



THE
JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

ALABAMA TORNADO DAMAGE AFTER 30 DAYS

Many counties in Alabama are now undergoing major clean-up activities in the aftermath of the deadly tornadoes that hit our state in late April. More than a month has passed and it's quite apparent that the recovery will take a very long time and will be very expensive. It appears that damage to insured property from the deadly tornadoes could reach as much as \$4 billion, which will set a new record. The state's old record for damages to property covered by insurance from a natural disaster was \$2 billion from Hurricane Ivan in 2004. Early estimates have put the damage across the South at as much as \$6 billion. To put the current damage assessment in perspective, damage to insured property in Alabama during Hurricane Katrina in 2004 was \$1 billion. Seventy percent of the damage from the tornadoes in the Southeast was in Alabama.

It should be noted that a significant amount of the total damages was to property that had no insurance coverage and that is very sad. According to the Red Cross, about 14,000 homes were destroyed or heavily damaged in Alabama. Another 9,400 dwellings sustained less severe damage. In addition, a large number of businesses were also destroyed or severely damaged. Since many of the dwellings and businesses were underinsured, that will cause major problems for the owners.

The April tornados were more violent and widespread than any our state has ever seen. It has been reported that 305 tornados touched down during the April 25th-28th outbreak. This was double the April average of 161 tornados. Gov. Robert Bentley and executives from five large insurance companies met in early May to assess the situation. The Governor said state officials learned during Ivan and Katrina that about 70 to 75% of Alabama's homeowners are insured for their losses. For those who are not insured, help is available through the Federal Emergency Management Agency.

Gov. Bentley has been pleased with the response, including everyone from President Barack Obama, who visited the state

and approved disaster assistance, to the hundreds of emergency response workers and tremendous number of volunteers who have worked tirelessly in the clean-up and recovery efforts. Most of the attention—and justifiably so—has been on the deaths and property damage in the counties that were hit hardest by the destructive tornadoes. There is also the emotional damage for the survivors that must be dealt with. Many Alabamians lost family members and friends. Thousands have lost either their businesses or their jobs and will have tremendous financial problems as a result. The economic losses to our state are huge and will be felt for a very long time.

FEMA's maximum grant for storm damage is \$30,200. While that money can be used to bridge some gaps between insurance coverage and costs to replace a home, it's not enough to rebuild a destroyed dwelling. In addition, the maximum grant includes temporary housing the agency can provide for up to 18 months. Those who need larger amounts to rebuild homes and don't have any insurance or don't have enough insurance coverage to cover the costs can apply for a loan from the Small Business Administration. The deadline for applying for an SBA loan is June 27th.

The disaster has brought folks in our state much closer together and that has been a good thing. Since the tornadoes struck, both the volunteer efforts and financial giving by Alabama citizens and organizations have been unbelievably good. It makes me realize there are lots of good folks in our state who really care about their fellow citizens. The recovery will be difficult and lengthy, but I am convinced that we will restore the areas hit by the tornadoes. In the meanwhile, we can't let any parts of the state be overlooked. Neither can we let the passage of time weaken our resolve to help folks who still badly need our help.

Source: *Tuscaloosa News*

THE REVOLVING DOOR IN OUR NATION'S CAPITOL

I have written on several occasions how key employees, including heads of federal agencies, seem to wind up working for the very companies they regulated while employed. While this has been common in the automobile and drug industries, it appears this sort of thing also happens in the communications industry. Recently, Mer-

edith Attwell Baker, a Federal Communications official, voted to approve a mega-merger between Comcast and NBC. You will never guess where Ms. Baker works now. Would you be surprised and maybe even shocked to learn that she now works as a lobbyist for none other than Comcast?

The "revolving door phenomenon," in which public officials go to work for Corporate America, exploits obvious connections and information they gained as public servants, and then pushes the corporate agenda in Congress and in the White House. An interesting aspect of the Comcast-NBC merger is that Ms. Baker was saying in speeches in March that the deal

IN THIS ISSUE

I.	Capitol Observations	2
II.	A Report on the Gulf Coast Disaster	3
III.	Purely Political News & Views	3
IV.	Legislative Happenings.	4
V.	Court Watch.	5
VI.	The National Scene	6
VII.	The Corporate World.	7
VIII.	Congressional Update	11
IX.	Product Liability Update	12
X.	Mass Torts Update.	13
XI.	Business Litigation.	17
XII.	Insurance and Finance Update	18
XIII.	Premises Liability Update.	21
XIV.	Workplace Hazards	22
XV.	Transportation.	22
XVI.	Healthcare Issues	24
XVII.	Environmental Concerns	25
XVIII.	The Consumer Corner	25
XIX.	Recalls Update.	31
XX.	Firm Activities	36
XXI.	Special Recognitions	37
XXII.	Favorite Bible Verses	38
XXIII.	Closing Observations.	39
XXIV.	Parting Words	39

“took too long.” It’s not surprising that folks all over the country are frustrated and feel betrayed when they read about this sort of thing. But it’s just another example of how giant corporations are favored and taken care of over ordinary citizens in our Nation’s Capitol.

ETHICS REFORM COULD KILL MINOR LEAGUE BASEBALL IN ALABAMA

The State of Alabama is most fortunate to have four minor league baseball teams. Each is a Double A team affiliated with a major league team. Considering there are only 30 such teams in the United States, our state has been most fortunate. These teams are unique assets and very valuable in many ways to Alabama. Unfortunately, the teams now face serious economic issues because of some apparently unintended consequences of the so-called ethics legislation that was passed at the tail-end of the Riley years. I don’t think when they passed the new law that legislators intended to hurt the minor league baseball teams in our state. But the reality is they have done exactly that and the damage done could have very serious consequences.

Team owners in Alabama are now facing serious issues caused by the new law. The provisions doing the damage are in conflict with what was believed to be the intent of the legislators. A sporting ticket is defined in the Act as a “thing of value.” I am told by informed sources that there have been sharp declines in team revenues because of the new law. The companies leasing the suites simply don’t want to run the risk of being prosecuted over the cost of a ticket to a baseball game. I understand the value of a suite ticket is about \$15. This revenue loss directly impacts the communities where the teams are located. Sponsorship revenue, which is key to maintaining low ticket prices, has been put in serious jeopardy.

Minor league baseball is unique in that each of the teams in Alabama is part of public-private economic efforts. Simply put, these facilities were built by municipalities with a private tenant revenue arrangement relating to the team’s success and the ability of the municipality to offer other events at these multi-purpose facilities. These facilities not only attract economic development, but improve quality of life in the areas served by the teams. No other facilities, other than minor league baseball stadiums in Alabama, serve a similar purpose.

The ethics law should be amended to save minor league baseball in Alabama. A simple change in a law that, in its current state, is extremely vague and probably unconstitutional, would solve the problem. Failure to do this will result in an economic blow to our state. The average payroll of a Double A team is \$1,800,000 for full-time and game-day staff throughout the calendar year. Minor league players are paid by Major League Baseball. In addition, an estimated \$2,000,000 is spent by the team with local vendors.

To put things in perspective, an estimated 2,000 hotel room nights are booked in Alabama each year in conjunction with baseball games and special stadium events. In addition, when our state’s teams host All-Star Games or exhibition games a significant economic impact occurs. The regular season home games result in a tremendous increase in downtown traffic and spending for local businesses, especially hotels and restaurants. The teams are responsible for revenue sharing payments in accordance with the leases. In addition to the rent, sales and business taxes contribute substantial amounts each year. According to the *Montgomery Business Journal*, July 2010, The Montgomery Biscuits have already paid \$4 million in revenue sharing rent since 2004. The City of Montgomery now owes \$5 million of a Series B bond issue which is paid by the team’s shared revenue. The City depends on the Biscuits remaining in Montgomery and doing well financially.

If you believe minor league baseball is important to our state and you want to help save it, contact your Senator and House members and ask them to join the team and vote to amend the ethics law. I believe it’s the right thing to do.

II. A REPORT ON THE GULF COAST DISASTER

BP ASKS JUDGE TO DISMISS THOUSANDS OF ECONOMIC LOSS CLAIMS OVER OIL SPILL

BP PLC has asked Judge Carl Barbier, the federal judge in charge of the oil spill litigation, to dismiss most of the claims filed against the oil giant by businesses and individuals who suffered economic damages caused by last year’s massive Gulf oil spill.

Judge Barbier heard arguments on the motions in late May, but at press time he hadn’t issued a decision. BP argued that Judge Barbier must dismiss the thousands of maritime and state law claims for economic losses by commercial fishermen, property owners and others. BP’s lawyers contend the claims are pre-empted by the Oil Pollution Act (OPA) of 1990. Plaintiffs’ lawyers, including our firm, dispute that the 1990 law is the only vehicle for resolving these claims. It should be noted that BP wants the court to say that both maritime law and state law are preempted and thus displaced by OPA and the Outer Continental Shelf Lands Act (OCSLA). We don’t believe that Judge Barbier will agree with BP on its contention.

But, regardless of whether state law applies to BP (and we firmly believe it does), Transocean, Cameron and Halliburton are not “responsible parties,” as defined by the law, so they can’t use OPA as a shield to their aggravated and very clear liability. We don’t dispute that the Limitation Action by Transocean is proper and the other parties have each been tendered in. This is the case that will be tried in the MDL in February.

III. PURELY POLITICAL NEWS & VIEWS

THE NATIONAL REPUBLICAN PARTY IS ATTACKING THE WRONG FOLKS

Based on media reports from around the country, it’s evident that the National Republican Party has declared war on “public employees,” making them a target for scorn and rejection. Teachers, firefighters, police officers, public health researchers, caregivers, sanitation workers, census takers, park rangers, air traffic controllers, and just about everybody else who is on a public payroll have been victims of the attacks. Based on reports, it appears that the attacks have been pretty nasty in some places.

It’s been reported that these well-funded attacks are carefully orchestrated by some hard core billionaires, including the Koch brothers. When you get down to it, these are really veiled attacks on the middle class in America. This is where the attacks are really aimed. If the right wing extremists are successful in their attempts to take over

government at both the national and state levels, their agendas will favor and protect the billionaires in Corporate America and will totally ignore the real needs of ordinary folks.

I predict the American people will eventually come to realize that voting for candidates in congressional races who are supported by right wing extremists are votes against their own self-interest. I have been rather amazed that people generally appear to ignore economic issues at the polls.

WHAT HAPPENED TO THE SURPLUS?

I read an interesting Op Ed piece recently in the *New York Times* written by Paul Krugman entitled "The Unwisdom of the Elite." While this piece dealt largely with the federal deficit, it also posed a question that got my attention. It was asked, "What happened to the budget surplus the federal government had in 2000?" Mr. Krugman answered by listing three main things that not only spent the surplus, but left the government and American taxpayers with a large deficit. Let's take a look at his list and see how accurate it is.

First, Mr. Krugman lists the Bush tax cuts, which added about \$2 trillion to the national debt over the last decade. Second, he lists the two wars in Iraq and Afghanistan, which combined added an additional \$1.1 trillion. And third on the list was the Great Recession, which led both to a collapse in revenue and to a sharp rise in spending on unemployment insurance and other safety-net programs, according to Mr. Krugman.

Mr. Krugman then goes on to tell who was responsible for all of the above. He correctly points out that it was definitely not a groundswell of public support for any of the three listed things that caused our national government to go from a surplus of over \$230 million in 2000 to a huge deficit in eight years, a relatively short period of time. Regardless of whether you agree with the above, it's impossible to ignore any of the three items mentioned by Mr. Krugman when making a list of reasons for our current deficit.

Source: *New York Times*

ALEC IS A NON-PROFIT THAT IS PRETTY PROFITABLE

I seriously doubt that many of our readers have ever heard of the American Legislative Exchange Council (ALEC). With a name like this, most would probably assume ALEC to be an entity that works for either Congress or state legislative bodies in some manner. While ALEC is a 501(c)(3) non-profit organization—and thus tax exempt—it is far from not being highly profitable. Washington, D.C.-based ALEC was created in 1971 by a small group of right wing political activists and elected officials. It has an annual budget of about \$7 million.

You might recognize the name Paul Weyrich, who also set up the Heritage Foundation, as one of the founders. Weyrich has been identified with right wing politics on a national scale. ALEC has numerous corporate donors, including ExxonMobil, the Koch brothers, Wal-Mart, GlaxoSmithKline, A T & T and many others. Most of what ALEC does helps the GOP with legislation of a political and highly partisan nature. Much of this work has been aimed at public employees and minorities, and from what I can tell, the work wasn't designed to "help" any of those folks in any respect.

IV. LEGISLATIVE HAPPENINGS

THE REGULAR SESSION WILL SOON BE OVER

As this issue was being sent to the printer on May 27th, the Alabama Legislature had one day earlier completed its 27th legislative day after having returned from a two-week break. Upon the Legislators return, the two budgets were passed quickly and were sent to the Governor for his signature. Regardless of hearing how great the budgets are from some in the Legislature, in their present form, these budgets will do great and long-lasting damage and harm to our state. Many believe Gov. Robert Bentley will place some needed amendments on the two budgets, especially amending the General Fund budget.

A few more bills are considered important by the leadership in the House and Senate, and they will likely pass during the last week of the session. Clearly, there are

several important matters to be considered, including the Congressional redistricting bill. But there are only three days left in which to get them passed. We will report on the final days of the session—and an overall recap of the entire session—in the July issue.

FOREVER WILD DESERVES ALABAMA VOTERS SUPPORT IN 2012

The Alabama Senate passed the amended Forever Wild reauthorization. The House will likely approve the Senate version, which calls for a referendum. The House had earlier approved a bill without the call for a referendum. From all indications, that body will agree to put the issue on the 2012 ballot.

I would have preferred for the Legislature to have approved Forever Wild's funding mechanism, but it's never a bad thing to give folks a chance to express their opinion at the ballot box. Alabama voters voted to create the program in 1992 by an overwhelming majority of 84 percent. I believe they will vote in a similar fashion next year.

Forever Wild's funding comes from 10 percent of the investment interest earned on natural gas royalties paid into the Alabama Trust Fund. The amount the program receives annually is capped at \$15 million. Over the past 18 years, Forever Wild has used that money, along with federal grants, to buy 222,000 acres in 37 tracts that are now open to the public in the form of nature preserves, state parks, recreation areas and wildlife management areas. Hunting is allowed on more than 184,000 of those acres, but the land has many other recreational uses.

Without Forever Wild seed money, the state would be shut out of the federal grant process. So far, nearly \$50 million of the \$164 million used to buy public land has come from federal sources, according to a 2009 report on the Forever Wild Land Trust's activities. It should be noted that Forever Wild is able to buy land from willing sellers and at fair market value only. Contrary to what some have said, nobody's land has ever been taken against their will. There has been a huge economic benefit from acquiring these public lands. Instead of trying to cut the program, as some opponents have argued for during debate on its reauthorization, Alabama should promote those lands as tourist destinations.

Source: Al.com

ALABAMA PASSES BILL TO REGULATE STORAGE OF COAL ASH

Alabama has become the last state in the country to regulate coal ash under new rules that may lead coal-burning utilities to change how they store the toxic material. Currently in the state, most of the ash byproduct of burning coal is either sold for recycling into other materials or stored in ponds near the plant that produced it. The U.S. Environmental Protection Agency has been contemplating whether to treat coal ash as a hazardous material and impose tight restrictions on how it's handled. But the Alabama Legislature acted first and passed a bill with its own new, less-stringent rules.

Environmental groups endorse Alabama taking authority over the ash as a solid waste, saying it is better than no regulations at all. Also, the state's solid waste designation would be superseded if the federal government decides to treat it as hazardous. The bill removing the exemption for coal ash from the state's solid waste law was approved unanimously by the Legislature and was signed into law by Governor Bentley.

The new law gives the Alabama Department of Environmental Management the power to require that dry coal ash be stored in permitted landfills with liners and groundwater monitoring in place. The law won't change how ADEM treats coal ash stored in wet ponds, which is to only monitor the water that is discharged off the top of the pond after the ash settles, and not the nearby groundwater.

It appears that if power companies in Alabama, or from other states, were to clean out their ash ponds and send the dry ash to an Alabama landfill, ADEM would now have authority over that process. The Tennessee Valley Authority, for example, announced plans to convert its wet storage ponds to dry after one of its facilities in Tennessee ruptured, spilling 5.4 million cubic yards of the toxic sludge across 300 acres. Coal ash contains several dangerous materials, including mercury and arsenic, which can cause cancer and other serious health effects if they contaminate drinking-water wells.

The EPA has two proposals pending, one to treat it as hazardous and the other as non-hazardous. The agency received more than 450,000 comments from the public, and a final rule is not expected before the end of the year. Both ADEM and Alabama Power Co. oppose the hazardous waste

option. Conservation Alabama supported the ADEM bill on solid waste. Adam Snyder, executive director of Conservation Alabama, says that before the new law was passed, coal ash could be spread on a field legally. At least now it has to be in a landfill that is regulated and monitored. The legislation also allows coal ash to continue to be recycled into things like concrete.

Source: AL.com

KILLING THE ALABAMA LAW INSTITUTE WOULD HAVE BEEN A BIG MISTAKE

It appears that a few members of the House let a personal vendetta against the Alabama Law Institute cloud their judgment and that almost resulted in shutting down the organization. The institute, which is based at the University of Alabama School of Law, was created in 1967 and operates with a seven-member staff. The well-respected Institute volunteers to clarify, revise, and simplify state laws, among other duties. I believe it has been a valuable source of information to Legislators over the years. The Institute has also hosted orientation for incoming State Legislators every four years in Tuscaloosa.

The Institute currently operates with an annual appropriation from the state General Fund, which after proration, is \$673,454. But for the next fiscal year, the House for some reason cut the appropriation to \$50,000. Law Institute Director Bob McCurley said the Institute would have had to shut down if this appropriation had stood. In my opinion, it would have been a big mistake to pull the plug on the Institute and put it out of business.

Gov. Robert Bentley, who is facing significant budget shortfalls because of declining revenues, and some very poor fiscal planning in past years, recommended cutting the Institute's budget to \$561,562 for 2011-12. The Senate went along with the Governor's recommendation, but the House voted to cut the appropriation to the Institute to \$50,000. The budget went to a House-Senate conference committee for reconciliation when the Legislators returned to Montgomery. A compromise was reached by the Legislative leadership and it appears the Institute will survive. The orientation will apparently be moved to Montgomery. Perhaps that's a good thing, but I doubt folks in Tuscaloosa or at the University of Alabama would agree.

Source: Tuscaloosa News

V. COURT WATCH

U.S. SUPREME COURT CONSIDERS MAJOR CLIMATE-CHANGE CASE

The U.S. Supreme Court heard a major climate-change case last month that should be getting more attention. It appears that the Justices may rule that the Environmental Protection Agency, rather than the courts, should address greenhouse-gas emissions from major power plants. Justice Ruth Bader Ginsburg had this to say which gives a good indication how she is thinking:

Congress set up the EPA to promulgate standards for emissions, and the relief you're seeking seems to me to set up a district judge, who does not have the resources, the expertise, as a kind of super EPA.

The Supreme Court heard oral arguments in the case—American Electric Power Co. v. Connecticut—which has pitted five major power companies and the federally-operated Tennessee Valley Authority against six states, New York City and a few private land trusts. The states are suing the companies for emitting massive amounts of greenhouse gases, arguing the emissions harm public health. The issues before the High Court are:

- whether the states' lawsuit is overtaken, or "displaced," by EPA climate regulations; and
- whether the courts should weigh in on the issue at all, or leave it to the executive and legislative branches of government.

The case deals with a series of big-picture issues that have come to the forefront of U.S. politics as the EPA begins to implement climate rules and Republicans and some Democrats in Congress seek to block or limit the agency's authority to do so. The case comes after the Supreme Court ruled in 2009 that greenhouse-gas emissions could be regulated under the Clean Air Act if the EPA found they endanger public health and welfare. One of the arguments made by a lawyer representing one of the Plaintiffs sounds much like what is being said by some who base their arguments in other arenas on states' rights. It was said:

This case rests on the longstanding fundamental authority of the States

to protect their land, their natural resources and their citizens from air pollution emitted in other States.

It will be most interesting to see how the Court rules. Most Court observers believe Justice Ginsburg's view will be that of the majority.

Source: thehill.com

ALABAMA CHIEF JUSTICE WARNS OF POTENTIAL COURT FIGHT

Chief Justice Sue Bell Cobb says the state's court system can't operate on the \$138.9 million allocated to them in the separate budgets that have passed the Alabama House and Senate. She wouldn't rule out the possibility that the state's judges might go to court to force the Legislature to increase funding for the judicial system. Going to court was given as an option because the Alabama Constitution requires "adequate" funding of the courts. Any decision to go to court would have to be made by all nine Supreme Court justices. The Chief Justice made it clear that taking the Legislature to court would not be her preference. But the courts' funding crisis concerns all Alabamians and is a most serious matter.

Source: Associated Press

ALABAMA SUPREME COURT RULES IN UNINSURED MOTORIST CASE

The Alabama Supreme Court, in a recent case, ruled that a default judgment entered against an uninsured driver isn't binding against an uninsured motorist's (UM) insurance carrier. The gist of the case was that an injured party filed suit against a driver who had no liability insurance. Progressive Specialty Insurance Company, the uninsured carrier, was notified by the Plaintiff and intervened in the case. The Plaintiff obtained a default judgment against the uninsured driver who hadn't filed an answer to the Complaint. The Plaintiff tried to bind Progressive by the judgment.

The Supreme Court ruled that a Plaintiff's claim for UM benefits is dependent upon a binding determination, on the UM insurance carrier. The Plaintiff in such a case has to prove the tortfeasor's liability. The Court's ruling makes it very clear that the UM carrier has the right to intervene and defend its own interests rather than having to rely upon the uninsured motorist to defend the carriers' interests. The proper

course of action for a Plaintiff in such cases is to prosecute his or her claims against the UM carrier and not try to use a default judgment against an uninsured motorist dependent to prove damages.

VI. THE NATIONAL SCENE

STRONGER REGULATIONS ARE BADLY NEEDED

Lobbyists for Corporate America and corporate lackeys in Congress are trying to convince the American people that regulations meant to protect folks from the ignoble impulses of Big Business are the worst thing that ever happened to our country. Public Citizen—as it has done for over 40 years—is fighting to preserve regulations that prevent corporations from risking the health and safety of people in this country in their incessant pursuit of profits. Those who want to diminish or eliminate the ability of the American people to set reasonable limits on the behavior of corporations have either forgotten or ignored recent history. Let's take a look at the results of either no regulation or a lack of effective regulation:

- A worldwide recession caused by Wall Street tycoons, many of whom are back to their old tricks, even after the American taxpayers bailed them out.
- 11 workers killed, more than 200 million gallons of oil spewed into the ocean, and incalculable ecological and economic devastation throughout the Gulf region as a result of BP cutting corners so it could make more profits.
- 29 coal miners sacrificed to Massey Energy's reckless greed.
- Thousands upon thousands of U.S. Citizens sickened, injured or killed by bacteria-tainted food, lead-painted toys and malfunctioning cars.

Despite these tragic examples, corporate executives and their lobbyists, as well as a good number of politicians, have undertaken an unprecedented campaign to tighten their chokehold on the lives of people by further weakening what already in most instances are modest regulations and safeguards. Congressional leaders have

formally asked more than 150 corporations, trade associations and neoconservative think tanks to provide a wish list of consumer, environmental, public health and other protections to eliminate. It's no surprise to learn they got a huge response to their requests. This is the leading edge of an insidious movement to strip away regulations that keep our food safe, our air and water clean, and our economy from collapsing—all with the aim of maximizing corporate profits that are already at record highs.

"Junk economics" is being used to mislead the public and attack regulations under the pretense that the regulations cost jobs and limit economic growth. Public Citizen has examined the so-called corporate "analyses," and found them to be "chock full" of fake calculations. According to the consumer advocacy group, they also deliberately ignore the obvious benefits of regulation. Fortunately, Public Citizen has launched a grassroots campaign to fend off the corporate assault on regulatory protections. The consumer advocacy group will profile victims of corporate wrongdoing to highlight the real-world impact of regulatory failure. Public Citizen will also deconstruct the groundless claims about the "costs" of public protections—and document the "enormous benefits of regulation."

It should be noted that even while many people are hurting, things are plenty good for big business right now—but not for workers. It has been reported that U.S. corporations raked in record profits of \$1.678 trillion in 2010. So it's obvious their failure to hire new workers has nothing to do with regulations. Corporations and their lobbyists routinely overstate the costs of public protections and ignore their benefits. Unfortunately, this approach works because the national media on too many occasions buy into the message.

Big Business must be properly regulated to stop rampant criminality and wrongdoing. For example, in the past five years alone, Big Pharma paid \$14.8 billion in penalties for allegedly violating federal and state laws, primarily for cheating the federal and state governments on price, and for improperly marketing medicines for purposes for which they had not been approved. It's obvious that we need stronger prescription drug safety rules and enforcement. The FDA is compromised because 50% of its budget for drug review and approval is provided by the pharmaceutical industry. As a result, the agency often is viewed as little more than an extension of Big Pharma, rather than serving the public it's supposed to protect.

Since the adoption of drug company funding in 1992, the FDA has reviewed and approved a record number of new drugs that later had to be recalled from the market. In fact, Public Citizen research published in the *Journal of the American Medical Association* has shown that one in five new drugs was found to have a significant safety problem after it had been approved. Does that sound like the FDA was doing its job?

On another front, most Americans believe polluters must be regulated to protect our health and the planet. Greenhouse gas and other pollutants threaten us with climate catastrophe, while worsening a virtual epidemic of asthma and other lung diseases. Stronger clean air rules will unleash a wave of technological innovation that will improve environmental health and reinvigorate the U.S. economy. People in the Gulf Coast states don't need to be reminded that we need tougher rules on oil drilling to prevent a recurrence of the BP disaster.

We experienced first-hand recently what weak regulation of financial institutions did to our nation's economy. That should be a proof enough that Wall Street and other big corporations must be regulated. The failure to regulate the financial service industry—and to enforce existing regulations—led directly to the Great Recession and the loss of eight million jobs, with most of those lost being in small businesses. The Great Recession was brought on by a runaway financial sector, empowered by reckless deregulation. Public Citizen won the first steps in Wall Street reform last year thanks to the involvement of tens of thousands of supporters.

We should all join with Public Citizen and help defend the gains that have been made by the group and push forward for additional measures needed to protect consumers and our economy from predatory practices in the financial industry. Please don't be misled by those who would tell you that we need less regulation of Corporate America. You can rest assured that you will hear this line many times over the upcoming weeks and months from those in Corporate America who are working hard to keep Congress under their control. I urge all of our readers to join with Public Citizen and fight to protect the rights of all American citizens. If you need more information go to citizen.org.

Source: Public Citizen

CLIMATE CHANGE WAS PREDICTED TO CAUSE VIOLENT STORMS AND TORNADOS

It was reported in 2007 that NASA scientists had developed a new climate model indicating that the most violent storms and tornados would become more common as the Earth's climate warms. The model was developed at NASA's Goddard Institute for Space Studies. I have to wonder if the federal government's failure to address the climate change issue played a role in causing the violent storms, tornadoes and floods that have devastated much of the country in recent weeks. Never in my life has there been such a series of violent storms and floods in the U.S., and actually around the world.

I have great difficulty comprehending how the lobbyists for the big oil companies can say that we don't have a most serious climate change problem. The best evidence of the warming is in Greenland and Antarctica where the polar ice caps are melting much faster than scientists once believed, described as "runaway rates." This should make even the honest skeptics wonder what is causing all of this to happen. One way to deal with a problem is to "pretend it doesn't exist." Unfortunately, that has been the way the oil giants and their lap dogs in Congress have dealt with a most serious international problem. It's time to take action, not just in Congress, but on an international scale, if we are going to save our planet for future generations.

3,200 GULF WELLS ARE UNPLUGGED AND UNPROTECTED

It was reported recently by Associated Press that there are more than 3,200 oil and gas wells, classified as active, lying abandoned beneath the Gulf of Mexico. These wells have no cement plugging to help prevent leaks that could threaten the same waters severely damaged by last year's BP spill. Associated Press has been looking into this situation for a good while, and an extensive account of their findings can be found in an April 20th story. These wells could pose an even greater environmental threat than the 27,000 wells in the Gulf that have been plugged and classified officially as "permanently abandoned" or "temporarily abandoned." Those sealed wells were first tallied and reported as a major leaking threat in an investigative report by Associated Press in July.

According to Associated Press, the unplugged wells haven't been used for at least five years. The federal government says there are no plans to restore production on them. Operators have not been required to plug the wells because their leases have not expired. As a result, there appears to be little to prevent powerful leaks from pushing to the surface. Even depleted wells can re-pressurize from work on nearby wells or shifts in oil or gas layers beneath the surface. Unfortunately, no one is watching to make sure this sort of thing doesn't happen.

Federal regulators have acknowledged that even some plugged wells have leaked in the past. And, as the AP disclosed last summer, there is no routine monitoring of abandoned wells—plugged or unplugged. The oil and gas industry generally views plugging on unexpired leases as an inconvenience and prefers the freedom to resume operations at any time on such wells. While I am not sure how dangerous these wells are, it does give me cause for concern.

Source: Associated Press

VII. THE CORPORATE WORLD

OUR FIRM CONTINUES TO PURSUE QUI TAM LAWSUITS

Lawyers in our firm continue to investigate qui tam lawsuits, which are suits brought by private citizens on behalf of the United States to recover monies owed to the government. The law provides citizen-Plaintiffs, called "relators," with powerful incentives—sometimes up to 30 percent of the amount recovered—to report instances of fraud against the federal government. The relator must have first-hand knowledge of the alleged fraudulent activity.

Government healthcare programs, such as Medicare and Medicaid, are common targets of fraud. Studies have shown that as much as 10% of Medicare and Medicaid charges are fraudulent. Common examples of Medicare and Medicaid fraud include:

- Billing more than once for the same service;
- Charging for services not performed;

- Offering free items or services in exchange for a Medicare or Medicaid number;
- Billing for expensive equipment while providing cheaper equipment; and
- Someone other than the physician completing the certificate of medical necessity.

Without any doubt, fraud on Wall Street has been widespread. The Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the SEC to reward those who expose fraud at public companies from 10% to 30% of the amount it recovers over one million dollars. Whistleblowers have been extremely helpful in uncovering fraud by large corporations. A 2009 *qui tam* suit resulted in a \$2.3 billion settlement of civil and criminal charges against Pfizer for using illegal sales tactics.

According to Reuters, a record 573 new *qui tam* cases were filed in 2010, an increase from 433, the year before. Justice Department data indicates that awards for reporting fraud hit a record high of \$385 million in the fiscal year ending September 30, 2010. The total rose nearly 50% from the previous year and was the third increase in a row. Lawyers in our firm who handle *qui tam* litigation predict that awards like these will create a powerful incentive for more whistleblowers to come forward in 2011. For more information on *qui tam* suits, you can contact Archie Grubb, a lawyer in our Consumer Fraud Section, at 800-898-2034 or Archie.Grubb@beasleyallen.com.

Source: LawyersandSettlements.com

SEC APPROVES NEW WHISTLEBLOWER RULE

In a major development, the U.S. Securities and Exchange Commission has made it easier to stop some of the fraudulent conduct on Wall Street. Corporate whistleblowers who report financial wrongdoing under the new program will now have a stronger incentive to speak out and report fraud and other bad conduct. This new rule comes as a result of last year's Dodd-Frank Wall Street overhaul law. Whistleblowers will now be paid between 10 and 30 percent of sanctions over \$1 million for original and useful information.

The rule does not require whistleblowers to first, or simultaneously, report problems internally. But in a concession to companies the final SEC version would make a whistleblower still eligible for a reward if he or she

reports wrongdoing to the company, and the company, in turn, reports it to the SEC. A whistleblower can also improve the chances of receiving a higher percentage award by internal reporting, but the rule only protects the whistleblower from retaliation if the employee also reports wrongdoing to the SEC.

The new SEC rule greatly expands the agency's authority to reward whistleblowers. Prior to Dodd-Frank, the SEC could only reward whistleblowers for tips on insider-trading cases. SEC Chairman Mary Schapiro said the new "rules are intended to break the silence of those who see a wrong." She added that the final measure struck the correct balance between encouraging whistleblowers to report problems internally when appropriate, while providing the option of heading directly to the SEC. Robert Khuzami, who is SEC enforcement chief, told the SEC's public meeting on the subject that the rule was already encouraging people to come forward. People who provided tips after Dodd-Frank was signed into law last July could be eligible for a reward.

The SEC's two Republican commissioners voted against the rule. Supporters of the rule, such as the National Whistleblowers Center, lauded the agency for resisting opposition from corporate lobbyists. The rule is expected to take effect 60 days after it is published in the Federal Register. As a matter of interest, the Commodity Futures Trading Commission is working on a similar rule.

Source: *Insurance Journal*

FEDEx PAYS GOVERNMENT \$8 MILLION TO SETTLE WHISTLEBLOWER LAWSUIT

FedEx will pay the federal government \$8 million to settle a whistleblower's lawsuit that claimed the company's couriers blamed heightened security measures for late deliveries to avoid paying penalties for missing shipping deadlines. The agreement was unsealed on May 3rd in U.S. District Court for the District of Columbia. The lawsuit alleged the practice began in the wake of the 2001 terrorist attacks, but continued through this year after beefed-up security had subsided or become routine and not an unpredictable hurdle.

The government said that couriers handling shipments for federal offices invoked security delays to mask late arrivals after they had become stuck in traffic, couldn't find parking or were tardy on relays of

packages. It was alleged that FedEx workers cited a security delay exception rather than honor money-back guarantees in contracts with federal customers when deliveries were late. FedEx denied all charges, but still it settled the case. The suit was originally brought under the federal False Claims Act by whistleblower Mary Garofolo, who worked for FedEx at its station in Crofton. Garofolo will receive \$1.44 million as her share of the money the government is due to recover. Ms. Garofolo retired from FedEx in 2007.

Source: *Washington Post*

DIALYSIS COMPANY SETTLES WHISTLEBLOWER LAWSUIT

Kidney dialysis provider Fresenius Medical Care AG has been ordered to pay \$82.6 Million to resolve a whistleblower lawsuit. The company was accused of overcharging Medicare. Fresenius and two of its subsidiaries overbilled Medicare between 1999 and 2005 for home support dialysis supplies.

Source: *Bloomberg*

UBS TO PAY \$160 MILLION TO SETTLE CHARGES

UBS Financial Services Inc. has agreed to pay more than \$160 million to settle anti-trust, securities fraud, tax and other charges with three federal agencies and 25 state Attorneys General, including Luther Strange of Alabama. UBS had been charged with rigging bids for at least 100 reinvestment transactions in 36 states, threatening the tax-exempt status of more than \$16.5 billion of municipal bonds. Justice Department and Securities and Exchange Commission officials announced the settlement with the firm, which left the municipal bond market in 2008.

Officials with the Justice Department said the anti-competitive behavior of the firm's former officials occurred during a period from 2001 to 2006. The \$160 million from the settlement will be divided as follows:

- \$91 million will be paid to the states;
- \$83 million of this money will serve as restitution to state agencies, nonprofits and other borrowers;

- \$47.2 million will be paid to the SEC, which will pass that money on as restitution to the 100 muni issuers; and
- \$22.3 million will go to the Internal Revenue Service.

UBS admitted and accepted responsibility for illegal, anti-competitive activity of former UBS executives in the municipal bond industry. It was alleged that former firm officials “used secret arrangements and multiple roles to win business and defraud municipalities through the repeated use of illegal courtesy bids, last looks for favored bidders, and money to bidding agents disguised as swap payments.”

The SEC said in its Complaint that between October 2000 through at least November 2004, UBS illicitly won bids for at least 22 muni reinvestment instruments, rigged at least 12 transactions while acting as bidding agents for contract providers, and submitted at least 64 “courtesy” or purposefully non-winning bids for contracts. It also, in at least seven instances, paid undisclosed kickbacks to bidding agents, purportedly for services rendered in connection with an interest rate swap, or on behalf of a winning provider of a contract, according to the commission. The SEC charged that “in each instance, UBS made fraudulent misrepresentations or omissions, thereby directly or indirectly deceiving municipalities and their agents.”

The issuers were located in Massachusetts, Colorado, Rhode Island, California, and New Jersey, among other states, according to the SEC. The former UBS officials rigged the bids to make it seem like they were competitive when they were not. Under federal tax rules muni bond issuers are provided with a “safe harbor” that assures the prices of their investment contracts will be treated as having fair-market value if strict bidding rules are followed, including that at least three competitive bids be obtained for investment contracts.

The investments must be purchased at fair-market value to ensure the issuers have not earned illegal arbitrage profits—higher investment yields than bond yields—that could threaten the tax-exempt status of the underlying bonds. According to federal regulators their investigation is active and ongoing. The Justice Department has already indicted 18 individuals in connection with the probe. The enforcement action against UBS comes after Bank of America LLC, now Bank of America Merrill Lynch, agreed in December to pay more

than \$137 million to settle charges with the SEC, the IRS, the Federal Reserve and the Office of the Comptroller of the Currency, as well as 20 state Attorneys General in connection with the investigation. The bank was granted amnesty from criminal charges by the Justice Department in 2007 in return for fully cooperating with that Department’s antitrust probe and the parallel civil investigations.

Source: bondbuyer.com

FEDERAL GOVERNMENT SUES DEUTSCHE BANK OVER MORTGAGE FRAUD

The United States has filed a civil lawsuit against Deutsche Bank AG, accusing the German bank of defrauding the government by repeatedly lying to obtain federal insurance guarantees on mortgage debt. The lawsuit filed against Deutsche Bank and its MortgageIT Inc unit is believed to be among the first targeting mortgage lenders under the federal False Claims Act. The suit is the latest push by the federal government to hold the mortgage industry responsible for excesses that contributed to a four-year-old U.S. housing slump and hundreds of thousands of foreclosures. It’s unclear at this juncture whether the government will target other banks with more lawsuits. The government is seeking more than \$1 billion from Deutsche Bank.

The suit, which was filed in U.S. District Court in Manhattan, says MortgageIT from 1999 to 2009 endorsed more than 39,000 mortgages totaling more than \$5 billion for Federal Housing Administration insurance. This meant they were backed by the federal government. Knowing they would profit from the eventual resale of the loans, it’s alleged that the Defendants were guilty of recklessly choosing mortgages that violated program rules “in blatant disregard” of whether borrowers actually had the ability to make payments. The government said it has paid out more than \$386 million of FHA insurance claims and related costs, and expects to pay out hundreds of millions of dollars more.

The Complaint seeks triple damages on the \$386 million of claims, as well as punitive damages, fines and other remedies. Deutsche Bank bought MortgageIT for \$430 million in 2007. The bank was also a target of an earlier report by the U.S. Senate’s Permanent Subcommittee on Investigations, criticizing lenders for contributing to the financial crisis. That report detailed how

investigators believed Deutsche Bank deceived clients into buying securities it believed were likely to implode. Deutsche Bank lost an estimated \$4.5 billion tied to the mortgage market collapse, but could have lost more had it not sold such securities, according to that report.

Source: *Insurance Journal*

BROOKE INSURANCE FRANCHISE EXECUTIVES SETTLE SEC FRAUD CHARGES

Five executives of Brooke Corp., a failed Kansas-based insurance agency franchise firm, have agreed to settle charges of financial fraud brought against them by the Securities and Exchange Commission. At press time, the charges against a sixth Brooke executive hadn’t been settled. The SEC charged the six executives with hiding critical information from investors and conducting a financial fraud. Each of the executives who pled guilty consented to orders of permanent injunction and permanent officer and director bars. They also agreed to pay penalties and disgorgement.

The SEC alleged that senior executives at Brooke Corp. And two subsidiaries—whose line of business was insurance agency franchising and providing loans to franchisees—misrepresented their deteriorating financial condition in filings to investors and other public statements in 2007 and 2008. The executives were engaged in various undisclosed schemes to meet almost weekly liquidity crises, but failed to disclose any of this. The reports that were filed were false reports and described accounting maneuvers used to conceal the rapid deterioration of the loan portfolio. It should be noted that the Brooke companies are no longer in business. Robert Khuzami, director of the SEC’s Division of Enforcement, had this to say:

The unscrupulous senior corporate executives at Brooke Corp. orchestrated a massive scheme to conceal the company’s deteriorating financial condition through virtually any means necessary, including reporting inflated asset values, double-pledging collateral, and diverting funds for improper uses. The fallout from their fraud had a devastating impact on the livelihood of hundreds of insurance franchisees that depended on Brooke and on the balance sheets of regional banks and other lenders, all of whom mistakenly relied on the

good faith and honesty of these executives.

In October 2008, Brooke Corp. declared Chapter 11 bankruptcy and suspended most of its operations. But the companies were unable to reorganize in bankruptcy. According to the SEC, the rapid collapse of the Brooke Companies had a “devastating regional impact as hundreds of its franchisees failed.” As a result of losses suffered on Aleritas loans, several regional banks also failed. The SEC’s complaint charges violations of, among other things, the antifraud, reporting, record-keeping, and internal controls provisions of the federal securities laws. The government’s complaint sought permanent injunctions, officer and director bars, and monetary remedies against the Brooke executives.

Source: *Insurance Journal*

NEW YORK ATTORNEY GENERAL INVESTIGATING WALL STREET FIRMS

New York State Attorney General Eric Schneiderman has requested information from three of the nation’s most powerful Wall Street firms in connection with an “active and ongoing investigation into the mortgage crisis.” The firms, Bank of America, Goldman Sachs and Morgan Stanley, bundled mortgages into securities and sold them to investors. It has been reported that this helped banks conceal troubled loans. At press time, no specific allegations of wrongdoing had been made by the New York Attorney General’s office.

Last October, Attorneys General in all 50 states, along with the Department of Housing and Urban Development, began an investigation into the mortgage crisis. Settlement negotiations have been ongoing. The New York investigation is said to be a “distinct and broader inquiry.” Mortgage loans packaged as securities were attractive to investors in part because the nation’s largest credit rating agencies often gave them Triple-A ratings. A Triple-A rating generally means that a security is not likely to default, but this wasn’t the case with many of the bundles big banks offered. It has been reported that some of those rated Triple-A defaulted. The 2nd U.S. Circuit Court of Appeals in New York determined last month that the ratings agencies, including Standard and Poor’s, Fitch Ratings and Moody’s Investors Service, could not be

held liable for their ratings. This investigation will be watched closely.

Source: *ABC News*

FRANCHISEES FILE CLASS ACTION LAWSUIT

A number of BP, ARCO and AmPm franchise owners have sued BP, claiming the giant oil company manipulates gas supplies and prices. It’s alleged that BP delivers less gas when oil future prices are trending up and deliver more gas at a higher price when oil future prices are trending down. The lawsuit, filed in federal court, also claims that BP required franchisees to install a defective, centralized point-of-sale system that hurt their businesses and brought customer complaints. Green Desert Oil Group, the lead Plaintiff, claims that BP sold Plaintiffs ARCO-brand gas stations “on the notion that ARCO has been and would continue to be known for its low-priced gasoline strategy as compared with other national brands, mainly due to an early 1980s decision to emphasize cost cuts for cash-only policy at its fuel pumps.”

The potential class, led by 15 Plaintiffs nationwide, makes a number of extremely serious charges against BP. The franchisees are asking for class certification and are seeking damages, injunctive relief to remove the Retalix system (a point-of-sale system), and punitive damages. The Complaint charges BP with breach of contract and negligence. The franchisees are represented by Jonathan Shub, a lawyer with Seeger Weiss, and James Lee, who is with Lee, Tran & Liang, both of Los Angeles. It will be interesting to see how BP defends this lawsuit.

Source: courthousenews.com

BP AGREES TO PAY \$25 MILLION FOR 2006 ALASKAN OIL PIPELINE SPILL

BP Exploration Alaska, Inc. has agreed to pay a \$25 million penalty for spilling more than 5,000 barrels of crude oil from the company’s pipelines on the North Slope of Alaska in 2006. This is the largest per-barrel fine ever collected by the government for an oil spill. The spill was caused by pipeline corrosion, and the government blamed BP for inadequate maintenance. Suit had been filed against the company in March 2009 in Anchorage federal court. Ignacia Moreno, assistant Attorney General for the Justice Department’s Environment and Natural

Resources Division, stated in a conference call with reporters:

This penalty should serve as a wake-up call to all pipeline operators that they will be held accountable for the safety of their operations and their compliance with the Clean Water Act, the Clean Air Act and the pipeline safety laws. It’s a just result for the American people.

BP has already spent \$200 million replacing the leaky lines. Under the terms of the settlement, the company will need to spend about \$60 million more to develop a system-wide program to manage pipeline integrity for the company’s 1,600 miles of pipeline on the North Slope. Cynthia Giles, who is assistant administrator at the Environmental Protection Agency, observed:

The spill was the result of gross negligence on the part of BP. The Clean Water Act gives the U.S. Authority to assess higher penalties when oil spills are the result of gross negligence, and this case sends a message that we intend to use that authority and to insist that BP Alaska and other companies act responsibly to prevent pipeline oil spills.

Of the \$25 million penalty, \$20.05 million will be deposited in the Oil Spill Liability Trust Fund. The rest will go to the U.S. Treasury. This isn’t BP’s first penalty related to the spill. In 2007, the company pled guilty to one misdemeanor violation of the Clean Water Act and paid a \$20 million criminal fine. The consent decree is subject to a 30-day period of public comment and must be approved by the court.

Source: legaltimes.typepad.com

QUEST DIAGNOSTICS TO PAY \$241 MILLION TO SETTLE LAWSUIT

Quest Diagnostics Inc will pay \$241 million to settle a civil lawsuit that alleged that the company had failed to comply with regulations, leading to overbilling for its services. According to the lawsuit, Medi-Cal—California’s Medicaid program—had overpaid for the company’s laboratory testing services.

The lawsuit was filed in the California Superior Court by smaller rival Hunter Laboratories. The State of California intervened in the case as a Plaintiff. Quest has agreed to reporting obligations regarding its pricing

for a limited period and will provide Medi-Cal with a discount until the end of July 2012. Under the settlement, the company will be released from all claims in the lawsuit.

Source: Reuters

EXPONENT PAYS THE U.S. GOVERNMENT TO CHALLENGE RESEARCH

Unless you are a lawyer who has handled a number of product liability cases, or you work for an automobile manufacturer or for the U.S. government, you may never have heard of a company by the name of Exponent, Inc. In an unusual scenario that raises questions of potential conflict of interest, this company that conducts research on behalf of the pesticide industry has paid a U.S. government agency to help prove some controversial chemicals are safe. The company, Exponent Inc., based in Menlo Park, Calif., is well-known to corporate clients facing product liability claims. In this recent situation, Exponent is trying to refute research showing that even a small amount of combined exposure to two agricultural chemicals, Maneb, a fungicide, and Paraquat, a herbicide, can raise the risk of Parkinson's disease, a progressive disorder of the central nervous system.

The federal agency involved is the National Institute for Occupational Safety and Health (NIOSH), a division of the Centers for Disease Control and Prevention. Federal ethics rules generally prohibit government employees from accepting money from businesses related to their jobs. This is to help ensure that government staffers remain "unbiased" and "free of corporate entanglements." Although NIOSH has statutory authority to accept "gifts," it doesn't utilize that authority to accept corporate donations for research, according to a NIOSH spokeswoman.

It appears Exponent was able to get around the restrictions by donating \$60,000 to the CDC Foundation, an independent, 501(c)(3) public charity. I understand the foundation then passed the \$60,000 along to NIOSH. While this appears to be legal under existing law, it fails to meet the "smell test." Congress authorized creation of the National Foundation for the Centers for Disease Control and Prevention in 1992 to solicit donations from outside the government to help protect public health. It incorporated in 1994.

Craig Holman, government affairs lobbyist for Public Citizen, the highly respected

Washington, D.C.-based consumer advocacy group, finds the arrangement troubling. He had this to say about Exponent acts:

This is a highly questionable and worrisome business relationship between private interests and the government," Holman said. "The CDC Foundation is a pass through for money from private enterprise that wants something out of the government. And so it is in effect really blurring the line between the monitor and those who are being monitored.

It has always seemed to me that Congress should appropriate adequate funds to governmental departments and agencies so that they wouldn't have to accept donations from private sources. This is especially true when the agency accepting the private funding has regulatory duties. It seems like it would be hard for an agency to accept a corporation's money and then have to regulate that company.

Source: bizactions.com

VIII. CONGRESSIONAL UPDATE

GULF COAST LAWMAKERS NEED TO GET TOGETHER ON THE OIL SPILL MONEY

It's high time for members of Congress to pass legislation that is badly needed for the Gulf Coast states. Although states on the Gulf Coast could receive as much as \$20 billion from the fines BP will eventually have to pay, thus far nothing has happened to make sure the states will actually get the money. There have been several bills introduced that propose how the fine money should be divided between the states, but so far not one single bill has passed.

For example, one bill, introduced by a senator from Florida (which has the most shoreline and population) would distribute the funds based on the length of a state's shoreline and population size. Another bill equally divides most of the funds among the states to be used for environmental projects. Alabama Congressmen, who believe our state suffered far more economic damage from the oil spill than other Gulf Coast states, don't like either of these bills. Rep. Jo Bonner, who represents the 2nd Congressional District in Alabama, believes

bills like those would largely leave Alabama out. He considers Alabama the "economic ground zero" of last year's spill.

It's essential that all of the lawmakers support efforts to help the Gulf Coast region recover from the oil spill. Legislation must be passed that will give Gulf Coast states most of the money BP will pay in fines. Thus far, lawmakers have introduced at least five bills, including the two mentioned above, that attempt to decide how and where the money should go. If an agreement can't be reached, there is concern that the money could end up going into a trust fund for future oil spills and to the U.S. Treasury. I agree with Casi Callaway, Executive Director of Mobile Baykeeper, an Alabama-based environmental group, who believes Alabama, Florida, Louisiana, Mississippi and Texas must work together so that the Gulf states can get the badly-needed money.

Rep. Steve Scalise of Louisiana, co-chairman of the recently formed Gulf Coast Caucus, reintroduced a bill earlier this year that would set aside 80 percent of the fine money to restore the Gulf Coast. Much of that would go to restoring and protecting ecosystems. Rep. Bonner has a bill that would send 80 percent of the fine money to the Gulf, but would steer much of that to coastal communities to help restore tourism and other industries. His bill has 13 cosponsors, including all members of Alabama's delegation.

Without a consolidated and cooperative regional approach, Gulf Coast lawmakers will have a difficult time convincing their colleagues from other regions to divert desperately-needed funds from the U.S. Treasury to the specific needs of the coastal states. Obviously, there are many needs that will require substantial funds. Areas of the country that were hit by the series of devastating tornadoes and floods have needs that must also be met. In addition to the economic and environmental needs along the coast, there will be huge health problems caused by the oil spill. BP's public relations efforts—unlike its terrible safety record—have been very good and highly effective. The further you get from the Gulf, I find that folks believe BP has solved all of the Gulf's problems. Those beliefs aren't helping to get members of Congress from other states to help the Gulf Coast.

It's time for all members of Congress from the Gulf Coast states to put aside their differences and, to the extent possible, join together and get the ball rolling.

Unless that happens we can't expect much to happen in Washington that will help the coastal states recover from the effects of the oil spill.

Source: *Montgomery Advertiser*

CONGRESS SHOULD REPEAL OIL SUBSIDIES AND INVEST IN CLEAN ENERGY

As has been widely reported by the national media, an important oil subsidies fight was lost in the U.S. Senate. Because of the power and influence of the big oil companies, I guess this was to be expected. Over the weeks before the vote to repeal the massive handouts to Big Oil, the industry's public relations machine went into overdrive. Their goal was to convince the public that taking away the handouts would hurt folks at the pump by driving prices up, which was totally false. While the Big Oil PR machine was working, the lobbyists spent their time and efforts making sure their "buddies" in the Senate didn't jump ship. The billions of dollars recouped had the subsidies been revoked could have been used to promote demand for clean and domestic fuel, provide incentives for the purchase of fuel-efficient vehicles and build a clean energy infrastructure. It would also have helped reduce the budget deficit.

While it's time for Congress to start looking out for the public's interest and not that of the big oil companies, nothing has happened thus far that hasn't benefited Big Oil. Over the years, the oil industry has wielded tremendous influence over presidents and members of Congress. As a result, the industry has been very well taken care of in Washington. The move by Democratic Senators to repeal the huge subsidies failed when there weren't enough votes to force a vote on the bill.

The tax breaks enjoyed by the five biggest oil companies amounts to over \$2 billion a year. The money saved had the Democratic Senators been successful would have been used to attack the spiraling deficit. It has been reported that the top five oil companies booked profits of \$36 billion in the first quarter of this year alone. Republicans who opposed to the bill claimed the companies would raise prices if the measure became law. I didn't buy that argument and I don't believe most Americans did either. There are members of Congress who continue to do the bidding of Big Oil, ignoring the needs of American citizens

and taxpayers which is a sad commentary on how things work in our Nation's Capitol.

Source: Public Citizen and *Forbes*

THE CONSUMER FINANCIAL PROTECTION BUREAU IS UNDER ATTACK

It's become most evident that Elizabeth Warren, who is spearheading the Consumer Financial Protection Bureau, has her work cut out for her. The new agency is designed to crack down on unfair, deceptive practices in financial products such as mortgages, student loans and credit cards. An agency of this sort has been badly needed to protect ordinary citizens and that has caused some of the Big Boys on Wall Street to pull out all stops in an effort to derail the agency before it even gets off the ground.

There are a number of bills in Congress to either delay the consumer agency, to defund it or to actually kill the agency outright. These bills are a direct attack on middle-class citizens. Wall Street lobbyists are pushing the bills that if passed would at least make the new bureau a weak and ineffective agency. We are hearing more of the expected cries of doom and gloom from the GOP saying that we don't need more regulation. Since it was largely a lack of regulation that caused our economic system to almost collapse, it would appear that sort of rhetoric would fall on deaf ears. But there are some in Congress who, when told to jump by powerful Wall Street lobbyists, respond by asking "How high?"

Hopefully, the American people understand how important the newly-created consumer protection agency is for them and will put pressure on Congress to back off and let the new agency do its badly-needed job. But when I consider how people consistently vote against their own economic interests in political races, I am concerned that ordinary citizens will buy into the push to weaken or destroy an agency designed to help and protect them.

WHITE HOUSE TO PROPOSE CYBERSECURITY LEGISLATION

The Obama Administration announced last month a major legislative proposal aimed at improving U.S. cybersecurity and protecting the economy. The proposal is the result of two and one-half years of work. As has been widely reported, U.S. computers have long been subject to hacking attacks, many of them believed to

have originated in China. This will be the first major cybersecurity legislative package proposed by any administration. The complex and systemic national vulnerabilities that place the American people and economy at risk must be addressed.

The proposed legislation is focused on improving cybersecurity for America's critical infrastructure and the federal government's own networks and computers. A critical balance must be reached between strengthening security, preserving privacy and civil liberties protections, and fostering continued economic growth. It appears that this proposal does just that. The Obama Administration wants Congress to enact a cybersecurity bill this year.

Source: *Insurance Journal*

IX. PRODUCT LIABILITY UPDATE

FORD CROSSOVER BEING INVESTIGATED FOR UNINTENDED ACCELERATION

The National Highway Traffic Safety Administration is investigating complaints that the Ford Freestyle crossover vehicle can lunge unexpectedly when driving at low speeds or idling. According to the agency, it has received 238 complaints involving 2005 through 2007 Freestyles. Eighteen minor crashes were reported to NHTSA with one minor injury. The seven-seat family haulers can lunge up to ten feet when the driver's foot is not on the accelerator or firmly on the brakes, according to NHTSA. But it says stepping on the brakes does firmly stop the car from moving.

The probe began on May 11th and it covers about 170,000 Freestyles. NHTSA will decide if a safety recall is necessary. Incidents of brief acceleration have been reported in both forward and reverse gears, according to NHTSA. As you may recall, Ford renamed the Freestyle the Taurus X during the 2008 model year and stopped making the vehicle in February of 2009. Details of the investigation were posted in mid-May on NHTSA's website.

Source: *Lawyers USA Online*

\$8.75 MILLION VERDICT AGAINST FORD UPHELD

In 2009, a Pennsylvania jury ordered Ford Motor Co. And a local dealership to pay \$8.75 million to the family of a 43-year-old tow truck operator who was killed when the parking brake on his truck gave way, causing the vehicle to roll on top of him. Joseph Blumer had just finished lowering a vehicle off the back of his Ford F-350 tow truck when the parking brake broke. The vehicle, which was in neutral gear and had a manual transmission, rolled down the hill it had been parked on and over Blumer, who suffocated. It was alleged in the Complaint that Ford Motor Co. knew as early as July 2000 that the parking brake system, used in all of its F-series vehicles between 1999 and 2004, was faulty.

The Pennsylvania Superior Court upheld that verdict last month, ruling that evidence of design changes and reports of prior incidents introduced by the Plaintiff were, in fact, admissible to the jury. Writing for a 2-1 majority, Judge Cheryl Lynn Allen ruled that evidence of design changes instituted by the Defendant manufacturer in the case was correctly presented to the jury because the changes were developed before the date of the subject accident. Further, Judge Allen ruled, the reports of prior incidents may have constituted inadmissible hearsay, but the Defendants failed to object to the reports during trial and failed to request a limiting instruction to the jury, thus waiving their right to appeal on the issue.

Ford sought a new trial, arguing that the Court erred in its evidentiary rulings. The majority of the Court disagreed. Judge Allen wrote: "The courts interpreting these rules, as well the notes accompanying them, make it clear that changes in design that are devised prior to the accident at issue are not barred as a subsequent remedial measure." And because the estate of the decedent proceeded in part on a malfunction claim, it was entitled to use circumstantial evidence as a means of establishing a *prima facie* case, Judge Allen wrote. That ruling applied as well to the question of the admissibility of the prior incidents reports.

The Trial Court conducted an in-camera review of those reports, ruling that 28 submitted by the Plaintiffs were admissible. Judge Allen ruled that 25 satisfied the "substantial similarity" test outlined by a 2010 Superior Court (*Lockley v. CSX Transportation Inc.*) decision. The reports, Judge Allen indicated, "need not detail the precise defect within the parking brake system in

order to be admissible as substantial similarity evidence because plaintiff proceeded on a malfunction theory."

Judge Allen ruled that Ford was still free to use cross-examination and other measure to argue the braking failure in Blumer was caused by something distinct. Further, the judge ruled that the reports may have arguably been hearsay, but Ford was required to preserve their objection to the evidence in a different manner. Ford, Judge Allen wrote, had argued that it preserved the issue by filing a motion *in limine* prior to trial and by requesting the limiting jury instruction. The judge wrote further that Ford did not preserve its appeal since it failed to make a hearsay objection at trial or base its request for a limiting instruction on hearsay.

Source: bizactions.com

X. MASS TORTS UPDATE

This may sound like a broken record, but our Mass Torts Section has been very busy over the past several months. Lawyers and their support staff in the section are currently investigating a number of drugs and medical devices. Several of them are already in litigation. I will mention briefly some of these projects.

DEPUY HIP REPLACEMENTS

Johnson & Johnson, in conjunction with its DePuy Orthopaedics subsidiary, announced at the end of August 2010 that it is recalling parts used for hip replacements. At issue is the high rate of repeat surgeries needed by people who have received the parts. An estimated 93,000 people will be affected by Johnson & Johnson's latest product recall. Affected hip replacement parts involved in the recall include the DePuy ASR XL Acetabular System and the DePuy ASR Hip Resurfacing System. Patients who reported problems in the first five years and had revision surgery reported a variety of symptoms, including pain, swelling and problems walking. These symptoms are normal for patients following a hip replacement, but can be a sign that something is wrong if they continue or come

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

We are currently reviewing cases involving individuals who have had a DePuy hip device implanted and all individuals unsure of the type of hip device implanted if the person has had revision surgery, or the person is experiencing hip pain, hip swelling or difficulty walking. If you need additional information or would like for our Mass Torts Section to review a potential claim, contact our firm at 800-898-2034.

Lawyers: Navan Ward, who serves on the PSC in the MDL, and Melissa Prickett

Primary Contact: Janet Pair and Amy Ross

DARVOCET AND DARVON

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

Propoxyphene is an opioid used to treat mild to moderate pain. First approved by the FDA in 1957, propoxyphene is sold by prescription under various names both alone (Darvon) or in combination with acetaminophen (Darvocet). After safety concerns were raised in 1978, and again in 2009, the FDA formed an advisory committee to review available data. In July 2009, a boxed warning was added to the drug, alerting patients and health care professionals of the danger of overdose. At that time, the FDA also required Xanodyne to conduct a new safety study assessing unanswered questions about the effect of propoxyphene on the heart.

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

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

Lawyer: Chad Cook
Primary Contact: Tabitha Dean

CRESTOR

Crestor (Rosuvastatin) is a popular prescription medication used to reduce the amount of cholesterol in your blood. Crestor, which is manufactured by AstraZeneca, was approved for use by the U.S. Food and Drug Administration ("FDA"), in August of 2003. Since that time, there have been several warnings issued by the FDA relating cholesterol lowering drugs (i.e. — statins) and serious adverse events.

A 2009 study, published in *The Lancet*, suggested that statins such as Crestor cause serious heart muscle problems, including cardiomyopathy. Cardiomyopathy, which means "heart muscle disease," is a deterioration of the heart muscle. Patients may experience difficulty breathing, swelling of the feet or ankles, rapid heartbeat and other symptoms. *The Lancet* article explained that the study's results "might be a reduction in the concentration of coenzyme Q10 or ubiquinone, which is known to be caused by statins."

Our firm is currently investigating claims involving Crestor use and cardiomyopathy.

Lawyer: Chad Cook
Primary Contact: Tabitha Dean

FOSAMAX

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

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

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

GARDASIL®

Gardasil, manufactured by Merck Sharp & Dohme Co., is aggressively marketed as a vaccine that prevents cervical cancer. In fact, it is a vaccine to prevent four types of the sexually transmitted disease, HPV (human papillomavirus). Gardasil is said to protect against four types of HPV, two of which are associated with cervical cancer. These two types of HPV are present in only 3.2% of the cases. At this time, Gardasil has not been proven to prevent cervical cancer. Scientific data indicates that the vaccine may not last longer than five years, if that long. The drug is indicated for young women and men from the age of nine years old up to 26 years old, though the vaccine is primarily given to girls. The Vaccine Adverse Event Reporting System has over 21,000 reports of adverse events related to the administration of this vaccine including more than 90 deaths. Serious adverse events include multiple sclerosis, blindness, Guillain-Barré Syndrome, lupus, rheumatoid arthritis, paralysis, blood clots and death. The vaccine is recommended to most young girls in their early teens. Parents should proceed with caution before allowing their daughters (and sons) to be vaccinated. We are currently investigating cases with documented use of Gardasil and a diagnosis of multiple

sclerosis, Guillain-Barré Syndrome, blindness, lupus, paralysis, rheumatoid arthritis and death.

Lawyer: P. Leigh O'Dell
Primary Contact: Melisa Bruner

HORMONE THERAPY

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

Lawyers: Ted Meadows, Melissa Prickett, Russ Abney, Navan Ward, Danielle Mason, James Lampkin and Matt Teague

Primary Contact: Katie Tucker and Gwyn Harris

KEPPRA GENERIC

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

Lawyer: Roger Smith
Primary Contact: Linda Reynolds

PAXIL®

Paxil® (paroxetine) is an anti-depressant manufactured by GlaxoSmithKline. Public Health Advisories have recently been issued for Paxil® regarding an increased risk of heart birth defects, persistent pulmonary hypertension (PPHN), omphalocele (an abnormality in newborns in which the infant's intestine or other abdominal organs protrude from the navel) or craniosynostosis (connections between sutures-skull bones, prematurely close during the first year of life, which causes an abnormally shaped skull) in children born to mothers exposed to Paxil®.

We are handling cases involving children born with birth defects to a mother who has documented use of Paxil® during pregnancy.

Lawyer: Chad Cook
Primary Contact: Tabitha Dean

PAIN PUMPS

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

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

ity of their pain pumps, which may have hastened the onset of Chondrolysis in some patients.

Chondrolysis symptoms usually present between six weeks and six months following surgery and include increased shoulder pain and stiffness, loss of cartilage, decreased range of motion, loss of shoulder joint space, crepitus in the shoulder and loss of strength. Patients suffering from Chondrolysis are usually unable to complete their post-surgical physical therapy due to pain. Whatever the patient's condition was prior to his or her shoulder surgery, the post-operative diagnosis of Chondrolysis is typically much worse. Ultimately, complete shoulder replacement surgery (acromioplasty) could become necessary in order to eliminate the painful and debilitating symptoms of Chondrolysis.

Lawyer: Frank Woodson
Primary Contact: Cathy Perry

REGLAN®

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

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

STEVENS- JOHNSON SYNDROME

Stevens-Johnson syndrome is an immune complex hypersensitivity reaction that can

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

Lawyer: Frank Woodson
Primary Contact: Cathy Perry

YAZ, YASMIN, OCELLA OR BEYAZ

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

Lawyer: Roger Smith
Primary Contact: Linda Reynolds and April Worley

ZITHROMAX

Zithromax (azithromycin), manufactured by Pfizer, is a popular antibiotic used most often to treat respiratory infections, while also used to treat skin infections and some sexually transmitted diseases. Zithromax is taken once

daily, usually two to five days under normal dosage. The most serious types of health problems that have been attributed to Zithromax include liver damage resulting in death or liver transplant surgery. The symptoms for liver damage may include yellow eyes, abdominal pain, nausea, clay colored stools, and dark urine. Recent warnings have been added to the label regarding abnormal liver function, jaundice, necrosis, hepatic (liver) failure and death, which have been experienced by persons taking this drug.

Lawyer: Chad Cook
Primary Contact: Tabitha Dean

FIRST LAWSUIT FILED OVER ACID REFLUX DRUG NEXIUM

A lawsuit has been filed in Texas against AstraZeneca over an increased risk of bone fractures allegedly caused by Nexium, its acid reflux medication. The Complaint filed in U.S. District Court alleges that 58-year-old Ginny Begin, of Toledo, Ohio, suffered serious bone deterioration after taking Nexium on a daily basis for approximately seven years. Her injuries include a broken leg bone she suffered while walking and three broken bones in her ankle that occurred when she walked down a flight of stairs.

Studies have shown that women have a much greater risk of injuries involving broken bones than do males. In 2010, the FDA issued a safety alert about the increased risk of fractures associated with prescription proton pump inhibitors (PPIs), including Nexium. The suit, which is believed to be the first, alleges AstraZeneca failed to warn patients or doctors of the increased risks. There will be more lawsuits filed very soon. Jason Gibson of The Gibson Law Firm in Houston, is representing the Plaintiff in the Texas lawsuit.

Source: *Lawyers USA Online*

A SECOND DEPUY HIP MDL IS FORMED

In August of last year, the DePuy ASR metal-on-metal artificial hip device was recalled due to an increased rate of revisions (second or follow-up surgeries) occurring shortly after the original hip implant. Medical literature and recent data show that a significant number of revisions in users of the ASR hip are due to metal debris

from the metal components in the device. Shortly after the recall of the 'ASR' device, the DePuy ASR MDL was formed for all lawsuits filed in federal courts around the country with Judge David A. Katz in the Northern District of Ohio in charge. Judge Katz has issued a number of orders required to get the ASR MDL underway.

But, the DePuy ASR hip is not the only hip device that DePuy Orthopedics manufactures. In fact, DePuy makes various models of the DePuy Pinnacle hip device. Specifically, the Pinnacle metal-on-metal hip model is similar to the ASR model. Reports of metal poisoning and pre-mature revisions are occurring in both DePuy devices. The problems with the metal-on-metal Pinnacle device have led to several lawsuits around the country. Recently, the involved law firms requested that a DePuy Pinnacle MDL be formed on May 23rd. The DePuy Pinnacle MDL was assigned to Judge James E. Kinkeade in the Northern District of Texas.

Although the majority of Plaintiffs' firms and counsel for DePuy requested that the Pinnacle MDL be in Texas, but before different courts, Judge Kinkeade was assigned the Pinnacle MDL. This appears to be a good choice. Since Judge Kinkeade is known to have been extremely fair to all concerned during his time on the bench. Many of the Plaintiffs' firms requested that only metal-on-metal Pinnacle cases be included in this MDL. Judge Kinkeade will decide which Pinnacle device models will be included in the MDL in the weeks or months to come.

The evidence supporting the DePuy ASR cases may be much stronger than the Pinnacle metal-on-metal hip cases. But it appears that both devices have the potential for a successful resolution in both MDLs. Anyone with either the ASR or Pinnacle hips should have their case investigated to determine its merits. If you need more information, contact Navan Ward at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

ALLERGAN ORDERED TO PAY \$212 MILLION IN BOTOX BRAIN-INJURY LAWSUIT

Allergan Inc., the maker of Botox, was ordered by a federal court jury last month to pay \$212 million to a Virginia man who alleged that use of the drug left him severely disabled. The verdict awarded Douglas Ray \$12 million in compensatory damages and \$200 million in punitive damages. This is the largest penalty ever in a Botox injury case. Ray was injected with

the drug in 2007 to treat hand tremors and quickly became ill with a fever and rash. He suffered brain damage and now requires round-the-clock care.

The suit, filed in U.S. District Court in Richmond, Va., alleged that Irvine-based Allergan failed to adequately warn Mr. Ray's doctor about the potential risks of Botox for off-label use. Known primarily as a wrinkle-buster, doctors also have prescribed the drug for treating serious medical conditions such as cerebral palsy and chronic migraines. The use of Botox for both cosmetic and medical purposes is only approved for very narrow uses by the FDA.

It has been widely reported that Botox has been promoted to doctors all over the country by Allergan for uses other than wrinkles. In September, Allergan agreed to pay the federal government \$600 million to settle civil and criminal allegations that it illegally marketed and sold the drug through 2005 for unapproved uses, such as treating headaches. Ray Chester, a lawyer with McGinnis, Lochridge, & Kilgore, a firm located in Austin, Texas, represented the Plaintiffs. Ray has handled a number of Botox cases and has done a very good job.

Source: *Chicago Tribune*

LAWSUIT BLAMES STOP-SMOKING MEDICINE FOR MURDER-SUICIDE

The estates of a couple killed in a murder-suicide two years ago have filed suit against Pfizer Inc., saying the drug company's stop-smoking medicine Chantix caused the rage that prompted the event. Sean Wain, 34, killed his wife Natalie, 33, and himself in an early morning shooting in May 2009. It has been reported that consumers of Chantix haven't been sufficiently warned that the drug can cause rage, hostility and suicide. Mr. Wain, according to the Complaint, had been using Chantix for a week or two prior to his and Mrs. Wain's deaths. This tragic event, a murder-suicide, left four children without parents. Victor H. Pribanic, a lawyer with Pribanic & Pribanic, who is located in White Oak, Penn., represents the two estates in the lawsuit. It will be interesting to follow this case as it develops.

Source: *Post Gazette*

J&J UNIT ORDERED TO PAY \$10 MILLION OVER MOTRIN INJURIES

A Pennsylvania jury ruled last month that Johnson & Johnson unit must pay \$10 million in damages to the family of a 13-year-old girl who suffered skin burns and eye damage after she took Children's Motrin to treat a fever and cough. J&J's McNeil Consumer Products unit was found to be responsible for the injuries suffered by Brianna Maya. Maya was left blind in one eye and suffered burns over 84 percent of her body after taking Motrin in 2000 when she was three years old. She is now 13.

It has been proved that J&J and McNeil failed to properly warn parents about Motrin's risks. J&J, the world's second-biggest seller of medical products, recalled more than 40 consumer brands last year, among them varieties of children's and infants' Tylenol, Motrin and St. Joseph Aspirin, over fears that the drugs had been tainted by production problems. As a result, regulators began to exercise more oversight at McNeil plants. Keith Jensen, a lawyer with Jensen, Balew & Gonzalez, a firm located in Ft. Worth, Texas, represented the Plaintiff and he did a good job.

Source: *Bloomberg*

FDA TO PULL DIABETES DRUG AVANDIA FROM PHARMACY SHELVES

The U.S. Food and Drug Administration has announced that the controversial diabetes drug Avandia is being pulled from the market because of the cardiovascular risks it poses to patients. The drug will no longer be sold at retail pharmacies beginning in November. According to the new rules, which will go into effect on November 18th, the medication will only be available to patients who have been safely using the drug, those who have had no success in controlling their blood sugar with other diabetes medications or patients who have been informed of the risks and still choose to take Avandia (rosiglitazone). These patients must be enrolled in a special program to qualify to receive the drug, according to the FDA. In a statement released on May 18th, the FDA said:

Under the Avandia-Rosiglitazone Medicines Access Program, rosiglitazone medicines will only be available to enrolled patients by mail order from certified pharmacies participating in the program. The drug

manufacturer, GlaxoSmithKline, will withdraw rosiglitazone medicines from the current supply chain and will provide pharmacies with instructions on returning the medicines.

Rosiglitazone is also sold under the names Avandamet (where the drug is combined with metformin) and Avandaryl (rosiglitazone plus glimeperide). The new rules apply to those combination drugs as well. The withdrawal of Avandia and related products from drugstore shelves comes eight months after the FDA severely restricted use of rosiglitazone to those patients with type 2 diabetes for whom other medications do not work. Dr. Steven Nissen, chief of cardiovascular medicine at the Cleveland Clinic, in an interview with *USA Today*, had this to say:

It's like a decade-long nightmare coming to an end. Eleven years after this drug was introduced, it will be so restricted in access that virtually no one will be able to get it.

Dr. Nissen has long urged that Avandia be pulled from the market. He led a study, published in 2007, that found that people with type 2 diabetes who took the drug had a 40 percent increase in heart attack risk. That increase in risk was supported in subsequent trials. More than 23 million Americans are thought to have type 2 diabetes. According to the FDA, almost a half-million Americans filled a prescription for rosiglitazone in the first ten months of 2010. Recently, that number has been on the decline. As part of restrictions put in place by the FDA back in September, doctors now have had to state and document a patient's eligibility to use Avandia. The doctors also have to tell patients about the cardiovascular safety risks associated with Avandia. It's significant that patients have to acknowledge that they understand those risks.

In Europe, the European Medicines Agency suspended marketing of the drug last year, forcing patients to find other medications to control their blood sugar levels. Rosiglitazone belongs to a class of drugs known as thiazolidinediones. It's intended to be used along with diet and exercise to control blood sugar levels in patients with type 2 diabetes. The latest FDA action does not affect the other major thiazolidinedione, Actos (pioglitazone), made by Takeda Pharmaceuticals. According to the FDA, that drug has

not shown the heart risks seen in the Avandia trials.

Sources: *USA Today* and health.usnews.com

XI. BUSINESS LITIGATION

U.S. SUPREME COURT REFUSES ARKANSAS POULTRY COMPANY APPEAL

The U.S. Supreme Court has refused to hear an appeal by an Arkansas-based company that was ordered to pay \$14.5 million to Oklahoma poultry farmers. The Court declined without comment to hear the appeal by Fort Smith-based O.K. Industries Inc. Oklahoma poultry farmers who had contracts to supply the company with chickens filed the lawsuit in 2002 claiming that the contracts were anti-competitive. The farmers said O.K. Industries used its power as the only poultry buyer in the area to manipulate lower prices for chickens. O.K. Industries said the farmers failed to prove their claims. The case was tried and a federal jury in 2008 awarded the farmers \$21.1 million. That amount was lowered to \$14.5 million by the judge in the case. O.K. Industries asked the U.S. Supreme Court to take the case and hear its appeal.

Source: *Insurance Journal*

LIMEWIRE SETTLES MUSIC LABELS LAWSUIT FOR \$105 MILLION

LimeWire, the file-sharing site shut down by order of a federal judge last October, and its former Chief Executive Mark Gorton, have agreed to pay \$105 million to settle claims that the company encouraged users to illegally share copyrighted songs online. The settlement is the latest development in an ongoing fight between the music industry and a host of online companies that have cropped up since the original Napster software opened the floodgates for digital music piracy in 1999.

LimeWire last year lost a court battle with music labels when U.S. District Court Judge Kimba Wood ruled that the company and its CEO were liable for infringing the copyrights of major record companies. This opened the way for the labels to seek damages. The company's software, which

had been downloaded 200 million times, was designed to induce users to violate copyrights, Judge Wood ruled. The recent settlement with Warner Music Group and Sony Corp.'s Sony Music Entertainment is among the largest paid by a file-sharing company. In 2006, Kazaa paid music and movie companies \$115 million to settle its lawsuits.

In the months following LimeWire's forced shutdown, the percentage of people in the U.S. who used file-sharing services fell to 9% in the fourth quarter of 2010, down from 16% three years earlier, according to a survey by the NPD Group, a market research firm. But the study noted that the drop could be temporary since former LimeWire users seek alternatives, including Frostwire and BitTorrent.

Source: *Los Angeles Times*

XII. INSURANCE AND FINANCE UPDATE

AN UPDATE FROM OUR CONSUMER FRAUD SECTION

Dee Miles, who heads up the firm's Consumer Fraud Section, supplied an update for this issue on some of the ongoing projects in the section. The lawyers and support staff in the Section are involved in a number of interesting lawsuits and are currently investigating new areas of concern to consumers and investors.

Drug Pricing Litigation

As we have reported previously our firm represents the States of Alabama, Alaska, Hawaii, Kansas, Louisiana, Mississippi, South Carolina and Utah in a series of cases against pharmaceutical companies. These States allege the drug companies' falsified pricing information, charging Medicaid much higher rates for drugs than they charged retailers. After receiving favorable rulings in the State of Alabama and Hawaii, our firm in conjunction with The State of Mississippi recently tried a case against Sandoz Inc. Judge Thomas L. Zebert, with the assistance of Special Master Bobby Snead, will assimilate the evidence introduced at trial and the post trial briefings and issue a verdict. We expect the Court to rule in late June to early July.

The States of Alabama, Alaska, Kansas and Mississippi are preparing for trials in late 2011 and early 2012. Our firm will proceed with trial settings against various pharmaceutical defendants. To date, our firm has recovered over \$350 million for the various states with many of the cases against other Defendants remaining to be tried.

Recently the State of Louisiana, through its Attorney General James D. "Buddy" Caldwell, hired our law firm along with several Louisiana law firms to assist his office with the newly filed AWP suit against 108 drug manufacturers in the Parish of East Baton Rouge.

These AWP cases are being handled by a team of lawyers from our firm. Dee Miles (Dee.Miles@beasleyallen.com), Bill Hopkins (Bill.Hopkins@beasleyallen.com), Roman Shaul (Roman.Shaul@beasleyallen.com), Clay Barnett, (Clay.Barnett@beasleyallen.com), Chad Stewart (Chad.Stewart@beasleyallen.com) and Alison Douillard (Alison.Douillard@beasleyallen.com), all lawyers in the Section, will handle these cases.

McKesson Litigation

In addition to going after the drug manufacturers for the fraudulent pricing of prescription drugs, the States of Alaska, Hawaii, Kansas and Louisiana have filed lawsuits against the major drug wholesaler, McKesson Corporation, for its role in the artificial inflation of these drug prices. These actions assert that from 2001 to 2009, McKesson associated itself with First Data Bank, Inc. To engage in a fraudulent scheme to unlawfully and artificially increase the Wholesale Acquisition Cost (WAC) to Average Wholesale Price (AWP) markup factor for a wealth of brand name prescription drugs. McKesson and First Data Bank's deceptive practices and unlawful acts resulted in the publication of false and misleading information concerning AWP's, which the four states relied upon in making payments for brand name prescription drugs. These alleged deceptions in the reported AWP's resulted in the states making excessive payments for those brand name prescription drugs, over and above any fraudulent price reporting by the manufacturers, which is the subject matter of the related AWP lawsuits filed in the several states. The McKesson litigation is being handled by the same team of lawyers in the Section who are handling the AWP litigation.

Dollar General Litigation

Our firm has filed a nationwide collective action lawsuit on behalf of all store managers against Dollar General, Inc involving Fair Labor Standards Act (FLSA). This suit alleges that Dollar General classified employees as "manager" (meaning the company does not have to pay overtime for the hours worked more than 40 hours per single work week), but did not arm these "managers" with any real "manager duties." Stated differently, Dollar General misclassified employees as "exempt" from overtime pay because they "titled" their "managers" when in fact they were still doing non-managerial employee duties. There are more than 3,500 Plaintiffs in the collective action. We are scheduled for trial in May 2012. This case is being handled primarily by Lance Gould (Lance.Gould@beasleyallen.com), Roman Shaul (Roman.Shaul@beasleyallen.com), and Brad Smelser (Brad.Smelsler@beasleyallen.com), all lawyers in the Section.

Toyota Litigation

The firm is also handling a wide variety of class actions. Dee Miles is currently a member of the Liaison Counsel Committee handling the Toyota Motor Corporation Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation pending in the United States District Court for the Central District of California. We are pleased to report that the case is proceeding swiftly. The Court has disposed of many preliminary matters, such as Motions to Dismiss, Amendments to Complaints and Discovery Plan Orders.

We are currently in the second phase of discovery in the case which involves in-depth depositions, voluminous document reviews and expert matters. The MDL is seeking to begin actual trials of some of the cases as early as 2013, but there is much work to do between now and then. As previously reported, the many class actions filed all over the country have been merged into a single consolidated Complaint. The discovery in both the class case and the individual death and serious injury cases are being conducted in harmony in an effort to expedite the cases for trial. This discovery process is also being done in conjunction with the many individual state cases that are not in the MDL, but are approaching trial dates as well. This effort appears to have been successful so far.

Toyota Hybrid and Faulty Brake Litigation

Our firm is also involved with the Toyota Hybrid and Faulty Brake Systems litigation which is also pending in the Central District of California. This is also a MultiDistrict Litigation case consolidated for purposes of discovery and this case is in the early stages of discovery, but is moving along quickly. This case is being handled by Bill Hopkins (Bill.Hopkins@beasleyallen.com) and Chad Stewart, (Chad.Stewart@beasleyallen.com), lawyers in the Section.

Ford Motor Company/Navistar Litigation

On behalf of our firm, Bill Hopkins is pursuing a case against Ford Motor Company and Navistar, Inc. It's alleged that a 6.0-liter Power Stroke Diesel Engine used in certain 2003-2007 Ford model pick-up trucks and supplied by Navistar are defective. Plaintiffs have experienced problems such as blown head gaskets, valve ruptures, poor engine acceleration, inability to start the engine, engine stalling, complete loss of power while driving and complete engine failure. These engines have been plagued with what Ford has called "unprecedented problems." Design changes have failed to remedy the problems. State class action lawsuits have been filed against Ford Motor Corporation and Navistar in federal courts in South Carolina, North Carolina, Virginia, Ohio and Maine after Ford ultimately stopped offering to assist consumers and was even denying or refusing to pay warranty claims related to the 6.0 Liter engine. The case against Ford and Navistar has been sent to the United States District Court for the Northern District of Illinois for MultiDistrict Litigation consolidation before Judge Kennelly. We believe our firm will be involved with the leadership of that MDL. If so, we can hopefully steer this litigation to a successful result. Bill Hopkins (Bill.Hopkins@beasleyallen.com) is the primary lawyer handling this matter for the Section.

Antitrust Litigation

Our firm continues to handle complex antitrust cases involving price fixing, tying arrangements, and other anti-competitive conduct, especially as it relates to the healthcare industry. For example, in *Lakeland Regional Medical Center, Inc. v. Astellas US, LLC, et al.*, Case No. 8:10-cv-2008-T-33TGW (M.D. Fla.) we filed a national class action on behalf of healthcare providers under the Sherman Act, Clayton Act, and Florida state antitrust laws. It alleges illegal tying of Astellas' unpatented drug, adenos-

ine, with its patented method of administration of Adenoscan®.

Our client, a not-for-profit hospital, provides myocardial perfusion imaging (MPI), a diagnostic technique used to study blood flow in the human heart. Adenosine is a naturally occurring compound that is often used as an adjunct to the MPI procedure. Astellas, one of the twenty largest pharmaceutical companies in the world, sells Adenoscan®, an adenosine based drug approved by the FDA for use in connection with MPI. Astellas' patent on Adenoscan® has expired, and chemically identical adenosine substitutes are available on the generic market at one-fourth the cost of Adenoscan®.

Unfortunately, our client and other similarly-situated healthcare providers are unable to purchase the less costly generic adenosine on the open market. This is because Astellas has threatened patent infringement litigation against our client and others who have sought to purchase identically formulated unbranded adenosine alternatives for use in MPI. Astellas seeks to require the hospitals to purchase its Adenoscan® product at a much higher cost when using Astellas' patented method of administering the drug. This arrangement essentially allows Astellas to extend its patent monopoly over the drug years after the patent covering the drug has expired. We contend that this conduct by Astellas constitutes an impermissible tying arrangement under federal and state antitrust laws. Our suit seeks certification of a national class action against Astellas, with relief to include treble damages, attorney's fees, and an injunction against further tying of the unpatented Adenoscan® product with the patented method of administration.

This case is primarily being handled by Archie Grubb, (Archie.Grubb@beasleyallen.com), and Andrew Brashier, (Andrew.Brashier@beasleyallen.com), lawyers in the Section. They are also handling other complex anti-trust litigation for the firm.

Credit Life Cases

Many consumers who purchase a car or other large purchases may often find that their finance agreement contains a credit life or credit disability charge on the loan documents. Without commenting on whether one should purchase credit life or credit disability on a loan, it is important to know that a consumer who pays that loan off early, or trades their car with an automobile loan for another car and that particular

credit life or credit disability policy is no longer on that loan, the consumer is due a refund. Often times the banks who make these loans do not refund the unearned premium on those policies that are purchased with a single premium at the time of the loan. These refunds for unearned premium are mandatory.

Our firm has filed several of these credit life, credit disability, and unearned premium cases as class actions and have had much success with these cases. These cases are being handled primarily by Lance Gould (Lance.Gould@beasleyallen.com) and Brad Smelser (Brad.Smelser@beasleyallen.com), lawyers in the Section.

Failed Bank Cases

The firm is handling several cases involving banks that have failed. Officers and directors of a bank that fails can be and usually are Defendants. There are many causes of action that can be brought against officers and directors for their failure to adequately manage a bank. We see banks that were taking a dive on performance where the officers and directors continued to increase their compensation. We have filed a number of these cases throughout the United States and continue to investigate these cases. Bill Hopkins (Bill.Hopkins@beasleyallen.com), Chad Stewart (Chad.Stewart@beasleyallen.com), Archie Grubb (Archie.Grubb@beasleyallen.com), and Andrew Brashier (Andrew.Brashier@beasleyallen.com), all lawyers in the Section, are primarily handling these cases.

Time Share Cases

Many consumers will purchase a time share and a vacation property, only to discover that the property is rarely, if ever, available for use, thus leaving the consumer with a worthless time share for that property. A number of class action cases have been filed concerning the abuse in time share sales. Bill Hopkins, (Bill.Hopkins@beasleyallen.com), Chad Stewart, (Chad.Stewart@beasleyallen.com), and Andrew Brashier, (Andrew.Brashier@beasleyallen.com), are investigating and handling these cases.

Investor Security Cases

Lawyers in the Section represent numerous investors, many of whom were elderly, who purchased bond funds from Regions Morgan Keegan. These bond funds were proprietary funds and were marketed and

sold to these investors as being “safe as a C.D.”. However, the funds actually held many subprime mortgages that were highly risky investments. As a result, these investors lost a majority of their initial investment. Scarlett Tuley (Scarlette.Tuley@beasleyallen.com), a lawyer in the Section, has successfully handled a number of these cases. We continue to investigate and handle investor security fraud cases, have several pending, with others to be filed very soon.

Qui Tam Cases

Employees who have inside knowledge of a fraud or corruption occurring by a corporation that is dealing with a governmental entity or governmental funds and they are the “original source” of that information, the law provides that person a “relator,” a means of filing a case known as a *Qui Tam* case. Under this statutory scheme, the government can join in on the “relator” case and ultimately share the recovery of damages as a result of the case. Our law firm has filed a number of these cases throughout the Country. Larry Golston (Larry.Golston@beasleyallen.com) and Archie Grubb (Archie.Grubb@beasleyallen.com), lawyers in the Section, are handling these *Qui Tam* cases for the firm.

Overtime Cases Under FLSA

Some employers attempt to get around the requirements of the FLSA by misclassifying their employees. Others, such as Pharmaceutical sales representatives, are often denied overtime compensation, based primarily on the argument that the employees are exempt pursuant to the outside sales exemption of the FLSA. However the cornerstone of the outside sales exemption is that the employee must have a primary duty of making sales. Promoting a product that eventually might be sold by another person does not constitute “making sales” within the meaning of the exemption. Pharmaceutical sales reps meet with physicians to promote certain products but the physicians do not actually purchase any products from these individuals. The administrative exemption is also unavailable to exempt pharmaceutical sales reps from FLSA coverage. This has allowed employers of pharmaceutical sales representatives to not properly pay their reps for the hours worked. Larry Golston (Larry.Golston@BeasleyAllen.com), is currently working on a class action against various pharmaceutical companies on behalf of their sales repre-

sentatives involving this type claim. He and Lance Gould (Lance.Gould@beasleyallen.com) are the primary lawyers working on FLSA litigation for the Section.

Donning and Doffing Labor Cases

We currently have a pending case against numerous contractors that provide engineering, construction and technical services to the US federal government, state and local government agencies and private industry clients. This class states that the class members were required to pass through extensive security measures as well as retrieve required protective gear before beginning their daily duties. The class members allege that they are not paid for the time spent retrieving required safety gear and going through the security checkpoints. Additionally, they are made to begin their shifts before their scheduled start times and work a great deal at the end of their shifts, none of which they are compensated for. This case is pending in the US District Court for the Northern District of Alabama and is currently awaiting an order from the Court regarding class certification. Lance Gould (Lance.Gould@beasleyallen.com), Roman Shaul (Roman.Shaul@beasleyallen.com), and Brad Smelser (Brad.Smelser@beasleyallen.com), lawyers in the Section, are handling these cases.

Morgan Fraud Cases

Bill Robertson from our firm recently completed a significant settlement against Litton Loan Servicing. Litton is a loan servicer, which means they contract with subprime loan originators to collect fees and payments on (primarily) mortgage loans. The Plaintiffs alleged there are a number of problems with the way Litton was collecting on certain loans. It was alleged that Litton was not properly crediting certain payments when made, that they were force-placing insurance on certain loans, and charging fees and costs that were excessive and not proper according to state and federal law.

Another case, filed in the Circuit Court of Hale County, Ala., alleges that Select Portfolio Servicing repeatedly held timely mortgage payments until the payments were late and later charged late fees to the Plaintiffs. As a result, the Plaintiffs were improperly charged unearned and unidentified fees and penalties relating to the alleged late payments. Select Portfolio Servicing failed to disclose that the Plaintiffs would be charged any and/or all of the fees, finance

charges, penalties and/or forced placed insurance premiums prior to the close of the mortgage loan. Due to the actions of the Defendants, the Plaintiffs were forced to enter into a Forbearance Agreement with the Defendants and threatened with foreclosure if the terms of the allegedly unfair agreement were not met. The Plaintiffs in this case are not alone in their fight against mortgage holders. This case is developing on a nationwide level with thousands of potential victims. Bill Robertson (Bill.Robertson@beasleyallen.com) is the primary lawyer handling these cases for the Section.

Alabama Dentists’ Case

As we all know, consumer fraud poses a threat both to consumers and the economy. It’s recognized that even the most wary and sophisticated consumers may fall victim to fraud offers. For example, Scarlett Tuley, a lawyer in the Section, currently represents a group of “in network” dentists in a class action lawsuit against Blue Cross Blue Shield of Alabama. It’s alleged that Blue Cross Blue Shield is not paying this group of dentists properly for dental services provided to their patients. The dentists contend that their services are being “bundled” and “recoded,” resulting in several treatments being paid as a single treatment at a much lower cost to Blue Cross Blue Shield, but at the expense of Alabama dentists. This case is being pursued as a class action in the Circuit Court of Jefferson County, Ala. Scarlett Tuley (Scarlett.Tuley@beasleyallen.com), is handling this important matter for our firm.

A JURY VERDICT IN AN UNINSURED MOTORIST LAWSUIT

A Plaintiff, insured by State Farm, was awarded \$3,019,955 last month by a Florida jury in a case arising out of a motor vehicle accident. A motorist ran a stop sign and collided with the Plaintiff’s vehicle. It was reported that the other involved driver was not familiar with the area, never saw a stop sign in his path, and as a result never applied his brakes. Obviously, liability in this case was very clear. The Plaintiff was badly injured in the collision. At the time of the accident in December of 2008, he was on a year’s retirement leave from his teaching job where he had taught science for 35 years.

The driver who ran the stop sign only carried \$25,000 of liability insurance coverage and his insurance carrier promptly paid the \$25,000 policy limits. The Plaintiff filed a lawsuit against State Farm, his own insurance carrier, seeking the underinsured motorist benefits under his policy. State Farm refused to pay the entire \$2,000,000 available in UM coverage. The Plaintiff had purchased the UM coverage to protect himself in the event of an accident caused by an uninsured or an underinsured motorist.

State Farm made a payment of \$190,000 to the Plaintiff, refused to pay more and proceeded to defend the claim. The company's lawyer asked the jury to award the Plaintiff only \$400,000 in damages. But the jury returned a verdict for the Plaintiff and against State Farm and awarded \$3,019,955 in damages. The verdict included damages for past and future medical expenses, lost earning ability, pain and suffering and loss of enjoyment of life. Randall Spivey of the Spivey Law Firm in Fort Myers, Fla., represented the Plaintiff and he did a very good job.

Source: lehighacrescitizen.com

CORRECTING A MISTAKE IN THE MAY ISSUE

On page 20 of the May issue, I made a mistake that certainly needs correcting. I wrote that all motorists in Florida are required to carry uninsured motorist coverage, which is incorrect. In Florida, motorists are required to carry No Fault or PIP insurance, (FSA 324.021 and 627.733), but not UM coverage. I apologize for this error and appreciate very much being made aware of it.

XIII. PREMISES LIABILITY UPDATE

ANOTHER LAWSUIT FILED OVER THE COWBOYS PRACTICE FIELD COLLAPSE

A Dallas Cowboys spokeswoman who was injured when the team's practice facility collapsed during a 2009 storm has filed a lawsuit. The Plaintiff, Jancy Briles, a member of the team's public relations staff, is suing companies involved in building or designing the steel and fabric structure. Ms. Briles

is the daughter of Baylor football coach Art Briles. The lawsuit contends that Ms. Briles should recover damages for suffering "serious, disabling and permanent injuries," caused by the collapse. The Defendants include Summit Structures LLC of Allentown, Penn., and its Canadian parent, Cover-All Building Systems Inc. Cover-All was dissolved after filing for bankruptcy in March 2010. Norseman Group Ltd., based in Edmonton, Alberta, bought Cover-All assets in June 2010.

The Cowboys were conducting a rookie minicamp when the 88,000-square-foot building fell in a wind storm on May 2, 2009. The National Institute of Standards and Technology concluded that the structure should have been able to withstand the wind gusts, which were between 55 mph and 65 mph. Special teams coach Joe DeCamillis suffered broken vertebrae in the accident, and scout Rich Behm was left paralyzed from the waist down. Each have settled claims totaling \$35 million from Summit Structures and companies controlled by Cowboys owner Jerry Jones. Jamar Hunt, a player, also received a settlement for an undisclosed amount from those companies as a result of suffering a herniated disk in his neck.

Source: Associated Press

INSURER SETTLES SUIT WITH FORMER FRATERNITY MEMBERS

A Georgia insurance company has settled the lawsuit it brought against four former members of a Utah State University fraternity. The company, RSUI, Inc., had paid a wrongful death claim on behalf of the fraternity. In its lawsuit, RSUI sought \$50,000 each from Sigma Nu pledge Chad Burton and chapter officers Cody Littlewood, Colton Hansen and Mitchell Alm as compensation for a payment made in a settlement with the parents of Michael Starks, who died on November 21, 2008, from alcohol poisoning after a fraternity event. At the time, RSUI was the insurer for the fraternity and its members, including pledges. Lawyers for RSUI have acknowledged that both the company and the four Defendants would have been jointly liable to the decedent's parents. But the company says it paid the full amount under the settlement with the parents.

RSUI contended the Defendants planned and participated in a "capture event," in which new pledges would be kidnapped by members of a sister sorority and later

rescued by fellow pledges. It was alleged that Starks drank nearly two-thirds of a bottle of vodka during the event and died hours later. RSUI's lawyers in a statement said:

The Defendants are required to pay their portion of the amount used to settle the claims against them. The Defendants accepted this benefit and it would be inequitable for them to retain the benefit without payment to Plaintiff of its value.

But lawyers for the fraternity brothers said RSUI breached its good faith agreement by suing its own policyholders. They contended RSUI couldn't subrogate for the amount paid in the settlement against its own insured. Terms of the agreement reached between RSUI and the four Defendants haven't been disclosed. But the lawyers who represented Hansen and Burton told the media their clients paid no money to RSUI. A lawyer for another student (Littlewood) said he couldn't discuss financial details of the settlement. Apparently, this matter isn't over. A lawyer for one of the students plans to file a counterclaim against RSUI on the student's behalf, and contends the insurance company had breached its implied duty of good faith and fair dealing.

Source: Insurance Journal

\$1.9 MILLION AWARDED TO FAMILY OF YOUNG BOY KILLED BY BEAR

A federal judge awarded \$1.95 million last month to the family of a young boy killed in a 2007 bear attack. The child, Samuel Ives, 11, was camping in American Fork Canyon with his mother, step-father and brother when he was ripped from his family's tent and killed by a black bear on the night of June 17, 2007. In his ruling, U.S. District Judge Dale Kimball said the U.S. Forest Service was required to warn the family that a dangerous animal was on the loose in the canyon after reports that a bear had opened coolers and slashed through a tent in the area earlier that day.

Judge Kimball wrote in his order that the Ives family "proved by a preponderance of evidence" that the Forest Service owed them a duty "to warn them about the earlier incident, whether the warning was oral, by posting signs on the gate of Timpooneke Road 56, and/or by roping off the specific campsite." Lawyers for the Forest Service

claimed the government agency was immune from litigation and that it would be impossible to prove any action taken by the agency would have changed the outcome of the bear attack. During the trial, one of the Defense lawyers said there was no need for the Forest Service to warn of a black bear threat because there had never before been a fatal attack by a black bear in Utah. Nevertheless, Judge Kimball found the agency negligent in failing to warn of the danger.

Earlier in the day in question, a camper in the area called the Utah Highway Patrol and the Forest Service to report the earlier bear sighting. UHP officials alerted the Division of Wildlife Resources, which began searching for the bear, deeming it necessary to kill the animal. But the Forest Service employee who spoke with the camper failed to take action and did not notify anyone else of the sighting. The Ives family intended to spend the night in the Timpooneke campground, but did not have the \$13 for the fee. Instead, they asked if they could camp up the road without paying. The Forest Service employee who spoke with Ives family about the campground fee testified in the non-jury trial that he would have notified the family of the danger if he had been aware of it. The parents said they filed the lawsuit "to prevent this from happening to anybody else."

Source: sltrib.com

PG&E FACES ANOTHER PIPELINE BLAST LAWSUIT

There has been another lawsuit filed against Pacific Gas & Electric Co. involving last year's deadly pipeline explosion in San Bruno, Calif. The suit was filed in San Mateo County Superior Court by the personal representative of James Franco, who died from injuries suffered in the September blast that killed eight people and destroyed 38 homes. It's alleged that poor maintenance and construction resulted in an "inevitable explosion" of the PG&E gas pipeline. The San Francisco-based company already faces dozens of lawsuits from victims' families and people who allege they were impacted by the inferno. Eric Laughlin, a lawyer with Hamilton, Laughlin, Barker, Johnson & Watson, located in Topeka, Kan., represents the Franco estate.

Source: sfgate.com

XIV. WORKPLACE HAZARDS

JURY AWARDS \$11 MILLION TO EX-UBS WORKER FOR HARASSMENT

A Missouri jury awarded a former UBS Financial Services Inc. employee \$10.6 million in damages last month after she was fired for complaining about sexual harassment on the job. Following a trial in Jackson County Court, the jury awarded the Plaintiff, Carla Ingraham, \$350,000 for the sexual harassment, \$242,000 for the retaliatory firing and \$10 million in punitive damages. UBS said it does not tolerate sexual harassment of any kind against an employee. But the jury obviously didn't agree with the company and ruled for the employee.

Source: Law 360

INJURED WORKERS SETTLE OIL LINE RUPTURE CLAIMS

Three contract workers burned in a 2008 oil line rupture at Citgo's East Plant, located in Corpus Christi, Texas, have reached a \$7 million settlement with the company that designed the equipment. The oil release occurred in February of 2008, when a contract worker, Jose Herrera, tried to hook up a cleaning device to a crude vacuum unit. The connection point broke and Herrera and two other workers, Aaron Salinas and John Davis, were burned when gallons of hot crude oil spewed out.

Refined Technologies Inc., the company that designed the injection cleaning device, agreed to the settlement with the three workers. Under the agreement, Herrera and his family will receive the bulk of the settlement amount. The two other workers, who weren't as severely burned, will receive smaller portions. Herrera, now 50, suffered burns to his face, neck and arms and underwent more than a year of skin grafts.

The lawsuit originally named Citgo Petroleum Corp. and Citgo Refining and Chemicals Co. as Defendants, but both were dismissed because of liability exemptions. Citgo did pay for the cleaning and detailing of more than 1,100 vehicles, boats and other refinery neighbors' property that were spotted with droplets of the oily material. Robert C. Hilliard, a lawyer with Hilliard, Munez, Gonzales, a law firm located in Corpus Christi, Texas, repre-

sented these workers. Bob did a very good job in this case.

Source: caller.com

XV. TRANSPORTATION

IT IS TIME TO END THE BATTLE OVER BUS AND TRUCK SAFETY RULES

As has been reported, a number of serious accidents involving tour busses and trucks have occurred over the past several weeks. The National Transportation Safety Board held a forum last month to hear from federal regulators, safety experts, and the truck and bus industries about what is being done to prevent deadly accidents on our nation's highways.

NHTSA also wanted to know why past safety recommendations—some of them decades old—haven't been enacted. In 2009 there were 3,200 deaths in accidents involving big trucks. Big tour buses average about 20 deaths a year to passengers out of more than 700 million passenger trips a year in the U.S. According to reports, between 2000 and 2009 tour buses were involved in 338 fatal crashes.

The Obama administration has made several proposals to toughen bus and truck regulation. One proposal would require equipping trucks and buses with devices that record how many hours drivers are behind the wheel. As much as one-third of all commercial motor vehicle crashes are due to fatigue, according to NTSB. The Administration also wants to reduce the daily limit drivers may spend behind the wheel from 11 hours to ten hours. The proposal also would require mandatory rest breaks, limit the overall work day to 14 hours and require that drivers be given more time off to rest when they've reached their weekly driving limit of 60 hours.

Opposition from the trucking industry has been a real stumbling block for change and that has slowed things down. The industry is opposing Congress giving the states authority to raise weight limits on trucks on interstate highways to nearly 100,000 pounds and extend truck lengths. The trucking industry, as well as shippers, can make more money if they can ship more products using fewer trucks and drivers. But bigger trucks are harder to stop quickly and can create a hazard on the

roadways because of their size and weight when loaded.

Safety advocates say it is just as important to ensure passengers can survive a crash when one occurs. The NTSB has been pushing for years for stronger bus roofs that won't crush in rollover accidents, better emergency exits, better fire protection and windows that prevent passengers from being ejected. They also want trucks and buses to have some of the safety technology that's available on many cars and on buses in other countries. That includes electronic stability control to prevent rollovers, adaptive cruise control that automatically adjusts speed to traffic, warning systems that alert drivers when they're drifting into another lane, and warning systems that alert drivers to an impending collision. The NTSB has about 100 bus safety recommendations that haven't been filled.

Source: *Insurance Journal*

THE COSTS OF DEATHS FROM CRASHES

It has been reported that over 30,000 people are killed in crashes each year in the United States. In 2005, in addition to the toll on victims' family and friends, motor vehicle crash deaths resulted in \$41 billion in medical and work loss costs. A new data analysis by the Center for Disease Control and Prevention (CDC) looked at the costs of crash deaths by state and found that half of all costs were found in ten states.

The ten states with the highest medical and work loss costs were: California (\$4.16 billion), Texas (\$3.50 billion), Florida (\$3.16 billion), Georgia (\$1.55 billion), Pennsylvania (\$1.52 billion), North Carolina (\$1.50 billion), New York (\$1.33 billion), Illinois (\$1.32 billion), Ohio (\$1.23 billion), and Tennessee (\$1.15 billion). Alabama had a total cost of \$1.07 billion. The costs for each state and CDC's recommendations for saving lives and money are available and can be obtained from the CDC by going to www.CDC.gov.

Source: CDC.gov

\$48 MILLION AWARDED IN FATAL 2006 PLANE CRASH

A jury in Franklin County, Mo., awarded \$28 million in punitive damages against a Connecticut airplane parts manufacturer in a case arising out of the 2006 crash of a skydiving plane at Sullivan Regional Airport that killed six. The jury earlier had awarded

\$4 million each to five families for the loss of their children. The family of the sixth victim was not part of this lawsuit. The crash was blamed on a defective engine part made by Doncasters, Inc.

The July 29, 2006 crash involved a DeHavilland Twin Otter airplane. The jurors heard testimony from air crash investigators, metallurgists and aircraft design engineers. Evidence was introduced during the trial revealing that Doncasters used a different alloy in a compressor turbine blade than called for by Pratt and Whitney Canada, the engine's manufacturer. Doncasters sold the part for half of its normal cost. The part broke causing the right engine to blow up. Witnesses reported, and a photograph showed, smoke and flames coming from the crippled engine just after take-off and moments before the 39-year-old plane nose-dived. The crippled plane struck a utility pole and tree and landed near a house.

The eight people aboard the twin-engine plane knew it was going to crash and suffered 52 seconds of "pre-impact terror." Among those killed in the accident were: Victoria Delacroix, 22, a counselor at a summer camp for disabled children, who was making her first jump. The other victims were all experienced skydivers. They include Melissa Berridge, 38, who was a staff member for Sen. Claire McCaskill's election campaign; Robert Cook, 22, a senior civil engineering student at the University of Missouri at Rolla, who had completed 1,700 jumps; Rob Walsh, 44, a freelance photographer and certified skydiving instructor, who had made more than 5,000 jumps. Scott Cowan, 42, of Sullivan, worked as a pilot for American Eagle Airlines, and was co-owner of Quantum Leap Skydiving, was piloting the plane when it crashed. David Pasternoster, 34, was killed, but his family was not a party to the lawsuit. Another person, a woman, who was a first-time skydiver, survived the crash.

Doncasters misled and manipulated the Federal Aviation Administration into approving this aircraft engine part. An FAA certification officer testified that the company hid key documents showing that the part in question failed performance tests. The jury also learned of eight other engine failures due to same part breaking. After it was determined the part was defective, a company official testified the company planned to continue selling it.

Gary C. Robb, a lawyer with Robb & Robb, a firm located in Kansas City, Mo., represented the five families and he did a very

good job for them. The \$48 million verdict is believed to be the third largest ever awarded in a Missouri airplane or helicopter crash case.

Source: slttoday.com

JURY AWARDS \$2.69 MILLION IN FATAL DUI WRECK

A jury in Wayne County, W.V., recently awarded \$2.69 million to the families of four people killed in a fatal drunken driving accident. The jury ordered a Kentucky man, Bobby Lynn Frazier, to pay 80% of the award and a car dealership in Ashland, Ky., to pay 20%. Police said Frazier was driving a pickup truck stolen from the dealership that hit another pickup head on. All four occupants of the second pickup were killed. The accident occurred April 17, 2008 in Kenova, W.V. Frazier pled guilty in 2009 to four counts of drunken driving causing death and other charges. He was sentenced to six to 26 years in prison.

Source: Associated Press

DAVE & BUSTER'S AGREES TO \$1.5 MILLION SETTLEMENT IN DUI CASE

A national restaurant chain has agreed to pay \$1.5 million to the family of a 20-year-old man who was killed in a 2008 drunken-driving accident. The settlement came just as the lawyers for Dave & Buster's and the lawyers for the family of Joseph Borselio were getting ready to select a jury in the case, which was ready for trial in state Superior Court. Borselio, 20, was killed in September 2008 while riding his bicycle after Douglas Moore struck him during a late-night accident. Moore was driving home from Dave & Buster's in West Nyack, N.Y., at the time of the accident. It was contended that the restaurant chain, which is based in Texas, over-served alcohol to Moore.

In addition to Moore, four restaurant senior executives were named in the 2009 lawsuit, which was based on a dram shop law. Under the law, commercial establishments can be held liable for injuries or deaths that result from patrons involved in drunken-driving accidents. Moore, who is serving four years in jail, had a blood-alcohol content of 0.21 the night of the crash. The legal limit in the state is 0.08.

The amount of the settlement will be in addition to the \$300,000 the family received in settlement from Moore's insurance company last year. Eric Smith, who is

with the Stratton Faxon law firm, located in New Haven, Conn., represented the Plaintiff and he did a very good job.

Source: *Greenwich Time*

RAILROAD SETTLES WRONGFUL DEATH SUIT FOR \$4 MILLION

Burlington Northern Santa Fe Railway Co. has agreed to settle a lawsuit filed over the death of a ten-year-old girl. In the first phase of the trial, involving only compensatory damages, a Missouri jury returned a verdict for \$4 million. The second phase, involving punitive damages, followed, but the case was settled before that phase could be completed. The parties actually reached a settlement while the jury was deliberating. BNSF agreed to pay the full judgment of \$4 million within ten days with no appeal.

The child, Shelby Wilson, was a passenger in a car that was struck by one of BNSF's trains at a rural crossing. The company failed to mark the crossing with lights and a gate. It was only marked with warning signs. The state had ordered the more stringent measure nearly a year before the accident. There was a dispute over whether the driver of the car was at fault and caused the accident. But the jury ruled against BNSF on that issue. Bradford Kendall, a lawyer with the firm of Holtsclaw & Kendall, located in Kansas City, Mo., represented the child's family. Brad did a very good job in this case.

Source: *Lawyers USA Online*

\$20 MILLION VERDICT IN LAS VEGAS FORKLIFT ACCIDENT CASE

A jury in Nevada awarded \$19,854,217 in damages last month to a man who was run over by a Sky-Trak 5028 rough terrain forklift. In the incident giving rise to the lawsuit, the Plaintiff, Tom Novick was pinned beneath one of the forklift's tires. The driver was parking the machine and it slowly rolled backward across the victim's entire body. Mr. Novick was severely injured. He suffered multiple catastrophic injuries, and was totally disabled. He had two amputations of his right leg, and has permanent brain damage.

Based on evidence posted during the trial, it appears Panelized Structures did not have an adequate commitment to safety. For example, the forklift driver, who was the brother-in-law of Panelized Structures' owner, was promoted to safety director after the most serious injury in company

history. In addition, the company used temporary workers without training them. The jury assigned 20% of the fault to Mr. Novick, and 80% of the fault to the forklift driver and his employer, Panelized Structures. John Shook, who is with the firm Shook & Stone, located in Los Vegas, represented the Plaintiff in this case and he did a very good job.

Source: *Courtroomview.com*

XVI. HEALTHCARE ISSUES

STUDY FINDS GAS IN DRINKING WATER NEAR DRILLING

New research is providing some of the first scientific evidence that a controversial gas drilling technique can contaminate drinking water. The study published last month found potentially dangerous concentrations of methane gas in water from wells near drilling sites in northeastern Pennsylvania. In central New York, where gas drilling is less extensive, there was no problem found. But in what was apparently an unexpected finding, the team of Duke University scientists did not find any trace of the chemicals used in the hydraulic fracturing process in 68 wells tested in Pennsylvania and Otsego County in central New York.

In hydraulic fracturing, or fracking, water, sand and chemicals are injected underground to crack the rock and get natural gas to flow into a well. Critics of the technique are concerned more about the chemicals since companies have refused to make public the proprietary blends used and some of the ingredients can be toxic. On average, water from wells located less than a mile from drilling sites had 17 times more methane than water tested from wells farther away, according to the study published in the *Proceedings of the National Academy of Sciences*.

Methane is not known to be toxic, but in high concentrations it can be explosive and cause unconsciousness and even death, since it displaces oxygen needed to breathe. Of the 60 wells tested for methane gas, 14 had levels of methane within or above a hazard range set by the Department of Interior for gas seeping from coal mines—all but one of them near a gas well. In nine wells, concentrations were so high that the

government would recommend immediate action to reduce the methane level.

Methane is released naturally by bacteria as they break down organic matter. The researchers' analysis shows that the type of methane in the wells with the highest concentrations is coming from deep in the earth, the same place tapped by companies in search of natural gas. What the study does not say is how exactly the methane is getting into drinking water sources, and what part of the drilling is potentially involved. While wells closer to drilling sites had more methane, most of the wells in the study—85 percent—had some.

Two federal agencies have launched their own studies. The State of Pennsylvania—where numerous homeowners are suing drilling companies over water contamination—views methane as among the most serious risks of gas drilling. In that state, an investigation into an explosion and fire at a house in December, and another at a home in February, is looking at natural gas drilling as the culprit. A natural gas drilling company last year agreed to pay \$4.1 million to 19 homeowners whose water was contaminated by methane gas, even though the company denies causing the pollution.

Source: *Associated Press*

THE FEDERAL AND STATE GOVERNMENTS URGE CAUTION ON RESTORATION ACTIVITIES

Due to the recent tornadoes, severe and straight-line winds, storms, and flooding in the Southeastern United States, governmental agencies, both federal and state, are warning folks about clean-up hazards. The U.S. Environmental Protection Agency has warned homeowners, volunteers and other workers to take steps to ensure that individuals, especially children, are not at increased risk for lead poisoning because of clean up and repair work around structures that may contain lead-based paint. Pregnant women and children especially are urged to keep away from work that could disturb lead-based paint. All persons working on potential lead-based paint surfaces should take precautions to prevent the spread of lead dust, which may pose a hazard to children and pregnant women during cleanup resulting from natural disasters.

The Renovation Repair and Painting Rule requires that workers disturbing lead-based paint be trained and certified, notify residents of the lead dust hazards, and follow lead-safe work practices, in order to reduce

exposure to lead dust. Because of the nature of the storm recovery work, certain emergency provisions in the RRP apply. Work covered under the RRP rule on storm-damaged housing will not require advance notice or trained renovators to remove materials from homes. Emergency renovation activities are also exempt from the warning sign, containment, waste-handling, training, and certification requirements to the extent necessary to respond to the emergency.

Other renovation activities are subject to the rule requirements. Volunteer workers, who do not receive compensation for work, are not required to be certified. But they should educate themselves about lead-safe work practices so as not to inadvertently cause hazards for themselves or other family members. The RRP program mandates that contractors, property managers and others working for compensation, in homes and child-occupied facilities built before 1978, must be trained and use lead-safe work practices. They are also required to provide a copy of the lead pamphlet “Renovate Right; Important Lead Hazard Information for Families, Child Care Providers and Schools” to owners and occupants before starting renovation work. If you need more information relating to lead-based paint, contact the National Lead Information Center at 800-424-LEAD (5323).

The Alabama Department of Public Health has also warned that cleaning up storm-damaged buildings can create serious health and environmental hazards. Buildings that have been damaged can produce a range of materials that may be hazardous. In addition to lead, they include asbestos, home or industrial cleaning products and insulation. Elevated concentrations of airborne asbestos can occur if asbestos-containing materials in many older homes are disturbed. Pipe or other insulation, ceiling tiles, exterior siding, roof shingles and sprayed-on soundproofing are just some of the materials found in older buildings that may contain asbestos. Buildings constructed before 1980 are more likely to contain asbestos. Airborne asbestos can cause lung cancer and mesothelioma, a cancer of the chest and abdominal linings.

If damaged public and commercial buildings are intact and safe to enter, all regulatory requirements are in force if the buildings are to be demolished or renovated. But, there are no regulatory requirements for damaged public or commercial buildings if they are significantly damaged, are unsafe to enter, and are to be destroyed.

During demolition of these heavily-damaged buildings, debris must be kept wet. Complete demolition is unrestricted, but partially damaged structures that are rebuilt must be cleared for lead problems before they are occupied again.

Sources: EPA and Alabama Department of Public Health

XVII. ENVIRONMENTAL CONCERNS

HOPEFULLY THE USDA WON'T CAVE IN ON TESTING

The U.S. Department of Agriculture has been testing fresh produce for pesticide residues and releasing the findings to the public since 1991. Tremendous pressure is now being put on the Department to change things and that's not good for consumers. Chemical agribusiness interests have launched an expensive campaign to keep the public from getting the information it needs to make good healthy choices. Just last year, nearly \$200,000 of taxpayers' money was used to support a misinformation campaign run by the Alliance for Food and Farming, a pro-agricultural chemicals lobby dedicated to combating pesticide critics such as the Environmental Working Group. Chemical agribusiness interests want to suppress the truth about pesticides.

The evidence linking pesticides to health problems—such as increased risk of cancer—is overwhelming. New studies show that pesticide exposure may lead to developmental delays and lower IQs in children. The President's Cancer Panel recommended last year that consumers avoid foods with pesticide residues. Instead of caving in to pressure from industry groups like the Alliance for Food and Farming, the USDA and other federal agencies should compile and analyze more information about pesticides in our food. If you agree, I recommend that you join with consumer advocacy groups and let your members of the U.S. House and Senate know how you feel.

KRAFT TO PAY \$8.1 MILLION TO SETTLE CONTAMINATION SUIT

Kraft Foods Inc. has been ordered by a federal court to pay \$8.1 million to 124 fam-

ilies in Attica, Ind. It was alleged in a class-action lawsuit that one of the foodmaker's factories contaminated air and water inside their homes. According to the settlement, which was approved last month by a federal judge in Indianapolis, the Northfield-based company also must clean up the plant site and groundwater and install systems to manage the contamination in the affected homes. It was alleged in the suit that chemicals including vinyl chloride and trichloroethylene had been spilled at the plant since 1957 and that those chemicals had leaked into the groundwater, seeped into their homes and caused toxic vapors. Two law firms, Chicago-based Varga Berger Ledsky Hayes & Casey and The Collins Law Firm, located in Naperville, Ill., represented the Plaintiffs and they did a very good job.

Source: Chicagobusiness.com

XVIII. THE CONSUMER CORNER

NHTSA WILL INVESTIGATE FUEL TANK PROBLEM ON F-150S

The National Highway Traffic Safety Administration is investigating a fuel tank problem that could affect more than 2.7 million Ford F-150 pickup trucks. According to NHTSA, the steel straps holding up the truck's gas tank can rust and break, possibly causing a fuel spill and fire. No injuries have been reported from the possible defect, according to the agency. NHTSA is looking into trucks from the 1997 through 2001 model years. The agency's investigations often lead to recalls.

NHTSA began looking at the fuel tank problem last year after it received 32 complaints. It was reported that NHTSA and Ford have now received 243 reports of the tanks falling. In two incidents, a fire started when the fuel tank fell. One of the fires destroyed the pickup, while the other extinguished itself. There was fuel leakage in 95 of the reported incidents, according to NHTSA. Nine reported sparks when the tank dropped on the road, which would increase the likelihood of a fire.

Ford says it's cooperating with the investigation. A company spokesman said owners with questions should contact their dealers. It should be noted this investigation isn't related to an air bag defect that caused

the recent recall of 1.2 million F-150s from the 2004-2006 model years. The F-Series has been the best-selling vehicle in the U.S. for more than three decades. It's been the subject of recent negotiations between NHTSA and Ford because of air bags that could deploy at the wrong time. Ford announced in February that it would fix 150,000 F-150s for that problem, but under pressure from regulators, it expanded the recall to 1.2 million trucks last month. In that case, there were 98 reported injuries because of the problem.

Source: Associated Press

GM VEHICLES INVESTIGATED FOR BAD FUEL GAUGES

The National Highway Traffic Safety Administration is investigating 865,000 General Motors Co. sport utility vehicles for potential faulty fuel gauges that could mistakenly tell drivers their vehicles have more gas than they do. NHTSA opened a preliminary investigation covering Chevrolet Trailblazers, GMC Envoys, Buick Rainiers and Saab 9-7s from model years 2005-2007, after receiving 668 complaints alleging inaccurate fuel gauge readings. Of the complaints, 58 incidents were alleged to result in a vehicle stall with 43 of those occurring because the fuel level reading indicated more fuel than what was actually in the tank. One complaint alleged the affected vehicle stalled while exiting an interstate highway and was struck from behind, according to NHTSA. The complaints were said by NHTSA to show an apparent increasing trend, with most complaints received within the past year.

The agency has also opened preliminary probes for Ford Motor Co. and Honda Motor Co. Ltd. vehicles. NHTSA received 18 complaints concerning the liftgate glass on the rear doors or hatches on 200,000 Ford SUVs. The reports said the liftgate glass on Ford Escapes and Mercury Mariners for model years 2010 and 2011 could spontaneously shatter when the liftgate was opened or closed. In one incident, according to NHTSA, a consumer reported that she and her ten-year-old son were cut by glass fragments. Many of the incidents occurred during cooler temperatures.

NHTSA also said it opened an investigation covering 288,000 Honda CR-V SUVs from model years 2002 to 2004 for complaints that the headlights stopped working. The agency said it has received 12

complaints alleging that both low-beam headlights stopped working simultaneously. NHTSA had this to say about the complaint:

Several of the complainants report the headlight switch and its wiring harness connector required replacement to repair the low beam headlight circuit. It was also reported the switch and connector had become damaged by overheating/melting.

GM, Ford and Honda all say they are cooperating with NHTSA. This is an obvious safety issue that should require a thorough investigation. It will be interesting to see what NHTSA does during and after the investigation.

Source: MSNBC

NEW CRIB SAFETY STANDARDS GO INTO EFFECT ON JUNE 28TH

The new safety rules for all cribs manufactured, sold, resold or leased in the United States will go into effect on June 28th. The regulations, which were adopted last year by the Consumer Product Safety Commission, do the following:

- the manufacture or sale of traditional drop-side rail cribs is prohibited;
- tougher safety regulations for crib slats and mattress supports are imposed;
- stronger quality crib hardware is required; and
- more rigorous testing is required.

But the CPSC stopped short of banning all drop-side cribs. The rules apply to a number of crib safety factors, not just drop-side cribs. Several manufacturers voluntarily recalled their cribs in cooperation with the CPSC because of specific defects or risks of harm that were discovered. Although these recalls were separate from CPSC's new crib standards, traditional drop-side cribs will not meet the new crib standards and those cribs cannot be sold after that date. The rules apply to both full-size and non-full-size cribs. In 2012, the rules will apply to cribs in use at child care centers and places of public accommodation.

Source: *Lawyers USA Online*

FDA SHOULD RECALL AND BAN DANGEROUS BED HANDLES

Bed handles to be installed on beds at home—designed to help the elderly and persons who are sick get in and out of bed—can be very dangerous. In fact, the handles have strangled people who unwittingly roll over in their sleep and become caught in the gap between the bed and the handles. Public Citizen began an investigation after getting a call from a woman whose mother was killed in that manner. It found that others had died in a similar manner.

Public Citizen sent a petition to the Food and Drug Administration on May 4th, urging the agency to recall all Bedside Assistant bed handles and ban the marketing of these devices. The consumer advocacy group asked the FDA to investigate the link between similar bed handles (also known as bed rail devices) made by other companies and the risk of life-threatening injury or death due to entrapment and subsequent strangulation or suffocation.

Bed handles—which are considered medical devices and are therefore regulated by the FDA—are used in patients' homes and in nursing homes. But they are rarely used in hospital settings. Dr. Michael Carome, deputy director of Public Citizen's Health Research Group, had this to say:

Contrary to the manufacturer's claim that the Bedside Assistant bed handles make any bed a safer bed, data previously provided to the FDA demonstrate that these devices can turn a bed into a death trap for patients who are physically weak or have physical or mental impairments.

I believe this is an important consumer safety issue. It will be interesting to see how the FDA responds to Public Citizen's petition.

Source: Public Citizen

WYOMING COUPLE SAYS COMPANY SPIED ON ITS CUSTOMERS

A Wyoming couple says in a federal lawsuit filed last month in U.S. District Court in Pennsylvania that a computer they leased from a national rent-to-own firm allowed that firm to secretly spy on them. In the class action lawsuit, Brian and Crystal Byrd said that Aaron's Inc. Took remote photographs of them, eavesdropped on their

email and tracked their internet activities through a leased laptop equipped with hidden spying devices. The Plaintiffs accuse Aaron's and DesignerWare LLC, the Pennsylvania-based manufacturer and marketer of the spying products, of breaking federal laws that protect computer privacy and prohibit electronic eavesdropping.

It is alleged in the lawsuit that the webcam was controlled by Aaron's through a concealed electronic device the company installed and enabled on that and other leased computers "to remotely gather, intercept, transmit and store private electronic information and communications from (rent-to-own) customers, including but not limited to photographs, screen shots and keystrokes." Aaron's, a Georgia firm, leases everything from electronics to furniture and has more than 1,800 outlets in the United States and Canada, according to its web site.

The Plaintiffs are seeking damages for what they say was an illegal invasion of their privacy. They also are requiring that the court ban Aaron's from installing and using the spying products and the sale of those products by DesignerWare. It will be most interesting to see how this case develops.

Source: Reuters

FDA WARNS ABOUT DRUG IN SOME TEETHING MEDS

Many parents use an over-the-counter medication containing benzocaine to help their child's teething pain. The Food and Drug Administration recently issued a warning linking benzocaine to a rare but serious condition called methemoglobinemia, in which the blood does not effectively distribute oxygen throughout the body. In its very worst cases it can be fatal.

REGULATORY OVERSIGHT ON MORTGAGE FORECLOSURES IS BADLY NEEDED

Mortgage servicers—entities that manage home mortgage loans—halted foreclosures throughout the country in September 2010, finding that documents required to be provided to courts in some states had been improperly signed or notarized. In addition, on-going litigation has raised questions over whether foreclosures are being brought properly because of concerns over how loans were transferred into mortgage-backed securities. The General Accounting

Office (GAO) was asked to examine the following:

- the extent to which federal laws address mortgage servicers' foreclosure procedures and federal agencies' past oversight;
- federal agencies' current oversight and future oversight plans; and
- the potential impact of these issues on involved parties.

It appears that the GAO did an extensive and very thorough investigation. It should be noted that federal laws do not specifically address the foreclosure process. As a result, past oversight by federal agencies of servicers' foreclosure activities has been limited and fragmented. State laws primarily govern the foreclosure process and specify what, if any, documentation is required to foreclose on a property.

While several federal laws include mortgage servicing provisions, they largely are focused on consumer protection at mortgage origination, not specific foreclosure requirements. We will discuss the mortgage servicers and foreclosure problems in this issue of the Report. Although various federal agencies have authority to oversee most mortgage servicers, past oversight of their foreclosure activities has been very limited. This was due in part because banking regulators have not considered these practices as posing a high risk to banks' safety and soundness. Some servicers have not been under direct federal oversight.

The GAO has recommended that banking regulators and the Bureau of Consumer Financial Protection (CFPB) develop plans for overseeing mortgage servicers and include foreclosure practices in any servicing standards that are developed. It's also recommended by GAO that regulators assess the risks that documentation problems pose for their institutions. If you want more information on this subject, you can go to www.GAO.gov.

Source: The General Accounting Office

A LOOK AT MORTGAGE SERVICING FRAUD

The mortgage servicing environment in today's world is a harsh one indeed. Undoubtedly, a large number of mortgage servicers have taken unfair advantage of the loans they service in a multitude of ways. We will set out a few of the key ways that

mortgage servicing fraud is being committed by the mortgage servicers.

One of the first ways mortgage servicers commit fraud involving the loans they service is through the wrongful charging of late fees. Servicers accept payments on behalf of the owners of the loans, and through those payments, they receive a small portion of the interest of each payment. But, if a late fee is charged and collected, the servicer is able to keep 100% of that late fee. Unfortunately, this gives the mortgage servicing companies an incentive to charge as many wrongful late fees to their loans as they can. Therefore, it's important to focus on the date in which the payment in question was mailed, received, submitted online or paid otherwise as compared to when it was posted. Then you must reference the grace period allowed in the mortgage to see if the late fee charged is valid and follows the law.

Another method of fraudulent actions committed by mortgage servicing companies is the wrongful force-placing of homeowner's insurance. Pursuant to most mortgage agreements, the borrower has a duty to maintain homeowner's insurance on the property at all times. But, it has been discovered recently that mortgage servicers have been force-placing insurance on property under mortgage that already had adequate insurance. This indicates that the servicers are not performing the proper due diligence when it comes to finding out if there is already insurance coverage on the subject property. In many instances the borrower won't realize that additional insurance has been placed on his or her property. That's because the insurance is listed as a corporate advance that goes toward the overall balance. As a result, it does not always show up on the monthly statements.

Two other areas of fraud being committed by mortgage servicers involve repayment plans and forbearance agreements. Specifically, repayment plans or forbearance agreements are methods used by servicers as a way to allow the servicer to collect delinquent amounts over a shorter payment period comprised of larger amounts (that make up a total of the current amount due plus a portion of the delinquent amount due). Once those larger amounts have been paid over the shorter period, the borrower is brought current on his or her payments. But, it has been discovered that mortgage servicers have been tacking on additional amounts to those total pay back amounts. This sort of thing is quite often

not known by the borrower. Therefore, repayment plans and/or forbearance agreements must be looked at closely to determine whether or not the amounts that are being paid back are the correct total amounts of what is actually owed.

Lastly, another major area of mortgage servicing fraud involves HAMP Loan Modifications. Mortgage servicers have the ability to apply and be accepted in the federal government's Home Affordable Modification Program (HAMP). If accepted, the servicers have the ability to submit loan modifications on behalf of borrowers through that program. There are several guidelines imposed by the government, but the mortgage servicers actually receive money from the government for each loan that is modified. Unfortunately, we have seen many loans that have been taken through the loan modification process and then ultimately denied at the end. This could be linked to the fact that servicers receive more money when a loan is foreclosed on as opposed to the money received from the government for modifying a loan.

An unfortunate aspect of this process is that payments made toward the loan modification go only to the loan modification itself. If a borrower is ultimately denied, the payments that were made toward the loan modification are not applied to their regularly scheduled monthly payments. In turn, this causes the borrower to become greatly deficient and immediately delinquent on their past-due, unpaid monthly payments. Thus, the borrower is automatically placed in default. In most instances, unless something is done immediately, the borrower loses his or her dwelling very soon because the foreclosure process is started almost immediately.

There are also other areas of mortgage servicing fraud and I'm sure there are some that are yet to be discovered. But, we have set out the five major areas of concern where mortgage servicers are committing fraud on borrowers in the servicing of their loan. If you need additional information relating to the matters described above, contact Bill Robertson, a lawyer in the firm's Consumer Fraud Section, at 800-898-2034 or by email at Bill.Robertson@beasley-allen.com.

CALIFORNIA AND ILLINOIS EXPAND FORECLOSURE PROBES

Attorneys General in California and Illinois have issued subpoenas to two compa-

nies that help mortgage servicers manage home loans. This is the latest sign that state officials are stepping up pressure on the mortgage industry. California Attorney General Kamala D. Harris and Illinois Attorney General Lisa Madigan said they had issued subpoenas to Lender Processing Services Inc. As part of their investigation of questionable foreclosure practices, including so-called robo-signing, when employees approve legal documents without proper review. Ms. Madigan's office said it also issued a subpoena to Nationwide Title Clearing Inc., a mortgage-industry services provider.

As the foreclosure crisis has mushroomed, fees generated from the servicing of delinquent mortgages, known as "default servicing," have turned the once-obscure corner of the mortgage market into a billion-dollar industry.

ALABAMA ATTORNEY GENERAL OPPOSES NATIONAL SETTLEMENT

Alabama Attorney General Luther Strange is among a small group of state Attorneys General who say they opposed a proposed nationwide settlement with the nation's largest mortgage servicers related to foreclosure abuses. The settlement, entered into by a coalition of Attorneys General and other governmental officials, would impose new regulations and fines against the servicers. Media reports indicated mortgage servicers could be required to pay at least \$20 billion to U.S. homeowners who incurred losses from mishandled foreclosures or loans during the housing collapse.

Attorney General Strange, along with the Attorneys General of Oklahoma and Nebraska, wrote a letter in March raising concerns over the term sheet submitted to the largest U.S. mortgage servicers. The three Attorneys General said in their letter to Iowa Attorney General Tom Miller, who is leading negotiations for the states involved in the settlement:

What started out as an effort to correct specific practices harmful to consumers has morphed into an attempt to establish an overarching regulatory scheme that fundamentally restructures the mortgage loan industry in the United States.

In a separate letter to Attorney General Miller, Attorneys General for Virginia, Texas, Florida and South Carolina expressed similar concerns about the settlement. They

said the settlement would conflict with state laws and go "beyond enforcement and into regulation." Georgia's Attorney General also has voiced disagreement. While the states have broken ranks in recent weeks, back in October all 50 states Attorneys General united to inquire whether mortgage servicers improperly handled foreclosure documents. Based on our firm's involvement in civil litigation, I know for a fact that the wrongful handling of foreclosures has happened in great number.

Any mortgage servicer engaged in illegal or deceptive practices must be held accountable for their wrongdoing. But current Alabama law doesn't provide adequate protection to consumers fighting wrongful foreclosure. Attorney General Miller's office has accused Bank of America of engaging in a strategy to divide the 50 states in their support for the settlement.

In an action, separate from the Attorneys General settlement, several federal banking regulators recently announced formal enforcement actions against eight national mortgage servicers and two third-party service providers for "unsafe and unsound" practices. Those actions will require the mortgage servicers to improve residential mortgage loan servicing and foreclosure processing. It may also result in independent inquiries into previous foreclosure processing.

Source: AL.com

STORM VICTIMS MUST BE CAUTIOUS WHEN USING GENERATORS

The massive destruction caused by the tornados that struck Alabama and several other states last month created a huge demand for generators. Soon after the disaster, people started to buy generators as fast as they became available. Unfortunately, lots of folks don't know how to properly operate a generator and many do not recognize the safety risks that accompany generator use. Regardless of the circumstances, all persons should make sure they know how to use a generator safely before using one. Soon after the April tornados struck, a number of people suffered carbon monoxide poisoning from the generators and had to be hospitalized. When using a generator there are some simple recommendations that must be followed:

- Do not use the generators indoors or in a poorly-ventilated area because the fumes will make people sick and can be

deadly. This is especially true for babies and pregnant women. Generators emit carbon monoxide gas. The warning sticker on a generator says that carbon monoxide can kill you in minutes.

- When operating a generator in a garage, the garage door must be left open.
- If you must bring a generator inside a home or business, make sure it's turned off.

While these recommendations are fairly simple—and apply plain old common sense—it's amazing that they are not always followed. Remember, failing to follow basic safety rules can cost you your life or the lives of family members. So my advice is to learn all you can about how to safely use generators, including their use in emergency situations, and then be safe!

CHASE SETTLES MORTGAGE ABUSE CASE WITH MILITARY HOMEOWNERS

Chase Home Finance LLC, a unit of JP Morgan Chase & Co., has agreed to pay \$48.4 million for overcharging servicemembers on their mortgages and illegally foreclosing on them. A federal judge in South Carolina has approved the settlement. Hopefully, this will help send a message to financial institutions that this is an important issue. It is incomprehensible how any persons with a bank or loan company could take advantage of members of the U.S. military or their families.

The U.S. Department of Justice's Civil Rights Division has been investigating several mortgage and lending companies for wrongful foreclosures against military personnel. This settlement certifies a class of about 6,000 military members who have Chase mortgages and whose rights under the Servicemembers Civil Relief Act (SCRA) were violated. Fortunately, for some class members, the settlement means they will get their homes back.

The SCRA gives servicemembers the right to have their interest rates reduced to 6 percent when on active duty, and it specifically prevents lenders from foreclosing on active-duty servicemembers unless they have a court order. The purpose of SCRA is:

to provide for, strengthen, and expedite the national defense through protection extended by this act... to servicemembers of the United States to enable such persons to devote their

entire energy to the defense needs of the nation.

Richard Harpootlian, a lawyer from Columbia, S.C., represented the Plaintiffs and did a very good job. He should be commended for taking on this very important case and the lender involved should be ashamed of what it did.

Source: Justice.org

CONSUMERS URGED TO STOP USING CLIP-ON CHAIRS

The U.S. Consumer Product Safety Commission has issued a warning to consumers, stating that some "metoo" clip-on table top chairs, imported by phil&teds USA Inc., of Fort Collins, Colo. put young children at risk of serious injury due to multiple safety hazards. CPSC is urging consumers to stop using some metoo clip-on chairs immediately. The product is an infant/toddler chair with a nylon fabric seat and a metal frame that clamps onto tables using two metal vise clamps. The upper part of each clamp rests on the table top and has either a rubber clamp pad on its underside or a rubber boot covering it. The chair is sold in three fabric colors—red, black and navy.

The company has refused to agree to a national recall of its hazardous product that is acceptable to CPSC. Instead, the company has offered a repair kit consisting of rubber boots to place on the upper clamp grips of the chairs. Consumers should be aware that CPSC has not approved a repair kit for this product, despite the firm's statement that it was conducting a recall "in cooperation with the U.S. Consumer Product Safety Commission."

CPSC is urging consumers to immediately stop using the affected metoo chairs in order to prevent the risk of injury to children. The affected metoo chairs pose serious fall and amputation hazards to children placed in them. Children can suffer impact and head injuries when the chair detaches from the table and falls with them in it. The CPSC says its staff is aware of numerous incidents involving the affected metoo chairs. The agency's staff has determined that the clamps can detach from a variety of different table surfaces. Additionally, the chairs can detach when children move around or use their feet to push against other objects. It was also determined by CPSC staff that the lack of adequate space between the horizontal metal bar at the front of the chair and the clamps

can cause children's fingers to be severely pinched, lacerated, crushed or amputated if caught between the bar and the clamp when the chair detaches.

In addition to hazards with the affected clip-on chairs, the product packaging and instructions provide conflicting information. The product's packaging and marketing information show the product being used in ways that may lead to the chair detaching from the table. But, the product's instructions do not adequately warn against this type of use. Tens of thousands of the affected metoo chairs may have been distributed since May 2006. They were sold for about \$50 through philandteds.com, Amazon.com, Buy Buy Baby, Target, Toys R Us, other online retailers and a variety of independent juvenile specialty stores.

Source: CPSC

ONLINE GAME STAR PLAYDOM SETTLES CHILD DATA CASE

US Walt Disney-owned Playdom will pay \$3 million to settle charges that the online game star wrongly gathered information about children. Playdom broke the law by not getting permission from parents or guardians before collecting information about young players and letting it be shared in the online game community, according to the Federal Trade Commission. FTC chairman Jon Leibowitz said in a release:

Let's be clear: Whether you are a virtual world, a social network, or any other interactive site that appeals to kids, you owe it to parents and their children to provide proper notice and get proper consent. It's the law, it's the right thing to do, and, as today's settlement demonstrates, violating COPPA will not come cheap.

The settlement was the most money ever paid to resolve charges of violating the Children's Online Privacy Protection Act (COPPA). Playdom also agreed to adhere to the law regarding data about young players. The FTC had charged the company behind games including "Pony Stars" and "My Diva Doll" with collecting personal information from children that signed up to play online and then letting them share such details in profiles and forums. Children younger than 13 years old were allowed to post their names, email addresses, locations and other information, according to the FTC complaint. Playdom, which was bought

by Walt Disney Company last year for about \$763 million, is considered among the top three social game companies. It's reported to have more than 40 million monthly users.

Source: Yahoo News

IT'S REPORTED THAT 80% OF BABY PRODUCTS ARE TOXIC

A new study published in *Environmental Science & Technology* last month said 80% of baby products contain toxic or untested chemical flame retardants. The data revealed that one-third of baby products, including nursing pillows, contain the chemical called chlorinated tris, which was removed from children's pajamas in the 1970s after raising concerns about cancer. Another flame retardant, known as TCEP, was detected in ten of the tested nursing pillows. TCEP is listed as a carcinogen in California.

Currently, companies are not required to label whether products contain flame retardants. There are flame retardants in 90 percent of American bodies, according to the Centers for Disease Control and Prevention. Sonya Lunder, a scientist with the Environmental Working Group, told USA Today:

But toddler's bodies have levels of flame retardants three times higher than adults, which the study says can be explained partly because children are on the floor a great deal, around household dust where chemicals accumulate, and they often have their fingers in their mouths.

As expected, some find fault with the study. A professor of chemistry at Florida Institute of Technology, Gordon Nelson, said that the study tested some products purchased in 2002, prior to when the common flame retardant, PentaBDE, was phased out of the production process. That chemical is no longer used in products. Dr. Nelson said if the study looked at products sold in stores now, baby products may appear safer.

Source: Fox News

JURY AWARDS \$12.5 MILLION TO TEEN RAPE VICTIM

A Wayne County jury awarded \$12.5 million last month to a 14-year-old girl who repeatedly was raped by an attendant during a 50-minute ride in a Superior Ambulance in July 2006. The seven-member jury

deliberated three and one-half hours over two days before announcing the verdict. The evidence at trial showed that the attendant raped the 14-year-old girl in the presence of the driver during an ambulance ride from Brownstown Township to New Baltimore. The driver reported the incident to a supervisor, who allegedly responded, "cover our asses."

The attendant was convicted of rape in a criminal trial and sentenced to three and one-half years in prison. Superior Ambulance, through its general counsel, Summer Heil, had this to say: "What happened to the Plaintiff in this case is reprehensible. She was victimized by a pedophile. But Superior was in no way responsible for this." The jury under Michigan law found the attendant 70% responsible, Superior 30% at fault and the driver not at fault. Bill McHenry and Geoffrey Fieger, lawyers with Fieger, Fieger, Kimmey, Johnson & Giroux, a firm in Southfield, Mich., represented the Plaintiff and they did a very good job.

Source: Freep.com

MISLABELING FOREIGN FISH IS NOT A GOOD THING FOR CONSUMERS

Two former seafood company executives were sentenced for an elaborate conspiracy to conceal the age and origin of foreign seafood. U.S. District Judge Ginny Granade accepted "binding" plea agreements for Karen L. Blyth and David H.M. Phelps, which means she has no discretion in the sentence. Both Defendants will serve substantially shorter prison terms than the punishment recommended under advisory guidelines. Blyth, who was part owner and president of Arizona-based Consolidated Seafood Enterprises, will serve two years and nine months in prison, followed by three years of supervised release. Phelps, who was part owner and vice president of the company, will serve two years in prison, followed by three years of supervised release. Each Defendant also will pay a \$5,000 fine, and neither can hold any ownership stake or managerial positions in the seafood industry while they are on supervised release.

Consolidated Seafood Enterprises contracted with importers to bring in fish from abroad and then supplied the product to wholesalers that sold seafood to restaurants and stores. Blyth and Phelps also ran Reel Fish and Seafood Inc., a seafood wholesaler near Pensacola, Fla. Blyth and Phelps admitted that they would buy and sell frozen

catfish fillets called basa, swai and sutchi that they knew had been falsely labeled to avoid customs duties. They passed off the fish, as well as Lake Victoria perch from Africa, as grouper to customers in Alabama, Florida and elsewhere.

The Defendants also admitted to overstating the size of shrimp they sold and labeling them as U.S. wild caught when, in fact, they were raised on shrimp farms in foreign countries. Both of the Defendants were present between January and June in 2005, when employees at Reel Fish and Seafood took shrimp out of boxes indicating they were farm-raised and repackaged them as wild-caught U.S. shrimp. Under the plea agreement, the Defendants agreed that they:

- Falsified, or allowed employees to falsify, documents describing 283,500 pounds of Vietnamese catfish as sole. Some of the fish had tested positive for malachite green, a chemical compound prohibited in the United States, and a banned antibiotic called Enrofloxin, although Armstrong said they were FDA-approved concentrations.
- Avoided an anti-dumping duty of \$40,098 on 81,000 pounds of imported Vietnamese fish by labeling it as sole.
- Sold 101,078 pounds of catfish as grouper to 65 customers of Reel Fish and Seafood in Alabama, Florida and elsewhere.
- Sold 25,000 pounds of imported Lake Victoria perch as grouper or snapper to 45 customers of Reel Fish from Jan. 20, 2005, to May 8, 2006.

The violations in this case should get the attention of consumers. Bringing in fish and shrimp and other seafood from foreign countries—and then mislabeling the products—is a most serious offense.

Source: Al.com

VOLVO SETTLES CLASS ACTION LAWSUIT

Volvo AB has agreed to pay \$525 million to settle a class-action lawsuit affecting more than 9,300 retirees. Mack Trucks Inc., a unit of Volvo, was accused of illegally reducing the retirees' lifetime health benefits. A federal judge granted preliminary approval of the settlement on May 12th. Under the settlement, the \$525 million would be paid in five annual installments into a trust to fund a new health care

plan. A fairness hearing has been scheduled for September 7, 2011.

The dispute concerned whether Mack, which had been having financial difficulties, could alter or rescind lifetime benefits it had agreed to provide through collective bargaining with the UAW (the retirees' union). Mack was bought by Swedish company Volvo in 2001. Even though the agreed-upon changes will reduce medical coverage, lawyers for the retirees, the UAW and Mack all said in a joint court filing that they provide "reliable" and "substantial" benefits by "reducing uncertainty about the availability of coverage."

In his ruling, the judge said the settlement avoided potential litigation concerning the "difficult and unsettled issue" under federal labor law over whether the benefits had vested. He also said the settlement secured an up-front payment that was guaranteed by Volvo, and which was neither dependent on Mack's future performance nor subject to claims by its creditors. In his order, the judge wrote: "The proposed settlement provides the retirees with significant lifetime medical benefits," and "falls well within the range of reasonableness." The case combined lawsuits filed in federal courts in Michigan and Pennsylvania.

Source: Reuters

BANK OF AMERICA TO SETTLE OVERDRAFTS LAWSUIT FOR \$410 MILLION

Bank of America will have to pay \$410 million to settle its portion of a broad lawsuit involving excessive overdraft fees on debit cards. The settlement was tentatively approved by a federal judge in Miami on May 23rd. The claim against Bank of America is part of a class-action lawsuit filed on behalf of consumers. It accuses the nation's banks of manipulating debit transactions to maximize the fees they could charge customers who exceeded the balance in their accounts.

Bank of America is the first Defendant to settle in the case, which included over 30 Defendants, including JPMorgan Chase, Wells Fargo, U.S. Bank, and Citibank. A hearing on final approval has been scheduled for November 7th. Bobby Gilbert and Bruce Rogue, who are lawyers with the Alters Law Firm in Miami, represented the Plaintiffs and they did a very good job.

DON'T FEED SIMPLYTHICK TO BABIES

The FDA has warned parents not to feed milk or formula mixed with SimplyThick to premature babies. The FDA announced on May 18th that 15 infants who had been given the product developed a life-threatening intestinal condition known as necrotizing enterocolitis. Two have died. The thickener helps those with swallowing problems keep their food down. The FDA states in a consumer update:

This situation is unusual because NEC [necrotizing enterocolitis] most often occurs in babies while they are in the hospital early in their premature course. But some of the ill babies that FDA is aware of got sick after they had been discharged from the hospital and sent home on a feeding regimen that included SimplyThick. At this time it is not known what about SimplyThick is making babies sick. FDA is actively investigating the link between SimplyThick and these illnesses and deaths.

The thickener in SimplyThick is a corn-starch-like substance called xanthan gum, used in salad dressings and dairy products. The company's website says: "Xanthan gum is a complex carbohydrate that acts as soluble food fiber and passes through the body essentially without being digested." Necrotizing enterocolitis, which usually develops soon after milk feeding starts, is diagnosed in 1% to 5% of infants admitted to neonatal intensive care units. KidsHealth gives this explanation:

A gastrointestinal disease that mostly affects premature infants, NEC involves infection and inflammation that causes destruction of the bowel (intestine) or part of the bowel.... The exact cause of NEC is unknown, but one theory is that the intestinal tissues of premature infants are weakened by too little oxygen or blood flow. So when feedings are started, the added stress of food moving through the intestine allows bacteria normally found in the intestine to invade and damage the wall of the intestinal tissues. The damage may affect only a short segment of the intestine or can progress quickly to involve a much larger portion.

It's sort of hard to believe that this product isn't being recalled. SimplyThick

says that the FDA is not recalling the product, but nonetheless states:

Pending the conclusion of the investigations, we are telling our customers and medical professionals to follow the FDA's recommendation that SimplyThick® brand thickener not be used with or given to babies who were born before 37 weeks.

Source: Los Angeles Times

XIX. RECALLS UPDATE

Each month we hope that fewer product recalls will have been issued. But it appears that has not been the case recently. There have been numerous product recalls over the past weeks. Serious safety-related recalls have become rather commonplace. The following are some of the more significant recalls since those reported in the May 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.

HONDA ADDS 833,000 VEHICLES TO AIRBAG RECALL

Honda Motor Co Ltd expanded an earlier recall of Honda and Acura vehicles over replacement airbags that could deploy with too much pressure, causing injuries or fatalities. The expanded recall adds 833,000 vehicles for the model years 2001 through 2003. Honda is looking for 2,430 replacement airbags that could contain the defect. These additional vehicles were not included in earlier safety recalls because the original airbag modules on the driver's side were not affected by the issue. But replacement airbags could contain the defect, according to Honda.

Honda said 2,430 faulty air bags were installed after crashes, but it doesn't know which vehicles got them. So the recall is being expanded to include 833,000 vehicles that might need inspection. Honda originally announced the recall in November 2008, involving fewer than 4,000 2001 Accords and Civics. In February 2010, Honda added more than 378,000 cars

to the recall, bringing the number of affected vehicles to 822,000.

The replacement airbag inflators could deploy with too much pressure, causing the inflator casing to rupture. This could result in injury or a fatality. The recall includes some 2001 and 2002 Accord and Civic sedans, 2002 Odyssey minivans and 2002 and 2003 CR-V crossover vehicles. It also includes 2002 and 2003 Acura 3.2 TL and 2003 3.2 CL vehicles.

According to Honda, the air bags can inflate with too much force and a casing can break and cause injury or death. Vehicles being added to the recall include some 2001 and 2002 Accord and Civic, 2002 Odyssey, 2002 and 2003 CR-V, 2002 and 2003 Acura 3.2 TL and 2003 Acura 3.2 CL models.

Honda said at the time it was aware of 12 incidents linked to the problem, with 11 injuries and one death. Owners were notified by mail in late May. If an owner is confident the air bag hasn't been replaced, they can notify the company. All others should have their vehicle checked by a dealer.

HONDA RECALLS 1,156 CIVICS

Honda is recalling 1,156 Civic vehicles due a seal in a gas line that may be misaligned, posing a fire hazard. The recall involves 2012 model year two-door and four-door Civics made between April 21, 2011 and May 2, 2011. In a statement, NHTSA said, "There is a possibility that an O-ring, which seals a connection in the fuel feed line, is misaligned. If the O-ring is misaligned, a small fuel leak may occur." Honda said dealers will inspect the vehicles and replace the fuel feed line assembly free of charge. Consumers can call 888-327-4236 for information.

KIA MOTORS RECALLS SPECTRA COMPACT CARS

Kia Motors Corp. is recalling more than 58,000 Spectra compact cars registered in cold-weather states, because the fuel tanks could drop to the ground and cause a fire. The recall affects Spectra LD models from the 2004 to 2007 model years.

GM RECALLS CHEVROLET CRUZE

GM has recalled every Chevrolet Cruze built at the Lordstown complex. The decision to recall was made to ensure the intermediate steering shaft was properly installed, according to GM. The problem could cause a driver to lose steering power. Of the recalled vehicles, 120,295 of them may have an additional problem with automatic-transmission shift links improperly installed. That problem could cause the vehicle to shift gears unexpectedly. GM doesn't want the steering problem to be confused with the 2,100 Cruzes recalled in April, when one steering wheel detached from its column. GM decided to announce the steering recall, along with the transmission recall at the same time.

GM says the issues arose during manufacturing, but so far the company hasn't given the details. Lordstown had previously installed a Dynamic Vehicle Testing system, which can identify engineering-related problems. GM representatives said no accidents or injuries have been reported because of the two-tiered recall. The company and dealership representatives said recall inspections shouldn't take more than an hour.

GM RECALLS PICKUP TRUCKS DUE TO WIPER DEFECT

General Motors has recalled more than 4,500 Chevrolet Colorado and GMC Canyon pickup trucks because nuts in the windshield wipers may not have been sufficiently tightened. If a nut in the wiper's motor crank arm were too loose, the wiper might not work if there were a build-up of snow or ice. The nut could also loosen if the wiper were operated on a dry windshield. At a certain point, the nut could be loose enough for the wipers to stop working. GM said the trucks, which are for the model year 2011, were built from late September to early November of last year.

NISSAN RECALLS 270,000 SERENA MINIVANS IN JAPAN AND HONG KONG

Nissan Motor Co has recalled about 270,000 Serena minivans in Japan and

Hong Kong to repair several defects including a glitch in the fuel tank that could cause the engine to stall. No accidents have been reported from the problems, according to Nissan.

DRAIN COVERS RECALLED

The Consumer Product Safety Commission has recalled about one million pool drain covers. The recall could cause the temporary closing of hundreds of thousands of pools across the country. We have written on numerous occasions about the hazards and safety risks to children who can be entrapped in swimming pools or spas because of the defective drain covers. The suction at the drains is extremely strong. Since we got this recall notice just as this issue was going to the printer, we don't have all of the information that is needed concerning this recall. If you want more information, including the manufacturers of the recalled drain covers, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com or you can contact the industry's drain cover recall hotline at (866) 478-3521 or go to www.apsp.org/draincover recall.

KOHLER RECALLS LAWN TRACTOR ENGINES

About 10,000 Kohler Courage Engines have been recalled by the manufacturer Kohler Co., of Kohler, Wis. A wire connector on the engine can become disconnected causing the operator's seat switch to fail. When this happens, the blades will not shut down, posing a laceration hazard to consumers. This recall involves Kohler Courage twin-cylinder engines sold with three brands of lawn tractors: Husqvarna, Cub Cadet, and Troy-Bilt. The vertical-shaft gasoline engines range in horsepower from 20 to 25. Engines included in this recall have serial numbers with the first five digits beginning with 41028 through 41056. Serial numbers can be found on the black engine cover. The engines were sold at Lowe's, Tractor Supply Company stores, and by authorized Cub Cadet dealers nationwide from February 2011 through April 2011 for between \$1,500 and \$5,700. Consumers should immedi-

ately stop using the lawn tractors and contact an authorized Kohler dealer or the retail location where the tractor was purchased for a free inspection and repair. For additional information, contact Kohler Co. At (800) 451-2294, or visit the firm's website at www.kohlerengines.com.

BUNK BEDS RECALLED DUE TO COLLAPSE AND FALL HAZARDS

Dorel Asia SRL, of Barbados has recalled Wooden bunk beds. This includes about 445,000 in the United States and 21,700 in Canada. The wooden side rails that run from the headboard to the footboard and hold the bunk bed's mattress in place can split and cause the bunk bed to collapse, posing a fall hazard to consumers. CPSC and Dorel Asia have received 23 reports of the side rails cracking or breaking, including seven reports of minor bruises or abrasions. The model number, date of manufacture, "Made in Vietnam" and the firm's phone number are printed on a white label located on one of the bunk bed rails. Some of the labels include the name "Dorel Asia SRL." The beds were sold at Walmart, Kmart and Target stores and online at www.walmart.com, www.kmart.com and www.target.com from September 2004 through September 2009 for about \$190. Consumers should immediately contact Dorel Asia to receive a free repair kit. Until consumers obtain and install the repair kit, consumers should take down the bunk beds and only use them as separate twin beds.

YAKIMA RECALLS FRONTLOADER UPRIGHT BIKE MOUNT

Yakima Products has recalled its FrontLoader, a top of car bike rack. A small number of units shipped to dealers from March 2010 through December 2010 have malfunctioned. There have been no injuries related to this malfunction and the issue has been addressed in the current generation of the FrontLoader that began shipping in February 2011. Yakima is in the process of contacting all affected dealers who will receive replacement product. FrontLoaders subject to the recall can be identified by the front wheel hoops.

Units with four wheel position options are part of the recall. Current units with five positions are not part of the recall.

Yakima and its retailers will be reaching out directly to those consumers that have purchased the affected product. Consumers that have purchased a FrontLoader produced or shipped to dealers between March and December 31, 2010 should cease use of the racks, remove them from their vehicle and execute the product return per the instructions posted on www.yakima.com/frontloaderrecall beginning April 28, 2011, or call 1-888-925-4621.

DREAM ON ME RECALLS DROP-SIDE CRIBS

About 22,000 Full-Size and Portable Drop-Side Cribs have been recalled by Dream on Me, Inc. of Piscataway, N.J. The drop-side rail hardware can break or fail, allowing the drop side to detach from the crib. When the drop-side rail partially detaches, it creates a space between the drop side and the crib mattress. An infant or toddler's body can become entrapped in the space, which can lead to strangulation and/or suffocation. A child can also fall out of the crib. The drop-side rail hardware can break or fail, allowing the drop side to detach from the crib or fall unexpectedly. In addition, the portable crib mattress support hardware and the drop-side release latch can break easily, and the slats can loosen or break and detach from the crib. Children can also cut themselves on exposed hardware inside the cribs.

According to the CPSC, the firm knows of 69 reports of incidents involving these cribs. The cribs are drop-side wooden cribs, painted or stained in black, cherry, dark brown, natural, white, and pink. Full-sized cribs: Models 613, 615, 616, 617, 619, 628, and 639 are included in this recall. The model number and "Dream on Me Inc." are printed on a label located on the inside of one of the end panels. The label lists a manufacture date between January 2006 and December 2009.

The portable cribs are smaller than the full-size cribs mentioned above. The

ends fold in to facilitate portability. Model numbers 621, 625 and 627 are included in this recall. The model number and "Dream on Me Inc." are printed on a label located on the mattress board. The label lists a manufacture date between August 2007 and February 2009.

The cribs were sold at Toys R Us, Walmart and Target stores nationwide and online at Amazon.com. The full-size cribs were sold from January 2006 to December 2009 for about \$200. The portable cribs were sold from September 2007 to December 2009 for about \$150. Consumers should immediately stop using these cribs and contact the company. Full-size cribs: Consumers will be given a free kit that will immobilize the drop side. Kits will be available beginning June 30, 2011. Portable cribs: Consumers can receive a free replacement portable crib with fixed sides. Replacement cribs will be available in mid-July 2011. For additional information, contact them toll-free at (877) 201-4314, or visit the company's website at www.dreamonme.com.

STIHL RECALLS YARD POWER PRODUCTS DUE TO BURN AND FIRE HAZARDS

About 2.3 million gas-powered STIHL trimmers, brushcutters, KombiMotors, hedge trimmers, edgers, clearing saws, pole pruners, and backpack blowers that utilize a toolless fuel cap have been recalled by STIHL Inc., of Virginia Beach, Va. The level of ethanol and other fuel additives can distort the toolless fuel cap, allowing fuel to spill, posing a fire and burn hazard. STIHL has received 81 reports of difficulty installing and/or removing the fuel caps and fuel spillage. No injuries have been reported.

You can visit STIHL's website, www.stihlusa.com for model numbers included in this recall and for additional photos of the power tools involved and photos of the toolless fuel cap. They were sold at authorized STIHL dealers nationwide from July 2002 through May 2011 for between \$190 and \$650. Consumers should immediately stop using these products and return them to an authorized STIHL dealer for a free repair. Consum-

ers can contact STIHL for instructions on identifying these toolless fuel caps. For additional information, contact STIHL toll-free at (800) 233-4729 between 8 a.m. and 8 p.m. ET Monday through Friday, or visit STIHL's website at www.stihlusa.com or e-mail to stihl-recall@stihl.us.

WAL-MART RECALLS GE FOOD PROCESSORS DUE TO LACERATION AND FIRE HAZARD

Wal-Mart Stores Inc., of Bentonville, Ark., has recalled General Electric® Food Processors. The safety interlock system on the recalled food processor can fail, allowing operation without the lid secured which poses a laceration hazard. In addition, the product can emit smoke, or catch fire, posing a fire hazard. Wal-Mart has received a total of 58 incident reports: 24 reports of the food processor operating without the lid in place, of which 21 resulted in injuries to fingertips; and 34 reports of the unit smoking, including three reports of fires. This recall involves GE-branded digital, 14-cup food processors. The food processors are black with stainless steel trim, and model number 169203 is imprinted on the underside of the unit. The food processors were sold exclusively at Wal-Mart stores nationwide and Walmart.com from September 2009 through February 2011 for a retail price of about \$50. Consumers should immediately stop using the recalled food processor and return the product to any Wal-Mart for a full refund.

TWEEN BRANDS RECALLS BEADED CURTAINS

About 36,000 beaded curtains have been recalled by GMA Accessories Inc., of New York, N.Y. and Tween Brands Inc., doing business as Justice, of New Albany, Ohio. The beaded curtains are prone to entanglement. When an adult or child plays with or runs through the beaded curtains, the risks of entanglement and strangulation are posed. The firm has received two reports of consumers becoming entangled in the curtains. No injuries have been reported.

This recall involves two styles of Justice-brand beaded door curtains, the

diamond beaded curtain, and the disco ball beaded curtain. These multi-colored curtains are used as a decorative divider in a doorway and measure 72 inches long. Each curtain is sold with two plastic mounting brackets, each measuring 12 inches wide. The name of the product is printed on the packaging and the curtains have tracking numbers 904598.1735 and 904597.1735 printed on labels located on one of the mounting brackets and on the packaging. The curtains were sold at Justice stores nationwide and online at www.shopjustice.com from August 2010 through March 2011 for approximately \$20. Consumers should immediately stop using the recalled curtains and return them to any Justice store for a full refund. For additional information, contact Tween Brands at (800) 934-4497, or visit its website at www.shopjustice.com.

GIRL'S HOODED SWEATER RECALLED DUE TO STRANGULATION HAZARD

About 300 Girl's Hooded Sweater with Drawstring have been recalled by El Gringo Imports of Seattle. The hooded sweaters have drawstrings through the hood which can pose a strangulation or entrapment hazard to children. In February 1996, CPSC issued guidelines, which were incorporated into an industry voluntary standard in 1997, to help prevent children from strangling or getting entangled on the neck and waist drawstrings in upper garments, such as jackets and sweatshirts. The recalled product is a hand-knitted wool sweater with a hood in sizes 1 through 10. The sweater has a drawstring in the hood with multi-colored yarn tassels. The sweaters are multi-colored with a front zipper. "El Gringo Imports" is written on a black neck tag. The sweaters were sold at Pike Place Market in Seattle from November 2009 to August 2010 for between \$20 and \$25. Consumers should immediately remove the drawstring from the sweatshirt to eliminate the hazard or contact El Gringo Imports for instructions on how to receive a full refund.

EDGE AND HOG BUOYANCY CONTROL DEVICES RECALLED DUE TO DROWNING HAZARD

WRK Enterprises doing business as Edge Dive Gear of Macon, Ga., has recalled Edge and HOG (Highly Optimized Gear) Buoyancy Control Devices (BCD). This includes about 750 in the U.S. and 20 in Canada. The spring in the over pressure valve can corrode and break preventing the buoyancy control device from retaining air, posing a drowning hazard to consumers. This recall affects Edge Freedom and Stealth models, and the HOG 32lb Wing model.

The Freedom is a jacket-style BCD made of heavyweight nylon. It is black and has a blue arch on the lower right side. The word "Freedom" is printed in white letters on the right front and the word "Edge" is located on a flap over the corrugated hose. Freedom BCDs with the serial numbers in the table below are affected. The serial number is printed on a tag that is located in the front right zipper pocket.

The Stealth is a back flotation-style BCD made of heavyweight nylon. It is black and gray with the word "Stealth" printed in white letters on the right-hand strap, and the word "Edge" on a flap over the corrugated hose. Stealth BCDs with serial numbers 000658 to 000697 are affected by this recall. The serial number is printed on a tag that is located in a small zippered pocket under the left weight pocket.

The HOG 32lb Wing is an oval-shaped, donut-style BCD made of heavyweight black nylon. It is designed for single-cylinder diving with a back plate or soft pack harness system. The HOG logo, a picture of a wild boar with the words "Highly Optimized Gear" and "HOG" inside an oval, is on the top strap of the device. HOG 32lb Wing BCDs with serial numbers 9042128 to 9042128 are affected by this recall. The serial number is inside a zippered compartment on a tag attached to the inner bladder of the wing.

They were sold at authorized Edge and HOG dealers nationwide, and in Canada from May 2009 through October 2010 for \$199 to \$250. Consumers should immediately stop using

the BCDs and return them to an authorized Edge dealer for a free spring replacement at no charge. For additional information, contact Chris Richardson at 1-888-370-3483 between 9 a.m. and 5 p.m. ET, Monday through Friday, or visit the company's website at www.edge-gear.com.

BRISTOL-MYERS RECALLS COUMADIN BLOOD THINNER

Bristol-Myers Squibb Co. has recalled one production lot of its blood thinner Coumadin after finding an oversize tablet. The company said it tested a returned bottle of Coumadin and found that one tablet was more potent than expected. An excessive dose of Coumadin, or warfarin, could create an increased risk of bleeding.

The recall affects 5-milligram Coumadin tablets with an expiration date of Sept. 30, 2012. The production lot is number 9H49374A. The New York drugmaker said it has notified the Food and Drug Administration about the recall. It said patients taking 5-milligram tablets should not stop taking them, but should talk to their pharmacist to find out if their prescription was filled with tablets that have been recalled.

SHEET SANDERS RECALLED BY ONE WORLD TECHNOLOGIES

About 300,000 Ryobi ¼ Sheet Sanders have been recalled by One World Technologies, Inc., of Anderson, S.C. Pieces of the fan can break off from the fan assembly and be ejected from the product, posing a laceration hazard to consumers. The firm has received 31 reports of broken fan pieces being ejected from the sander, including two reports of minor lacerations. This recall involves Ryobi brand sheet sanders, model S651D. The sander is blue and black. The word "Ryobi" is on the left side. The model number can be found on the data plate located on the side of the sander just below the handle. The sanders were sold at Home Depot, Gardner, Inc., Tap Enterprises, Inc., Direct Tools Factory Outlets, Amazon.com, and ToolKing.com from June 2005 through August 2010 for about \$30. Consumers should immediately

stop using the recalled sander and contact One World Technologies to receive a free replacement sander. For additional information, contact One World Technologies Customer Service at (800) 597-9624 between 8 a.m. and 5 p.m. ET Monday through Friday or visit the company's website at www.ryobitools.com

TELSTAR RECALLS ENERGY-SAVING LIGHT BULBS DUE TO FIRE HAZARD

About 317,000 Light Bulbs have been recalled by Telstar Products d/b/a Sprint International Inc., of Brooklyn, N.Y. The light bulbs can overheat, posing a fire hazard to consumers. Telstar Products has received two reports of fires. In one incident, the fire was contained to the light fixture. The other reported incident resulted in a residential fire.

This recall involves energy-saving light bulbs sold under the Telstar and Electra brand names. The bulbs were sold in two styles: spiral and the "3-Us" shape. The Telstar bulbs were sold in 20 and 23 watts with model number LB-1020 and LB-1023 printed on the packaging. The Electra bulbs were sold in 18, 20, 23, 26, 28, 30, 34, 36, 38 and 40 watts with model numbers LB-18, LB-20, LB-23, LB-26, LB-28, LB-30, LB-1018, LB-1020, LB-1023, LB-1026, LB-1134, LB-1136, LB-1138 and LB-1140 printed on the packaging. "CE 110V," "China" and the wattage number are printed on the bulb. The bulbs were sold at discount stores throughout New York and New Jersey from August 2010 through March 2011 for between \$1 and \$1.50. Consumers should immediately stop using the light bulbs and return them to the store where purchased for a full refund.

UJ TRADING RECALLS KNIGHT HAWK TOY HELICOPTERS DUE TO FIRE HAZARD

UJ Trading, of Houston, Texas, has recalled about 18,500 Danbar Knight Hawk Toy Helicopters. They were previously recalled in January 2010. The battery housing under the helicopter canopy can overheat while charging, posing a fire hazard. This recall involves Danbar Toys Knight Hawk

remote control helicopters. The helicopter can be identified by model number 006047 marked on the back of the controller and the Knight Hawk logo on the front of the controller. The body of the helicopter also contains the markings: "AH-64" and "helicopter." The toy helicopters were sold at toy, hobby and other stores, including mall kiosks, nationwide and online at www.UJToys.com from April 2010 through April 2011 for about \$36. Consumers should immediately take the recalled helicopters away from children and contact UJ Trading to receive a full refund. UJ Trading will provide consumers with a postage paid label to return the product. For additional information, contact UJ Trading at (800) 536-2691 between 9 a.m. and 5 p.m. CT Monday through Friday, or visit its website at www.UJToys.com.

GERBER AXES RECALLED

Gerber Legendary Blades Gator Combo Axe have been recalled by the Consumer Product Safety Commission. Unless otherwise indicated, discontinue use of this product immediately and return them to the store where purchased for a refund. For more information about the products, call the manufacturer or CPSC's toll-free hot line, 800-638-2772.

The axes were sold at retail stores nationwide, including The Sportsman's Guide, Dick's Sporting Goods, Bass Pro Shops, American Rod & Gun and online since March 2005 for about \$28 to \$60. The knife in the ax handle can come out when the ax is used for chopping or hammering, posing a laceration hazard to the user. Consumers should immediately remove the knife from the ax handle and contact Gerber to receive a free handle cap, which will hold the knife in the ax handle during transport and storage, instructions for the use of the handle cap, and a warning label to affix on the ax head.

US REISSUES 2009 MACLAREN STROLLER RECALL

The U.S. Consumer Product Safety Commission has reissued a recall notice for certain Maclaren strollers, saying there have been 37 reported

injuries since the stroller was originally recalled in November 2009. Maclaren single and double umbrella strollers made before November 2009 had a hinge mechanism that could cut or even amputate a child's finger when the stroller was being opened. The government said there have been five fingertip amputations, 16 lacerations and 16 fingertip entrapments reported since the strollers were recalled.

About one million strollers sold between 1999 and November 2009 were affected. All have the word "Maclaren" printed on the stroller. Maclaren will provide a free hinge cover to repair the defect. There have been a total of 149 reported incidents with the strollers. Maclaren strollers are now made with a different hinge mechanism. Consumers who need a repair kit should contact Maclaren USA at hingecovers@maclaren-usa.com or call 877-688-2326.

MORE STROLLERS RECALLED DUE TO CHOKING RISK

Lan Enterprises has recalled 2,300 strollers due to strangulation risks. This recall was because of an opening between the armrest bar/snack tray and seat bottom of the stroller that is big enough for an infant to slide through and become trapped at the neck. The CPSC announced the recall late last month.

KATIE BROWN TEA LIGHT CANDLE SETS RECALLED BY MEIJER INC.

Meijer Inc., of Grand Rapids, Mich., has recalled about 7,600 Katie Brown 12-piece tea light candle sets. The clear plastic candle holder can ignite, posing a serious burn and fire hazard to consumers. Meijer has received one report of the resin cup catching fire and melting. No injuries or property damage have been reported. The recalled wax tea light candles in clear plastic holders were sold in five different colors/scents: vanilla, spruce, snappy spice, sunny tuscan and sweet love. Model numbers are 50181MKB, 50182MKB, 50183MKB, 50184MKB and 50185MKB printed on the bottom of the tea light holder. The wax tea light candles measure approximately 2

inches in diameter. The Katie Brown logo is printed on the clear packaging cover of the tea lights. Printed on a label on the bottom of each 12-piece pack of tea light candles is "Distributed by Wholesale Merchandisers, Inc. 2929 Walker Ave NW, Grand Rapids, MI 49544. Made in India. www.katiebrown.meijer.com"

The candle sets were sold exclusively at Meijer Stores in Michigan, Ohio, Kentucky, Illinois and Indiana from October 2010 through March 2011 for about \$8. Consumers should stop using the tea light candles immediately and return all tea light candles sets to any Meijer Store for a full refund. For additional information, contact Meijer at (800) 927-8699, or visit its Web site at www.meijer.com.

If you need more information on any of the recalls listed above, or would like information on a recall that you are aware of that we haven't listed, please visit our firm's web site at www.BeasleyAllen.com/recalls. We would also like to know if we have missed any significant recall that involves a safety issue this month. If so, please let us know. You may also contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information.

XX. FIRM ACTIVITIES

BEASLEY ALLEN LAWYERS PASS ALABAMA BAR EXAMINATION

Alison Douillard, Andrew Brashier and Kyle Shirley, three of our lawyers, have passed the Alabama State Bar examination and are now licensed attorneys in Alabama. Ali was already licensed in Georgia. She came to work for the firm as a Law Clerk after her first year of law school in May of 2008. Fortunately for us, Ali stayed with us and as a lawyer she has been working on the Medicaid Fraud Litigation in the Consumer Fraud Section, commonly referred to as the AWP litigation. That litigation is ongoing in several states. Ali was featured in the November issue of the *Report* and she continues to do very good work.

Andrew joined the firm in September 2010 and works in the Consumer Fraud Section. He has focused primarily on class action work involving consumer fraud. He

will also work on *Qui Tam* litigation under the False Claims Act and insurance litigation filed on behalf of policyholders. Andrew will also handle workers' compensation claims. He received his B.A. with a double major in Political Science and History, graduating from the University of Alabama at Birmingham in 2007 with honors. Andrew earned his Juris Doctor degree from Samford University's Cumberland School of Law in 2010.

Kyle, who is originally from Prattville, Ala., joined the firm in February 2011 and works in the Environmental Law Section. He is working on the BP Oil litigation. Kyle received his undergraduate degree at the University of Alabama with a major in Political Science and a minor in Criminal Justice in 2008. He obtained his Juris Doctor Degree at Thomas Goode Jones School of Law in 2010.

EMPLOYEE SPOTLIGHTS

TIM GRIFFIN

Tim Griffin, who has been working at the firm for three years, currently serves as a Staff Assistant in the Mass Torts Section. Tim works with Navan Ward, Jr. on the DePuy hip replacement litigation. As a staff assistant, Tim is responsible for assisting lawyers in contacting clients, receiving client calls and information, requesting and reviewing medical records, and ensuring the clients' files are all updated, accurate and complete.

Tim graduated cum laude with a Bachelors of Science in Communication Arts from Troy University in December 2004. He is a member of the Montgomery Symphony Orchestra. This is Tim's sixth season playing oboe and English horn with the orchestra. As a local musician, Tim has also played oboe for the Alabama Shakespeare Festival in productions such as *Man of La Mancha*, Disney's *Beauty and the Beast*, *Peter Pan*, and *A Christmas Carol the Musical*. He also plays regularly at area churches. Tim also enjoys hiking, mountain biking, going to the gym, and spending time with family and friends. Tim is a very good employee and we are fortunate to have him with us.

JESSICA SUTHERLAND

Jessica Sutherland started with the firm last August and she currently works as a Legal Assistant to Henry Barnett in the Consumer Fraud Section. In this position, Jessica helps in the drafting of discovery motions, assists in research and helps get cases ready

for trial. Jessica, who has 16 years experience in litigation, is working primarily on the Average Wholesale Price litigation.

Jessica graduated from Samford University in 1999. She received her Legal Assistant Certification in 2000 and her ALS Certification 2007. Jessica lives in Millbrook with her seven-year-old daughter, Haley, and 14-year-old son Tray. They are members of Church of the Brook. Her free time is usually spent attending her children's extracurricular events and ministry activities such as ARK, Women's Outreach and other Community Outreach events. Jessica is a very good employee and we are fortunate to have her with us.

CARLTON SIMS

Carlton Sims, who joined the firm last August, is a law clerk to Parker Miller in the Toxic Torts section. Carlton currently is working in the BP oil litigation, including claims filed with the Gulf Coast Claims Facility (GCCF) claims process. Carlton received his BA in Economics at the University of the South in Tennessee and his MBA at the University of Alabama. He also received his Juris Doctorate last month from Thomas Goode Jones School of Law. At Jones Carlton served as the Editor-in-Chief of the *Faulkner Law Review*.

As a lifelong resident of Montgomery, Carlton worked for Sims Corporation, his family's architectural signage & lighting business for 22 years until it was sold in 2007. Carlton has a 17-year-old son, Carlton III, who is a rising senior at American Christian Academy in Tuscaloosa, Ala. Carlton III, at 6' 5", is a varsity basketball player for ACA and also plays in the Amateur Athletic Union (AAU) league. Since January, Carlton has been a volunteer mediator for District Court civil and small claims for the Montgomery County District Court Mediation Project. Carlton plans to sit for the Alabama Bar Exam in July. Carlton is a very good employee and we are fortunate to have him with us.

XXI. SPECIAL RECOGNITIONS

GOV. ALBERT BREWER IS HONORED

Albert P. Brewer was honored this month by the Alabama Civil Justice Foundation for his career of service to the people of

Alabama. Gov. Brewer was "roasted" in Birmingham by his many friends who turned out to pay tribute to him. The honoree has dedicated his life to public service and has touched the lives of many others over the years, always in a positive manner. His years of service in the Alabama Legislature as both a member and as Speaker, then as Lieutenant Governor and finally as Governor were good years for Alabama.

The Brewer Administration was marked by a progressive agenda that emphasized education, economic development, highway construction and ethics in government. As a progressive New South Governor, Albert Brewer was simply ahead of the times. Had this man served another term as Governor, we in Alabama would all be much better off today. Albert Brewer will go down in history as one of Alabama's most admired and respected citizens.

LAWYERS STEP UP TO HELP ALABAMA TORNADO VICTIMS

Just days after the devastating tornadoes tore through Alabama and several other Southern states, a number of legal organizations stepped up to help the victims of the storms. In our state, the Alabama State Bar instituted its disaster assistance plan which has a number of initiatives, including a hotline (1-800-354-6154) that people can call for pro bono referrals and an online bulletin board where lawyers can ask for or offer assistance such as office furniture or temporary space. The free legal clinics are now open and helping the tornado victims.

State Bar staff are screening calls and referring callers to members of the Bar's Young Lawyers Section. A lawyer will then return the call and answer legal questions at no charge. In the event more extensive legal assistance is required, matters are returned to the Volunteer Lawyers Program which then refers it to a VLP panel member. Anybody can make a financial contribution to the Alabama Law Foundation at: <https://alfinc.org/donationform2.cfm>. Monies collected will be distributed among disaster relief agencies.

The Alabama Association for Justice, an organization of trial lawyers, started taking requests from victims for help filling out insurance claims and matching them with volunteer lawyers. Local bar associations throughout the state are having walk-in clinics and other assistance programs. The University of Alabama School of Law held a clinic to help people fill out Federal Emer-

gency Management Agency paperwork and were available to answer any legal questions. Alyce Spruell, a lawyer based in Tuscaloosa who is the president of the Alabama State Bar, observed:

It's a really tough time here. A lot of our bar members have been out working in soup kitchens or doing debris removal. There's some law practice going on right now, but not a lot.

The State Bar's toll-free number allows residents with legal questions to call and be connected with a lawyer who is part of the bar's Volunteer Lawyer Program. The State Bar's Young Lawyers Program is actually working with FEMA representatives in their disaster recovery centers. The Bar has several walk-in clinics in affected areas where residents can come in for help. Our firm was spared from the tornados, but 100% of our lawyers are participating in the State Bar's volunteer lawyer program. We are also helping to staff the free legal clinics. The firm has also donated money to the Red Cross to put toward its local disaster relief efforts.

The Alabama Lawyers Association dedicated half of the proceeds from its inaugural golf tournament to those in Alabama affected by tornadoes and storms that swept through the state. The tournament was held May 5th at Pine Tree Country Club in Birmingham. Larry Golston, a lawyer in our firm, is the current president of the Association.

The Young Lawyers Section at the State Bar, working with FEMA, is assisting homeowners and businesses wade through the thicket of federal paperwork required to be eligible to receive financial assistance. The Young Lawyers Section has worked hard with the disaster hotline and has provided initial legal assistance to the callers. The Bar, in conjunction with local bar associations, law school and volunteer groups, has hosted and will continue to host, more than 66 clinics which will be staffed by 285 members of our Volunteer Lawyers Program, law students and other volunteers.

HELPING THOSE WHO NEED IT MOST IS ALWAYS A GOOD THING

The Montgomery County Bar Association hosted its 6th Annual Charity Event last month, benefitting One Place Family Justice Center (OPFJC). OPFJC aids victims of domestic violence, child and elder abuse and sexual assault. The event was a

resounding success with over 200 persons in attendance. Everyone enjoyed live music and great food, and had a good time with friends and colleagues. But the important thing is they raised money to benefit a deserving local organization that really helps folks. Along with sponsorships, the silent auction was the primary fundraising vehicle. This year, a live auction was added to spice up the event.

With the generous help of sponsors, the event raised over \$35,000 to help OPFJC serve and defend the most vulnerable in our community. The event raised more money this year than in any other year in spite of the economic recession and the recent tornadoes that ravaged a large part of our state. Kendall Dunson, President of the Association, said he was very proud of the effort by Montgomery lawyers. He thanked all of those who participated, including the organizers, event planners, sponsors, auction item donors and attendees. Without the concerted efforts of all involved, the event would not have been successful.

In the near future, MCBA will partner with Montgomery's Eastern Boulevard Chick-Fil-A to raise money in support of those affected by the recent tornadoes. Chick-Fil-A will designate a MCBA day and donate a portion of all receipts to the storm victims. The Association appreciates Chick-Fil-A's willingness to reach out and help where it is so badly needed. Our profession requires all of us to serve our community and we should never forget that. There is no greater service than helping those who need it the most. If you have not done so already, I encourage all of our readers to donate your prayers, energy and money toward the tornado relief effort. Kendall has done a tremendous job as president of the MCBA. He has provided the type leadership needed to make sure our Association helps folks who need help.

GRANT ENFINGER SELECTED AS NATION'S SEVENTH BEST SHORT TRACK RACER

Grant Enfinger was selected as the seventh best short track racer in the entire country. This is a great accomplishment for the Fairhope native. Grant has developed a very good reputation as being fast, fearless and aggressive on the track every time he races. He has had success in both Super Late Models as well as in ARCA, having a string of top five finishes. The 26-year-old driver has teamed with Allgaier Motorsports

this season and they are currently fourth in ARCA Racing Series points.

FAITH RADIO SPONSORS "OPERATION ADOPT-A-BIBLE" FOR MILITARY SERVICEMEN

Faith Radio (WLBF, 89.1 FM), located in Montgomery, partnered with Chick-fil-A in hosting the kickoff party last month for "Operation Adopt-A-Bible." Chick-fil-A customers had the opportunity to write a message of encouragement to the United States Military in specially designed Bibles that complement the military uniform. Blue Bell Ice Cream was also involved in this event and provided free ice cream to all participants.

Jeff Bush had a concert for customers in the Chick-fil-A parking lot with some songs off his newly-released album, *Alive Forever*. Faith Radio will be promoting "Operation Adopt-A-Bible" through the month of June by providing the Bibles to members of the military. Chick-fil-A donated some of the proceeds from its evening sales to help purchase Bibles for the military. If any of our readers are interested in participating in the June military Bible drive, contact noncommercial, listener-supported Faith Radio at 1-800-239-8900 or visit www.faithradio.org.

SOURCE: FAITH RADIO

XXII. FAVORITE BIBLE VERSES

My long-time friend Ray Warren sent in his favorite Bible verse for this issue. Ray says he especially likes the verse because it's the ultimate prescription for eliminating worry in our lives.

Have no anxiety about anything, but in everything by prayer and supplication with thanksgiving let your requests be made known to God. And the peace of God, which passes all understanding, will keep your hearts and your minds in Christ Jesus.

Philippians 4:6-7

Patrick J. Ballard, a Birmingham resident, furnished a verse for this issue. Pat is a very

good lawyer and I appreciate him taking time to send in a verse.

He has showed you, O man, what is good. And what does the LORD require of you? To act justly and to love mercy and to walk humbly with your God.

Micah 6:8 (NIV)

Dot Robinson, who works for the Montgomery County Bar Association, found a scripture in her daily Bible study that she wants to share. Dot says it's appropriate for lawyers.

Speak up for those who cannot speak for themselves; ensure justice for those being crushed. Yes, speak up for the poor and helpless, and see that they get justice.

Proverbs 31:8-9 (NLT)

Tom Sexton, who is president of Pickwick Antiques, Inc., located in Montgomery, sent in the following verse.

Confess your trespasses to one another, and pray for one another, that you may be healed. The effective, fervent prayer of a righteous man avails much.

James 5:16

My daughter Bee McCollum, who lives in Auburn with her husband Wes and daughter Maggie, sent in one of her favorite verses for this issue. Wes is a lawyer in a three-lawyer firm in Auburn and Maggie is a tenth grader at Auburn High School. Maggie is a very good student, making "Straight A's" this year. She is also a very good volleyball player. Bee and her family love the Lord and that's the best thing I can say about anybody and especially about a family member.

But seek first his kingdom and his righteousness, and all these things will be given to you as well.

Matthew 6:33

XXIII. CLOSING OBSERVATIONS

THE RIGHT TO TRIAL BY JURY

I have had one person question whether there really is a constitutional right to a jury trial in a dispute that is not criminal in nature. I was somewhat surprised that the person asking the question was totally unaware of the Seventh Amendment to the U.S. Constitution. The question to me was, “Does the U.S. Constitution really guarantee a right to a civil jury trial?” And, my answer was, “Yes it does and very clearly so in the Seventh Amendment.” I then began to wonder if there are many others who believe as this person did and question whether the guarantee of a jury only applies in criminal cases. So I decided that the best thing to do would be to publish the Seventh Amendment once again for all to see.

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.

The right to a jury trial in civil cases was so important that it's in our Constitution. This right is just as important as any right guaranteed to us in the Constitution by our forefathers! They had the wisdom and foresight required to anticipate that ordinary citizens—and really all citizens, including the rich and powerful—need the protection that only a jury can provide in times of trouble.

MEMORIAL DAY IS OFTEN OVERLOOKED

Memorial Day is a federal holiday and is one whose real meaning is quite often overlooked. All too many simply look at it as a day off from work and a time to spend with family and friends. Formerly known as Decoration Day, the special day commemorates U.S. soldiers who died while in military service. It was extended after World War I to honor Americans who have died in all wars. This is a day to pay tribute not only to all who have given their lives in defense of their country, but we should also honor those who have served both in the past and those now in uniform. All branches of service are important to our national defense and in the on-going fight to keep our country free and safe. May God bless our military as we pay tribute to those who have died.

A MONTHLY REMINDER FOR ALL WHO LOVE OUR COUNTRY

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

WE CAN'T AFFORD TO IGNORE THIS ADVICE

All that is necessary for the triumph of evil is that good men do nothing.

Edmund Burke

XXIV. PARTING WORDS

With all of the pain and suffering that thousands of American citizens have experienced over the past several weeks, due to the devastating tornadoes and floods, it's very easy for folks to be overcome with a feeling of despair and hopelessness. Many have lost family members, their homes, businesses and jobs and that has to be very difficult to deal with. The fact that so many of us who were not directly affected by any of this have gotten involved and helped the victims makes me realize that there are still people in this country who really care about their fellow man.

Paul's prayer in Eph 3:14-21 for his friends is certainly applicable in times like these. In a time of great need, and even despair, God is still with us and He gives us hope when things seem hopeless.

For this reason I bow my knees to the Father of our Lord Jesus Christ, from whom the whole family in heaven and earth is named, that He would grant you, according to the riches of His glory, to be strengthened with might through His Spirit in the inner man, that Christ may dwell in your hearts through faith; that you, being rooted and grounded in love, may be able to comprehend with all the saints what is the width and length and depth and height—to know the love of Christ which passes knowledge; that you may be filled with all the fullness of God. Now to Him who is able to do exceedingly abundantly above all that we ask or think, according to the power that works in us, to Him be glory in the church by Christ Jesus to all generations, forever and ever. Amen.

We must continue to support the victims financially and by volunteering wherever needed. We also will continue to pray for all who are in need and are hurting, as a result of the disasters.

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