



THE
JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

ALABAMA GAINS IN POPULATION

Alabama's population has grown in the last decade and while that's good news, we didn't keep pace with some other states. The first census results, announced on December 21st, showed that our state's population—as of April 1, 2010—was 4,779,736, up 7.5% since 2000. But the growth rate for the Southeast region as a whole was 14.3%. The growth rate for the nation overall in the past decade was 9.7%. Interestingly, the Southeast was the fastest growing section of the United States, closely followed by the Southwest region which was at 13.8%. Both the Northeast and Midwest lagged behind, growing at 3.2% and 3.9% respectively.

Source: *Birmingham News*

THE SPECIAL SESSION

While the same results would have taken place in the regular session, the recent special session of the State Legislature appears to have accomplished what Gov. Bob Riley and the new legislative leadership wanted. The cost of the session, which I understand was about \$500,000, could have been used for other state needs had the ethics issues been handled in the regular session. But it was good politics for Gov. Riley to call the session and get the bills passed while he was still in control of state government. Some Capitol observers say that the Governor badly wanted this victory instead of allowing his successor, Dr. Robert Bentley, to get credit for passing an ethics package. Others say it was the outgoing Governor's intense dislike for Dr. Paul Hubbert that prompted his calling the session.

Regardless of his reason, there was definitely a need for passing tough ethics laws. Hopefully, the bills are as strong as the media apparently believes them to be. One bill that passed that had absolutely nothing to do with ethics was the one dealing with dues check-off. That bill was aimed directly at Dr. Paul Hubbert and AEA. Since neither Paul, nor any of the AEA members, are corrupt, I wonder

what this had to do with ethics. But, both from a political and payback perspective, this was a good move by Gov. Riley.

When signing the bills into law, Gov. Riley praised the Legislature for answering the people's mandate for accountability in government. He says Alabama now has the strongest ethics laws in the country. I really hope that is accurate. Other than the AEA bill, each of the other bills, at least to some degree, dealt with ethics issues. I believe most folks in Alabama agree the legislation should have been passed. But it appears that there are some awfully big loopholes in several of the bills.

I also have to wonder why the third-party groups such as the 527 Committees weren't dealt with in the bills. The only mention of these groups in one of the bills did absolutely nothing to curb their use. That means that out-of-state companies will be able to fund political races in our state with no disclosure requirements. Until those groups are controlled, statewide political races in Alabama will continue to be controlled by special interests. I will discuss the individual bills in more detail in the Legislative Section.

GOP PLANS A NEW APPROACH TO RUNNING STATE GOVERNMENT

One interesting happening in the special session has received little media attention. The new leadership in the House and Senate indicated they want to "examine state government with a goal of restructuring budgets." A resolution calling for a committee to study state government passed the Senate during the session, but didn't make it out of the House. Many saw that as an attempt to dilute the power and authority of the new Governor. Hopefully, that was not the reason for the resolution. I understand the resolution to create the Alabama Commission to Restructure State Government will be reintroduced in the 2011 legislative session that convenes March 1st.

Under the resolution, the commission would consist of 13 members, with the Governor, President Pro Tem of the Senate and the House Speaker serving as ex-officio members. The committee would include three people appointed by the Governor, two people and a Senator by the Senate President Pro Tem, two

people and a member of the House by the House Speaker and one person by the Lieutenant Governor. This make-up would assure that the legislative leaders would be in control of the Committee. There needs to be a spirit of cooperation between the Governor's office and both houses of the Legislature. It will be interesting to see how this most unique development works out.

Source: *Tuscaloosa News*

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THE LAWSUIT BY THE UNIVERSITY OF ALABAMA AGAINST DANIEL MOORE

I really never understood exactly why the University of Alabama filed suit against its old friend Daniel Moore. But it did, and apparently the school spent a lot of money on legal fees and the case isn't yet over. As I understand it, the suit sought to recover back pay for more than 20 paintings done by Moore, and sought to have the well-respected artist license any future paintings. A federal judge ruled in Moore's favor on the main issues in the suit and the University appealed to the Eleventh Circuit. It was reported by the *Montgomery Independent* that the University has already spent more than \$1.4 million in legal fees in its battle with Moore. Over the years I always associated Moore with Alabama football. All of his paintings were scenes from Alabama football games and were all very good. I wonder how Alabama football fans feel about this lawsuit?

Source: *Montgomery Independent*

STATE AGENCY SETTLES SUIT WITH JPMORGAN

JPMorgan Chase & Co. And the Alabama Public School and College Authority have reached a settlement to end the state's lawsuit to cancel a derivative contract that threatened to cost the state more than \$122 million. Because of the settlement, the Authority, which issues debt to finance construction, and the New York-based bank will dismiss the suit. Under the terms of the settlement, the authority paid \$19 million to JPMorgan on December 21st. Standard & Poor revised its outlook on the agency's debt to stable from negative, based on the agreement.

The case had been pending in federal court in Montgomery. The Alabama agency sued the bank in 2008 to cancel the derivative contract, which was set to take effect that year. I understand the agency would have owed JPMorgan more than \$122 million if the contract was upheld by the court. That apparently makes this a good settlement for the state. Hopefully, that is accurate since the state did the paying!

Source: *Bloomberg News*

II. A REPORT ON THE GULF COAST DISASTER

FEDERAL GOVERNMENT FILES SUIT OVER GULF OIL SPILL

The Justice Department filed suit on December 15th against BP Exploration and Production Inc. and eight other companies. The suit is based on the Gulf oil spill disaster and is an effort to recover billions of dollars from the Defendants. The lawsuit asks that the companies be held liable without limitation under the Oil Pollution Act for all removal costs and damages caused by the oil spill. This would include damages to natural resources. The lawsuit also seeks civil penalties under the Clean Water Act. As expected, the Justice Department filed the suit in federal court in New Orleans. This is a most significant filing.

The other Defendants in the case—besides BP—are Anadarko Exploration & Production LP and Anadarko Petroleum Corp.; MOEX Offshore 2007 LLC; Triton Asset Leasing GMBH; Transocean Holdings LLC and Transocean Offshore Deepwater Drilling Inc. And Transocean Deepwater Inc.; and BP's insurer, QBE Underwriting Ltd./Lloyd's Syndicate 1036. Anadarko and MOEX are minority owners of the well that blew out. Transocean owned the rig that BP was leasing. QBE/Lloyd's can be held liable only up to the amount of insurance policy coverage under the Oil Pollution Act and is not being sued under the Clean Water Act.

The lawsuit alleges that safety and operating regulations were violated in the period leading up to April 20th. It says further that the Defendants failed to keep the Macondo well under control during that period and failed to use the best available and safest drilling technology to monitor the well's conditions. The Defendants also failed to maintain continuous surveillance and failed to maintain equipment and material that were available and necessary to ensure the safety and protection of personnel, equipment, natural resources and the environment.

So far, more than 300 suits have been filed because of the spill and all have been consolidated in federal court in New Orleans. The staff of the commis-

sion appointed by President Obama, looking into the spill, has said that the disaster resulted from questionable decisions and management failures by three companies: BP, the well owner and operator; Transocean, the owner of the Deepwater Horizon rig; and Halliburton. The panel found 11 decisions made by these companies increased risk. The Justice Department has sued other companies which it says also have legal responsibility for the damages caused by the spill.

GOVERNOR RILEY CLAIMS EXTORTION BY THE BP CLAIMS FUND

Gov. Bob Riley wants action taken to stop Ken Feinberg from depriving Claimants of their "legal rights." In fact, the Governor is calling the way the fund has operated under Feinberg "extortion." He doesn't believe Claimants should be asked to sign away their rights to sue BP for damages. The Governor correctly pointed out that Feinberg has been trying his best to force Claimants to sign a "final release," before getting a check from his fund. Governor Riley is also correct that small business owners who are owed tens of thousands of dollars have received no payments since June and many have gone out of business as a result.

It was rather interesting to hear Gov. Riley say that one reason economic victims of the spill felt under pressure to sign a final settlement was because they did not know what the future held. He is absolutely correct in making that point. While we know that there will be tremendous losses and damages to Gulf Coast businesses and residents over a long period of years, nobody can say with any degree of certainty exactly what the future holds. I do know, however, that the ordeal will be very long and the losses and damages very great.

Source: *Insurance Journal*

ATTORNEYS GENERAL URGE CAUTION IN SETTling CLAIMS

Attorneys General from Alabama, Florida, Louisiana and Mississippi have warned Gulf Coast residents to "proceed with caution" before signing away their legal rights in order to accept money for oil spill claims. No Claimants should sign away their legal rights to sue BP and the

other corporations responsible for the damages caused by the largest oil spill disaster in U.S. history. Once a full release is signed, that Claimant gives up the right to file suit for future losses and damages. Interestingly, Feinberg is getting releases signed that release not only BP, but 120 separate companies. That news has largely been ignored by the media for some reason. If a Claimant accepts a final check, a complete release is being required. This means—regardless of future losses—nothing further can be recovered by a Claimant.

The Gulf Coast Attorneys General said in a joint, written statement, that they have told Feinberg of their concern about his required release. For example, if Claimants accept a final settlement and sign a waiver, they will have nowhere to turn should future losses and damages occur. The Attorneys General said in a written statement: “The GCCF final payment system requires the Claimant to predict all possible damages, current and future, that the Claimant will ever incur from the spill.” Feinberg is a typical snake-oil salesman whose “pitch” changes almost daily. I agree with the Attorneys General that folks should deal with Feinberg with great caution! He is sort of like a chameleon in that he changes his pitch quite often.

In the weeks before Christmas, Feinberg pulled another of his slick moves. Feinberg, realizing that lots of folks—including owners of small businesses who are on the verge of bankruptcy—are desperate due to BP’s refusal to pay valid claims, made what he labeled a “quick-pay deal,” which was an offer of \$5,000 to individuals and \$25,000 to business owners. These would be final payments and, as stated above, would require the recipients to sign away their rights to sue BP or any of the other companies legally responsible for the oil spill and damages done. This move, coming during the holiday season, is even more callous and heartless. One observer called this move by Feinberg the “perfect definition of extortion.”

Source: AL.com

BP HAS A REASON TO PLAY A NUMBERS GAME

BP is challenging the U.S. government’s estimates of how much oil flowed from

its runaway well in the Gulf of Mexico. This is an attempt to reduce by billions of dollars the federal pollution fines BP faces for the largest offshore oil spill in history. BP’s lawyers are arguing that the government overstated the spill by 20% to 50%. The company submitted comments to the Presidential oil spill commission in October claiming the government’s spill estimate of 206 million gallons is “overstated by a significant amount.” BP told the commission the company will present its own estimate as soon as “the information is available to get the science right.”

BP’s goal is to save the oil giant as much as \$10.5 billion and that is why they are playing a “numbers game.” Based on our experience with BP, I wouldn’t put anything past this outfit. President Obama wants Congress to set aside the money BP pays for fines to be used for the Gulf’s coastal restoration. William K. Reilly, co-chairman of the Presidential commission, was shocked at BP’s claim that the actual amount of the spill is 50% less than the government’s estimate. The most current estimate puts the total spill at 206 million gallons.

Under the Clean Water Act, the oil giant—which owned and operated the well—faces fines of up to \$1,100 for each barrel of oil spilled. If BP were found to have committed gross negligence or willful misconduct, the fine could be up to \$4,300 per barrel. That means, based on the government’s estimate of 206 million gallons, BP could face civil fines alone of between \$5.4 billion and \$21.1 billion.

At press time BP hadn’t offered its own numbers, but has been laying the predicate by challenging the government’s estimates. BP is claiming that the actual flow rate was 20% to 50% lower. The government has engaged independent scientists and multiple techniques to arrive at its numbers. Also, other independent peer-reviewed studies have corroborated the government’s position on the spill numbers.

Source: Associated Press

TRANSOCEAN ORDERED TO TURN OVER SAFETY RECORDS

Judge Carl Barbier has ordered Transocean Ltd. To turn over safety records to the government panel investigating the deadly rig explosion that caused the Gulf

oil spill. Transocean, which owned the Deepwater Horizon rig, has refused to produce some of the safety records for its other rigs in the Gulf of Mexico to the panel of Coast Guard and industry regulators. Transocean argued that the records sought by the panel, including external audits of safety management systems, weren’t relevant to its investigation. But Judge Barbier ruled on December 17th that the panel was entitled to the documents. One of the government’s lawyers told Judge Barbier that the records were needed to determine if the April 20th rig explosion resulted from a systemic problem with Transocean’s rigs.

Source: Associated Press

COMPANIES SHOULD BE KEPT FROM GULF OIL SPILL EVIDENCE

It’s being said that the credibility of the investigation into the Gulf oil spill is being undermined because representatives of companies that made or maintained a key piece of evidence—the blowout preventer—have had too much access to the device as it is being analyzed. That’s the position of the U.S. Chemical Safety Board, which is being allowed to monitor the analysis. The Board demanded in a December 23rd letter to the head of the Bureau of Ocean Energy Management, Regulation and Enforcement that testing should stop and not resume until Transocean and Cameron officials are removed from any hands-on role in the examination of the 300-ton device.

Following the rig explosion on April 20th, the blowout preventer used with BP’s well failed to do its job. It should have stopped the flow of oil into the Gulf, but it failed to do so. The device was raised from the sea floor on September 4th. The testing process began November 16th at a NASA facility in New Orleans. Technicians have largely been disassembling the blowout preventer and have so far made no determination about why it didn’t work. The Board, like the companies and other parties involved, has been granted limited access to the testing. But it says its representatives have been shut out of tests that have included multiple representatives of Transocean and Cameron International, which made the blowout preventer.

Source: Associated Press

III. DRUG MANUFACTURERS FRAUD LITIGATION

\$51 MILLION VERDICT RETURNED AGAINST JOHNSON & JOHNSON IN PENNSYLVANIA

The Commonwealth Court entered a more than \$51 million verdict last month in favor of the Pennsylvania state government against Johnson & Johnson for overcharging state programs and consumers for prescription drug reimbursements. Judge Robert Simpson entered a non-jury order requiring the drugmaker to reimburse the state government \$45,283,562 and to pay civil penalties in the amount of \$6,567,000. The total amount of the verdict was \$51,850,562.

In his decision Judge Simpson also barred Johnson & Johnson from quoting either to the Pennsylvania Department of Public Welfare or to state programs increased average wholesale prices for its drugs without also reporting current acquisition costs such as average manufacturers' prices or average sales prices. In addition, the judge's order prohibited the company from promoting or marketing "spreads"—the difference between the price a prescriber pays for a drug and the price it is reimbursed for that drug—for any of its drugs that are reimbursed by state programs. The order came after a five-week trial in the case.

The state alleged that Johnson & Johnson "deliberately overstated" the AWP for its drugs, resulting in state programs—particularly Medicaid and the Pharmaceutical Assistance Contract for the Elderly Program—and consumers paying too much to reimburse prescribers and creating a spread that Johnson & Johnson could then market to drug dispensers. The case dealt with the average wholesale price issue that has been before the Alabama Supreme Court.

The Complaint further alleged that Johnson & Johnson engaged in similar misconduct when marketing prescription drugs to pharmacists. The Complaint said the company attempted to conceal the actual AWPs of its drugs by providing rebates, discounts and other financial incentives to pharmacists and asking them to keep those incentives confidential. According to the Complaint, Johnson

& Johnson raised the AWPs of its drugs yearly without reflecting these discounts. Judge Simpson agreed with the state which said the drugmaker violated Pennsylvania's Unfair Trade Practice and Consumer Protection Law. The judge found from the evidence that Johnson & Johnson engaged in "deceptive practices." The lawsuit was filed by Attorney General Tom Corbett.

Interestingly, the Pennsylvania court refused to accept Johnson & Johnson's contention that the state knew the AWPs did not reflect actual acquisition costs, but chose to rely on them anyway. Donald E. Haviland Jr., who is with Haviland Hughes in Philadelphia, and Barry R. Eichen of Eichen Crutchlow & McElroy in Edison, N.J., represented Pennsylvania and did a very good job for the citizens of that state.

THREE DRUGMAKERS PAY \$421 MILLION TO SETTLE U.S. OVERPAYMENT CHARGES

Abbott Laboratories and two other drugmakers have agreed to pay \$421.2 million to settle claims they overcharged the U.S. for medicines. Boehringer Ingelheim GmbH's Roxane Inc. will pay \$280 million, Abbott will pay \$126.5 million and B. Braun Melsungen AG will pay \$14.7 million. Boehringer and B. Braun are closely-held companies. The settlements resolve civil claims that the companies inflated the average wholesale prices for drugs reported to the federal health programs Medicare and Medicaid.

The government reimbursed doctors and pharmacists at those higher prices, and the companies actually sold the drugs at a fraction of those stated prices. The scheme let doctors and pharmacists make more profits, and the drugmakers kept them as customers. The Justice Department correctly stated that the practice was widespread in the pharmaceutical industry.

The settlement resolves lawsuits under the False Claims Act, which lets private citizens sue on behalf of the government and share in any recovery. The difference between the inflated government payments and the price paid by health-care providers for a drug is known as "the spread." Profits for doctors or pharmacists increased as the spread widened. Abbott, Roxane and Braun created artificially-inflated spreads to market, promote and

sell the drugs to existing and potential customers. The U.S. intervened in a False Claims case against Roxane and filed a lawsuit on January 18, 2007. The U.S. sued Abbott in May 2006.

Source: *Bloomberg*

A NATIONAL SETTLEMENT WILL BOOST STATE MEDICAID FUNDING

Settlement of a national suit that accused two companies of improperly marketing an anti-epileptic drug will bring \$101 million to the states' Medicaid program. All states and the federal government filed the lawsuit against Elan Corp. And Eisai Inc. In the suit it was alleged that Elan had marketed the drug Zonegran—an anti-seizure treatment for epileptic patients—as a treatment also for pain, obesity, headaches and psychiatric conditions. It was further alleged that Eisai continued the improper marketing of Zonegran after it acquired interests in Zonegran from Elan in 2004. The settlement calls for the two companies to pay states and the federal government a total of \$101 million in damages and penalties.

\$280 MILLION SETTLEMENT WITH DEY PHARMA OVER INFLATED DRUG PRICING

The Justice Department has reached a \$280 million settlement of a False Claims Act case with Dey Pharma LP and related companies for inflating published drug prices. The agreement increases settlements during December for similar cases to more than \$701 million. The Dey settlement, announced on December 21st, resolves a September 2006 whistleblower case. The case had been transferred to the District of Massachusetts as part of a MDL.

The case accused the Dey entities, which also include Dey Inc. And Dey L.P. Inc., of reporting false and inflated prices for generic versions of four drugs used to treat asthma and respiratory conditions: albuterol sulfate, albuterol MDI, cromolyn sodium, and ipratropium bromide. The Medicare and Medicaid programs based reimbursement rates on these prices. Dey's actions led to fraudulent government claims. Carmen Ortiz, U.S. Attorney of the District of Massachusetts, stated in a press release about the settlement:

Taxpayer-funded kickback schemes like this not only cost federal health care programs millions of dollars, they threaten to undermine the integrity of the choices health care providers make for their patients.

Dey's former parent company, Merck KGaA, is responsible for paying the settlement and other costs related to pending and future cases related to Medicare and Medicaid reimbursement lawsuits against Dey.

It should be noted that since January 2009, the Justice Department has recovered more than \$5.3 billion in False Claims Act cases alleging fraud against federal health care programs. During the same period, the Justice Department's total False Claims Act recoveries are nearly \$6.8 billion. That should tell U.S. Taxpayers that lots of corporations have really been doing a good job of cheating the government.

Source: *National Law Journal*

PHARMACEUTICAL DRUG COMPANIES ARE AT THE TOP OF THE FRAUD HEAP

A new study by the watchdog group Public Citizen has found that the pharmaceutical drug industry has become the biggest defrauder of the federal government, surpassing even the defense industry. Public Citizen learned that the drug industry paid out nearly \$20 billion in penalties over the past two decades for violations of the False Claim Act. More than half of the industry's fines were paid by just four companies: GlaxoSmithKline, Pfizer, Eli Lilly and Schering-Plough. Fraud has no place in any business undertaking and certainly not in corporate deals with our national government.

Source: Public Citizen

Pfizer Targeted Nigerian Attorney General

Diplomatic cables released by WikiLeaks show the pharmaceutical giant Pfizer hired investigators to find evidence of corruption against the Nigerian Attorney General to pressure him to drop a \$6 billion lawsuit over fraudulent drug tests on Nigerian children. Researchers did not obtain signed consent forms, and medical personnel said Pfizer did not tell parents their children were getting the experi-

mental drug. Eleven children died, and others suffered disabling injuries including deafness, muteness, paralysis, brain damage, loss of sight, and slurred speech.

Source: *democracynow.org*

DRUG COMPANIES SHOULD NOT BE ALLOWED TO ADVERTISE

It was bad enough when drug manufacturers were just using television and newspapers for their massive advertising campaigns. But now they have started to use the emerging and unrelated social-media space. The FDA has guidelines, even though weak, on how drugs can be marketed in newspapers and magazines. Only in 1997 did the FDA issue rules for broadcast media. Companies are required to disclose basic information about a drug's known risks in newspapers, magazines and on television. But there are no such regulations for social media.

Last month, the FDA was supposed to issue guidelines on how drug companies market drugs on outlets such as Twitter, Facebook and Google. That is very important since the public is very much in tune with the social media outlets. For example, one research center estimates that 61% of adults get health information online today. Analysts say that online marketing accounts for a growing share of the \$4 billion pharmaceutical companies spend each year advertising their products. In the first half of 2010, companies overall spent about \$5.7 billion on so-called search ads on outlets such as Yahoo! Drug companies have no business advertising their products in any fashion. I believe that the selection of drugs must be left to medical professionals and their patients. There is really no justification for advertising by the drug companies.

IV. PURELY POLITICAL NEWS & VIEWS

DR. PAUL HUBBERT AND AEA

Gov. Bob Riley has had Dr. Paul Hubbert and the AEA in his sights for almost eight years. He finally inflicted some pain on Paul in the recently-completed special session of the Alabama Legislature. The

dues check-off legislation that passed was purely political and had nothing to do with ethics or corruption. Apparently, the fact that AEA was largely responsible for defeating Bradley Bryne in the race for Governor last year, was the final straw for Governor Riley. Many believe that Paul and the AEA were mortally wounded in the session. While that may be true, I wouldn't write off Paul Hubbert as a factor in Alabama politics. He is smart, an extremely hard worker, and in my opinion he won't give up. It will be interesting to see how Paul responds. I have heard from a number of teachers who felt like members of the AEA didn't deserve the treatment they got during the session.

PUBLIC MAY NOT BE SOLD ON THE NATIONAL REPUBLICAN PARTY

Without any doubt Republicans made major gains in the November elections. But even with the win it appears they have yet to win the hearts and minds of the American people, according to a new *Washington Post-ABC News* poll. The midterm elections definitely gave the Republicans the upper hand in Congress. The GOP gained 63 seats to take control of the House and added six seats to their Senate minority. This result was widely seen as a rebuke to President Obama. But interestingly, according to the poll, the public trusts the President more than it does Congressional Republicans to deal with the country's main problems in the upcoming two years. President Obama wins in the poll on that issue by 43% to 38%. While that's not a landslide, it's very significant.

More than anything, the poll suggests that the election was a vote against the status quo. It appears not to be a broad mandate for Republicans and their plans. The survey also underscores the degree to which Americans are conflicted about who they believe is setting the agenda in Washington. The President's narrow advantage is a striking contrast to the public's mood during the same time in 1994 and 2006, the last two midterm election years when one or both chambers of Congress changed hands. The current President definitely is in better shape with the public.

After Democrats won back the House and the Senate four years ago, they had a

large, double-digit lead over President George W. Bush when it came to big issues. Similarly, after the GOP's 1994 landslide, people expressed far more confidence in Congressional Republicans than they did in President Bill Clinton. In the new poll, just 41% of respondents say the GOP takeover of the House is a "good thing." About 27% say it is a "bad thing," and 30% say it won't make any difference. Most continue to say that the Republicans in Congress are not doing enough to compromise with President Obama on important issues. The bottom line is that folks are just generally upset and the party in power always suffers when the people feel that way.

The public is divided down the middle when it comes to the economy—the top issue with folks in the U.S. About 45% say they trust the GOP when it comes to the economy and 44% side with the President. The new poll also has even splits between the Democratic President and the GOP on taxes and dealing with the threat of terrorism. That may be grounds for the kind of negotiations that resulted in the compromise over taxes and unemployment benefits that made its way through the lame-duck session of Congress last month.

The public's ambivalence should serve as a warning that the GOP will not have a free hand in the new Congress. The President maintains double-digit leads over Republicans in two big areas—helping the middle class and health-care reform. The GOP has a significant edge on only one issue tested in the poll, and that deals with the federal budget deficit. In that area, Republicans in Congress are up eight points. It will be interesting to see how things play out in Congress this year.

Source: *Washington Post*

BIG COMPANIES STILL FINANCE ELECTIONS

So-called independent groups, such as the U.S. Chamber of Commerce and Karl Rove's group labeled "Crossroads GPS" poured hundreds of millions of dollars into campaigns leading up to the November General Election. Unfortunately, nobody knows where all of this money came from. If you check the filings with the Federal Elections Commission, the independent regulatory agency which has the duty of policing campaign

finance laws in the U.S., you will come up with no real answers. To this day, both the source and the recipients of the contributions remain a deep secret.

Public Citizen says that only ten groups out of at least 165 so-called independent groups spending money to influence elections in November were responsible for 65% of the \$176.1 million spent by outside groups as of the end of October. When the U.S. Supreme Court opened the floodgates for Corporate America, corporate wrongdoers started dancing in the streets. Ordinary citizens have little say when it comes to financing political races. That needs to change!

Source: Public Citizen

V. RECENT SETTLEMENTS BY THE FIRM

IMPORTANT SETTLEMENT OF TIRE CASE

Our firm settled a claim last month on behalf of the family of Michelle Strother against Ford, Firestone and Wal-Mart. The claim involved the death of Michelle, a beautiful young lady who was living in Mobile on August 6, 2008. Michelle had just left a visit with her parents, Joey and Missy, in Troy on that day. She was on her way back to Mobile when the tire on her Mercury Mountaineer lost its tread. The Mountaineer, which was being driven by one of Michelle's friends, went out of control and rolled over. Michelle died on the scene.

The Mercury Mountaineer, which is the same design as the Explorer, was equipped with Firestone ATX tires that were subject to the recall of 2002. Even though the tires on the Mountaineer had been recalled, the spare was never recalled. The Mountaineer was bought used from friends of the family who testified that they were never notified of the recall. Shortly before the accident, Michelle had a flat tire. One of her friends put the spare tire on the vehicle. The spare tire looked new but was actually twelve years old. Our clients carried the Mountaineer to Wal-Mart shortly before the accident and asked Wal-Mart's tire professional to take a look at the tire to

be sure it was okay. Wal-Mart did not advise that the tire be removed.

Our firm has handled numerous similar cases. Unfortunately the spare tire is often not recognized as one of the potentially dangerous tires. People must be vigilant and cautious about the potential for any tire they put on the ground. The fact that a tire looks new does not mean that it is. The tread can look perfect and the tire can still be dangerous. The only way to tell the true age of a tire is by interpretation of a very cryptic DOT code.

Greg Allen, Ben Baker and LaBarron Boone from our firm handled this case for the family and did an excellent job. The amount of the settlement is confidential at the request of the Defendants.

LEE COUNTY PEDESTRIAN CASE SETTLED

Our firm settled a case that was pending in the Circuit Court of Lee County, Ala. last month. Our client, an Auburn University student, was walking across the street in a designated crosswalk on West Magnolia Avenue at the intersection of Wright Street in Auburn. This was a football weekend and the area was crowded with lots of folks. Our client was nearly through the crosswalk and only a few steps away from the curb when she was struck by a vehicle driven by a 19-year-old male who had a prior history of numerous speeding tickets. Another pedestrian had to jump out of the way to avoid being struck by his vehicle. As a result of this incident, our client suffered injuries to both knees, her left ankle and hips. She sustained a right knee lateral collateral ligament tear and was required to undergo surgery on her right knee. She was also required to undergo PRP (platelet rich plasma) injections in both knees and had to undergo extensive physical therapy.

The individual Defendant had already paid his liability policy limits, leaving a claim against our client's carrier. That was the underinsured motorist claim recently settled. Georgia law was applied to that claim since the policy was written and issued in that state. The case was handled by Julia A. Beasley of our firm and Wes McCollum who is with McCollum, Crutchfield & Wilson, a law firm located in Auburn. This was a very good settlement for our client.

HORMONE THERAPY CASES SETTLE

With an impending consolidated trial set for the 10th of this month, in Philadelphia, we were able to negotiate a settlement with the two Defendants in the case, Wyeth and Pfizer. The terms and amount of the settlement are confidential at the request of the Defendants. These cases involved four women from Pennsylvania who range in age from 56 to 67. All four are credible witnesses who suffered from hormone positive breast cancer after taking the Defendants' hormone drugs, Prempro and/or Premarin and Provera.

Some women experience estrogen deficiency (lack of endogenous hormones) when they begin going through menopause. Symptoms of estrogen deficiency include hot flashes, night sweats, mood swings and vaginal dryness. All four of these women experienced these symptoms before they took the Defendants' hormone drugs. The estrogen deficiency symptoms disappeared after they began taking the products; thus showing the estrogen they ingested (i.e., the Defendants' drugs) replaced what was no longer there. After developing hormone positive breast cancer and ceasing hormone therapy ingestion, each of the four women had one or more of the estrogen deficiency symptoms return.

Therefore, despite the Defendants' argument that other risk factors were the cause of their breast cancer, the only source of hormone stimulation for the cancer was their use of the Defendants' drugs. No other risk factor would account for current source of hormones; no other risk factors changed; and there was no other risk factor that could have acted as an alternative explanation for the hormonal changes that would have been necessary to cause the growth and development of these cancers.

These women suffered injuries that ranged from partial mastectomy to a full mastectomy and went through radiation and/or chemotherapy, and other drug therapies. Had it not been for their use of the Defendants' drugs, they would not now worry every time they have a mammogram that the cancer has come back. Nor would they experience the emotional stress and pain that comes with a breast cancer diagnosis. Each of these women had prescribing physicians who testified that had they known of the true

breast cancer risk for these drugs they would have treated these women differently when it came to prescribing Defendants' drugs.

Had the case gone to trial the evidence would have shown that the Defendants had red flags that certainly alerted them to the possibility that their drugs could cause hormone positive breast cancer as early as the 1970s. Additionally, the Defendants had additional red flags that arose in subsequent years all the way up to the halting of the WHI study in 2002. Had Pfizer simply not ignored these signals and otherwise properly tested its drugs, these women would not have ended up with these injuries. Ted Meadows and Russ Abney, lawyers in our Mass Torts Section, handled these cases for four deserving clients. They did a tremendous job for them.

EXCAVATOR QUICK COUPLERS ARE CONSTRUCTION SITE HAZARD

Our firm settled a case recently against a manufacturer and supplier of hydraulic quick couplers used on heavy earth excavators. Tragically, a construction worker was crushed and trapped, his leg was amputated and he suffered other permanent injuries when an excavator bucket on a large excavator fell off the articulated boom arm. During our investigation and preparation of this case, we learned that this was not an isolated incident. In fact, our lawyers and investigators uncovered 15 other incidents in the past five years—13 of which involved crushing death from a falling excavator bucket.

On most construction sites where trenching activities are taking place, construction laborers are usually working within the trench to install water or other pipelines. Another worker typically operates the excavator to dig the trench and also to lower large sections of pipe into the pit or to deposit crushed stone base or backfill underneath and around the pipe. The excavator operator routinely changes the boom attachments from the bucket to a crane lifting-eye, rock crusher or some other attachment in order to complete the various lifting tasks. Historically the operator is required to exit the excavator cab to manually install heavy retaining pins to hold the attachment in place. Usually, if the trench is prepared

properly and the equipment and operator function properly, no one is injured.

In recent years, various companies have begun manufacturing and supplying devices known as a "quick couplers" for use on excavating equipment. The purpose of such devices, which vary in configuration but are usually hydraulically operated from within the excavator cab, is to reduce the time required to change excavator attachments. In order to change attachments, the operator simply hydraulically releases the coupler from one attachment and then grasps another. One of the primary problems with most "quick" couplers is that they fail to include manual safety pins to ensure that the attachment remains attached. If the coupler is only partially engaged (because the full attachment point is obscured from the cab of most excavators), then the attachment may fall onto an unsuspecting worker when the boom arm is moved. In response to such an obvious safety defect and the resulting string of injuries and deaths, OSHA now requires all excavator quick couplers to be attached with manual safety pins. Unfortunately, many of the original designs are still out there on jobsites across the country and countless workers face injury or death from these dangerous devices. Mike Andrews, a lawyer in our firm, was the lead lawyer in this important case. He did a very good job for our client. The amount of the settlement in the case was confidential.

VI. LEGISLATIVE HAPPENINGS

SUMMARY OF ACTION IN THE SPECIAL SESSION

The Alabama Legislature passed seven bills in the recently-completed special session. I have read the bills which were signed into law by Gov. Riley on December 20th. There are some very good things in the bills, but unfortunately very little was done that will actually reform Alabama's campaign finance laws. Hopefully, the real problems will be dealt with in the regular session. I will summarize for our readers what happened in the special session. The following bills were passed:

- A bill was passed requiring ethics training for public officials and requiring people who lobby the judicial and executive branches of state government to register with the State Ethics Commission. That is a very good thing.
- A bill banning the transfer of campaign money between political action committees was passed. This had been labeled PAC to PAC transfers. Even though both political parties have used PAC to PAC transfers over the years, passage of this bill was needed and is a good thing. Public disclosure of campaign giving and receiving was needed and applies to both political parties. Unfortunately, there are some huge loopholes left in the laws and rules dealing with financing of campaigns and that should be very apparent. I guarantee that the special interests know all about any loopholes and omissions.
- A bill was passed to ban legislators from holding other state jobs. I have never understood the real need for this legislation, but hopefully, it will turn out to be a good thing. To single out groups of citizens and say they can't serve in the Alabama Legislature doesn't seem quite right.
- A bill that limits how much lobbyists and the people who hire them can spend entertaining public officials was passed. This bill needs lots of work to make it effective. I believe public disclosure of this sort of thing is badly needed, which would allow the public to decide the issue at the polls.
- A bill to give the State Ethics Commission subpoena power was passed. I hope this won't wind up being used as a politically-motivated measure. I have always felt, to be effective, the Commission needed the ability to issue subpoenas. But many believe it should be left to the Attorney General and local District Attorneys.
- A bill was passed prohibiting payroll deductions for public employee groups' membership dues. This was apparently the primary reason for the session. I doubt that we have heard the last on this matter.

It will take a few years to find out the real effect the package of bills will have.

Unfortunately, there will be very little change in how elections in Alabama are financed. Rather than using PAC to PAC transfers, special interests will continue to use the third party groups that have been used effectively in recent years. Millions of dollars have been put into political campaigns in our state in recent elections with no disclosure requirements. That most serious problem was not addressed in the session. As a result, you can rest assured that the practice will continue. But overall, the session was a success.

THE REGULAR SESSION

The House and Senate will return to Montgomery for the organizational session on January 11th. The regular session will start on March 1st. When they get down to work, the new Legislators will find out—if they don't already know—that the State of Alabama is flat broke. In fact, the actual condition of the state's finances may be worse than is being reported by the media. The Governor and Legislators will have to make some tough decisions early in the session. It will be a real challenge for the Governor and Legislators to fund the essential services that must be provided by state government. The old ways simply won't work any longer. We have patched and borrowed for years and that is now catching up with us. It's now time to make both short- and long-range planning a real part of the operation of state government.

PRORATION IS REQUIRED BY LAW

We have had a number of inquiries about proration and how it works. Proration refers to the constitutionally-required cuts that must occur when revenues are projected to fall below income for the general government or education budgets. Proration has been declared ten times since 1978 in the Education Trust Fund and six times since 1982 in the General Fund. Both budgets were in proration last fiscal year. While the bad economy played a role, I believe that over-budgeting in prior years was the real culprit. Without the federal stimulus money—which won't be available this year—last year's budget problems

would have been much worse. The lack of federal stimulus money creates big problems for all of those who are now in charge of state government.

VII. COURT WATCH

U.S. SUPREME COURT WILL DETERMINE VALIDITY OF WAL-MART CLASS ACTION

The Supreme Court will hear an appeal by Wal-Mart relating to one of the largest employment discrimination cases in U.S. history. The lawsuit against Wal-Mart Stores was originally filed in 2001 and alleges Wal-Mart discriminated against hundreds of thousands of women in both pay and promotion. Wal-Mart said the lawsuit was not suitable for class-action status, claiming there are too many Plaintiffs with too many different circumstances to qualify for class status. But, in April, the U.S. Court of Appeals for the Ninth Circuit in San Francisco ruled 6-to-5 that the case could proceed as a class-action.

Wal-Mart will have another chance to plead its case against qualifying the lawsuit as a class-action in the Supreme Court. However, this case will have repercussions on other class-action suits, including categories of antitrust, securities and product liability. Lawyers for Wal-Mart say the Plaintiffs do not have enough in common to make a class action appropriate, as they were employed in more than 3,400 stores throughout the country. The Plaintiffs' lawyers argue the class is naturally large because Wal-Mart is the nation's largest employer and "manages its operations and employment practices in a highly uniform and centralized manner." They assert, as do other civil-rights groups, that a class-action suit is the best way to make businesses stop discriminatory practices. Arguments are expected to be heard this spring, and a decision handed down by the end of June.

Sources: *New York Times* and *The Washington Post*

FEDERAL LAW DOES NOT PREEMPT SEATBELT CLAIMS

The Texas Supreme Court has ruled that federal motor vehicle safety standards don't preempt a product liability claim alleging that a bus involved in a fatal crash should have been equipped with passenger seatbelts. The decision upholds a state appellate ruling. Five passengers were killed and several injured when a chartered passenger bus crashed on an interstate highway.

The Plaintiffs sued the bus driver, owner and manufacturer. With respect to the manufacturer, the Plaintiffs alleged that the vehicle was defectively designed and unreasonably dangerous because it was not equipped with passenger seatbelts. The manufacturer argued that federal safety standards preempted the Plaintiffs' state-law claims. The Supreme Court disagreed, explaining that:

Regulatory silence will not preempt a state law absent a clear and manifest statement of intent to forbid all regulation in that area. Applying this standard to [the National Highway Traffic Safety Administration's] decision not to require passenger seatbelts in motorcoaches, we find nothing in the regulatory history or agency statements indicative of such intent. In this lacuna of regulation, the jury's finding that [the manufacturer] should have installed seatbelts on its motorcoach does not conflict with any federal law and is not preempted.

The Court similarly concluded that federal law didn't preempt the Plaintiffs' claim that the bus should have been equipped with laminated windows. But, the Court agreed that the jury's \$17 million verdict should be reversed because it did not apportion liability consistent with state law.

Source: Dolan Media Newswire

STRYKER HIP IMPLANT SUIT NOT PREEMPTED

The Court of Appeals for the Seventh Circuit has ruled that federal law regulating medical devices does not preempt a product liability lawsuit over an allegedly defective ceramic-on-ceramic hip replacement system. The Appeals Court issued its ruling and reversed a lower court dis-

missal. The Plaintiff underwent hip replacement surgery involving the implantation of the Trident-brand ceramic-on-ceramic system manufactured by Stryker Corp. Trident is a "Class III" medical device that Stryker has manufactured since 2003.

The device was implanted in the Plaintiff's body shortly after the Food and Drug Administration informed Stryker that a component of the Trident hip system was "adulterated" and that the company's manufacturing processes failed to comply with federal standards. After the Trident system failed and needed to be surgically removed, the Plaintiff sued Stryker under Illinois law for negligence and strict liability for a defective product.

Stryker argued that the Plaintiff's lawsuit was preempted by the Medical Device Amendments to the Federal Food, Drug, and Cosmetic Act. But the Court concluded that the Plaintiff's state-law claims were viable under the U.S. Supreme Court's decision in *Riegel v. Medtronic*. The Seventh Circuit explained that §360k of the Medical Device Amendments provides immunity for manufacturers of new Class III medical devices only insofar as they comply with federal law. The court said in its opinion:

§360k does not protect [manufacturers] if they have violated federal law. Just as a plaintiff in an auto accident may use the other driver's speeding violation as evidence of negligence, [the plaintiff in this case] claims that she was injured by Stryker's violations of federal law in manufacturing the device implanted in her hip. ... [I]f she can prove those allegations of harm [were] caused by violations of federal law, her claims under state law would not impose on defendants any requirement 'different from, or in addition to, any requirement' imposed by federal law.

This too is a most significant ruling. Hopefully we will soon see the end to federal preemption challenges to lawsuits based on state law.

Source: Lawyers USA Online

VIII. THE NATIONAL SCENE

THE TAIL STILL WAGS THE DOG IN WASHINGTON

I was not at all surprised when I read in the Birmingham News recently that Rep. Spencer Bachus had said that "in Washington, the view is that the banks are to be regulated, and my view is that Washington and the regulators are there to serve the banks." That seemed to shock lots of folks. But when you reflect on how things work in Washington, the comment shouldn't have been very newsworthy. In fact, I commend Spencer for being honest and candid about how Congress really views regulation of the banking industry and that includes both Republicans and Democrats.

Our regulation of the big banks has been woefully weak over the years. In large part, the lack of regulation contributed to our nation falling into the recent recession which was the worst since the Great Depression. Our financial institutions were allowed by the government regulators to take commercial banking into areas where they were never intended to go. Also, all sorts of conduct—much of which was highly questionable—became the "game of the day" on Wall Street.

EXXON SPENT \$4.07 MILLION ON LOBBYING IN THIRD QUARTER

Lobbyists in Washington have pretty well run our national government for the past ten years. Exxon Mobil Corp. spent \$4.07 million in the third quarter to lobby the federal government on offshore oil drilling laws and other issues, according to a disclosure report. While that's a 43% drop from the \$7.16 million that the oil giant spent in the year-ago period, it's still lots of money. It's 62% higher than the second quarter of this year.

Source: Forbes

OVERHAUL OF OIL INDUSTRY BADLY NEEDED

I agree with William K. Reilly that the oil and gas industry needs a "major trans-

formation” in its approach to safety. This is badly needed if we are to avoid another big offshore drilling disaster. Hopefully, those in a position to make it happen have learned a lesson from recent events. Mr. Reilly, who serves as co-chairman of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, says that BP and two other companies involved with the doomed Macondo well—Halliburton Co. and Transocean Ltd.—made “breathtakingly inept and largely preventable” missteps.

Mr. Reilly says that improvements in the training and expertise of federal regulators are badly needed. He believes the regulators “failed miserably” in their oversight of offshore drilling before the April 20th disaster. Unfortunately, it took the worst offshore spill in U.S. history to get the government’s attention. Mr. Reilly, who came down hard on the industry, says there is an absence of “a shared industry culture that puts a premium on safety and risk management.” It’s very clear that the industry has failed to make safety a high enough priority. A major transformation is badly needed in the oil and gas industry’s understanding of what it means to put a priority on creating a safety culture. Hopefully, the President and Congressional leaders—both Democrat and Republican—will not only listen to Mr. Reilly and others, but will take action!

Source: *Wall Street Journal*

FAA ORDERS RE-REGISTRATION OF THOUSANDS OF PRIVATE AIRCRAFT

The Federal Aviation Administration said last month that registration records for as many as one-third of all private aircraft are out-of-date and inaccurate. The agency has begun the process of re-registering aircraft in the United States—a task made more urgent by the threat posed by criminals and terrorists. Of the 357,000 registered aircraft in the United States, records for about 119,000 are believed to be out of date, with many of them believed to be junked or inactive aircraft, according to the FAA.

The inaccurate records also could conceal criminal or even terrorist activity, according to some security and aviation experts. They say it’s critical that the FAA restore order to its records. The FAA is in the process of canceling registration for

all civil aircraft—a category that includes virtually everything except military aircraft—and requiring the owners to re-register. The re-registrations will be phased in over three years, and aircraft owners will be required to renew the registrations every three years thereafter.

Proper records can assist investigators, aviation and security. Authorities routinely check the “N” number, or tail number, of suspicious planes, or planes that have entered restricted airspace. Just as importantly, an accurate database can help the FAA notify aircraft owners of safety-related information, such as Airworthiness Directives.

Source: *CNN*

IX. THE CORPORATE WORLD

NEW YORK ATTORNEY GENERAL SUES ERNST & YOUNG

The New York Attorney General filed an important lawsuit last month against Ernst & Young. The suit accuses the accounting firm of helping to hide the financial troubles of Lehman Brothers Holdings, Inc. The civil fraud action is the first major government action arising out of the Wall Street bank’s 2008 downfall. In addition to other damages, the Attorney General is seeking more than \$150 million in fees that the firm received from 2001 to 2008 as Lehman’s outside auditor. It’s alleged that the firm stood by for years while the bank used “accounting gimmickry” to create a false impression about its financial condition.

Source: *Associated Press*

CORPORATE AMERICA EXERCISES FAR TOO MUCH CONTROL OVER GOVERNMENT

At year’s end, it’s quite appropriate for each of us to reflect on how things have been going for ordinary citizens in this country. While Public Citizen and other consumer advocates won a number of hugely-important victories last year, low and middle income citizens in America have not done well by anybody’s standard. The “real poor” in this country have been virtually ignored by both parties. It’s

high time for “politics as usual” to stop in Washington. The kings of Corporate America still control our national government. Ordinary folks need and should demand action to bring about real change. It’s not enough for the politicians to just talk about it.

Some folks hope there will be an increasingly powerful people’s movement willing to take on the awesome corporate power that has trampled over ordinary folks for years. I pray those folks are correct, but it will take a wakening by working men and women across the U.S. When you take a look at how powerful Corporate America is in Washington, it’s not a pretty picture. Corporate crime and wrongdoing is an everyday fact of life in the United States and around the world. The past year has been remarkable for a series of high-profile, deadly corporate disasters. One would think any one of these would have been enough to light a fire under Congress. Let’s take a look at a few of them:

- The BP Deepwater Horizon catastrophe that killed 11 workers and spewed hundreds of millions of gallons of oil into the Gulf of Mexico;
- The deadly explosion at Massey’s Upper Big Branch coal mine;
- The unintended acceleration of Toyota cars associated with more than 90 deaths; and
- The failure of the FDA to adequately regulate the drug manufacturers resulting in a tremendous number of unsafe drugs being on the market.

One might think that these disasters, on their own and certainly in combination, would have brought about desperately-needed legislative reform. But unfortunately that hasn’t been the case. Despite blanket television and newspaper coverage of the corporate wrongdoing in each instance—and despite deep public outrage and demands for action to prevent the same things from happening again—Congress has done almost nothing to curb the corporate wrongdoing. And unless things change dramatically, and very soon, the situation will get worse. So far the powerful business lobby has prevented legislation from being passed in most every area, where reform is badly needed. When legislation is passed, all sorts of road blocks are put in

the way of reform or mandates are simply ignored. Public Citizen had this to say:

Revelations of deadly, sudden acceleration in Toyota cars were followed by ever more revelations of problems with Toyota vehicles, major vehicle recalls, public apologies from Toyota, and damning indictments of inaction by the National Highway Traffic and Safety Administration. Yet thanks to the powerful auto lobby Congress has failed to pass the Motor Vehicle Safety Act of 2010, a bill to upgrade safety standards and provide more funding to the resource-starved federal auto safety agency. There's no mystery as to the congressional failure. It is simply a reflection of the same corporate power that led to the under-regulation and under-enforcement that made each of the corporate disasters possible.

The ability of corporations and industries to block remedial regulatory efforts at the very moment when they are most vulnerable—due to adverse publicity and an outraged public's call for action—speaks to the extraordinary political power of Big Business. It's very clear that the power of Corporate America is certain to be enhanced in the incoming Congress. Most remarkable of all, with evidence all around of the need for stronger rules to control corporations and protect Americans, the Chamber of Commerce and the business lobby are gearing up for a campaign claiming that the way to jumpstart the economy is by rolling back existing regulations.

It should be noted that corporations have earned record profits in the last two quarters of 2010. American businesses raked in profits at an annual rate of \$1.659 trillion in the third quarter. Remember, it was the failure to regulate Wall Street that cost 8 million jobs and plunged our nation into the worst recession since the 1930's. Groups like Public Citizen have learned that facts are not enough to defeat corporate propaganda and destructive policy agendas. Curbing corporate power and political influence will require overcoming public disgust with Washington's many failures.

It will also require moving beyond mere outrage with corporate wrongdoing to "organized outrage," and there is a distinct difference in the two. Even with our nation's policymaking process being as bad as it is, an "organized citizenry" can still force change for good. The reality is that it simply won't happen any other way. The American people—including those who claim to be members of the Tea Party—should be outraged. Only the American people can bring about real change. It's obvious the politicians in our Nation's Capitol won't do it. Together, the people can force the politicians to stop. If so, they can repeal the corporate attacks on our health, safety and consumer protections.

We should all be thankful for groups like Public Citizen and for their dedication and hard work. For nearly 40 years, Public Citizen has proved time and time again that organized "people power," when folks get fed up, can defeat concentrated "corporate power." Ordinary folks have been very much like a sleeping giant over the past ten years. I believe most American citizens are fed up with Corporate America literally running the show in Congress. These folks must now rise to the challenge and demand real change in Washington. When that happens, we will see real change happen. It's worth it to save our nation.

Source: Public Citizen

DEUTSCHE BANK TO PAY OVER \$550 MILLION IN FRAUD INVESTIGATION

Deutsche Bank has admitted criminal wrongdoing and agreed to pay more than \$550 million relating to its participation in tax shelters that enabled the rich to temporarily avoid paying hundreds of millions of dollars in U.S. Taxes. Federal prosecutors and the Justice Department's tax division announced the deal on December 21st, saying a nonprosecution agreement requires the bank to continue cooperating and to submit to the appointment of an independent expert who will review its compliance measures and ensure it does not help people dodge taxes in the future. The \$553,633,153 payment by the bank will include the amount of taxes and interest that the Internal Revenue Service was unable to collect from taxpayers from 1996 to 2002 because of the misconduct. It also

includes a civil penalty of more than \$149 million.

U.S. Attorney Preet Bharara said in a news release that the bank provided a detailed statement of facts describing its wrongful conduct. The nonprosecution agreement bars the bank from involvement with any prepackaged tax products of the type the bank had previously offered. The Department of Justice agreed not to criminally prosecute Deutsche Bank for any crimes related to its participation in a broad conspiracy to defraud the Internal Revenue Service.

This scheme enabled wealthy U.S. citizens from 1996 through 2005 to evade about \$5.9 billion in individual income taxes on capital gains and ordinary income. It appears they dodged paying taxes by claiming \$29.3 billion in bogus tax benefits that enabled them to claim losses that did not really exist. According to the government, Deutsche Bank participated in about 15 different tax shelters, working 1,300 deals involving more than 2,100 customers. Some tax shelters were supported by an opinion letter in which accounting giant KPMG and a law firm represented that the customers' tax position would "more likely than not" withstand IRS challenge, the government said. KPMG LLP reached its own deal with the government admitting its role in the tax-shelter scheme. The firm avoided criminal prosecution by cooperating with authorities and was fined \$456 million, including \$128 million in forfeited fees from sales of the shelters.

Source: Associated Press

X. CONGRESSIONAL UPDATE

CONGRESS PRODUCTIVE BUT UNPOPULAR

Perhaps never before has a U.S. Congress done more and been liked less than the current group of lawmakers. Congress ended its work on December 22nd when it wrapped up its two-year legislative cycle with a great deal of action in its final days. Included in the bills passed was an extension of expiring tax cuts for millions of Americans and approval of a new U.S.-Russia nuclear arms control treaty. But it appears that these and other

successes were overshadowed by voter anger over things like the double-digit U.S. jobless rate. I suspect that accounts for why Congress has had an approval rating of just 13%—one of the lowest ever. Republicans will take over the House of Representatives when the 112th Congress convenes on January 5th.

Norm Ornstein of the American Enterprise Institute and other Congressional scholars are calling the last Congress one of the most productive of the past half century. The following are some of the major measures enacted.

- An \$858-billion package of tax cuts and extension of unemployment benefits that Obama hopes will create new jobs. Some economists predict it will add 1 percentage point to economic growth in 2011.
- The biggest overhaul of the U.S. health-care system in 40 years, one designed to extend coverage to more than 30 million uninsured Americans, drive down costs and make it tougher for insurance companies to cancel coverage. There are court challenges to the law's constitutionality and Republicans vow to overturn it, but this is seen as unlikely.
- A U.S.-Russia nuclear arms control treaty—a major foreign policy victory for Obama in his bid to improve ties with Moscow and curb the spread of atomic weapons to other nations.
- The broadest overhaul of financial rules since the 1930s, which tightened regulation of Wall Street in an effort to avoid a repeat of the 2007-2009 financial crisis. While the measure drew heavy media coverage, polls have shown that most Americans are unfamiliar with it.
- An \$814 billion economic stimulus package in February 2009 to create jobs and boost growth amid recession. Republicans denounced the package. But the nonpartisan Congressional Budget Office says it prevented even tougher economic times by creating or saving millions of jobs.
- In the biggest change in nearly a half century in college loans, Congress halted federal subsidies to private lenders and redirected billions of dollars in savings to needy students.

- Legislation to expand a popular federal health insurance program for children.
- The Food and Drug Administration was given the power to regulate tobacco products in an attempt to reduce smoking, the leading preventable cause of disease and death in the U.S.
- A bill of rights for credit card holders, providing new consumer protections, including banning unfair rate increases, abusive fees and penalties.
- Legislation that effectively reversed a divided 2007 U.S. Supreme Court ruling that made it tougher to sue for wage discrimination.

I don't believe that the surge of activity in the closing days—even combined with other positive happenings earlier in the session—has changed the way the public views Congress. The entry of the Tea Party into the fray will make sure the discontent carries over into the current year.

Source: Reuters

FOOD SAFETY MODERNIZATION ACT PASSES

Congress has passed the Food Safety Bill which is good news for consumers. The bill, designed to increase government inspections of the food supply in the wake of recent food-borne disease outbreaks, originally passed with broad support in both the House and Senate. However, it had to be amended to avoid a constitutional challenge. Food-borne illnesses kill 3,000 Americans every year and make 48 million people sick.

Outbreaks of food-borne illness have killed thousands of Americans in recent years and forced large-scale recalls of foods ranging from ground beef and eggs to peanut butter. The new Act gives the government the power to order a food recall, and processing plants would be inspected more frequently. The Act covers processed foods, fruit and vegetables, but not meat.

Source: Fox News

XI. TOYOTA UPDATE

TOYOTA TO PAY \$32.4 MILLION IN FINES RELATED TO TWO RECALLS

Toyota has agreed to pay two more fines, totaling \$32.4 million, for failing to recall millions of defective vehicles in a timely manner. The fines are the maximum allowed by law and are in addition to the \$16.4 million Toyota paid in early 2010 in a related matter. The sum of the fines, \$48.8 million, amounts to about \$30 for each vehicle Toyota has sold this year in the United States.

The new fines are the result of two separate investigations: one into the recall of nearly 5 million vehicles with accelerator pedals that could become trapped under the floor mat, and a second involving a 2005 recall to fix steering relay rods that could crack or break in some models. Toyota waited a year after initiating a recall on the relay rods in Japan before conceding that models in the United States also were affected. Since November 2009, Toyota has recalled more than 11 million vehicles worldwide, including popular models like the Prius hybrid and the Camry and Corolla sedans.

In May of last year, Toyota paid what was a record fine in connection with the government's investigation of a January recall for so-called sticking accelerator pedals. Automakers are required to notify the National Highway Traffic Safety Administration within five days of discovering a defect. The fines levied on December 21st are \$16.375 million for the floor-mat recall in late 2009, and \$16.05 million for the steering relay rod recall. Both amounts are the maximum allowed but differ because of adjustments for inflation. The problems in each of the three recalls for which Toyota has been fined were connected to numerous reports of crashes that resulted in injuries and deaths.

Source: New York Times

TOYOTA SETTLEMENT IN SUDDEN-ACCELERATION LAWSUIT

Toyota Motor Corp. has paid \$10 million to settle its first sudden-acceleration lawsuit. Even with this case—which

received tremendous media attention—settled, the company still faces many more lawsuits. Toyota's problems related to sudden acceleration in its vehicles garnered worldwide attention and those problems are far from over.

The automaker agreed to settle the lawsuit filed by the relatives of four people, including California Highway Patrol officer Mark Saylor, killed in a fiery crash near San Diego in August 2009. As we all know, this incident, captured on a chilling 911 phone call, set off a string of massive recalls, Congressional investigations and federal fines. Toyota said in a written statement that it had reached the settlement with the families of Saylor; his wife, Cleofe Lastrella; their daughter, Mahala; and his brother-in-law Chris Lastrella so they could "move on from this difficult period." While that sounds good, the actions by Toyota in dealing with its victims have been quite different. For example, the company said it was disappointed that the amount of the settlement was made public. More importantly, the carmaker has made no serious efforts to settle other lawsuits, none of which got the media attention that this case did. Neither has Toyota really dealt with its overall safety problems as it should have done.

Toyota's efforts to prevent the amount from being made public—which was rejected by a Los Angeles County Superior Court judge—was to prevent the public from knowing about the settlement. Since there are a tremendous number of other sudden-acceleration lawsuits pending in state and federal courts, with more to be filed, Toyota didn't want attention drawn to its problems. While this settlement is a strong indication of admission of liability by Toyota, it can't be used in other cases.

Superior Court Judge Anthony J. Mohr was emphatic in stating that the amount of the settlement would not be admissible as evidence in other suits. The settlement was disclosed in September, but the amount was sealed under court order until Judge Mohr removed the seal on December 20th. Nevertheless, this settlement is most significant and will have an effect on future strategies by Toyota. It will be most difficult for Toyota to continue to blame its victims for the automaker's safety problems, as it has done in the past.

Source: *Los Angeles Times*

WOMAN SUES TOYOTA OVER DEADLY 2008 CRASH

A woman has sued Toyota Motor Corp., blaming a deadly 2008 freeway crash on a defect that she said caused her Lexus sport utility vehicle to accelerate out of control. Unmi Suk Chung was driving her 2004 RX330 on a Freeway in West Los Angeles on December 15, 2008, when the car raced to 80 mph, crashed on an offramp and overturned. A passenger in the back seat was killed. Ms. Chung and another passenger were injured.

The lawsuit was filed less than two months after the Los Angeles County District Attorney's office dismissed a felony vehicular manslaughter charge it had filed against Chung in connection with the accident. It appears they realized the sudden-acceleration problems in Toyota vehicles would make it impossible to get a conviction. As we all know, sudden-acceleration problems have caused hundreds of crashes of Toyota cars. The automaker has recalled millions of vehicles to repair gas pedals and replace floor mats it blamed for the problem. But it has carefully avoided any admission that the problems are related to a defect in Toyota's Electronic Throttle Control System.

The RX330 was not among the most recent recalls, but that model was recalled in 2006 because of a floor-mat defect that the company said could cause the gas pedal to stick. Ms. Chung, 62, told California Highway Patrol investigators that the car accelerated even as she pressed the brake pedal with all her power. A passenger who survived the crash told the investigators that Ms. Chung was screaming, "No brakes! No brakes! No brakes!" in the moments before the crash. It will be interesting to see how this case progresses.

This lawsuit, like dozens of others filed against Toyota, alleges that a problem with the vehicle's computer throttle system caused it to accelerate on its own. The suit also blames Toyota for failing to install a brake override that would close the throttle when the gas pedal is engaged, a fail-safe system used by many other automakers.

Source: *LA Times*

TOYOTA HAS MORE CAMRY PROBLEMS

Toyota has authorized dealers to make a second accelerator pedal fix on its Camry sedan. Toyota sent a bulletin to dealers last month telling them it will foot the bill if a bracket holding the accelerator pedal was damaged during the recall repairs for sticky pedals earlier this year. As we all know, Toyota had to fix millions of the recalled cars, including Camrys and other models, early in 2010. The latest notice wasn't another recall. Instead, it's classified as a less drastic action, but it's still a safety issue and one that is significant.

Toyota had lots of safety trouble and recalls, 16 in number, last year. The "sticky pedal recall" resulted from a series of reported accidents in which drivers reported that their accelerators stuck wide open, creating runaway cars. Besides sticky pedals, Toyota has blamed floor mats that can jam against the accelerator. So far Toyota has denied that there was an electronics issue as well.

Source: *USA Today and Reuters*

TOYOTA FILES SUIT AGAINST GENERAL MOTORS

Toyota Motor Corporation has filed a lawsuit in a U.S. court for damages against General Motors' bankruptcy estate over the closure of their joint manufacturing plant in California. The Japanese firm claims GM's Motors Liquidation Company (MLC) should pay \$73 million for breach of contract over the closure of the New United Motor Manufacturing Inc. (NUMMI) plant this year.

GM pulled out of the venture last year as it restructured under government-backed bankruptcy protection. Toyota closed the plant earlier this year after reaching an agreement with the plant's 4,500 unionized workers. Toyota sold the factory to Tesla Motors in May as the Japanese automaker bought a \$50 million stake in the U.S. electric vehicle maker. NUMMI has also filed a separate lawsuit against MLC, seeking about \$360 million in damages stemming from the dissolution of the joint venture.

Toyota says that MLC, responsible for the discarded assets of the former auto giant, chose "to end its active participation in NUMMI," which "breached MLC's commitments to NUMMI and sounded its

death knell.” Toyota eclipsed GM as the world’s top automaker in 2008. Amid skyrocketing debt and plummeting sales, GM was forced into bankruptcy protection in June 2009. The company received a \$50 billion government bailout at that time. After government-backed restructuring, GM, still the largest U.S. Automaker, recently launched a massive \$23 billion share offering in what has been described as “a dramatic turnaround for the embattled company.” The IPO lowered the government stake in the company below 50% and recouped \$11.7 billion for U.S. Taxpayers.

Source: Reuters

XII. PRODUCT LIABILITY UPDATE

FORD HAS A PROBLEM GREATER THAN AXLE FAILURE

It’s quite evident that Ford Motor Co. didn’t do enough to tell owners about its recall of Windstar minivans. That’s the opinion of the family of a Massachusetts man who was killed when his rear axle cracked in half, sending the vehicle crashing into a building. The family of Sean Bowman, the decedent, told the Associated Press that it received a safety recall notice from Ford in October, one week after the fatal accident.

In August, Ford announced it was recalling 575,000 older-model Windstars over concerns the rear axles can corrode and break. But the recall wasn’t widely publicized. When AP checked with Ford about the Bowman case, it found that Ford was expanding its recall and cooperating with government investigators. But, Ford declined to comment to the Associated Press on the Bowman case. The automaker now says it’s adding 37,000 minivans to the initial recall. That addition will bring the total number of Windstars covered to 612,000 in the U.S. And Canada.

The original recall included vans sold in the 1998 to 2003 model years in 21 states in the U.S. And Canada where heavy road salt can cause the axles to rust. The corrosion can lead to cracks that can cause the axles to break. The recall expansion includes 2003 model-

year vans with heat-treated axles. It also includes vans registered in Utah, where road salt is used in some areas. Ford had been checking state motor vehicle registration databases to find Windstar owners in the affected states.

Ford began notifying owners of the additional 37,000 vans about the recall on December 6th. Ford said that as of September, the latest figures it has available, there were seven accidents with three injuries, none serious. Ford says it was aware of 950 complaints at that time. I suspect Ford has problems on this issue much greater than axle failure, which in itself is major, and it will be interesting to see how NHTSA responds to Ford’s delay and inaction.

Source: Associated Press

XIII. MASS TORTS UPDATE

LAWSUITS INVOLVING DEFECTIVE HIP REPLACEMENT PARTS CONSOLIDATED

Litigation has continued to heat up due to the recall in August of 2010 by Johnson & Johnson’s subsidiary, DePuy Orthopedics, Inc., of its DePuy ASR hip implant devices. Due to data suggesting a higher incident rate of revision surgeries being required for patients who had the DePuy ASR hip implanted, the company was forced to recall these hip devices. The main issues causing these revisions are metal debris that comes from the metal-on-metal hip components and/or the hip components mal-functioning.

This problem has led to several federal lawsuits being filed around the country by users of the DePuy ASR hip behalf. Recently, a panel of federal judges gathered in Durham, N.C., to decide if these cases needed to be consolidated in one federal court and if so, which federal judge should oversee this litigation. This federal court consolidation of cases is typically referred to as Multi-district litigation (MDL). After hearing arguments from a number of lawyers representing both Plaintiffs and the Defendant, the judicial panel selected Judge David A. Katz, from the Northern District of Ohio, to oversee DePuy litigation MDL.

In our opinion, this was a very good decision. Judge Katz is a very good judge who is respected by both Plaintiff and Defense lawyers around the country. He currently handles the Ortho Evra birth control MDL litigation. Interestingly, Ortho Evra is also a subsidiary of Johnson & Johnson. Judge Katz has done an excellent job of pushing that litigation to a potential resolution. It’s expected that he will do the same with the DePuy litigation as well.

Practically, this means that those who have potential claims against DePuy and aren’t able to file their claims in state court, will end up with Judge Katz in his court. Based on this judge’s experience with other MDLs, we are quite pleased with his selection to head up the DePuy litigation.

The recall involves the ASR XL Acetabular and ASR Resurfacing systems. Patients who received the defective hip replacement parts from DePuy may experience symptoms including pain, swelling and trouble walking. These symptoms may indicate serious problems such as the hip implant loosening from the bone, fracturing the bone to which it is attached, or dislocating. The recall affects 93,000 people and it is expected that thousands of lawsuits will be filed on behalf of people injured by the defective parts.

We are currently investigating hundreds of cases on behalf of clients injured by the defective hip implant. Even people who are not currently experiencing symptoms may be at risk. The recalled part uses metal-on-metal parts to reduce wear. However, the friction between these parts may release particles of toxic heavy metals into the tissue and bloodstream, causing metal poisoning. This can result in serious injury, including tumors, neurological problems and heart failure. We will keep our readers updated on this important litigation. Navan Ward is heading up this litigation for our firm. He can be reached at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

AN UPDATE ON PREMPRO LITIGATION

Last month we reported that Nevada’s Supreme Court upheld a \$57.7 million jury award to three women with Prempro-induced breast cancer. That award included \$35 million in punitive damages handed down in 2007 over Wyeth offi-

cial's mishandling of the drug. Now, jurors in a Virginia federal court found last month that Georgia Torkie-Tork could not show that Wyeth officials downplayed the breast-cancer risks associated with Prempro, a hormone-replacement drug. Wyeth's lawyers argued that Ms. Torkie-Tork couldn't prove she and her doctors received inadequate warnings about Prempro's cancer risks because she could not show which of her doctors prescribed the menopause drug. Evidence in the case showed that some of her physicians destroyed their records as part of normal business practices and could not remember prescribing the drug for the woman.

More than 6 million women took Prempro and related menopause drugs to treat symptoms such as hot flashes and mood swings before a 2002 study highlighted their links to cancer. Wyeth's sales of the medicines, which are still on the market, topped \$2 billion before the release of the Women's Health Initiative, a National Institutes of Health-sponsored study.

Our firm was scheduled to start a four-Plaintiff Prempro trial in Philadelphia on January 10, 2011. I am pleased to report that those cases have been settled. The lawyers from our firm, Ted Meadows and Russ Abney, in those cases will now prepare for our next Prempro trial which is set in Little Rock, Ark., on February 1, 2011.

Source: Bloomberg

JURY RETURNS VERDICT AGAINST JOHNSON & JOHNSON IN LEVAQUIN TRIAL

A federal court jury in Minnesota returned a verdict against Johnson & Johnson last month in a Levaquin trial. It was alleged that the drug company failed to properly warn of the risks of tendon damage linked to Levaquin. The jury awarded compensatory damages of \$700,000 and punitive damages of \$1.1 million in the case. John Schedin, who is 82 years old, sued J&J and its Ortho-McNeil-Janssen Pharmaceuticals unit in 2008. He says both of his Achilles tendons ruptured after he took Levaquin. It was contended that the companies failed to warn doctors and patients of the drug's association with tendon damage.

The trial was the first of more than 2,600 lawsuits in U.S. courts alleging that

Levaquin caused tendon damage in patients and that J&J failed to disclose the risk adequately. The jury, in ordering punitive damages, found the company acted with deliberate disregard for the safety of others. A status conference on other cases in federal court in Minnesota will be held very soon. U.S. District Judge John R. Tunheim is overseeing those suits. The next case for trial should be selected at this conference.

In 2008, the U.S. Food and Drug Administration required J&J and makers of related drugs in the class of antibiotics called fluoroquinolones to include warnings on the risk of tendon ruptures. The risk was higher in patients older than 60, those taking steroids, and recipients of kidney, heart or lung transplants, the FDA said. The Plaintiffs claim the label warning should have been improved earlier and remains inadequate. They also say J&J and Ortho-McNeil-Janssen boosted sales by downplaying risks.

Mr. Schedin was prescribed Levaquin and a steroid for an upper respiratory infection in 2005. Prior to his Levaquin-induced bilateral Achilles tendon rupture, he was vigorous and active for his age. He has never fully recovered and is now severely restricted in his activities. His doctor would have prescribed another antibiotic had he known about the risks associated with Levaquin, especially when taken together with steroids. Mikal Watts, a Houston-based lawyer, represented Mr. Schedin and did a very good job.

Source: Bloomberg

XIV. BUSINESS LITIGATION

SUNSHINE MILLS WINS LAWSUIT IN FRANKLIN COUNTY, ALA.

An Alabama jury returned a \$61 million verdict last month in favor of Sunshine Mills, Inc. Against Ross Systems, Inc. in a fraud lawsuit. The Franklin County jury awarded \$16 million compensatory and \$45 million in punitive damages. Ross Systems was acquired by CDC Software in 2004. Sunshine Mills, located in Red Bay, Ala., had acquired the Ross ERP beta system in 2005. Ross Systems said it will

appeal. Jere White, a very good lawyer with Lightfoot, Franklin & White in Birmingham, was the lead lawyer for Sunshine Mills and did an excellent job in this case.

HOSPITALS SUE TRINITY OVER HOSPITAL SITE

Brookwood Medical Center and St. Vincent's Health System, two Birmingham hospitals, have filed suit against Trinity Medical Center in an attempt to block Trinity's plan to move in to the unfinished HealthSouth hospital on U.S. 280. The hospitals contend that Trinity's plan would cost the Plaintiffs millions of dollars a year in lost business and that Trinity is moving primarily to "get a better payer mix." It's contended that state regulators approved Trinity's plan in violation of their own rules.

Source: AL.com

ALLSTATE FILES LAWSUIT AGAINST COUNTRYWIDE

Allstate has filed a federal lawsuit against Countrywide Financial over \$700 million in toxic mortgage-backed securities the insurer bought in 2007, only to see their value decline rapidly. The suit targets Countrywide, its former CEO Anthony Mozilo and other executives, and Bank of America, which bought the mortgage giant in 2008. It's alleged in the Complaint that beginning in 2003, Countrywide abandoned its underwriting standards, misrepresented crucial information about the underlying mortgage loans and concealed material facts from Allstate and other investors.

The insurer says its claims are based on analysis of the loans underlying the mortgage-backed securities, internal Countrywide documents that have been made public, and complaints filed against Countrywide by the regulators, states' Attorneys General and other investors.

Source: Associated Press

XV. INSURANCE AND FINANCE UPDATE

AIG To Pay \$146 Million In Workers' Compensation Settlement

American International Group Inc. (AIG) has agreed to pay \$146.5 million in fines and additional taxes to state insurance regulators for the under-reporting of premiums to states more than a decade ago. The company will pay \$100 million in penalties to all 50 states and the District of Columbia and another \$46.5 million in additional taxes and assessments to eight state insurance departments that led the investigation. The settlement resolves a multi-state investigation over whether AIG violated premium reporting rules governing workers' compensation insurance from 1985 to 1996.

The misreporting had the effect of lowering the premium taxes and premium-based assessments AIG paid, according to regulators. Under the terms of the settlement, AIG will:

- Pay a \$100 million fine to be apportioned among all the participating states;
- Pay approximately \$46.5 million in additional taxes and assessments;
- Enter into a compliance plan containing agreed-upon specific steps and standards for evaluating AIG's ongoing compliance with workers' compensation insurance rating and reporting requirements;
- Submit to periodic internal and state monitoring and a confirmatory examination at the end of 24 months; and
- Agree to pay a contingent potential fine of up to \$150 million if AIG fails to meet the terms of the compliance plan.

The AIG insurance companies will be filing restated financial statements by March 1, 2011 reflecting the reallocation of approximately \$2.1 billion of premium. The multi-state examination was led by the states of Delaware, Florida, Indiana, Massachusetts, Minnesota, New York, Pennsylvania and Rhode Island. But all states will participate in the settlement. The investigation involved AIG's

financial reporting of workers' compensation insurance for the years 1985 through 1996. It was found that AIG failed to comply with rating, forms and financial reporting laws. AIG misreported \$2.12 billion of workers' compensation premium. It was reported instead as general or commercial automobile liability premium.

In early 2006, AIG reached a \$343 million settlement with New York and other states' Attorneys General for underpayment of workers' compensation premiums taxes and residual market assessments. AIG was found to have improperly booked workers' compensation premiums as general liability premiums from at least 1985 through 1996. One effect was to reduce AIG's taxes and residual market payments for those years. That 2006 settlement was part of an overall \$1.6 billion settlement of fraud, bid-rigging and improper accounting charges with the Securities and Exchange Commission and New York officials. It was reported that AIG's current chief executive officer and board of directors cooperated fully throughout the examination. This settlement is conditioned upon its adoption by at least 35 of the remaining 43 states and the District of Columbia by March 1, 2011.

State regulatory issues may also be resolved. The agreement is also conditional, however, upon settlements of lawsuits between AIG and some of its workers' compensation competitors over whether the residual markets and state guaranty funds whose assessments are based on reported premiums have been shortchanged by misreporting. A federal judge in Chicago ruled in August 2009 that the trade group National Council on Compensation Insurance Inc. did not have standing to sue for \$1 billion on behalf of the residual markets. But individual insurers have filed their own lawsuits and AIG has also sued other insurers. AIG, which received a total of \$182 million in government bailout funds, is progressing on its restructuring plan that will allow it to pay back the government.

Source: *Insurance Journal*

APPEALS COURT REJECTS KATRINA SETTLEMENT

A federal appeals court has rejected a \$21 million settlement of Hurricane Katrina damage claims that some residents had complained was unfair. One group said the settlement would have entitled residents and businesses to as little as \$40 each. U.S. District Judge Stanwood Duval Jr. in New Orleans had approved last year's settlement of class-action lawsuits against three Louisiana levee boards and their insurer, St. Paul Fire & Marine Insurance Co.

But a three-judge panel from the 5th U.S. Circuit Court of Appeals ruled the settlement isn't fair because its backers failed to show Plaintiffs would benefit in any way in exchange for surrendering their claims. The panel said Judge Duval erred by approving the settlement without any assurances that lawyers' fees and administrative costs wouldn't "cannibalize" the entire \$21 million.

Public Citizen Inc., a non-profit group representing three former New Orleans residents who objected to the settlement's terms, said roughly 500,000 households and 41,000 businesses in greater New Orleans would have been entitled to shares of as little as \$40 each. "You shouldn't force people to give up a claim for nothing without giving them a chance to opt out," said Public Citizen attorney Michael Kirkpatrick. Joseph Bruno, one of the lawyers who helped negotiate the settlement, believes the settlement can be reworked to satisfy the 5th Circuit's objections.

Source: *Insurance Journal*

FIFTH THIRD SETTLES SUIT OVER DEBIT CARDS

A lawsuit, filed in the U.S. District Court in Northern Illinois, against Fifth Third Bank, has been settled. It was claimed that Fifth Third improperly assessed overdraft fees for insufficient funds on debit card purchases and ATM withdrawals by "re-sequencing" transactions to maximize the number of overdraft fees. While the bank denied the claims, the case was settled for \$9.5 million. Members of the class, current and former bank account customers of Fifth Third Bank, started getting notices of the settlement last month.

The proposed settlement class includes anyone who held a Fifth Third account from October 21, 2004 through July 1, 2010 and incurred at least one overdraft fee associated with a Fifth Third debit card transaction. A court hearing on the proposed settlement has been set for March 16th. Claims can be submitted online at www.OverdraftSettlement.com or by submitting a written form obtained by writing to Fifth Third Overdraft Settlement, P.O. Box 3266, Portland, Ore., 97208-3266.

Source: *Cincinnati Enquirer*

OHIO COURT ISSUES IMPORTANT RULING IN ATLANTA BUS CASE

The Ohio Supreme Court, in a very important ruling, says that a university's insurance coverage extended to a charter bus that crashed, killing five student baseball players and two others. The ruling, issued last month, provides up to \$16 million more in insurance coverage to pay claims. The insurers argued they could not be liable because the university did not own the bus. They claimed the bus company was responsible for the driver. The lower courts agreed and the case went to the Supreme Court. But, the state's Highest Court said the driver was covered under the school's insurance because the university hired the bus and had effectively granted permission to the driver. In my opinion, the Court's ruling was legally sound.

Source: *Atlanta Journal Constitution*

XVI. EMPLOYMENT AND FLSA LITIGATION

\$152.5 MILLION SEX-BIAS SETTLEMENT BY NOVARTIS APPROVED

The federal judge presiding over a sex-bias class action against Novartis AG's U.S. unit has given final approval to the \$152.5 million settlement the drugmaker reached in July. The suit was filed in 2004 by Amy Velez and four other women who claimed they faced discrimination in pay and promotion and for pregnancy. The case was certified as a class action on behalf of more than 5,600 women who

worked in sales jobs at Novartis since July 15, 2002. In her order, U.S. District Judge Colleen McMahon in Manhattan wrote: "The road to this settlement was long, arduous, risky and expensive. The settlement is, by all measures, excellent."

Under the settlement, Novartis, which is based in Basel, Switzerland, will pay \$60 million in back pay to the class and as much as \$40 million in compensatory damages. Lawyers for the class were awarded \$40.1 million in fees and expenses. Witnesses and class representatives get \$9.8 million. Novartis also agreed to implement measures to protect female workers' rights. The settlement came after a jury found Novartis liable for discrimination on May 17th and awarded \$3.4 million in damages to 12 of the women. Two days later, the same jury awarded \$250 million in punitive damages.

Source: *Bloomberg*

VERIZON SETTLES CALIFORNIA LAWSUIT FOR \$6 MILLION

Verizon Communications Inc. has agreed to pay up to \$6,011,190 to current and former California employees to settle a class action lawsuit filed by the California Department of Fair Employment and Housing (DFEH). The Complaint challenged the company's family medical leave practices. The settlement, which requires court approval, covers Verizon's voice, data and video operations in California.

The lawsuit alleges that from 2007 to 2010, Verizon denied or failed to approve in a timely manner class members' requests for leave for their own serious health condition, to care for a family member with a serious health condition, or to bond with a new child. The Department further alleged that the company fired some class members for violating Verizon's attendance policy when they missed work for a CFRA-qualifying reason.

The settlement of this lawsuit—the largest in DFEH history—will result in payment to class members of more than \$6 million dollars. It was reported that Verizon cooperated fully with the investigation. As part of the settlement, Verizon agreed to review and revise its leave policies and procedures and to continue an existing internal review process that employees can invoke to appeal denials. Verizon, which has 7,000 employees, also

agreed to train all California officers, managers, supervisors and human resources personnel on the procedures and to submit regular updates to the DFEH regarding the company's compliance.

Source: *Central Valley Business Times*

GENERAL ELECTRIC SETTLES DISCRIMINATION LAWSUIT

General Electric Co. has agreed to pay \$3 million to settle a racial discrimination lawsuit brought by black workers from the Monroeville, Ala. Area. The settlement was reached last month a day before a civil trial was set to begin. The Plaintiffs agreed to accept the \$3 million offer by GE. As a part of the agreement, the Plaintiffs agreed to waive any future claims against GE, its employees or anyone associated with GE. The Plaintiffs also agreed to sign confidentiality agreements prohibiting them from discussing the settlement or any of the allegations they made. Sixty-two people filed suit two years ago, alleging discrimination by Baghouse Associates, a company that GE bought in 2004.

The workers, all but one of whom lived in the Monroeville area, worked for Lacy Enterprises, which supplied workers to Baghouse Associates. The workers traveled to power plants and heavy industrial operations in various places throughout the country to change filters. The Plaintiffs alleged that their GE supervisor subjected them to a barrage of racial slurs and insults, denied them breaks to use the restroom or treat injuries, and arbitrarily fired or suspended black workers because of their race. The lawsuit also alleged that GE tolerated the mistreatment and canceled the contract with Lacy Enterprises when its owner complained.

Source: *Al.com*

ELEVENTH CIRCUIT REVERSES JURY VERDICT IN FLSA CASE

The Fair Labor Standards Act of 1938 requires employers to provide premium compensation for hours worked over 40 in a workweek by employees. But the law contains numerous exemptions which allow certain employers to avoid overtime payments. One of the exemptions is known as the "administrative" exemption. Recently, the administrative

exemption was the subject of a case in Florida, even though it should not have been. The problem was that the employers in the case did not assert the defense when they filed an answer to the Complaint. In fact, they did not ask the district court to allow them to amend their answer until after they had presented their case at trial.

Even with the delay, the district court allowed the employers to amend their answer and argue that the Plaintiff was not entitled to overtime pay due to the administrative exemption. The jury found that while the employee did frequently work more than 40 hours each week, she was not entitled to overtime pay because of the administrative exemption.

The Eleventh Circuit Court of Appeals reversed the jury's verdict. The Appeals Court found that the delay by the employers resulted in them waiving the defense. The jury should not have been allowed to consider the defense, according to the Court's decision. The Court remanded and sent the case back to the lower court to conduct a trial on damages.

INJURED FORMER PLAYER SUES NFL PENSION PLAN

A former running back for the Washington Redskins and Carolina Panthers has filed suit against the NFL's pension plan. The Complaint alleges that the player should receive the highest level of disability benefits because of a spine injury from a helmet-to-helmet hit that ended his career. The suit, filed on behalf of Eric Shelton in U.S. District Court in Baltimore, seeks \$18,670 a month—nearly \$225,000 a year—in pension benefits. Shelton had been awarded \$9,167 a month—about \$110,000 annually—by the plan in August after going through an appeals process.

Shelton, who is now 27, was drafted by Carolina in the second round out of Louisville in 2005. He signed with Washington in January 2008, then was hurt during an intra-squad scrimmage at the Redskins training camp in July 2008, and waived less than a week later. The Complaint says that the "helmet-to-helmet blow ... caused a permanent and disabling narrowing of his spinal column" and that Shelton has "migraine headaches, transient paralysis

... And other neurological and related disorders and has been unable to work."

Shelton had received a series of rulings from the NFL Player Retirement Plan, which is jointly run by the league and the players' union. There was an initial benefit of \$1,140 per month—less than \$14,000 a year—awarded in September 2009. The amount was increased through the appeals process in August. Shelton's lawsuit came as the NFL was trying to use hefty fines and the threat of suspensions to cut down on dangerous hits. The complaint quotes the pension plan as saying a player should receive top benefits if he is "substantially prevented from or substantially unable to engage in any occupation or employment" as the result of an injury. The six-member plan board that hears appeals includes three members appointed by the NFL and three appointed by the players' union.

Source: *Insurance Journal*

XVII. PREMISES LIABILITY UPDATE

WOMAN CRIPPLED BY CYBEX EXERCISE MACHINE AWARDED \$66 MILLION

A jury returned a verdict last month in favor of a New York woman who was rendered a quadriplegic after a Cybex weight machine crushed her vertebra. The \$66 million verdict was against Cybex International Inc., a Medway Company, which is responsible for \$49.5 million of the verdict in favor of Natalie Barnhard, a 30-year-old Buffalo resident. The verdict in New York State Supreme Court was one of the largest personal injury awards ever in Erie County. The company, which has less than \$4 million in liability insurance to cover the claim, said it will appeal.

Ms. Barnhard, then 24, was using a Cybex weight machine in 2004. She was at work as a physical therapist assistant at Amherst Orthopedic Physical Therapy in Buffalo when the incident occurred. While doing a shoulder stretch, Ms. Barnhard had her hand on top of the leg extension machine. The machine fell onto her when she stretched back with her shoulder and arm. It took four people to lift the 500-pound machine off of her.

Kevin English represented Ms. Barnhard and did a very good job.

Source: *Boston Herald*

\$2.7 MILLION SETTLEMENT IN WRONGFUL DEATH LAWSUIT

A \$2.7 million settlement has been reached in a lawsuit involving the death of Michael Doyle, a 26-year-old financial trader. Doyle fell from a porch at an apartment complex in Lakeview, Ill., during a New Year's Eve party in 2007. The victim's family contended the porch was defective, citing a city inspection report that found rotted columns and inadequate bolts. The family filed a lawsuit against Kenard Management, which managed the building. Doyle was a guest at a friend's apartment celebrating New Year's Eve with friends from college. He and five other people were on the third floor deck at the back of the building. When he got up from sitting on the stairs to walk to a table, he tripped and fell head first through the metal railings of the deck to the ground below.

Six months before the accident, Kenard had been alerted by its insurance carrier that the large railing gap—2 feet by 8 feet—should be closed with wire mesh. Kenard had received bids to do the work, but nothing had been corrected at the time of the incident. It was alleged in the lawsuit that the work would have prevented Doyle from falling to his death.

Source: *Chicagobreakingnews.com*

CASINO SETTLES SECONDHAND SMOKE LAWSUIT FOR \$4.5 MILLION

A former casino employee whose lung cancer was caused by 25 years of exposure to secondhand smoke at work has settled his lawsuit filed against his former employer for \$4.5 million. It is being reported that the lawsuit filed by Vince Rennich against the Tropicana Casino and Resort in Atlantic City has become a rallying cry for the ultimately unsuccessful effort to ban smoking in the nation's second-largest gambling market. Mr. Rennich is reported to have said that all he wanted was "to have smoking stopped in the casinos." He says that his goal in the lawsuit was never about money.

Rennich now works at Dover Downs, a smoke-free casino in Delaware. He says

the atmosphere there is much better than Atlantic City, where smoking is allowed on 25% of the casino floor. The 52-year-old Rennich learned of his cancer in 2005 when he was hospitalized after a car accident. He had one-third of his right lung removed in September of that year, and says he is feeling well nowadays. Rennich says he has never smoked a cigarette in his life.

He became one of the most visible faces of the movement to ban smoking in Atlantic City's 11 casinos in 2007 and 2008. The city was on the verge of banning smoking, but relented when the economy crashed and casinos worried about losing even more of their business to neighboring states that allow gamblers to smoke. A compromise under which smoking is banned from 75% of the casino floor but allowed on the remaining 25% seems to have satisfied no one, but it has been in effect for nearly two years. Karen Blumenfeld, executive director of the anti-smoking group Global Advisors on Smokefree Policy, said the settlement should be a wake-up call for the casino industry. She also said Rennich's case should be a catalyst to removing a casino exemption from New Jersey's law that bans smoking inside all other public buildings.

Source: *Times Herald*

LAWSUIT FILED IN COLLAPSE OF BOTANICAL GARDENS CANOPY WALK

A worker has filed a lawsuit in Georgia against the Atlanta Botanical Garden and several engineering firms and construction companies for injuries he suffered when an elevated walkway he was helping to build collapsed in 2008. The Canopy Walk, which travels through the trees, collapsed on a breezy, cold morning just days before Christmas, dropping workers as much as 40 feet to the ground. As you may recall, one person was killed and 18 were injured, including seven workers with brain, spinal and other serious injuries.

The suit filed by Johnathan Scott last month is the most recent one to be filed in Fulton County State Court concerning the collapse. There have been other lawsuits filed previously, including one for the death of a 56-year-old construction worker.

It's alleged that the Atlanta Botanical Garden and nine companies were at fault and failed to protect workers building the elevated walkway. It's contended in all of the suits that the shoring towers were too far apart and some "had heights exceeding four times the minimum base width." Further, the towers were not properly anchored and the elevated walkway was inherently dangerous. On the day of the accident, Scott was working for one of the subcontractors hired to pour concrete. The others who have filed suit also were working for a concrete subcontractor.

Source: *Atlanta Journal Constitution*

LAWSUIT FILED INVOLVING DEADLY TENNESSEE HOME BLAST

A couple who lost a son in a Tennessee home explosion last year has filed a wrongful death suit against the Knoxville Utilities Board. Steve and Sue Krzeski contended in the suit that a device connecting the natural gas supply to the home failed and allowed gas to seep into the residence. On December 9, 2009, 18-year-old Nick Krzeski died in the blast and his parents were seriously injured.

Source: *Insurance Journal*

FAMILY OF FIRE VICTIM FILES WRONGFUL DEATH LAWSUIT

The family of a ten-year-old boy killed in a January 2010 apartment fire in Utah has filed a wrongful death lawsuit. The suit alleges that the fire alarms at the apartment complex did not work and that the management company of the apartment complex did not regularly inspect the alarms. The boy died on January 18, 2010, in a fire that started in the corner of a room where a Christmas tree was set up.

Source: *Desert News*

XVIII. WORKPLACE HAZARDS

JURY RETURNS VERDICT FOR MEN INJURED IN PIPELINE EXPLOSION

A Harris County, Texas jury returned a verdict last month for the families of three men burned in a 2008 Vanderbilt pipeline explosion. The jury awarded the workers, Luis Moreno, Meliton Lerma and Genaro Castillo, \$19.9 million for injuries they sustained in the incident. In June 2008, the three victims were performing demolition work at a Hilcorp Energy-operated gas plant located on the West Ranch, about a mile 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 were among the hired RCS employees. 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 they did not properly vent, purge and clean all the lines prior to the commencement of the demolition project. But they never warned its contractor or subcontractors of the hidden danger, said a news release.

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. It was alleged that they were systematically abusing their own rules if that was in fact the policy. The jury found that both A&R and Hilcorp were at fault in causing the fire. The jury also apportioned some responsibility to RCS and a small percentage to the Plaintiffs. 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 divided three ways, Moreno was awarded 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.

Source: victoriaadvocate.com

JURY AWARDS \$1.2 MILLION TO WORKER WHO UNLOADED RAW ASBESTOS

A forklift driver who unloaded bags of raw asbestos for six years as part of his job has won his lawsuit against Union Carbide. The jury returned a \$1.2 million verdict against Union Carbide, which mined and sold the asbestos to the driver's employer. The verdict came more than two years after the worker, Daniel Edwards, died from mesothelioma.

Union Carbide failed to adequately warn about the dangers of asbestos even though the medical literature and internal corporate documents showed a link between asbestos and mesothelioma as early as 1967. That was two years before Edwards started working with the product. Union Carbide claimed that it was up to the employer, National Gypsum, to warn about the risks of asbestos.

Edwards worked at the same National Gypsum plant in Maryland for his entire life, operating a forklift to load and unload deliveries. During the period of 1969 to 1975 Union Carbide shipped more than 2.4 million pounds of raw asbestos to National Gypsum by rail from a mine it owned in California. Two of Edwards' co-workers testified that when asbestos arrived in 35-lb. bags, they lifted them and dumped them onto Edwards' forklift, releasing white clouds of asbestos. The bags were then broken open and mixed with other ingredients to make products like joint compound.

As many as 50 documents showing a link between asbestos and mesothelioma, including a 1967 internal corporate document on the hazards associated with the product, were introduced during the trial. The 1967 document outlined pretty much all the company needed to know about the hazards two years before Union Carbide began selling asbestos to National Gypsum.

Source: *Lawyers USA Online*

XIX. TRANSPORTATION

THE PUBLIC MUST BE MADE AWARE OF DEADLY RENTAL CARS

We recently reported on safety issues relating to the renting of recalled vehicles by the rental car industry. There still is no federal law requiring rental car companies to fix recalled vehicles before renting the vehicles to consumers. Even though the rental car companies have at least a common law duty not to rent recalled vehicles, they are still doing it. Consumers can take steps to protect themselves. Clarence Ditlow, executive director of the Center for Auto Safety, gave ABC News Chief Investigative Correspondent Brian Ross some ways consumers can protect themselves. Mr. Ditlow says rental car drivers should specifically ask the agent at the car rental company to check out a car's vehicle identification number (VIN). As you may recall from a prior issue, Mr. Ditlow has been petitioning the Federal Trade Commission to mandate that rental car companies fix recalled vehicles before renting them out. He says consumers should ask the rental agent to check their computer system to see if there is an outstanding recall on a vehicle before accepting it.

After the ABC News investigation reported the tragic story of the Houck sisters, whose family spent five years in court fighting Enterprise, another of the country's huge rental car companies, Hertz changed its policy and now no longer rents out vehicles affected by recall notices. No other major national car rental company has changed its policy.

U.S. safety officials launched an investigation to determine how quickly rental car companies repair vehicles that have been recalled for safety issues. The National Highway Traffic Safety Administration has sent letters to GM, Chrysler and Ford for details on the recall repair status of nearly three million cars that are commonly rented. Every rental car and rental truck company in this country should repair a vehicle before they rent it. Car rental companies that still don't have policies prohibiting vehicles under recall from being rented to consumers are "putting profits ahead of safety," according to Mr. Ditlow.

Source: *ABC News*

FAMILY AWARDED \$14 MILLION IN DRUNK DRIVER DEATH CASE

A jury in Lee County, Fla., awarded almost \$14 million last month to a family who lost two young boys in a 2007 drunken driving crash. The two boys—ages one and six—died in the vehicle crash that occurred in January of last year. The parents, Maria and Juan Louis Martinez, had four children. But now, as a result of an alcohol-related vehicle crash, they have only two.

George Butler was driving around 80 mph when he hit the family's truck, causing it to flip onto its side. In addition to the two deaths, another son who was 11 at the time suffered injuries during the crash. The jurors awarded \$12 million for pain and suffering to the parents and surviving son for the loss of the two boys. The remainder of the damages went to past and future medical bills and funeral costs. The jury awarded about \$25,000 in punitive damages.

Butler had been drinking at a lounge located on Fort Myers Beach and left there to drive home. The Martinez family was driving to a birthday party. Butler said he remembered drinking at the bar, but couldn't remember how he got drunk. He also testified that he didn't know how he got in the truck. John Romano of Lake Worth represented the Martinez family and did a very good job.

Source: *News-press.com*

\$2.255 MILLION SETTLEMENT IN DRUNK DRIVER CRASH

We reported on another drunk driver case that had been filed a few months back. That case has now been settled. A police officer and the bar that served her alcohol have agreed to pay a total of \$2.255 million—the limit of their insurance policies—in settlement to compensate the families of four young people killed and one man injured in the 2009 vehicle crash in Des Peres, Mo. A wrongful-death lawsuit, brought by the survivor and the dead victims' families, alleged that the officer, who was off duty, drank "a high quantity" of alcohol on the night in question at O'Leary's Restaurant & Bar, and then drove her car into oncoming traffic. We reported on this lawsuit after the suit was filed.

The 42-year-old officer was driving drunk and on the wrong side of the road.

Her blood-alcohol content was 0.169% three hours after the crash. The threshold for drunk driving is 0.08%. There was no question about the driver being at fault. The parents also sued the restaurant because its “employees knew the officer was intoxicated” and did not stop her from driving or call her a cab. The restaurant was located in a strip mall about 1,000 feet from the Sunset Hills police station. Bar workers served the off-duty officer alcohol despite her slurred speech and unsteady gait.

The crash occurred about 1:45 a.m. on March 21st, when the officer’s Mitsubishi collided with the Honda occupied by the victims. All four passengers were natives of India, who had studied and worked in the U.S. for several years. The Honda’s driver suffered a head injury, fractured rib, liver trauma, lung contusion and contusions to the skull. He eventually returned to work. This was a tragic occurrence and is another example of how drinking and driving can’t be tolerated.

Source: *St. Louis Today*

\$15 MILLION VERDICT RETURNED IN FATAL VEHICLE CRASH ON TOLL ROAD

A federal judge awarded more than \$15 million to the family of one of the men killed in a 2005 toll road crash caused by an intoxicated truck driver. In a court order issued last month by U.S. District Judge Theresa L. Springmann in Fort Wayne against Net Trucking, the judge awarded the money to the wife, son and estate of Dimitry B. Karpov. The lawsuit had been pending for several years in the quadruple-fatal crash.

Stanislaw Gil, the truck driver, was sentenced by a judge to 14 years in prison and ten years on probation after he pleaded guilty to four counts of reckless homicide and one count of criminal recklessness. He admitted to causing the crash on the Indiana Toll Road near Bristol. Gil was not injured in the August 2005 crash. His tractor-trailer rig was loaded with food when it hit a slow-moving vehicle as it approached a construction area, sparking a chain-reaction crash. The crash killed four people.

Gil was intoxicated and the company for which he worked, Net Trucking, doctored its log books to conceal the fact he had been driving longer than he was allowed under federal law. Judge Spring-

mann also found the company engaged in fraudulent conveyance, with company officials hiding assets and conveying property a few months after the crash.

Source: *Insurance Journal*

JURY AWARDS \$10.5 MILLION IN WRONGFUL DEATH SUIT

A Charlottesville jury has awarded more than \$10.5 million to the family of a woman who died after a concrete mixer truck fell on her car in 2007. The award may be the largest ever for a wrongful death case in Virginia. The victims were Jessica Lester, 25-year-old nurse trainee, who died after eight days, and her husband Isaiah Lester, who survived the incident. The Lesters’ car was crushed as they drove on a state road near Monticello and were hit by a truck driven by William Sprouse, working for Allied Concrete Co. The truck was charging 36,000 pounds of cement. The truck overturned and fell onto the Lesters’ car, crushing it. Sprouse has pleaded guilty to manslaughter and served 30 days in jail. The December 9th verdict will actually be worth more than \$12 million, including interest. Matthew B. Murray and Malcolm P. McConnell of Allen, Allen, Allen & Allen in Charlottesville and Richmond, Va.; and Joseph A. Sanzone of Sanzone & Baker, P.C. in Lynchburg, Va., for the parents of Jessica Lester. They represented the Plaintiffs and did a very good job.

Source: *Washington Post*

FAA LOOKS AT PROBLEMS WITH MIDAIR COLLISION WARNING DEVICES

Federal aviation regulators are proposing fixes to midair collision warning devices installed on nearly 9,000 U.S. airliners and business aircraft. This comes after the government found a safety problem during a test flight. The Federal Aviation Administration’s proposed directive, made public on December 27th, seeks to mandate software upgrades to widely-used devices manufactured by a unit of L-3 Communications Holdings Inc. During a flight test over a busy airport’s airspace, according to the FAA, airborne collision warning systems manufactured by the unit, Aviation Communication & Surveillance Systems LLC, failed to properly keep track of all nearby planes. The

agency said one aircraft disappeared for at least 40 seconds from cockpit displays, which “could lead to possible loss of separation of air traffic and possible mid-air collisions.”

Despite the proposal’s broad sweep, regulators apparently concluded the problem doesn’t pose an imminent safety threat because they want to give airlines and operators of business aircraft up to four years to complete the upgrades. According to the FAA, Traffic Alert and Collision Avoidance Systems (TCAS) devices are installed on more than 7,000 U.S. Airliners and more than 1,800 business aircraft registered in this country. Less than 100 U.S. military aircraft also use these TCAS devices. The devices provide pilots with computer-generated alerts and emergency instructions to avoid nearby aircraft. Other U.S. And European companies manufacture similar systems, but those aren’t affected by the FAA’s proposed rule.

The National Transportation Safety Board, which investigates airliner incidents and accidents, has started to collect its own reports of cockpit collision-avoidance warnings. The board wants to make sure that such incidents are promptly and fully reported, and that relevant radar data and detailed flight information gets passed on to investigators.

Source: Associated Press

XX. HEALTHCARE ISSUES

FDA SAYS DIET DRUG MAY CAUSE HEART PROBLEMS

A scientist for the Food and Drug Administration says Contrave, a pill to treat obesity from Orexigen Therapeutics Inc., helped patients lose weight, even though it didn’t meet all the criteria set forth by the agency. But, more importantly, the FDA’s review, posted online, also raised questions about the pill’s effects on the heart. That has been a perennial issue for weight loss drugs that have been plagued by safety issues. Contrave was the third weight loss pill to be reviewed by the FDA during 2010. FDA officials have acknowledged the need for new weight loss drugs amid an epidemic

of U.S. obesity. The agency rejected the two other medications under review due to safety concerns.

The FDA said on December 3rd that four studies conducted by Orexigen showed patients taking its drug lost, on average, 4.2% more weight than patients taking a placebo. But, the results did not meet an FDA guideline that there should be at least a 5% difference in weight loss between the groups. The drug did meet a second measure of effectiveness involving the number of patients who lost at least 5% or more of their weight. FDA guidelines published in 2007 state that a drug can be considered effective if it meets this requirement. The FDA was to have asked a panel of experts to vote on the drug's efficacy and safety on December 7th. The vote is non-binding, but the FDA frequently follows the guidance of its panelists.

Early in 2010, Abbott Laboratories' Meridia weight loss pill was pulled from the market after regulators said it increased the risk of heart attack and stroke. In reviewing Contrave, FDA scientists complained that the company enrolled few elderly patients or patients with a history of heart disease in its trials, making it difficult to determine the drug's safety in patients at risk for heart attack and stroke.

Contrave is a combination pill, mixing the antidepressant bupropion with the anti-addiction drug naltrexone. FDA reported higher rates of side effects already linked to the drugs, including high blood pressure, dizziness and insomnia. Attempts to come up with a blockbuster weight loss drug have been plagued for decades by safety issues. In October of last year the FDA rejected two drugs in one week: Qnexa from Vivus Inc. And lorcaserin from Arena Pharmaceuticals Inc. Qnexa had shown significant weight loss in trials, but was linked to potential heart problems and birth defects. In lorcaserin's case, the FDA raised concerns about cancerous tumors seen in rats who took the drug. It will be interesting to see what the FDA does with Contrave.

Source: Associated Press

Pfizer Withdraws Thelin From Market

Pfizer is pulling its blood pressure drug Thelin off the market and has stopped all

clinical trials. This was done because the drug can cause fatal liver damage. Thelin is sold in the European Union, Canada, and Australia as an oral treatment for severe pulmonary arterial hypertension, or high blood pressure in the pulmonary artery. It wasn't being sold in the U.S. Two patients who were taking Thelin died during a clinical trial. A review of data from clinical studies and post-marketing reports showed a new link to liver injury.

Liver damage was a known side effect of Thelin and similar drugs, according to Pfizer. The review uncovered a link to liver damage that was not tied to identifiable risk factors. Pfizer says the problem was unlikely to be detected by routine monitoring, and in some cases, the problems did not go away after patients stopped taking Thelin. Pfizer also has withdrawn its filing for marketing approval in the U.S.

Source: Associated Press

FDA To Reexamine Metal Dental Fillings

It was reported last month that U.S. health regulators will seek a second opinion on whether dental fillings containing mercury pose a risk to dental patients, especially children and pregnant women. While there are no new scientific findings on such silver-colored cavity fillings, the Food and Drug Administration wants feedback on methods it used to weigh available data and decide in 2009 that the metal alloy is safe.

The FDA will ask its panel of outside experts to assess how much mercury dental patients are exposed to and how much exposure is acceptable. The FDA reversed course in July 2009 and declared the fillings, known as dental amalgam, posed no risk. Earlier, it cautioned against their use in certain more vulnerable people such as pregnant women and children.

The agency is revisiting the issue after four groups questioned its assessment and petitioned for a second look. A panel of outside experts considered available data as well as the agency's interpretation. The panel will give its recommendations. Nancy Stade, deputy director of policy for the FDA's device center, had this to say:

Based on its own review and feedback from the panel, FDA will

decide whether to make changes to its regulation. At this time, the FDA is not modifying its existing recommendations to consumers.

Millions of Americans have had cavities in their teeth patched with the lower-cost dental amalgam. Other options include bone-colored resin. FDA could decide to continue backing the metal fillings, again urge more cautious use, or ban the products. Mercury is a known toxin and the issue is whether the vapors released from mercury in dental fillings are enough to cause harm such as brain or kidney damage. While some experts and advocacy groups say mounting data show a clear link between mercury and side effects, and that dental fillings are no exception, industry groups and dentists say the evidence shows dental amalgam is safe. Lots of folks will be very much interested to see what the FDA comes up with.

Source: Reuters

Cheewing Tobacco Maker To Pay \$5 Million In First Wrongful Death Case

A smokeless tobacco company has agreed to pay \$5 million to the family of a man who died of mouth cancer in what appears to be the first wrongful death settlement involving chewing tobacco. U.S. Smokeless Tobacco Co. will pay \$5 million to the family of Bobby Hill, a North Carolina resident. The company, which makes Copenhagen and Skoal brands, was headquartered in Greenwich, Conn. before it was acquired by Altria last year.

Mark Gottlieb, director of the Tobacco Products Liability Project at Northeastern School of Law in Boston, believes this is the first case of its kind. He predicts more lawsuits involving smokeless tobacco. There are lots of victims of smokeless tobacco use and there will likely be more cases filed.

Mr. Hill's widow filed the lawsuit in 2005 after her husband died of cancer of the tongue. Mr. Hill was 42 and had been chewing the company's spit tobacco products since he was 13. This settlement comes as the tobacco industry tries to weaken proposed tougher warning labels on tobacco products and is marketing spit tobacco as a less harmless alternative to cigarettes. Hopefully, this settlement will have an effect on alerting the public to the dangers and risks asso-

ciated with chewing tobacco. Antonia Ponvert, a lawyer with Koskoff, Koskoff & Biober, located in Bridgeport, Conn., represented the Hill family and did a very good job.

Source: MSNBC

XXI. ENVIRONMENTAL CONCERNS

ENVIRONMENTALISTS SUE EXXONMOBIL OVER AIR LAWS

A lawsuit has been filed against Exxon-Mobil, the largest U.S. oil refiner, for violating federal air pollution laws. It's alleged by the environmental groups who filed the suit that Exxon released 8 million pounds of illegal pollution in the last five years, violating federal air pollution laws thousands of times. The lawsuit against ExxonMobil is the latest by Sierra Club and Environment Texas as part of their campaign to rein in what they call "illegal emissions" by dozens of refineries and chemical plants that operate in the Texas Gulf Coast. In recent months, the groups have reached multimillion-dollar, out-of-court settlements with Shell and Chevron Phillips after filing similar suits. It appears this will be the largest of the lawsuits based on the size of the plant. The lawsuit alleges that Exxon violated emission limits on:

- sulfur dioxide, a component of acid rain;
- hydrogen sulfide, a toxic, flammable gas characterized by a rotten egg smell;
- such cancer-causing agents as benzene and butadiene; carbon monoxide; and
- the smog-causing agent nitrogen oxide.

The lawsuits are part of the broader accusations by the environmental groups and the U.S. Environmental Protection Agency that state regulators are not properly monitoring and enforcing federal emissions standards. Texas has more oil refineries, chemical plants and coal-fired power plants than any other state and is the nation's leader in greenhouse gases. The state produces more than 20% of the nation's oil, and one-third of the country's gas is refined along the Texas

Gulf Coast. Texas environmental regulators say their rules are meant to decrease pollution, but aren't so stringent that it becomes too expensive to operate in the state. As expected, ExxonMobil denied the allegations against it in the lawsuit.

Source: Associated Press

DUPONT OFFERS \$70 MILLION TO SETTLE WEST VIRGINIA POLLUTION CASE

Chemical company DuPont has offered to pay \$70 million and spend millions more on medical monitoring for the next 30 years to end a legal battle over a toxic exposure case it lost in West Virginia. DuPont is appealing a 2007 jury verdict that ordered it to spend \$130 million on medical monitoring for some 8,500 people and \$55.5 million to clean up properties contaminated with arsenic, cadmium and lead from a former zinc-smelting plant in Spelter. The proposed settlement would wipe out a \$196 million punitive damage award DuPont has also been fighting. Before it can be approved, the proposal must be reviewed by the members of the class-action lawsuit, who can raise objections. A fairness hearing was set for December 30, just as this issue was going to press.

In addition to the cash payment program, DuPont is offering to run a 30-year medical monitoring program for people who meet certain residency requirements. People will have six months to sign up for that program, which would be monitored by a committee with members from both parties and a settlement administrator.

The case centered on a zinc smelter that operated for 90 years in north-central West Virginia, producing more than 4 billion pounds of slab zinc and 400 million pounds of zinc dust for use in rustproofing products, paint pigments and battery anodes. By 1971, a toxic waste pile stood 100 feet tall, covering nearly half the 112-acre site. Dust loaded with heavy metals and other toxins often blew into homes in Spelter and other small communities around the site.

The plant closed in 2001, and DuPont worked with state regulators to demolish buildings and cap the ground with plastic and soil. In 2007, a jury ruled DuPont was negligent in creating the waste pile, and that it had deliberately downplayed and lied about possible health threats. It

awarded \$380 million in punitive damages—an amount the state Supreme Court later cut to \$196 million. The High Court affirmed the jury's other awards, but it sided with DuPont in ruling the company could seek another trial on the timeliness of the plaintiffs' original claims. Both sides have been preparing for a 2011 trial on that issue which will take place this year if the settlement offer is not accepted.

Source: Insurance Journal

XXII. THE CONSUMER CORNER

CPSC BANS DROP-SIDE CRIBS

The Consumer Product Safety Commission has voted unanimously to ban the manufacture, sale and re-sale of drop-side cribs. As we have reported, there have been at least 32 infant and toddler deaths in the past decade. It's believed the actual number is higher. The cribs have a side rail that moves up and down, allowing parents easier access to the crib. However, the cribs have come under closer scrutiny lately because the drop-side rail can partially detach from the crib, creating a gap between the mattress and the side rail. A baby can get caught in the v-shaped gap and suffocate or strangle. The ban will take effect in June of this year.

Parents should not purchase drop-side cribs from second-hand stores or borrow the drop-side cribs from friends. The new CPSC standard also mandates tougher safety testing for cribs. This will include simulating older children shaking the crib, running around on the crib and jumping up and down on the crib. The new tests hope to make sure that cribs can take the pressure. Additional information can be found on the CPSC website (<http://www.cpsc.gov/>) and at the Charlie's House website (<http://charlieshouse.org>).

LOWE'S RECALLS 11 MILLION BLINDS BECAUSE OF STRANGULATION RISK

Lowe's Stores has recalled about 11 million Roman shades and roll-up

blinds. The recall came after reports that two young children nearly strangled in the window coverings. The newest recall comes nearly a year after government safety officials declared a voluntary industry-wide recall of more than 50 million shades and blinds following reports of five child deaths and 16 injuries since 2006 caused when kids' heads and necks became caught in the cords or the space between the shades and the cords.

The latest recall includes about 6 million Roman shades and about 5 million roll-up blinds. Lowe's shades and blinds were covered by the initial recall. At that time the company took steps to provide warnings and repair kits. The new recall is voluntary and conducted in cooperation with the CPSC. The new recall underscores the need for regulations that demand that the industry produce safer blinds, according to Carol Pollack-Nelson, an independent product-safety consultant from Rockville, Md., who formerly worked for the CPSC. She noted that the federal government, blind makers and consumers have been grappling with the same safety concerns for years.

According to the CPSC, mandatory standards have been a delicate issue for a long time. Instead, the CPSC and window covering industry leaders have been working together to draft comprehensive voluntary standards within a year. Ms. Pollack-Nelson said that the CPSC needs to ensure that any proposed voluntary standards are comprehensive and that they are enacted quickly.

In the latest recall, CPSC officials report that two children became entangled in the exposed cords found on the backside of Roman-style shades. In November 2009, a two-year-old boy from Arvada, Colo., was found with the inner cord wrapped around his arm and neck. In July 2010, a four-year-old boy from Lexington, S.C., suffered a rope burn to his neck after getting tangled in a Roman shade. No injuries were reported involving the roll-up blinds.

The Roman shades were sold at Lowe's stores, other retail stores and www.lowes.com from at least 1999 through 2010 and between 1999 and 2005 for the roll-up blinds. The products retailed for between \$10 and \$1,800. They were manufactured in China, the United States, Mexico and Taiwan. CPSC officials said consumers should stop using the recalled Roman shades and roll-up blinds immedi-

ately and contact the Window Covering Safety Council (WCSC) for free repair kits by calling (800) 506-4636 or by visiting www.windowcoverings.org.

Since 1990, more than 200 infants and children have died after becoming entangled in blinds, according to the WCSC's website. Cordless blinds are now widely available.

The industry must make the necessary changes. You really can't expect most consumers to recognize the hazard presented. It has been reported that many parents thought long trailing cords on blinds were the problem, without realizing that babies and young children can also get caught in the cords on the body of the blinds.

Source: *MSNBC*

ANTITRUST LAWSUIT FILED AGAINST MAJOR CREDIT CARD COMPANIES

More than a dozen states filed in an antitrust lawsuit against the nation's largest credit card companies on December 20th. The states argue that Visa, MasterCard and American Express prevent merchants from encouraging customers to use credit cards with lower merchant fees, which could translate into lower prices. The three credit card companies have such a high share of the market that merchants cannot afford to refuse their cards and they have no practical choice other than paying the higher fees. The companies are restricting competition among credit cards based upon their merchant fees at the retail level, where sales actually take place.

Visa and MasterCard have already agreed to a settlement, which if approved by the court, would end anti-competitive prices. But American Express says it will fight the lawsuit. The goal of this litigation is to get the credit card companies to eliminate practices that allegedly restrain trade and allow merchants to offer discounts, rebates or other incentives to use a card with a lower fee. The Department of Justice and seven states initially filed a complaint in October and 18 states have now joined that lawsuit.

Source: *Associated Press*

MINNESOTA'S ATTORNEY GENERAL SUES DISCOVER OVER CHARGES

Minnesota Attorney General Lori Swanson filed suit against Discover last month, accusing one of the nation's largest credit card companies of billing tens of thousands of Minnesota customers for account protection programs they didn't want. The lawsuit alleges that Discover Bank, DFS Services and parent company Discover Financial Services violated state consumer fraud and deceptive trade practices laws. The suit was filed on behalf of the Minnesota public, but it was alleged that the billing practices are likely widespread in other states. The Attorney General is seeking refunds for Minnesota customers and civil penalties.

The exact amount of the refunds won't be known until the Attorney General gets a complete customer list for the state. The Attorney General says Discover telemarketers talked fast, skipped over words and rushed customers through a script to sign them up for the programs, including payment protection, identity theft protection and credit monitoring. She said the phone conversations often started out as courtesy calls before the telemarketer brought up the protection programs, leaving consumers confused. Lots of folks are signed up without any agreement or actual contract being involved.

Attorney General Swanson said the account protection programs brought in almost \$300 million in sales for Discover last year as enrollment has grown. The Attorney General's office is looking into complaints about similar programs from other credit card companies. Consumers were warned to be on guard against telemarketing calls from their credit card issuers and to monitor charges on their statements carefully.

Source: *Insurance Journal*

DIRECTV SETTLES CHARGES IT MISLED CONSUMERS IN 48 STATES

DirecTV will pay restitution to thousands of consumers to settle charges by 48 states, including Alabama, that it misled consumers about its prices and contract terms. The amount of restitution will be decided based on the number of claims filed with attorneys general since 2007. Consumers who believe they may

be eligible for restitution will have 150 days to file complaints with their Attorney General's office if they have not done so already. In addition, the company will pay \$13.5 million to the states for investigative and legal costs.

According to DirecTV, the agreement covers its advertising, customer service and its policies regarding third-party retailers. The company said it had already made changes in many areas addressed in the consent agreement and that those changes would be in effect in all 50 states. The 48 states that participated in the agreement alleged that the company:

- Failed to clearly disclose the price that the consumer would pay for the service and the commitment term required to keep DirecTV services.
- Failed to clearly disclose limitations on advertised prices.
- Enrolled consumers in additional contracts or contract terms without clearly disclosing the terms to the consumer.
- Enrolled consumers in additional contracts when replacing defective equipment.
- Did not clearly disclose to consumers that a seasonal sports package would automatically renew.
- Offered cash back to consumers but actually only provided bill credits.

As part of the settlement, the company agreed to fully disclose prices and terms to consumers, tell consumers if they are required to pay for sports packages and tell consumers when they are entering into a contract. The company also agreed not to move consumers into new contracts when it replaces defective equipment and not to offer cash back if it intends to only offer credits.

Consumers should contact their states' Attorney General's office. Participating states are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Caro-

lina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming and the District of Columbia.

Source: Cleveland.com

THERE ARE PITFALLS RELATING TO INSTANT TECHNOLOGY

Consumers use the internet for an increasing number of reasons, from toys, to cars to groceries online. They can also manage their finances, invest or pay bills online. The use of the internet as a social tool to find new friends or reconnect with old ones via social sites like Facebook®, MySpace®, or Twitter® has grown exponentially in the last five years. The increasing use of the internet as a social and information source has created a hazard that few people realize until it is much too late. Even careful users can be exposed to damages to their financial privacy and personal privacy.

Most computer users are familiar with the malicious side of the internet. Viruses, Worms, Trojan Horses, Spyware and Ad-ware are terms that most people recognize. Most internet users have some type of software to combat the attacks that are sure to happen. However, more and more websites are tracking your behavior and using that information to customize their sites and advertising to your tastes, personality, and habits, all while generating revenue by selling your personal information to other predators. As most have heard, "cookies" are among the most prevalent tools of these websites. Internet cookies grab information about you when you visit a site, store themselves on your computer and when you revisit the site later, loads that information back to the host site to fine tune advertising or have certain information automatically appear. When you visit a site that mysteriously knows what city you are located in, you can be sure that a cookie on your computer told the site about you.

Another function these programs serve is even more intrusive. These cookies and other software are tracking your "web-surfing" habits, your personal information that you are entering on internet sites, whether they are social media sites or even banking sites. These programs can report back this information in different ways to give general financial and demo-

graphic information or specific information to the requesting host. This information is then often sold to internet marketers who are selling you as part of a massive email list to businesses, marketers or even predators. Most people don't realize these companies even exist, but your personal information has become a multi-billion dollar industry.

Consider the other users of these programs that are accessing this same information, including scam artists, pornographers, and other unsavory characters. They can send you unwanted and unsolicited email. Sometimes they will use the email addresses of consumers to access websites and break into their accounts. Most people today still use relatively weak passwords, consisting of short dictionary terms or information that is easily determined such as your birthday or your street address or your spouse's name. They can then enter your accounts and steal your money, access your personal information and create your very own "wiki-leaks" fiasco.

Some will use the newfound access to your email to send hundreds of thousands of emails to other consumers, including your contacts, to spread their marketing or defraud other people leaving only your soiled reputation as evidence. Some very sophisticated programs will even send you to a phantom website when you think you may be visiting your bank's website. These programs use "keyloggers" to record your username and passwords, pin numbers and other information to allow access to your banking and credit accounts. In essence, be careful with your passwords or following unknown links and never give your information unless you know the site is secure.

Technology is growing by leaps and bounds, and the use of the internet is becoming common for people from ages six to 86 each day. With all the good things that are available on the internet, safeguarding your personal information must be a concern. Our firm may be able to help you once fraud has occurred, but we hope you will take precautions to limit your exposure to danger. If you would like more information on the matters discussed, contact Tim Fielder at 800-898-2034 or by email at Tim.Fielder@beasleyallen.com.

ELECTRONIC PICKPOCKETING THREATENS CREDIT CARDS AND PASSPORTS

It was reported recently that travelers and consumers can fall victim to electronic pickpocketing and never even know it because they carry new credit cards and U.S. passports. Credit card issuers, along with the U.S. State Department, have begun installing radio frequency identification (RFID) chips in credit cards and passports because the technology holds more data than magnetic stripes and can be read quicker. While this is good, apparently it also carries with it some risks. Experts have warned that people are at risk of having their personal information stolen.

As you may know, RFID chips are commonly found in cards used to raise gates in parking garages and unlock doors at businesses. Obviously, they are very easy to use. All a person has to do is swipe the card in front of a reader. Within the last few years, that same technology has been introduced to credit cards and U.S. passports. This carries with it the risk of potentially putting holders at risk of being ripped off. It doesn't matter if the cards are kept in a wallet or a purse since they can transmit through them when prompted by a RFID reader. Readers are easy to come by. In fact, the readers can be bought on eBay.

Apparently, it's very easy for hackers to obtain your information when they use a RFID reader on a credit card. The account number and expiration date pop up on the computer screen almost instantaneously after the reader gets within a few inches of the card. The only credit cards that are vulnerable are those that allow users to tap or pass a reader to pay rather than swiping. Some might also have a symbol on them that indicate they transmit. U.S. passports are harder to break because a password is required, but hackers with the know-how and correct information can see everything on the passport's front page.

It was reported that every U.S. passport issued since 2006 has a RFID chip in it, along with a gold emblem with a circle in the middle at the bottom of the passport's cover. The RFID concept is now being widely used.

CELL PHONES CAN BE DANGEROUS

A North Texas man talking on his cell phone was rushed to a hospital after his phone apparently exploded last month. Aron Embry had just finished a call when he heard a "loud pop." He soon realized that he has been injured. Embry was immediately taken to an emergency room in Dallas where his cuts required stitches. Apparently, he has suffered no hearing loss. It appears that the glass on the face of the Motorola Droid smartphone shattered. He had just purchased the phone two days before the incident. Based on reports, it appears that the screen burst outward. Interestingly, the man's phone still appears to be functioning, with its battery intact.

Family members said they plan to contact the manufacturer of the phone and Verizon about the incident. In response to the incident, Motorola has issued this statement:

Motorola's priority is, and always has been the safety of our customers, and all Motorola products are designed, manufactured and tested to meet or exceed international and local standards for consumer safety. We will reach out to the consumer and investigate this thoroughly.

While an exploding phone is rare, there have been reports of incidents. Just a few months ago, a 23-year-old man died after his phone exploded in North India. Most reports of exploding phones happen when they are in charging mode, which was the case in China. The phone of a 27-year-old housewife exploded while she was talking to her husband as the phone was being charged. She was killed. There was another incident reported in Wyoming a few years ago. There. A 19-year-old co-ed suffered second to third-degree burns while sleeping. Her phone had been charging near her bed when it caught fire. She was injured while trying to extinguish the fire.

In direct response to the Wyoming case, the U.S. Consumer Product Safety Commission issued warnings for cell phone users. Among tips released by the CPSC were making sure a person's cell phone is compatible with the battery. It warned users to keep batteries away from metal objects while phones are not in use. Phones should also be kept away

from liquids and users should be careful that they do not overheat.

Source: WFAA.com—Kens5.com

BANK OF AMERICA RESTARTS SOME FORECLOSURES

Bank of America Corp. has restarted about 16,000 foreclosure cases across the U.S. But according to reports, it could be weeks before it's known whether the bank's submission of new documents will be approached by local judges. Last month the bank instructed its foreclosure lawyers to prepare new affidavits in 7,800 cases where court approval is required to foreclose on a home. This was out of a total of 102,000 frozen by the bank because of the false documentation concerns. In states where no court approval is required, lawyers were asked to lift the hold on 8,000 delayed foreclosure sales out of 30,000. As you will recall, Bank of America and several U.S. banks halted foreclosures following allegations that employees signed hundreds of foreclosure documents a day, which in effect were fraudulent.

Other banks also are reviving foreclosures following internal reviews. Wells Fargo & Co. has prepared 46,000 supplemental affidavits in cases where court approval is required, and 94% have been sent to outside counsel for submission to the courts. J.P. Morgan Chase & Co. has also started refileing foreclosure affidavits on a "state-by-state basis."

The 16,000 foreclosure cases reopened by Bank of America involve vacant properties or homes that were rented to other occupants. Apparently, the bank believes those present fewer risks of legal challenges. The majority are in Florida, California, Texas, Georgia and Michigan. Since it will likely take the courts several weeks to schedule hearings, Bank of America may not get the prompt relief it seeks. Bank of America expects to file the remaining replacement affidavits this year.

Source: Wall Street Journal

BANK OF AMERICA SETTLES WITH THE SEC

Bank of America has agreed to pay \$137 million to settle charges that it was part of a wide-ranging scheme to pay states, cities and school districts artifi-

cially low interest rates on their investments. It was alleged that Bank of America, the nation's largest financial company, paid kickbacks and colluded with rivals to share investment business from municipalities without paying market rates. The broad scheme caused government bodies "in virtually every state, district and territory in the United States to be paid artificially suppressed rates or yields" on the invested proceeds from municipal bond offerings. The settlement was between Bank of America and 20 states.

The financial giant is the first bank to face government charges in a continuing investigation that authorities have described as the biggest ever in the \$400-billion-a-year municipal bond market. Prosecutors have indicated that other firms were likely to be brought into court.

Bank of America agreed to pay \$67 million to the 20 states and \$36 million to the Securities and Exchange Commission. Both amounts will be divided among the affected government agencies. The bank also agreed to make payments to the Internal Revenue Service and the Office of the Comptroller of the Currency, a federal bank regulator. Bank of America broke the law in 88 different deals from 1998 to 2002, according to the SEC. A single desk at Bank of America's New York-based investment bank was responsible for the transactions. Bank of America alerted authorities to the desk's conduct in 2004 and then cooperated with investigators in exchange for leniency for the company itself, including immunity from federal criminal prosecution. Employees at a number of big banks have already pleaded guilty in the investigation, including one Bank of America employee, Douglas Campbell.

When the Bank of America employee entered his plea in September, Campbell admitted paying kickbacks to Beverly Hills-based CDR Financial Products Inc. To secure investment work from municipalities. Local agencies employed firms such as CDR to collect bids from banks to invest the proceeds of bond sales until the money was spent on public projects. Bank of America paid kickbacks to those middleman firms to coordinate the bidding with other banks so they could all pay lower interest rates, according to the SEC. Robert Khuzami,

the SEC's head of enforcement, said in a statement issued by the agency:

The conduct was egregious—in return for business, the company repeatedly paid undisclosed gratuitous payments and kickbacks and affirmatively misrepresented that the bidding process was proper.

Four former CDR employees pleaded guilty to federal criminal charges in early 2009 as part of agreements with prosecutors. CDR, two other employees and its founder, David Rubin, were indicted in October 2009 and have pleaded not guilty. One way to stop the abuse of consumers is to impose fines that match profits, then add some jail time for the executives.

DANNON SETTLES COMPLAINTS OVER YOGURT ADS

Dannon Co. Inc. has agreed pay \$21 million and drop some health claims for its Activia yogurt and DanActive dairy drink in settlements with state and federal regulators. The food company has claimed that beneficial bacteria in its Activia yogurt helps relieve irregularity and that its DanActive drink helps people avoid catching colds or the flu. The Federal Trade Commission said last month that there is not enough evidence to back those claims. The Commission announced that it has reached a settlement with the company that prohibits Dannon from making such claims unless they are approved by the Food and Drug Administration.

The Attorneys General from 39 states have also reached a \$21 million settlement with the food maker over the marketing claims. This case, led by Attorneys General in Oregon and Tennessee, represents the largest Attorney General consumer protection multi-state settlement ever reached with a food producer. The two lead states will receive \$1.06 million under the agreement and the remainder of the money will be divided among 38 other states. FTC Chairman Jon Leibowitz said in a statement:

Consumers want, and are entitled to accurate information when it comes to their health. Companies like Dannon shouldn't exaggerate the strength of scientific support for their products.

Dannon, which is owned by Groupe Danone of France, said it will more clearly convey that Activia's benefits on irregularity are confirmed only for three servings a day of the product. It also agrees that DanActive will not be marketed as a cold or flu remedy, which Dannon claims it has never done. Dannon settled a class-action lawsuit earlier this year over similar claims from consumers that it inappropriately advertised the benefits of the two products. Interestingly, less than \$1 million of a \$35 million fund established in the case was paid out.

Source: Associated Press

ALARMS ARE A DEFENSE AGAINST CARBON MONOXIDE

As we have stated on numerous occasions, carbon monoxide is a silent killer. With cold weather hitting much of the country, there have been a number of poisonings and even deaths related to this odorless, tasteless and colorless gas. December, January, and February are peak months for carbon monoxide poisoning. While you can neither see nor smell carbon monoxide, it's certainly deadly and can kill folks.

Carbon monoxide is a gas produced by common fuel-burning sources such as furnaces, water heaters, fireplaces, stoves, alternative power sources and cars. It's important to get all fuel-burning appliances checked each year. Carbon monoxide gas kills 450 Americans every year and poisons more than 20,000. Carbon monoxide is the leading cause of accidental poisoning in the U.S. Symptoms mimic the flu, with headache, fatigue, nausea, dizziness, and shortness of breath.

There are alarms available and they should be used. According to a new survey, 47% of homes don't have carbon monoxide alarms. Alarms should be installed outside each sleeping area and on every level of a home, including the basement.

JOHNSON & JOHNSON'S DRUG PLANT CITED BY FDA

Johnson & Johnson, the world's biggest maker of health-care products, was cited by U.S. regulators over violations at a plant where the company suspended over-the-counter drug production in early 2010. J&J's McNeil Consumer Healthcare

unit failed to properly track customer complaints and ensure the quality of Tylenol Arthritis Relief, Benadryl Fastmelt Tablets, St. Joseph's Aspirin and Sudafed PE at its Fort Washington, Penn., plant. The U.S. Food and Drug Administration released an inspection report on December 15th. FDA staff visited the plant from October 27th to December 9th.

Operations in Fort Washington have been suspended since J&J withdrew more than 40 types of children's pain and allergy medicines on April 30th because of signs of contamination. As product recalls have mounted this year, Members of Congress have investigated J&J's handling of quality-control issues. Johnson & Johnson claims it has been working diligently to ensure that its manufacturing operations meet the level of quality that consumers and the FDA expect. J&J, based in New Brunswick, N.J., said July 20 that the recalls and manufacturing halt would reduce sales by about \$600 million this year. The company reported \$61.9 billion in revenue in 2009.

The Fort Washington inspection findings are the first released since the FDA identified bacteria in raw materials, dust and equipment in disrepair during an April assessment. Inspectors didn't issue a notice of violations after a June 18th visit to the facility, according to data obtained by Bloomberg through the Freedom of Information Act. Most of the issues cited in the recent report involve complaints and data collected before the April recall. The FDA says it's still reviewing the observations and isn't in a position "to characterize their significance."

Source: Bloomberg

GLASS BAKEWARE HAS A SHATTER RISK

Susan Koeppen, who is a Consumer Correspondent on the *CBS Early Show*, has given a warning for the millions of Americans using glass bakeware. She reports that, if it's not used properly, glass bakeware can suddenly shatter—and in some cases send glass flying through your kitchen. *Consumer Reports* put some of the top names to the test—and is asking the federal government to investigate the problem. Ms. Koeppen points out that glass bakeware is a staple in American kitchens, but cooking with glassware can lead to explosions.

Source: CBS News

XXIII. RECALLS UPDATE

Once again, there have been a large number of product recalls over the past weeks. 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 the December 2010 issue. Readers are encouraged to contact our firm if more information is needed on any of the recalls.

FORD EXPANDS WINDSTAR MINIVAN RECALL

Ford Motor Co. has expanded the recall of its Windstar minivans over concerns that their rear axles can corrode and break. The automaker has added 37,000 vans to the recall, bringing the total number of Windstars covered to 612,000 in the U.S. And Canada. The original recall, announced in August, included vans sold in the 1998 to 2003 model years in 21 U.S. states and Canada where heavy road salt can cause the axles to rust. The corrosion can lead to cracks that can cause the axles to break. I mentioned a situation in the Products Liability Section where a death was caused by the defect.

The recall expansion includes 2003 model year vans with heat-treated axles. It also includes vans registered in Utah, where road salt is used in some areas. Ford says it had been checking state motor vehicle registration databases to find Windstar owners in the affected states. It began notifying owners of the additional 37,000 vans about the recall on December 6th. The company said Windstar owners with questions should contact their local dealers or call Ford at 1-866-436-7332.

GENERAL MOTORS RECALLING 100,000 CROSSOVERS TO FIX SEAT BELTS

General Motors Co. is recalling about 100,000 crossover vehicles to fix seat belts that could fail in a crash. GM told the National Highway Traffic

Safety Administration that the recall involves 2011 model year versions of the Cadillac SRX, Chevrolet Equinox and GMC Terrain. The automaker said the seat belt buckle anchor for the driver and front passenger seats could break apart in a crash.

According to GM there have been no crashes or injuries reported. GM discovered the problem during testing in September. Dealers will modify the seat belt buckles free of charge. The recall is expected to begin around the middle of this month. Owners can contact Cadillac at (866) 982-2339, Chevrolet at (800) 630-2438 and GMC at (866) 996-9463. They can also consult the GM owner center website at <http://www.gmownercenter.com>.

VOLVO RECALLS FOUR 2011 MODELS FOR ENGINE STALLING

Volvo has recalled 6,046 vehicles from the 2011 model year due to potential engine stalling. On the 2011 Volvo S80, S60, XC70 and XC60, the engine software that controls fuel cutoff function has been programmed to be too sensitive. In affected vehicles, the engine idle speed may drop, resulting in a sudden engine stall when braking or coasting in stop-and-go traffic. This could increase the risk of a crash. All recalled vehicles will get updated software from Volvo to correct the problem free of charge. The recall began on December 10th when Volvo sent recall notices to affected owners.

VOLVO RECALLS FOUR MODELS TO FIX SEAT FLAW

Volvo has also recalled certain vehicles to correct a potential problem with their power front passenger seats. The company says a detection system on the front seat's rails may not have been installed properly. As a result the seat may be able to move forward beyond the intended limit, placing the passenger too close to the airbag and increasing the possibility of injury in a crash.

The recall includes S40 and S60 sedans, and V50 station wagons from the 2009 through 2011 model years, and XC60 crossovers from the 2010 and 2011 model years. The problem affects about 7,420 vehicles. Volvo says its dealers will inspect the front passenger side seat rails to see if the “end stop” is in place and repair the vehicles as necessary. Owners with questions can contact Volvo at 800-458-1552 or customercare@volvoforlife.com.

MAZDA RECALLS 16,000 MINIVANS FOR STALLING PROBLEM

Mazda has recalled about 16,200 of its 2009-10 Mazda 5 models because of a stalling problem. The automaker told NHTSA that corrosion on a fuel-pump connector could cause the connector to break and the engine would stall. According to Mazda, there had been no injuries resulting from the malfunction. The automaker described the recall as voluntary, but once an automaker discovers a safety defect it is required to notify NHTSA and conduct a recall.

CHRYSLER RECALLING 76,000 DODGE RAM TRUCKS

Chrysler has recalled about 76,000 Dodge Ram pickup trucks to fix a power steering issue that could lead to brake pedals that are slow to return after the driver applies them. The recall affects certain 2010-2011 model year Dodge Ram trucks built from March 2009 through October 2010. Chrysler said some trucks with diesel engines and a hydroboost brake system could be equipped with a power steering reservoir cap with excessive vent pressure levels. The excessive levels could lead to brake pedals that are slow to return and make the brake lights remain on, potentially causing a crash. Chrysler said it will notify owners and dealers will replace the steering reservoir cap free of charge. Owners can contact Chrysler at (800) 853-1403.

KIA AND HYUNDAI RECALLS

Kia is recalling almost 6,700 2011 Sorentos, and its corporate parent, Hyundai, has recalled almost 1,800 2011 Santa Fe models. The automakers said an incorrectly programmed computer resulted in rear brake calipers on the sibling vehicles being “improperly machined.” The automakers said that could allow brake fluid to leak, reducing stopping power.

VOLKSWAGEN RECALLS VEHICLES FOR FUEL LINE PROBLEM

Volkswagen has also recalled five models across five model years—228,235 vehicles—due to an improperly placed fuel line. The automaker says a small plastic tab on the wiper fluid reservoir could rub against a fuel line. That could cause a fuel leak to develop and lead to a fire. The models involved are the: 2007-09 Golf; 2007-09 Jetta; 2007-09 Jetta Sportwagen; 2006-10 New Beetle; and 2007-09 Rabbit.

Depending on the model, dealers will remove or reposition parts that come into contact with the fuel line. Volkswagen will begin the recall campaign on or before the end of this month. For more info, owners can call Volkswagen at 800-822-8987 or NHTSA’s hot line at 888-327-4236.

TOYOTA RECALLS MINIVANS TO REPLACE SWITCH BRACKET ON BRAKE LAMP

Toyota has recalled nearly 100,000 Sienna minivans from the 2011 model year to replace a switch bracket on the brake lamp. According to the Japanese automaker, a driver’s foot could hit the switch bracket and deform it while applying the parking brake pedal. Toyota says there have been no accidents or injuries related to this issue. The switch bracket is welded onto the left side of the brake pedal assembly. The brake lamp provides a signal to indicate that the brake pedal has been

depressed and illuminates the brake lights.

HONDA TO RECALL 143,100 FIT CARS

American Honda Motor Co. will recall about 143,100 Fit cars from the 2007 and 2008 model years to fix a problem with the headlights. The cars are prone to a wiring problem in which the connectors for the low-beam circuit become worn after repeated use. That causes corrosion and overheating, and finally the low-beam headlights go out. It doesn’t affect the high-beam headlights, or “brights.”

Honda said it knew of no accidents or injuries caused by the headlight failure on the small compact car. The recall includes more than 1.3 million vehicles worldwide, with the majority in Japan. U.S. owners of the cars will receive notification to bring the vehicle to a Honda dealer for inspection. If corrosion is spotted, the dealer will replace parts to prevent potential headlight failures. Drivers of the vehicles should get a letter from Honda starting this month. Honda owners who have questions or concerns about the recall also can go to Recalls.Honda.com or call (800) 999-1009, and select option 4.

HONDA IS RECALLING THOUSANDS OF THE PASSPORT SUV

Honda Motor Co. is recalling about 35,000 Passport sport utility vehicles to inspect brackets on the rear suspension that could detach and lead to a crash. The recall involves Passports from the 1998-2002 model years and is limited to 21 states and the District of Columbia where road salt is used during the winter. Honda says the front bracket of the rear suspension lower trailing links could corrode and the bracket could break off from the frame. According to Honda, the government received 33 complaints from owners. It says no injuries were reported.

Honda says the problem was not related to a similar recall involving Ford Windstar minivans. Ford

recalled more than 600,000 minivans in the U.S. And Canada this year over concerns the rear axle could break, affecting the vehicle's handling. Owners should take their vehicles to an authorized dealer.

HONDA IS RECALLING 10,800 ALABAMA-MADE VEHICLES

Honda is recalling approximately 10,800 vehicles manufactured at its plant in Lincoln, Ala., to prevent potential front suspension failure. The automaker said the recall will impact late model year 2010 to 2011 Accords and model year 2011 Pilots. The above is all the information we had on the recall at press time.

SEATTLE BIKE SUPPLY RECALLS REDLINE BICYCLES DUE TO FALL HAZARD

About 200 Redline D640 Bicycles have been recalled by their importer Seattle Bike Supply of Kent, Wash. The head tube can separate from the frame, causing the rider to lose control and fall. This poses a risk of serious injury. Seattle Bikes is aware of eight reports of head tubes separating from the frame, including four reports of minor scrapes and cuts. This recall involves all 2008 Redline D640 bicycles. The bicycles were sold in black and have aluminum frames. "REDLINE" is written down the frame's tube. The model number is written on the frame's top tube. The bicycles were sold at bicycle specialty stores nationwide from December 2007 to May 2010 for about \$900. Consumers should immediately stop using the recalled bicycles and contact a local Redline bicycle dealer to receive a free frame replacement. For additional information, contact Redline Bicycles at (800) 283-2453 or visit its website at www.Redlinebicycles.com.

CONTACT LENSES RECALLED BY JOHNSON & JOHNSON

Johnson & Johnson, which has had a number of product recalls, has

recalled nearly five times as many contact lenses as the 100,000 boxes it announced in August of 2010 due to eye stinging. J&J said that in late October the recall of its 1 Day Acuvue TruEye lenses, which took place primarily in Japan, was expanded to a total of about 492,000 boxes. J&J, which claims to be striving for greater transparency in the wake of a series of image-damaging recalls of over-the-counter medicines, said it announced the expanded recall by press release only in Japan, where some 75% of the affected product was sold. This leaves J&J investors largely in the dark.

JOHNSON & JOHNSON RECALLS ROLAIDS

Johnson & Johnson is recalling several types of Roloids because of reports of metal and wood particles in the products. The products include Roloids Extra Strength Softchews, Roloids Extra Strength Plus Gas Softchews and Roloids Multi-Symptom Plus Anti-Gas Softchews. The company says the materials were potentially introduced into the products at an outside manufacturer. The company has suspended production of the products in question.

PFIZER RECALLS 19,000 LIPITOR BOTTLES

Pfizer Inc. is recalling about 19,000 bottles of its drug Lipitor in the U.S. This is the fourth such recall since August due to reports of malodorous bottles. The New York-based drug maker said the latest recall stems from one customer report of an uncharacteristic odor related to the bottles, which were supplied by a third-party manufacturer. Pfizer didn't identify the supplier.

Pfizer has cited reports of musty or moldy odors emanating from bottles in recalling about 370,000 bottles of Lipitor in three previous alerts beginning in August. Pfizer said the risk of health problems to Lipitor users appears to be minimal. The company

said the recall was triggered by increased surveillance of odor-related issues following reports of problems at another drug maker.

SUBURBAN FIRM RECALLS PORTABLE STOVES

The Sterno Group LLC of Des Plaines has recalled 37,500 portable butane stoves which could fail to completely shut off. The Consumer Product Safety Commission said the stove's "on-off" valve can fail to close completely when turned to the "off" position, causing butane to leak from the stove. This poses a fire and burn hazard to consumers. Only one report of a stove failing to shut off has been reported. No injuries have been reported.

The recalled portable butane stoves have model numbers STO6001 and 50006. The model number and UPC 0-27371-50006-9 or UPC 0-76642-06001-6 is printed on the stove's packaging. Manufactured in China, they were sold in sporting goods stores and other retail stores nationwide, including Puerto Rico, from September 2009 to September 2010, and to restaurants and restaurant supply stores from August 2006 through September 2010 for between \$20 and \$30. For additional information, contact Sterno toll-free at 877-478-3766 or visit the company's Web site at www.sterno.com.

FIRST YEARS® RECALLS AMERICAN RED CROSS® CABINET SWING LOCKS

About 41,300 of the First Years American Red Cross Cabinet Swing Locks have been recalled by Learning Curve Brands Inc. d/b/a The First Years, of Oak Brook, Ill. The installed latches can break and children could gain access to contents of a cabinet, posing the risk of exposure to hazardous items. First Years has received seven reports of latches breaking. No injuries have been reported. This recall involves The First Years American Red Cross cabinet swing locks with item number Y7181. The latches are mounted on cabinets or drawers to help prevent young chil-

dren from gaining access and were sold two per blister card. An America Red Cross logo and “cabinet swing lock” is printed on the package. “American Red Cross” is molded onto the front of the lock. A date code is printed on the bottom of the back of the package and on the back side of each latch just above the connection point.

The locks were sold at Toys R Us, Babies R Us and other retail stores nationwide and on the Internet from September 2008 through September 2010 for about \$4 per pair. Consumers should immediately remove the latches from cabinets, record the date code on the back of each latch and contact The First Years to obtain a \$5 coupon toward the purchase of another Learning Curve product. When removing the latches, consumers should take special care to store hazardous items out of reach of children. For additional information, contact The First Years toll-free at (866) 725-4407, or visit its website at www.recalls.thefirstyears.com

AMERTAC RECALLS NIGHT LIGHTS DUE TO FIRE AND BURN HAZARD

American Tack & Hardware Co. Inc. (AmerTac), of Saddle River, N.J. has recalled Forever-Glo® Cylinder Nite Lites. An electrical short circuit in the night light can cause it to overheat and smolder or melt which can burn consumers or result in a fire. AmerTac has received nine reports of the recalled night lights smoking, burning, melting and/or charring. No injuries have been reported. The recalled Forever-Glo® Cylinder Nite Lite is a cylinder shaped night light with a white base and clear top that plugs into the wall. Only Model Number 71107 with a manufacturer code of SY is included in this recall. The model number and manufacturer code are printed on the back of the night light. The light measures about 4 inches in height by 1-1/2 inches wide and is about 1 inch deep. The lights were sold at hardware stores, lighting showrooms and home centers nationwide from May 2009 through September 2010 for about \$5. Consumers should stop

using the recalled night lights immediately. If the units are plugged into the wall, remove the light from the wall socket. Contact the firm for instructions on receiving a full refund. For additional information, contact AmerTac at (800) 420-7511, or visit AmerTac’s website at www.amertac.com or www.recall-center.com.

WAL-MART RECALLS ELECTRIC HEATERS DUE TO FIRE AND BURN HAZARD

About 2.2 million Flow Pro, Airtech, Aloha Breeze & Comfort Essentials Heaters have been recalled by Wal-Mart Stores Inc., of Bentonville, Ark. The heaters can malfunction resulting in overheating, smoking, burning, melting and fire. Wal-Mart has received 21 reports of incidents, which included 11 reports of property damage beyond the heater. Injuries were reported in four incidents, three of which required medical attention for minor burns and smoke inhalation. The remaining incidents included smoke irritation, sparking or property damage beyond the heater. This recall involves Flow Pro, Airtech, Aloha Breeze and Comfort Essentials 1500 watt heaters. The heaters are grey with a metal handle on the top with vents and grey control knobs on the front. The model number is 1013 and can be found on a label on the lower left corner of the back panel of the heater. The heaters were sold at Wal-Mart stores nationwide from December 2001 through October 2009 for about \$18. Consumers should immediately stop using the recalled heater and return the product to any Wal-Mart store for a full refund. For additional information, contact Wal-Mart toll-free at (800) 925-6278, or visit its website at www.walmart.com.

CIRCO CHILDREN’S CAMPING COMBO PACK RECALLED DUE TO FIRE HAZARD

Target Corp., of Minneapolis, Minn., has recalled about 1,500 Circo Children’s Space Camp Combo Packs. The floor of the tent failed a flammability test and poses a fire

hazard. The recall involves one model of the Circo Space Combo pack, which includes a children’s tent, sleeping bag, backpack and a headlamp. The tent is green and dark blue with planets, stars and figures printed on it. The packing box has the UPC number: 490911500926, DPCI: 091-15-0092. The packs were sold at Target stores nationwide and online at www.target.com from September 2010 through October 2010 for approximately \$25. Consumers should immediately stop using the recalled tents and return them to any Target store for a full refund or store credit. For additional information, contact Target at (800) 440-0680, or visit its website at www.target.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. Please tell the CPSC about it by visiting <https://www.cpsc.gov/cgibin/incident.aspx>.

METALLIC PILLAR RECALLED DUE TO FIRE RISK

About 12,000 Silver Metallic Pillar Candles have been recalled by General Wax & Candle Company, of North Hollywood, Calif. The metallic paint on the candles can ignite, posing a risk of fire. This recall involves metallic pillar candles sold in two sizes: 2.8 by 4 inches and 2.8 by 6 inches. “Metallic Pillar Candle” and UPC code 86718 56082 or 86718 56092 is printed on the bottom of the candles’ plastic wrapping. The candles were sold at Bed Bath and Beyond stores nationwide from October 2010 through November 2010 for between \$8 and \$10. Consumers should stop using the recalled candles and return them to any Bed Bath and Beyond store or contact General Wax and Candle for a full refund. For additional information, contact General Wax and Candle at (800) 543-0642 or visit its website at www.generalwaxbbbfund.com.

DESK AND TABLE LAMPS RECALLED

About 1,600 desk and table lamps from wholesaler CDX Group Inc., of Brooklyn, N.Y., are being recalled because they have standard electrical wiring, connections and plugs that pose a fire and shock risk to consumers. The lamps were sold from April 2010 through July 2010. Consumers can contact the company at 877-253-4599 for more information.

FAGOR AMERICA INC. RECALLS REFRIGERATORS DUE TO FIRE HAZARD

Fagor Refrigerators have been recalled by Fagor America Inc., of Lyndhurst, N.J. The refrigerator's control board can overheat, posing a fire hazard to consumers. Fagor America has received 19 reports of incidents, including two reports of fires resulting in damage to the refrigerator and surrounding property. No injuries have been reported. This recall involves Fagor 24-inch wide refrigerators sold in stainless steel and black. "Fagor" is printed on the refrigerator's front door. Model and serial numbers are located inside the refrigerator door, on the left hand side near the food storage drawers.

The refrigerators were sold at Specialty Home Appliance Stores nationwide between July 2006 and May 2010 for between \$2,000 and \$2,500. Consumers should immediately stop using the refrigerator, unplug it and contact the Fagor repair hotline to schedule a free inspection and repair. For additional information, contact Fagor America at (888) 354-4411 or visit Fagor's website at www.fagoramerica.com.

CAST IRON SKILLETS RECALLED DUE TO BURN HAZARD

About 7,500 Enamel-coated 8-inch cast iron skillets have been recalled by Meyer Trading Company Limited, of Hong Kong, China. Small pieces of the enamel coating can pop off when the skillet is heated, posing a burn hazard to consumers. The firm says it has received five reports of

enamel popping off of the skillet, resulting in two reports of consumers receiving minor burns. This recall involves Technique brand enamel-coated 8-inch cast iron skillets with two pour spouts and a ribbed underside. The interior portion of the skillet is cream while the exterior was sold in three colors: sage, blue and red. The brand "Technique" is printed on the bottom of the pans.

The skillets were sold through QVC's televised shopping programs, at qvc.com, and QVC retail and employee stores from August 2009 through September 2010 for between \$28 and \$35. Consumers should immediately stop using the recalled skillets. Known purchasers were mailed instructions for obtaining a full refund. Consumers who purchased the skillets at a QVC store should return the skillets to any QVC store for a full refund. For additional information, contact QVC at (800) 367-9444, or visit its website at www.qvc.com.

STIHL INC. RECALLS CHAIN SAWS DUE TO LACERATION HAZARD

STIHL Incorporated of Virginia Beach, Va., has recalled about 5,000 STIHL MS 361C chain saws (C-Q version). The throttle trigger may stick after it has been released by the operator, which could cause the engine to continue to run at a speed that drives the saw chain. This can pose a risk of a laceration injury to the user or a bystander. STIHL has received three reports of the throttle trigger sticking. No injuries have been reported. The recalled chain saws have a rear-handle activated chain brake (C-Q version) and have an orange top casing, gray base, black handle and "STIHL MS 361C" printed in an orange circle on the side of the unit. The chain saws were sold by authorized STIHL dealers nationwide from February 2004 through August 2009 for about \$640. Consumers should stop using these chain saws immediately and return them to an authorized STIHL dealer for a free repair. For additional information, contact STIHL at (800) 610-6677 or

visit STIHL's website at www.stihlusa.com.

MICHAELS STORES RECALLS SILVER TREE TEALIGHT CANDLE HOLDERS DUE TO FIRE HAZARD

Michaels Stores Inc., of Irving, Texas, has recalled 7,600 Silver Tree Tealight Candle Holders in the United States and 650 in Canada. The tealight cups are positioned where the flame from the candles can ignite other parts of the candle holder, posing fire and burn hazards to consumers. Michaels has received reports of six incidents including five fires and a consumer who received minor burns. This recall involves silver-colored tealight candle holders in a shape of a Christmas tree. The candle holders are about 16-inches tall and have a silver star on the top. Nine tealight cups and clear plastic beads hang from the tree branches. The tealights were sold exclusively at Michaels Arts & Craft stores nationwide from October 2010 through December 2010 for about \$20. Consumers should immediately stop using the recalled candle holders and return the product to any Michaels Arts & Craft store for a full refund. For additional information, contact Michaels at (800) 642-4235 or visit its website at www.michaels.com.

TODDLER GIRL GARMENTS RECALLED BY AMERICAN EAGLE OUTFITTERS

About 1,200 Toddler Girl Pants and Shorts have been recalled by American Eagle Outfitters Inc., of Pittsburgh, Penn. The metal clasp at the waistband can detach from the garment, posing a choking hazard to young children. This recall involves toddler girl pants, jeans and shorts sold in various styles. The style number is printed on a sewn-in label located under the care/content label on the inside of the waistband. The garments were sold in sizes 12-18 months through five years. The outfits were sold exclusively at 77kids by American Eagle stores nationwide and at www.77kids.com between July 2010 and August 2010 for between \$24 and \$34.

Consumers should immediately take the recalled garments away from children. Consumers who purchased the garments online will receive a postage-paid envelope with instructions on how to return the garment for a full refund. All other consumers should return the garments to the nearest 77kids by American Eagle store for a full refund. For additional information, contact American Eagle Outfitters toll-free at (888) 307-3672 or visit its website at www.77kids.com.

GIRLS' HOODED ZIP JACKET AND VEST SETS RECALLED

Girls' Hooded Zip Jackets and Vest Sets have been recalled by Splendid (a division of VF Contemporary Brands, Inc.), of Los Angeles, Calif. The hooded zip jackets and the vest sets have drawstrings through the hoods which can pose a strangulation or entrapment hazard to children. In February 1996, CPSC issued guidelines to help prevent children from strangling or getting entangled on the neck and waist drawstrings in upper garments, such as jackets and sweatshirts. This recall involves girl's hooded zip jackets with style # SJ6J7831 and long sleeve t-shirt with hooded vest sets with style # SJYK7935.

The zip jackets were sold in camouflage, jasmine, parfait and royal. The vest sets were sold in black, caviar, denim, electric pink, macadamia, peacock, quartz and sapphire. The style number can be found on the care label located at the inside left side seam. "Splendid" can be found on the neck label. The jackets were sold at major department stores and children's boutiques nationwide from August 2010 through November 2010 for between \$80 and \$90. Consumers should immediately remove the drawstrings from the hoods of the zip jackets and vest sets to eliminate the hazard or contact Splendid for instructions on how to return the items for a full refund. For additional information, contact Splendid toll-free at (855) 640-2803 anytime or visit its website at www.splendid.com/safetynews.html.

PORTABLE TABLE-SAWS RECALLED BY RYOBI DUE TO LACERATION HAZARD

About 21,500 Ryobi RTS20 portable table-saws have been recalled by the distributor One World Technologies, of Anderson, S.C. The saw blade on the motor carriage could be misaligned, posing a laceration hazard. The company received one report of a consumer being hit by a piece of metal during the cutting operation. There was no report of a physical injury or property damage. This recall involves the RTS20 Ryobi ten-inch, portable table-saw. The table saw has a blue base and warning label with the model RTS20 and the Ryobi name printed on it and attached to the rear of the saw. Home Depot retail outlets nationwide and Canada sold the saws from July 2010 through October 2010 for about \$200. Consumers should contact Ryobi immediately to receive a free inspection of their product and, if necessary, a free repair or replacement of their RTS20 Ryobi table-saw. For additional information, contact Ryobi at (800) 597-9624, or visit its website at www.ryobitools.com.

TRIMMERS/BRUSHCUTTERS RECALLED BY STIHL INCORPORATED

STIHL Incorporated, of Virginia Beach, Virginia has recalled 1,000 of their STIHL FS 310 Bike Handle Trimmer/Brushcutter. Vibration from the ignition module may cause the trimmer head to loosen and detach from the mounting, posing an injury hazard. The company received three reports of incidents and no reports of injuries. The recalled bike handle trimmer/brushcutter has "STIHL" printed on the engine head. The model number FS 310 is located in two places, on the shaft and on the flywheel housing below the starter grip. This recall includes all units with serial numbers ranging from 27961 1030 through 27961 1119 and 27984 3607 through 27984 4556, which can be found on an adhesive label affixed to the bottom of the fuel tank and etched into the metal frame on the bottom of the engine. The trimmers were sold at

authorized STIHL dealers nationwide from June 2009 to April 2010 for about \$550. STIHL informed purchasers for whom they had addresses directly by letter after April 15, 2010. Consumers should stop using this trimmer/brushcutter immediately and take it to an authorized STIHL dealer for a new ignition module, which will be installed at no cost to the consumer. For more information, contact STIHL at (800) 610-6677 or visit STIHL's website at www.stihlusa.com.

PAGING LOUDSPEAKERS RECALLED BY TOA ELECTRONICS

TOA Electronics Inc., of Burlingame, Calif., has recalled about 2,600 Paging Horn Loudspeakers. The speaker housing can crack at the mounting bracket, causing the speakers to fall from their mounting. This poses a risk of injury from impact to consumers. Higher failure rates have occurred in high temperature and humidity environments. TOA has received 18 reports of speakers falling in Japan. No incidents or injuries have been reported in the United States. This recall involves TOA paging horn speakers in the SC series. The speakers have "Paging Horn Speaker," the TOA logo and model and production information printed on the back. The speakers were sold at audio retailers nationwide from March 2008 through December 2009 for between \$70 and \$130. Consumers should immediately stop using and take down any mounted speakers. Consumers can contact TOA directly or their local TOA dealer for instructions on receiving a free replacement product. For additional information, contact TOA at (800) 733-4750 or visit its website at www.toaelectronics.com.

ZOOM BUGGY CARS AND DREAM PILLOW STARS RECALLED BY KINDERMUSIK

Kindermusik International, Inc. of Greensboro N.C., has recalled Zoom Buggy Car and Dream Pillow Star educational toys. The toys were man-

ufactured by Darton, of Huang Yun, China. The wheels on the Zoom Buggy cars and plastic beads on the Dream Pillow Star can detach, posing a choking hazard to young children. Kindermusik International Inc. has received 15 reports of the wheels detaching from the Zoom Buggy Car and no incidents with the Dream Pillow Star. No injuries have been reported. Zoom Buggy Cars have a wooden body with red and blue plastic wheels and a red handle. The recalled units have tracking labels on both the product and packaging with a date code of 201005 and a batch ID of APO18829 on the bottom of the cars. Dream Pillow Stars have a wooden star center with red plastic handles, yellow plastic center stars and red, blue and green plastic beads. The recalled units have tracking labels on both the product and packaging with a date code of 201005 and a batch ID of APO18829 on the bottom of the product.

They were sold exclusively through Kindermusik Educators as part of Kindermusik At-Home-Materials from July 2010 through October 2010 for the Zoom Buggy Car and from September 2010 through October 2010 for the Dream Pillow Star for about \$33.95. It was also sold at Kindermusik classes and Kindermusik.com from August 2010 through October 2010 for about \$10. Consumers should stop using and discard the recalled items immediately and contact their Kindermusik Educator for a replacement. For additional information, contact Kindermusik International at (800) 628-5687, visit the Kindermusik International website at www.kindermusik.com or e-mail the firm at info@kindermusik.com

SALLY JACKSON CHEESE RECALLS ALL CHEESE

Sally Jackson Cheese of Oroville, Wash., is recalling all cheese products, including cow, goat, and sheep, because they may be contaminated with *Escherichia coli* O157:H7 bacteria (*E. coli* O157:H7). *E. coli* O157:H7 causes a diarrheal illness, often with bloody stools. Although most healthy

adults can recover completely within a week, some people can develop a form of kidney failure called Hemolytic Uremic Syndrome (HUS). HUS is most likely to occur in young children and the elderly. The condition can lead to serious kidney damage and even death.

Sally Jackson brand cheeses made from raw cow, goat, and sheep milk were distributed nationwide. The cheeses were distributed to restaurants, distributors, and retail stores. The three types of cheese are all soft raw milk cheeses in various sized pieces. The products do not have labels or codes. The cow and sheep milk cheeses are wrapped in chestnut leaves, the goat cheese is wrapped in grape leaves and all are secured with twine. The cheeses may have an outer wrapping of waxed paper.

The products have been identified as a possible source of *E. coli* infections currently under investigation. The problem was revealed as a result of follow-up by the FDA of a report of an outbreak of *E. coli* O157:H7 infections. The notification came from the Washington State Department of Agriculture, Washington Department of Health, and the Oregon Public Health Division. Customers who have purchased Sally Jackson cheeses are urged to return it to the place of purchase for a full refund. Consumers with questions may contact the company at 509-429-3057.

RECALL OF CANNED CHICKEN SALAD PRODUCTS

The Suter Company, Inc., a Sycamore, Ill. firm, has recalled approximately 72,000 pounds of canned chicken salad products that may contain foreign materials, according to the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS). The products subject to recall include:

- 8.2-ounce packages of "BUMBLE BEE LUNCH ON THE RUN CHICKEN SALAD COMPLETE LUNCH KIT." The package contains a 2.9-ounce can of Bumble Bee Chicken Salad along

with crackers, mixed fruit, a cookie and a spoon. The package label indicates the product is "Mixed and Ready to Eat." The product package indicates a "Best-by" date of 07/11.

- 3.5-ounce packages of "BUMBLE BEE CHICKEN SALAD WITH CRACKERS." The package contains a 2.9-can of Bumble Bee Chicken Salad and crackers. The package label indicates the product is "Ready to Eat." The product package indicates a "Best-by" date of 01/12 or 02/12.

The cans of chicken salad bear the establishment number "P-169" inside the USDA mark of inspection and the lot code "0225XXQBC" printed on the package. The chicken salad products were assembled between August 14th and Aug 28, 2010, and shipped to distributors and retail stores nationwide. The problem was discovered after consumer complaints about finding hard plastic in the product. FSIS has not received any reports of injury at this time. Anyone concerned about an injury from consumption of this product should contact a physician. Consumers with questions about the recall should contact Tim Suter at (815) 895-9186.

KROGER RECALLING SELECT PET FOODS IN 19 STATES

The Kroger Co. is recalling select packages of pet food in 19 states, saying the products might contain aflatoxin, which poses a health risk to pets. The company said in a statement Saturday it is recalling select bags of Pet Pride Cat Food, Pet Pride Kitten Formula Food, Old Yeller Chunk Dog Food, as well as Kroger Value Chunk Dog Food and Kroger Value Cat Food. The products carry expiration dates of October 23rd and 24, 2011.

Cincinnati, Ohio-based Kroger says it is using a customer recall notification system in an effort to help customers determine if they purchased the affected pet food. States with Kroger-affiliated stores included in the recall are Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missis-

sippi, Missouri, Nebraska, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia and West Virginia.

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.Beasley-Allen.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.

XXIV. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

GRANT COFER

Grant received a B.A. in Political Science from the University of Tennessee in 2007. He finished in three years, graduating *summa cum laude*, and was a member of the University Honors program. He wrote his senior thesis on the Second Amendment, focusing on the historical setting in which it was enacted and the individual nature of the rights it bestows. The summer before graduating he interned for the law firm Maloney & David PLC, an experience that served as the impetus for him to attend law school.

Grant received his J.D. from Harvard Law School in 2010. During law school, he worked as a legal intern with the American Federation of Government Employees (AFGE), where he assisted HUD employees with grievance filings, disciplinary proceedings and midterm bargaining negotiations. He also worked as a summer associate for the law firm Bingham McCutchen LLP, where he focused on securities litigation and international discovery issues.

Grant joined our firm in November of 2010 as a lawyer in the Toxic Torts section. Since joining the firm, his practice has concentrated primarily on the BP oil spill litigation. He has been a most valuable addition to the Mass Torts Section.

Grant was born in Germany into a military family. His father, Robin, was a pilot

in the U.S. Army. It was an interesting life, he says, with the family moving about every two years. Grant never lived in one place longer than that until his family moved to Fredericksburg, Va., when he was a sophomore in high school. In fact, his junior year marked the first time he returned to the same school he had attended the previous year. Now, his dad and his mother, Kathryn, live in Huntsville, along with his youngest brother, Jake, who is a freshman in high school. His middle brother, Kevin, attends the University of Tennessee. Grant's father retired from the military about three years ago. In his spare time, Grant loves to read, SCUBA dive, and is a huge car fanatic. "Anything having to do with fast cars, I love," he says. He is kept company at home by his three feline roommates. Grant is a hard and dedicated worker. We are most fortunate to have him with us.

BRANTLEY FRY

Brantley Fry, a native of Birmingham, Ala., graduated from Hollins College with a degree in Sociology. She then earned her law degree from the nation's top environmental law program at Vermont Law School in 2000. Brantley has been practicing environmental law for over ten years. In fact, she knew at a young age that she would work on environmental issues. Being an environmental lawyer helps Brantley fight for children and adults whose lives have been turned upside down by toxic contamination. She says being a mother makes her very much aware of how important her work in the environmental field is for children.

After law school, Brantley served as interim professional staff on the U.S. Senate Judiciary Committee. She also served as a Senior Associate for a federal contractor, ICF Consulting, where she provided regulatory support services to federal agencies, including the U.S. Environmental Protection Agency, the U.S. Nuclear Regulatory Commission, the U.S. Department of Energy, and the U.S. Department of Defense. Brantley also served as Executive Director of Black Warrior Riverkeeper, where her duties included oversight of litigation strategy in numerous citizen actions alleging violations of various environmental laws, particularly the Clean Water Act.

In connection with her environmental law practice, Brantley has represented a wide range of clients including individu-

als, non-governmental organizations, and governmental agencies. Her practice has focused on environmental law and policy. Brantley has vast experience with federal agencies and has dealt with the National Environmental Policy Act, CAA, CERCLA, and Resource Conservation and Recovery Act. Brantley has overseen litigation strategy and research for citizen actions under state and federal environmental laws. She also performed comparative analysis of stormwater laws, regulations, and program implementation in eight southeastern states.

Brantley joined our firm in March 2009, and her practice includes class action, toxic tort cases pending before federal courts in the southeastern U.S. She is currently working on the TVA coal ash spill and BP oil spill litigation. In addition, Brantley reviews potential toxic tort cases for the firm. Brantley is married to John Wilson from Birmingham, and they have two young children, Carlisle and Walker Wilson. John is a landscape architect who operates his own business, called Golightly Landscape Architecture. They are both lifetime members of St. Mary's-on-the-Highlands Episcopal Church, and their children are fifth generation parishioners there. In their spare time, the family loves doing anything outdoors, especially canoeing and hiking. We are most fortunate to have Brantley and her vast experience in the field of environmental law with us.

LASONYA LUCAS

LaSonya Lucas has been with the firm for five years working as a Staff Assistant in Mass Torts. She works with Chad Cook and Danielle Mason, lawyers in the section. Her duties include communicating with clients, and making sure all of the necessary documents and medical records are in the client's file in order to properly investigate the claim. In addition to other duties, LaSonya also assists in helping to gather the necessary documents needed for trial preparation such as Plaintiff Profile Forms. LaSonya previously served as a medical records coordinator in the Vioxx litigation before moving into her current position as Staff Assistant.

LaSonya and her husband, Tyrone, were married in May of 2009 and are expecting their first child any day. They plan to name their boy Lathan Vance Lucas. LaSonya has a Bachelors Degree in

Human Resource Management from Troy University Montgomery. She enjoys spending time with her family and friends and working with her church. She also likes watching college football, basketball and traveling. LaSonya is a very good, hardworking employee and we are fortunate to have her with us.

JASON KING

Jason King came to work with the firm in October of last year as a Web Developer. Currently, he is working on redesigning and repurposing the 40-plus websites our firm has. We will be adding more to that list in the near future. His focus is more on the user experience side of development, which means creating a friendly and easy-to-use interface for the users of the sites. Also, he makes sure our sites are easily found through searches like Google, Bing and others.

Jason attended AUM where he says he changed majors often trying to find exactly what he wanted to be. However, once he discovered computers and the internet he knew that was where he belonged. He was able to get in on the ground floor of a web development company in the infancy of the internet and grow with it. Although he never finished his degree, the experience and knowledge he gained while getting involved in the web early was irreplaceable. Jason plans to continue his education either by working toward his degree or through professional certifications.

Jason says his passion is music. He turned his fascination of music and playing drums into a skill and passion when he was 13. He played in local bands until the age of 25 when he put down the sticks for a few years to focus on his career. After an eight year layoff from music, Jason began playing drums in the contemporary worship service at Heritage Baptist Church and did so for about two years. Jason said he really hopes to be able to get back to playing, but until that time he will have to be content "drumming on my steering wheel." Jason is a very good addition to our firm. Based on his work so far I believe that Jason will be an outstanding employee.

XXV. SPECIAL RECOGNITIONS

THE FIRM NAMES TOP LAWYERS

Greg Allen and Andy Birchfield were named as our firm's "Litigators of the Decade," last month. We recognize our lawyers who demonstrate exceptional professional skill throughout the course of the year and who best represent the firm's ideal of "helping those who need it most." The Litigator of the Decade award was created this year to recognize the lawyer who has demonstrated consistent excellence on behalf of their clients and the firm. We named two this year because of what they have done over the past ten years.

The two lawyers in our firm who were recognized for exceptional performances over the past ten years are most deserving. Each has performed at an extremely high level and has achieved tremendous results for their clients. All of us at the firm are blessed to have Greg and Andy on our team. They are not only talented and very hard workers but are good men who recognize that ordinary citizens must be protected when they are injured or abused by powerful entities in Corporate America. Greg and Andy have been recognized by their peers as being as good as they come in their respective fields of expertise and I am proud to be associated with them.

Greg began working with me in 1979, serving as a law clerk while attending Jones School of Law in the evenings. He joined the firm after graduation and now practices in the area of personal injury and product liability. Greg has won countless victories for his clients and he says what he does for his clients is the best part of his job. In October, Jones School of Law announced it would name a new addition to the law school after him, as the Allen Law Center.

Andy joined the firm in 1996, and was instrumental in developing the Mass Torts Litigation Section in 2000, of which he is now section head. Andy was instrumental in the firm's Vioxx litigation, and served as co-leader of the Plaintiffs Steering Committee for the federal Vioxx Multidistrict Litigation. In November 2010, he and his family were recognized as one of the

River Region Families of the Year by the Family Guidance Center.

Two lawyers were selected as the firm's Litigators of the Year for 2010: Cole Portis, head of the firm's Personal Injury and Product Liability section; and Gibson Vance, who practices in the firm's Fraud section and is serving this year as President of the American Association for Justice. In addition, the firm recognized excellence in each of its sections, naming the Lawyer of the Year in each. Honorees for 2010 are Rick Morrison, Personal Injury Section Lawyer of the Year; Roman Shaul, Fraud Section Lawyer of the Year; Russ Abney, Mass Torts Section Lawyer of the Year; Ben Baker, Jr., Product Liability Section Lawyer of the Year; and John Tomlinson, Toxic Torts Section Lawyer of the Year.

We are blessed to have lawyers in our firm who work hard for their clients and who always put their clients' interest first, which is very important. The lawyers who received the awards this year were recognized for exceptional performances in their respective areas of expertise. Each of the lawyers recognizes that their being honored could never have happened without lots of hard work by other lawyers and support staff in their section. I am proud and personally honored and privileged to be a part of the Beasley Allen team.

THE ALABAMA SHAKESPEARE FESTIVAL IS GOOD FOR ALABAMA

Many people don't realize how important the Alabama Shakespeare Festival is to the entire State of Alabama. The importance of the Festival was made known last month in Montgomery. Mayor Todd Strange and County Commission Chairman Elton Dean recognized the substantial economic impact the ASF has had on the River Region and Alabama in its 25-year existence. At its Silver Anniversary Observation in November of last year, "Alabama Shakespeare Festival Silver Anniversary Day," was proclaimed. It was important to recognize the festival's cultural and economic contributions to Montgomery and the entire state. It should be noted that ASF generates \$30 million of annual revenue to the economy. The Festival is an important cultural and economic asset, not only for Montgomery but for the entire state. If

any of our readers have never attended a performance at the Festival, they have missed out on a real treat.

The ASF has reached an important milestone which is a tribute to the scores of talented artist, artisans, staff and board members. Their talents, diligence, expertise, leadership and gifts have enabled professional theatre to survive and thrive in Alabama. I have served on the Board of Directors for ASF for several years and know how hard all of the folks there work. The Alabama Shakespeare Festival has been referred to as one of Alabama's "brightest stars" and that pretty well says it all.

DR. SIDNEY WOLFE HELPS REGULATE THE DRUG MANUFACTURERS

Dr. Sidney M. Wolfe, the Director of Public Citizen's Health Research Group, does a tremendous job of helping to regulate the powerful pharmaceutical industry. Dr. Wolfe publishes a monthly newsletter, "Worst Pills, Best Pills," which is something every consumer in America should read. Each year more than 100,000 people die from adverse drug reactions and another 2 million people are seriously injured. There have been drugs approved by the FDA and put on the market which never should have been approved and sold to unsuspecting consumers.

Some drugs like Vioxx and Rezulin stayed on the market even though hundreds of folks died as a result of taking these very dangerous drugs. Dr. Wolfe had warned the FDA and consumers about these and other dangerous prescription drugs long before they were taken off the market. Some stayed on the market for years before the FDA took any action. We should all commend Public Citizen and especially Dr. Wolfe for their efforts on behalf of people in this country who expect drugs to be safe.

THE CHRISTIAN LEGAL SOCIETY

The Christian Legal Society (CLS) is a membership organization of Christian lawyer, law students and other individuals dedicated to serving Jesus Christ through the practice of law, the defense of religious freedom, and the provision of legal aid to the poor and needy. I encourage all

who fall into one of these categories to join this organization. Proclaiming the Word of God and practicing Christian principles in our personal and professional lives should be our goal and really our responsibility as followers of Jesus Christ who also just happen to be lawyers. If you need more information go to the CLS website (www.clsnet.org) or call toll-free (855) 257-9800.

XXVI. FAVORITE BIBLE VERSES

John Croyle, who does a tremendous job operating Big Oak Ranch, says Isaiah 61:3 is one of his favorite verses.

To console those who mourn in Zion, To give them beauty for ashes, The oil of joy for mourning, The garment of praise for the spirit of heaviness; That they may be called trees of righteousness, The planting of the LORD, that He may be glorified."

Isaiah 61:3

Ralph Coleman, a very good lawyer from Jefferson County, sent in a verse for this issue.

Unless the LORD builds the house, They labor in vain who build it; Unless the LORD guards the city, The watchman stays awake in vain. It is vain for you to rise up early, To sit up late, To eat the bread of sorrows; For so He gives His beloved wage from the LORD, The fruit of the womb is a reward. Like arrows in the hand of a warrior, So are the children of one's youth. Happy is the man who has his quiver full of them; They shall not be ashamed, But shall speak with their enemies in the gate.

Psalms 127

Eddie Davis, a lawyer employed by the State of Alabama, says Romans 14:13 is one of his favorites. Eddie was recently admitted to practice before the U.S. Supreme Court which is a very high

honor. He attends St. James United Methodist Church in Montgomery.

Therefore let us not judge one another anymore, but rather resolve this, not to put a stumbling block or a cause to fall in our brother's way.

Romans 14:13

Mrs. Dean Albritton, who is the best Sunday School Teacher around, furnished a verse for this issue. As you may have figured out, Dean is Walter Albritton's wife. Many believe, if given the chance, Dean could "out-preach" her husband!

For I say, through the grace given to me, to everyone who is among you, not to think of himself more highly than he ought to think, but to think soberly, as God has dealt to each one a measure of faith.

Romans 12:3

Tony Barkley, who also goes to church with me at St. James United Methodist Church, is a really good man. He has been an inspiration to all who know him. Tony sent in a verse that is most appropriate for all of us.

For I consider that the sufferings of this present time are not worthy to be compared with the glory which shall be revealed in us.

Romans 8:18

My longtime friend, Ted Check, sent in one of his favorite verses. Ted is retired and spends his time keeping up with his grandchildren and issuing orders to his wife Ellen around their house. Some say that Ellen is ready for Ted to "find a job" and get back to work!

Let not your heart be troubled; you believe in God, believe also in Me, the Spirit of truth, whom the world cannot receive, because it neither sees Him nor knows Him; but you know Him, for He dwells with you and will be in you.

John 14:1

Johnny and Mary Helms who are from Louisville, Ala., sent in a verse this month in memory of their son, Chris. We represented the Helms family several years ago. They are good folks in every respect.

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

Psalm 27:1

XXVII. CLOSING OBSERVATIONS

The following prayer was sent to me last month and I felt it spoke to the current situation in the United States, at a time when many people are searching for answers to their many problems. It is a simple, but profound message, and one that we should all take to heart. When you get down to it, we don't have to look very far for solutions to our problems.

Lord God, I thank you this morning for the Rock of my salvation. I thank you that my life can be built upon a strong foundation. Please help me today to trust, to live, to take every breath based upon the foundation I have in You. Please help me to weather life's storms, to keep looking to You, and to be a thankful child...never a pouting child. I pray that You will strengthen me and keep my feet steady on solid ground today. I pray for my

family members, Lord, that each one will be committed to You and live a life that glorifies You and ministers to others. In the blessed name of Jesus, in the power of the Holy Spirit, I pray, amen.

AN OVERSIGHT ON MY PART

When I reported on a case recently that resulted in a \$34 million verdict in Baltimore, I mentioned Billy Murphy, the person who I understood was the lead lawyer for the Plaintiff. While that was correct, I failed to mention two other lawyers who were actively involved in the case. I now understand that Don Discepolo, a Baltimore lawyer, got the Murphy firm involved in the case at the outset and actually helped try the case. Mary Murphy, another lawyer in the Murphy firm, also participated in the trial. I apologize for this oversight.

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.

2 Chron 7:14

XXVIII. PARTING WORDS

Looking back at 2010, it's quite evident that our world has seen its share of trouble. There have been wars, severe storms, earthquakes, poverty and terrorist attacks around the globe. It is very easy for folks to get discouraged and wonder what will be next. I suspect that's the normal response from most of us. But we should remember what Jesus said. He said: "In this world, you will have trouble. But take heart! I have overcome the world" (John 16:33). That is all the assurance we need and it's a guarantee that only Jesus can give us. Nothing else can come even remotely close.

In dealing with the problems of the world—and there are many for sure—we must have faith in what Jesus said while on this earth and believe Him. We must pray daily and diligently for those who are put in harm's way regardless of who they might be and where they are. I am thankful for all that God has done for me, my family and co-workers in 2010 and look forward to 2011 with great anticipation.

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