, leading to a fluid leak that could cause a loss of power steering and lead to a crash.

### **GM RECALLS COLORADO AND CANYON PICKUPS**

**\*\*WSJ BY JONATHAN WELSH**

General Motors has recalled regular-cab and extended-cab Chevrolet Colorado and GMC Canyon mid-size pickup trucks, and certain Isuzu i280 and i370 pickups to fix a problem with their child-restraint equipment. GM says the recall includes 192,676 vehicles. The affected Chevrolet and GMC models are from the 2004 to 2011 model years and the Isuzus, which are rebadged versions of the same truck, are 2007-2008 models with bench seats that have a 60/40 split. The top tether anchor for the center-front seat position isn't accessible as required under U.S. and Canadian safety standards. To fix the problem, dealers will cut a hole in the trim panel that currently blocks access to the anchor. The service will be free of charge regardless of vehicles' mileage, age, or chain of ownership. GM says it knows of no crashes or injuries related to this condition.

The National Highway Traffic Safety Administration says that while it and General Motors do not recommend placing children in the front seat, there are times when it is necessary to do so in a vehicle that has no back seat. A lack of proper access to the top tether could result in a child safety seat being installed improperly and increased risk of injury or death for child passengers. GM says when it is necessary to use a child seat in vehicles with no rear seat, it recommends installing the child seat on the right-side passenger seat where a top tether anchor is already accessible. It should be noted that a child seat should not be placed in the center seat because of its proximity to the air bag in a crash.

### **HONDA AND MANTIS MINI TILLERS RECALLED**

American Honda Motor Co. has recalled about 6,100 mini soil tillers. The Torrance, California,

company recalled gas-powered Honda and Mantis Mini Tillers due to reports of rubber grommets on the gas tanks that crack and could leak fuel, resulting in a fire hazard.

The recall involves Honda Mini Tillers model number FG110 with serial numbers GCALT 1696948 to 1700567 and Mantis Mini Tillers model number 7262 and 7270 with serial numbers GCART-1165215 to 1171495. Both brands include engines made in Thailand. They were sold nationwide from March 2010 through September 2010 for about \$400. Consumers were advised to stop using the recalled mini tiller and contact a Honda Power Equipment dealer to arrange for a free replacement fuel tank assembly. Consumers can call 888-888-3139 for information.

### **CLUB CAR RECALLS GOLF CARS AND HOSPITALITY, UTILITY AND TRANSPORT VEHICLES**

Club Car, LLC of Augusta, Georgia, is recalling about 5,000 golf cars and hospitality, utility and transport vehicles. The brake pedal can crack and separate, resulting in a loss of braking ability. This can result in a crash. Club Car has received two reports of brake pedals breaking. No injuries have been reported. The recalled vehicles are Model 2010 DS golf cars and hospitality, utility and transport vehicles used for short-distance transportation. They are various sizes, models and colors. The vehicles can be identified by the serial number, which is above and to the right of the accelerator pedal. A list of models and serial numbers is below. The carts were sold at authorized Club Car dealers nationwide from April 2010 through July 2010 for between \$6,000 and \$17,000. Club Car is providing a free inspection and replacement of the brake pedal. The company is contacting its customers directly. For more information, contact Club Car at (800) 227-0739, ext. 3580 or go to its website at [www.clubcar.com](http://www.clubcar.com).

### **GIANT RECALLS ANTHEM X 29ER BICYCLES DUE TO FALL HAZARD**

Giant Bicycle Inc., of Newbury Park, California has recalled 370 2011 Model Year Anthem Giant Bicycles. The frame

can crack at the junction of the seat post and top tube, posing a fall hazard to riders. This recall involves 2011 model year Giant Anthem X 29er 1, 2 and 3 model bicycles. The bicycles were sold in small, medium and large. "Giant" and the model name are printed on the bicycle. Authorized Giant Bicycle dealers nationwide during August 2010 for between \$2,200 and \$3,500. Consumers should immediately stop riding the recalled bicycles and contact any authorized Giant Bicycle dealer for a free inspection and repair. For additional information, contact Giant Bicycle toll-free at (866) 458-2555 or visit its website at [www.giant-bicycles.com](http://www.giant-bicycles.com).

### **CAR SEATS RECALLED BY BRITAX**

About 23,000 Chaperone Infant car seats have been recalled by Britax Child Safety Inc., of Charlotte, North Carolina. The harness chest clip can break and pose a laceration hazard. Due to its small size it also poses a choking hazard. The firm has received four reports of the chest clip breaking. Injuries from three reports included minor lacerations and scratches to arms and a finger; and one report involved an infant placing the clip in his mouth. This recall involves Chaperone infant car seats with model numbers E9L95P2 (Red Mill), E9L95P3, E9L95P5 (Cowmooflage), E9L69N9 (Moonstone) manufactured between April 2009 and May 2010. The white serial label with the seat's serial number, model number, and manufacture date can be found on the underside of the car seat.

The car seats were sold nationwide and on the Britax website from June 2009 to October 2010 for about \$230. Consumers should immediately contact Britax for a free repair kit, which includes a replacement chest clip. Registered owners have been directly contacted by Britax. This product was also recalled by NHTSA. See the recall notice at [http://www-odi.nhtsa.dot.gov/recalls/results.cfm?rcl\\_id=10C006000&searchtype=quicksearch&summary=true&refurl=rss](http://www-odi.nhtsa.dot.gov/recalls/results.cfm?rcl_id=10C006000&searchtype=quicksearch&summary=true&refurl=rss). For additional information, contact Britax at (888) 427-4829 anytime, or visit its website at [www.britax.com](http://www.britax.com). Photos are available at: <http://www.cpsc.gov/cpscpub/prere1/prhtml11/11031.html>.

### **JOHN DEERE LAWN MOWERS RECALLED**

Deere and Co. has recalled John Deere mowers with foot lift option due to an injury hazard. About 6,450 John Deere EZtrak Zero Turn lawnmowers were manufactured by Deere & Co. of Moline, Illinois, and sold nationwide—except in California—from February 2009 through September 2010 for about \$5,300. The BM22809 Premium Foot Lift Kit, sold separately from mowers for about \$80, is also being recalled.

A bolt on the steering lever can catch on the tab of the foot lift stop and lock in place, the commission said. This can stick the steering lever in a forward position, which poses a risk of injury to users. The recall involves numerous models of Z445 riding mowers with 54-inch-high decks and 7445 or 7465 Zero-Turn Mowers with Premium Foot Lift features. Consumers were advised to stop using the mowers and contact a John Deere dealer to have the lift stop bracket removed. Consumers can call 800-537-8233 for information.

### **BICYCLES RECALLED BY EASTON SPORTS**

Easton Sports, of Scotts Valley, California, has recalled about 200 bicycles with 2010 EC90 Zero seat posts. The carbon top clamp of the seat post can crack, posing a fall hazard to the user. This recall involves bicycles with 2010 EC90 Zero seat posts. The EC90 Zero seat posts are black with red and gray graphics. "EC90" is printed on the post. The bikes were sold at Turner Suspension Bicycles, Ibis Cycles and Security Bicycle Accessories retailers nationwide from April 2010 through August 2010 for between \$150 and \$200. Consumers should immediately stop riding the bicycles and contact any authorized Easton Sports for a free replacement top seat clamp. For more information, contact Easton Sports toll-free at (866) 892-6059 or visit its website at [www.eastonbike.com](http://www.eastonbike.com).

### **ROLLERBLADE USA RECALLS SKATES DUE TO RISK OF INJURY**

About 29,000 pairs of Spark, Spitfire Inline Skates have been recalled by Rollerblade USA, of West Lebanon, New Hampshire. The frame mounting bolts

and wheel axle bolts can be loose on new skates. Loose wheels or frames on the skates can cause the rider to fall, posing a risk of injury. Rollerblade USA has received 31 reports of loose bolts, including one report of a fall resulting in minor injuries that required medical attention. This recall involves several models of inline skates purchased since September 2009.

The skates were sold at sporting goods stores nationwide and on the Internet from September 2009 through July 2010 for between \$80 and \$160. Consumers should immediately inspect all wheel-axle and frame-mounting bolts to ensure that they are properly tightened. Rollerblade USA recommends regular inspection and tightening of bolts. After wheel-axle and frame mounting bolts are inspected and tightened if needed, products are acceptable for sale & use. Video instructions on bolt tightening and maintenance are available at [www.rollerblade.com](http://www.rollerblade.com). For additional information, contact Rollerblade USA at (800) 232-7655 or visit its website at [www.rollerblade.com](http://www.rollerblade.com).

### **BASSETTBABY RECALLS DROP-SIDE CRIBS**

Bassett Furniture Industries, Inc., of Bassett, Virginia, has recalled about 90,000 Bassettbaby drop-side cribs with external plastic hardware. The crib's drop-side rail can malfunction, detach or otherwise fail, causing part of the drop side to detach from the crib. The firm and CPSC are aware of 18 reported incidents in which drop-sides malfunctioned or detached from the crib. No injuries were reported. In one of the incidents a child became entrapped between the mattress and the drop-side. In three of the incidents children fell out of the cribs. The firm also has received 154 reports of drop-side hardware breaking during shipment, assembly or use.

The recalled cribs are wooden with a metal mattress support and have a drop side with external plastic hardware. The cribs were sold in a variety of finishes. A label is attached to the footboard or headboard with the names "Bassettbaby" or "Bassett Furniture Industries, Inc." as well as the model number, production date and other information. On some older

models the manufacturer's name appears on a separate label. This recall does not include non drop-side cribs. The cribs were sold at children's product stores, and other retailers nationwide and on-line from January 2000 through August 2010 for between about \$200 and \$500. Consumers should immediately stop using the recalled drop-side cribs and contact Bassettbaby for a free kit that will immobilize the drop side. In the meantime, parents are urged to find an alternate, safe sleeping environment for the child, such as a bassinet, play yard or toddler bed depending on the child's age. For additional information, contact Bassettbaby at (800) 308-7485, or visit its website at [www.bassettbaby.com](http://www.bassettbaby.com).

### **WINDOW SHADES AND BLINDS RECALLED AMID SAFETY REVIEW**

The death of a toddler who strangled in a window shade cord has caused a huge recall. This recall came as the industry is developing a better standard to make window coverings in American homes safer for children. Hanover Direct Inc., of Weehawken, New Jersey, is recalling about 495,000 roman shades and some 28,500 blinds. Hanover is the parent company for Domestications, The Company Store, and Company Kids. The 22-month-old boy in Cedar Falls, Iowa, became trapped in the pull cord of a roman shade in May. The infant was found hanging by his neck and was rescued by his father, but died later at a hospital.

The CPSC estimates that one child dies every month after strangling on the cords of blinds or roman shades. Consumer safety groups have complained that the government and industry have been slow over the last two decades to cut child deaths from blinds. More recently, however, CPSC has stepped up its efforts to get safer window coverings on the market. While there have been millions of blinds and shades recalled in the past several years, safety advocates say fatality rates haven't improved much and the process for moving safer designs to the market has been sluggish. The problem is the cord on the blinds and shades that rolls them up and down. Young children can get tangled and trapped in the cords, leading to injuries and deaths. Since 1990, CPSC estimates that nearly 250

infants and young children have died from accidentally strangling on window cords.

This recall involving Hanover is an expansion of a previous recall from October 2009 of about 90,000 roman shades. Thousands more roman shades as well as roller and roll-up blinds are now being called back. The products were sold through the company nationwide from January 1996 through October 2009. Consumers can contact the company at 800-453-1106 or [www.domestications.com](http://www.domestications.com) and [www.hanoverdirect.com](http://www.hanoverdirect.com) for more information.

### **GE RECALLS DISHWASHERS DUE TO FIRE HAZARD**

About 174,000 GE Profile™ and GE Monogram® Dishwashers have been recalled by GE Appliances & Lighting, of Louisville, Ky. Water condensation can drip onto the electronic control board, causing a short circuit and resulting in an overheated connector. This poses a fire hazard to consumers. GE has received five reports of fires, four of which caused minor damage to the kitchen countertops where the dishwashers were installed and one caused minor damage to adjacent cabinets and smoke damage to the home. This recall involves the GE Profile dishwashers manufactured between July 2003 and December 2005 and GE Monogram dishwashers manufactured between January 2004 and December 2006.

The dishwashers were sold in white, black, bisque, stainless steel and with custom panels. The recalled model and serial numbers can be viewed at [www.geappliances.com/recall](http://www.geappliances.com/recall). The recalled model and serial numbers are located on the inside on the front left side of the dishwasher tubs. The dishwasher was sold at retail stores nationwide, appliance dealers and authorized builder distributors from July 2003 through December 2006 for between \$750 and \$1,400.

Consumers should immediately stop using the recalled dishwashers, disconnect the electric supply by shutting off the fuse or circuit breaker controlling it and inform all users of the dishwasher about the risk of fire. Contact GE for a free in-home repair or to receive a GE rebate of \$200 for the

purchase of a new GE Profile dishwasher and a GE rebate of \$400 for purchase of a new GE Monogram dishwasher. For additional information, contact GE toll-free at (877) 275-6840 or visit the company's website at [www.geappliances.com/recall](http://www.geappliances.com/recall).

### **HAIER AMERICA RECALLS CHEST FREEZERS DUE TO FIRE HAZARD**

Haier America Trading LLC, of New York, has recalled about 67,500 chest freezers. A capacitor in the freezer's circuitry can overheat, posing a fire hazard. Haier America and CPSC have received reports of 18 incidents, including four reports of fires with minor property damage, consisting of smoke damage, damage to a wall, and food spoilage. There have been no reports of injuries. This recall involves the Black & Decker® Model BFE53 and Haier® Model ESNCM053E 5.3 cubic foot capacity white chest freezers. "Black & Decker" is printed at the front upper-right corner or "Haier" is printed on the front upper-left corner of the freezer. "Black & Decker" or "Haier," the model number, the unit's serial number and other information are printed on a rating label at the top center of the back of the freezer. Only Model BFE53 and Model ESNCM053E freezers with serial numbers beginning as follows are included in this recall: 1001, 1002, 1003, 1004, 1005, 1006, and 1007.

Black & Decker Model BFE53 was sold exclusively at Wal-Mart nationwide from January 2010 through September 2010, for about \$150. Haier Model ESNCM053E was sold through Amazon.com and other retailers from May 2010 through October 2010 for between \$220 to \$290. Consumers should immediately unplug their freezer and contact the company to schedule an appointment for a free repair to the freezer. For additional information, call the company toll-free at (877) 878-7579 or visit its website at [www.chestfreezerrecall.com](http://www.chestfreezerrecall.com).

### **HUNTER SAFETY SYSTEM RECALLS CARABINERS DUE TO FALL HAZARD**

About 16,000 Carabiners have been recalled by Hunter Safety System of Danville, Ala. The pins in the carabiners can detach, causing a climbing strap to break free from the safety harness. This

can result in the climber falling. The company says it's aware of two reports of the carabiner pins detaching. No falls or injuries have been reported. The 2010 Year HSS Ultra-Lite carabiners were supplied with the HSS-300 Ultra-Lite full body climbing safety harness. The carabiners are black with a pin sticking out of the gate. They have "CB20101" stamped on the side opposite the gate. The carabiners were sold at outdoor hunting retailers and directly from the company via telephone and the company's website at [www.huntersafetyssystem.com](http://www.huntersafetyssystem.com) from June 2010 through September 2010 for about \$100. Consumers should immediately stop using the carabiners and return them to the company for a free replacement. For additional information, contact Hunter Safety System toll-free at (877) 296-3528 or visit its website at [www.hssvest.com](http://www.hssvest.com).

#### **PRIMAL VANTAGE EXPANDS RECALL OF PLASTIC TREE STEPS**

Primal Vantage Co., Inc., of Randolph, New Jersey, has recalled about 40,000 Ameristep Plastic Strap-On Tree Step. The plastic portion of the step can break, posing a fall hazard to the user. Primal Vantage has received six complaints of step breakage, including two reports of consumers being bruised and cut. The product is a plastic tree step that attaches to a tree via a nylon strap and a large metal buckle. It is used to climb a tree in order to hunt from an elevated position. Model numbers 105 and 155 both have a "08," which is stamped on the plastic portion of the step denoting the year of manufacture.

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

#### **BEMAN RECALLS BOWHUNTING ARROWS**

Beman, of Salt Lake City, Utah, has recalled about 11,300 Beman Bone Collector Arrows. The recalled arrows can break when launched and hit unintended targets, posing a puncture hazard to the user and bystanders. Beman received an incident report involving two arrows. No injuries have been reported. This recall involves Beman Bone Collector Arrow sizes 340 and 400 with lot numbers 107545100, 107747900 and 107545200. "Beman," "Bone Collector," "340" or "400" and the lot number are printed on the arrows. The arrows are black with green designs and are made of carbon composite material. The arrows were sold without tips. The arrows were sold at sporting goods stores nationwide between August 2010 and September 2010 for about \$70 per half dozen. Consumers should immediately stop using the recalled arrows and contact Beman to return the recalled arrows in exchange for free replacement arrows. For additional information, contact Beman toll-free at (888) 380-6234 or visit the firm's website at [www.beman.com/recall](http://www.beman.com/recall).

#### **SANDOZ RECALLS METHOTREXATE INJECTION VIALS**

German drug maker Sandoz is recalling two sizes of methotrexate injection vials sold under the Sandoz and Parenta brands because of the possible presence of glass flakes. "While it is unlikely," injection of the drug from affected vials "could lead to serious adverse events, resulting in disability and death," Sandoz said in a statement, which also recommended that patients immediately stop use of the affected product. The flakes resulted from delamination of glass used to make the 50 mg and 250 mg vials of the drug. Sandoz said that so far it has not received any reports of adverse events or product complaints connected to the flaking, including in vials from lots in which the particles were found.

Methotrexate is an anti-metabolite—it slows the growth of certain kinds of cells—and is used to treat severe cases of psoriasis and rheumatoid arthritis, as well as leukemia, breast cancer and other cancers. It can cause serious, sometimes fatal toxic reactions and is generally a treatment of last resort. The

recall covers 24 lots, including four lots in which the flakes were detected. The company statement did not explain how many vials were in the lots and a Sandoz spokesman did not immediately respond to an e-mail message seeking more information.

#### **JOHNSON & JOHNSON RECALLS BENADRYL AND MOTRIN**

Johnson & Johnson has recalled Children's Benadryl Allergy Fastmelt Tablets and Junior Strength Motrin. The recall involves cherry and grape flavors of the Fastmelt tablets that were distributed in the U.S., Belize, Barbados, Canada, Puerto Rico, St. Martin, and St. Thomas, as well as 24-count packages of Junior Strength Motrin Caplets distributed in the U.S.

According to the company, there is no health danger. It says consumers can continue to use the products. Johnson & Johnson says it initiated the recall after a review revealed "insufficiencies in the development of the manufacturing process." In the past year, J & J recalled tens of millions of bottles of Tylenol, Motrin, and other nonprescription drugs. If you have concerns or questions, call the company at 888-222-6036.

#### **LIPITOR PILLS RECALLED DUE TO MOLDY SMELL**

Drugmaker Pfizer Inc. has recalled 38,000 bottles of its blockbuster cholesterol drug Lipitor due to an unpleasant odor, the third recall this year related to the problem. The latest recall was triggered by two consumer complaints about a musty or moldy odor on Lipitor bottles, which are made by an outside company in Puerto Rico. Pfizer has recalled over 360,000 bottles of Lipitor in the last three months because of the issue. The company recalled 140,000 bottles in August and another 191,000 in late November. The latest action affects two product lots.

Pfizer said the issue was caused by trace amounts of a chemical called 2,4,6-tribromoanisole, which is used to treat wooden pallets often used to store and ship bottles. According to Pfizer, its inspectors found the chemical in packaging materials and wooden pallets at the Puerto Rican plant which

supplies its bottles. Any Lipitor user who encounters the odor can have their bottle replaced at the pharmacy at no charge. Lipitor is the best-selling prescription medication in the U.S., with \$7.5 billion in sales last year, according to health care data firm IMS Health.

### **RECALL OF MEDTRONIC TISSUE DEVICE STEPPED UP**

According to U.S. health regulators, a recalled Medtronic Inc. Tissue device could cause more problems than originally thought. The device maker recalled its Octopus Nuvo Tissue Stabilizer in September because part of it could break, leading to fragments falling into patient chests and damaging the heart. Officials with the FDA now say “there is a reasonable probability” that use of the recalled product will cause serious harm or even death and have upgraded it to a Class I recall. The device is used to help stabilize tissue during certain surgical procedures. Health care facilities should stop using the devices. The company says 571 have been distributed in the United States, Europe and Canada and that it is working to retrieve them.

### **THE CHILDREN’S PLACE VESTS RECALLED**

A New Jersey company is recalling about 3,300 girl’s outdoor vests with metal snaps that could come off and pose a choking hazard. The white ruffle outdoor vests were imported from China by The Children’s Place Services Co. of Secaucus, New Jersey, and sold online at [www.childrens-place.com](http://www.childrens-place.com) in September for about \$20 each. The vests are quilted with a fake fur hood. The metal snaps on the vest can detach posing a choking hazard. Consumers who purchased the vests should have received mailed instructions for returning the vests for a full refund. Consumers can call 877-752-2387 for information.

### **TRADER JOE’S PASTA SALAD RECALLED**

Pasta salad sold at Trader Joe’s is being recalled because of a possible salmonella threat. APPA Fine Foods recalled 12 oz. packages of its ‘Spicy Thai Style Pasta Salad’ produced from October

25<sup>th</sup> through 29<sup>th</sup>. The packages have the establishment number “P-21030” in the USDA Mark of Inspection and a “use by” date of October 31<sup>st</sup> or November 1-6, 2010.”

### **LATEST EGG RECALL OVER SALMONELLA AFFECTS 228,000 EGGS**

Egg distributor Cal-Maine Foods has issued an egg recall of 228,000 eggs from eight states because of concerns over potential salmonella enteritidis contamination. Cal-Maine’s website lists brand names and expiration dates of potentially contaminated eggs that were sold in Arkansas, California, Illinois, Iowa, Kansas, Missouri, Oklahoma and Texas. The company acted after the FDA found salmonella in a routine sample test at a small Ohio farm that provided eggs to Cal-Maine. No reports of salmonella have been linked to sales of the recalled eggs. In August, more than a thousand people across the nation were sickened in a salmonella outbreak that prompted a recall of 380 million eggs traced to two Iowa farms. Symptoms of salmonella poisoning include fever, abdominal cramps and diarrhea that starts 12 to 72 hours after eating contaminated food or beverage, the Centers for Disease Control and Prevention reports. The agency’s salmonella enteritidis page explains how eggs become contaminated and what you can do to lower your risk.

### **ORVAL KENT FOOD COMPANY RECALLS PRODUCTS CONTAINING CILANTRO**

Orval Kent has recalled 23 products as a precautionary measure because the products may be contaminated with Salmonella. The Orval Kent products are being recalled because they contain fresh cilantro produced and distributed by EpicVeg, Inc. of Lompoc, California. Epic Veg, Inc. issued the notice to recall one lot of cilantro with the UPC code 033383801049 and lot 6127R on November 3<sup>rd</sup>. This lot of cilantro has the potential to be contaminated with Salmonella. EpicVeg, Inc. distributed the cilantro to Field Fresh Foods, a produce supplier to Orval Kent.

Consumers who have recently purchased the items listed below should not consume this product and should return it to the store of purchase for a

full refund or replacement. For more information on Salmonella, which can be life-threatening, visit the Centers for Disease Control and Prevention’s website at <http://www.cdc.gov>.

Orval Kent products affected total 43,814 lb. The recalled products were distributed at retail stores nationwide. There have been no reports of illness to date in connection with the items. Consumers with questions may contact Orval Kent at 800-544-1246. You can contact the recall coordinator Bill Schwartz by email at [william.schwartz@orvalkent.com](mailto:william.schwartz@orvalkent.com).

### **ROCKING HORSE DEPOT RECALLS ROCKING HORSE TOYS**

About 1,200 rocking horses are being recalled by Rocking Horse Depot, of Buckeye, Ariz. The reins on the rocking horse bridle is long enough to form a loop around a child’s head and neck, posing a strangulation hazard to young children. CPSC has received one report of a near strangulation incident involving a 21-month-old girl who became entangled in the reins at her neck. The girl’s parents freed her without injury. This recall involves Rocking Horse Depot’s small, medium and large rocking horses with bridles. The rocking horse has a hardwood frame and is covered with synthetic hide. Each rocking horse has fluffy mane and tail, and a leather Rocking Horse Depot emblem on the right side of the saddle. The rocking horses were sold at [RockingHorseDepot.com](http://RockingHorseDepot.com) from November 2006 through December 2009 for between \$105 and \$185. Consumers should immediately remove or cut the reins to eliminate the hazard. Consumers can also contact Rocking Horse Depot for instructions on how to remove the reins. For more information, please contact Rocking Horse Depot collect at (623) 302-6313, or visit its website at [www.rocking-horsedepot.com](http://www.rocking-horsedepot.com).

### **DOLLAR TREE RECALLS CHILDREN’S HALLOWEEN LANTERNS**

About 682,000 Pumpkin, Ghost and Skull Halloween Lanterns were recalled by Greenbrier International Inc., of Chesapeake, Virginia. The bulb in the battery-operated lanterns can overheat, posing fire and burn hazards

to consumers. The firm has received one report of the bulb in a lantern overheating, but no injuries have been reported. This recall involves plastic Halloween-themed lanterns designed to resemble a pumpkin, ghost and skull. The lanterns are about 6 1/2-inches tall and were sold in orange, white and black. Model number 954439-13096-003-1005 is printed on a label on the bottom of the lanterns. The lanterns were sold at Dollar Tree, Dollar Bill\$, Occasions, Deal\$ and Dollar Tree Deal\$ stores nationwide from August 2010 to October 2010 for about \$1.

If any of these lanterns were left over from Halloween, they should be taken away from children immediately. Remove and properly discard the batteries and return the lanterns to the store where purchased for a full refund. For additional information, contact Dollar Tree Stores Inc. At (800) 876-8077, or visit the company's website at [www.dollartree.com](http://www.dollartree.com).

#### ***NEW BRAUNFELS SMOKEHOUSE TURKEY PRODUCTS RECALLED***

About 2,609 pounds of fully cooked, ready-to-eat smoked turkey breast products sold by New Braunfels Smokehouse of New Braunfels, Texas, have been recalled because they may be contaminated with the bacterium *Listeria monocytogenes*. The organism can cause serious and sometimes fatal infections in young children, frail or elderly people, or people with weakened immune systems. The turkey items were produced August 4<sup>th</sup> and distributed nationwide. The products subject to recall include:

One-pound packages of New Braunfels Smokehouse Sliced Smoked Turkey with package code 2210 on the label.

Four- to six-pound packages of New Braunfels Honey-Glazed Spiral Sliced Smokehouse Hickory Smoked Boneless Breast of Turkey with package code 2180.

Four- to six-pound whole breast packages of Stegall Boneless Hickory Smoked Turkey Breast with package code 2210.

Four- to six-pound whole breast packages of Stegall Spiral Sliced Hickory

Smoked Turkey Breast with package code 2180 or 2210.

Consumers with questions about the recall should contact the company at 800-537-6932.

#### ***POTTERY BARN RECALLS LAMPS DUE TO SHOCK HAZARD***

Pottery Barn, of San Francisco, California, is recalling about 7,300 Pottery Barn Lamps. The electrical wire that runs through the lamps can be pinched or severed at the lamp's adjustable joint, posing a risk of electric shock to consumers. Pottery Barn has received one report of a consumer who received an electrical shock when she touched the lamp. This recall involves Pottery Barn's Clay Task Lamp (Model #2467553), the Montgomery Task Lamp (Model #9691783) and the Montgomery Floor Lamp (Model #9691775). All of the lamps have bronze-colored finishes. "Pottery Barn" and the model number are printed on the bottom of the lamp. Pottery Barn stores nationwide, in Pottery Barn's catalog and on its website [www.potterybarn.com](http://www.potterybarn.com) from July 2009 through August 2010 for between \$60 and \$300. Consumers should immediately stop using the recalled lamps, unplug them and contact Pottery Barn for instructions on how to return the lamp for a full refund. For additional information, contact Pottery Barn toll-free at (877) 851-7890 or visit its website at [www.potterybarn.com](http://www.potterybarn.com).

#### ***MOTORIZED AWNINGS RECALLED BY SOMFY SYSTEMS DUE TO SHOCK HAZARD***

About 4,600 Motorized Awnings have been recalled by Somfy Systems Inc., of Dayton, New Jersey. The awning motor's power cable can be severed while the awning is opened or closed manually, posing a risk of electrical shock to the user. This recall involves the Sunea CMO RTS motor used to operate retractable awnings. The awning motor heads are silver and black-colored. "Somfy" is printed on the motor head. Motor heads that are entirely black in color are not included in this recall. The Sunea CMO RTS model numbers included in this recall are 525A2, 535A2 and 550R2. The model number is printed on a label on

the motor tube. Awning dealers and retailers nationwide from December 2009 through September 2010. Consumers should immediately stop using recalled awning motors and the awning's manual crank and unplug and/or pull the circuit breaker to protect against anyone using the awning. Contact Somfy Systems to receive free installation of a replacement awning motor. For additional information, contact Somfy Systems at (800) 637-6639 or visit its website at [www.somfysystems.com](http://www.somfysystems.com).

#### ***ROBERT BOSCH TOOL RECALLS BOSCH HAMMER DRILLS***

Robert Bosch Tool Corporation, of Mt. Prospect, Illinois, has recalled about 20,000 Bosch hammer drills. The models have a grounding system and trigger switch that could cause ground wire abrasion and/or ground connector failure posing a shock hazard. In addition, the switch trigger could become stuck in the "on" position posing an injury hazard to the user. Bosch 1/2 inch 2-Speed Hammer Drill with model number HD19-2, HD19-2D, HD19-2L and 1/2 inch 2-Speed Hammer Drills with model number HD 21-2 are included in this recall. "BOSCH" is printed in red lettering on the side of the drills. The drills were sold at home improvement, hardware and major retailers nationwide and various distributors from September 2009 through August 2010 for between about \$140 and \$220. Consumers should immediately stop using the hammer drill and return hammer drill to Robert Bosch Tool Corporation for repair. For additional information, contact Bosch toll-free at (866) 244-2110 or visit its website at [www.Boschtools.com](http://www.Boschtools.com).

CPSC is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. You can tell the CPSC about it by visiting <https://www.cpsc.gov/cgibin/incident.aspx>. Also, 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](http://www.BeasleyAllen.com/recalls). We would also like to know if we have missed any significant recall that involves a safety issue this month. If so, please let us know. You may also contact Shanna Malone at Shanna.

Malone@beasleyallen.com for more recall information.

## XXII. FIRM ACTIVITIES

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### EMPLOYEE SPOTLIGHTS

#### MICHELLE FREEMAN

Michelle Freeman, who is a clerical assistant to Roger Smith in the Mass Torts Section, has been with the firm since September 4, 2007. Her primary duties are assisting with sending out various correspondence to clients and other law firms such as update letters, settlement documents, settlement payments, referral payments and requests for additional information regarding their claims. In addition to assisting with the various mail outs, one of Michelle's other primary responsibilities is downloading medical records related to the Yaz, Yasmin and Ocella litigation and documenting them in the appropriate files. She also assists with various projects when needed.

Michelle and her husband Brian have been married since 1996 and God has blessed them with a very special little girl named Haley who is six years old. When Haley was two months old, her pediatrician discovered she had a heart murmur that required immediate open heart surgery due to a rare congenital heart defect called Total Anomalous Pulmonary Venous Return (TAPVR). Michelle says they are so thankful to her wonderful medical staff of doctors, nurses, her amazing surgeon in Atlanta, the love and kindness of friends, family and even strangers and most importantly God for getting her through this tough journey. We are so thankful Haley is doing great and is a very active six year old who loves her friends, family, church and school.

Michelle is a 1990 Graduate of Alabama Christian Academy and attended Auburn University Montgomery and Troy University Montgomery. She and her family are huge Alabama fans. She has ridden, raised and shown Quarter Horses her entire life but hasn't gone back to riding since her daughter was born. The family is very active in organizations that help raise awareness about congenital heart defects by attending meetings, heart walks and other functions. Michelle is also very involved in support groups for other families that are going through this same journey by offering support and prayers as they go through this

difficult time. Michelle has been collecting pop tabs for the last six years for the Ronald McDonald House in Atlanta to help it raise money for their houses for families that need a place to stay free of charge while their children are in the hospital and need a home away from home. Michelle and her family collect these pop tabs in memory of a very special family they met in Atlanta who lost their precious son. Michelle is a very good employee and we are blessed to have her with us.

#### BRAD SMELSER

Brad Smelser came to the firm in May 2007 after his first year of law school. He worked as a Law Clerk full-time in the summers and part-time during the fall and spring semesters during the remainder of his time in law school. Brad successfully passed the Alabama bar exam in September 2009 and now serves as a Staff Attorney in our Consumer Fraud Section. He spends the vast majority of his time helping on cases involving violations of the Fair Labor Standards Act. This is the federal law that, among other things, establishes the federal minimum wage and overtime compensation requirement. Brad primarily investigates potential cases, writes briefs, and helps prepare depositions.

Brad graduated from the University of Alabama, *cum laude*, in May 2005 with a degree in Commerce and Business Administration, majoring in finance. He attended Thomas Goode Jones School of Law of Faulkner University and received his juris doctor, *cum laude*, in May 2009. While attending law school, Brad had an outstanding record in the law school. He was Managing Editor of the law review, was one of ten law students named as Who's Who Among Students, and was on the Dean's List.

Brad and his fiancé, Mary, have two children, five-year-old Karley and two-year-old Garrett. Brad's favorite pastime is spending time with his children. He also enjoys watching baseball and reading a good book. Brad has been a good and dedicated employee and we are fortunate to have him with the firm.

#### WILL SUTTON

Will Sutton is currently working for the firm as a lawyer in an Of Counsel role, in our Toxic Torts Section. Will, who graduated from Auburn University in 2007 with a B.A. in Political Science, obtained his juris doctor at Thomas Goode Jones School of Law in 2010. While attending law school, Will was a member of the American Association for Justice. He has also studied international criminal law in the Netherlands.

Will started to work for the firm while he was in law school. He worked in the Consumer Fraud Section as a law clerk, where he assisted lawyers with Fair Labor Standards Act litigation and in civil fraud cases. He began working as a contract attorney in the Toxic Torts Section in October 2010 after passing the Alabama Bar Exam. He is currently working on the BP litigation, which has expanded greatly since we started our work on this matter. Will has done a very good job since coming to the firm. He has been a real asset and we are fortunate to have Will with us.

### THE FOURTH ANNUAL LEGAL STRATEGIES CONFERENCE

Our firm hosted the fourth annual Legal Strategies Conference & Expo at the Renaissance Montgomery Hotel in Montgomery on November 19<sup>th</sup> and 20<sup>th</sup>. The event, attended by 1,458 lawyers, provided continuing legal education credits. The conference has grown steadily each year since we held the first one in 2007, which attracted about 400 lawyers.

Practice areas addressed included Product Liability, Mass Torts, Environmental and Fraud litigation. Special programs include the topic of Legal Ethics. In addition to lawyers from our firm, the meeting featured as speakers the following: Dr. David Bronner, CEO of the Retirement Systems of Alabama; Morris Dees, Founder and Chief Trial Counsel, Southern Poverty Law Center; Judge Charles Price, Judge Joel Dubina; Alyce Spruell, current President, Alabama State Bar; and Tony McLain, General Counsel, Alabama State Bar. John Croyle, founder of the Big Oak Ranch, was the speaker at the prayer breakfast on Saturday morning.

A number of vendors had booths and provided demonstrations of products, services and answered questions about how lawyers can best enhance their practice. The event sponsors were LexisNexis, Lawyers.com, Freedom Court Reporting, Garretson Firm Resolution Group, Inc.; Asbury Newton, Berney Office Solutions, Burton & Associates, Forge Consulting, LLC; Boosters, Inc.; Harmon, Dennis, Bradshaw; Jackson Thornton Valuation & Litigation, MediConnect, Needles, American Bar Association Retirement Funds, RGK Consultants, LLC; Alabama Office Supply, American Association for Justice, BEC Consulting, BigHand, Inc.; Clustify/Hot Neuron LLC, Crivella West, EasySoft, Jack Ingram Motors, Med Art & Legal Graphics, Pro Law, The Locker Room, and DiscoverEPartners.

The Expo also featured the BeasleyAllen.com Racing ARCA car, and lawyers from around the state were able to meet Grant Enfinger, the driver. Legal and community groups including the Alabama State Bar Volunteer Lawyer Program, Alabama Law Foundation, Alabama Civil Justice Foundation and Jones School of Law also were present to meet with lawyers in attendance over the two-day event. We are extremely pleased to have been able to offer this conference as a service for lawyers throughout the state of Alabama. This was a valuable opportunity for continuing education, as well as providing the chance for networking with other lawyers. The convention was deemed a total success.

## XXIII. SPECIAL RECOGNITIONS

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Wendi Lewis, who serves as Communications Director for the firm, wrote the following piece for this issue about a local ministry that is doing good work in Montgomery. I believe you will find it most interesting. It's good to know that folks who really need help are getting it.

### **CHURCH OF THE BARREL PUTS FAITH TO WORK**

A cold wind blows, scattering leaves and tattered bits of paper across the overgrown yard. The brown grass crunches underfoot as a group of men form a circle around a 50-gallon drum filled with burning debris. They hold their hands out to its heat and wait. A few tuck bottles of liquor into their pockets, still in the thralls of an addiction. Some of the men wear faded work pants and battered shoes, their faces scruffy with beards. But take a closer look and you will see others in the circle who seem out of place with their shiny loafers, suits and ties, and fresh haircuts. But they have a special light about them, as they reach out to their brothers around the barrel, sharing lunch, bringing warm clothes, hats and gloves, and, even better than that, a message of hope and salvation.

This is the "Church of the Barrel," a ministry born out of the recognition of a need, and a burning desire to share Jesus in the hope of changing lives. It started about a year ago, almost by

accident, although the men who create this ministry each week in the abandoned yard at the corner of Rosa Parks Avenue and Stone Street wouldn't call it that. They know this is something they were called to do.

A group of men from Vaughn Forest Church, along with a mission ministry called TREC International, learned about a group of homeless men who were gathering in the yard to drink and stay warm around a fire they would light in a barrel. The ministry started by bringing these men warm clothes, boots and gloves, and helping them with odds and ends, things they needed, and running errands for them. Eventually, the homeless men asked the missionaries—for that's what they are, even if their mission field is a little closer to home by most people's definitions—for a Bible study.

"We decided to do it on Tuesdays at lunch," recalls Chris Glover, a lawyer in our firm who attends Vaughn Forest, and who has been a part of the ministry from the beginning. "The first day we brought fried chicken. One of the homeless guys called it 'bird with the Word.' We had a fire in the barrel burning to stay warm that day. Thus, the 'Church of the Barrel' was born."

The group is committed to meeting, sharing lunch and studying the word of God with the homeless each Tuesday. They started with a ministry for three or four men, and now meet weekly with a group of about 15 people, including a few women. They know that only God is powerful enough to make a difference in the lives of the people they minister to, who are facing huge odds and years of hardship.

"We have a lot to do," Chris says. "These guys are surrounded by temptation, live on the streets, and have had a lifetime of defeat. It's amazing that we are so close to so much hurt. These guys live within two miles of our office. Yet, it is a world away. The Word of God will make a difference so we keep bringing it," he says.

Chris says they have seen miracles. Some have been healed of physical ailments, even a serious heart problem. Alcoholics have been released from their addiction, and are turning their lives around. Some have found jobs and now have homes, and

for maybe the first time in their lives, they have hope.

It is evident to Chris that God is working in the lives of those who need it most, but the ministry also blesses those who are working in it, he says. "I've been blessed in ways I could never imagine by going. It isn't easy, but God blesses our obedience. We all have different callings and the key is to go when Christ says go and do when he says do, whatever and where ever that is. Despite the obstacles, I love to go."

Chris says he is constantly reminded of the scripture found in James 2: 14-17:

*"What good is it, my brothers and sisters, if someone claims to have faith but has no deeds? Can such faith save them? Suppose a brother or a sister is without clothes and daily food. If one of you says to them, 'Go in peace; keep warm and well fed,' but does nothing about their physical needs, what good is it? In the same way, faith by itself, if it is not accompanied by action, is dead."*

For more information about the TREC International ministry program, which not only works in Montgomery, but also worldwide, visit [www.trecmud.com](http://www.trecmud.com). TREC urges Christians to "Get Your Faith Dirty" by putting it to work to help those in need.

Wendi Lewis  
Communications Director  
Beasley Allen

### **FAMILIES OF THE YEAR**

The winners of the 22<sup>nd</sup> annual Families of the Year Awards in Montgomery were announced in Montgomery and the honorees were recognized on November 14<sup>th</sup>. The families were selected from central and south Alabama communities. Among the six families honored were the Andy and Tanya Birchfield and the Cole and Joy Portis families. Andy heads up the firm's Mass Torts Section and Cole is the head of our Product Liability Section. Our firm is blessed to have two such fine examples of families that make a real difference in their communities. We are very proud of them.

## THE ST. JAMES MOCK TRIAL TEAM

This fall Stephanie Emens, a lawyer who serves in an Of-Counsel role with the firm, has been coaching a YMCA Youth Judicial Mock Trial team composed of seven ninth-graders from St. James School in Montgomery. The Youth Judicial program gives high school students a taste of the legal world by having them actually prepare and try a mock civil lawsuit. The students learn proper courtroom procedure and are also expected to be knowledgeable on an abridged version of the rules of evidence. The team competed in the state competition last month and received first place for their Plaintiff's team! Caitlin Cobb, the daughter of Chief Justice Sue Bell Cobb, was on the team and received an award for being one of the top advocates in the competition.

This was the first year for St. James to field a mock trial team. The team members were able to hold their own against older and more experienced teams. It also was Stephanie's first time to coach a team. She says the team members were very excited when they won!

## XXIV. FAVORITE BIBLE VERSES

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My friend John Gibbons, who heads up the Fellowship of Christian Athletes in Alabama, sent in the following verses:

*"Rejoice and be glad, because great is your reward in heaven, for in the same way they persecuted the prophets who were before you." "You are the salt of the earth. But if the salt loses its saltiness, how can it be made salty again? It is no longer good for anything, except to be thrown out and trampled by men." "You are the light of the world. A city on a hill cannot be hidden."*

Matthew 5:12-14

*Greater love has no one than this, than to lay down one's life for his friends.*

John 15:13

Betty Baggott, who resides in Montgomery and comes to the firm once a month to give a devotion, furnished this verse.

*But seek first the kingdom of God and His righteousness, and all these things shall be added to you.*

Matthew 6:33

Chris Glover, a lawyer in our firm who handles product liability cases, says he has many favorite Bible verses. But he says that his real favorite is Luke 9: 23-26. Chris considers it a blessing to share the verse with others and believes it's the key to life. He says the verse is the exact opposite of worldly wisdom.

*Then he said to them all, if anyone desires to come after me, let him deny himself, and take up his cross daily, and follow me. For whosoever desires to save his life shall lose it: but whoever loses his life for My sake will save it. For what is a man advantaged, if he gain the whole world, and lose himself, or be cast away? For whosoever shall be ashamed of me and my words, of him shall the Son of man be ashamed, when he shall come in his glory, and in his Father's, and the holy angels.*

Luke 9:23-26

Vaughn Stafford, who serves as Pastor of Worship and Design at St. James United Methodist Church in Montgomery, has a number of favorite Scriptures including Jeremiah 29:11; Phil 4:13; Romans 8:28; Isaiah 40:28-31; 1 Cor 13; and Psalm 23, just to name a few. But he says his current favorite involves the power, humility, compassion and passion of Isaiah found in Isaiah 6:1-8. Let's take a look at "Isaiah's commission."

*In the year that King Uzziah died, I saw the Lord sitting on a throne, high and lifted up, and the train of His robe filled the temple. Above it stood seraphim; each one had six wings: with two he covered his face, with two he covered his feet, and with two he flew. And one cried to another and said: "Holy, holy, holy is the LORD of hosts; The whole earth is full of His glory!" And the posts of the door were shaken by the voice of him who cried out, and the house was filled with smoke. So I said: "Woe is me, for I am undone! Because I am a man of unclean lips, And I dwell in the midst of a people of unclean lips; For my eyes have seen the King, The LORD of hosts." Then one of the seraphim flew to me, having in his hand a live coal which he had taken with the tongs from the altar. And he touched my*

*mouth with it, and said: "Behold, this has touched your lips; Your iniquity is taken away, And your sin purged." Also I heard the voice of the Lord, saying: "Whom shall I send, And who will go for Us?" Then I said, "Here am I! Send me."*

My long time and very good friend Tom Boggs, who is a highly successful lawyer from Marengo County, says Proverbs 22 is his favorite verse and especially the first part.

*A good name is to be chosen rather than great riches, Loving favor rather than silver and gold.*

Tom says his father passed a good name on to him and that he, under God's direction, has honored that name.

Frances Davis, Joyce Spears, and Lorraine Withers, all from Montgomery, sent in their favorite verse. Each is a member of a small group that has been meeting each Sunday night for the past several months. They also are members of St. James United Methodist Church.

*And we know that in all things God works for the good of those who love him, who have been called according to his purpose.*

Romans 8:28

## XXV. CLOSING OBSERVATIONS

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### CHILDREN ARE AT RISK FROM ADULT VIDEO GAMES

The Parent's Television Council (PTC) recently announced the results of its latest "secret shopper" campaign to determine whether or not video game retail outlets are adhering to the video game industry's guidelines, and refusing to sell M-rated video games to unaccompanied minor children. The PTC conducted 109 visits to local stores in 14 markets in 11 states: California, Colorado, Florida, Georgia, Minnesota, Mississippi, Oklahoma, Tennessee, Texas, Utah, and Virginia. During each visit, a youth between the ages of 12 and 16 attempted to purchase an M-rated video game. They were instructed not to lie or misrepresent themselves in any way.

Out of the 109 stores visited, 21 sold M-rated games to minors—a 19% failure

rate by the video game retailers. While this is an improvement by all but two chains over the PTC's previous "secret shopper" campaign in 2008, it's hardly the level of compliance parents should expect from an industry that touts its ratings system as a solution. In 2008, a survey by the Federal Trade Commission found that "20% of underage teenage shoppers were able to buy M-rated video games." Thus, compliance with ESRB guidelines—even by the ESRB's own Retail Partners—has hardly improved in two years.

Chain stores which are ESRB Retail Partners are listed by name. Other stores are considered local/regional chains. Results are listed next to the results of the PTC's 2008 campaign.

Source: Parent's Television Council

#### **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

## **XXVI. PARTING WORDS**

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We really enjoyed the Thanksgiving holiday with members of our family and we soon will be celebrating Christmas. These holidays are celebrated in various ways all over the country. Unfortunately, folks sometimes get so caught up in the commercial aspect of the holiday season that many ignore their real significance. I know that I have fallen into that trap on occasion in years past. It's important for each of us to take a few minutes to reflect on what each of these special days really means for families. Clearly, there has to be more to them than just turkey, toys and festive parties. In fact, there is even much more than just having our families together for the holidays.

During Thanksgiving, we should all have been thankful for the many blessings we enjoy on a daily basis and for all of the advantages we have just by being American citizens. Between Thanksgiving and Christmas, we have an opportunity to make sure we have our priorities in the proper order. It's also an appropriate time for us to share with others less fortunate and to help make their holiday season more joyful. This is especially true in light of the economic downturn that has affected so many families in the U.S.

As we approach Christmas Day, we should reflect on its real meaning to Chris-

tians as well as to non-Christians. Christmas can be a season of great joy and true happiness. It's a time when God shows His great love for us. It can truly be a time of healing and renewed strength. We must never forget that it's the time when we celebrate the birth of the Christ child. God sent His son—Jesus—into the world to be born and His birth brought great joy to the world. The prophets had spoken of His coming hundreds of years before. After His birth, the world would never be the same. It gave hope then and forever more.

We can truly be happy at Christmas regardless of our circumstance or of what is happening around us. No matter what is going on that may put a damper on our spirits, we can rejoice and be glad because we are the children of a loving and forgiving God. The fact that God loved us so much that He gave His one and only son to die on the cross for us makes Christmas Day a time to truly celebrate Jesus' birth. The assurance that Heaven will be our home some day is an assurance that is impossible to beat. If you haven't already done so, it's a perfect time to invite Jesus into your heart and accept Him as your Lord and Savior. The joy and peace that you will experience on Christmas Day will be greater than anything you have ever experienced and it will be everlasting.

I wish for each of you and your families a happy and joyous Christmas and a healthy, safe, prosperous and most happy New Year.

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