



THE
JERE BEASLEY REPORT

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Beasley Allen

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I. CAPITOL OBSERVATIONS

LT. GOV. KAY IVEY TO LEAD STUDY COMMISSION

Gov. Robert Bentley has named Lt. Gov. Kay Ivey to head the new state commission that we wrote about last month. The commission's task will be to find ways to make government more efficient and effective. In my opinion, this was a very good move on the Governor's part. Kay is a hard worker, and having served as Treasurer, she is fully aware of how state government has been run in the past. It appears the state's two top officials have a good relationship and that is good news for all Alabamians. It's critically important that the Governor and Lt. Governor work in harmony. This appointment is a good beginning!

ALABAMA GOVERNOR ACTS TO PREVENT FORECLOSURES

Gov. Robert Bentley and the Alabama Housing Finance Authority have developed a program designed to help unemployed homeowners prevent home foreclosures. The Governor announced the details of the program on February 2nd in Montgomery. The new program is possible because the Alabama Housing Finance Authority was allocated \$162 million in federal funds to help unemployed or underemployed homeowners with temporary assistance to avoid foreclosure. Alabama's portion is part of \$2 billion in federal funding that is allocated for states with the highest unemployment rates. Hopefully, this program will help Alabama citizens who need help to keep their homes.

Source: Associated Press

THE NEW ATTORNEY GENERAL HITS THE GROUND RUNNING

Once he was sworn in, Attorney General Luther Strange hit the ground running and so far he hasn't slowed down. Luther has made some moves that

will keep him very busy over the next few months. One of his best moves thus far was to bring Richard Allen back to the Attorney General's office as Chief Deputy Attorney General. Richard, who ran the office under Bill Pyrro, is most capable and knows exactly how state government is supposed to work. He will definitely be an asset to the new Attorney General.

Luther, who has taken the lead in the state's lawsuit against BP and other Defendants, was appointed by Judge Carl Barbier to a key position in the MDL litigation. Filing suit against the wrongdoers last year was a good thing for Alabama and that's quite evident now. While it definitely has put Alabama in a very good position, nobody should believe that BP will roll over and play dead. This company is not only powerful politically, but it has the ability to spend whatever it takes in litigation to protest its turf. Alabama must be able to take its case to a courtroom if necessary. Fortunately for Alabama citizens, Gov. Riley wasn't able to settle the case under the terms he proposed and which were most favorable to BP. Had the case settled at that time, under those terms and conditions, our state's interest would not have been well served. In fact it would have been a major victory for BP and all of the wrongdoers and a tremendous loss for Alabama.

JOHN MCMILLAN TAKES OVER AS COMMISSIONER

My long-time friend John McMillan, the new Commissioner of Agriculture and Industries, is no stranger to public service. John served as a County Commissioner in Baldwin County, having been appointed by Gov. Albert Brewer in 1969. He was later elected to the House of Representatives from his home county of Baldwin in 1974 and was reelected in 1978. John was then appointed as Commissioner of the Department of Conservation and Natural Resources by Gov. Fob James in 1980. Since 1985, John has served as head of the Alabama Forestry Association. He brings this vast experience into his new position and I believe it will serve him well. John fully understands the challenges he faces, as well as the opportunities, in his new job. I am

confident John will do an outstanding job as Commissioner.

AN UPDATE ON THE REGIONAL WATER WARS

It's encouraging to know that Gov. Robert Bentley will meet personally with Georgia Gov. Nathan Deal to try and find an end to a 20-year legal battle over water rights in both states. It appears that Gov. Deal, who is new on the job, shares our Governor's desire to reach an agreement on water. Gov. Bentley's statement that he is anxious to jump-start talks has been well received in Georgia. While this

IN THIS ISSUE

I.	Capitol Observations	2
II.	A Report on the Gulf Coast Disaster.	3
III.	Drug Manufacturers Fraud Litigation.	8
IV.	Purely Political News & Views	9
V.	Legislative Happenings.	9
VI.	Court Watch.	10
VII.	The National Scene	11
VIII.	The Corporate World.	12
IX.	Toyota Litigation Update	14
X.	Product Liability Update	16
XI.	Mass Torts Update.	17
XII.	Business Litigation.	20
XIII.	Predatory Lending.	20
XIV.	Premises Liability Update.	21
XV.	Workplace Hazards.	21
XVI.	Transportation.	22
XVII.	Healthcare Issues	23
XVIII.	Environmental Concerns	24
XIX.	The Consumer Corner	25
XX.	Recalls Update.	28
XXI.	Firm Activities	35
XXII.	Special Recognitions	36
XXIII.	Favorite Bible Verses	36
XXIV.	Closing Observations	37
XXV.	Parting Words	39

problem will be a tough nut to crack, it should be settled if at all possible. It has been in court for a very long time and it doesn't appear that a great deal of progress has been made.

Gov. Bentley has said that if Georgia continues taking water from the federal reservoirs—and takes more from new reservoirs—it will worsen conditions for downstream communities. He is absolutely correct on that point. Georgia, Alabama and Florida have been in a legal battle over the region's water rights for the past two decades and that's sort of hard to understand or to justify. It's time for this matter to be resolved. In any event, it's good that Gov. Bentley sees the need for immediate action on this very important issue that affects our state. His responsibility is to work this out, but at the same time protect Alabama's interest.

Source: Associated Press

SOME INTERESTING FACTS RELATING TO APPOINTED BOARDS IN ALABAMA

Phil Rawls with the Associated Press wrote an interesting piece last month concerning the makeup of the boards and commissions that set policies for state government. It appears nothing changed concerning the make-up of these boards and commissions over the past eight years. They are no more diverse now than they were eight years ago. White men dominate, even though a quarter of Alabama's residents are black and more than half are women. That's not good for our state. The report by Examiners of Public Accounts on this subject is worth reviewing. The seats on state boards and commissions held by women amounted to 25.4% at the end of the Riley Administration.

In 2003, African-Americans filled 14.6% of the seats. The percentage went up only slightly to 15.0% near the end of Riley's term. At that time, white men held 62.7% of the 2,602 positions that existed. Those statistics are a long way from reflecting the state's population. It's pretty evident that we need more diversity in state government appointments. I believe that would be good for our state.

The Governor makes the largest number of appointments to state boards

and commissions, but a variety of state officials, including the Lieutenant Governor and speaker of the House, also make appointments. I am convinced that Gov. Robert Bentley will be sensitive to diversity.

Source: Associated Press

ELECTRONIC BINGO MACHINES LEAVING ALABAMA

The three major gaming equipment companies have reached an agreement with Attorney General Luther Strange to pull their electronic bingo machines out of Alabama. This was a major accomplishment and one that may signal the end of the bingo controversy that has been such a hot topic in Alabama over the past several years. The agreement, which does not apply to the three Creek Indian casinos in the state, is a blow both to dormant casinos in Alabama and to any persons or entities who might want to resume electronic bingo in our state.

The three major manufacturers of gambling machines—International Gaming Technology, Bally Technologies and Multimedia Games—all signed agreements with the Attorney General last month to remove their machines from the state within 60 days. I understand that most of the bingo machines played in the state are owned by those gaming companies and leased to casino owners for a share of the revenue. Additionally, two other companies—Cadillac Jack and Hest Technology—had previously removed their machines from the state. Under the agreement, the gaming companies didn't concede they did anything illegal in Alabama, but their machines are no longer available for use in the state.

Source: al.com

II. A REPORT ON THE GULF COAST DISASTER

AN EXPANDED REPORT FROM THE WHITE HOUSE COMMISSION

The White House oil spill commission has released an expanded report on the causes of the BP drilling disaster. According to the report, BP had workers on the doomed Deepwater Horizon rig who could have prevented the missteps that led to the massive Gulf of Mexico oil spill, but they were not consulted. The commission released new details on February 17th about the events that preceded the BP accident. The commission's investigators said BP workers failed to ask a knowledgeable company engineer who was visiting the rig about unexpected results from a critical negative pressure test on the rig. "If anyone had consulted him or any other shore-based engineer, the blowout might never have happened," the commission said in a statement.

The commission believes the misreading of that pressure test and the decision to move ahead with temporary abandonment of BP's Macondo well was a major catalyst for the rig explosion that eventually spilled millions of barrels of oil into the Gulf of Mexico. Had BP's well site leaders brought their faulty explanation of the test results to one of the visiting engineers, "events likely would have turned out differently," the commission report said. The engineers visiting the rig that day later questioned the crew's interpretation of the test results. BP onshore officials said they would have insisted on further testing, had they been consulted. The commission's chief counsel, Fred Bartlit, said in a statement:

The sad fact is that this was an entirely preventable disaster. Poor decisions by management were the real cause.

Created by President Barack Obama during the BP oil spill, the commission released its major findings and recommendations in January. The expanded

report on the causes of the accident does not change any of the commission's previous conclusions, but is meant to provide the public with the "fullest possible account" of the accident, the commission said.

Other new details released in the report include the finding that BP knew that there were issues with Halliburton and its work years before the accident. The commission previously criticized Halliburton's cement job on the rig, saying the company may have completed the job before knowing its cement formula was stable. This latest report said BP's engineers had problems with the Halliburton engineer assigned to the Macondo well for years, but they still did not review his work carefully. In addition, the flow of oil and gas that led to the explosion "almost certainly" came through an area of the well where Halliburton's cement should have blocked the flow.

An interesting finding was that flaws in the blowout preventer were not the root cause of the explosion. Several have criticized the commission's findings on this part of the report because the panel never examined the blowout preventer. But the report said the rig crew didn't activate the blowout preventer until hydrocarbons had already flowed by it. I will withhold judgment on this issue until we have completed discovery in the cases filed. Also, Transocean Ltd, which owned and operated the Deepwater Horizon rig, was accused in the report of missing several signs that hydrocarbons were in the riser pipe of the rig prior to the blowout. I firmly believe Transocean will be at fault and partially responsible for the incident.

There is a great deal yet to be learned through discovery in the MDL concerning the activities of the companies in order to adequately assess blame. But we have seen enough already to know that BP and perhaps others were guilty of much more than simple negligence. It's clear that the conduct of BP is well beyond gross negligence.

Source: *Insurance Journal*

JUDGE FINDS KEN FEINBERG TIED TO BP

In a very important ruling, Judge Carl Barbier has found that Ken Feinberg, who as we all know is the administrator of BP's claims facility, is not the independent claims man that he has decalred himself to be. Under the judge's order, BP must refrain from calling Feinberg "neutral." Instead, BP must disclose in all communications that the Gulf Coast Claims Facility (GCCF) and Feinberg, as its administrator, are acting on behalf of BP in fulfilling the oil company's legal obligations under the Oil Pollution Act.

Fishermen, boat-owners, tour-boat operators, hotel owners, business owners, and others who lost their livelihoods stemming from last year's Gulf oil spill believed that Feinberg was an independent claims man. They now realize that this man was far from independent. We knew that he wasn't from the beginning and now a judge agrees with us. Because Feinberg is paid by BP, there's a built-in conflict of interest that stacks the entire claims process against the folks who are seeking redress. Judge Barbier ordered Feinberg to make his relationship with BP transparent in all of his communications involving claims.

So far, about 87,000 individuals and businesses have accepted a settlement of their claims. Each one of those settlements comes with an agreement not to sue BP and other wrongdoers. Judge Barbier ruled that BP must tell Claimants they have the right to consult a lawyer and to explain that Claimants have the right to join the hundreds of pending lawsuits if they do not accept a final settlement. The judge also said the court may take action to cure previous miscommunication by Feinberg and the GCCF. This could result in the settlements being re-examined.

This is a very good ruling by Judge Barbier and one that will protect persons and businesses who have been injured and damaged by the oil spill. Lawyers in our firm who have been working on the BP litigation know from experience that Feinberg has misled folks in a number of ways relating to his role and their rights. Hopefully, things now will change and for the better.

Source: *Insurance Journal*

THE DEADLINE TO FILE CLAIMS MUST BE FOLLOWED

As we have previously reported, the vast majority of lawsuits which have been filed against BP and the other wrongdoers involved in the Deepwater Horizon incident and resulting oil spill, have been consolidated in the MDL in federal court in Louisiana. If persons and entities having claims against these wrongdoers have not asserted their claims by April 20, 2011, some or all of their claims may be forever barred. It should be noted that filing a claim with the Gulf Coast Claims Facility does not constitute filing a claim in this court action. The federal court has allowed the joinder in this action, i.e., the filing of a claim, by way of a short form, which is available on the court's website at <http://www.laed.uscourts.gov/OilSpill/Forms/Forms.html>. This website also has other information which may provide the answer to any questions that Claimants may have. Of course, individuals or businesses that have suffered a loss or been damaged should consult a lawyer of their choice to make sure their rights are protected.

FEDERAL OFFICIALS SAY OIL SPILL FINES MUST GO TO GULF COAST

Top federal officials have urged Congress to send billions of dollars in fines, anticipated as a result of the massive Gulf oil spill, to the Gulf Coast states impacted by the disaster. Even though a number of lawmakers have said they favor authorizing such use of Clean Water Act fines, no action has yet been taken in either the House or Senate. As a result, the money remains headed toward a fund that finances future oil spill cleanups. Jane Lubchenco, administrator of the National Oceanic and Atmospheric Administration, had this to say:

It is important for Congress to act to divert Clean Water Act penalties associated with the spill to dedicated funds to support restoration and recovery in the Gulf.

The Clean Water Act fine money could total between \$5.4 billion and \$21.1 billion. Billions more could come from

the separate Natural Resource Damage Assessment, which is examining the spill's environmental impact. BP PLC and the spill's other responsible parties must foot the bill for both of those programs.

It's evident that funding is critical to the recovery effort. Melody Barnes, head of the White House's domestic policy arm, has also called on Congress to send the money from fines to the Gulf. It appears that President Obama remains committed to that cause. Some Gulf officials, especially those in Alabama, have expressed concern that economic recovery efforts may be ignored in favor of environmental recovery. BP and the others responsible for the oil spill must be held fully accountable in all aspects of the recovery.

THE GULF COAST CLAIMS FACILITY HAS FAILED GULF COAST RESIDENTS

Ken Feinberg continues to fail Gulf Coast residents in administering the Gulf Coast Claims Facility (GCCF). Feinberg continues to over-promise and under-deliver in his dealings with individuals and businesses in the coastal states. In the previous interim emergency claims period, the GCCF paid only 168,000 of the 466,000 claims filed as of December. Even more disappointing was the method by which Feinberg denied claims. After the Department of Justice expressed concern in November over the tremendous backlog of claims in the GCCF, Feinberg denied 100,000 claims in a ten-day period. Many of these claims were stale from sitting at the GCCF office for over two months and were denied with vague boilerplate letters that did not explain the specific reasons why they were denied. That is unacceptable.

Throughout December and January, Feinberg travelled along the Gulf Coast region promising folks that his system would be more fair, transparent, and would pay claims faster. Unfortunately, any hope that his promises would come true was dashed when Feinberg and his team of lawyers drafted the new interim and final claims protocol. Instead of having to wait a few weeks, Claimants will now have to wait up to three months to even learn whether their claims will

be accepted. All the while, many of these same companies and individuals have not received one penny of relief from BP or the GCCF since the oil spill occurred. That, too, is totally unacceptable.

While the actual claim form consists of only three pages, the GCCF now requires individuals and businesses hurt by the oil spill to produce documents as if they were large, publically-traded companies. Unfortunately, many folks and businesses will not be able to meet these robust document requirements. Even more troubling is the GCCF's final claim calculation of two times an interim emergency claim. Considering that the *Exxon Valdez* oil spill continues to significantly impact Alaskan residents 20 years after the spill, this method of calculation is totally unacceptable.

Predictably, the interim and final claims process has proven to be even worse than the interim emergency claims process. Since opening on December 17, 2010, Feinberg's fund has paid only one interim claim out of the 49,310 filed. Not surprisingly, the only final full review interim claim that has been paid involves a former BP business partner—for over 10 million dollars! Neither Feinberg nor BP will disclose the name of that recipient. Too bad folks on the Gulf Coast weren't business partners of the oil giant.

Taking all of this into consideration, it's no surprise that Gulf Coast business closures are piling up and folks are going into bankruptcy while desperately waiting for their claims to be paid. One restaurant in Moss Point, Miss., Kicker's Seafood, shut its doors recently after having been open for 19 years due to the GCCF's failure to fully compensate its claims. Others, including 3 Graces restaurant of Destin, Angelo's Fresh Seafood & Takeout (which had been operating for 20 years), The Wheelhouse (Gulf Shores), and Mike's Café and Oyster House, are just a few of the many restaurants left in the wake of the GCCF's and BP's unjust claims system. Perhaps this is why so many businesses and individuals struggling for money took Feinberg's quick pay final settlements around Christmas time at \$5,000 for individuals and \$25,000 for businesses.

The more time passes, the more clear it becomes that Feinberg and BP are working together to avoid paying claims and to limit BP's liability. Undoubtedly, folks along the coast are taking notice. Last month, as reported above, Judge Barbier issued a ruling recognizing that Feinberg was not independent of BP. Feinberg has actually boasted that he is working on behalf of BP. After bragging and predicting that he would eventually return \$10 billion of the \$20 billion BP set aside for the GCCF fund, the Department of Justice wrote a scathing letter to Feinberg stating that "the role of the GCCF is to satisfy the obligations of the responsible parties to compensate those harmed as a result of the Deepwater Horizon oil spill." The letter said that the role "is not to preserve the \$20 billion fund that BP has established or to return the money to BP"

Lawyers in our firm are working hard every day helping Claimants get the money they deserve. Any of our readers who have any questions regarding the GCCF or the oil spill litigation in general, can contact any of the lawyers in the Environmental Litigation Section at 800-898-2034. You can also go to our website www.BeasleyAllen.com for more information.

Sources: Associated Press, *The Mobile Press Register*, Florida Freedom Newspapers, *Watertown Daily Times*

A SLICK PUBLIC RELATIONS MOVE BY BP

When I heard that BP was complaining about how Ken Feinberg was paying too much money out of the GCCF and was too generous in his payments, I almost fell out of my chair. Then I realized this was just another slick public relations move by the oil giant. BP furnished an early copy of its 25-page complaint to the *New York Times* so it would receive full favorable coverage prior to any official filing. Anybody who really believes that BP hasn't benefited from Feinberg's handling of claims apparently hasn't filed a claim with the GCCF or dealt with Feinberg.

Feinberg has been working for BP and is nothing more than an extension of the company. BP has spent hundreds of millions on public relations in efforts to con-

vince the American people that the oil spill really wasn't that bad and that the adverse effects of the spill are just about over. Unfortunately, the further one gets from the Gulf Coast, the less folks know about the tragic consequences of the oil spill, including the massive amounts of chemicals that were pumped into the waters for months. It appears that BP's public relations efforts have been very effective outside of the areas directly affected by the spill.

Now the oil giant is telling the public that if anything, Mr. Feinberg's proposed settlements are too generous. The company said the planned payments far exceed the extent of likely future damages because they overstate the potential for future losses. This is posted in a strongly-worded, 25-page document on the fund's Web site. Basing its estimates on much of the same data Feinberg used, the company concluded that there was "no credible support for adopting an artificially high future loss factor based purely on the inherent degree of uncertainty in predicting the future and on the mere possibility that future harm might occur." Putting this on the GCCF website is meaningless except for its public relations value.

BP argues in its filing that the Feinberg estimate vastly overstates the likely damage, which it places in the range of just 25% to 50% of Claimants' 2010 losses. The company noted that almost all of the closed fishing grounds had reopened, and economic recovery in tourism was well underway, with hotel and sales tax revenues in the fall of 2010 similar to those from the same period in the year before.

BP has to believe that this very public disagreement between BP and its own claims administrator will undercut the other major attacks on Feinberg. It's significant that its filing, while strongly worded, gives no indication that the oil giant plans to intercede in the process it handed off to Feinberg. This latest public relations effort was a slick move by BP and it appears to have worked well the further one gets from the Gulf Coast. Recently, I met with some lawyers in Atlanta and they were all saying that most folks in the Atlanta area believe BP has cured all of the problems caused by the

oil spill and has done a good job of taking care of the victims and restoring the beaches. That made me realize how effective BP has been at its public relations efforts and how easily the public forgets in situations like this.

Source: *New York Times*

FEINBERG CLAIMS THE GULF WILL RECOVER BY 2012

In another part of the BP public relations plan, Ken Feinberg now says the Gulf of Mexico will recover from the massive oil spill by the end of 2012. He claims by that time most of the harmful effect of the worst offshore oil spill in U.S. history will have dissipated and the economy will be much improved. This is just another public relations ploy designed to mislead folks. On the basis of Feinberg's estimate, the GCCF plans to make final payments of twice the documented 2010 damages minus payments already made through the fund. As football expert Lee Corso says, "Not so fast my friend!" It might be interesting to see where Feinberg is getting this information—could it be from BP or a source friendly to BP? He says it comes from reliable sources, but based on his past performance on the Gulf, anything this man says has to be suspect. As a result of what we have seen and heard from folks on the coast, it is hard to believe that the Gulf will have recovered by the end of next year.

It's no secret that millions of gallons of oil poured into the Gulf between last April and July, damaging the fragile wetlands of Louisiana, washing ashore in Alabama, Mississippi and Florida, and hitting coastal industries including fishing and tourism. Tremendous damage—both short and long-term—was done. Most Gulf coast residents believe the compensation fund has short-changed them and favored BP's interests over their own. They also believe, and rightfully so, that BP is attempting to get out of its public commitment to "make this right" for spill victims.

Source: *Insurance Journal*

SCIENTIST FINDS GULF BOTTOM STILL OILY AND STILL DEAD

A recently-released report shows that oil from the BP spill remains stuck on the bottom of the Gulf of Mexico. Video and slides produced by a top scientist from the University of Georgia demonstrate the oil isn't degrading as hoped and has decimated life on parts of the sea floor. The report is at odds with the recent report by Feinberg, explained above, that said all will be good by 2012.

Marine scientist Dr. Samantha Joye of the University of Georgia produced some early results of her December submarine dives around the BP spill site at a science conference last month in Washington. Dr. Joye went to places she had previously visited in the summer expecting the oil and residue from oil-munching microbes to be gone by then. She found that it wasn't. "There's some sort of a bottleneck we have yet to identify for why this stuff doesn't seem to be degrading," Dr. Joye told the American Association for the Advancement of Science annual conference.

In five different expeditions, the last one in December, Dr. Joye and her colleagues took 250 cores of the sea floor and travelled across 2,600 square miles. Some were locations she had been studying before the oil spill on April 20th. She found there to be a noticeable change. Much of the oil she found on the sea floor—and in the water column—was chemically fingerprinted, proving it comes from the BP spill. Pictures of oil-choked bottom-dwelling creatures were shown by Dr. Joye. They included dead crabs and brittle stars—starfish like critters that are normally bright orange and tightly wrapped around coral. These brittle stars were pale, loose and dead. She also saw tube worms so full of oil they suffocated.

Dr. Joye said her research shows that the burning of oil left soot on the sea floor, which still had petroleum products. Even more troublesome was the tremendous amount of methane from the BP well that mixed into the Gulf and was mostly ignored by other researchers. Dr. Joye and three colleagues have published a study in *Nature Geoscience* that said the amount of gas injected into the Gulf

was the equivalent of between 1.5 and 3 million barrels of oil. "The gas is an important part of understanding what happened," according to Dr. Ian MacDonald of Florida State University. It will be interesting to see how BP and Feinberg attack this study.

Source: Associated Press

OIL DISPERSANT LINGERED IN GULF LONG AFTER WELL WAS CAPPED

It was reported recently by National Geographic that dispersants used on the Gulf Oil Spill remained in the Gulf waters for months. The report says that, in all probability, this has had a negative impact on deepwater sealife. *National Geographic* reports the new study found chemicals pumped directly into the oil flowing out of the Deepwater Horizon wellhead got stuck at about 3,000 feet. The chemicals then lingered for at least three months after the well was capped. Nobody can say exactly what the overall impact on life in the Gulf will be, but preliminary studies suggest the dispersant severely affected deepwater coral. We believe this is a most serious matter with consequences that will have adverse effects for years.

Source: al.com

LAWSUIT SAYS BP'S PURSUIT OF COST-CUTTING LED TO GULF SPILL

A group of investors believe officers and directors of BP PLC, pursuing cost-cutting over safety, ignored "red flags" that could have prevented the explosion of the Deepwater Horizon drilling rig in the Gulf of Mexico. The Louisiana Municipal Police Employees' Retirement System and other investors claim BP executives and directors breached their fiduciary duties to the company by ignoring safety and maintenance for years before BP's Macondo well exploded on April 20th. The investors seek reforms in BP management and damages from the executives and board members to be paid to the company. It was alleged in a lawsuit filed last year, and recently amended, by the investors:

Despite repeated guilty pleas, warnings, employee deaths and injuries, and criminal and civil penalties imposed on the company by numerous federal and state regulators, the Defendants continued to systematically cut budgets. The Defendants' decisions and deliberate inaction caused one of the largest environmental disasters in the history of the U.S.

The investors' lawsuit is a derivative claim brought on behalf of the company. It has been combined with other shareholder actions pending in federal court in Houston. The Louisiana pension fund initially filed the derivative lawsuit in May and it was joined by similar claims by other investors. The investors now have filed a combined amended Complaint, adding details to their claims.

It was contended that a series of events and regulatory fines since the Texas City explosion should have convinced executives and managers of the need for policy changes. BP's neglect of company pipelines in Alaska caused a March 2006 rupture that spilled 267,000 gallons of crude oil at Prudhoe Bay and led to \$20 million in civil and criminal fines against BP, according to the Complaint. The Plaintiffs alleged that the company's internal study into problems at the Alaskan pipeline operations, by Booz Allen Hamilton in March 2007, found that "BP's top-down budget targets provided a 'budget box' in which activities, materials and projects had to fit."

Federal safety regulators fined BP more than \$5 million for "willful" safety violations at its Ohio refinery from 2006 to 2010. Federal regulators and prosecutors fined BP more than \$150 million in combined civil and criminal penalties for safety and environmental violations at the Texas City plant and the company's failure to bring the site into compliance after the fatal 2005 blast. The investors are seeking reimbursement of costs for pursuing the lawsuit, including attorneys' and experts' fees, along with unspecified damages to be paid to BP by the individual directors and executives for the company's losses as a result of the alleged breaches of fiduciary duty. The lawsuit also asks that the Defendants account for

profits and benefits, including salaries, bonuses and stock options, obtained through their alleged misconduct. Any money recovered would be placed in a trust for the company's use.

Source: *Business Week*

ONE MILLION FEWER PEOPLE VISITED ALABAMA BEACHES AFTER OIL SPILL

It has been reported that a million fewer visitors visited Alabama's beaches in 2010 than the year before. It should also be noted that many people who visited after the oil spill were attracted by huge discounts. According to Mike Foster, vice president of marketing for Gulf Shores and Orange Beach Tourism, that means "the economic blow is a lot bigger than what you see in just straight numbers of attendance."

In 2010, Alabama Gulf Coast beaches—including Orange Beach, Gulf Shores, Fort Morgan and Dauphin Island—saw 3.6 million visitors, compared to 4.6 million people in 2009, according to a report from the Alabama Tourism Department. Gulf State Park alone saw 300,000 fewer visitors in 2010 than the previous year. The Department receives 1% of the 4% state lodging tax. But officials have not yet determined how much lodging revenue was lost in 2010.

Source: Al.com

MILLIONS FOR OIL SPILL CLEANUP OWED TO COMPANIES

It appears that millions of dollars are owed to several companies that were hired to help BP respond to the massive oil spill. These companies claim BP or one of its contractors owes them for their work. It's not clear whether the real culprit is BP or its contractors. The contractors BP hired employed sub-contractors to perform much of the work.

Regardless of who is in the wrong here, BP has the responsibility to see that the sub-contractors are paid in full.

Source: Associated Press

LAWSUIT ACCUSES BP OF DENYING OIL SPILL WORKERS OVERTIME AND OTHER BENEFITS

Three workers who helped BP in its oil spill cleanup efforts after last year's disaster have filed suit in U.S. District Court in New Orleans. It alleges that the oil giant denied them overtime pay and other benefits. The Plaintiffs seek a notice to allow others with similar complaints to join in the action. The initial Plaintiffs, Jon Brewer, Nathan Cohen and Quentin Doyle, say they were among tens of thousands of workers who were assigned to do cleanup work along the Gulf Coast following the April 20, 2010, disaster. They say BP and The Response Group LLC, a Cypress, Texas, company, misclassified them as independent contractors and denied them overtime. The Plaintiffs seek back pay, damages and attorneys' fees.

Source: al.com

III. DRUG MANUFACTURERS FRAUD LITIGATION

JURY ORDERS DRUG COMPANY TO PAY \$170 MILLION IN MEDICAID FRAUD CASE

A Texas jury has found that a global drug manufacturer misrepresented prices to the state's Medicaid program and said the company should pay the state and federal government \$170.3 million. The verdict came at the end of a three-week trial in a state district court. Lawyers representing the Texas Attorney General's office argued that the Defendants, Actavis Mid-Atlantic LLC and Actavis Elizabeth LLC, artificially inflated the costs of medications to obtain more money. Medicaid reimbursed pharmacies at higher rates because of the falsely reported prices.

This trial was the first of its kind to take place in Texas. There had been similar cases by Texas in recent years, but all of them settled out of court. Attorney General Greg Abbott said in a statement that the case makes clear his office will hold accountable those who defraud the Medicaid program. He correctly stated

that the program, a joint federal and state effort to provide health coverage to needy Texans, must be protected. In this regard, the Attorney General observed:

Considering the hundreds of millions of dollars that are at stake, we will continue to vigilantly pursue providers that falsely report prices to Medicaid and defraud the taxpayers.

This is just another case where drug-makers reported inflated drug prices to a Medicaid program. This time it was the Texas program. Texas has settled with 11 companies for more than \$139 million. In 2008, the state increased pressure on Actavis and three other drugmakers and began to discuss settlements or possible trials. Actavis was the first to go to court. Teva Pharmaceuticals settled in July for \$51 million. Par Pharmaceuticals is set for a May trial, and a case is still pending against Watson Pharmaceuticals.

It was proven in the Texas lawsuit that the drugmakers schemed to increase sales by reporting inflated drug prices to the state Medicaid program. Pharmacies and wholesalers who purchased the corporations' drugs could bill Texas for the inflated price, realizing "windfall profits" that also were bolstered by kickbacks, rebates and false price markups from the drugmakers, according to the Attorney General's office. General Abbott said in his statement that he has been working for years to protect the Medicaid program, which costs the state billions each year.

Source: statesman.com

PFIZER TO PAY \$142.1 MILLION OVER NEURONTIN MARKETING

Pfizer Inc., the world's largest drug-maker, has been ordered to pay a total of \$142.1 million in damages for violating U.S. racketeering laws in marketing Neurontin, its epilepsy drug. A federal judge in Boston, U.S. District Judge Patti Saris, upheld a jury's finding. Kaiser Foundation Health Plan Inc. And Kaiser Foundation Hospitals claimed that Pfizer illegally promoted Neurontin for unapproved uses. Judge Saris tripled the jury's award of \$47.3 million under a provision of the

Racketeer Influenced and Corrupt Organizations Act of 1970. But Judge Saris denied Kaiser's request for an estimated \$76 million in interest on the award.

Kaiser officials alleged they were duped into believing that migraines and bipolar disorder could be treated effectively with Neurontin. As we have previously reported, Neurontin was approved in 1993 by the U.S. Food and Drug Administration for epilepsy. Kaiser, the first insurer to bring a Neurontin case against Pfizer to trial, said it was forced to pay \$90 million more than it should have for the drug.

Pfizer currently faces more than 300 suits accusing it of illegally promoting Neurontin or hiding its health risks. The drugmaker knew the medicine posed a suicide risk and failed to disclose it to patients and doctors. The company also has settled at least two suits alleging the drug played a role in users' suicides. Warner-Lambert Co. developed and marketed Neurontin for several years before Pfizer acquired the drugmaker in 2000. Four years later, Warner-Lambert pleaded guilty and agreed to pay \$430 million to resolve off-label marketing allegations by the U.S. Justice Department. Judge Saris, who is overseeing Neurontin cases from across the U.S. that are consolidated in federal court in Boston, recently dismissed more than 40 suits. A state-court judge in Missouri refused in August to grant class action status to all former Neurontin users in a lawsuit trying to combine claims into a class action.

Source: Bloomberg

GLAXO SETTLES AVANDIA CASE

GlaxoSmithKline PLC has settled a lawsuit alleging its Avandia diabetes drug caused a North Carolina man to die of a heart attack. The case, which was scheduled to go to trial, was settled on the eve of trial. The U.K.'s biggest drugmaker settled the suit filed by the family of James Burford, an Avandia user who died in 2006. The company had previously already agreed to pay almost half a billion dollars to resolve claims that it concealed the drug's health risks. The Burford lawsuit, scheduled for trial in Philadelphia federal court, was the first of 2,000

heading to court alleging London-based Glaxo hid Avandia's health risks. Regulators in Europe had the drug withdrawn from the market and U.S. sales were limited because of heart attack risks.

Burford, an electrical-parts salesman, took Avandia for 15 months to treat diabetes before having a fatal heart attack in his North Carolina home. He was 49 at the time of his death. It was alleged in the Burford case Glaxo refused to take Avandia off the market, even though studies concluded it increased risks of heart attacks and strokes. It was also alleged that Glaxo officials withheld studies by regulators showing the increased risk tied to the drug. The Food and Drug Administration voted for stronger warnings and drastically limited the use of the drug, allowing its availability to new patients only if they are unable to control their Type 2 diabetes with alternatives and if they are made aware of the serious potential heart risks associated with the drug. Patients who are currently taking the drug may continue to do so if they choose.

Source: Bloomberg

PLAINTIFF WILL BE ALLOWED TO SEEK PUNITIVE DAMAGES IN MOTRIN CASE

A Plaintiff in a product liability lawsuit will be allowed to seek punitive damages in his case alleging that a pharmaceutical company failed to provide adequate warnings with its over-the-counter pain reliever. The California Court of Appeals made this ruling in affirming the judgment of a lower court. The Plaintiff in this case developed Toxic Epidermal Necrolysis (TEN) when he was 15 years old. The disease is a rare and sometimes life-threatening condition characterized by the detachment of the top layer of skin from the lower layers of the skin all over the body.

A product liability lawsuit was filed against Johnson & Johnson, alleging that the boy's disease was the result of a severe reaction to Motrin, an over-the-counter pain reliever made by one of the drug company's subsidiaries. It was contended by the Plaintiff that Johnson & Johnson's warning label for Motrin was inadequate because it failed to include a

specific warning of the risk of TEN. Johnson & Johnson argued that the Plaintiff could not seek punitive damages because he could not show malice under state law. But the Appeals Court concluded that the Plaintiff could proceed with his claim for punitive damages based on evidence that Johnson & Johnson has known for years that ibuprofen—the main ingredient for Motrin—is associated with TEN.

The Court correctly ruled that punitive damages were not foreclosed by the fact that Motrin's warning label had been approved by the Food and Drug Administration. The Court wrote:

There are triable issues of fact regarding whether [Johnson & Johnson's] FDA-approved labeling could evidence despicable conduct or conscious disregard for safety. The relevant federal regulations place the burden on manufacturers to ensure their drug labeling is adequate at all times, regardless of FDA approval of existing labeling.

This is a most significant ruling and one that should be universally followed in both state and federal courts around the country. It's sound from a legal and constitutional perspective.

Source: Lawyers USA Online

IV. PURELY POLITICAL NEWS & VIEWS

NEW HEAD OF ALABAMA DEMOCRATIC PARTY ELECTED

Former Supreme Court Justice Mark Kennedy was elected last month as the new Chairman of the Alabama Democratic Party. In my opinion, Mark was an excellent choice to take over the reins of the party. Mark is highly intelligent, a tremendous communicator, and has good organizational talents. Nevertheless, Mark will face a real challenge in trying to turn things around for Democrats in Alabama. Currently things are not good for the Democratic Party in our state.

Bradley Davidson has been named by Mark as Executive Director of the Alabama Democratic Party. Davidson replaces Jim Spearman. He is the former executive director of Empower Alabama, a nonprofit organization that worked to increase civic service among young people. The Selma native is a graduate of the University of Alabama and Vanderbilt University. He is pursuing a graduate certificate in public administration from the University of Virginia.

Source: Associated Press

REPUBLICANS ELECT A NEW LEADER

Bill Armistead of Columbiana has been elected as the new chairman of the Alabama Republican Party. Bill, a former member of the state Senate, takes over from the Legislature's new Speaker of the House, Mike Hubbard of Auburn. According to the new chairman, the GOP won't look back to 2010. Instead, Bill said that "the fight has just begun against the Democrats." He added that the GOP is "marching forward to victory in 2012."

Bill cautioned Republicans to watch out for Democrats trying to interfere in party elections with either crossover voting or running as "pretend Republicans" in future elections. He is appointing a committee to examine ideas such as party registration and other ways to make certain real Republicans are running the Republican Party. Bill ran for the position against state Rep. Jay Love of Montgomery in an election by the State Republican Executive Committee. Many observers believed Jay would be elected, but it appears the old line Republicans were able to elect their man. It will be interesting to see how this move works out.

Source: Birmingham News

V. LEGISLATIVE HAPPENINGS

BAD NEWS FOR ALABAMA AT BUDGET HEARINGS

The Alabama Legislature will be facing some tough financial decisions during

the regular session which began this month. The Education Trust Fund, which funds public education in Alabama, has been reduced by \$1.5 billion, a huge amount, over the last several years. But, the full force of these reductions failed to hit the education community. That's because the Federal Government provided a billion dollars in stimulus funds over the last two years. Now, there are no more stimulus monies and that puts Alabama in a real bind. State Legislators will have to cut the next education budget by some \$500 million after they cut everything that could possibly be cut out of the budget. When you consider that education has to be a priority for our state leaders and is critically important to our state's future, I wonder what will happen.

Unfortunately, the General Fund budget is worse off than the education budget. Medicaid alone needs \$235 million to maintain current levels of health care. The Department of Corrections needs \$72 million to avoid releasing thousands of prisoners. Maintaining current levels of service requires \$700 million. It will be difficult to choose between reducing health care for our poor and releasing prisoners on one hand and cutting other needed governmental services on the other hand. This will be a very tough session for all concerned.

MADD NEEDS OUR HELP IN ITS FIGHT AGAINST DRUNK DRIVING

In 2009, there were just under 11,000 Americans killed in drunk driver motor vehicle crashes. It's significant that 3,000 folks in the U.S. Are killed each year by repeat offender drunk drivers. Unfortunately, Alabama is one of the states that doesn't do enough to prevent first-time offenders from becoming repeat offenders. Lawyers in our firm who handle litigation involving motor vehicle crashes know firsthand that drunk drivers are a real problem in our state. We would like to see Alabama become a real leader in eliminating drunk driving to the fullest extent possible.

The Alabama Legislature should pass legislation to eradicate repeat-offender violations, injuries and deaths through

the mandatory use of ignition interlocks for all drunk driving offenders. MADD has had a campaign to eliminate drunk driving and this has been a key part of the program. Hopefully the Legislators will make passage of this legislation a top priority for the Regular Session which starts this month.

In addition, the strictest prevention measures and the toughest enforcement of existing penalties should be used by law enforcement and the courts. Continuing to educate the public—and especially young folks—that drinking and driving will lead to serious consequences for offenders is also a necessity. All of us should support MADD'S efforts and get actively involved with them. The first place to start is in our homes and work places.

GOV. BENTLEY SUPPORTS COASTAL INSURANCE LEGISLATION

Gov. Robert Bentley has again given his support for a bill that would force insurers to disclose premiums collected and losses paid. He pledged to hold a Special Session to seek a comprehensive solution to coastal insurance woes. There is a tremendous need for lower prices and more options in the hard-pressed homeowners insurance market of Mobile and Baldwin counties.

Sen. Ben Brooks, R-Mobile, will be a key person in the move to get legislation passed. Insurance reform is badly needed and hopefully it will happen in the Regular Session. Gov. Bentley has said he prefers a consensus on solutions before calling a Special Session, which makes sense. He also indicated he might appoint a commission to include insurers, policyholders and Insurance Commissioner Jim Ridling.

Source: al.com

VI. COURT WATCH

SUPREME COURT ALLOWS LAWSUITS OVER SEAT BELTS

The U.S. Supreme Court, in a very important decision, ruled last month that

federal regulations setting vehicle safety standards do not bar lawsuits seeking damages from automakers for installing lap-only seat belts. The unanimous ruling held that a California lawsuit against Mazda Motor Corp. over a fatal 2002 collision involving a 1993 Mazda minivan could proceed. A passenger sitting in a rear seat and wearing a lap-only seat belt was killed.

The lawsuit filed by the family of the passenger, Thanh Williamson, alleged that the minivan was defectively designed because it lacked a lap-and-shoulder seat belt for the rear seat. Mazda said it complied with federal safety regulations in effect at the time and that an appellate court in California correctly ruled the product liability lawsuit could not go forward. The Supreme Court disagreed and overturned the appellate court ruling.

Justice Stephen Breyer said in the Court's opinion that the federal safety regulation does not preempt state tort lawsuits claiming manufacturers should have installed lap-and-shoulder belts, instead of lap-only belts, on rear inner seats. The ruling adopted the position argued by the Obama Administration, which said California and other courts have interpreted federal law too broadly in barring lawsuits against automakers that put in lap-only seat belts. It said the federal regulations were meant only as minimum standards. The vehicle safety regulations have been changed, and most passenger vehicles built after September 1, 2007, include shoulder-and-lap seat belts in all rear seats that face forward. The Administration said the issue still was important and estimated that more than 1 million vehicles in the United States still have some lap-only belts. This is an extremely important ruling and is a victory for consumers. The Court has cleared up the confusion caused by the misapplication of an earlier High Court decision, *Geiger v. America Honda Motor Co.* This should take away from automakers a bogus defense, i.e., federal preemption, in their efforts to avoid liability in meritorious cases. It will also give victims an opportunity to hold wrongdoers accountable.

Source: *Insurance Journal*

VACANCIES FILLED ON THE CRIMINAL APPEALS COURT

Gov. Robert Bentley has filled the two vacancies on the Alabama Court of Criminal Appeals. He appointed Shelby County Circuit Judge Michael Joiner to fill the vacant seat left when Jim Main was appointed to the Alabama Supreme Court. Judge Joiner was elected Circuit Judge in Shelby County in 1992 and has served as Presiding Circuit Judge since 2005. He created the drug court program in Shelby County in 2002 and served as co-chairman of a committee to implement drug courts across the state. Judge Joiner has lived in Shelby County all his life. He will be a very good addition to the Appeals Court.

Gov. Bentley also named Marshall County District Judge Liles Burke to serve on the Court of Criminal Appeals. Judge Burke fills the vacancy left on the court by now-Justice Kelli Wise. Judge Burke presided over criminal, civil, and juvenile cases brought in district, circuit and juvenile court. He has done an outstanding job as a district judge in Marshall County. Judge Burke from all accounts will also be a very good addition to the Court.

FEDERAL JUDICIAL VACANCIES REACHING CRISIS POINT

It was reported last month that federal judges have been retiring at a rate of one per week this year. This is driving up the number of vacancies that have nearly doubled since President Obama took office. These departures are delaying trials in some of the nation's federal courts. The workloads for judges in the federal system has greatly increased. The crisis is most acute along the southwestern border, where immigration and drug cases have overwhelmed court officials. The three judges in Tucson, the site of last month's shooting rampage, are each handling about 1,200 criminal cases. There is a crisis in Arizona where criminal trials are being delayed.

Since President Obama took office, federal judicial vacancies have risen steadily as dozens of judges have left without being replaced by the President's nominees. There are several reasons for this problem. Republicans have blocked

nominees, the White House has been slow with nominations, and a dysfunctional Senate confirmation system is also being blamed. Senate Republicans and the White House should work together to set aside the divisions that have slowed confirmations.

There are now 101 vacancies among the nation's 857 district and circuit judgeships, with 46 classified as judicial emergencies in which courts are struggling to keep up with the workload. At least 15 more vacancies are expected this year, according to the Administrative Office of the U.S. Courts. When Obama took office in 2009, 54 judgeships were open. The effect is most visible in civil cases, with delays of up to three years in resolving discrimination claims, corporate disputes and other lawsuits. The vast majority of federal cases are dispensed through the district and circuit courts of appeal, with the Supreme Court hearing fewer than 100 cases each year. The 60 nominees confirmed in Obama's first two years in office made up the lowest number in 35 years, according to the Senate Judiciary Committee.

Source: *Washington Post*

U.S. SUPREME COURT SIDES WITH CSX CORP. IN ALABAMA TAX CASE

The U.S. Supreme Court ruled against the State of Alabama in a decision released last month. The Court broadened the ability of railroads to challenge state taxes as illegally favoring other types of carriers, ruling in favor of CSX Corp. The justices, voting 7-2, said CSX can press claims that the state is violating a federal law that protects railroads from discrimination by forcing the company to pay higher fuel taxes than motor and water carriers.

A lower court has said that the federal law, known as the Railroad Revitalization and Regulatory Reform Act, doesn't permit suits over generally applicable sales and use taxes. CSX says that in some parts of the state it pays diesel fuel taxes of as much as 10%—or 30 cents per gallon on fuel costing \$3. Motor carriers pay a flat rate of 19 cents per gallon, while water carriers are exempt from sales and use taxes if they travel in inter-

state or foreign commerce, according to a statement by CSX.

Source: *Al.com*

ALL AMERICANS SHOULD READ THE BILL OF RIGHTS

I sometimes wonder how many U.S. citizens have taken the time to read the U.S. Constitution and that includes the ten Amendments known as the Bill of Rights. While all of us should read the Bill of Rights, it's especially needed by those who make laws in this country, both at the national and state levels. It's also needed for those who have the responsibility to interpret those laws passed by Legislative bodies. I fear that we have failed to follow to the letter that which was expected by our forefathers. Most of our readers are probably familiar with the first ten amendments to the Constitution of the United States. But to be sure I am setting these amendments out here.

The Seventh Amendment is one that has been virtually ignored and greatly abused by the U.S. Supreme Court and also by the Executive branch of government during the Bush Administration. It's clear as a bell that each U.S. citizen has a constitutional right to a trial by jury to resolve civil disputes in our judicial system. That's why it's impossible to reconcile the courts allowing mandatory, binding arbitration and federal preemption, each of which take away the rights of citizens. When the members of the U.S. House of Representatives read the entire U.S. Constitution earlier this year, I wondered if all of them grasped the true meaning of what they read and heard. Hopefully, enough of them did and will work to see that all Constitutional rights are preserved and protected.

VII. THE NATIONAL SCENE

STATE BANKRUPTCY PROPOSAL CRITICIZED BY BOTH PARTIES AT HEARING

At a February hearing in the U.S. House of Representatives, both Republicans and

The Bill of Rights

The First Ten Amendments to the Constitution of the United States

Amendment I Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Democrats criticized a proposal to allow states to file for bankruptcy to escape their debts, calling it an unnecessary intrusion into local affairs that could roil the bond market. Former House Speaker Newt Gingrich, who badly wants to be elected President, has advanced the idea. However, the chairman of the House Judiciary Committee, Republican Lamar Smith, said that allowing bankruptcy filings could penalize states with higher interest costs—including states with sound balance sheets. Representative John Conyers, a Democrat from Michigan, said it is a “useless” idea. Democrat Hank Johnson, a Georgia Democrat, said, “State bankruptcy may be a solution in search of a problem.”

Suggestions that states should be allowed to file for bankruptcy, as cities can, have drawn criticism from federal lawmakers in both parties, state officials and public-employee unions, whose contracts might be jeopardized in a filing. States were left out of a Depression-era law that allows municipalities to reorganize their finances under Chapter 9 of the Bankruptcy Code, a provision that has largely been used by small sewer and utility districts. Since Vallejo, Calif., a 115,000-person town, filed for bankruptcy in early 2008, no city of that size has followed its lead.

The skepticism about allowing states to seek protection from creditors was echoed by experts invited to speak before the subcommittee. “Legislating

state bankruptcy would disrupt the current municipal bond market and undermine investor confidence,” said the managing director of a Massachusetts-based municipal bond firm.

In a piece of troubling economic news, U.S. states are forecasting a collective \$125 billion in budget deficits for fiscal year 2012, according to a study by the Washington-based Center on Budget & Policy Priorities. However, there some signs that states are beginning to emerge from the worst effects of the recession. U.S. state tax collections headed for their biggest jump in more than four years during the last three months of 2010, the fourth-straight increase, according to a study this month from the Nelson A. Rockefeller Institute of Government in New York.

In Alabama, our State’s constitution requires the Legislature to construct and pass a balanced budget every fiscal year. Consequently, all state agencies and entities in Alabama which depend on state funds are bracing for a budget shortfall at the end of fiscal year 2011 and for even more significant cuts in fiscal year 2012. Our elected leaders have a great deal of work ahead as they navigate the state through these difficult financial times. If you need additional information on this matter, you can contact Clay Barnett, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

Source: Bloomberg

VIII. THE CORPORATE WORLD

NHTSA EMPLOYEES AND THE AUTOMOBILE INDUSTRY

There has been a great deal of attention relating to a recently-released study on Toyota’s runaway-acceleration problems. *The Washington Post* reported that dozens of former federal officials have played leading roles in helping carmakers handle federal investigations of auto defects. An analysis by the Post shows that as many as 33 former National

Highway Traffic Safety Administration employees and Transportation Department appointees left those jobs in recent years and now work for automakers. They are working as lawyers, consultants and lobbyists and in other jobs that deal with government safety investigations, recalls and regulations. Common sense tells us that this can create serious problems if persons working for NHTSA in regulatory roles “are looking ahead for future employment in the very industry being regulated.”

These former NHTSA employees can be found throughout the industry. They are on staff rosters for every major automaker and every major automotive trade group. They also appear as expert witnesses and legal counsel for the industry in major lawsuits involving auto safety issues. Several former Cabinet members have gone on to work directly for automakers. For example, Toyota recently hired Rodney E. Slater, the Transportation Secretary under President Bill Clinton, to head its North American Quality Advisory Panel. The panel assists the company with quality and safety issues.

Clarence Ditlow, executive director of the Center for Auto Safety, who is opposed to the agency hiring staff from the industry, had this to say:

They look upon that time as a down payment on future income. On the whole, regulators shouldn't come from the regulated industry and they certainly shouldn't go back.

Automotive safety experts are concerned about revolving-door trends concerning NHTSA and the automobile industry. The consequences are quite serious for several reasons. The agency's Office of Defects Investigation has a staff of only 57 persons. It can easily be overpowered by the thousands of experts in Washington who represent the automobile industry. The agency is the government's gatekeeper on auto defects, which account for at least 10% of vehicle fatalities each year, according to the Center for Auto Safety. NHTSA is also responsible for setting legal standards that consumers depend on when they are looking around to buy vehicles for families and businesses.

I am convinced that when it comes to regulation the deck is often stacked against consumers in regard to safety issues. NHTSA and its employees must be independent and capable of doing the job of regulation. More will be written on this matter in the section on Toyota. However, I suggest that you read the article by Kimberly Kindy in the February 9th issue of the Post.

Source: *Washington Post*

TYSON FOODS WILL PAY \$5.2 MILLION IN FINES

The Department of Justice says that Tyson Foods, Inc. paid Mexican officials bribes to get its chicken past inspections and across the border for import into the United States. “Tyson Foods used false books and sham jobs to hide bribe payments made to publically-employed meat processing plant inspectors in Mexico,” Assistant Attorney General Lanny A. Breuer said recently. As a result of the scheme, he says Tyson will pay \$4 million to the United States to resolve criminal allegations and \$1.2 million to the Securities and Exchange Commission.

As part of a deferred prosecution agreement with the Justice Department, Tyson acknowledged responsibility for the actions of its subsidiaries, employees and agents who made improper payments to government-employed veterinarians who inspected two of its chicken processing plants in Gomez Palacio, Mexico. Any company that exports meat products from Mexico must participate in an inspection program, supervised by the Mexican Department of Agriculture. According to court documents, the inspection program at each facility is supervised by an on-site veterinarian employed by the government of Mexico to ensure that all exports conform to Mexican health and safety laws.

According to the Department of Justice, Tyson's Mexican subsidiary, Tyson de Mexico, paid approximately \$90,000 between 2004 and 2006, to two publically-employed veterinarians who inspected its Mexican plants, resulting in profits of approximately \$880,000. Under the Dodd-Frank Act passed in July of last year, securities fraud whistleblowers are

entitled to between 10-30% of SEC recoveries for original information prompting “any judicial or administrative action brought by the commission under the securities laws that results in monetary sanctions exceeding \$1,000,000.” That is a good thing and badly needed to stop the sort of thing described above.

Source: fraudblawg.com

CHEVRON FINED \$9.5 BILLION IN ECUADOR

An Ecuadorean judge has ruled in an important environmental case that Chevron Corp. was responsible for oil drilling contamination in a wide swath of Ecuador's northern jungle. Chevron was ordered to pay \$9.5 billion in damages and cleanup costs. But the amount—\$8.6 billion plus a legally mandated 10% reparations fee—was far below the \$27.3 billion award recommended by a court-appointed expert. Even so, it appears to be the highest damage award ever issued in an environmental lawsuit.

But whether the Plaintiffs—including indigenous groups who say their hunting and fishing grounds in Amazon River headwaters were decimated by toxic wastewater that also raised the cancer rate—will be able to collect remains to be seen. In a statement, Chevron called the decision “illegitimate and unenforceable” and vowed to appeal. The company has contended that it could never get a fair trial in Ecuador and has removed all assets from the country.

This high-stakes case has been in the U.S. And Ecuadorean courts for more than 17 years. It's also possible that the Plaintiff's may decide to appeal. The suit was originally filed in a New York federal court in 1993 against Texaco and dismissed three years later after the oil company argued that Ecuador was the proper venue to hear the case. Chevron bought Texaco in 2001 and the suit was refiled in Ecuador two years later.

The 47 named Plaintiffs in the suit sought damages on behalf of 30,000 people for environmental contamination and illnesses that they claim resulted from Texaco's operation of an oil consortium from 1972 to 1990, an oil patch dug out of virgin rain forest. The recent ruling was hailed by the environmentalist

groups Amazon Watch and Rainforest Action Network as “proving overwhelmingly that the oil giant is responsible for billions of gallons of highly toxic waste sludge deliberately dumped into local streams and rivers, which thousands depend on for drinking, bathing, and fishing. It is time Chevron clean up its disastrous mess in Ecuador,” they said in a joint statement.

Chevron invested tens of millions of dollars in its legal defense as well as counterattacks against the Plaintiffs and Ecuadorean officials. It has long argued that a 1998 agreement Texaco signed with Ecuador after a \$40 million cleanup releases the company of any liability in the case. But the Plaintiffs contend that the cleanup was a “sham” and didn’t exempt third-party claims.

The events involved in this litigation reminded me of the old James Bond (007) movies. Chevron sought relief in a half-dozen U.S. federal courts and requested binding arbitration in an international tribunal in the Netherlands. The oil company even used corporate spies to clandestinely videotape meetings with Ecuadorean officials in which the men posed as contractors seeking oil contamination cleanup contracts. The men were said to have even tried to talk the trial judge—who later resigned—into saying he expected to rule against Chevron. It was reported that one of the men turned out to be a convicted drug trafficker.

A federal judge in New York, on a motion by Chevron, issued an order blocking any judgment for at least 28 days. The judge concluded that attempts to collect assets could seriously disrupt the business of a company vital to the global economy. The ruling in Ecuador gives Chevron 60 days to set up an escrow account in Ecuador through which the damages would be distributed.

The decision in Ecuador requires that Chevron pay \$6 billion for cleanup of soil and water; \$1.4 billion to build health care systems; and \$800 million for creating health care plans and attending to cancer patients—the court-appointed expert had calculated 1,401 pollution-caused cancer deaths. The balance of the recovery is earmarked for recovering native plant species, water distribution systems and repairing cultural damage. In

addition, under the applicable law Chevron must pay 10% of the judgment as reparations. It will be interesting to see how this very complex litigation will wind up.

Source: *Forbes*

ADVICE ON HOW TO AVOID SHAREHOLDER LAWSUITS

There have been a tremendous number of investor lawsuits filed in the courts around the country over the past several years. Many so-called experts made a good living advising Corporate America on how to avoid being sued. When companies are looking at bad earnings news, a new study released by the University of Iowa has some pretty good advice for corporate bosses. The study suggests it’s best for executives to remember what they learned as children. “If a child does something wrong and tells his mother about it, he’ll probably be in less trouble than if mom finds out about it on her own,” said Richard Mergenthaler, an accounting professor in the Tippie College of Business at the University of Iowa.

The new study concludes that the earlier a firm announces bad earnings news, the less likely it will be sued by unhappy shareholders. In fact, Mergenthaler’s research found that companies that wait until the last few weeks of a quarter to announce they will not meet analysts’ earnings expectations are 45 times more likely to face shareholder lawsuits than firms that make the announcement in the first weeks of the quarter. Mergenthaler concluded that “(t)he earlier a company communicates the information to the market, the better off they’ll be.” The study, “The Timeliness of Earnings News and Litigation Risk,” is co-authored by Dain Donelson, John McInnis and Yong Yu, all of the University of Texas at Austin. I’m not sure about this study, but I suspect the findings are pretty much accurate!

Source: *Insurance Journal*

IX. TOYOTA LITIGATION UPDATE

GOVERNMENT FINDINGS ON TOYOTA SUDDEN UNINTENDED ACCELERATION

On February 8th, the U.S. Department of Transportation released results of a ten-month study on the suspected cause of Sudden Unintended Acceleration (SUA) that affected thousands of Toyota vehicles and prompted the recall of more than 8 million various makes and models beginning in late 2009. The National Highway Traffic Safety Administration contracted a group of NASA engineers to look into the issue of sudden unintended acceleration in nine Toyota vehicles. This study could not prove that Toyota electronic throttle systems caused unintended acceleration in the vehicles that were studied. The NASA engineers cautioned: “Because proof that the ETCSi (electronic throttle) caused the reported UAs was not found does not mean it could not occur.”

Despite this finding, Secretary of Transportation Ray La Hood told reporters in a news conference: “There is no electronic-based cause for unintended high-speed acceleration in Toyotas.” But a number of safety groups investigating claims of accidents, injuries and deaths caused by SUA believe the study is incomplete and in no way exonerates Toyota or involvement of its electronic throttle system. Most believe the NASA study will not stand up when more exhaustive research is finalized. Lawyers in our firm who are working on SUA cases agree on that point.

NASA’s report is not exhaustive, nor the final word on the issue of Sudden Unintended Acceleration in Toyota vehicles. Dee Miles, who is head of our firm’s Consumer Fraud section, serves on the Liaison Committee for personal injury/wrongful death cases in the Toyota Multi-District Litigation (MDL). Dee points out that there is ongoing, more extensive testing on the suspect Toyota models being conducted by the MDL lawyers and experts, as well as by independent investigators. NHTSA’s work is certainly

helpful to all, but they are limited in their resources and their testing appears to have been limited as a result.

Another of our lawyers, Graham Esdale, has been working on Toyota SUA cases long before the first recalls were announced by the manufacturer. Graham firmly believes that more testing will prove that some Toyota vehicles have experienced Electronic Throttle Control System problems that led to death in some cases and injury in others. He says the book is still open on this problem. It should be noted that a primary defect in the Toyota vehicles is the lack of a brake over-ride system. Had these vehicles incorporated this safety feature, the crashes, whether caused by electronics, a sticky pedal or floor mat interference, would never have happened. NHTSA did note in the report that it may require a brake override system as mandatory on all cars.

The notion that SUA is tied to the automobile electrical system has already been supported by independent research, including a study conducted by Safety Research & Strategies, Inc. (SRS). Sean Kane, president of SRS, testified before Congress in February of last year to present findings that proved incidences of SUA even after problems such as “sticky accelerator pedals” and “improperly fitted floor mats” were corrected. During 2010, NHTSA levied \$48.8 million in civil penalties against Toyota for its failure to comply with federal law in notifying the government about potential problems that eventually led to the massive recalls. Hopefully, Toyota’s bosses realized that it is in the company’s best interest to put this chapter in its history behind it and move forward.

REGULATORS HIRED BY TOYOTA HELPED HALT INVESTIGATIONS

The revolving door from NHTSA to the automobile industry is a most serious problem. Former regulators hired by Toyota Motor Corp. helped end at least four U.S. investigations of unintended acceleration by company vehicles in the last decade, warding off possible recalls. Christopher Tinto, vice president of regulatory affairs in Toyota’s Washington

office, and Christopher Santucci, who works for Tinto, helped persuade the NHTSA to end probes including those of 2002-2003 Toyota Camrys and Solaras. Both men joined Toyota directly from NHTSA, Tinto in 1994 and Santucci in 2003.

While all automakers have employees who handle NHTSA issues, Toyota may be alone among the major companies in employing former agency staffers to do so. General Motors Co., Ford Motor Co., Chrysler Group LLC and Honda Motor Co. All claim their companies have no ex-NHTSA people who deal with the agency on defects. The links between Toyota and NHTSA are cause for concern. This may fuel mounting criticism of their handling of defects in Toyota and Lexus models tied to 19 deaths between 2004 and 2009. Three Congressional committees are still looking into the Toyota recalls. Joan Claybrook, an auto safety advocate and former NHTSA administrator in the Jimmy Carter administration, stated:

Toyota bamboozled NHTSA or NHTSA was bamboozled by itself. I think there is going to be a lot of beat on NHTSA over this.

In one example of the Toyota aides’ role, Santucci testified in a Michigan lawsuit that the company and NHTSA discussed limiting an examination of unintended acceleration complaints to incidents lasting less than a second. Transportation Department spokeswoman Olivia Alair said recently that NHTSA “currently has three open investigations involving Toyota and is monitoring two major safety recalls involving Toyota vehicles. NHTSA’s record reflects that safety is its singular priority.”

On January 21st Toyota recalled 2.3 million U.S. cars and trucks with potentially defective accelerator pedals. That followed Toyota’s decision in November to recall 4.48 million vehicles in the U.S. And Canada because floor mats might trap gas pedals while they were depressed. As of February 8th, combined worldwide recalls for pedals, floor mats and a software fix to adjust brakes on the Prius and other hybrid models rose to more than 8 million vehicles.

All four of the probes the Toyota aides helped end were about complaints that

the unintended acceleration was caused by flaws in the vehicles’ electronic throttle systems. Toyota has consistently denied that the system is a problem. Tinto came to Toyota after about four years at NHTSA. He hired Santucci from NHTSA in 2003, after the two met on opposite sides of the table in defect investigation cases. Santucci said in the deposition that he works on most of the automaker’s recall petitions. In last year’s floor-mat recall, Santucci said he helped write Toyota’s explanation of the remedy and had phone calls and meetings with NHTSA to describe the automaker’s plans.

NHTSA opened eight investigations of unintended acceleration of Toyota vehicles from 2003 to 2010, according to Safety Research & Strategies Inc., a Rehoboth, Mass., group that gathers data from NHTSA and other sources. Three of the probes resulted in recalls for floor mats. Five were closed, meaning NHTSA found no evidence of a defect. In four of the five cases that were closed, Tinto and Santucci worked with NHTSA on Toyota’s responses to the consumer complaints the agency was investigating, agency documents show.

The first closed case where NHTSA records show the involvement of Tinto and Santucci dealt with unanticipated acceleration by 2002 and 2003 Toyota Camrys and Solaras. The case, opened in March 2004, was the one Santucci testified about when he discussed limiting the scope of the probe. He did so in a deposition for a lawsuit filed on behalf of a Michigan woman who was killed in an April 2008 accident.

It’s both interesting and highly significant that an internal Toyota document, subpoenaed by a House committee, showed Toyota officials boasted about the effectiveness of the effort in which Santucci and Tinto were involved. Toyota said it saved the company as much as \$100 million. If some ordinary person or the owner of a small business operated like this most of our political leaders in Washington would claim to be shocked!

Source: *Business Week*

STALLING TOYOTA HIGHLANDERS SPUR INVESTIGATION

The government has opened a preliminary investigation into reports of stalling engines in more than 40,000 Toyota Highlander hybrids. The National Highway Traffic Safety Administration said on its website it had received 32 complaints alleging stalling engines in Highlander hybrids from the 2006 model year. The probe involves 43,491 hybrids and was opened last week. There have been no crashes or injuries reported. Defect investigations can sometimes lead to vehicle recalls. Toyota has recalled more than 12 million vehicles globally over safety problems since 2009, but U.S. regulators said earlier this month that electronic flaws were not to blame for reports of sudden, unintended acceleration. The new investigation involves reports of Highlanders stalling at speeds of 40 miles per hour or more. Some drivers reported the vehicle could not be restarted or was towed to the dealership. Nearly all of the reports were received within the past year. Toyota said it would fully cooperate with the review. The preliminary investigation will assess the scope, frequency and potential safety problems connected to the alleged safety defect.

X. PRODUCT LIABILITY UPDATE

MISSOURI SUPREME COURT RULES AGAINST FORD MOTOR COMPANY

The Missouri Supreme Court has ruled on appeal that an overweight woman who was paralyzed in a Ford Explorer crash can sue the manufacturer for failing to warn of the risk of seat collapse in rear-end collisions. In the ruling, the Supreme Court reversed a lower court judgment. The Plaintiff, who weighed 300 pounds, was driving a 2002 Ford Explorer when she was rear-ended by another vehicle. The Explorer's seat collapsed backward, fracturing her T9 vertebra. She was rendered a paraplegic as a result of her injuries.

The Plaintiff sued Ford for defective design and failure to warn. A jury found in favor of Ford on the Plaintiff's claim that the design of the seat was unreasonably dangerous because it was more likely to collapse in a rear-end collision when being used by an overweight person. While the Supreme Court upheld the jury's design defect verdict, it said that the trial judge was in error in directing a verdict for Ford on the Plaintiff's failure-to-warn claim.

In reaching its decision on the failure-to-warn claim, the Supreme Court held that state law in Missouri recognizes a failure-to-warn cause of action "when the consumer shows she would not have purchased or would not have used an otherwise non-defective product that was rendered unreasonably dangerous because of the lack of adequate warning about the dangers the product posed to the class of users of which the Plaintiff is a member." The Supreme Court also concluded that the Plaintiff's evidence was sufficient to present her failure-to-warn claim to a jury. The Court's opinion stated:

[N]ot only did the [the Plaintiff and her husband] testify that they did not know the Explorer seats yielded rearward for persons of [the plaintiff's] weight much more readily than for persons of normal weight, they went further by presenting evidence that had they read a warning before purchase, they would not have purchased the Explorer, and had they learned of it later through reading the manual, [the plaintiff's husband] would have done everything in his power to prevent his wife from riding in the Explorer.... This causation theory is straightforward, not speculative, and does not offend reasonable concepts of proximate cause.

While this is a mixed verdict both for the Plaintiff and for Ford, it's still significant. But it will be very interesting to see how a jury reacts to this claim on retrial. Of course, it's quite possible the parties will settle and avoid a trial.

Source: *Lawyers USA Online*

MULTIPLE RECALLS FOR REAR SUSPENSION

Our firm has had the occasion recently to review a number of cases where the potential defect involved the failure of rear support or suspension in vehicles. These vehicles include: 1999-2003 Ford Windstar; 1998-2002 Isuzu Rodeo; 2002 Isuzu Axiom; and 1998-2002 Honda Passport. Other vehicles that have had similar recalls include: 2001-2003 Hyundai Elantra; 2001-2004 Hyundai XG300 and XG350; 1999-2004 Hyundai Sonata.

The specific defect includes failure in the front or rear suspension equipment. With respect to the Isuzu vehicles, the defective equipment has been identified as the rear suspension lower link bracket. With respect to the Ford Windstar, the defective equipment has been identified as the front lower control arm rear attaching bracket.

The recalls apply mostly to northern states, including Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wisconsin. The failure of this suspension equipment is purportedly the result of exposure to highly-corrosive materials used in many northern states for deicing roads.

In many instances, lawyers in our firm who handle product liability litigation review cases where there are serious injuries and deaths involved. In many cases the reason that a vehicle left the roadway in a crash may not be known initially. This type of failure is one of many possibilities we explore to attempt to make such determinations.

Despite the fact that the recalls focus on these northern states, such failures should be considered in these vehicles in any instance where there is an unexplained loss of control of these and other vehicles. Many vehicles have traveled in these states and may have been exposed to these corrosive materials.

Our products liability section is prepared to assist with investigating such cases where serious injuries or deaths have resulted to determine if the vehicle

accident was the result of such a failure in these and other vehicles. We also encourage our readers, especially those in the listed states, to watch for this type of corrosion in the suspension area of their vehicles.

Sources: <http://www.internetautoguide.com>; <http://www.wodi.nhtsa.dot.gov/recalls/results>; and <http://www.usrecallnews.com>.

WEAK ROOFS AND UNSTABLE SUVs STILL CAUSING DEATH AND SERIOUS INJURIES

Automobile manufacturers have known for decades that the roofs on their vehicles are weak and not capable of withstanding forces in a real-world rollover accident. Further, manufacturers have known for years of the instability in their SUVs. SUVs with narrow track width are much more likely to roll over on smooth, flat, dry pavement than vehicles with a much larger track width. Both of these design defects—weak roofs and a narrow track width—are a dangerous combination for unsuspecting consumers of these vehicles. A recent opinion out of the California Court of Appeals highlights just how dangerous the combination of these design defects is to the traveling public.

On December 14, 2003, Sukhsagar Pannu was driving his 1998 Land Rover Discovery (Series I) sport utility vehicle on an interstate in California. Mr. Pannu was a successful businessman and was a world-class athlete who once played for the Hong Kong National Field Hockey Team. Another vehicle approached Pannu's SUV from the rear and collided with it. The collision forced the SUV across the freeway toward the far right lane where it also collided with a Chevrolet Blazer. The Land Rover rolled over three and a half times before coming to a stop on its roof. During the rollover, the roof crushed 16-17 inches into Pannu's occupant space.

As a result, Pannu suffered a severe spinal injury resulting in partial quadriplegia. Pannu sued Land Rover, the manufacturer of the SUV, alleging that the vehicle was defectively designed because it was unstable and had a weak roof. At trial, Pannu's attorneys proved that, by simply reinforcing certain aspects of the roof's structure, at a minimum cost, the

roof crush would have been limited to only three inches. Further, Pannu established that, by simply adding an inch and a half to the track width of the vehicle and utilizing low profile tires to lower the center of gravity by a mere .44 inches, the Land Rover would not have rolled over.

After hearing the evidence, a California judge concluded that the Land Rover's defective design in both having a weak roof and a narrow track width caused the injuries to Mr. Pannu. During the trial, Land Rover attempted to attribute the full responsibility for Pannu's injuries to the driver who initiated the accident. But that attempt was rejected by the Court, which recognized that simple and inexpensive design changes to the Land Rover's stability and roof would have prevented the Land Rover from rolling over and would have prevented Pannu's spinal injuries. The Court awarded damages in the amount of \$21,654,000 to Pannu for his economic and non-economic damages.

Land Rover appealed the judgment to the California Court of Appeals. In January of this year, the Court of Appeals rejected every one of Land Rover's arguments and upheld the \$20 million judgment. The Appellate Court found most telling that Land Rover's own documents supported the trial court's finding of defect. The Appellate Court noted:

With respect to stability design, Pannu established that the production Discovery would tip under evasive steering maneuvers and that slight modifications to the track width and center of gravity of the vehicle dramatically improved its rollover resistance. Similarly, modest enhancement of the roof support of the production Discovery yielded substantial gains in roof strength. The new improvements could be achieved at a modest cost. Land Rover did not rebut any of these showings. Moreover, Land Rover's senior engineer who testified about the design goals of the Discovery acknowledged these modifications were available and could have been made at the time Pannu's vehicle was manufactured.

The Appellate Court further pointed out that "Land Rover's ability to credibly rebut this evidence was hampered by the fact that it implemented all of these improvements in the successor model, the Discovery Series II." The evidence demonstrated that Land Rover knew of the dangers of rollover and corrected them in the redesign of the Discovery Series II. But the company failed to warn of the dangers of the rollover and roof crush to consumers who had purchased the Discovery Series I. Incredibly, Land Rover actually advertised that the Discovery Series I had a "steel innerbody cage" and a "steel roof panel," leading consumers to believe that the vehicle was a solid car and could withstand damage.

Sadly, there are many models of this Land Rover still out on the highways today. Also, there are many other SUVs with the very same unstable design and weak roof on the road. The Pannu case is a prime example of corporate indifference to design defects and the tragic consequences of those design decisions. If you have any questions about SUVs designed with weak roofs or SUVs that are unstable, please contact Cole Portis, Ben Baker, or Dana Taunton at 800-898-2034 or by email at Cole.Portis@beasleyallen.com; Ben.Baker@beasleyallen.com; or Dana.Taunton@beasleyallen.com.

XI. MASS TORTS UPDATE

MORE THAN \$900 MILLION SET ASIDE FOR DEPUY LAWSUITS

Johnson & Johnson, the DePuy hip replacement manufacturer, has set aside \$922 million to cover litigation costs. In its fourth quarter earnings, the company said its DePuy Orthopaedics subsidiary faces a growing number of suits over its ASR hip replacements. While the amount set aside will involve this money for settlements, in our opinion it won't be enough to satisfy all claims.

DePuy, an Indiana-based division of Johnson & Johnson, recalled the ASR hip system on August 26, 2010 after hundreds

of patients complained to the Food and Drug Administration that the device failed soon after implantation. The lawsuits seek redress for severe injuries, debilitating pain, severe inflammation of surrounding tissue and bone, loss of mobility and the need for surgery to remove and replace the ASR hip implant devices. As we have previously reported, the more than 100 hip recall lawsuits were recently consolidated in the U.S. District Court for the Northern District of Ohio for pretrial proceedings.

There will be more cases filed in the near future. As we reported last month, Navan Ward, a lawyer in our Mass Torts Section, was selected for membership on the committee in charge of the MDL litigation. If you need more information on this litigation, contact Navan at 800-898-2034 or by email at Navan.Ward@beasley-allen.com.

Source: *Lawyers USA Online*

PENNSYLVANIA APPELLATE COURT AFFIRMS PUNITIVE DAMAGES AGAINST WYETH

An appellate court in Pennsylvania last month handed down a significant opinion in a hormone therapy case that is favorable to consumers. The court's 55-page opinion decides and clarifies several issues involving Pennsylvania law. The case involved a woman diagnosed with breast cancer after taking Wyeth's drug PremPro for 18 months. At trial, the jury returned a Plaintiff's verdict of \$1.5 million in actual damages and \$8.6 million in punitive damages. The judge who tried the case denied Wyeth's post trial motions for JNOV on causation and damages and issued a written opinion supporting its granting of Wyeth's motion for Judgment Notwithstanding Verdict (JNOV) as to the award of punitive damages. The trial judge later died and the case was assigned to another judge who granted Wyeth's supplemental motion for JNOV as to actual damages.

The appellate court clarified what evidence would be required to overcome Pennsylvania's "learned intermediary" doctrine. In general, the doctrine requires the Plaintiff to prove that, if the Defendant had issued a proper warning to the Plaintiff's doctor, the doctor would have

altered his behavior and the injury would have been avoided. This doctrine has been the law in Pennsylvania for many years, but its application has been unclear. In this case, the doctor testified that he would pass on any significant warnings given to him by the manufacturer and allow the Plaintiff to make the ultimate decision as to whether or not to take the drug. The Plaintiff testified at trial that had she been told about the risk of breast cancer she would not have taken the drug.

The appellate court found that evidence at trial was sufficient to show proximate cause between the lack of an adequate warning and the injury. The court also found that a medical doctor is not required to give expert testimony about the inadequacy of a drug's label. The Plaintiff's expert was found to be qualified to offer such opinions based on her education, training and experience with the pharmaceutical industry.

Finally, and most significantly, the appellate court reversed the trial court's JNOV order relating to punitive damages. The court found there was sufficient evidence to support the jury's finding that Wyeth's motives were "evil" or its actions were done with "reckless indifference to the rights of others." The court rejected Wyeth's argument that simply complying with FDA regulations precluded punitive damages. Instead, the court found that Plaintiff had presented significant evidence that Wyeth should have known from the mid-1970s that more studies were needed to understand the true risk its drug presented and it refused to undertake even one such study. The court also clarified that the case of *BMW v. Gore* was never intended to limit the amount a jury could award in punitive damages against a Defendant for the Defendant's conduct within the state. In this case, Wyeth is a Pennsylvania corporation and its "evil or reckless conduct" all occurred in Pennsylvania. The fact that the Plaintiff and her doctor lived in Arkansas was found to be immaterial. If you need more information on this matter contact Russ Abney at 800-898-2034 or by email at Russ.Abney@beasleyallen.com.

AN INCREASE IN DILANTIN LAWSUITS

There has been a significant increase in litigation filed over the anti-seizure drug Dilantin. Dozens of suits have been filed alleging that it causes horrendous and life-threatening skin burns. The suits allege that the drug, used to treat epilepsy and in hospitals and emergency rooms to prevent seizures following head injuries, causes Stevens Johnson Syndrome (SJS) and its more severe counterpart, Toxic Epidermal Necrolysis (TEN), where a patient's skin literally burns off. These conditions can also lead to blindness, internal organ damage and sometimes death.

The lawsuits name Pfizer, the maker of Dilantin, as a Defendant, in addition to eight manufacturers of the generic version phenytoin, including Mylan Pharmaceuticals and Baxter Healthcare. Thus far no cases have made it to trial. But Pfizer has settled several cases for confidential amounts.

Dilantin has been on the market since the 1930s, prescribed as an anti-seizure drug for epileptics. The drug is also used as a precautionary measure against seizures for people who suffer head injuries. In some cases, it has been prescribed as a pain reliever for severe headaches when other drugs don't work. An FDA safety notice issued on November 24, 2008 first alerted lawyers to the problems with the drug.

Steven Johnson Syndrome typically starts with flu-like symptoms and then develops into a rash and burning of the skin, internal organs and mucosal areas, such as the eyes and throat, often causing blindness and liver failure. It cooks a person from the inside out and it's worse than third degree burns. A patient develops the more severe Toxic Epidermal Necrolysis when 30% or more of the person's skin burns off. The rare disease is estimated to affect 1,400 out of 1 million children and 900 out of 1 million adults, according to one study. African Americans and Asian Americans are particularly susceptible to the disease. This is thought to be because of a gene in certain people that kicks their immune system into overdrive when metabolizing the drug, killing off healthy skin cells at a fast rate.

There is a recognized genetic propensity for Asian and African Americans that put them at a higher risk than people of other ethnic backgrounds. With only a handful of drugs that cause the condition, SJS and TEN are always caused by drugs. If a patient only has Dilantin in their system, it's a pretty strong case of specific causation.

On the question of general causation, I understand that Pfizer's own expert medical director and the former director of the American Dermatological Association have admitted that Dilantin causes SJS and TEN. It appears that Pfizer knew about the increased risks of SJS and TEN, but failed to warn of the risks. It should be noted that labels on the drugs sold in countries such as Canada, the Czech Republic and the Netherlands contain stronger warnings, with those labels warning doctors and patients directly, by way of a patient insertion leaflet, that the drug carries a higher risk of SJS and TEN for black people.

Why would the company use a stronger warning in other countries, but fail to provide similar warnings in the United States, where those affected populations are much larger? Pfizer has changed its label on its oral Dilantin medication to include warnings to doctors about higher risks to black patients, but it does not warn patients directly. Thus far, the change has not been made on the tablet or IV forms of the drug.

Alternative anti-seizure drugs in the U.S. contain stronger warning labels than Dilantin. For example, the anti-seizure drug Lamictal contains a black box warning that specifically warns against use in children unless a doctor thinks it is necessary. It also warns about the higher risk in certain ethnic subpopulations, recommending a blood test for those groups before taking the drug. Dilantin should clearly have the same warnings.

Source: *Lawyers USA Online*

FIXODENT DENTURE CREAM USERS SUE PROCTOR & GAMBLE

A class action lawsuit involving Fixodent denture cream has been filed against Proctor & Gamble. Two former denture cream users are saying that the

company has manufactured a product that made them extremely ill. It's alleged that the cause was the product's use of zinc. Mark Jacoby, a construction worker who wore dentures for 20 years, told *ABC News* that he believes his debilitating neurological illness is due to the high zinc content in his Fixodent. Anne Coffman claims that the product caused numbness in her limbs. Ms. Coffman was eventually diagnosed with zinc poisoning, a condition in which high zinc levels interfere with the body's absorption of copper, which can lead to irreversible neurological problems.

Both Jacoby and Coffman, Plaintiffs in the class action lawsuit against Proctor & Gamble, use wheelchairs now. There have been previous studies linking denture users with neurological disease. Dr. Sharon Nations, author of a study in the journal *Neurology* told *ABC News*: "They had high zinc levels that we could measure in the blood. And all of them reported that they were using very large amounts of denture cream."

In 2009, Proctor & Gamble added a warning label to its Fixodent packaging, warning that "prolonged zinc intake may be linked to adverse health effects." Proctor & Gamble says it will defend the lawsuits and told *ABC News* that its Fixodent formula has undergone extensive scientific testing, and that it continuously monitors for its safe use. Fixodent hasn't been the only denture cream to use zinc. Last June, the drugmaker GlaxoSmith-Kline, the makers of Super Poligrip, announced that it would remove zinc from its products in the U.S. That company has also been sued with allegations of nerve damage.

Source: *New York Daily News*

COURT UPHOLDS \$1.5 MILLION VERDICT IN HERNIA PATCH TEST CASE

A federal judge in Rhode Island has denied a motion for a new trial in the second bellwether case in the Kugel mesh hernia patch litigation. In early February, Judge Mary M. Lisi upheld a \$1.5 million jury verdict in the case. The judge concluded that expert testimony presented by Christopher Thorpe, the Plaintiff, was admissible and sufficient to show

that the Composix Kugel Mesh hernia patch had been negligently designed by Davol, Inc., a division of C.R. Bard. On this point, Judge Lisi wrote:

It is clear that [the expert's] ultimate conclusion would have carried more weight, had it been supported by general acceptance or peer reviewed literature. However, the reasoning and methodology by which he arrived at his ultimate conclusion were sufficiently grounded in scientific knowledge and supported by factual evidence, thus making his testimony admissible.

The Plaintiff suffered an abdominal wall abscess and fistula when two plastic rings on his hernia repair patch broke. He sued Davol under North Carolina product liability law, alleging that the rings should have been made stronger to resist the stresses of the healing process, in particular the contraction of scar tissue. There are approximately 2,500 hernia patch lawsuits currently pending in state and federal court in Rhode Island, the home of Davol. The Thorpe case was selected for the second bellwether trial after being consolidated in multi-district litigation under Judge Lisi in U.S. District Court for the District of Rhode Island. The first bellwether trial resulted in a Defense verdict.

Last August, a jury found for the Plaintiff, awarding \$1.3 million for his injuries and \$200,000 to his wife. While the appeals court ruling denies Davol a new trial and upholds the amount of the verdict, Judge Lisi said that there was insufficient evidence to find Davol liable based on the alternative ground of inadequate warning. Also, no evidence was found by the court to justify punitive damages under North Carolina law.

Source: *Lawyers USA Online*

XII. BUSINESS LITIGATION

TEXAS JURY ORDERS J&J TO PAY \$482 MILLION IN PATENT LAWSUIT

A federal jury in Texas ordered Johnson & Johnson and a subsidiary to pay \$482 million in damages last month to an inventor. It was claimed in the lawsuit that the health care giant infringed on the Plaintiff's patent for a cardiac stent. As you may know, heart stents are mesh-wire tubes that prop open coronary arteries after surgery to remove fatty plaque. The dispute centered over Cordis' Cypher drug-eluting stents, which release a drug to help keep arteries from becoming blocked.

Bruce Saffran, a doctor from Princeton, N.J., sued the two companies in 2007. He claims the Cypher stents infringed on his 1997 patent covering technology to deliver injury-healing medication inside the body. Jurors concluded Dr. Saffran proved that the Cypher stents infringed on his patent and that Johnson & Johnson and Cordis did so willfully. This allowed the court to potentially triple the amount of damages.

Johnson & Johnson says it will ask the judge to overturn this verdict. If that is unsuccessful, the company says it will appeal the verdict. In 2008, another federal jury awarded Dr. Saffran \$431.9 million in his patent infringement lawsuit against Boston Scientific Corp. The trial judge later raised the amount to \$501 million. The company agreed in 2009 to pay \$50 million to settle that dispute. Now a second jury has found that Dr. Saffran's patent was valid and willfully infringed upon. It was found that the patent constituted a significant medical advancement allowing the development of the drug-eluting cardiac stent. Paul R. Taskier, a lawyer with Dickstein Shapiro in Washington, D.C., represented Dr. Saffran and did a very good job.

Source: *Insurance Journal*

COURT THROWS OUT \$11.5 MILLION ARBITRATION AWARD

Citigroup Inc. won a victory over the actor Larry Hagman last month when a judge threw out an arbitration award against the bank for over \$11 million in damages. Hagman, the actor who played J.R. Ewing in the 1980s TV show Dallas, had accused Citigroup of breach of fiduciary duty and breach of contract. Last year, an arbitration panel of FINRA, a self-regulatory body of the U.S. financial industry, awarded \$10 million in punitive damages that Citigroup was to pay to charities selected by Hagman. The actor was awarded \$1.1 million in compensatory damages and \$440,000 in legal fees.

But a ruling by Los Angeles Superior Court Judge Michelle Rosenblatt vacated the arbitration award, in part because one of the arbitrators was a Plaintiff in a similar type of legal action and failed to disclose it. It had been claimed by the actor that Citigroup changed his investment portfolio so that it was tilted toward equities, as opposed to fixed income and cash, causing heavy losses. It was also claimed that the bank sold Hagman a life insurance policy he couldn't afford. The Court's decision can be appealed.

Source: *Insurance Journal*

ALLSTATE SUES JPMORGAN OVER MORTGAGE SECURITIES LOSSES

Allstate Corp. has filed suit against JPMorgan Chase & Co. To recover losses after the bank allegedly misrepresented the risks on more than \$757 million of mortgage securities the insurer bought. The lawsuit against the second-largest U.S. bank was filed just seven weeks after Allstate filed a similar lawsuit against Bank of America Corp., the largest U.S. bank, over losses on more than \$700 million of mortgage securities. The latest lawsuit was filed in the New York State Supreme Court in Manhattan.

Allstate, the largest publicly-traded U.S. home and auto insurer, is one of many to sue lenders for allegedly misleading them about mortgage securities. The Northbrook, Ill.-based company said it suffered "significant losses" after JPMorgan and its affiliates misled it into believing it was buying "highly-rated, safe securities"

backed by high-quality loans. Allstate alleges that the "Defendants knew the pool was a toxic mix of loans given to borrowers that could not afford the properties, and thus were highly likely to default." The securities include many backed by Bear Stearns Cos., which was near collapse before JPMorgan bought it in May 2008, and Washington Mutual Inc., which failed and whose bank operations were bought by JPMorgan four months later. Each of those companies was heavily exposed to subprime and other risky mortgages.

Allstate said most of the securities it bought from the various Defendants started out with "triple-A" ratings, the same carried by U.S. government debt, but that 97% now carry "junk" ratings. The insurer is seeking to undo the securities purchases, which took place between 2004 and 2007, and seeks in addition unspecified damages. JPMorgan in January said it set aside an additional \$1.5 billion for legal reserves, mainly to cover mortgage-related litigation.

It should be noted that JPMorgan also faces a \$6.4 billion lawsuit by the court-appointed trustee seeking money for victims of Bernard Madoff's Ponzi scheme. The bank was Madoff's principal banker for more than 20 years. JPMorgan has denied wrongdoing in all of the cases.

Source: *Insurance Journal*

XIII. PREDATORY LENDING

PAYDAY LENDER'S CLASS ACTION BAN VIOLATES PUBLIC POLICY

If you haven't already figured it out by now, I don't have much use for the payday lending industry. The companies making up this industry have a history of preying on folks who are in great financial need and aren't capable of defending themselves. The industry is making a financial killing on the backs of these folks and that shouldn't be tolerated. The following will give you an example of how the pay-day lenders operate.

Tiffany Kelly took out a small loan from McKenzie Check Advance, a pay-day lender doing business in Florida. In so doing, Ms. Kelly believed she was dealing with a legitimate business, which would treat her fairly. A co-worker had told her about McKenzie. Ms. Kelly, then a 24-year-old single mother, was in desperate need of quick cash to make ends meet. She had been turned down for public assistance and her bank would not lend her any money. In other words, this woman was easy prey for a pay-day lender.

Unfortunately, Ms. Kelly was dead wrong about the lender. McKenzie was in fact charging its customers interest rates that far exceeded Florida's laws. But when she learned about McKenzie's illegal practice and wanted to file a lawsuit, the company said it couldn't be sued. You see, McKenzie had an arbitration clause and a class action ban tucked away in its consumer contract signed by Ms. Kelly. That's when Public Justice got involved.

Representing a number of local consumers who had taken out loans from McKenzie, Senior Attorney Paul Bland at Public Justice got involved and contested the ban. The testimony of several prominent Florida lawyers, each well-versed in consumer law, was presented to the court. These lawyers each testified that it would be virtually impossible for an individual to find representation in a payday loan case without the availability of a class action. Because payday loan cases are complex, time consuming, and involve small amounts, individual Plaintiffs are unable to obtain competent legal counsel without being able to use a class action. In the appeal, Amy Radon, a Goldberg lawyer, was the principal author of Public Justice's brief and she did a great job.

The legal team in this matter consisted of Paul Bland, Amy Radon, Clayton Yates of Yates & Mancini, LLC in Fort Pierce, Fla.; Theodore J. Leopold and Diana L. Martin of Leopold-Kuvin in Palm Beach Gardens, Fla.; Christopher Casper of James, Hoyer, Newcomer, Smiljanich & Yanchunis P.A. in Tampa, Fla.; and Richard Fisher in Cleveland, Tenn. All of these lawyers did excellent work and obtained a great result for consumers and espe-

cially those who deal with payday lenders.

Source: PublicJustice.net

XIV. PREMISES LIABILITY UPDATE

THE WIDOW OF A FIREFIGHTER SETTLES HER WRONGFUL DEATH LAWSUIT

The widow of one of two Contra Costa County, Calif., firefighters who died in a 2007 house fire has settled her wrongful-death lawsuit against two security companies for \$4.6 million. The companies were blamed for mishandling the initial report of the blaze. The fire in San Pablo killed Fire Engineer Scott Desmond and Capt. Matt Burton. It also killed the home's residents, Delbert and Gayle Moore.

The suit was filed in Contra Costa County Superior Court in 2008. It was alleged that Pinnacle Security of Utah and its subcontractor Security Associates International of Illinois were to blame for the firefighters' deaths. When the fire broke out early July 21, 2007, Security Associates received an automatic smoke alarm from the home. A company employee activated a two-way intercom at the home and asked, "Is everything OK?" Gayle Moore responded, "No, we have a fire."

The employee called the Contra Costa County Fire Protection District on a non-emergency line and said, "I'm calling to report a fire alarm," as opposed to "an actual fire," the suit said. Apparently, that led the fire dispatcher to consider it a lower-priority call. At one point, the employee was put on hold for five minutes while the dispatcher answered emergency calls and the fire intensified and grew larger in the Moore home.

It was nearly ten minutes after Gayle Moore spoke to the alarm company before firefighters were dispatched to the scene. Only one engine was initially dispatched with Desmond and Burton aboard. Pinnacle Security will pay \$2.6 million to Desmond's family, and Security Associates International will pay \$2

million. The companies will pay an additional \$350,000 to settle a lawsuit filed by the Moores' children.

Source: SFGate.com

FLORIDA HOMEOWNERS SETTLE BOMBING RANGE LAWSUIT FOR \$1.2 MILLION

Homeowners in a Florida subdivision have settled a class action lawsuit against a homebuilder for \$1.2 million. The settlement was reached last month with The Ryland Group. It was alleged in the lawsuit that the builder failed to disclose that the homes were built on or near the Pinecastle Jeep Range, a World War II-era bombing range in Orlando. Residents said their home values plummeted after live bombs and other munitions were found on the property. The settlement will be divided among 118 homeowners.

Source: Insurance Journal

XV. WORKPLACE HAZARDS

FEDERAL APPEALS COURT REVIVES LAWSUIT IN COLOMBIA COAL KILLINGS

A federal appeals court has reviewed a lawsuit accusing an Alabama coal company of responsibility in the killings of three union leaders in Colombia in 2001. The 11th Circuit Court of Appeals reversed a lower court judge's ruling that had dismissed the lawsuit against Drummond Company Inc. The company has consistently denied any involvement in the killings. The lawsuit was filed by relatives of the men, who were killed. The trial court ruled that the Plaintiffs didn't have standing to file suit in Alabama. But the three-judge appellate panel sent the case back to the trial judge, finding that the Plaintiffs clearly have a stake in the controversy. It will be interesting to see how this case winds up.

Source: Business Week

FAMILIES OF SIX WORKERS KILLED IN BLAST SUE REFINERY IN WASHINGTON

Relatives of six of the seven workers killed in an April 2010 explosion and fire at Tesoro Corp.'s Anacortes, Wash., oil refinery have filed a wrongful death lawsuit. The lawsuit filed in a state court alleges the company deliberately ignored dangerous conditions that led to the blast. A contractor who was burned, but survived, joined the families in the lawsuit.

The lawsuit accuses Tesoro of failing to inspect decaying equipment and ignoring industry safety standards and federal laws governing refinery safety. Washington state Department of Labor & Industries investigators determined the explosion was preventable. The department fined Tesoro \$2.39 million. San Antonio, Texas-based Tesoro has appealed the fine.

Source: Associated Press

RASH OF ACCIDENTS PUTS SPOTLIGHT ON GRAIN ELEVATORS

Recent high-profile accident cases have put a regulatory spotlight on grain elevators. Recent elevator incidents in Colorado and South Dakota are among a number of cases filed nationwide. There have been 89 fatalities reported to OSHA involving grain elevators nationwide since 2009, including 40 engulfments, 32 falls and seven dust explosions. These accidents have triggered increased concern by the Occupational Safety and Health Administration. Currently, OSHA has four safety inspections checking elevators in North Dakota and South Dakota. OSHA has done ten inspections in North Dakota and ten in South Dakota in its first emphasis year for grain elevators. It expects to do 20 to 30 per year through its Bismarck-area office. Inspections can be triggered by complaints from current employees or other agencies. If there is a fatality, or if three people have been hospitalized within eight hours, there also is an automatic inspection.

Effective October 1, 2010, OSHA imposed a new penalty structure that largely doubles penalties. There haven't been any changes for about 40 years. The penalty levels have been changed because there isn't the deterrent of

earlier penalties. The agency also extended the time frame under which the penalties could be considered a repeat penalty. Further, the agency changed its schedule for offering "adjustments" to the penalties based on size. Small elevators, with one to 25 employees, for example, used to get a 60% discount and now are eligible for a 40% discount.

Elevator employees "cannot be in the bin where there is an unguarded sweep auger, where an employee could be exposed" to the auger. New rules regarding bin entry, especially when employees go in to free grain that has become stuck or frozen are in place. OSHA has indicated that if anyone dies in a grain storage facility in a bin entry issue, and that incident is related to workers entering storage bins, the agency will go beyond civil penalties and consider referring the incident to the Department of Justice for criminal prosecution. Several North Dakota firms have received letters on the topic. OSHA is not the only agency involved. The Food and Drug Administration, the Department of Transportation and the Environmental Protection Agency, have increased their interest in the industry.

Source: *Insurance Journal*

XVI. TRANSPORTATION

JURY AWARDS \$49 MILLION IN CALIFORNIA FREEWAY LAWSUIT

A California jury awarded more than \$49 million last month in a lawsuit arising out of a freeway accident that killed one man and left a California Highway Patrol officer a quadriplegic. The jury awarded \$39 million in damages to the CHP Officer and his wife for paralyzing injuries the officer suffered in the December 2007 crash. The officer had pulled a motorist over on U.S. Highway 101 when a man driving a truck slammed into them, killing the motorist. The decedent's parents were awarded \$10.2 million by the jury for the loss of their son. The truck driver pleaded guilty to driving while intoxicated and transporting mari-

juana. He was sentenced in 2008 to 15 years in prison.

Source: Associated Press

ANOTHER CROSSWALK LAWSUIT SETTLED IN SEATTLE

A 45-year-old Seattle woman, struck by a Metro bus while she was in a crosswalk on Seattle's Alaskan Way in 2008, has reached a \$4.5 million settlement with King County. The settlement between Ree Ah Bloedow and the county was reached two weeks before the case was scheduled for trial. Ms. Bloedow lost her career as a staff attorney for the State Department of Social and Health Services because of the brain injury she suffered in the accident. She was crossing a public street in January 2008 when she was struck by a mirror on the bus. In addition to the brain injury, her arm was shattered. The settlement will not only pay for needed medical care, but also lost wages because she had to leave her job. The lawsuit was filed in early 2009 and was set to go to trial on February 14th.

Ms. Bloedow was walking in a clearly-marked crosswalk and the bus driver wasn't paying attention. The County admitted it was at fault and accepted responsibility for the accident. This wasn't the largest settlement Metro has paid in an injury claim. A year ago it agreed to pay \$7 million to settle a lawsuit filed by a woman severely injured when a Metro Transit supervisor's van struck her while she was riding a Vespa scooter to work. Jack Connelly, a lawyer in Tacoma, Wash., represented Ms. Bloedow and did a good job.

Source: *Seattle Times*

JURY AWARDS FAMILY \$2 MILLION IN WRONGFUL DEATH CASE

A jury in California awarded \$2 million to the family of a woman killed in an accident at the intersection of two state highways in Madera County on July 5, 2008. The jury found that the intersection was "a dangerous condition of public property." The case arose out of an accident that claimed the life of Suzanna Coronado. Mrs. Coronado and her

husband Michael, who survived the accident, were riding a motorcycle southbound on one of the highways when a driver, Alexander Huerta, pulled out from an intersecting highway. Huerta was driving a GMC Envoy pulling a trailer with a vehicle on it. When Mr. Coronado came around a curve on the downhill grade, the Huerta vehicle was completely obstructing his lane of travel. As a result, the motorcycle went down.

Mrs. Coronado's four children and her husband sued the State of California Department of Transportation (Caltrans) alleging that the intersection where the accident occurred was in a dangerous condition on the day of the accident and that Caltrans had notice of a lengthy history of broadside-patterned accidents at the intersection. Caltrans implemented a safety improvement project at the intersection in the summer of 2009. Failure to act by Caltrans until the improvements in 2009, despite its knowledge of the significant accident history, was found to be unreasonable. Paul A. Matiasic and Scott L. Johnson, lawyers from San Francisco, represented the Coronado family and they did a very good job.

Source: Sierrastar.com

\$5 MILLION JURY VERDICT AGAINST INSURANCE COMPANY IN ALABAMA

Frank Shepard Jr., who was badly injured in a traffic accident in Washington County, Ala., more than two years ago, was awarded \$5 million by a jury last month. Shephard sued the insurance company of his employer, Shred-it. It was contended that Auto-Owners Insurance, which had the uninsured motorist coverage on the company vehicle, should cover his damages, to include medical costs, mental anguish, and pain and suffering. Shepard settled with the estate of the other driver, who was killed in the crash, for \$2.25 million. This was the maximum amount available under the liability insurance policy. The amount of the settlement will be deducted from the jury's verdict. Thus, Auto-Owners Insurance is responsible for \$2.75 million. The claim that went to trial was for the underinsured motorist coverage under Alabama law.

The wreck occurred on December 3, 2008, as Shepard was on his way to Waynesboro, Miss., to meet a Shred-It customer. An automobile driven by Beverly King Johnson appeared from behind a hill, in the wrong lane, and collided head-on with Shepard's truck. Johnson was fatally injured. The sole issue at trial related to damages. The crash broke Shepard's leg in two places, fractured his foot, shattered his jaw and broke or damaged 24 of his 28 teeth. The impact was so powerful that some of Shepard's teeth went through his jaw and into his neck. It was reported that Shepard has made good progress, but that he has a long recovery ahead of him. He has already had three surgeries on his jaw and will need multiple dental procedures. Mike Windom and Desi Tobias, lawyers from Mobile, tried the case along with Tom Baxter, a former Washington County Circuit judge. They did a very good job for their client.

Source: *Mobile Press-Register*

XVII. HEALTHCARE ISSUES

PUBLIC CITIZEN IS FAR AHEAD OF FDA ON THE SAFETY OF DRUGS

The record of Public Citizen relating to the safety of drugs in the United States has been very good. In fact, if the FDA had listened to the early warnings from Public Citizen, lots of dangerous drugs would have been off the market much sooner than turned out to be the case. For example, Public Citizen warned the diet drug Meridia was dangerous for safety reasons and should be withdrawn in 1998. The drug was finally withdrawn from the U.S. market on October 10, 2010 because, just as Public Citizen had warned, it caused an increase in heart attacks and strokes. It shouldn't have taken the FDA over 12 years to heed the warnings.

There have been at least 20 drugs that were approved by the FDA after 1992 which were subsequently withdrawn from the market for safety reasons. I have

often wondered how things would be if the FDA had been given the authority and funding and independence to truly regulate the pharmaceutical companies. Public Citizen has done a better job of protecting the public on dangerous drugs than has the FDA. If you want more information on this subject go to www.worst-pills.org.

PUBLIC CITIZEN'S NINE RULES FOR SAFER DRUG USE

I have a great deal of confidence in Public Citizen's knowledge and expertise when it comes to drugs. Public Citizen has 9 rules for safer drug use that are found in the February 2011 issue of *Worst Pill, Best Pills News*. This publication is described as "Your expert, independent second opinion for prescription drug information." Dr. Sidney M. Wolfe, a person with no ties to the powerful pharmaceutical industry, is the editor. I am passing along these rules for your consideration. Take a look. Perhaps you will agree they are good rules to follow.

- Make sure drug therapy is really needed.
- If drug therapy is indicated, in most cases (especially in older adults) it is safer to start with a dose that is lower than the usual adult dose.
- When starting a new drug, see if it is possible to discontinue another drug.
- Regularly talk to your doctor about stopping your drugs.
- Find out if you are having any adverse drug reactions.
- Assume that any new symptom you develop after starting a new drug was caused by the drug.
- Before leaving your doctor's office or pharmacy, make sure the instructions for taking your medicine are clear to you and a family member or friend.
- Discard all old drugs carefully.
- Ask your primary doctor to coordinate your care and drug use.

If you would like to have comprehensive, up-to-date drug information and insight on drug risks and safety you can subscribe to the Public Citizen publication at www.worstpills.org.

FDA ISSUES FIRST REPORTABLE FOOD REGISTRY REPORT

In its first report on its new Reportable Food Registry, the Food and Drug Administration announced that Salmonella and food allergens were the most common food hazards reported by those in the food industry. The registry was set up under the FDA Food Safety Modernization Act, which was recently signed into law. Under the Act, manufacturers, processors, packers and holders of FDA-regulated foods are required to report safety problems that could result in serious health consequences to humans or animals to the FDA in a timely manner. These reports provide early warning to the FDA about potential public health risks and help ensure that dangerous foods are removed from commerce when necessary.

According to FDA officials, the first report, which consists of about 2,200 entries, showed that the registry was successful. "This report is a measure of our success in receiving early warning on problems with food and feed," said FDA Deputy Commissioner for Foods Michael Taylor, in a statement. "The data in this report represents an important tool for targeting our inspection resources, bringing high risk commodities into focus, and driving positive change in industry practices—all of which will better protect the public health."

Salmonella accounted for 37.6% of hazards, while undeclared allergens or intolerances accounted for 34.9%, according to the report. Salmonella was most commonly found in spices and seasonings, raw agricultural produce, animal feed and pet food, and nut and seed products. Food allergens were most commonly detected in bakery goods, dried fruit and vegetable products, prepared foods, dairy items and candy.

Source: *Lawyers USA Online*

EPA TO SET LIMITS ON CHEMICALS IN DRINKING WATER

The Environmental Protection Agency says it will be setting a limit on the amount of the chemical perchlorate, as well as other "toxic contaminants," in drinking water. The national regulation on perchlorate will reverse a 2008 decision made by the Bush Administration. It comes after EPA Administrator Lisa Jackson ordered agency scientists to review "the emerging science of perchlorate," which is both a naturally-occurring and man-made chemical. According to the EPA, it's used in fireworks, road flares, rocket fuel and may be present in bleach and some fertilizers. Research has indicated that it can impact the thyroid and disrupt the proper development of fetuses and infants. Some states have already established limits on perchlorate in drinking water, but thus far there is no national standard.

Monitoring data shows more than 4% of public water systems have detected perchlorate, and between 5 and 17 million people may be served drinking water containing it, according to the EPA. Once the EPA proposes a formal rule, it will be subject to the public comment process. In addition, the EPA is also establishing a drinking water standard on "a group of up to 16 other toxic chemicals that may cause cancer and pose serious risks to human health."

The chemicals are a group of volatile organic compounds, such as industrial solvents, and include trichloroethylene and tetrachloroethylene, along with other regulated and some unregulated substances "discharged from industrial operations." The move is part of a Drinking Water Strategy laid out by Jackson last year, the agency said. The strategy included addressing contaminants as a group so that their presence in drinking water could be addressed "cost-effectively." It will be interesting to see how the strategy works out.

Source: *CNN*

XVIII. ENVIRONMENTAL CONCERNS

MAGISTRATE JUDGE MAKES RECOMMENDATIONS IN TVA COAL ASH CASES

In late January, U.S. Magistrate Judge Bruce Guyton sent a report to U.S. District Judge Thomas Varlan on the Plaintiffs' motion for class certification in the TVA coal ash case that our firm is involved in. Judge Guyton's report recommended that the District Court should deny the Plaintiffs' motion because a class action trial format did not appear to be the most practical and efficient means of resolving all of the litigation surrounding the December 22, 2008, coal ash spill and resulting environmental disaster at the TVA power plant in Kingston, Tenn. Instead, Judge Guyton recommended that the cases should proceed individually, though perhaps in a consolidated trial.

Because the District Court will have to adopt the Magistrate's recommendations before it becomes a final ruling, the Plaintiffs have submitted their objections to the Magistrate's report. Among other things, the Plaintiffs argued that class certification would streamline the overall legal process and eliminate the need to try the same factual and legal issues in numerous individual trials. Should Judge Varlan choose to accept the Magistrate's recommendations and deny class certification, this will be a procedural ruling aimed only at the management of the overall litigation. In other words, the ruling would not address the merits of the Plaintiffs' claims or prevent them from going forward with their individual cases.

We are hopeful that the District Court will issue its decision on the magistrate's report in the next few weeks. In the meantime, lawyers in our firm remain confident that TVA and its co-Defendants will be held responsible for the collapse of the coal ash impoundment at the Kingston facility and the release of more than 5.4 million cubic yards of coal ash sludge into the Emory River and surrounding private properties. If you need

more information on this development, contact David Byrne, one of the lawyers from our firm who is handling this case, at 800-898-2034 or by email at David.Byrne@beasleyallen.com.

ALABAMA GOVERNOR ACTS PROPERLY ON LANDFILLS

Gov. Robert Bentley has signed Executive Order 8 which places a moratorium on new landfill permits in Alabama until stricter environmental guidelines for larger facilities can be adopted. A group opposing a landfill proposed for a 5,100-acre tract in Conecuh County praised the action. Some parts of Alabama, especially in rural areas, have become a dumping ground for America.

Under the order, landfills accepting more than 1,500 tons of waste a day and which are 500 or more acres in size should adhere to stricter rules due to a larger area of impact. Currently, landfill developers need only make application in any county and get approval from elected commissioners. It was reported that if no vote takes place within 90 days of the application, the application is automatically approved. The order calls on the Alabama Department of Environmental Management, Alabama Department of Public Health and the Solid Waste Advisory Committee to adopt and promulgate new rules for larger landfills. This certainly appears to have been a good move by the Governor.

Source: al.com

XIX. THE CONSUMER CORNER

CLASS ACTION LAWSUITS FILED AGAINST NAVISTAR AND FORD

Our firm has filed class action lawsuits in five states against Navistar and Ford Motor Company seeking damages for owners and leasees of vehicles that are equipped with the 6.0 Liter Powerstroke® diesel engine. The lawsuits contend the 6.0 Liter engines are defective in several respects.

Beginning in the fall of 2002, Ford began selling certain F-series trucks which included the 6.0 Liter Powerstroke® diesel engine which was offered in Ford's medium and heavy duty pickup trucks and its discontinued Ford Excursion SUV. The 6.0 Liter Powerstroke® diesel engine was first introduced in Ford's 2003 models and continued to be offered in the 2004, 2005, and some 2006 models. Navistar designed and manufactured the 6.0 Liter diesel engine. These engines have been plagued with what Ford has called "unprecedented problems" since inception and subsequent design changes have failed to correct or rectify the problems.

In fact, on January 11, 2007 Ford filed a suit in Michigan state court against Navistar seeking contribution for the significant warranty costs Ford was incurring in having to repair, replace, or repurchase significant numbers of Ford trucks equipped with the engines. In that lawsuit, Ford admitted that the 6.0 Liter engine "has the highest repair rates of any engine Ford has put into widespread distribution." Ford also alleged it had incurred eight hundred and eighty seven million (\$887,000,000.00) in warranty bills for 6.0 Liter repairs.

Despite representing only ten percent (10%) of Ford's total engine volume, the 6.0 Liter accounts for approximately eighty percent (80%) of Ford's warranty spending on engines. Ford also claims it was forced to dedicate a team of seventy (70) engineers to assist Navistar to fix the 6.0 Liter engines already on the road and to improve the quality of the 6.0 Liter engines which were still being produced at the time. Some of the more serious problems encountered with these engines include problems related to fuel injectors, the fuel system, turbo chargers, wiring harness troubles, numerous faulty sensors, defective exhaust gas recirculation ("EGR") valves, faulty computers, and oil leaks.

While Ford initially publicly recognized and admitted "unacceptable high warranty repair rates" related to the engines and conducted voluntary recalls, in addition to offering to buy vehicles back, the company ultimately stopped offering to assist consumers and even began denying or refusing to pay warranty claims related

to the 6.0 Liter engine, often claiming the problems were related to the user or other factors.

State class action lawsuits have been filed in federal courts in South Carolina, North Carolina, Virginia, Ohio, and Maine. Bill Hopkins, who handles class action litigation for our firm, is working on the case. If you need more information on this matter, you can contact Bill at 800-898-2034 or by email at Bill.Hopkins@beasleyallen.com.

IGNITION COIL PROBLEM IDENTIFIED ON NEARLY 500,000 VOLKSWAGEN PASSATS

The National Highway Traffic Safety Administration has intensified its investigation into possible fire problems on nearly 500,000 Volkswagen Passats with 4-cylinder turbo engines. The investigation covers 490,000 Passats from the 2001-7 model years. The focus of the investigation involves ignition coils, which have caused trouble for the German brand since at least 2003. The automaker has admitted problems with its 2001-2 4-cylinder engines. That population of vehicles appears to be covered in the new investigation.

The coils are used to generate the high-voltage current that fires spark plugs, and Volkswagen dedicates one coil for each plug. On the 4-cylinder models being investigated, there are four ignition coils. When a coil fails, the spark plug does not fire and the engine loses power. Last August, NHTSA opened a so-called preliminary evaluation—a low-level inquiry—into an estimated 199,000 Passats from the 2002-3 model years. The Administration's primary concern was fires caused by failing ignition coils.

The NHTSA stated that additional consumer complaints and records provided by Volkswagen indicated sufficient reason for concern to begin a more serious "engineering analysis" and greatly increase the number of vehicles covered. An engineering analysis brings NHTSA a step closer to a recall, although sometimes the Administration concludes that its concern was not warranted after all, in which case the investigation is simply ended.

NHTSA said it had received 14 complaints of fires and another 21 complaints of ignition coil failures that caused vehicles to suddenly lose power. Volkswagen reported another 199 complaints, although it was not clear how many of those involved fires. Volkswagen, after last August's preliminary-evaluation opening, said it was cooperating with the NHTSA.

Source: *New York Times*

VOLKSWAGENS UNDER REVIEW FOR FUEL-PUMP FLAWS

Volkswagen AG vehicles are under review by the U.S. National Highway Traffic Safety Administration after reports of engines stalls, some at highway speed, that may be related to fuel-pump failures. NHTSA said it has received reports of one accident and 160 complaints from owners and Volkswagen about engine loss of power and stalling. The power loss and stalling was related to high-pressure pumps failing and contaminating the fuel system with debris, according to the NHTSA.

According to NHTSA, about half of the reports involved stalling with "many of these alleging stall incidents at highway speeds in traffic with no restart." NHTSA is reviewing model years 2009 and 2010 of the Volkswagen Jetta and Golf and the Audi A3 that have TDI clean-diesel engines, totaling about 97,272 vehicles. The NHTSA, which received 52 of the complaints directly and the rest from the automaker, has upgraded its investigation to an engineering analysis, a step that can lead to a recall. Volkswagen says it is cooperating with the NHTSA on this matter.

Source: *Bloomberg*

SUMMER INFANT RECALLS VIDEO BABY MONITORS WITH CORDS

Summer Infant Inc., of Woonsocket, R.I., is providing new on-product label and instructions for about 1.7 million video baby monitors with electrical cords. The cords can present a strangulation hazard to infants and toddlers if placed too close to a crib. Because of this serious strangulation risk, parents and

caregivers should never place these and other corded cameras within three feet of a crib.

Over the past year the CPSC has received reports of two strangulation deaths of infants with the electrical cords of Summer Infant video baby monitors. In March 2010, a ten-month old girl from Washington, D.C. strangled in her crib in the electrical cord of a Summer Infant video monitor. The monitor camera had been placed on top of the crib rail. In November 2010, the CPSC received a report of a six-month old boy from Conway, S.C., who strangled in the electrical cord of a baby monitor placed on the changing table attached to the crib. In January 2011, the CPSC learned the product involved was a Summer Infant video baby monitor.

CPSC and Summer Infant are also aware of a near strangulation incident in which a 20-month old boy from Pittsburg, Penn., was found in his crib with the camera cord wrapped around his neck. The Summer Infant monitor camera was mounted on the wall, but the child was still able to reach the cord. Fortunately, he was freed from the cord without serious injury. Summer Infant has initiated a campaign to provide new on-product labels for electric cords and instructions to consumers with the recalled video monitors distributed between January 2003 and February 2011.

The baby monitors were sold at major retailers, mass merchandisers, and juvenile products stores nationwide for between \$60 and \$300. They were sold in more than 40 different models, including handheld, digital, and color video monitors. All video monitors include both the camera (placed in the baby's room) and the hand held device (some models have two hand-held devices) that enable the caregiver to see and/or hear the baby from a specific distance. The brand "Summer" is found on the product.

The product was manufactured in China. CPSC and Summer Infant urge parents to immediately check the location of the video monitors, including cameras mounted on the wall, and all electric cords to make sure the cords are out of arm's reach of their child. Consum-

ers should contact Summer Infant toll-free at (800) 426-8627 or visit the firm's website at www.summerinfant.com/Home/Product-Recall.aspx to receive a new permanent electric cord warning label about the strangulation risk and revised instructions about how to safely mount cameras and keep cords out of a child's reach.

In October 2010 CPSC issued a safety alert warning consumers that there had been six reports of strangulation from baby monitor cords since 2004. Since that alert the number of death reports has risen to seven. CPSC has revised the safety alert "Infants Can Strangle in Baby Monitor Cords." CPSC is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. You can tell the CPSC about it by visiting <https://www.safer-products.gov/CPSRMSPublic/Incidents/ReportIncident.aspx>.

Source: CPSC

NEARLY 10,000 BABIES SUFFER CRIB INJURIES YEARLY

Almost 10,000 infants and toddlers are hurt in crib and playpen accidents each year, according to the first nationwide analysis of emergency room treatment for these injuries. Most injuries are from falls in toddlers between ages one and two occurring due to attempts at climbing out of a crib or playpen. Researchers who studied 19 years of data say better prevention efforts are needed, but that recent safety measures including a ban on drop-side cribs likely will reduce those numbers.

The study found a gradual decrease in the injury rate between 1990 and 2008. But overall, even in the most recent years examined, an average of 26 infants daily were injured in crib-related accidents, according to lead author Dr. Gary Smith, director of the Center for Injury Research and Policy at Nationwide Children's Hospital in Columbus, Ohio. Dr. Smith says that's "still not acceptable." The study, released by the American Academy of Pediatrics' medical journal *Pediatrics*, was timed for a U.S. House subcommittee

hearing last month on consumer product safety issues.

The doctors' group opposes loosening crib regulations and is concerned that the industry may seek to roll back parts of a 2008 law. Dr. O. Marion Burton, the Academy's president, said the new study, "scientifically validated with peer review," shows why a "rollback would be unwise." The 2008 law called for mandatory crib standards including more rigorous safety testing. The federal Consumer Product Safety Commission adopted the mandate in December, 2010, to take effect in June of this year. It bans the manufacture and sale of traditional drop-side cribs with side rails that move up and down to make it easier to place and remove infants. The movable rails can become partially detached, creating a gap between the mattress and rail where babies can get stuck. Dozens of injuries and deaths including suffocations linked with drop-side cribs led to the ban. As we have previously reported, millions of such cribs have been recalled.

The study authors analyzed national 1990-2008 data on ER-treated injuries from the product safety commission. They focused on nonfatal injuries related to cribs, playpens and bassinets; information on injuries linked with specific models was not provided. Overall, 181,654 infants were injured. Most children were not hospitalized. The data also show that there were 2,140 deaths, but that doesn't include crib-related deaths in children who didn't receive ER treatment.

A spokeswoman for the Juvenile Products Manufacturers' Association said that her industry group supports the 2008 law, but that some provisions "are overly burdensome" and need to be reexamined. She added that crib makers adopted a voluntary ban on drop-side models more than a year ago and "would like to see a reasonable enforcement policy" from the safety commission. The industry group has said that properly assembled drop-side cribs that haven't been recalled can be safely used. From experience, I have never believed that voluntary standards by an industry work well for consumers.

Source: Associated Press

CONSUMER AGENCY WARNS OF SAFETYCRAFT CRIB DANGERS

A federal consumer agency has warned that SafetyCraft brand full-size and portable drop-side cribs manufactured or distributed by Generation 2 Worldwide contain drop-side hardware that may be dangerous to toddlers and infants. The Consumer Product Safety Commission said last month that the hardware found on SafetyCraft drop-side cribs can fail and place infants and toddlers at risk of strangulation and suffocation. The CPSC urged parents and caregivers to stop using these cribs immediately and find an alternative, safe sleeping environment for babies. The Commission says folks should not attempt to fix these cribs. According to the Commission, Generation 2 Worldwide of Dothan, Ala., ceased operations in 2005.

Source: *Montgomery Advertiser*

CPSC WANTS TO STOP DAILY TABLE SAW AMPUTATIONS

The Consumer Product Safety Commission is calling on the power-tool industry and the safety standards group to find out why more hasn't been done to address a mounting and very serious problem. There have been a number of debilitating table-saw injuries over the years, but many safety experts say the problem hasn't really gotten the attention it deserves. The CPSC estimates there are an average of about ten finger amputations a day, just from table saws used by consumers. CPSC Chairman Inez Tenenbaum told *USA Today*:

The safety of table saws needs to be improved in a way that prevents school children in shop class and woodworkers from suffering these life-altering injuries. All options are on the table for CPSC at this time.

It was reported that Stephen Gass, who invented technology that stops blades when body parts are detected, persuaded the CPSC to grant his petition for rule-making during the Bush administration. But it was most interesting that the CPSC never drafted any rules. As a result, a new vote will now be required by the Com-

mission. "There's a pattern of injury, a safety technology that can address it, and it's affordable," according to Sally Greenberg, executive director of the National Consumers League. The group is joining Gass to push for a federal rule requiring all table saws to detect flesh and stop blades before they cut into it. The CPSC estimates the cost to society of saw-related injuries is about \$2 billion a year.

Source: *USA Today*

BANK OF AMERICA SETTLES OVERDRAFT LAWSUIT

Bank of America Corp. will pay \$410 million to settle lawsuits accusing it of charging customers with excessive overdraft fees. The largest U.S. bank by assets is among the more than two dozen U.S., Canadian and European lenders named as Defendants in the class action litigation, which in 2009 consolidated lawsuits filed across the country. JPMorgan Chase & Co., Citigroup Inc. and Wells Fargo & Co. are among the other defendants named in the case. Bank of America says that it has already changed its overdraft practices, eliminating fees for debit transactions and significantly lowering fees for customers who overdraw excessively. The case was pending when settled in the U.S. District Court in Miami. The settlement requires court approval.

Many banks let customers overdraw their accounts in exchange for fees, typically \$25 or \$35. Critics say the fees disproportionately burden lower-income customers and others who often maintain low account balances. In a November 2009 complaint filed in the Miami court, customers alleged that Bank of America routinely processed debit transactions from largest to smallest rather than in chronological order, causing account balances to fall faster and boosting potential overdraft fees. It was alleged further that the bank also did not clearly tell customers they could decline overdraft protection, and typically charged the fees to debit card users rather than decline transactions. The complaint alleges that Bank of America customers would often rack up hundreds of dollars of overdraft fees, even

when they may have been overdrawn by only a few dollars.

Overdraft fees industry-wide totaled about \$23.7 billion in 2008, up from \$10.3 billion just four years earlier, according to the Center for Responsible Lending. Last year the Federal Reserve imposed a rule that prohibits banks from charging overdraft fees on electronic and debit card transactions without advance customer approval. In August, a federal judge ordered Wells Fargo to pay \$203 million to California customers who complained about overdraft fees. The bank is appealing this ruling.

Source: Reuters

AT&T SUED OVER IPHONE DATA OVER-BILLING

A lawsuit has been filed against AT&T by a California man. AT&T has been accused of over-billing the Plaintiff on data charges for his iPhone. This suit raises new questions about the carrier's billing practices. Plaintiff has alleged that the carrier was charging him for usage even when he wasn't using his iPhone. The Plaintiff said he purchased the \$15 monthly 200MB plan. He became suspicious after he was charged overage fees for using 223MB worth of data across 259 data connections. It's contended that research has revealed that AT&T has been regularly over-billing customers by between 7% and 14% over actual data usage, and in some cases by as much as 300%.

While AT&T's billing errors on an individual customer basis may not be that large, when applied across all iPhone customers, they will have a "huge effect" on the bottom line for the company if the Plaintiff's contentions are correct. It is alleged that "a significant portion of... data revenues were inflated by AT&T's rigged billing system for data transactions." A test iPhone account found that even with all apps closed, push and location services disabled, and the device unused, AT&T billed the account for over 2,292KB of usage over a period of ten days.

While it may not be out of the realm of possibility that those "phantom" data charges may be necessary between the

smartphone device and the network itself, it still gives critics yet more ammunition to fire at AT&T regarding the handling of the iPhone. This is not the first time the carrier's iPhone policies have come under fire. There have been six lawsuits filed over the company's 3G speed claims. Last year the AT&T exclusivity agreement and it is alleged knowledge of iPhone 4 antenna problems also were challenged in court. The Plaintiff is asking for class action status for his suit.

Source: Betanews.com

XX. 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 February issue. Readers are encouraged to contact our firm if more information is needed on any of the recalls. We would also like to know if we have missed any safety recalls that should be included in this issue.

TOYOTA RECALLS OVER 2 MILLION MORE VEHICLES

A year after its "unintended acceleration" trouble began, Toyota is now expanding its recall of floor mats to include nearly 2.2 million more Lexus and Toyota vehicles in the United States. The automaker blames floor mats for the recall claiming the problem to be so-called "pedal entrapment." The company calls the recalls "voluntary," but federal regulators say they requested the recalls. Toyota said the new models affected include:

- Lexus GS. About 20,000 2006 and early 2007 Lexus GS 300 and GS 350 all-wheel-drive vehicles to modify the shape of the plastic pad embedded in the driver's side floor carpet.

- Lexus RX. About 372,000 2004 through 2006 and early 2007 Lexus RX 330, RX 350 and RX 400h vehicles to replace the driver's side floor carpet cover and retention clips.
- Toyota Highlander. About 397,000 2004 through 2006 Toyota Highlander and Highlander HV vehicles to fix floor mat issues.
- Toyota 4Runner. About 603,000 2003 to 2009 4Runners to address floor mats.
- Lexus LX. About 17,000 2009 to 2011 Lexus LXs for floor mats.
- Toyota RAV4. About 761,000 2006 through 2010 RAV4 to address floor-mat entrapment issues.

The recalls clearly show that Toyota is still having major problems with issues surrounding sudden unintended acceleration. Last year that resulted in the recall of hundreds of thousands of cars to replace floor mats that can jam against accelerator pedals or to replace pedal mechanisms that can stick.

On the GS, Toyota says that if the floor carpet around the accelerator pedal is not properly replaced after a service operation, there is a possibility that the plastic pad embedded into the floor carpet may jam against the accelerator pedal. If this occurs, the accelerator pedal may become temporarily stuck in a partially depressed position rather than returning to the idle position. Owners of the involved GS 300 and GS 350 all-wheel-drive vehicles will receive a notification by mail beginning in early March.

As for the RX and Highlander, Toyota says the recall is to fix a forward retention clip used to secure the floor carpet cover, which is located in front of the center console. If it is not installed properly, the cover may lean toward the accelerator pedal and interfere with the accelerator pedal arm. If this occurs, the accelerator pedal may become temporarily stuck in a partially depressed position.

tion rather than returning to the idle position.

I don't believe this is the end of Toyota's SUA problems. Hopefully, I am wrong, but usually when there is "smoke" there is "fire" and there has been too much "smoke" relating to the electronics aspect of the problem to accept Toyota's claim that the electronic throttle systems are free from fault. Our lawyers who are working on the Toyota litigation and a number of safety experts believe there is a serious problem in that area and so do I.

FORD RECALLING 365,000 F-150 PICKUPS

Ford has recalled 365,000 of its F-150 pickups. The recall is intended to fix inside door handles. The problem is the doors could fly open in a crash. The recall covers the 2009 and 2010 model years. The recall started on February 14th. About 68,000 of the popular trucks under recall are in Canada and about 14,000 are in Mexico. Ford says there have been no crashes or injuries tied to the problem. The F-150 is the nation's best selling vehicle.

FORD RECALLS NEARLY 150,000 F-150 PICKUPS

Ford is recalling 144,000 F-150 pickups from the 2005 and 2006 model years because of concerns that the airbags may deploy without warning. A wiring short could trigger the airbags in some 2005 and 2006 model Ford F-150 pickups. The National Highway Traffic Safety Administration advised Ford to recall the F-150 after investigating 238 reports of accidental airbag deployment. Seventy-seven injuries have been reported, including chipped teeth, minor burns and cuts to the arms, hands and face. Road vibrations and regular driving can cause the airbag wires to rub against the metal edge of the horn plate. The rubbing may eventually cut through the insu-

lation on the wire, which then may short and cause the airbag to deploy. Ford is recalling 135,000 trucks in the United States and 9,000 in Canada. Ford claims the risk of accidental airbag deployment is relatively low. It should be noted that Ford changed the wiring for the 2007 model year.

FORD RECALLS 2011 FORD EXPLORER

The 2011 Explorer has been recalled by Ford Motor Co. Ford is recalling 1,658 new Explorers equipped with manual recline second row seats. The potential defect, which covers some Explorers built between July 15, 2010 and December 13, 2010, is the manual recliner mechanism on the 60 side of the 60/40 split second row bench seat. According to NHTSA, the components are "out of dimensional specification," and, that in the event of a crash, the seat back may not provide the required strength to protect second row occupants.

The redesigned Explorer, which is built in Chicago, was launched in late 2010. The automaker sold more than 7,300 of the new Explorers in January—a 70% increase in sales compared with the SUV's older version a year earlier. Ford said its seat supplier for the Explorer, Lear Corp., had shipped some second-row seats with manual reclining mechanisms that did not meet federal safety standards.

Ford said it identified the problem at its assembly plant in December and instructed dealers to stop selling affected vehicles until they could be repaired. The automaker said it would repair recalled vehicles under warranty for consumers who have already purchased them. Recall notices were sent starting on February 14th. Owners of the Explorers should take their vehicle to the nearest Ford dealer for repairs. Ford dealers are supposed to be equipped to repair the compromised part.

GM RECALLS THOUSANDS OF CADILLAC VEHICLES

General Motors has recalled more than 50,000 Cadillac CTS vehicles worldwide to fix a loose joint that could cause a rear wheel to become unstable, making it hard for drivers to steer. GM says the recall affects more than 44,000 CTS vehicles in the United States from the 2009 and 2010 model years. The remaining vehicles were sold in China and around the globe. According to GM, there have been no injuries or fatalities related to the recall. The auto company said nuts in the rear suspension could become loose, causing a sudden change in the vehicle's handling or making the driver lose control of the vehicle. Owners can contact Cadillac at 866-982-2339 for more information.

2010 NEW BEETLES RECALLED

Volkswagen has recalled 27 New Beetles from the 2010 model year because they do not comply with federal standards for crash protection. The affected vehicles, which do not meet barrier test requirements that took effect September 1st, were built between September 1st and September 22, 2010. Folks should check their vehicle's build date which is found on a sticker on the driver-side doorjamb.

Volkswagen says it will offer to replace affected owners' vehicles with comparable vehicles that were built before September 1st and thus meet federal standards before the new standards took effect. For more information, owners can call Volkswagen at 800-822-8987 or NHTSA's vehicle safety hotline at 888-327-4236.

BRIGGS & STRATTON RECALLS 50 ENGINES

Milwaukee small engine producer Briggs & Stratton has recalled about 50 40 V-twin engines due to a risk of injury. The engines involved in the

recall were used on Sears, Husqvarna and Bad Boy riding mowers. Wiring on the engines was incorrectly routed, leaving them vulnerable to wear that could disconnect the shut-off mechanism, allowing the engine to continue operating even with the key in the "OFF" position, according to the Consumer Product Safety Commission.

The engines were included in Craftsman mowers sold at Sears, Husqvarna mowers sold at Home Depot and Bad Boy mowers sold at Tractor Supply Co. The mowers were sold in February and March 2010 for between \$1,500 and \$3,500. Consumers were advised to contact a Briggs & Stratton dealer and arrange for a free inspection. Consumers can call 866-927-3349 for information.

SAFETY RECALL ORDERED FOR TOYO TIRES

Toyo Tire Holdings of Americas Inc., the parent company of both Toyo Tire USA Corp. and Nitto Tire USA Inc., has announced a safety recall campaign on a limited number of Toyo Tires and Nitto brand tires. The company has determined that select Toyo Versado CUV, Toyo Versado LX II, Toyo Open Country A/T, Toyo Tourevo LS II and Nitto Terra Grappler tires were distributed to retailers across the United States with a rubber chemical mixture that does not meet the company's specification.

As a consequence, sections of the tread may become detached, potentially causing loss of vehicle control and a crash, which could result in death or injury. Approximately 4,891 tires are subject to this recall, of which approximately 588 were produced using the out-of-spec rubber. The recalled tires were manufactured at the Toyo Tire & Rubber Co., Ltd. plant in Sendai, Japan during a two-week period in September of 2010. They can be identified by the "Made in Japan" stamp and the numbers "3810" or "3910" at the end

of the Department of Transportation serial number, both located on the tire sidewall. Tires manufactured before and after this period are not involved.

NEARLY 800,000 DOREL CHILD-SAFETY SEATS ARE RECALLED

Almost 800,000 child seats have been recalled because their harnesses may not hold the child securely. The recall covers a wide range of booster, convertible and infant seats, including some sold as part of a stroller travel system, made by the Dorel Juvenile Group of Columbus, Ind. (DJG). The action was prompted by NHTSA, which began an investigation of the restraints last year after receiving several consumer complaints that the restraining straps on the seats had loosened.

The harness locking and release button does not always return to its locked position. A button that is not in the locked position can allow the harness adjustment strap to slip back through the adjuster as a child moves around in the seat resulting in a loose harness and increasing the risk of a child being injured in a crash. According to DJG, the problem involves certain restraint systems manufactured from May 1, 2008, through April 30, 2009, which have a "Center Front Adjuster" (CFA) for the harness. DJG said it had received 143 complaints of the front harness loosening and was conducting the recall.

The restraints were sold under the brand names Safety 1st, Maxi-Cosi, Cosco and Eddie Bauer, Julie Vallese. They were manufactured from May 1, 2008, to April 30, 2009. The company says there have been no reports of center front adjuster failure in real world crashes, no injuries and no deaths reported to the company.

Those recalled include infant, convertible, and booster child restraint systems which were sold both as stand-alone seats or part of a travel

system (with a stroller). DJG said it intends to provide consumers with a remedy kit consisting of a small tube of non-toxic, food-grade lubricant to be applied to the CFA to prevent sticking and to allow it to properly engage the CFA strap. Until the remedy has been applied, NHTSA says consumers can continue to use the seats. But parents and caregivers should make sure the harness is properly adjusted and the lock/release button is fully in the locked position. Consumers who want more information about this recall should contact the manufacturer directly at 1 866-623-3139.

IKEA RECALLS SNIGLAR CRIBS DUE TO MATTRESS SUPPORT COLLAPSE

IKEA Home Furnishings, of Conshohocken, Pa., has recalled about 20,000 SNIGLAR cribs in the United States and 6,000 SNIGLAR cribs in Canada. The four bolts provided with some SNIGLAR cribs to secure the mattress support are not long enough. This can cause the mattress support to detach and collapse, creating a risk of entrapment and suffocation to a child in the crib. This recall involves SNIGLAR non-drop-side, full-size cribs with model number 60091931. SNIGLAR, IKEA and the model number are printed on a label attached to the mattress support. The crib frame and mattress support are made of natural/light-colored wood.

The cribs were sold exclusively by IKEA stores nationwide from October 2005 through June 2010 for about \$80. Consumers should stop using the crib immediately and check the crib. If the mattress support bolts extend through the nut, the bolts are the proper length and the crib is not included in the recall. If the bolt does not extend through the nut, the crib is included in the recall. Contact IKEA for a free repair kit for recalled cribs. In the meantime, consumers should find an alternate, safe sleep environment for the child, such as a bassinet, play

yard or toddler bed depending on the child's age. For additional information, contact IKEA toll-free at (888) 966-4532 anytime, or visit the firm's website at www.ikea-usa.com.

**RESISTANCE STRETCH TUBING
RECALLED BY EB BRANDS DUE TO
INJURY HAZARD**

EB Brands, of Yonkers, N.Y., has recalled Resistance Stretch Tubing. The handle on the tubing, also called bands, can break or detach while in use, causing the tubing or handle to strike the user and posing an injury hazard. EB Brands has received one report of an incident involving a bone injury. This recall involves Everlast Resistance Stretch Tubing, Everlast Pilates Stretch Tubing, Sportline Resistance Stretch Tubing and Pineapple Pilates Stretch Tubing, used for exercise and stretching. The tubing comes in yellow, blue or black with black handles. The words "2404", "2001 EB Sport Group" and "Made in China" are molded on the handles. A list of affected lot numbers is available on the company's website. The tubing was sold at sporting goods retailers from March 2010 through December 2010 for between \$13 and \$25. Consumers should immediately stop using the recalled product and contact EB Brands for a free replacement product or a full refund. For additional information, contact EB Brands at (800) 624-5671, or visit the company's website at www.ebbrands.com.

**DEVILBISS RECALLS AIR COMPRESSORS
DUE TO FIRE HAZARD**

DeVilbiss Air Power Company of Jackson, Tenn., has recalled about 460,000 air compressors. The air compressor motor can overheat, posing a fire hazard. DeVilbiss says it has received nine reports of motors overheating, including three reports of fire damage to surrounding property. No injuries have been reported. The recalled compressors

were sold under the Craftsman, Delta Shopmaster, DeVilbiss, Husky and Porter-Cable brand names. The model number and manufacture date on each unit is located on the unit name plate on the tank.

The DeVilbiss, Porter-Cable, Husky, and Delta Shopmaster brand air compressors were sold at home centers nationwide from January 2003 through December 2004 for between \$199 and \$299. Craftsman-brand compressors were sold at Sears stores nationwide from September 2000 through December 2005 for between \$199 and \$229.

Consumers should immediately stop using and unplug the recalled compressors and call DeVilbiss or Sears for a free inspection and repair. For additional information, consumers with DeVilbiss, Porter-Cable, Husky and Delta compressors should contact the company's website at www.porter-cable.com or www.devap.com. Consumers with Craftsman-brand compressors should call Sears toll-free at (888) 279-8013, or visit the Sears website at www.sears.com.

**ATICO INTERNATIONAL USA RECALLS
HEATERS DUE TO FIRE HAZARD**

About 92,000 TrueLiving Heater Fans and Portable Quartz Radiant Heaters have been recalled by Atico International USA, Inc. of Fort Lauderdale, Fla. These heaters have caught fire, posing a fire hazard to consumers. Atico has received eight reports of the A14B1053 Heater Fan overheating and 21 reports of the A14B0979 Quartz Heater overheating. Reports for the A14B1053 Heater Fan included one report of damage to an electrical outlet and wall and one report of flames coming out of the front of the unit. Reports for the A14B0979 Quartz Heater included damage to the heater's plug, one report of flames coming from a control knob and one report of a consumer receiving minor burns to the hand. For both products, reports

included incidents of smoke and melting of the plastic casing.

Model numbers are found on a silver colored sticker on the bottom of the unit. Additionally, both heaters are marked with manufacturing dates between 6/1/2010 and 8/30/2010. The date code appears as "DATE CODE: 0610" The heaters were sold by Dollar General Stores from September 2010 to December 2010. The heater fans sold for about \$15 and the quartz radiant heater sold for about \$42. Consumers should immediately stop using the recalled heaters and return them to any Dollar General Store for a full refund. For additional information, contact Atico International USA toll-free at (866) 448-7856 between 9 a.m. and 5 p.m. ET, Monday through Friday, or visit the company's website at www.aticousa.com

**LASKO RECALLS PORTABLE ELECTRIC
HEATERS DUE TO FIRE HAZARD**

Lasko Products Inc., of West Chester, Penn., has recalled its portable electric heaters. An electrical connection in the base of the unit can overheat, causing it to melt and expose the electrical connection, posing a fire hazard to consumers. Lasko received a total of 36 reports of the electrical connection overheating with no reports of injury. There were 18 reports of minor burn damage to floors or carpets. The portable, electric, tower heaters are 20.5 inches tall x 8.25 inches wide x 9.25 inches deep. They are dark grey with silver front covers and black vent slats. The brand names Lasko or Air King are on the top, center of the front cover. The Lasko Model 5540 and Air King Model 8540 subject to this recall were manufactured in 2002 and have date codes that begin with a "2." The date code is on the label located on the bottom of the unit. The date code is a four-digit number on the bottom left area of the label, above the voltage number. Heaters with date codes beginning

with “3,” “4” or “5” are not subject to this recall.

The Lasko Model 5540 heaters were sold at Sam’s Club and other retailers from September 2002 through early 2004 for \$39 to \$49. The Air King Model 8540 was sold primarily through the maintenance, repair and operating products supply company, W.W. Grainger Inc. from late 2002 to 2004 for approximately \$80.00. Consumers should stop using the heaters immediately and contact Lasko to receive a free replacement heater. For additional information and pictures of affected models, visit Lasko’s website at www.Laskoproducts.com, or call Lasko anytime, toll-free at (800) 363-8044.

WINDTUNNEL CANISTER VACUUMS RECALLED DUE TO FIRE AND SHOCK HAZARDS

Hoover Inc., of Glenwillow, Ohio, has recalled about 142,000 Hoover® WindTunnel Canister Vacuums. The power cord between the power nozzle and the wand connector can short-circuit posing fire and shock hazards to consumers. This condition can occur even if the vacuum has been turned off but left plugged in. Hoover says it has received 69 reports of overheating or electrical malfunction, including one report of fire and smoke damage, and two reports of carpet damage. There has been one report of a minor injury.

This recall involves the Hoover Wind-Tunnel Bagless Canister Vacuum model S3755. The vacuum is silver and black in color, and comes with a power nozzle. The model number can be found on a label on the bottom of the canister. The vacuums were sold at mass merchandisers, department stores and independent vacuum retailers nationwide and online from March 2003 to December 2008 for between \$250 and \$280. Consumers should immediately stop using the recalled vacuum cleaners and contact Hoover for a free repair. For additional informa-

tion, contact Hoover toll-free at (888) 564-2066, or visit the company’s website at www.hoover.com/wind-tunnelcanisterrecall.

AMERTAC RECALLS NIGHT LIGHTS DUE TO FIRE AND BURN HAZARD

About 261,000 LED Night Lights have been recalled by American Tack & Hardware Co. Inc. (AmerTac), of Saddle River, N.J. An electrical short circuit in the night light can cause it to overheat and smolder or melt, which can burn consumers or result in fire. AmerTac has received 18 reports of the night lights smoking, burning, melting and/or charring, including three reports of minor property damage and one of a minor burn injury.

Three night light models are being recalled: model numbers 71193, 71194 and 327879. Only those with KML molded on the back are being recalled. All three models have KML, ETL, the AmerTac™ logo and the model number molded on the back of the night lights’ plastic housing. Model number 71193 is a square shaped, white plastic unit with a flat translucent square window on the front and a button for changing the screen color. Model 71194 and 327879 resemble a computer mouse with white plastic housing and inset translucent windows on the front and sides.

The night lights were sold at hardware stores, lighting showrooms and home centers nationwide from March 2009 through January 2011 for about \$7. Consumers should stop using the recalled night lights immediately and unplug them from the wall. Contact AmerTac for instructions on receiving a full refund and for additional information at (800) 420-7511, or visit AmerTac’s website at www.amertac.com or www.recall-center.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

contact CPSC by visiting <https://www.cpsc.gov/cgibin/incident.aspx>.

TYCO RECALLS FIRE ALARM PANELS

Tyco Safety Products has recalled 540 fire alarm control panels that have reportedly failed to function on two occasions. Tyco Safety Products Westminister of Westminister, Mass., has received two reports of control panels, distributed by SimplexGrinnell, that have failed to alert monitoring centers when they should have. The fire alarm control panels were sold from May 2010 through September 2010 for between \$10,000 and \$20,000. The control panel involved in the recall is the Simplex 4100U-NXP model. The words “Simplex” and “Fire Control” appear on the front panel. Building managers have been advised to contact SimplexGrinnell for a free software upgrade for the control panels. Building managers can call 866-565-6322 for information.

SUNBEAM PRODUCTS INC. RECALLS CONVERTIBLE IRONS

Sunbeam Products Inc., Boca Raton, Fla., has recalled their convertible clothes iron. The iron can overheat and cause a fire because of a wiring issue, posing a risk of burn injury to consumers. Sunbeam says it has received 17 reports of irons overheating and three reports of irons catching on fire. No injuries have been reported. The recalled product is the Sunbeam® Convertible Iron with a model number of GCSBRS—103. It is a blue and gray, hand-held garment iron that converts to a garment steamer. The model number can be found on the bottom of the iron’s plastic base. The recalled irons have date codes C235 or C237 imprinted on the blade of the plug and on the bottom of the packaging.

The irons were sold at Bed Bath & Beyond stores nationwide from June 2010 to November 2010 for about \$60. Consumers should immediately

stop using the irons and contact Sunbeam for a free replacement. For additional information, call Sunbeam at (800) 656-9708 anytime or visit the company's website at www.sunbeamconvertible.com.

**KRISTI G, SWIMWAYS CORPORATION
RECALLS CHILD CHAIRS**

Kristi G Company, of Atlanta, Ga. and SwimWays Corp., of Virginia, has recalled about 5,200 Kristi G Go & Grow Chairs. The chair can tip over, posing a fall hazard. SwimWays Corp. has received eight reports of the chairs tipping over. In two of the reports, children received scrapes on the face and hands. The recalled product is a lightweight, polyester chair for children three months and older, weighing up to 75 pounds. The chairs include a detachable sun canopy, detachable tray, three-point harness, and a polyester carry bag. There are holes in the seat to allow for standing. The chairs differ in color scheme only as follows: model 80325 is brown with blue polka dots, 80326 is brown with green polka dots and 80327 is brown with pink polka dots. The model number is located on the box. The chairs were sold online by national mass merchandisers and retailers from March 2010 to January 2011 for \$34.99 to \$89.99. Consumers should immediately stop using the recalled product and contact SwimWays Corp. To receive reimbursement of the purchase price. For more information, contact SwimWays Corp. At (888) 559-4653 or visit the company's website at www.kelsyus.com or www.swimways.com

**ESCALADE SPORTS RECALLS OASIS
PLAYSETS DUE TO FALL HAZARD**

Escalade Sports of Evansville, Ind., has recalled about 4,600 outdoor playsets. The swing seats on the playsets can crack and break in half, causing the user to fall to the ground. Escalade Sports has received 24 reports of the seats breaking; no inju-

ries have been reported. This recall involves belt-style swing seats on four models of Oasis Playsets: PG01W, PG02W, PG03W and PG04W. Model numbers are located on a plate on the swing's horizontal beam. The green plastic seats are about 26 inches long and are hung from green, plastic-coated chains. The swing seats have rounded ends with black grommets on each end.

The playsets were sold by Oasis distributors and dealers nationwide from April 2008 to December 2010 for between \$1,500 and \$2,200. Consumers should immediately stop using these swing seats and contact Escalade Sports for free replacement swing seats. For additional information, contact Escalade Sports at (800) 742-6009, or visit the company's website at www.escaladesports.com. Consumers can also e-mail the company at safetyinfo@escaladesports.com.

**SASSY INC. RECALLS REFRESHING
RINGS INFANT TEETHERS/RATTLES**

Sassy Inc., of Kentwood, Mich., has recalled about 37,000 Refreshing Rings Infant Teethers/Rattles. Small pieces of the plastic ball can detach as a result of children chewing on the teether/rattle, posing an ingestion hazard. The company says it has received one report of pieces of the black plastic from the polka dot ball detaching while being chewed. No injuries have been reported. This recall involves Refreshing Rings infant teethers/rattles intended for babies ages three months and older. The product has a red, water-filled ring on one end and a black and white polka dot ball on the other end. The two ends of the rattles/teethers are connected by a black and white, flexible plastic rod with three floating rings. Style number 80026 is printed on the packaging.

The teethers were sold at mass merchandise and baby specialty stores nationwide between July 2009 and

January 2011 for about \$5. Consumers should immediately take the teethers/rattles from children and contact Sassy Inc. for instructions on how to return the product for a free replacement toy. For additional information, contact Sassy Inc. At (800) 323-6336 or visit the company's website at www.sassybaby.com.

**COMPANY RECALLS ALCOHOL SWABS
AFTER TODDLER'S MENINGITIS DEATH**

Triad Group has recalled all of its alcohol products. The company also makes alcohol pads and swabs for dozens of other stores, like CVS, Kroger, Safeway and Walgreens. It was reported the very young don't have as strong an immune system and are particularly at risk. The manufacturer stated on its website:

This recall has been initiated due to concerns from a customer about potential contamination of the products with an objectionable organism that may or may not be related to Triad's manufacture of these products. We are, out of an abundance of caution, recalling these lots and revalidating our production lines.

**J&J RECALLS ANTIPSYCHOTIC DRUG
INVEGA SYRINGES**

A unit of Johnson & Johnson has recalled 70,000 syringes of its antipsychotic drug Invega Sustenna after finding that some of the pre-filled syringes may have cracks which possibly could affect the drug's sterility. Janssen, a unit of Johnson & Johnson, said in a letter to pharmacists and health care providers that the voluntary recall affects lots of its 234-milligram-strength injections. The crack is completely covered by the label and is not detectable by the user. The company said in the letter posted on its website that there have been no reports of adverse effects or infection since the product launched and no reports of leakage associated with cracked syringe barrels. No other

strengths of the drug or products marketed by Janssen are affected.

Invega was approved in December 2006 to treat schizophrenia. The drug is related to Risperdal, a former blockbuster antipsychotic that lost patent protection in 2008. Janssen markets Invega in the United States for New Brunswick, New Jersey-based J&J. According to Janssen the recall impacts most available inventory of the 234-mg strength drug, but it says it expects to resume shipping the product this month and returning to normal levels of product availability in April.

DIABETES TEST STRIPS RECALLED

Abbott Diabetes Care products has recalled faulty glucose test strips. This is the second recall on the strips since December. The FDA increased the level of the recall in February. Officials are very concerned that the test strips may provide inaccurate blood sugar readings and potentially cause diabetics to suffer serious injury or even death. The test strips were sold by Abbott under the names:

- precision xceed pro
- precision xtra
- medisense optium
- optium
- optiumez
- relion ultima

The test strips were manufactured between January and September 2010, and are used with monitoring systems of the same names. The monitoring systems themselves are not being recalled. Abbott and the FDA recommend that customers using the affected strips discontinue using them and contact Abbott for free replacement strips. The toll free number is 1-800-448-5234.

A HALF-MILLION BABY BASSINETS RECALLED

Hundreds of thousands of baby bassinets made by Burlington Basket Co. have been recalled amid concerns that they could collapse if not assembled properly. The recall involves about 500,000 bassinets—all made by the company before June of last year. The Consumer Product Safety Commission says the bassinets can collapse if the support rails that hold the basket are not fully locked into place. The Burlington, Iowa-based company is not offering to take back the bassinets, but is instead giving consumers free repair kits to show exactly how to install the support rails. Consumers should check to make sure their bassinet has the support rails properly locked in place.

The CPSC and the company have received ten reports of incidents in which the bassinets collapsed when the folding legs were not locked properly. Two infants received minor injuries, including a bruise to the head. The bassinets were sold at Wal-Mart and other mass merchandisers, department stores and juvenile product stores nationwide. Consumers can contact the company at 800-553-2300 for more information.

NURSES CHOICE RECALLS HOLIDAY KEEPSAKE NEWBORN MITTENS

Nurses Choice Corp. of Wilmington, N.C., has recalled 4,700 Newborn Keepsake Mittens. Decorations on the mittens can be pulled off, posing a choking hazard. The company says it has received one report of a decoration falling off a mitten but that no injuries have been reported. The infant mittens are made of white cotton. They have candy cane, teddy bear and “2011” decorations glued on one side. The recalled products were distributed by hospitals nationwide for free to newborns from October 2010 to January 2011. Consumers should immediately stop using the mittens and contact Nurses

Choice for a free replacement. For more information, contact Nurses Choice at (800) 747-7076, by e-mail to info@nurses-choice.com or visit the company’s website at www.nurses-choice.com

HORSE FEED MANUFACTURER ISSUES RECALL

A manufacturer has issued a recall of horse feed that was distributed in California, Nevada and Oregon because it may contain a medication that can be fatal to horses if fed at high levels. Missouri-based Manna Pro Products is recalling Family Farm Complete Horse 10 horse feed, lot number 1006, because it may contain potentially harmful levels of the medication monensin sodium, or Rumensin. The feed was distributed in January to retailers in California, Nevada and Oregon. No illnesses or deaths have been reported and retailers have removed it from their stores, but the company says customers who purchased the product should stop feeding it immediately.

REI NOVARA FUSION BICYCLES RECALLED

The U.S. Consumer Product Safety Commission announced a voluntary recall of 160 REI Equipment bicycles due to a fall hazard. The alloy steerer tube on REI’s Novara Fusion bicycles could separate from the fork, causing a rider to lose control, the Commission said in a statement. The bicycles were imported from Taiwan by Recreational Equipment Inc., doing business as Novara, of Kent, Wash., and sold nationwide at REI stores from November 2009 through November 2010.

They were sold for between \$600 and \$900. The bicycles were sold in two sizes. The Step Through bicycles were sold in extra small and small. The Fusion bicycles were sold in medium, large and extra large. Consumers were advised to stop using the bicycles and contact an

REI store to arrange for installation of a free replacement fork. Consumers can call 800-426-4840 for information.

If you need more information on any of the recalls listed above, or would like information on a recall not listed, please visit 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.

XXI. FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

PARKER MILLER

During his time in the firm's Environmental Section, Parker Miller has played an integral role in some of the most significant and complex litigation in the nation. Currently, Parker is actively involved in the BP Oil Spill litigation, a consequence of the tragic Deepwater Horizon explosion that resulted in the worst environmental disaster in United States history. Parker is working with numerous Gulf Coast fishermen, businesses and government entities that have been devastated by the oil spill's impact. He currently represents hundreds of cleanup workers sickened as a result of their exposure to oil and toxic chemical dispersants. Whether it's obtaining significant emergency payments to keep businesses open, counseling injured cleanup workers who were given little warning of dangerous toxins, or working with lawyers throughout the nation in the New Orleans multidistrict litigation, Parker, along with other lawyers and support staff in the section, are helping to make a difference for Gulf Coast residents.

Working with Rhon Jones, Environmental Section Head, Parker has also assumed a leadership role with the national Hot Fuel multidistrict litigation team against

some of the world's largest oil companies. Our firm represents consumers and businesses in seeking billions in lost revenues as a result of thermal expansion of motor fuel at retail. Recently, the Plaintiffs achieved class certification for consumers and businesses in the State of Kansas and defeated the oil company appeals in the 10th Circuit. In addition to these projects, Parker represents clients against major coal companies for mine subsidence property damages, and is actively investigating claims related to nuisance, trespass to property, and personal injury due to exposure to toxic chemicals.

Parker received his B.S. in Business Administration from Auburn University and his Juris Doctor degree from Thomas Goode Jones School of Law. While attending law school, Parker was recognized as one of the nation's finest student advocates and received the Lewis F. Powell Jr. American College of Trial Lawyers Medal of Excellence in Advocacy for his performance in the American College of Trial Lawyers' annual National Trial Competition. Out of hundreds of teams, Parker's team finished a national semifinalist. Additionally, Parker studied law abroad at the Universiteit van Amsterdam in conjunction with Tulane University, was on the Dean's List at Jones, and was a charter member of the Jones School of Law Board of Advocates.

Parker maintains an active role in various local, state and national legal and non-legal societies. He is a member of the American Association for Justice's Oil Spill Litigation Taskforce, and a member of the prestigious American Inns of Court, Hugh Maddox Chapter. Parker is also a committee member and recruitment subcommittee chairman of the Alabama State Bar's Volunteer Lawyers Program—a program dedicated to achieve justice for those who could not otherwise afford it. He is also a member of the Montgomery County Bar Association's Grievance Committee, an attorney host on WSFA's Law Call television program, and a guest speaker for the Montgomery Boys' Club.

Parker is originally from Faunsdale, Ala., and is the son of Tommy and Mary Miller. An avid golfer and Auburn football fan, Parker lives in Montgomery with his wife, the former Ashley Brownsberger of Tampa Bay, Fla. Parker and Ashley are

active in St. Peters Church. We are fortunate to have Parker in the firm.

KATHY ECKERMANN

Kathy Eckermann, who has been with the firm for ten years, now serves as my Executive Assistant. This is a very important position and it takes a special person to handle the demands that go along with the job. Kathy assists me with a number of things including answering the phone, returning phone calls, checking the firm trial schedule for accuracy, making travel arrangements, scheduling board meetings, and dealing with all sorts of people contacts. Anything to do with Auburn football tickets also comes over her desk. It takes a person with excellent people-skills to handle this position.

Kathy has been married to Eddie Eckermann for 30 years. Eddie, a retired school teacher, currently drives buses for Capital Trailways. Kathy and Eddie have two children, both in their 20's. Aaron is a full time musician, serving as the drummer for a touring band, and Leah graduated from Troy University in December. Kathy attended Huntingdon College and received a Bachelor of Arts in Music Education, graduating cum laude. She loves playing the piano and composing music, reading, walking for exercise, hiking when on vacation and spending time with her family. Kathy serves as the pianist at her church, Eastmont Baptist.

For over 20 years Libby Wilbanks held down the position Kathy now fills. When Libby moved back to Georgia, Kathy took over. Kathy had been working with Libby for several months, learning all about the position and now is doing an excellent job. Libby did a tremendous job and hopefully Kathy will have a similar tenure. I have been blessed to have good folks working with me and Kathy fits that description very well.

MICHELLE BAILEY

Michelle Bailey, who has been with the firm for three years, currently serves as a clerical assistant. Much of Michelle's time is spent managing the mailing list and database for The Jere Beasley Report. The report currently goes out to over 63,000 people. Michelle's work also includes managing the invitation lists for the seminars and retreats the firm sponsors throughout the year. Michelle is a single

mother of a teenage son, Mason. She also has 4 dogs (Colin, Sada, CJ & Logan). She also has two nephews and a niece whom she adores and, according to Michelle, spoils each chance she gets.

Michelle has a B.S. in Sociology and Criminal Justice. But she says she is actually going through Junior High School again, courtesy of her son. Michelle says she never thought she would have to experience that again! She enjoys sewing, word search puzzles, board or card games, music and going to the gym. Michelle is a very good employee and does an excellent job of keeping up with the *Report*. We are fortunate to have her with the firm.

TRACIE HARRISON

Tracie Harrison came to work with the firm over 11 years ago. Interestingly, Tracie traveled back and forth from Sprott (Perry County, Ala.), a 160 mile round trip everyday, to work. She came to work as Legal Secretary for Rhon Jones, who heads up our Toxic Torts Section. After two months she was moved to the position of Legal Assistant and she continues to work in that capacity with Rhon and John Tomlinson. Tracie is currently working on several important cases. Two of them are the Gulf of Mexico BP Oil Spill litigation and the TVA Kingston Coal Ash Spill case.

Tracie has been married to Nick for 16 years and they have one son. Hayden, who is nine years old and is a fourth grader at Victory Baptist School in Millbrook. Tracie is a lifelong member of Marion Presbyterian Church in her home town, but since moving to Elmore County, the family attends Millbrook Presbyterian Church.

Tracie is also a full-time student at Judson College, working towards a Bachelor of Arts with a double major in English & History. Judson, the nation's fifth oldest women's college, was founded in 1838 by Baptists in Marion to educate young women in a Christian environment. The independent, liberal arts college was listed among the Top 20 Best National Liberal Arts Colleges 2011 in *U.S. News & World Report*. Judson is committed to a quality, valuable education for women of the future.

Tracie currently enjoys Zumba, fitness dancing featuring exotic rhythms set to high-energy Latin and other international beats, as well as cooking and reading. She also enjoys getting away and spending time with her family in Perry County, hunting, fishing, and in the summer hanging out on the Cahaba River. Tracie is a very good and dedicated employee and we are blessed to have her with us.

XXII. SPECIAL RECOGNITIONS

BOB PALMER IS A VERY SPECIAL PERSON

Bob Palmer is a very special person. Not only is he a good lawyer, but Bob is also a very good man. Bob took a break from the practice of law in Birmingham to write his first novel, *Archibald Zwick and the Eight Towers*. The novel was published last November and it has been a best seller. In addition to his literary talents, Bob's work as a lawyer has benefited ordinary working folks in Alabama. He won a tremendous victory a few years back in a toxic torts case that overturned a terrible Alabama Supreme Court decision that had set an unreasonable statute of limitations for toxic cases.

Bob said he was "praying for God's guidance to change the law in Alabama," and that is exactly what happened. He was honored with the 2008 Access to Justice Award by the Public Justice Foundation for his efforts to allow greater protection for victims of toxic chemical exposure. Currently, Bob has a number of other literary projects underway. His novel can be purchased on Amazon.com and Barnesandnoble.com and at some Lifeway stores.

THE FIRM IS SPONSORING GRANT ENFINGER

Our firm is sponsoring Grant Enfinger and the Beasley Allen race car again this year. Our commitment to the ARCA race program expired at the end of 2010, but we decided to sponsor the BeasleyAllen.com car this year at the two fastest tracks in the country. Grant will again drive the

ARCA car. He raced on February 12th at the World Center of Racing. The Lucas Oil Slick Mist 200 kicked off Daytona Speed Weeks, which was the beginning of the race season. Grant had difficulty with his car in that race, but managed a ninth place finish which was great under the circumstances. He will drive at Talladega on April 15th and is hoping to win that race. These races are televised live nationally. For more information on ARCA activities, visit www.arcaracing.com.

XXIII. FAVORITE BIBLE VERSES

We received a large number of Bible verses for this issue. Several came from lawyers in the firm. It's good to know that this section is well received by our readers. Frankly, I believe it's one of the most important sections in the Report each month. I encourage folks to send in verses. We will use as many as we can each month.

My cousin, G.B. Beasley who lives in Ft. Payne, sent in a verse for this issue. GB was a highly-successful high school football coach in North Alabama. In fact, Coach Paul Bryant once called him one of the best high school coaches in Alabama. GB later served as principal of Ft. Payne High School. After retiring, he continued to work on educational programs for the state. He and his wife Jean now spend lots of time traveling around the country.

The Gentiles shall see your righteousness, and all kings your glory. You shall be called by a new name, which the mouth of the LORD will name.

Isaiah 62:2

Shane Seaborn, a lawyer with offices in Clayton and Union Springs, sent in one of his favorite verses. Shane says he keeps the verse near his office computer.

If you wait for perfect conditions you will never get anything done.

Ecclesiastes 11:4

Tom Methvin, our firm's Managing Shareholder, who not only "talks the talk" as a Christian, but also "walks the walk," furnished the following verse:

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

Romans 8:28

My friend Bryan Kelly, who is with Common Ground, sent in a verse for this issue. Bryan and his wife Delta serve the folks in West Montgomery on a daily basis. They are doing the Lord's work and will be blessed for it.

*Oh, magnify the LORD with me,
And let us exalt His name together.*

Psalm 34:3

Ted Meadows, a lawyer in our Mass Torts Section, also furnished a verse for this issue. Ted and his family are active members of St. James United Methodist Church.

*Learn to do right! Seek justice,
encourage the oppressed. Defend
the cause of the fatherless, plead the
case of the widow.*

Isaiah 1:17 (NIV)

Archie Grubb, a lawyer in our Consumer Fraud Section, also furnished the following verse for this issue. Archie, a native of Eufaula, Ala., comes from a long line of very good lawyers. His great-grandfather, William Irwin Grubb, was a federal judge in Birmingham from 1909 until his death in 1935.

*Then I heard the voice of the Lord
saying, "Whom shall I send? And
who will go for us?" And I said,
"Here am I. Send me!"*

Isaiah 6:8:

Stephanie Emens sent in one of her favorites verses for this issue. Stephanie, who is a lawyer in our Toxic Torts Section, says this verse is a good one for the times we live in today.

*"Therefore we do not lose
heart. Though outwardly we are
wasting away, yet inwardly we are*

*being renewed day by day. For our
light and momentary troubles are
achieving for us an eternal glory
that far outweighs them all. So we
fix our eyes not on what is seen,
but on what is unseen. For what is
seen is temporary, but what is
unseen is eternal. For we know
that if our earthly house, this tent,
is destroyed, we have a building
from God, a house not made with
hands, eternal in the heavens."*

2 Corinthians 4:16-18, 5:1

Stephanie says that it can be easy to lose heart if we only fix our eyes on what is seen in the news, on television, in movies, and even in our own lives. She adds that refocusing our attention on the unseen is what gives us the strength and perspective to "run the race marked out for us." That's very well said and very true!

Ben Baker, a lawyer in our firm who handles product liability cases, sent in a verse. Ben and his family are active members of Christchurch, an Anglican Parish in Montgomery.

*Likewise you younger people,
submit yourselves to your elders.
Yes, all of you be submissive to one
another, and be clothed with humil-
ity, for "God resists the proud, But
gives grace to the humble."*

1 Peter 5:5

Cole Portis, who heads up the Personal Injury—Products Liability Section in our firm, sent in a favorite verse. Cole and his wife Joy have seven children and are active members of Morningview Baptist Church.

*I have been crucified with Christ. It
is no longer I who live, but Christ
who lives in me. And the life I now
live in the flesh I live by faith in the
Son of God, who loved me and gave
himself for me.*

Galatians 2:20

We weren't able to put in all of the verses received for this issue due to space restrictions. But we will put those in the next month. It's a blessing to know that

these verses help folks who read the Report. I know they help me!

XXIV. CLOSING OBSERVATIONS

RUSS ABNEY KNOWS WHERE TO TURN FOR HELP

Russ Abney, a lawyer in our firm, lives in Atlanta, Ga.. Russ works out of that location and is an important member of our Mass Torts Section. He specializes in pharmaceutical litigation and needless to say, Russ has been very busy lately. Russ says the following message from the New Testament keeps him grounded in his work and in his family life.

*Take heed that you do not do your
charitable deeds before men, to be
seen by them. Otherwise you have
no reward from your Father in
heaven. Therefore, when you do a
charitable deed, do not sound a
trumpet before you as the hypo-
crites do in the synagogues and in
the streets, that they may have glory
from men. Assuredly, I say to you,
they have their reward. But when
you do a charitable deed, do not let
your left hand know what your
right hand is doing, that your char-
itable deed may be in secret; and
your Father who sees in secret will
Himself reward you openly. "And
when you pray, you shall not be
like the hypocrites. For they love to
pray standing in the synagogues
and on the corners of the streets,
that they may be seen by
men. Assuredly, I say to you, they
have their reward. But you, when
you pray, go into your room, and
when you have shut your door,
pray to your Father who is in the
secret place; and your Father who
sees in secret will reward you
openly. And when you pray, do not
use vain repetitions as the heathen
do. For they think that they will be
heard for their many words. "There-
fore do not be like them. For your
Father knows the things you have*

need of before you ask Him. In this manner; therefore, pray:

*Our Father in heaven,
Hallowed be Your name.
Your kingdom come.
Your will be done
On earth as it is in heaven.
Give us this day our daily bread.
And forgive us our debts,
As we forgive our debtors.
And do not lead us into temptation,
But deliver us from the evil one.
For Yours is the kingdom and the
power and the glory forever. Amen.*

“For if you forgive men their trespasses, your heavenly Father will also forgive you. But if you do not forgive men their trespasses, neither will your Father forgive your trespasses.” Moreover, when you fast, do not be like the hypocrites, with a sad countenance. For they disfigure their faces that they may appear to men to be fasting. Assuredly, I say to you, they have their reward. But you, when you fast, anoint your head and wash your face, so that you do not appear to men to be fasting, but to your Father who is in the secret place; and your Father who sees in secret will reward you openly. “Do not lay up for yourselves treasures on earth, where moth and rust destroy and where thieves break in and steal; but lay up for yourselves treasures in heaven, where neither moth nor rust destroys and where thieves do not break in and steal. For where your treasure is, there your heart will be also. “The lamp of the body is the eye. If therefore your eye is good, your whole body will be full of light. But if your eye is bad, your whole body will be full of darkness. If therefore the light that is in you is darkness, how great is that darkness!” “No one can serve two masters; for either he will hate the one and love the other, or else he will be loyal to the one and despise the other. You cannot serve God and mammon.

“Therefore I say to you, do not worry about your life, what you will eat or what you will drink; nor about your body, what you will put on. Is not life more than food and the body more than clothing? Look at the birds of the air, for they neither sow nor reap nor gather into barns; yet your heavenly Father feeds them. Are you not of more value than they? Which of you by worrying can add one cubit to his stature? “So why do you worry about clothing? Consider the lilies of the field, how they grow: they neither toil nor spin; and yet I say to you that even Solomon in all his glory was not arrayed like one of these. Now if God so clothes the grass of the field, which today is, and tomorrow is thrown into the oven, will He not much more clothe you, O you of little faith? “Therefore do not worry, saying, ‘What shall we eat?’ or ‘What shall we drink?’ or ‘What shall we wear?’ For after all these things the Gentiles seek. For your heavenly Father knows that you need all these things. But seek first the kingdom of God and His righteousness, and all these things shall be added to you. Therefore do not worry about tomorrow, for tomorrow will worry about its own things. Sufficient for the day is its own trouble.

Matthew 6

I always look forward to hearing from my long-time friend John Ed Mathison. Interestingly, since John Ed “retired” he seems to be busier than ever. The following is from John Ed and it’s a good message for us. It definitely puts things in the proper perspective.

CHECK YOUR TICKET

The Super Bowl was played last Sunday in Jerry Jones \$1.2 billion palace. Most people were amazed at this venue for a football game.

The NFL wanted to make it the largest crowd ever to see a Super Bowl game live. For that reason

they put in a lot of temporary seats to bring the seating capacity to over 105,000. They also sold \$200 tickets to watch the game on video screens that were set up outside the stadium.

But not everybody was impressed with the new stadium. About 1,200 people discovered that they had paid a lot of money for airline tickets, hotels, and tickets to the game, only to discover that their tickets to the game were no good. They had tickets in the temporary seating, and the Fire Marshall said that those seats were unsafe.

There was a chain reaction of placing the blame for the failure to have the seats secure. Was it a lack of planning on the part of the NFL, the stadium employees, or the ice and snow storm that kept workers from finishing the job? I like what one commentator said, “It was greed.”

It must be extremely disappointing to buy a ticket to an important event, then to discover that the ticket is no good. They did find some standing room places in the stadium for a few of them, and offered to let some watch the game on monitors or on one of the outdoor television screens. That is not exactly what people who had spent thousands of dollars expected.

The NFL did offer to give a check to the ticket holders for triple the amount of the face value of the tickets. Since the tickets were \$800, the fans would receive \$2,400. One of the fans had actually paid \$3,000 for his ticket, so he said he was losing \$600 just on the ticket—not counting the airfare, hotel, and food.

In life we “buy a ticket” for what we receive every day. Sometimes we pay a lot for a ticket to something we think we want, then discover the ticket doesn’t work. It may be disappointing to have a bad ticket for the Super Bowl—it’s really sad to buy into a philosophy of life that

is a total bust. There is only one guaranteed commitment that you can count on—that is the Christian faith. Jesus said, “I have come that you might have life and have it more abundantly.” (John 10:10)

There are a lot of advertisements of how a person can enjoy life. They involve the accumulation of things, the use of certain products, achieving a certain life style, working extra hard to make extra money—the list goes on and on. There is only one genuine guarantee and that is in Jesus Christ.

This concept goes much further when it comes to eternal life. Some things might help you have a little temporary fun in this life, but when it comes to eternal life only faith in Jesus Christ is valid. Jesus said, “I am the way, the truth and the life; no man comes to the Father, but by Me.” (John 14:6)

I really look forward to seeing the stadium in Dallas some day. I hope the ticket I get will be a good one.

I am a thousand times more excited about seeing what God has prepared for me in heaven. I know that my ticket has been paid for by God’s son Jesus Christ with His death on the cross, and then validated by His resurrection and my acceptance of His grace.

In fact I don’t have to worry about being in temporary seating—it’s an

eternal seat that exceeds a million times the finest luxury boxes in Cowboy Stadium! Paul writes, “eye has not seen, ear has not heard, nor has entered into the heart of man all that God has prepared for those who love Him.” (I Corinthians 2:9)

Valid tickets are important when going to a football game, and in life. There is no need for any of us to be disappointed. Snow storms, nor inefficiencies, nor greed will ever hamper God’s plan for each of us.

Do you have the valid ticket?

John Ed Mathison
www.johnedmathison.org

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

XXV. PARTING WORDS

Leigh O’Dell, another lawyer in our Mass Torts Section, gave the weekly devotion for the firm on February 16th. She spoke on courage, using Joshua as an

example of how you can be apprehensive and maybe even “scared” when given a difficult task or placed in a totally unfamiliar situation, but still have the courage to carry on. That courage comes from a loving and powerful Heavenly Father. The following message gave Joshua his marching orders.

“Be strong and very courageous. Be careful to obey all the instructions Moses gave you. Do not deviate from them, turning either to the right or to the left. Then you will be successful in everything you do. Study this Book of Instruction continually. Meditate on it day and night so you will be sure to obey everything written in it. Only then will you prosper and succeed in all you do. This is my command—be strong and courageous! Do not be afraid or discouraged. For the Lord your God is with you wherever you go.

Joshua 1:8-9:
(New Living Translation)

I suspect that each of us on occasion has been sort of scared in certain situations. I know that I have been on more than one occasion. Knowing that God is with us and in control—with the Holy Spirit to guide us at all times—will keep us grounded and able to cope with difficult assignments or predicaments. That’s an assurance that beats all of the alternatives without question. Hopefully, each of our readers has that assurance. If not, it’s readily available.

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

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Beasley Allen
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