George Beck was sworn in as U.S. Attorney in Alabama’s Middle District on July 6th. The U.S. Senate had earlier confirmed the Montgomery lawyer after a long wait as the new chief federal prosecutor in Montgomery. His nomination by President Obama was approved on a voice vote. George is a former Deputy Attorney General for the State of Alabama, serving with then Attorney General Bill Baxley. He was instrumental in transforming the Attorney General’s office into a highly-functional operation. Most recently, George has been a successful lawyer in the Capital City, handling a number of high-profile cases as a defense lawyer. In my opinion, the Geneva County native will do an outstanding job as a successful lawyer in the Capital City, handling a number of high-profile cases as a defense lawyer. In my opinion, the Geneva County native will do an outstanding job as the new chief federal prosecutor in Montgomery.

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State Senator Billy Beasley, a Democrat from Barbour County, plans to introduce a bill in the Legislature to repeal Alabama’s immigration law. Billy, who is my brother, is a former Deputy Attorney General for the State of Alabama, serving with then-Attorney General Bill Baxley. He was instrumental in transforming the Attorney General’s office into a highly-functional operation. Most recently, George has been a successful lawyer in the Capital City, handling a number of high-profile cases as a defense lawyer. In my opinion, the Geneva County native will do an outstanding job as a successful lawyer in the Capital City, handling a number of high-profile cases as a defense lawyer. In my opinion, the Geneva County native will do an outstanding job as the new chief federal prosecutor in Montgomery.
convinced that the immigration bill passed in the Regular Session is not good for Alabama citizens. Billy had this to say:

_This issue is one that should be handled by the Federal government and not by individual states. While the border between Mexico and the United States should be secured, a path for citizenship must also be provided for those Mexicans in this country without proper entry._

_It is wrong for public officials to demagogue this matter and to play political games with a most sensitive issue. The economic cost of this ill-advised bill will be huge. It will require the State of Alabama, as well as local governments, to spend millions of dollars to enforce provisions of the law. This comes at a time when the Alabama law is already hurting them badly I am told. I will pre-file a bill to repeal the Alabama immigration law and hope the GOP leadership will support it. In the event they won’t, I will ask them at least to allow reasonable debate on the bill when it comes to the floor for a vote. Unfortunately, that was not done on many serious matters during the recently completed Regular Session._

While I realize it will be difficult to get a complete repeal through the Legislature, I commend Billy for trying. Hopefully, he will get some help from his GOP buddies. I suspect some of them realize that they made a major mistake when they passed this legislation.

_A MOST INTERESTING AND INSIGHTFUL ARTICLE_  

Josh Moon, a very good writer with the Montgomery Advertiser, recently wrote a very good article on so-called tort reform and how it affects Alabama citizens. It was most interesting and also very insightful. Josh was “fair and balanced” in his approach to this hot button issue and that too was interesting and rather refreshing. I am including the article in it’s entirely in this issue.

**JUST SAYING: 'TORT REFORM' HARMs US ALL**

With so many controversial bills emerging out of the last legislative session, it was easy to miss the passage of five more measures designed to make Alabama more “business-friendly” by insulating companies from consumer lawsuits. Portrayed as “tort reform,” the current restrictions, signed by Gov. Robert Bentley a couple of weeks ago, reduce the statute of limitations on some suits, prohibit suits against businesses that merely sell a harmful product, reduce post-judgment interest rates, prohibit “forum shopping” for wrongful death cases and redefine the standards for expert testimony.

Those restrictions join a previous set passed in 1999 that, among other things, placed a $1.5 million limit on punitive damages. The message from politicians to businesses is clear: If you’ll bring jobs to Alabama, we don’t mind if you defraud our citizens, sell us products that will kill us, operate in a careless way or generally do whatever it is you’d like to do to increase profits. Just please, employ a few of my constituents so I can claim job increases during the next election. Amazingly, though, many of those constituents have been fooled by big businesses’ PR campaigns into backing this nonsense.

It’s a campaign that’s used outright lies, scare tactics and horror tales to get the average person to vote against their own interests.

Here’s an example of how the scheme works:

In 1999, a jury awarded $581 million to a family in Hale County after they were defrauded of less than $1,000 by Whirlpool Corp. The company’s door-to-door salesman had lied to the family about the terms of purchasing a satellite dish. The PR campaign kicked in at this point and all you heard about was the “jackpot justice” verdict and a bunch of jurors who allowed their emotions to get in the way of common sense. These verdicts, they said, were killing business in the state, sending corporations scrambling and pushing insurance rates through the roof. It was the worst thing to happen since Hitler. Missing from the discussion were the facts of the case.

Whirlpool and several other companies were making big bucks pulling a scheme on poor, uneducated families all over the state, in which they offered financing on satellite dishes for a rate they said was 20 percent but was actually more than 300 percent. They were intentionally deceptive, and in many cases flat out lied about the terms and the costs. The jury heard about the depths to which the salesmen would sink, highlighted by a sale to a legally blind woman who didn’t own a TV set. They also heard from a former salesman who said it was accepted practice to prey on the elderly and uneducated and that he had personally trained other salesmen to lie about the terms of the contracts.

To put a stop to this widespread and outright fraud, the jury sent a message with a big verdict. And the result was this: Whirlpool and several other companies stopped the scheme in Alabama. Whirlpool sold its finance company and got out of the business completely. But instead of applauding our court system for watching out for their constituents, our politicians buckled under the weight of all those big-business campaign contributions and made sure it never happened again.

In doing so, they lessened the effectiveness of the last line of defense between everyday folks and major companies by limiting punitive damages. “The civil courts are the place where average citizens can hold big corporations accountable—it’s about the only place,” said attorney Jere Beasley, the senior member of the Beasley Allen Law Firm. “(Business interests) have used fear to get the general public to go along with these so-called reforms.” Truly, it’s baffling that an average person would ever back tort reform bills, because the premise of “frivolous lawsuits clogging our courts and hurting business” makes no sense.

If a lawsuit is truly “frivolous,” there’s a guy in a black robe in every courtroom that can kick it out before it sees the light of day. In addition, Beasley points out that there is a statute in this state that allows for any person who is the victim of a frivolous lawsuit to sue the lawyers, law firm and Plaintiff who brought that suit and recoup any damages suffered. On top of that, if the jury verdict is too large, the judge reduces the penalty.

But more important than all of that, creating these restrictions undercut the guarantee of the Seventh Amend-
ment of our Constitution, which grants us all the right to a trial by jury in civil disagreements over values greater than $20. It seems to me that the argument that many have bought is that we can’t trust a jury of our peers—like the ones we trust with our freedom in criminal courts—to make rational decisions in civil court, but we can trust politicians financed by big business who haven’t seen one shred of evidence in any of these cases. That line of thinking is what needs to be reformed.

I would be interested to find out what our readers think about this article and about “tort reform” generally. Letters to the editor have already started. It appears that Josh hit a nerve with a few of the proponents of “tort reform” who set out years ago to destroy the civil justice system. It’s quite evident that the negative letters are part of a letter-writing campaign.

Source: Montgomery Advertiser

CMS Abandons Appeal Of Ruling On State Fraud Recovery Policy

Our firm assisted Bob Riley and Troy King when they were in office, on behalf of the State of Alabama, and obtained settlements and judgments for the State involving the false reporting of drug prices to the Alabama Medicaid Agency by the powerful pharmaceutical companies. During the latter part of Riley’s last term, the Federal government, acting through CMS (Centers for Medicare and Medicaid Services), made a demand on the State for payment of 70% of all of the funds received by the state whether by settlement or judgment. The State of Alabama refused to pay and cited Federal Regulations allowing the State to recover the costs of investigation and litigation and attorneys’ fees before it had to forward any “Federal Share” to the Federal government. Stated differently, the State of Alabama’s position was that the state would pay the required 70% of the “net recoveries” as prescribed by the Federal Regulations and that the “Federal Share” of any recovery the State obtained, but was not obligated to pay 70% of the entire recovery without accounting for the costs of investigation and litigation as well as attorneys’ fees associated with obtaining a settlement or judgment from the pharmaceutical companies.

The Federal Government disagreed, not only with Alabama, but with all other States that were litigating these same fraudulent pricing claims in their states. A declaratory judgment action was filed by Alabama in the United States District Court of the Middle District of Alabama and was assigned to Judge Mark Fuller. The suit set out the gross inequity of the Federal Government’s position.

In his February opinion, Federal Judge Mark Fuller ruled that the CMS letter sent to Alabama Medicaid constituted “final agency action” which made it reviewable under the Administrative Procedures Act (APA). Judge Fuller also found that notice and comment requirements under the APA applied to the letter because it “implemented;” but “did not interpret,” the Medicaid Act. Rules issued by an agency that are merely “interpretive” are not subject to APA requirements, the judge noted.

Judge Fuller ultimately found that the appropriate remedy for the APA violation, which he deemed a “prejudicial error” requiring remand, was to vacate the letter and he did so. The Federal Government appealed Judge Fuller’s ruling to the Eleventh Circuit Court of Appeals, but it never filed a brief of any kind with the Court. Recently, the Federal Government abandoned its appeal, leaving Judge Fuller’s decision intact. This should be a clear victory for Alabama and hopefully for all states that have been successful in suing the drug companies.

Interestingly, a similar action is pending in Michigan involving the very same issues. There had been a $49 million settlement in that state with Specialized Pharmacy Inc. A dispute arose between CMS and Michigan concerning the Federal share of that settlement. The settlement was broken down as follows: one-third represented “Medicaid dollars;” with two-thirds representing a civil penalty imposed under Michigan law. CMS took the position that Michigan was required to report to the Federal Government the Federal share of the entire recovery.

Michigan offered to pay CMS the Federal share of the $15,900,000.00 in the settlement attributed to Specialized Medicaid Overpayments. But in January 2009, CMS issued a disallowance of more than $18,600,000.00 and deducted that amount from Michigan’s Medicaid payment. Michigan asked CMS to reconsider its decision, but CMS denied the request.

The Michigan lawsuit specifically challenges the refusal by the Health and Human Services Departmental Appeals Board to hear an appeal of the CMS decision not to reconsider the $18,600,000.00 disallowance. That case is pending in the United States District Court of the Western District of Michigan.

It appears that the Federal Government viewed its chances on appeal concerning the issues discussed above to be better in the Sixth Circuit Court of Appeals than it would have been in the Eleventh Circuit. That may explain the government’s dismissal of the appeal from Judge Fuller’s decision. It could be that the government’s lawyers believed they would lose in the Eleventh Circuit, which was almost certain to have happened. Stay tuned.

It’s Past Time For The State Water Wars To End

A federal appeals panel has handed Georgia a victory by overturning a lower court ruling that would have significantly restricted the main source of water for roughly 3 million people in metro Atlanta starting next year. The decision by the Eleventh U.S. Circuit Court of Appeals found that Lake Lanier can legally be used to supply metro Atlanta with water. This is contrary to a nearly two-year-old ruling from U.S. District Court Judge Paul Magnuson. The appeals panel also reversed an order from Judge Magnuson that would have sharply restricted water withdrawals from the lake next year to levels last seen in the 1970s, when the metro region was a fraction of its current size.

The case now heads back to the U.S. Army Corps of Engineers for a decision on whether metro Atlanta can get more water before the legal action proceeds. It was not immediately clear whether Florida and Alabama would appeal the ruling from the three-judge panel. Striking down Magnuson’s order improves metro Atlanta’s hand at the bargaining table by eliminating what its political leaders considered an imminent, worst-case scenario. It also gives Georgia more time to reach a political agreement that has historically proved elusive for years. Lake Lanier was formed by damming the Chattahoochee River north-east of Atlanta. The river curves southwest around Atlanta. It then flows along the border between Alabama and Georgia. The Chattahoochee and Flint Rivers merge at Lake Seminole on the Florida border and form the Apalachicola River, which empties into the Gulf of Mexico.

The ongoing litigation centers around how much water metro Atlanta can take from the headwaters of a watershed that serves three states. Alabama and Florida have argued that Atlanta’s consumption leaves too little water for communities downstream and harms valuable shellfish beds fed by the Apalachicola River. The three states have fought over water rights in a series of lawsuits that started in 1990. Atlanta never contributed to the cost of building the dam on Lake Lanier, which
was completed around 1960, because a previous mayor thought water would never be in short supply.

Lawyers for Alabama and Florida have argued that Congress authorized the dam to provide electricity, support navigation and control floods—not supply drinking water. The lawyers representing Georgia claim that lawmakers always intended the U.S. Army Corps of Engineers would operate the hydroelectric dam in a way that kept the river flowing from it with enough water for Atlanta downstream. The case is especially important to Gwinnett County, a suburb of Atlanta that draws its drinking water directly from Lake Lanier. Georgia had faulted the Lower Court judge for not weighing the harm his order could cause Atlanta before signing it. This lawsuit was filed in 2000 and should have been resolved years ago. Hopefully, the case will now be set for trial and then be either tried or settled.

Source: Gadsden Times

ALABAMA CITIZENS HAVE BENEFITED FROM THE HEALTHCARE LEGISLATION

The much-maligned Affordable Care Act—commonly referred to by the National Republican Party as Obamacare—has reduced the cost of health care insurance for many Alabamians. The 2010 law created a federal program to offer insurance for those who, because of pre-existing conditions, previously were unable to purchase affordable health insurance. The policies are a bridge to 2014, when the law prohibits insurance companies from denying such coverage.

On July 1st, the Obama administration reduced the premiums Alabamians must pay for the plans by 40 percent. While the Affordable Care Act is not perfect, its success in providing affordable insurance to Alabamians who previously could get no health insurance is one more indication that Republican calls for repeal are misguided.

Source: Associated Press

LAWSUIT FILED AGAINST RETIREMENT SYSTEMS OF ALABAMA

A lawsuit was filed recently by two Birmingham law firms against the Retirement Systems of Alabama and several RSA executives. The lawsuit, which seeks class-action status, claims that the RSA made bad investments in Alabama. Based on what I know about Dr. David Bronner and his staff, I will be surprised if this case gets very far. I will be shocked if Dr. Bronner, the RSA Chief Executive Officer, and the 25 other RSA executives and board members named as Defendants have done anything wrong. Interestingly, among the Defendants are Gov. Robert Bentley and Dr. Paul Hubbert.

The named Plaintiffs in the suit filed in state court are Tonya Denson and Venius Turner, each identified as an RSA member and an Alabama resident. If a class is approved by the court the number of Claimants could exceed 10,000 people. The Teachers’ Retirement System provides coverage for about 230,000 teachers, former teachers and other public employees in Alabama and has about $19 billion in assets. It is a large part of the system. Over the years, RSA has been highly successful and in my opinion, Dr. Bronner has been good for Alabama.

Source: Al.com

APPOINTMENTS MADE TO THE CONSTITUTION COMMISSION

Gov. Robert Bentley made his appointments in late July to the Constitutional Reform Commission. The governor appointed Albert Brewer, a former governor; Wetumpka Tea Party president Becky Gerritson; and Vicki Drummond, a supporter of the Alabama Policy Institute, who is from Birmingham. When he was governor, Albert Brewer tried to overhaul the state’s governing document some 40 years ago. Unfortunately for Alabama citizens, his efforts were blocked by certain special interests.

Albert, who served as governor from 1968 to 1971 and is now a law professor at the Cumberland School of Law at Samford University, established a commission in the late 1960s to consider revisions to the state’s 1901 Constitution, framed to disenfranchise blacks and poor whites. He has continued to champion constitutional reform, and later served on a commission created by Bob Riley to consider limited changes to the Constitution.

The 16-member Constitutional Revision Commission, established by Senate President Pro Tem Del Marsh, is charged with suggesting changes to the state’s governing document. It is scheduled to suggest possible changes to the constitution’s severe limits on home rule next year. Sen. Marsh named Carolyn McKinstry, a survivor of the Sixteenth Street Baptist Church bombing in 1963; Matt Lembke, an attorney at Bradley Arant Boult Cummings; and Jim Pratt, a Birmingham lawyer, who is now president of the Alabama State Bar and past president of the Alabama Association for Justice, a group representing injured parties in lawsuits. Alabama Speaker of the House Mike Hubbard appointed Rep. Patricia Todd, D-Birmingham; Democratic pollster John Anzalone; and Greg Butrus, a Balch Bingham attorney to the Commission. The members of the Commission seem to represent all segments of our state’s population. While I favor a constitutional convention to write a new constitution, this is a step in the right direction.

Source: Montgomery Advertiser

II.

A REPORT ON THE GULF COAST DISASTER

FEDERAL JUDGE ASKED TO APPOINT SPECIAL MASTER TO OVERSEE GULF OIL SPILL CLAIMS

The lead attorneys for individuals and businesses suing BP over last year’s Gulf oil spill have asked Judge Carl Barbier to appoint a special master to oversee the claims process. It was stated in a court filing that administrator Kenneth Feinberg has been too slow to process interim payments from the $20 billion fund that BP set up. The payments are meant to help victims get by until their claims are settled. BP and Feinberg have benefited because many victims desperate for financial help chose quick, one-time payments in exchange for promises not to sue. That was BP’s goal from the beginning.

The Justice Department announced in late July that an independent audit would be done to determine if claims are being processed appropriately. Feinberg, responding in a statement emailed to The Associated Press, said that the GCCF has made interim payments to more than 20,000 claimants and that there are more than 40,000 final payment offers outstanding. He claimed some $250 million in interim payments have been made. What he didn’t say is that he has taken advantage of victims who have lost their business and their jobs and badly needed help.

The claims process has been beset by red tape and delay. At the center of it all has been a fund administrator whose ties to BP have raised legitimate questions about his independence. As of July 25th, only $4.8 billion of the $20 billion had been paid out to 199,248 claimants. Feinberg has insisted he was being fair and is blaming the fund’s problems on “inflated and outlandish claim requests.” More than a year has passed since

the disaster and a tremendous number of complaints about the process continue. Even BP has claimed repeatedly that it believes the payouts have been “too generous” and has asked Feinberg to scale things back. Hopefully Judge Barbier will appoint a competent special master because an appointment of this sort is badly needed.

Source: Associated Press

**BP’s Billion Dollar Gulf Oil Spill Recovery Fund Is Grossly Inadequate**

Most folks who are knowledgeable about the BP oil spill believe the $1 billion that BP set aside to help the Gulf Coast’s fragile ecosystem recover from last year’s oil spill is grossly inadequate. Cooper Shattuck, the Legal Adviser to Gov. Robert Bentley, recently attended a hearing in Washington before the Environment and Public Works Subcommittee on Water and Wildlife. Cooper had this to say in his testimony to the Subcommittee: “$1 billion doesn’t go as far as it used to. It won’t be enough. It’s just early restoration.” It should be noted that BP reported $5.3 billion in second-quarter profits this year.

Cooper appeared as a special counsel responsible for assessing oil spill damages as the government gets ready to select the first restoration projects. As you will recall, the Obama Administration reached an agreement with BP last year to provide $1 billion to begin early restoration projects. That did not mean BP won’t be held liable for damages from the massive oil spill—it will. But BP provided the $1 billion for early restoration funding by agreement. It should also be noted that the Obama Administration has filed suit against BP.

Alabama Senator Jeff Sessions believes the BP fund is “a good step,” but he said the final tally “is likely to require billions more.” It was good to learn that the top Republican on the subcommittee believes strongly that BP officials are “responsible to the last dollar of their corporate existence.” Federal and local officials on the Natural Resource Damage Assessment and Restoration Advisory Council are currently assessing the environmental and other long-term damage to the region. Thus far, more than 80 studies have been planned.

The assessment process could take another few years, including at least a year of field work, according to Tony Penn of the National Oceanic and Atmospheric Administration. Mr. Penn was absolutely correct when he said in written testimony prepared for the hearing that “the task of quantifying the environmental damage from the spill is no small feat.” I don’t believe anybody really knows at this juncture how badly the environmental damage to the coastal states really is. Many lawmakers and officials from the coastal states are concerned the process could take as long as ten years. But most appear to believe that for investment in restoration to take upwards of a decade is totally unacceptable. BP must be made to sign off quickly on the assessment, review and funding activities. Any delay in getting started can only make matters worse.

It’s very significant that Cooper is the new chairman of the Trustee Council’s executive committee. The group plans to select about 14 restoration projects by the end of July. The Council will then negotiate with BP about the choices and hold public hearings. As we have reported, the Gulf Coast states lost billions in income from tourism and other sources because of the spill. Some waterways were actually shut down, with, at one point 40 percent of Alabama waters being closed to fishing. Alabama’s tourist industry took a tremendous hit and the full impact is still not known.

To compound matters economically, the oil spill took place as the region was still rebounding from Hurricane Katrina and other disasters. Cooper was correct when he observed that “working with BP to assess damage from the spill hasn’t always gone smoothly.” He pointed out that working with BP has been “an adversarial process,” and that actually may be an understatement of how bad it has been. Hopefully, the federal government will keep BP’s corporate feet to the fire and get prompt action on securing more funds for the restoration projects.

Source: Montgomery Advertiser

**BP Accountability Is The Number One Priority For Alabama’s Attorney General**

Alabama Attorney General Luther Strange, selected as the lead attorney for all states filing claims against BP has said many times that his top priority is to ensure that the oil giant remains accountable for its wrongdoing. Luther is absolutely correct that BP’s acknowledgement of responsibility in the spill and its pledge to make victims “whole” again, will make it difficult for the company to back up on its promise. Luther, who is doing a tremendous job as Attorney General, says his office will “hold BP accountable to that promise.”

The federal court in New Orleans will also make sure BP keeps its promise. The litigation to determine the liability for the spill, according to Luther, is “one of the most complex in U.S. history,” and I totally agree with his assessment. But we must never forget that BP is a powerful adversary and one with the financial ability to make all of us work extremely hard to ensure that the oil giant keeps its word. A trial is set for February in federal court in New Orleans. It’s good to see the Attorney General taking such a strong stand in this important litigation. That’s good news for Alabama and the entire Gulf Coast region.

**Gulf Coast Lawmakers Agree On BP Division Of Oil Spill Fines**

A majority of Gulf Coast lawmakers have come to an agreement on distributing the oil spill fines and that is great news for their states. Sen. Richard Shelby, R-Al., and Sen. Mary Landrieu, D-La., announced the plan at a news conference on July 21st. Legislation will be introduced that calls for dedicating at least 80 percent of BP penalties paid under the Clean Water Act to the Gulf Coast states to invest in the long-term health of the coastal ecosystem and its economies. It was time for this agreement to be reached on distributing Clean Water Act fines resulting from the Gulf oil spill which could total as much as $21.1 billion.

The efforts to reach an accord had been hampered by disagreements over how much each state should get and how much of it should be dedicated to environmental as opposed to economic recovery efforts. Hopefully, the legislation will pass promptly and be signed into law. Nine of the ten U.S. Senators representing Gulf Coast states agreed on the plan. The proposal would distribute at least some fine revenue to all five of the Gulf states, with those most impacted by oil, environmentally and economically, getting the most money. Some of the funds would be restricted for environmental use only, but most of the money could also be used for economic recovery projects.

Sen. Barbara Boxer, a California Democrat, as chairwoman of the Senate Committee on Environment and Public Works, helped broker the agreement. She acknowledged that, at one point, negotiations looked likely to fail altogether. Sen. Boxer is due a great deal of credit for bringing about the agreement. The compromise agreement would send four-fifths of Clean Water Act fines from the Gulf oil spill to Gulf Coast states. The Gulf state money would be allocated as follows:

- 35 percent would be divided equally among the five states. States could use this money for environmental or economic recovery projects.
• 30 percent would be divided among the states according to a complicated formula calculating the severity of the oil spill’s impact on each state. These funds could also be spent on environmental or economic recovery projects. Louisiana would get about 10.5%, Alabama would get about 6%, Florida and Mississippi would get slightly less than 6% and Texas would get about 2%.

• 30 percent would be allocated by the newly-formed Gulf Coast Ecosystem Restoration Council, which would include representatives from each state and the federal government. The money would be limited to environmental projects, which would be chosen by the Council without strict guidelines regarding how much goes to each state.

• 5 percent would be used to fund Gulf science and fisheries programs. Each state would receive some funding, but the National Oceanic and Atmospheric Administration would have leeway in determining how much money goes where.

In a written statement, Sen. Shelby described the compromise bill as “good news for Alabama’s environmental and economic recovery from the oil spill.” He is absolutely correct. The Senator added in his statement: “This legislation allows for great flexibility in the allocation of recovery funds to ensure that the penalties our state is owed are distributed in the best interest of Alabama’s coastal communities.” Sen. Roger Wicker, R-Miss., predicted that the bill would bring speedy recovery to the Gulf Coast, adding that: “It represents a balanced approach by all Gulf State Senators to support economic and environmental restoration.” Sen. John Cornyn, R-Texas, was the only Gulf Coast Senator not signed on to the bill as a cosponsor.

The federal Clean Water Act mandates that companies responsible for disasters such as last summer’s Gulf oil spill must pay penalties based on the amount of oil spilled. But the law, as currently written, would send the revenue to a fund for the cleanup of future oil spills and to federal coffers for general use. While this agreement is a needed first step, the bill must still get approval from the full Senate, as well as from the full House. It should be noted that Gulf Coast lawmakers in the House have been unable to reach a similar agreement. Hopefully, that will have been changed by the time this issue is mailed. I believe that President Obama must put his full support behind the Senate bill for it to pass both Houses. I understand he will sign the bill when it comes to him.

Source: Al.com

**BP IS DEAD WRONG TO CLAIM THERE WILL BE NO FUTURE DAMAGES**

In a rather clever move, BP says it wants the Gulf Coast Claims Facility, to reconsider whether claims of future damage from the 2010 disaster can be justified. Arguing that the US Gulf Coast economy is “strong,” the oil giant told the GCCF in a filing last month that “there is no basis to assume that Claimants, with very limited exceptions, will incur a future loss related to the spill.”

When you consider that Ken Feinburg and the entire GCCF work for BP, it’s quite evident what BP is up to. This public relations ploy was designed to give media the impression that the GCCF was being unfair to BP and favoring victims. That’s totally false and hopefully nobody in the media will buy that line.

The bottom line is BP wants the GCCF to stop trying to calculate future damages. Feinberg said his organization “welcomes any and all input from any interested sources, including BP” and will take BP’s submission “under advisement.” Anybody who believes Feinberg and his staff have been unfair to BP at any time since the GCCF was created, has been on another planet. The bottom line is that folks all across the Gulf Coast region are still hurting. Nobody knows with any exactness what the future damages will be. Claims are still being made and many large claims haven’t even been submitted yet. BP doesn’t need to be protected from its victims. Based on what we have learned, it’s the other way around.

Florida senator Bill Nelson, in a letter sent to Feinberg, said revisiting the method to calculate future claims “would shirk the company’s responsibility … To fully compensate those who sustain damages related to the spill.” Sen. Nelson noted that “BP does not need to be protected from the citizenry.” He correctly stated, “It is the other way around.” BP, powerful and politically connected, has had its way in Washington for years. Hopefully, that has changed, but only time will tell.

Source: The Daily

**BPadopts new safety standards for gulf drilling**

According to BP, it has adopted new, safer standards for deep-water drilling in the Gulf of Mexico. The announcement came a year after the company capped its blowout well in the Gulf which was located about 50 miles off the Louisiana coast. The company said in a letter to U.S. regulators that the standards exceed existing federal requirements and demonstrate BP’s commitment to safety. As we have learned, the extremely weak federal requirements over the years have been a large part of the problem when it came to regulation. It has been sort of like the “tail wagging the dog.”
Of course, that poor regulation didn’t mean BP and other oil companies could ignore sound safety practices and procedures that were available to them.

BP said the standards include new requirements for features on and testing of blowout preventers and lab tests of cement used in well casings. The company also said it will include new information in its response plan about managing spills in open water and near shore. As we have repeatedly written, over 200 million gallons of oil flowed into the Gulf after BP’s Macondo well blew out in April 2010. It’s too bad for all concerned that BP didn’t see fit to adopt its so-called new approach to safety prior to April 20, 2010!

Source: Montgomery Advertiser

III. DRUG MANUFACTURERS FRAUD LITIGATION

JUDGE ORDERS MAKER OF RISPERDAL TO PAY $327 MILLION

A judge has ordered the maker of Risperdal to pay $327 million in civil penalties to the state of South Carolina for its marketing of the antipsychotic drug. The case was filed by the state Attorney General against the maker, Ortho-McNeil-Janssen Pharmaceutical, a subsidiary of Johnson & Johnson. A jury found that the company violated state deceptive practices laws by making willful misstatements in its product labeling and “dear doctor” letters about the drug’s benefits while minimizing its risks and side effects. The penalty order was issued in June. We reported on the first phase of the trial in a prior issue.

Several states, including Louisiana, have brought similar suits. Louisiana won a $257 million jury verdict in October. In the South Carolina case, Judge Roger L. Couch found penalties of $152 million for the mislabeling of approximately 509,499 boxes ($300 per violation) and $172 million in penalties for 43,556 dear doctor letters ($4,000 per violation). The statute allows civil penalties of up to $5,000 per violation. Annual sales of Risperdal for 2010 totaled $1.5 billion. Approximately 40,000 bottles of the drug were also recalled recently for an “uncharacteristic odor” thought to be caused by trace amounts of a wood preservative.

NOVO NORDISK PAYS $25 MILLION TO SETTLE FALSE CLAIMS ACT

Novo Nordisk, Inc. will pay $25 million to settle a whistleblower lawsuit that involved the illegal off-label marketing of hemostasis management drug, NovoSeven. Once approved by the FDA, a manufacturer may not market or promote a drug for any use not specified in its new drug application and approved by the FDA. Such unapproved uses are also known as ‘off-label’ uses. The qui tam relators or “whistleblowers” alerted the federal and state governments to the fraud.

Source: Fraudblawg.com

IV. PURELY POLITICAL NEWS & VIEWS

BIG MONEY ALREADY POURING INTO 2012 RACE

It appears that the presidential election next year will be one of the most costly ever. The big money is already pouring in. For example, the infamous Koch brothers have pledged to raise at least $88 million to fund an independent campaign to defeat President Obama in next year’s election. A so-called independent group, American Crossroads, was formed to handle the money and they will have none other than Karl Rove as a key adviser. It was reported that the group plans to raise at least $130 million for the election cycle. That amount is in addition to the money that other traditional GOP-leaning interest groups will spend in the race.

GOV. PERRY COULD WELL BE THE GOP NOMINEE

While it’s way too early to predict who will get the Republican nomination for President, I will go out on a limb and predict that Gov. Rick Perry will win up with the Republican nomination. The Texan appeals to the Tea Party folks and he is about as conservative as they come. He also likely have Karl Rove calling the shots for his campaign. The man who made George W. Bush a national candidate will figure out a way to torpedo the current front runners and pave the way for Perry to jump to the front of the pack. Perhaps, the ticket could wind up having both Gov. Perry and Rep. Michelle Bachmann on it. It will be interesting to see if these two candidate could work together as a team. In any event, if it happens, the GOP could do much worse in selecting a ticket to take on President Obama.

V. SETTLEMENT OF THE MONTH BY THE FIRM

Our firm recently settled a case while the jury was deliberating on the island of St. Croix in the Virgin Islands. The Plaintiff, Herlène James-Steele, was a right front passenger in a 1997 Ford Contour. The Contour struck the back of a 1991 Isuzu Trooper that was stopped in the road. The accident itself was uneventful. Each of the vehicles was driven away from the accident scene on its own power. However, the airbag system deployed in the Contour, causing a severe injury to Ms. James-Steele’s right eye. She had numerous surgeries and eventually lost vision in that eye. No other occupants were injured in the accident. The accident was a low speed, underride collision, and had the airbag system not deployed, there would have been no serious injuries. Plaintiff’s expert estimated that the barrier equivalent velocity was in the 6 to 7 mph range. The Ford documents indicated that the airbag should never deploy in an 8 mph or lower barrier impact.

The Plaintiff’s design expert testified that the accident should not have resulted in an air bag deployment. He also was of the opinion that the air bag sensors were wrongfully positioned and wrongfully calibrated, which resulted in this inadvertent air bag deployment. Ms. James-Steele was tragically and unnecessarily permanently blinded by this inadvertent air bag firing in a low speed collision.

The Defendant’s expert, Greg Stephens of Seattle, Wash., claimed that the impact speed was 19 mph. The Plaintiff’s expert, Kelly Kennett, determined that the speed was in the 10 mph impact range. In order to prove the case, we ran three crash tests. The transmission was leaking, the radiator was leaking, and the gear shift mechanism was displaced significantly. This third crash test demonstrated that the Ford expert’s calculations were wrong.
Judge Timothy Savage was the trial judge who oversaw the litigation. The plaintiff was represented by Greg Allen and Chris Glover of our firm, along with Phillip Golomb of Philadelphia, Penn. Our St. Croix local counsel was Glenda Cameron. The case tried for a little over a week before it went to the jury and settled for a confidential amount while the jury was deliberating. Greg and his team did a tremendous job for their client.

VI.
LEGISLATIVE HAPPENINGS

GOV. ROBERT BENTLEY SIGNS LAW REQUIRING ANTI-DUI DEVICES FOR VEHICLES

Alabama’s drunk-driving laws got stricter after Gov. Robert Bentley signed a bill that makes Alabama the final state in the nation to mandate the use of ignition interlock devices for those persons convicted of driving under the influence. The device goes on a car’s dashboard. In order to start a car, the driver must blow into a Breathalyzer. If the device detects an alcohol level greater than an established baseline, the car will not start. The interlock device may also require the driver to breathe at several points while driving, and logs failed tests without stopping the operation of the vehicle.

Under the new law, a first-time DUI offender in Alabama who injures someone, has a blood-alcohol level of .15 or greater, refuses to provide a blood alcohol content or has a child under 14 in the car would be required to have the ignition interlock device for two years after a 90-day suspension of their license. A second conviction, regardless of the circumstances, would require the installation of the device for two years after restoration of the license. Third-time offenders would be required to drive with the devices for three years; subsequent offenses would require the devices be put in place for five years. Bills mandating ignition interlock devices had been introduced in the State Legislature for several years, but never made it to passage. MADDA and a number of individuals in Alabama who have lost family members due to automobile accidents involving drunk drivers, never gave up and their efforts have paid off.

Source: Montgomery Advertiser

LACK OF INTERNET TAX COSTS ALABAMA MILLIONS

Alabama is losing out on a source of revenue due to its inability to collect taxes on internet sales. Our state lost about $100 million in 2010, based on Revenue Department estimates, because Alabama does not have a way to capture sales tax on internet, catalog and telephone sales. According to Curtis Stewart, director of Tax Policy and Research for the Alabama Revenue Department, until the state can get the sellers to collect the tax, it will remain very difficult to get the tax money the state is due. Across the country, states are dealing with sharp reductions in sales tax revenue. Many believe that’s due in part to consumers shopping online or by phone.

Some states have pushed Congress for years to pass a uniform sales tax law that would enable states to collect the tax on sales from online and similar purchases. Thus far Congress has failed to act. Currently, Alabama has only two ways to collect the 4 percent state sales tax for purchases consumers make on the internet or through catalog and telephone sales:

- Companies that have a physical presence in Alabama are required to collect the tax on such purchases and forward the money to the state.
- Consumers who do not pay the tax are supposed to report the purchases on their state income tax forms each year, which rarely happens.

According to Mr. Stewart, most folks don’t pay the tax on items bought on-line. It doesn’t take an expert on tax law to figure out that it would be much more efficient to have the seller pay the tax. They don’t want to do that because the seller would lose its price advantage over the local retailers.

Alabama took a step toward uniform sales taxes in the 2011 session of the Legislature with passage of a House bill by Rep. Mike Hill, R-Columbiana. This law sets up a commission to establish regulations and develop computer software the state would need if Congress acts on a streamlined sales tax law for all states. That puts Alabama in line to be among the first states to receive the taxes if Congress passes the needed legislation. Debate has gone on in the Legislature for several years about whether the state can develop a system to collect the sales tax, even if Congress does not act. Rep. Hill had this to say in a media interview:

I hear every year that we can’t really act until Congress does, but that has always puzzled me. I think we can do it. I know I am a Republican and I’m supposed to be against taxes. But I think it is unfair to businesses that have come here and invested in the state not to collect it on those sales, too.

Without any doubt, Alabama needs the additional $100 million in annual sales tax revenue. But so far the leadership in Congress hasn’t seen fit to push this issue. I am sure what else Alabama can do to collect these taxes. In any event, I have to wonder why Congress won’t act on this important issue. Surely it isn’t because of lobbying activities by those who like the status quo—or is it?

Source: Times Daily

NEW ALABAMA LAW AIMED AT PREVENTING BRAIN INJURIES

A state law that took effect in June will forbid young athletes from playing if a concussion is suspected. The law, which Gov. Robert Bentley signed, requires parents and coaches to learn about the dangers of concussions and doesn’t allow any youngster who might be concussed to play until he or she has received permission from a doctor. It applies to a range of athletic programs, from high school football to Little League to pee wee soccer programs.

It was reported that few people even know this law was passed. Most of the 125 nurses at a workshop at Children’s Hospital in Birmingham had never heard of the new legislation. Since the new law is barely known around the state, the next year could be one of trial and error as programs work out how to inform parents, coaches, athletic trainers and others. A seminar was held in order to alert medical professionals to the requirements of the new law. Dr. Drew Davis, a professor at the University of Alabama at Birmingham and a pediatric rehabilitation physician who practices at Children’s Hospital of Alabama, spoke at the seminar.

UBA and Children’s Hospital are setting up a Concussion Center that will provide medical care for children and education for those who need it, including checklists on how to handle concussions. The treatment for concussions has changed in recent years, and now calls for more rest. Children who experience mild injury should stay out of sports for about a week and then return gradually, Davis said. In addition, schools may want to consider policies such as waiving classwork or exams for students who have been concussed so their grades don’t suffer.

Source: Montgomery Advertiser
Although people usually heal quickly and fully after these injuries, untreated concussions or repeated trauma can lead to long-term problems with test-taking and other mental skills, according to Dr. Davis. Hospital emergency rooms in the U.S. treat about 135,000 children ages 5 to 18 with sports- and recreation-related traumatic brain injuries each year, according to the Centers for Disease Control and Prevention. Concerned about the safety of child athletes—and the long-term effects of brain injury seen in some professional sports—the NFL and the NCAA have pushed states to pass laws like Alabama’s new law.

About 20 states have done so in the past two years. Last year, the Alabama High School Athletic Association mandated that high school athletes can’t return to practice or play until being cleared by a physician. According to doctors at Children’s, that has led to about a threefold increase in the number of concussion cases they see. Although the new state law doesn’t have a strict enforcement component, Dr. Davis said insurance companies will refuse to cover athletic facilities if programs aren’t compliant.

Source: Al.com

VII.
COURT WATCH

ALABAMA CHIEF JUSTICE STEPS DOWN

If things go as planned, Sue Bell Cobb will have stepped down on August 1st as Alabama’s Chief Justice. The highest-ranking Democrat in Montgomery made her surprise announcement last month. Most likely Gov. Robert Bentley will have appointed her replacement by the time this issue is reached. The Governor said a person would reach the cIvIl JUStIce SyStem remAInS Under entitled to his or her day in court. This con-

business litigation between corporations clogs up the courts, for three decades or more huge corporations have pursued a relentless campaign to deny victims of corporate wrongdoing access to the justice system. In the last few months, the Supreme Court has gifted Corporate America a pair of decisions that dramatically restrict the ability of victims to join together in class-action litigation, denying many access to justice altogether.

In April, the court issued AT&T Mobility LLC v. Concepcion. More recently, the court handed down Wal-Mart Stores, Inc. v. Dukes. In Concepcion, a case Public Citizen argued before the Supreme Court, five Justices held that corporations could use fine-print provisions in contracts to deny consumers and employees the right to bring class actions. And in Dukes, a case in which Public Citizen filed a friend-of-the-court brief, the same five Justices not only shut down the largest employment class action ever filed, they established rules that will make it more difficult for employees to join together in class-action suits.

These decisions are an affront to core American values and the rights of victims of corporate wrongdoing and violence. Less well appreciated is how the civil justice system serves as a crucial system of corpo-
rate accountability. Restricting victims’ rights not only denies justice to those directly injured by corporations, it removes vital checks on corporate power. That’s why the U.S. Chamber of Commerce and the Big Business lobby spend so much money propagandizing about the purported costs of the civil justice system, and why they have worked so hard for more than three decades to dismantle it.

That’s also why fighting to keep the courthouse doors open is crucial, not just to protect the rights of victims, but to sustain our democracy. These are the reasons Public Citizen places so much importance on preserving the civil justice system and preserving and expanding access to justice. Despite recent Supreme Court rulings, this is no time for despair. The severity of the situation only makes it that much more important that we work harder to preserve and advance access to justice, using all available tools.

Source: Public Citizen

HIGH COURT OVERTURNS BAN ON VIOLENT VIDEO GAMES

The U.S. Supreme Court ruled recently that the government doesn’t have the authority to “restrict the ideas to which children may be exposed.” That was a blow to those seeking to ban the sale or rental of violent video games to children. As expected, Gamemakers celebrated the High Court’s decision, with Grapevine-based GameStop, the world’s largest video game retailer, leading the parade. The High Court voted 7-2 to reject California’s 2005 law covering games sold or rented to those under 18, calling it an unconstitutional violation of free-speech rights. Writing for the majority, Justice Antonin Scalia said: “Even where the protection of children is the object, the constitutional limits on governmental action apply.”
Justice Stephen Breyer and Clarence Thomas dissented from the decision, Justice Breyer said it makes no sense to legally block children’s access to pornography, yet allow them to buy or rent brutally violent video games. I certainly agree with that statement and I believe a vast majority of the American people do, too. More than 46 million American households have at least one video game system, and the industry brought in at least $18 billion last year. The industry has set up its own rating system using the Entertainment Software Ratings Board, similar to the one used by movie studios and theaters. ESRB assigns one of eight ratings, then blocks the sale to children of games rated M for “mature” and AO for “adults only.”

The California law, which never went into effect, would have prohibited anyone under 18 from buying or renting games that give players the option of “killing, maiming, dismembering or sexually assaulting an image of a human being.” Retailers who sold those games directly to minors would have faced fines of up to $1,000 for each game. GameStop, the leading retailer in ESRB ratings compliance, had to be very happy with the High Court’s ruling. GameStop operates 6,670 stores in about 20 countries.

Source: Star Telegram

**MYLAN PAIN-PATCH SUIT MAY PROCEED IN ALTERNATE STATE**

In a very important opinion, the West Virginia Supreme Court ruled that a product liability suit was improperly dismissed when it would be “time-barred” in the purportedly more convenient forum in which it could have been filed, West Virginia’s High Court reversed the judgment of a trial court. The Plaintiff, a resident of North Carolina, alleges that his wife died in 2005 because of an overdose of the narcotic fentanyl delivered to her body through a pain patch made by Mylan Pharmaceuticals, a West Virginia corporation.

In 2008, the Plaintiff filed a wrongful death suit against Mylan in a West Virginia state court. Mylan moved to dismiss, contending that North Carolina was the more convenient forum because that is where the Plaintiff’s action accrued. The Plaintiff argued that dismissal was inappropriate on the basis of forum non conveniens because his lawsuit was time-barred under North Carolina law, and he would be left without a remedy. The West Virginia High Court agreed with the Plaintiff, explaining that:

> because North Carolina does not recognize the discovery rule, it is not a forum in which [the Plaintiff] can attempt to litigate his claims. Accordingly, the remedy provided by North Carolina is so inadequate and unsatisfactory that it is no remedy at all. Under the facts of this case, therefore, North Carolina does not ‘exist’ as an alternate forum in which [the Plaintiff’s] claims may be tried and the circuit court erred in dismissing the action on the basis of forum non conveniens.

This is a very good decision by the West Virginia court. Had they ruled otherwise, it would have resulted in an injured party being deprived of a legal remedy for an alleged wrong.

Source: Lawyers USA Online

**VIII. THE NATIONAL SCENE**

**MINER OWNER MASSEY KEPT TWO SETS OF SAFETY RECORDS**

I suspect all of our readers will be shocked to learn that the owners of the West Virginia coal mine where 29 men died in an explosion last year kept two sets of safety records, with one set being hidden from federal safety officials. Investigators from the Mine Safety and Health Administration (MSHA) have disclosed that information to families of the victims of the April 2010 Upper Big Branch mine explosion. A final report on the accident from MSHA is due later this year. This is the sort of conduct by huge corporations that proponents of so-called tort reform want to protect.

Massey Energy, which owned the mine at the time of the accident, was recently acquired by Alpha Natural Resources. The families were told that Massey kept two sets of records on safety problems. One internal set of production reports detailed those problems and how they delayed coal production. But the other records, which are reviewed by MSHA and required by federal law, failed to mention the same safety hazards.

Portions of the Upper Big Branch mine hit by the explosion were not treated for excessive and explosive coal dust because the entryways or tunnels in those areas were too small to accommodate the machine used to spray the material that neutralizes coal dust, according to the report. Gas readings taken shortly after the explosion showed too little methane to support Massey’s claim that a naturally-occurring and unpredictable inundation of gas caused the disaster. The details came from a private briefing in Beckley, W.Va., for the families of the 29 mine workers killed in the disaster. Six participants provided those details to NPR.

Sources: National Public Radio and Reuters

**SHAREHOLDERS SUE MURDOCH’S NEWS CORP.**

A group of News Corp. shareholders have filed suit against News Corp., the media conglomerate, over a phone-hacking scandal at its now-closed News of the World tabloid in London. The lawsuit accuses News Corp. of large-scale governance failures surrounding the British hacking case. News of the World employees have been accused of hacking into the phone of a missing 13-year-old girl, who was later found murdered, as well as those of other crime victims.

The lawsuit was filed in Delaware Chancery Court by shareholders led by Amalgamated Bank. Several municipal and union pension funds joined in the lawsuit as Plaintiffs. The shareholders are also challenging the acquisition by News Corp. of Shine Group Ltd., founded by the daughter of News Corp. Chairman and CEO Rupert Murdoch. The suit claims that Rupert Murdoch “habitually uses News Corp. To enrich himself and his family members at the Company’s and its public shareholders’ expense.”

This lawsuit may be the least of Murdoch’s problems. It appears that Murdoch’s empire is falling apart around him. This man has hurt lots of folks along his path to tremendous wealth and power and political influence. I understand from good sources there will be much more to report in the coming weeks about the Murdoch empire and how it has been operating. I suspect some executives—and others—at Fox News might have reason to be a little bit uneasy!

Source: Insurance Journal

**JURY FINDS COLLEGE AT FAULT IN PLAYER’S DEATH**

The jury hearing the case of Ereck Plancher, the University of Central Florida football player who died during a pre-practice conditioning workout in 2008, found the UCF Athletic Association to be guilty of negligence. It was found by the jury that the school failed to do everything possible to
save the player's life. The jury awarded Plancher's parents $10 million. But the athletic department at the school was found to be not guilty of gross negligence.

The case garnered national attention after several players went public to describe the intensity of the workout. They also said that Plancher was clearly struggling at the end of the workout when he fell at the end of some sprints. Some teammates had to help him up, but coaches yelled at them to stop. Head football coach George O'Leary initially understated the intensity of the workouts. The school didn't interview players about the incident until more than a month after Plancher's death. UCF lawyers had tried to prove that Plancher's suffering from sickle cell trait had led to his sudden death. Lawyers for the player's family called experts who testified that there is 'no evidence-based proof' that sickle cell trait caused the player's death.

Source: Courier-Journal

ARMY SUSPENDS NEW PARACHUTE MODEL AFTER SOLDIER'S DEATH

The US Army has suspended the use of its new style of parachutes following the death of a soldier during a training jump. Staff Sgt. Jamal Clay, of the Army's 82nd Airborne Division, died at Fort Bragg on June 25th when his T-11 parachute malfunctioned during a training exercise. Fort Bragg, the Army base located in Fayetteville, N.C., began using the square parachutes two years ago after tests showed they provided a more slow and stable descent than their mushroom-shaped predecessors.

According to an internal army memo, investigators found that Clay's death was due to 'potential packing, inspection, quality control and functionality problems' with both his main and reserve parachutes. The memo said: "The observations are significant and pervasive enough to indicate potential systemic shortfalls." Following the incident, Secretary of the Army John McHugh last month ordered the suspension of all use of the T-11 parachutes until a thorough safety investigation could be completed and any problems with the system corrected. Internal investigations into Clay's death are also being conducted.

It appears this accident is the first fatality with the new parachute. It was first used at Fort Bragg in 2009 after testing reportedly showed it to be safer than the traditional rounded parachutes. I understand that the T-11 chute is also designed to support the bulkier load of today's soldier, which can be up to 400 lbs. with equipment. The T-11 parachutes are expected to take the place of the older T-10 parachutes in about five years. The 82nd Airborne Division currently uses the T-10 model. Hopefully, this incident doesn't signal a problem with the new parachute, either in the design or in the manufacturing process.

Source: myfoxatlanta.com

IX.

THE CORPORATE WORLD

THE PUBLIC MUST BE PROTECTED FROM CORPORATE WRONGDOING

The American people have heard for years that there is too much regulation of businesses in the U.S. Folks have been sold this bill of goods by the giants of Corporate America and many citizens believed it. But events in recent years have clearly shown what happens in this country when ordinary folks don’t have adequate safeguards to protect them from corporate wrongdoing and abuse. Regardless of what the public relations campaigns have said, the federal government has never done a very good job of regulating enterprises such as the automobile, drug and chemical industries. The fault lies directly with Congress and that is because of the tremendous amount of money poured into political campaigns and the powerful lobbyists who work for Corporate America. We have seen under-regulation, combined with corporate disregard of safety rules, resulting in:

- vehicles being recalled because of safety-related defects;
- drugs on the market that never should have been approved;
- a handful of other commodities also qualify for government support, including peanuts, sorghum and mohair. Dairy and sugar producers have separate price and market controls that are highly regulated and can be costly to the government.
- The flawed subsidy system creates perverse incentives for farmers to grow as much industrial-scale, fertilizer- and pesticide-intensive crops as possible, with harmful effects on our environment and drinking water—and the availability of organic food in grocery stores.

Some of our readers may want to discuss the Farm Bill with their senators and representatives. I have always believed that some of our government’s priorities may need some adjustment when it comes to setting agriculture policy for our nation.

Source: EWA.org
• multiple salmonella and E. coli outbreaks;
• a deluge of lead-tainted toys;
• a massive and environmentally-devastating oil gusher in the Gulf of Mexico;
• deadly mine disasters; and
• the collapse of our nation’s economy, which has cost eight million American jobs.

Public Citizen has been a leader in the battle to bring about change in Washington so that the public is protected, but Big Business has fought back at every opportunity. Public Citizen had this to say:

Despite this very recent history, Big Business is waging a massive, multi-million dollar campaign to eliminate vital regulations and public protections while strengthening corporations’ grip on our democracy. Republican leaders in Congress have signaled that they intend to work hand in glove with Big Business and the U.S. Chamber of Commerce on this assault on our health and safety laws. They plan to challenge existing public protections, weaken agencies like the Food and Drug Administration, the Environmental Protection Agency and the Occupational Safety and Health Administration, and block the implementation of Wall Street reform and other legislation. Some Democrats also have indicated a strong skepticism of regulation, if not an outright anti-regulatory bias.

The assault by the grants into Corporate America on regulatory protections threatens the lives and health of American citizens as well as our health and our nation’s economy. Huge corporations, their lobbyists and public relations firms routinely overstate the costs of public protections and ignore their benefits. In a prime illustration of what is put out by junk economists, the corporate-funded Heritage Foundation attributes more than a third of all the costs of regulation issued in 2010 to fuel economy standards. Yet Heritage fails to mention that the National Highway Traffic Safety Administration found those very rules would confer benefits three times as great as the costs. That is typical of the false information that is routinely put out on a regular basis for public consumption.

Public Citizen needs help in its fight to dispel Big Business’s baseless claims once and for all. Ordinary citizens must get serious about putting America back to work and making our country safer and cleaner. Big Business must be regulated to stop rampant wrongdoing that frequently is criminal in nature. For example, during the last five years alone Big Pharma has 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. New rules must be passed so that corporate crime no longer pays.

Stronger prescription drug safety rules and enforcement are badly needed. The FDA is compromised because 50% of its budget for drug review and approval is provided by the pharmaceutical industry. As a result, the regulatory agency often seems more loyal to Big Pharma than to the public it serves. 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. Corporations cannot be trusted to place your health and well-being ahead of their bottom line. Public Citizen needs help in order to win strong consumer protections and ensure that agencies fulfill their mission of protecting the public from corporate wrongdoers and abusive corporate power.

Polluters must be regulated in order 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 our economy. We also need much tougher rules on oil drilling to prevent a recurrence of the BP Deepwater Horizon disaster.

Source: Public Citizen

**JPMorgan To Pay $228 Million To Settle Case Involving Municipal Bonds**

JPMorgan Chase will pay $228 million to settle charges that the bank’s securities division “rigged the market for municipal bond derivatives.” State and federal regulators announced the settlement last month. The Securities and Exchange Commission and state Attorneys General, including Alabama’s Luther Strange, accused the company’s JPMorgan Securities unit of anti-competitive and fraudulent conduct in reinvestment transactions linked to municipal bonds. According to the SEC, JPMorgan Securities reaped millions of dollars in ill-gotten gains by manipulating the bidding process for securities that state and local governments use to reinvest proceeds from the sale of municipal bonds.

The SEC alleges that JPMorgan Securities entered into “secret agreements” with bidding agents to obtain information on rival bids, a practice known as “last looks.” Robert Khuzami, the SEC’s top enforcement officer, had this to say about JPMorgan Chase’s conduct: “Municipal issuers and investors didn’t stand a chance against the fraudulent strategies JPM and others used to guarantee profits.”

The charges covered at least 93 transactions in 31 states from 1997 through 2005, the SEC said. Under the settlement, JPMorgan will return about $51.2 million to municipalities and other borrowers. It will also pay $177 million to settle “parallel charges” brought by other federal and state agencies. In a statement, JPMorgan put the blame on “certain former employees on the municipal derivatives desk.” The company said that desk was closed in 2006.

The SEC also barred James Hertz, a vice president at JPMorgan Securities, from operating in the municipal bond business and other financial industries. Hertz, who pleaded guilty to fraud in connection with the municipal bond bidding process, had been cooperating with investigators. This settlement stems from an ongoing investigation into the most interesting world of municipal bond trading. While it wasn’t immediately known how much each state would be paid since the fund to issue repayments has yet to be set up. Alabama Attorney General Luther Strange had this to say about the settlement:

I am pleased that this settlement will make compensation available to Alabama entities that were harmed. I appreciate the leadership and diligent work of those involved and commend our Antitrust Chief James Steinwinder for leading Alabama’s four-year investigation.

In April 2008, the states began investigating allegations that certain large financial institutions, including national banks and insurance companies, and certain brokers and swap advisors, engaged in various schemes to rig bids and commit other deceptive, unfair and fraudulent conduct in the municipal bond derivatives market. Municipal bond derivatives are contracts that tax-exempt issuers use to reinvest proceeds of bond sales until the funds are needed, or to hedge interest-rate risk. The
According to prosecutors, Farkas led a lavish lifestyle that included multiple houses—including one on Key West—several dozen classic cars, a private jet and a seaplane. Farkas, of Ocala, Fla., is the last of seven employees and executives from Taylor Bean and from Colonial to be sentenced. Taylor Bean collapsed in 2009 when the scheme unraveled, putting 2,000 employees out of work. Prosecutors say Colonial and two other major banks—Deutsche Bank and BNP Paribas—were collectively cheated out of nearly $3 billion during a scheme that spanned more than seven years.

Prosecutors said Farkas and his co-Defendants also tried to fraudulently obtain more than $500 million in taxpayer-funded relief from the government’s bank bailout program, the Troubled Asset Relief Program. Neither Taylor Bean nor Colonial ever received any TARP money, even though TARP at one point gave conditional approval to a payment of roughly $550 million, investigators say. Farkas said during his trial that he didn’t have details or knowledge of many aspects of the various fraud schemes. His lawyer said the six Taylor Bean and Colonial executives who testified against Farkas cooperated with the government to secure lighter sentences for themselves. The ramifications from that development may eventually become a much bigger story.

Source: USA Today

X. PRODUCT LIABILITY UPDATE

FORD HAS BEEN MISLEADING JUDGES AND LAWYERS FOR YEARS

During the jury selection process in a hotly-contested lawsuit in a Georgia state court, Ford Motor Company admitted that it has had liability insurance coverage for its product liability claims since 1999. Unfortunately, the automaker never saw fit to let judges and lawyers know about it. In a wrongful death lawsuit (Young v. Barrett), filed in Cobb County, Ford finally revealed to Judge Kathryn Tanksley, a day after the jury venire had been duly qualified, that the company actually has multiple insurance policies issued by several insurance companies to cover product liability claims. Under Georgia law, it is a reversible error not to qualify a jury venire on the insurance carriers of a Defendant in a civil lawsuit. Judge Tanksley had repeatedly warned Ford’s lawyers prior to the start of jury selection that, if in fact the automaker had insurance, a mistrial would be the result. The judge also instructed the lawyers to confirm whether or not Ford had liability insurance coverage that applied to the case. The Ford

EXECUTIVE GETS 30 YEARS FOR $3 BILLION MORTGAGE FRAUD

An executive convicted of orchestrating a $3 billion fraud as chairman of one of America’s largest private mortgage companies has been sentenced to 30 years in prison. Federal prosecutors in northern Virginia had sought a life sentence for Lee Farkas, former chairman of Florida-based Taylor Bean & Whitaker. They called the case against him one of the most significant arising from the nation’s financial meltdown. A federal jury in Alexandria convicted Farkas in April of all 14 counts, including securities fraud and conspiracy.

The fraud began in 2002 and took multiple forms, according to prosecutors. Taylor Bean overdrew its main account with Colonial Bank by several million dollars and eventually double- and triple-pledged mortgages it held to a variety of investors. Prosecutors also alleged that Taylor Bean sold hundreds of million in worthless mortgages to Colonial.

The high school student was driving a 1999 Kia Sephia that her father had bought for her 16th birthday, just two months prior to the accident. On the date in question, she lost control of the car, which struck a sign and overturned. Kia officials knew that seatbelts in the 1999 model vehicles were faulty, but did not include them in a recall of 1995-1998 vehicles. Kia also was aware that Sephias and Sportages made in 1999 and 2000 had the same faulty seatbelt buckles as the vehicles it recalled in December 2002. The company did not recall the 1999 and 2000 models until August 2004.

The case was tried in Circuit Court Judge Charles Graddick’s courtroom. The verdict was against Kia Motors Corp., Kia Motors America, and Celltrion DBI Inc. Skip Finkbohner and Toby Brown, lawyers with the Mobile-based firm Cunningham Bounds, represented the family. Skip had this to say about the outcome in the case:

I'm satisfied that the court system has done what was within its ability to do, but I feel bad for the family. Kia should have recalled all of the vehicles, not just some of them, particularly because the defect was in a safety device. It's not like it was a cigarette lighter or a radio. This is the single most important safety device in the car.

These Mobile lawyers, who are very good at what they do, did an outstanding job in this case. Their job was to make sure that justice was done for the family and they certainly accomplished that goal.

Source: Al.com
lawyers assured the court repeatedly that the company had no insurance and proceeded with jury selection.

Janice and Donald R. Young of Greensboro, N.C. filed the lawsuit which involved the death of their 15-year-old son, Donald R. Young III. The youngster died in Georgia after a rollover crash of a Ford Explorer. During discovery responses in the case, lawyers representing the Plaintiffs requested information from Ford regarding insurance proceeds that would be applicable to any judgment returned in the case. Instead of identifying potential insurance carriers, as required by Georgia law, Ford’s lawyers responded as follows: “Ford states that it has sufficient resources to cover any judgment which could be reasonably rendered in this case, if any.”

Since Ford, based on the response, appeared to be self-insured, no further discovery was sought on the insurance issue. Following voir dire, Ford’s lawyers admitted to the court that the auto maker did have liability insurance, through a network of insurance carriers. Due to Ford’s failure to truthfully respond to Plaintiffs’ discovery requests and specific inquiries made to Ford’s lawyers by Judge Tanksley, the company’s out-of-state lawyers had their pro hac vice orders revoked by the court. In addition, a portion of Ford’s answer was stricken by Judge Tanksley as a sanction. A new jury was selected and the case was tried for a week and subsequently settled during the trial for a confidential amount.

Because of the revelation of Ford’s insurance in the Young case and the harsh sanctions imposed on the automaker for its deceptive practice of not identifying insurance, Ford is now amending responses in pending cases to identify the existence of insurance. For example, in a case being handled by our law firm, Ford has recently amended its discovery responses to identify numerous insurance carriers and excess insurance coverage up to $500,000,000.00. This information had never previously been disclosed by Ford’s lawyers.

In all likelihood, Ford will face numerous motions for new trials in cases where Ford did not disclose its insurance carriers. Jurors who sat on Ford cases could have been policyholders of a company that insured Ford. As a result, in a lot of trials, the jury may have never been properly qualified due to Ford’s cover-up of its insurance policies. Ford’s intentional refusal to identify insurance carriers in cases is a clear effort to influence juries into believing that any award would be coming directly from Ford. Ford’s trial tactic in the Young case clearly was meant to influence the jurors. Qualifying juries on the existence of insurance carriers of a Defendant is a fundamental right to ensure that a fair and impartial jury can be selected. Ford’s actions are a prime example of how huge corporations believe that they are above the requirements of the law.

Regardless of the subject matter, lawyers and their clients, both Plaintiff and Defendant, have an obligation to tell the truth in litigation. When something like the events described in the Young case happens, it hurts all of us who are involved in the civil justice system.

Stephen G. Lowry of Harris Penn Lowry Delcampo, was the lead lawyer for the Plaintiffs in this case. As the trial progressed, Darren W. Penn, another lawyer in the firm, was negotiating with the Ford general counsel’s office. The lawyers in this case did an outstanding job.

Source: Cobb County Court Records and Fulton County Daily Report and Law.com

JURY AWARDS $35 MILLION IN WAVERUNNER COLLISION

A jury has found Yamaha responsible for a 2005 WaveRunner accident that killed Jaysell Perez, a 14-year-old girl. The jury awarded about $35 million to her parents and to Jaysell’s best friend, Samantha Archer, who was injured in the crash. The jurors awarded $19 million for Mr. And Mrs. Perez and $16 million for Ms. Archer. Yamaha Motor Corp. USA failed to correct steering problems with the water scooter and then failed to warn people of the hazards created by the failure.

David Kleinberg, a lawyer with Neufeld, Kleinberg & Pinkiert, who have several offices in Florida, represented Ms. Archer. Eric Ansel, a lawyer with Ansel and Miller, located in Homewood, Fla., represented Mr. And Mrs. Perez. These lawyers did a very good job for their clients.

Source: Palm Beach Post

JURY RETURNS $10 MILLION TASER VERDICT

A federal jury has ordered Taser International Inc. To pay $10 million to the family of a 17-year-old teenager who died after a Charlotte-Mecklenburg police officer struck him with a Taser. The incident happened in March 2008 at a Food Lion store in north-east Charlotte. It appears that the officer violated department policy when he shocked the teenager for about 37 seconds, contributing to his death. The boy fell to the floor during the confrontation and died.

The jury returned its verdict in U.S. District Court for the Western District of North Carolina. The jurors found that the manufacturer knew the product could cause heart problems if it struck near the heart but failed to warn customers, which in this case included the Charlotte-Mecklenburg Police Department. Without any doubt, police officers have a right to this type information and the manufacturer has a duty to provide it.

Source: Charlotte Observer

A BRIEF LOOK AT TIRE FAILURES

It is recognized by tire manufacturers that tire failures, blowouts and detreads are foreseeable events. The manufacturers are well aware that tire treads will wear with proper use, and at some point, will fail if not serviced properly and replaced after their intended period of use has expired. Tire tread separation happens in a number of ways, including being caused by bonding problems in the tire manufacturing process, contaminants introduced into the tire during the tire making process, under-vulcanization, use of old ingredients, and improper sized components. Even something as simple as air being trapped in between the layers of the tire during manufacturing can cause a tire tread separation.

Lawyers in our firm have handled a number of cases involving a tire tread separation. Detreading of a defective tire can result in single or multi-vehicle accidents. That event can also cause vehicle rollovers. The automobile manufacturers all agree that drivers should be able to pull over—not roll over—when a tire detrends. Unfortunately, that does not always happen when a tire fails. Lawyers in our firm’s Product Liability Section are currently handling a number of cases where deaths and disabling injuries have occurred as a result of a tire failure of some kind. If you would like more information on tire failures, contact Rick Morrison, a lawyer in the Section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

RETIREES SUITE NFL SAYING LEAGUE HID INFORMATION ON CONCUSSIONS

Seventy-five former players have sued the National Football League, claiming it concealed information about the dangers of concussions for decades. The lawsuit, alleging negligence and fraud, was filed in Los Angeles Superior Court. Many players’ wives also are plaintiffs. The suit alleges the NFL knew as early as the 1920s of the harmful effects of concussions, but concealed them from coaches, trainers, players and the
public until June 2010. It also names helmet-maker Riddell, the NFL's official helmet supplier as a defendant.

As most of our readers will know, concussions are movements of the brain inside the skull from an impact. The former players contend that they suffered repeated concussions from hits and tackles during their years in the NFL that caused brain damage. They contend the injuries left them with problems such as dementia, headaches, memory loss, blurred vision, sleeplessness and ringing in the ears. Some claim the injuries caused depression, anxiety, “explosive mood changes,” poor judgment and substance abuse. According to the suit, the NFL knew for decades that multiple blows to the head can cause long-term brain injury but fraudulently denied it, even as independent evidence showed that players were at risk.

The Mild Traumatic Brain Injury Committee was established by the NFL in 1994 to study the risk of long-term brain injury to players. The suit contends that the committee published “false, distorted and deceiving” findings that the risk was minimal in order to deceive Congress, players and the public. The NFL only warned active players in June 2010 of the risks associated with multiple concussions and Riddell failed to warn active players until around the same time, the suit claims. The NFL has never warned past players, according to the suit.

Sources: Associated Press and sportsillustrated.cnn.com

XI.
MASS TORTS UPDATE

Chad Cook Selected To Help Lead Fosamax Consolidated Litigation

Chad Cook, a lawyer in our firm’s Mass Torts Section, has been selected to help direct litigation related to femur fractures caused by the osteoporosis medication Fosamax®. Chad is one of 11 lawyers appointed by U.S. District Judge Garrett E. Brown, Jr., the MDL judge, to oversee the consolidated litigation as part of the Plaintiffs Steering Committee (PSC). The litigation, which involves hundreds of cases against Merck Sharp & Dohme, Corp., which manufactures Fosamax®, is consolidated by Judge Brown in the District of New Jersey.

It’s quite an honor for Chad to be selected to serve on the Fosamax Femur Fracture PSC. He will be working with a group of very good lawyers representing the victims who have suffered injuries due to their taking Fosamax. As you may already know, Fosamax is a type of medication known as a bisphosphonate, prescribed for the treatment of bone loss and osteoporosis. The FDA reviewed data from an ongoing safety review of oral bisphosphonates to determine if use of the drug was related to an increased risk of thigh fractures, specifically low-energy femoral shaft and subtrochanteric fractures. In October of 2010 the FDA required all manufacturers of bisphosphonates to include in the warning section of their label a description of low-energy femoral shaft and subtrochanteric fractures that are associated with the use of drugs in this class.

Lisinopril Caused Liver Failure

Jennifer Roberts, a Florida resident, has filed suit against Merck & Co., the maker of Lisinopril. She took Lisinopril for six weeks. When her urine changed color, her doctor “ran all kinds of tests but everything came back negative.” Instead of getting better as her doctor said she would, Ms. Roberts got worse. She wasn’t able to raise her head or stand up straight—and she couldn’t even remember her husband’s name. A worsening of brain function occurs when the liver is no longer able to remove toxic substances in the blood.

Subsequently Ms. Roberts received a liver transplant. By the time she got to Ochsner Clinic, her MELD score was rated 38 and she was gravely ill. Fortunately, Ms. Roberts only had to wait 15 hours for a liver transplant. She was in the hospital for 12 days and was able to get lab work done. Now she has to go back to the hospital every ten weeks to have three stents in her bile duct replaced. Ms. Roberts suffers from her stomach pain every day and will have to be on medications for the rest of her life.

Source: Lawyersandsettlements.com

Bayer Agrees To Pay $750 Million To Settle Genetically-Modified Rice Lawsuits

After five years of hard-fought litigation, Bayer Corporation has agreed to a settlement of $750 million to resolve claims by U.S. farmers who were damaged when Bayer allowed unapproved genetically-modified rice to infiltrate U.S. rice. The settlement program is open to all long-grain rice farmers and landowners who planted rice in any year from 2006 through 2010 regardless of whether they filed a lawsuit.

In August 2006, the U.S. Department of Agriculture announced that genetically-modified Liberty Link rice had been found in U.S. long-grain rice, specifically Clearfield 131 and Cheniere varieties. At that time, U.S. farmers were in the midst of harvesting their 2006 long grain rice crop. The price of long grain rice fell sharply. The price of rice futures fell 14%. American farmers suffered significant market losses. The European Union, Japan, and other Asian markets refused to buy U.S. rice for fear it contained genetically-modified rice.

Approximately 11,000 farmers and landowners from Arkansas, Louisiana, Mississippi, Missouri, and Texas filed suit in federal or state courts to recover damages suffered as a result of the market loss and related costs of cleaning up contaminated rice. Cases filed in federal court were consolidated in St. Louis before Judge Catherine Perry, United States District Judge for the Eastern District of Missouri. Most state court cases were filed in state court in Arkansas. Juries in six cases in federal and state courts awarded farmers more than $54 million in compensatory and punitive damages. Other cases filed by farmers and/or landowners were settled before or during trial.

The settlement provides for compensation for market losses, losses for those farmers who planted Clearfield 131 or Cheniere rice, and for other losses. Farmers and landowners are compensated for market losses based on the number of acres planted for crop years 2006, 2007, 2008, 2009, and 2010. The payment per acre is a maximum of $120 per acre for 2006, $80 per acre for 2007, $60 per acre for 2008, $40 per acre for 2009, and $10 per acre for 2010. Farmers and landowners who planted Clearfield 131 and/or Cheniere in 2006 will be compensated at $100 per acre planted. For farmers and landowner who had other losses, a fund is available under the settlement for compensation. Claimants will be required to provide extensive documentation.

In order for the settlement program to be activated and for Bayer to be required to fund the settlement, the settlement agreement requires that farmers and/or landowners with an interest in 85% of the average acres planted during crop years 2006, 2007, 2008, and 2009 participate in the settlement. If this threshold participation percentage is not met, Bayer will have the right to walk away from the settlement. The settlement enrollment process has already begun. Farmers or landowners who did not file a lawsuit may still make a
claim under the settlement. The enrollment deadline is October 10, 2011.

In addition to the lawsuits brought by farmers and landowners, Bayer Corporation also faces lawsuits filed by large farm cooperatives, Riceland Foods and Producers Rice Mill. A jury in Stuttgart, Ark., awarded Riceland Foods $136.8 million in compensatory damages in March of this year, finding that Bayer acted negligently in its handling of genetically-modified rice. That verdict remains on appeal. Lawsuits filed by non-farmers and landowners are not a part of the settlement.

Don Downing, a St. Louis lawyer, and Adam Levitt, a Chicago lawyer, serve as co-lead counsel for the Plaintiffs in the federal litigation. Scott Powell of Hare, Wynn, Newell & Newton in Birmingham represents a number of clients in the settlement. Leigh O’Dell, a lawyer in our firm’s Mass Torts Section, also represents clients. All of these lawyers have done an excellent job for their clients in this most interesting litigation.

**KUGEL HERNIA PATCH MAKER SETTLES 2,600 LAWSUITS**

C.R. Bard, the maker of the Kugel mesh hernia patches, has settled 2,600 lawsuits for a total of $184 million. Approximately 3,600 suits were consolidated in a MDL in a Rhode Island federal court and also centralized in a Rhode Island state court. The suits alleged that Davol, a Rhode Island division of New Jersey-based C.R. Bard, manufactured hernia patches that contained a plastic ring that could buckle or break off inside patients. The mesh would then ball up or migrate, leading to perforation, infections and bowel injuries and even death in some cases. Bard issued separate recalls of the product in December 2005, March 2006 and January 2007.

After the cases were consolidated, two bellwether trials were held, resulting in one Defense verdict and a $1.5 million Plaintiffs’ verdict. In February, U.S. District Court Judge Mary M. Lisi denied the Defendant’s motion for a new trial in the second case, upholding the verdict. The majority of the filed cases have now been settled, leaving approximately 1,000 Plaintiffs remaining in this litigation.

Only the total amount of the settlement and the number of suits involved have been publicly disclosed for purposes of Securities and Exchange Commission filings because Bard is a public company. Each of the lawyers and firms involved in the settlement negotiated separately for their respective clients. Therefore, each settlement is different and in each case the amount to be paid to the Plaintiff is confidential.

There are currently 100,000 recalled devices that have been put in people’s bodies since 2001. There is a certain amount of uncertainty as to when the devices currently inserted in bodies will break. Don Migliori, a partner at the Motley Rice firm in Providence, R.I., was co-lead counsel and liaison counsel for the Plaintiffs in the MDL and in the state court suits. He will remain as the court’s liaisons in the cases that remain active. It appears that Don has done a very good job for the victims in this litigation.

Source: Lawyers USA Online

**LAWMAKERS EXPAND TAINTED HEPARIN INVESTIGATION**

Congress has expanded its investigation of contaminated heparin supplies that were imported from China and given to U.S. patients more than three years ago. Hundreds of lawsuits have been filed as a result of patients being injured or killed after being given contaminated doses of the blood thinner. Recently, a jury awarded $625,000 to the estate of a man who died after being given a contaminated dose of the drug.

Members of the House Energy and Commerce Committee have contacted ten drug supply companies requiring documents related to the contaminated drugs. This came after information from the Food and Drug Administration indicated that the companies have information related to the Chinese heparin industry and Chinese heparin supply chains. The letter written by the Committee to the companies stated:

*There is reason to believe all or some of the individuals responsible for the adulteration are still actively engaged in the Chinese pharmaceutical supply chain and pose a continuing threat to pharmaceutical products imported to the U.S. How the Heparin came to be contaminated and the exact nature of the contaminant remain unknown. It is important to determine how the adulteration happened so that industry and government can take more effective proactive measures to reduce the risk of such adulteration in the future.*

The referenced letter was sent to Amphastar Pharmaceuticals, Momenta Pharmaceuticals, Siegfried USA, Inc., Sagent Pharmaceuticals, APP Pharmaceuticals, Sanofi Aventis, Drug Source Company LLC, Global Pharma Sourcing LLC, Pacific Rainbow International and Sandoz. The investigation into the cause of the tainted heparin supply began in 2008, when lawmakers asked the FDA to probe the incidents. The U.S. Government Accountability Office ultimately placed some blame on the FDA for, among other things, allowing drugs to continue to be imported from Chinese facilities that refused to allow inspections. Committee members have also called on the FDA to release documents related to its response to the unsolved cases. It’s time for Congress to clamp down on imports from China and require Chinese manufacturers to comply with all requests concerning safety issues.

Source: Lawyers USA Online

**A LOOK AT THE DRUG TOPAMAX**

On May 4, 2011, the Food and Drug Administration notified the medical community and the public that there is an increased risk for the development of oral cleft (cleft lip and/or cleft palate) in infants born to women taking Topamax during the first trimester of pregnancy. Topamax had previously been classified as a Pregnancy Category C drug, approved to treat partial onset seizures (1996) and migraines (2004). Pregnancy Category C means data in animal studies has shown a potential for impairing fetal development. However, data from the North American Antiepileptic Drug Pregnancy Registry indicate a significant increase in the risk of cleft lip and/or cleft palate in fetuses exposed to Topamax during the first trimester. Mothers taking Topamax during the first trimester of pregnancy were found to be 21 times more likely to give birth to a child with cleft lip and/or palate than untreated women. Data from a United Kingdom database is similar—a sixteen-fold increase in cleft lip and/or palate in women taking Topamax during the first trimester of pregnancy.

Based upon this information, the FDA has re-categorized Topamax to Pregnancy Class D, which means there is data to indicate birth defects in humans. In an FDA statement to the public on March 4, 2011, the FDA recommends that women of childbearing age find treatment options other than Topamax due to the higher risk that a child born to mothers on Topamax will develop cleft palate. The FDA further recommends that women of childbearing age who continue to take Topamax should use effective birth control. The FDA notes that hormonal contraceptives may be less effective when used with Topamax.

In 2010, Ortho-McNeil, a Johnson & Johnson company, the manufacturer of
Topamax, pled guilty to one count of a misdemeanor violation of the Food, Drug & Cosmetic Act for illegally promoting Topamax for uses that were not approved by the FDA and was fined $6.14 million. An affiliate of Ortho-McNeil, Janssen Pharmaceuticals, agreed to pay $75.37 million to resolve civil allegations under the False Claims Act that it illegally promoted Topamax for non-FDA approved uses.

We are currently investigating a number of claims for infants born with cleft lip and/or cleft palate who were exposed to Topamax during their first trimester of development. If you need for more information on this subject contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2054 or by email at Roger-Smith@beasleyallen.com.

Source: U.S. Department of Health & Human Services, FDA website

XII.
BUSINESS
LITIGATION

LIBERTY MUTUAL SUES GOLDMAN OVER FREDDIE MAC INVESTMENT LOSSES

Liberty Mutual Insurance Co. And several of its subsidiaries have filed suit against investment banker Goldman, Sachs & Co. for “making materially misleading statements and omissions” in a preferred stock offering of mortgage lender Freddie Mac in November 2007. The insurers invested $37.5 million in the Series Z offering of Freddie Mac (Federal Home Loan Mortgage Corp.) shares backed by subprime mortgages and underwritten by Goldman. In the suit, filed in U.S. District Court in Massachusetts, the insurers allege if they had been informed of the “true state” of Freddie Mac’s capitalization, they would never have purchased the Series Z preferred shares. They say as a result of Goldman’s “fraudulent conduct,” their more than $37 million in investments are now “virtually worthless.”

Their Complaint alleges the insurers have suffered “huge losses” on the shares of stock they have sold, as well as on the shares of stock they still hold. They are asking treble damages and want a jury to hear their claims. The Plaintiffs include Liberty Mutual and its subsidiaries Safeco, Employers of Wausau, Peerless and Liberty Life. According to Insurance Journal, Goldman Sachs says it will fight the suit.

The Complaint alleges that Goldman’s actions in underwriting the Series Z offering were “part of a calculated pattern of deception in which Goldman not only profited from the collapse of the mortgage market, but also magnified risks in the market by selling high risk, poor quality mortgage products to investors around the world.” The Complaint further alleges that Goldman sold investors poor quality investments and placed its own financial interests before that of its clients.

As you may recall, Freddie Mac began getting into trouble around 2006 when homeowners began defaulting on subprime mortgages in increasing numbers. Freddie Mac raised almost $6 billion in the November 2007 offering, according to the Complaint. But by 2008 Freddie Mac had deteriorated to the point where it had to be rescued by the federal government. Preferred stock investors like Liberty Mutual then suffered losses because the government issued new preferred shares that were senior to the preferred stock they held.

While it was marketing and selling Freddie Mac securities, Goldman had taken huge net short positions on other securities backed by subprime residential mortgages that generated $3.7 billion in profits for the firm in 2007 alone, according to allegations in the Complaint. Before others became fully aware of the risk, it’s alleged that Goldman also took actions to transfer the risk of its own subprime mortgage inventory to the Plaintiffs. The Complaint refers to an April 2011 investigation report by the U.S. Senate.

About a year ago, Liberty Mutual sued Goldman over losses on the $62.5 million of preferred stock of the other government-sponsored mortgage player, Fannie Mae, that it bought in late 2007 through offerings underwritten by Goldman. While I have no problem with Liberty Mutual filing a lawsuit alleging fraudulent conduct on the part of other companies, I do wonder if the proponents of so-called “tort reform” consider Liberty Mutual’s lawsuit to be frivolous.

Source: Insurance Journal

XIII.
AN UPDATE ON SECURITIES LITIGATION

BANK OF AMERICA TO PAY $8.5 BILLION IN HOUSING CRASH SETTLEMENT

Bank of America Corp. will pay $8.5 billion to settle claims of investors who lost money on mortgage-backed securities. This is a landmark event that will likely influence other major banks to settle their mortgage claims. Thus far, the amount to be paid is the largest single settlement by big banks related to the financial crisis that helped spark the Great Recession. According to Bank of America, the charges include an additional $5.5 billion to cover expected payments to other mortgage bond investors.

The $8.5 billion settlement covers claims from 22 institutional investors, including BlackRock Financial Management, Pacific Investment Management Co and Western
Asset Management. According to the bank, the settlement is linked to mortgages made by Countrywide Financial Corp., once the nation’s largest mortgage lender, which it bought in 2008. Some observers believe the settlement, which is subject to court approval, should cause other big banks, including JPMorgan Chase & Co and Wells Fargo & Co., to consider settling similar lawsuits with mortgage bond investors. A fairness hearing has been set for November 2011. I understand that not all persons and groups are satisfied with the settlement. It will be interesting to see what opposition develops and where it comes from.

Source: MSNBC

**INVESTORS SETTLE WITH WASHINGTON MUTUAL FOR $208.5 MILLION**

Washington Mutual Inc., the former owner of the biggest U.S. bank to fail, and its former executives, underwriters and auditor have reached a $208.5 million settlement of a class-action lawsuit filed by investors. The settlement provides for:

- $105 million in payments on behalf of the individual Defendants;
- $85 million to be paid from the underwriters; and
- $18.5 million to come from Deloitte & Touche LLP.

A request for preliminary approval of the settlement was filed in federal court in Seattle by lawyers for the Ontario Teachers’ Pension Plan Board, the lead Plaintiff in the case. The lawsuit consolidates more than 20 suits with mortgage bond investors. A fair-

Source: sfgate.com

**WELLS FARGO TO PAY $125 MILLION OVER MORTGAGE SECURITIES**

Wells Fargo & Co. has agreed to pay $125 million to settle accusations by investors that the bank misled them about the risks of mortgage-backed securities it sold. The Plaintiffs in the consolidated group case, or class action, include the General Retirement System of Detroit, New Orleans Employees’ Retirement System and other public pensions. The proposed settlement was filed last month in federal court in San Jose. Wells Fargo, the largest U.S. home lender, and several investment banks that underwrote the securities were sued in 2009 over alleged violations of securities laws in connection with sales of $36 billion in mortgage pass-through certificates in 2005 and 2006.

The securities were backed by pools of mortgage loans that Wells Fargo or its affiliates originated or purchased. In 28 offerings, the bank misrepresented the quality of the loans, failing to disclose that it hadn’t followed appropriate underwriting standards and loans were made based on inflated appraisals, investors said in a Complaint. The bank and the underwriters deny wrongdoing, according to the proposed accord, which is subject to a judge’s approval. Wells Fargo still faces claims in state courts in California, Illinois and Indiana filed by individual investors and federal home loan banks seeking to recoup billions of dollars of mortgage-backed securities purchases.

The settlement covers $50 million worth of mortgage trusts with an original loan balance of $424 billion, according to the bank. David Stickney, a California lawyer with Bernstein, Litowitz, Bergerto, Grossman, represented the Plaintiffs in the Wells Fargo case and he did a very good job.

Source: sfgate.com

**XIV. INSURANCE AND FINANCE UPDATE**

**$14.5 MILLION JURY VERDICT AWARDED AGAINST STATE FARM INSURANCE**

A jury in Hamilton County, Ohio, returned a $14.5 million jury verdict for Joseph Radcliff and his restoration company, CPM Construction of Indiana, against State Farm Fire & Casualty Company. This litigation started when State Farm filed suit for insurance fraud and RICO claims against Radcliff and CPM. The lawsuit arose out of work done by Radcliff and CPM following the April 2006 hailstorm. The lawyers for Radcliff and CPM said that after State Farm received nega-

active publicity in the Indianapolis media for denying hail damage claims, the company made unfounded claims of fraud against Radcliff and instigated the filing of felony charges against him. Those charges were dismissed by the Marion County Prosecutor, but the negative publicity resulted in Radcliff’s personal reputation and business being destroyed. Not only did the jury find that State Farm’s claims against Radcliff were baseless, they also found that the Radcliff’s allegations of being defamed by State Farm were true.

Radcliff was represented by Will Riley, Joe Williams, James Piatt and Jamie Kendall all with the law firm Price Waicukauski & Riley, and Mark McKinzie, who is with Riley Bennett & Egloff LLP, located in Indianapolis. They did a very good job in this case.

Source: prweb.com

**ZURICH FILES SUIT TO DENY DATA BREACH COVERAGE**

Zurich American Insurance Co., one of Sony Corp’s insurers, has asked a court to declare that it does not have to pay to defend the media and electronics conglomerate from mounting legal claims related to a massive data breach earlier this year. The dispute, which pits corporate giants against each other, comes as demand soars for “cyber insurance,” with companies seeking to protect themselves against customer claims and associated costs for data and identity theft. The manner in which to write such policies has become a huge subject of debate in the insurance industry.

Zurich asked a New York state court to rule it does not have to defend or indemnify Sony against any claims “asserted in the class-action lawsuits, miscellaneous claims, or potential future actions instituted by any state attorney general.” Zurich American, a unit of Zurich Financial Services, also sued units of Mitsui Sumitomo Insurance, AIG and ACE Ltd, asking the court to clarify their responsibilities under various insurance policies they had written for Sony.

One legal expert said that “Zurich doesn’t think there’s coverage, but to the extent there may be a duty to defend it wants to make sure all of the insurers with a potential duty to defend are contributing.” This is the opinion of Richard Bortnick, a lawyer with Cozen O’Connor and publisher of the digital law blog CyberInquirer. He is not involved in the case. The lawyer said that while Sony may be able to claim there was property damage as a result of the data breach, Zurich is likely to argue that the sort of general liability insurance it wrote
for Sony was never intended to cover digital attacks.

In April, hackers accessed personal data for more than 100 million users of Sony’s online video games. Sony has said it could not rule out that some 12.3 million credit card numbers had been obtained during the hacking. In May, Sony said it was looking to its insurers to help pay for its massive data breach. Sony has said it expects the hacking to drag down operating profit by $178 million in the current financial year, including costs for boosting security measures.

According to Zurich American, 55 purported class-action Complaints have been filed in the United States against Sony. The insurer also said Sony has been subject to investigations by state and federal regulators since the breach. Zurich American has subsequently received claims for coverage from Sony under its policy, a commercial general liability policy written for Sony Computer Entertainment of America as of April 1st.

Zurich American contends that it has no obligation to defend any other Sony unit under that primary policy, since it only applies to the specific business in question. In addition, the insurer said its policy only covers the Sony unit for “bodily injury, property damage or personal and advertising injury.” It said no such claims have been made in any of the class-action lawsuits. Even if such claims had been made, Zurich American said, the policy had exclusions in place that would deny Sony coverage for the claims made.

Source: Insurance Journal

XV. 
EMPLOYMENT AND FLSA LITIGATION

THE IMPACT OF THE AT&T DECISION ON EMPLOYEE CLASS ACTIONS

As has been widely reported, the U.S. Supreme Court ruled in a recent case (AT&T Mobility LLC v. Concepcion) that an arbitration agreement can prohibit an individual from commencing or participating in a class action lawsuit. The High Court ruled that the Federal Arbitration Act preempts state law which says class arbitration bans are unconscionable. While this was not an employment case, many believe this decision could well have a major impact on employment arbitration agreements. If businesses are now able to place an outright ban on class action arbitration, employees may be left with individual arbitration as their only way to receive justice. This may become a backdoor way for attempts by employers to put a halt to major class actions, especially in wage and hour cases. It will take a while for the full impact of this decision to be fully known.

Source: Associated Press

EMPLOYMENT CLASS ACTIONS SURVIVE DESPITE WAL-MART RULING

Predictions that the U.S. Supreme Court’s ruling in a case (Dukes v. Wal-Mart Stores Inc.) could end class action employment lawsuits by employees, appear to have been premature. The landmark U.S. Supreme Court decision, siding with the world’s largest retailer, was widely seen as a blow to many other would-be class-action Plaintiffs. But some employment class-action lawsuits, particularly those involving disputes over overtime and other wage-and-hour claims, are surviving and appear to have even been strengthened by the ruling. Judges have issued opinions stating that the Wal-Mart decision does not apply to a given case.

The Wal-Mart case centered on whether a group of up to 1.5 million current and former workers at the retailer, who contended that women were paid less than men and denied promotions, was properly certified as a class. The Supreme Court said the women could not sue jointly, finding they did not have enough in common to band together. Plaintiffs who sue en masse have more power, because they can pool resources and combine claims into one lawsuit. Following the Supreme Court’s June 20 ruling, Wal-Mart workers will now have to sue in smaller groups or as individuals.

Over the past weeks, courts and lawyers have rushed to interpret the ruling. A day after the decision, a federal judge in New York ruled that about 600 employees of Tyco International Ltd unit SimplexGrinnell can sue jointly on their claims that they were underpaid. On June 29th, a federal judge in Florida denied Starbucks Corp.’s attempt to decertify a class of more than 700 workers in a lawsuit on overtime pay, saying there were enough similarities to justify keeping class members together. That same week, a federal judge in California denied trucking company C.R. England Inc.’s attempt to decertify a class of up to 1,000 drivers in a wage-and-hour class action. A federal judge in Ohio upheld class certification in a similar case against nursing home company HCR ManorCare.

The Plaintiff classes kept intact or certified so far are small compared with the Wal-Mart group. Neither do their lawsuits involve the same type of sex bias allegations. It’s believed by some experts that the Wal-Mart case will have more of an impact in other nationwide discrimination class actions, including pending cases against Costco Wholesale Corp., Toshiba Corp., Goldman Sachs Group Inc., Cigna Corp. And Bayer. We shall see if that is correct.

Source: Insurance Journal

WAGE-AND-HOUR VIOLATION CASES

Many lawyers who handle employment litigation believe that class actions involving alleged wage-and-hour violations should not be affected by the ruling in the Wal-Mart case. In order to survive problems in claims based on wage-and-hour violations, the lawyers in those cases must be able to distinguish their cases from the Wal-Mart case. It’s much easier to establish commonality in these cases than it was in the Wal-Mart case.

It should also be noted that in cases involving state labor law, classes of proposed Plaintiffs are much narrower than the large one in the Wal-Mart case. For example, in the SimplexGrinnell case, the judge upheld class certification for about 600 workers who alleged that the Tyco fire and safety equipment unit violated New York labor law.

Cases brought under the federal Fair Labor Standards Act are also proceeding in the courts. Class certification for these cases do not have to satisfy the same strict requirements as in discrimination cases, such as the Wal-Mart lawsuit, brought under Title VII of the Civil Rights Act. Both the Starbucks and the HCR ManorCare lawsuits faced the less stringent certification standard. HCR lawyers asked District Court Judge Jack Zouhary in Ohio federal court, to consider the impact of the Wal-Mart ruling to their wage-and-hour case. But Judge Zouhary wrote in a July 1st order: “This Court concludes the concerns expressed in Dukes simply do not exist here.”

According to lawyers representing the employer-side, some judges are misinterpreting the Wal-Mart ruling, keeping alive class-actions that do not merit certification. It will be most interesting to see which side prevails in this most important area of law.

Source: Insurance Journal
CLASS ACTION AGAINST TRUCKING GIANT CONTINUES

A California federal judge rejected a request by trucking giant C.R. England Inc. To vacate an order certifying four classes of drivers in a wage-and-hour action against the company, saying the U.S. Supreme Court’s ruling in Dukes v. Walmart did not apply. The lawsuit against the trucking company alleges that drivers were denied meal and rest breaks required by California law and made improper deductions from driver’s paychecks. A major difference in the Dukes case was that discretion was given to each individual manager on how they chose to hire and promote. The facts of the Dukes case make it hard to show a company-wide policy was at fault for the discrimination of a class of 1.5 million women across the country. The Supreme Court decision has been widely viewed as setting the stage for smaller class actions, even outside the employment arena, as Plaintiffs will likely allege narrow class definitions.

Source: Law360

LOAN OFFICER OVERTIME LAWSUIT PROCEEDS

A federal judge in California denied a motion to dismiss a class action lawsuit alleging Prospect Mortgage LLC of misclassifying its loan officers and loan originators as being exempt from overtime pay and minimum wage. The Complaint states that Prospect Mortgage paid loan officers and others similarly situated on a commission basis and did not pay them at all for weeks in which they did not complete loan sales regardless of how many hours they spent working for the company. The Complaint also alleges that these same employees were not paid for overtime when they worked more than 40 hours in a week. The Plaintiffs are attempting to bring their claims on behalf of both a nationwide class of employees under the Fair Labor Standards Act and a California class of workers under the state’s labor laws.

Source: Law360

VERIZON TO PAY $20 MILLION TO SETTLE DISCRIMINATION SUIT

Verizon Communications has agreed to pay $20 million to settle a discrimination lawsuit charging the telecommunications giant with failing to accommodate hundreds of workers whose absences were caused by their disabilities. The lawsuit was brought by the U.S. Equal Employment Opportunity Commission and settled in a consent decree last month in U.S. District Court in Baltimore. The settlement amount was the largest of any single EEOC lawsuit alleging violations of the Americans With Disabilities Act, or ADA, the commission said. The EEOC’s Complaint said the company disciplined or fired workers who built up absences under a “no fault” attendance policy rather than making exceptions for those with disabilities.

Source: SFGate.com

LARGE WAGE & HOUR CLASS ACTION LAWSUIT FILED AGAINST STARBUCKS

A class action lawsuit was filed recently against Starbucks in Santa Clara Superior Court, entitled Cooper v. Starbucks Corporation, Case No. 111-CV-201544. The class action Complaint filed against Starbucks alleges that Starbucks, “systematically failed to record and pay [Baristas] for minimum wages, wages for all hours worked and overtime wages,” in violation of California overtime laws. Specifically, the lawsuit alleges that Starbucks intentionally and unlawfully failed to pay the Baristas for compensable training time which was spent reviewing, memorizing and completing Starbucks’ training materials.

Under California overtime laws, employers are required to pay employees overtime compensation for all hours worked in excess of eight hours in a single workday or 40 hours in a work week. The law requires California companies to pay hourly employees for all mandatory training time. When employees are required to take quizzes off the clock by an employer, under the state wage and hour laws, they are still entitled to receive compensation for the full amount it takes to complete the quiz or other training activity.

For more information about the Star-bucks class action lawsuit call (877) 852-3912 or visit the Starbucks Class Action Website. The San Jose firm of Blumenthal, Nordrehaug & Bhowmik represent the employees in this case.

Source: SFGate.com

DO EMPLOYEES GET PAID FOR COMMUTING TO WORK?

Lawyers in our firm routinely get inquir-ies from clients that travel both long and short distances to work, or who do not have a formal office, wondering if they should be paid for their commute time to and from the job site. The answer, like several things in the law is, it depends. First, under the Fair Labor Standards Act (FLSA), the general rule is that employees do not get paid for routine commutes to and from work, no matter the distance. However, if an employee is assigned work outside their routine commute, that may turn the drive to work or home into compensable time.

For example, if your boss asks you to go by an office supply store on the way in to pick up things needed for the office, or if you have to drop off your store’s bank deposit on your way home, then that time spent on company business is usually compensable. But a more difficult question arises when a company gives its employee a vehicle and allows them to use it to commute to and from work. Generally, if the vehicle is a normal size car or truck, like most people drive to and from work, then they would not be owed compensation for their commute time. However, if the employee is given a non-typical or specialty vehicle, i.e., an 18-wheeler, concrete truck or truck that hauls heavy equipment, then the commute time to work may very well be compensable.

Similarly, if the company vehicle is such that it requires you to deviate from your normal commuting route (due to such vehicular restrictions as weight allowances on bridges, size allowances in tunnels, or chemicals transported), then the time may also be compensable.

Another caveat for employer-provided vehicles is where the employee is actually responsible for the direct costs of driving the company automobile. Under the FLSA, the employee should generally not incur out-of-pocket expenses associated with operating the company vehicle. This means that in connection with commuting in employer-provided vehicles, the employee should generally not be responsible for things such as maintenance, parking fees, gas or toll roads. If your employer is con-stantly asking you to cover expenses such as these, then your commute time may be compensable. If you need additional infor-mation contact Roman Shaul, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Roman.Shaul@beasley-allen.com.

XVI.

PREMISES LIABILITY UPDATE

CORNELL FRATERNITY SUED OVER STUDENT’S DRINKING DEATH

The mother of a 19-year-old Cornell University sophomore, who died after being forced to drink heavily at a fraternity house in February, has filed a wrongful-death lawsuit against the fraternity. It was alleged that the student was hazed, tied up and then left to die. The student, George Desdunes, joined a chapter of Sigma Alpha Epsilon at Cornell, which is in Ithaca, N.Y. He was kidnapped in the early morning by fraternity pledges who bound his wrists and ankles with zip ties and duct tape. He was forced to drink until he passed out, according to the suit. It was alleged that the student was found unconscious on the same couch later that morning, his hands and feet still tied. The suit was filed by his mother, Marie Lourdes Andre, in a state court in Brooklyn.

It was alleged in the lawsuit that one of the pledges tried “to interfere with the crime scene by having the zip ties removed before police arrived.” An autopsy showed the decedent had a blood-alcohol level of 0.409 percent, five times the legal limit for driving in New York and many other states.

Some former pledges of the fraternity were charged with “first-degree hazing” and “unlawfully dealing with a child” in connection with the death. Cornell withdrew recognition of the fraternity and its members had to leave the Sigma Alpha Epsilon house. The chapter was suspended by the fraternity’s national headquarters.

Tommy Bruce, a spokesman for Cornell, said the university “neither condones nor tolerates hazing or the type of activities that we understand contributed to George’s death.” Unfortunately, this sort of thing goes on at many collegiate universities in this country. It’s past time for college and university officials, involving presidents and boards of trustees, to take strong action to combat activities of the sort involved in this case.

Source: New York Times

JURY VERDICT IN PLANT EXPLOSION LAWSUIT

A jury in Washington County, Ohio, recently returned a verdict of $5.671 million in favor of a 53-year-old man who sustained injuries as a result of an explosion at an AEP plant in 2007. Drumand McLaughlin was employed by Ohio Power Company, an AEP subsidiary, when he sustained shoulder injuries during the explosion at the AEP facility in Beverly, Ohio. The jury found that Ohio Power Company acted with a deliberate intent to cause harm to the Plaintiffs. Companies must conduct their business in a safe manner so that their employees and the general public are not put in harm’s way.

Jurors heard testimony during the trial from numerous experts, including compressed gas experts, relating to the explosion being caused by the dangerous conditions on a hydrogen tank at the facility. There was evidence that even though AEP had experienced a similar explosion at its Kammer plant in Marshall County, Va. Approximately 15 months earlier, it failed to take any steps to correct that problem at the Miskingham River facility following the Kammer explosion. A series of fires and explosions in company hydrogen systems and a litany of documents establishing company knowledge of the dangers was enough for the jury to conclude that AEP was liable for deliberately intending injuries to occur. Chris Regan, one of the lawyers for the Plaintiffs, had this to say:

"Companies cannot simply ignore major safety issues at their facilities. The jury was able to hear the evidence and concluded that we cannot allow this type of conduct to go unpunished. Being held accountable for ignoring safety rules is a necessity. We feel it’s very important that a large company that disregards its safety rules that are put in place to protect employees be held accountable for those actions."

The jury awarded $1.571 million to the Plaintiff and $100,000 to his wife and an additional $4 million in punitive damages. The jury also determined that Mr. & Mrs. McLaughlin should be entitled to recover their reasonable attorneys’ fees in an amount that will be determined by the trial judge. Geoffrey Brown and Chris Regan, lawyers with the firm Bordas & Bordas, located in Wheeling, W.Va., along with Rod Windom and Scott Windom, lawyers from Harrisville, W.Va., represented the McLaughlins and they did a very good job.

Source: wvrecord.com

JURY SAYS EXXON MUST PAY $1.5 BILLION FOR LEAK

A jury in Maryland recently awarded 160 plaintiffs, who had filed suit against Exxon Mobil, more than $1.5 billion for a 2006 leak at a gasoline station. The verdict against the oil company, tried in Baltimore County Circuit Court, included more than $1 billion in punitive damages. That was in addition to the $495 million in compensatory damages that the jury awarded the Plaintiffs as a result of damage caused by the 26,000 gallons of gasoline that leaked from a pressurized line in Jacksonville, Md., over 37 days in January and February in 2006. The leak reached the groundwater in the community that relies on private wells for drinking water. Exxon Mobil said it had already spent more than $46 million on the spill’s cleanup and been fined $4 million by the state. The company will appeal the verdict.

Source: Reuters

GEORGIA COURT HOLD STORE LIABLE FOR FATAL DUI CRASH

The Georgia Supreme Court has found that a convenience store can be held liable for a fatal highway accident that took place after the driver of a motor vehicle purchased a 12-pack of beer. Overturning a lower court, the Supreme Court ruled 6-1 that Expressit! Stores 98-Georgia can be held liable for selling beer to a man who was noticeably intoxicated when he made the purchase. About four hours later the man, Billy Joe Grundell, was in a collision with a van. Grundell and five other people were killed in the crash.

The families of those injured sued the convenience store under the Georgia Dram Shop Act, but the trial court awarded summary judgment to the store on grounds the beer was not sold for consumption on the premises. The Georgia Court of Appeals affirmed the trial court. The Supreme Court disagreed, ruling that the Dram Shop Act applies when a convenience store sells closed or packaged containers of alcohol not intended for consumption on the premises to a noticeably intoxicated adult.

It was alleged in the suit that Grundell was noticeably intoxicated when he entered the store and purchased a 12-pack of beer. Grundell and his passenger drove off and consumed the beer. Later, Grundell’s vehicle crossed the centerline of a highway and ran head-on into a van going the opposite way. At that time, Grundell’s blood alcohol concentration was twice the legal limit.

Source: Reuters
Georgia's Dram Shop Act says that a person who sells, furnishes or serves alcoholic beverages to an intoxicated person of lawful drinking age shall not be liable for injury, death or damage that person causes because of their intoxication. However, the law also says a person who knowingly sells alcoholic beverages to a noticeably intoxicated person, knowing that such person will soon be driving, may become liable. The High Court said that because the statute uses the terms “sells, furnishes or serves” alcohol in the disjunctive, it is clear that it was intended to encompass the sale of an alcoholic beverage at places other than the proverbial dram shop.

The High Court criticized the Court of Appeals for refusing to apply the statute to such sales. The Lower Court had said it did so because, in its view, doing so “would lead to wholly impracticable results.” But the Supreme Court said that the upshot of the Court of Appeals' decision is that the dram shop act cannot be applied to sales made by convenience stores as a matter of law. Each case must rise or fall on its own facts,” the High Court said.

That would mean that a convenience store cannot be held liable for selling closed or packaged alcoholic beverages to a noticeably intoxicated adult under any set of circumstances. We cannot accept this interpretation of the statute.

Expresiz! had argued that, like airlines, convenience stores have no way of knowing if their customers will soon be driving a motor vehicle. The store also contended that unlike taverns, bars and restaurants, where customers drink on the premises, convenience stores are limited in their ability to discern whether their customers are noticeably intoxicated. But Georgia's High Court did not buy that argument, finding that a convenience store will often have an opportunity to observe how the customer arrived and will depart and thus may know if a customer will soon be driving a motor vehicle. Also, the Court said, the convenience store seller has an opportunity to observe if the customer appears to be noticeably intoxicated. “This is not to say that the dram shop act cannot be applied to sales made by convenience stores as a matter of law. Each case must rise or fall on its own facts,” the High Court said.

Source: Insurance Journal

Drunk Driver Ordered To Pay $4.9 Million In A Personal Injury Case

Barron Hilton, the younger brother of the infamous Paris Hilton, has been ordered to pay $4.9 million to a gas station attendant he struck with his Mercedes-Benz. The judgment in the civil lawsuit against Hilton includes $4.6 million for pain and suffering, medical expenses and loss of earnings. Barron Hilton also must pay $225,000 in punitive damages and nearly $71,000 in interest.

The case arose out of a 2008 incident in which witnesses testified that young Hilton was involved in at least one collision, drove the wrong way for miles down the Pacific Coast Highway and finally pulled into a gas station in Malibu, where the hotel heir struck the employee, Fernando Tellez. Hilton denied he had driven the car and claimed amnesia. Witnesses clearly placed him in the vehicle and identified him as the driver.

Hilton, who was 18 at the time, was arrested and charged with driving under the influence of alcohol or drugs. His blood-alcohol level registered .14% and he later pleaded no contest to the charge, authorities said. Earlier that morning, according to authorities, Hilton's companion, Ashley Elizabeth Meyers, had been driving the Mercedes-Benz and hit another vehicle. Joseph M. Kar, a lawyer in Sherman Oaks, California, who represented Mr. Tellez, had this to say about the incident:

"This wild night of reckless partying resulted in Mr Tellez's permanent disability, required him to undergo multiple surgeries and medical procedures and destroyed his family and his ability to provide for his family:

Kar, who did a very good job for his client, said he was particularly troubled by the "unfair tactic" in which Hilton and his attorneys "refused to admit guilt for something he had already admitted to by pleading no contest in the earlier criminal DUI case."

Source: Los Angeles Times

Jury Awards $1 Million In DUI Case Against Country Club

The family of a man killed in a 2008 car collision was awarded $1 million last month in a lawsuit against Southern Oaks Country Club. Employees at the club were accused of selling too much alcohol to a woman who is now serving time in prison for causing the fatal accident. Lance Shetler was killed December 29, 2008, when his car was involved in a head-on crash with a vehicle driven by Mark Charles Pierce, a former high school football star whose blood-alcohol level was nearly double the legal limit three hours after the crash. Pierce is serving a 15-year sentence for the crash and an eight-year sentence for a 2006 Parker County drug conviction.

State District Judge Dana Womack signed a final judgment order against MNP Southern Oaks Private Club, which was doing business as Southern Oaks Country Club. In the lawsuit, Shetler's family alleged that the club continued to serve Pierce alcohol despite witness accounts that he was intoxicated when he arrived at the club to play golf with an uncle and another couple. Testimony indicated Pierce bought "at least 12 cans of beer" at 12:30 p.m. The day of the crash and bought six more after playing the first nine holes. After nine more holes, he went to the clubhouse, where a bartender served him more alcohol. A blood test after the crash showed Pierce's blood-alcohol level at 0.14. The legal limit for being declared intoxicated is 0.08.

Shetler was a father of three, an inventor of medical devices and a Sunday School teacher. Steven Laird, a lawyer in Fort Worth, represented the Shetler family and did a very good job. He had this to say about the impact of the verdict:

"I hope this is a lesson to the community that serves alcohol to pay attention to proper policies and procedures, to not overserve alcohol and to preserve the safety of the general public.

Drinking and driving are a deadly mix and the results can be either serious injuries or deaths for innocent victims. We all have an obligation to help keep drunk drivers off U.S. highways.

Source: Star Telegram

Tubing Company At Fault In Girl's Drowning

A report has been issued by the federal government relating to the drowning death of a nine-year-old girl in Georgia. Allsouth Tubing, a Gwinnett County company, rented tubing equipment to the girl and her family. The company failed to warn the family of the Buford Dam's pending release or what to do in case of an emergency. This was the finding of the federal report released last month. It was reported that Allsouth Tubing could face criminal charges in the girl's death. Before Anna Van Horn and others in her group ever embarked on the ill-fated excursion in June, Allsouth Tubing should have reviewed the dangers, as required by federal law that governs the Chattahoochee River National Recreation Area, according to the U.S. National Parks

Service report. Within minutes of entering the Chattahoochee River with two adults and three siblings, the little girl after being swept downstream by the river’s currents. She was still wearing her life jacket when she was pulled lifeless from the water about two hours later. The group was “unaware of the scheduled water release that was to occur at 2:55 p.m. Approximately 2.5 miles upstream,” the report states.

AllSouth Tubing, also known as $10 River Tubing, has locations in Duluth and Sugar Hill, where the group rented tubes. It appears that the business has been closed. The Parks Service interviewed numerous witnesses in its investigation of the incident before revoking the permit for AllSouth, according to Nancy Walther, a spokeswoman for the National Parks Service. Interestingly, the company was forced to close both locations, but recently re-applied and was granted a permit to re-open the Duluth location after being instructed to better educate customers on safety concerns.

The federal report has been sent to the U.S. Attorney’s Office. Prosecutors then will determine if criminal charges are warranted. The Buford Dam releases water daily because the dam produces hydo-electric power for surrounding counties. The U.S. Army Corps of Engineers schedules water releases based on a variety of factors. Communities need more power in the hotter parts of the day, making the afternoon a popular time for water releases. Also, most areas of metro Atlanta, as well as other communities, depend on the water.

Warning systems are in place to make river revelers aware of the dam’s releases. In addition to signs, sirens sound when the dam releases. Further down the river, there are two options for those wanting to stay safe: Those in the area can tune in to radio station AM1610 or call 770-945-1466 to hear a message, recorded daily, explaining the day’s dam release schedule.

Source: Atlanta Journal Constitution

$11 Million Settlement Reached In Brain Injury Case

A 19-year-old Virginia woman who suffered a traumatic brain injury in a traffic crash has settled her case for $11 million with the owner of a van that crossed the center line on a wet two-lane highway. The woman was a backseat passenger in a Ford 150 pickup truck when it was hit by a Ford Econoline E350 service vehicle in Pennsylvania in June 2008. She was hospitalized for about six weeks and was in a rehabilitation center for another six weeks of treatment. She incurred $562,043 in medical bills. An expert estimated that it would take $4 million to care for her for the rest of her life.

The case was settled on the condition that the Defendants and their insurers would not be identified. In addition to the brain injury, the woman suffered a broken and dislocated hip that has left her with a very bad limp. But the extent of the brain injury was the focus of settlement negotiations. Before the injury, the woman participated in softball and gymnastics and took advanced placement classes in high school. The woman now has the functional abilities of a 12-year-old. Her experts were prepared to testify that she is unlikely to recover any more intellectual capacity. But defense experts contended that further improvement is likely, although they acknowledged the severity of the initial injury.

The Plaintiff filed the lawsuit in the Circuit Court of Loudoun County, Va., her county of residence. The driver of the truck in which she was a passenger is also a resident of Loudoun County and is the father of a high school classmate of the Plaintiff. She had accompanied the classmate and the father on the trip to Pennsylvania. The driver of the truck and the corporate owner of the van were named as Defendants in the lawsuit. The corporation did not object to Loudoun as the venue for the dispute, at least in part because of the county’s reputation as a conservative jurisdiction.

Prior to the settlement, Dr. Jeffrey Freder ick at the National Legal Research Group conducted a focus group session of about 25 county residents. After the trial team presented an abbreviated version of the case, the group broke into three “juries” and their deliberations were recorded. Although some group members indicated they would have awarded less than the ultimate settlement amount, others suggested that they would have gone higher. The team also developed a multi-media presentation for a mediation of the case. In addition to relying on the counsel provided by its insurance carrier, the Defendant who was the corporate owner of the van hired a lawyer to follow the case and attend the proceedings. He was provided with excerpts from the deliberations of the “juries.” The Defendant corporation had a $1 million basic policy and $15 million in excess coverage.

Retired Judge Paul Sheridan conducted two mediation sessions, but neither resulted in a settlement. He continued to work with the parties and the case finally settled about 10 days before a scheduled two-week trial. The settlement was a present value of $11 million and will be

www.BeasleyAllen.com
structured to provide the woman with a lifetime of payments. Richmond lawyer John C. Shea represented the Plaintiff, along with Roger T. Creager of Richmond and Jonathan B. Kazem of Leesburg, Va. They did a very good job for their client.

Source: Lawyers USA Online

**NTSB FINDS PILOT AT FAULT IN 2009 MONTANA PLANE CRASH**

Federal accident investigators have issued a report relating to a plane crash that killed 13 members of a family headed to a Montana ski vacation two years ago. The report says the crash was caused by a pilot who did not use a required anti-ice additive in the fuel and continued to fly despite a deteriorating fuel system. The investigation into the crash of a high-performance Pilatus PC-12 in Butte, Mont., on March 22, 2009, found several examples of the pilot skirting federal flight laws or ignoring the aircraft manufacturer’s guidance for operating the single-engine turboprop, the National Transportation Safety Board found. The pilot was also killed in the crash. NTSB Chairwoman Deborah Hersman had this to say:

> To err is human, but we all know that the aviation environment is not forgiving when it comes to mistakes. That is exactly why it is so important to follow procedures, use checklists and always ensure you have a safety margin to offset the potential for human error.

The plane had a total of 10 seats, meaning some of the passengers were on board illegally. The Federal Aviation Administration, which regulates aircraft operations, requires that everyone be seated in a seat on a flight, except children younger than two years of age, who may be held in an adult's lap. NTSB investigators calculated that the plane was about 600 pounds over its maximum takeoff weight when it left Oroville, Calif. According to Malcolm Brenner, an expert in human errors, it appeared that oversight of the privately-owned plane had gradually become sloppy.

Investigators initially were concerned that the cause of the crash would never be determined. There were no crashproof recorders on the plane, and the heavily damaged wreckage yielded no clues. But NTSB investigator Dennis Diaz found a small set of microchips from the plane’s safety-warning system. The unit was heavily damaged by fire, but the chips were salvaged, and they contained a detailed record of the plane’s history that ultimately solved the case.

It showed that the left tank had become blocked by ice that formed in the fuel lines. As the right tank’s fuel was drained by the engine, the plane became increasingly out of balance and difficult to control. It was later confirmed that the pilot had not used anti-ice additive the two times he refueled the plane the day of the accident. The additive is required when flying in freezing temperatures.

Based on the evidence recovered from the chip, investigators estimated that the fuel imbalance began more than an hour before the accident. The aircraft’s emergency manual tells pilots to land as soon as possible if a fuel imbalance occurs, but the pilot continued past several airports. As the plane approached Butte, with the right-wing fuel tank nearly empty, the pilot attempted a sharp turn, and the plane plunged into a cemetery.

Source: USA Today

**CAPSIZING SURVIVORS ON TOUR BOAT CAN SUE STATE OF NEW YORK**

Last month the Appellate Division of the New York Supreme Court ruled that a lawsuit accusing the State of New York of wrongfully allowing too many passengers on the ill-fated Ethan Allen tour boat can proceed to trial in October. The vessel capsized on Lake George on Oct. 5, 2005, killing 27 passengers and seriously injuring several others on board. Twenty-seven victims’ families later sued the state Office of Parks, Recreation and Historic Preservation, which had inspected the boat annually since 1979 and certified the Ethan Allen could carry up to 48 people.

National Transportation Safety Board investigators later found the boat should not have had more than 14 passengers and blamed the deadly incident on the boat’s instability. After the family of 73-year-old Mary Metz of Michigan, who died in the capsizing, sued the state, family lawyers moved to eliminate the state’s defense that it could not be held liable due to sovereign immunity. State employees are generally shielded from legal liability when working within their discretion. The state, in turn, sought to have the entire lawsuit dismissed.

In 2010, the Court of Claims rejected both arguments. Now, the state Appellate Division of state Supreme Court has modified that ruling. It found the state was not immune to being sued in the Ethan Allen case because its employees showed no discretion during its annual inspections. The ruling said the state had “not submitted any evidence that its inspectors ever independently verified the appropriate number of passengers who could safely travel on the vessel or engaged in any exercise of reasoned judgment to determine whether such verification was necessary or appropriate. Accordingly, defendant has not demonstrated its entitlement to judgment in its favor as a matter of law.” Albany lawyer James Hacker is handling the lawsuit.

Source: Timesunion.com

**WRONGFUL-DEATH SUIT ARISING OUT OF HIGHWAY CRASH FILED**

A wrongful-death lawsuit has been by the widow of a man killed in a June 30th night time wreck in Pulaski County, Mo. Stephen Hutinett, 52, was killed when his Ford F-150 pickup collided with a flatbed trailer being towed by a dump truck. The decedent’s wife, Sharon, was seriously injured in the crash. The wrongful-death lawsuit filed by Sharon Hutinett, alleges that the flatbed trailer broke away from the dump truck and crossed into the path of the Hutinett’s pickup. The driver of the dump truck and the owner of the trailer were named as Defendants. The lawsuit alleges that:

- safety chains weren’t used to attach the trailer to the dump truck.
- the trailer’s rear wheels didn’t have working air brakes.
- there were no working lights on the trailer.

Stephen Hutinett, who worked as a machinist, is also survived by three daughters. As a former Eagle Scout, he stayed involved in Scouting as a volunteer. This was a tragic occurrence that could have been avoided if only the owner had properly maintained that trailer.

Source: KansasCity.com

**TOM METHVIN AND HIS SON WERE ON THE TRAGIC TRAIN WRECK IN THE DESERT**

Tom Methvin, our firm’s managing shareholder, and his teenage son Slade were on an Amtrak train en route to California on a father-son outing when the train was struck by a tractor-trailer rig. The fiery crash killed at least six people and injured dozens more. Fortunately, Tom and Slade were not hurt. The driver for John Davis Trucking Co., based in Battle Mountain, Nev., failed to heed railroad warning signs and crashed into the westbound California Zephyr Amtrak train. There will be issues relating to training and supervision of the company’s drivers. The truck driver was killed along
with the train's conductor and at least four other people when the truck smashed through closed railroad arms and into the side of the California Zephyr. There were about 195 passengers and 14 crew members on board the train.

At press time, National Transportation Safety Board investigators and local authorities hadn't determined why the driver ignored or failed to see signs and flashing lights and crashed into the train. According to skid marks found at the scene, the driver applied the brakes on his rig, which had an estimated weight of 50,000 pounds, 320 feet before the rail crossing. The visibility was clear and unobstructed. It will probably never be known why the truck driver either failed to see the train or failed to slow his truck in time to avoid a collision. The skid marks, more than a football field long, indicate a high speed approach by the truck driver.

Source: Reuters

XVIII. HEALTHCARE ISSUES

A DIVIDED WORLD WHEN IT COMES TO HEALTHCARE

Congress had struggled for years over whether something should be done about the lack of health insurance for millions of folks in this country. These folks had no insurance and virtually no access to the health care system in one of the richest countries in the world. Finally, last year a bill was passed. Unfortunately, the debate over healthcare didn't end when the bill became law. Instead, the debate has greatly intensified. There have been numerous court challenges to the new healthcare law that will eventually wind up in the U.S. Supreme Court. State legislatures also have passed legislation designed to exempt citizens from their states out of the bill passed by Congress. The National Republican Party has made what they refer to as “Obamacare” a hot political issue for 2012. What they fail to realize is that the issue could wind up being bad news for the GOP candidate for president.

It might be a good time to take a look at how healthcare works around the world. Public Citizen is absolutely correct when it says, “the world is now divided in two” on healthcare. The clear division is between countries that cover all of their citizens with health insurance and those who don't. The United States would have to fall into the second group.

There are countries that make it unlawful to profit off of basic health insurance. Unfortunately, there are those countries that allow for health insurance corporations to profit off of the sick. Health care is a human right in some countries but unfortunately there are some countries where it is not. The bottom line appears to be if you can afford it, you get treated. But if you can't afford it, you won't get treatment and you may die. In other words, you pay for your treatment or you may die. Most poor countries in the world are “pay or die” places in which to live. Remarkably, all too many of the citizens in our country fall into that same category. It has been reported that 45,000 Americans die every year from lack of health insurance. Tragically, that’s 120 a day who die as a result of having no health insurance. By way of comparison, in Canada, the United Kingdom, France, Switzerland, Germany, Taiwan and Italy, health care is a human right, where it’s unlawful to profit off of basic health insurance. Simply put, everybody is in and nobody is out.

When it appeared that we would finally have the long-awaited opportunity to pass healthcare reform, those who had fought so hard and so long were elated. But then the powerful health insurance lobby mobilized, organized and made plans to take over the bill and change it to their liking. With the health care insurance and pharmaceutical industries directing the debate, a sensible concept, Medicare-for-All, which is single payer, never received serious consideration. In fact, it was taken off the table very early by the Obama Administration and Congressional leaders with little fanfare. Some type of single payer plan makes sense, but nothing of that sort had a chance to get through Congress. The American people got health care reform, but not the reform that would take control from the insurance industry and guarantee all citizens in America a basic right to health care.

Public Citizen tried to get Congress to do the right thing, and while at least things for some citizens were improved, there remain serious problems for many others. That's why Public Citizen continues to take on the powerful corporate interests that have blocked real healthcare reform. Amazingly, despite its enormous popularity and unparalleled record of success, powerful Republicans in the House are now proposing to destroy the existing Medicare system. They would slash benefits for the elderly and leave older Americans at the mercy of the for-profit insurance industry. But the fight is not just about protecting the existing Medicare system, it's about ensuring that all American citizens receive health care as a matter of right.

Regardless of how the new health reform ultimately plays out, there are two things for certain: Millions and millions of Americans will remain with no health insurance; and, it will leave the for-profit insurance industry in charge of prices and life-and-death treatment decisions for those who do. The only way to ensure that everyone is covered and receives healthcare is with a single payer system. And with millions and millions with no health insurance, many thousands will die every year from lack of coverage or access to healthcare. Surely, that is something that can't be tolerated in a country such as ours. But as we approach the election year, the attacks on the healthcare law passed by Congress get worse and worse. When you consider that the attacks are on an Act of Congress that left lots to be desired, it's rather sad to see that those who need and deserve adequate health insurance will have little impact on the ongoing debate.

Source: Public Citizen

MEDICAID PAYMENTS WILL BE CUT BY STATES

In an effort to curb rising Medicaid costs, about a dozen states are starting a new budget year by reducing payments to doctors, hospitals and other health care providers that treat the poor. Some health care experts say the cuts, most of which went into effect during July, could add to a shortage of physicians and other providers participating in Medicaid. I believe that reducing payment rates is a bad solution to the overall problem. In fact, that approach can only worsen the situation since severe Medicaid physician shortages already exist in many states.

Insurers and employers should also be concerned about the payment cuts. Cutting the rates will prompt providers to raise their prices for patients who have private insurance. States that reduced Medicaid payments to physicians are South Carolina, Colorado, Nebraska, Oregon and South Dakota. Arizona, which cut rates in April, will impose another cut in October. States reducing payments to hospitals include Colorado, Connecticut, Florida, Nebraska, New Hampshire, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Virginia and Washington. New York cut hospital payment rates in April.

In March, California approved a 10% Medicaid cut to doctors and hospitals, but those reductions are pending because of an
the smell of cigarette smoke are 78 percent of the 5 million youth. One study links exposure to second-hand smoke exposure impacts America's Academy of Pediatrics look at how second-hand smoke may be a factor of ADHD.

So how can this be? Two new studies from the American Academy of Pediatrics look at how second-hand smoke exposure impacts America's youth. One study links exposure to second-hand smoke in the home with a 50 percent increased risk of the development of neurobehavioral disorders in children. It suggests that 8 percent of the 5 million children younger than 12 who are exposed to secondhand smoke at home suffer from learning disabilities, ADHD and other behavioral disorders. On a more positive note, the second study suggests that children ages eight to 13 who have a negative opinion the smell of cigarette smoke are 78 percent less likely to start the habit later on.

Source: WSFA TV

XIX. ENVIRONMENTAL CONCERNS

CAUSE OF YELLOWSTONE OIL SPILL REMAINS UNKNOWN

It will likely be months before investigators know what caused an ExxonMobil oil pipeline to rupture near Billings, Mont., spilling about 1,000 barrels of crude oil into the Yellowstone River. The spill fouled shoreline and contaminated backwaters along dozens of miles of the scenic river. The flow of oil through the company's Silvertip pipeline has been shut off since the July 1st accident. ExxonMobil hasn't yet submitted a plan for the replacement pipe to the safety administration, which must approve the project before it can go forward. The agency hasn't yet determined how deep the replacement pipe will have to be buried, except that it will be deeper than the pipe that ruptured. The depth will depend on the plan ExxonMobil submits, but horizontal drilling will be required. Federal regulations require that pipelines that cross underneath riverbeds be buried at least four feet. The result of tests conducted by ExxonMobil prior to the accident indicated the pipeline beneath the river bottom was buried about five feet. At the time of the accident, unusually high amounts of mountain snowmelt had increased water level and velocity in the river to historic levels. That, in turn, increased the possibility for erosion of the riverbed covering the oil pipeline. Safety officials were concerned enough about that section—as well as other pipelines in parts of the country that suffered flooding—that they were checking daily with ExxonMobil. It will likely be August or September before water levels in the river are low enough to exhume the section of damaged pipe responsible for the spill. It will be about two months after that before investigators identify a cause for the spill. The pipe replacement will also require moving two shutoff valves. The agency won't know for certain how large the leak was until it examines records at the ExxonMobil's control room in Houston.

A barrel of oil equals 42 gallons. A Pacific Gas & Electric natural gas pipeline explosion last year in San Bruno, Calif., killed eight people and injured dozens of others. An Enbridge Inc. pipeline ruptured last July in southwest Michigan, spilling more than 800,000 gallons of oil into the Kalamazoo River. Sen. Jon Tester, D-Mont., told the House Transportation and Infrastructure Committee's pipeline subcommittee, he's frustrated because ExxonMobil officials have changed their initial statements on several key elements of the accident, including how long it took to shut the pipeline down, how far downstream the oil has traveled and how deep the pipeline was buried. Sen. Tester had this to say in his testimony: "And in this situation, Exxon was tasked with regulating itself. Regulators were not on the job. And now we're paying a price for it."

Relations between ExxonMobil officials and Montana Gov. Brian Schweitzer, a Democrat, became openly hostile. Last month, Gov. Schweitzer pulled out of the incident command group, responding to the leak. His office said ExxonMobil was barring reporters from meetings held at a local hotel in violation of the state's open meetings law. As a result, they were preventing public access to information about the pipeline and the leak.

Source: Forbes

BP REPORTS ALASKAN OIL PIPELINE LEAK

BP has reported another pipeline leak in its Alaskan oilfields. This is more bad news for the oil giant as it attempts to rebuild its reputation after the Gulf of Mexico oil spill. According to BP, the pipeline handles 30,000 barrels per day at its Lisburne field, which is currently closed for maintenance. The pipeline ruptured during testing and spilled a mixture of methanol and oily water onto the tundra. BP has a long history of oil spills at its Alaskan pipelines—incidents which have hurt its public image in the U.S.

According to the Alaska Department of Environmental Conservation, the leak, which occurred on July 16th, amounted to 2,100 to 4,200 gallons. Lisburne, which is managed as part of the Greater Prudhoe Bay Unit, has produced no oil since June 18th, according to Alaska Oil and Gas Conservation Commission records, suggesting maintenance work requiring a prolonged shutdown. The field had been undergoing "its annual maintenance." Previous problems including leaks from corroded pipelines in Alaska and the fatal Texas City refinery blast in 2005 had already earned the company a poor reputation for safety. Of course, we all know about the massive oil spill in the Gulf of Mexico last year.

Production from the entire Lisburne field remains shut off while the spill is addressed, according to Alaska officials. Efforts have been focused on containment and cleanup. The methanol-produced water mix has spread into wet tundra as well as onto a
EPA Clamps Down on Pollution Spoiling Air Downwind

The Environmental Protection Agency has been clamping down on pollution from power plants that contributes to unhealthy air downwind in 27 states, including Alabama. EPA Administrator Lisa Jackson announced the plan to reduce smokestack pollution causing smog and soot in downwind states—where it combines with local air contaminants, making it impossible for those states to meet air quality standards on their own.

The rule differs from one proposed by the Obama administration in July. Power plants in the District of Columbia and five states—Delaware, Connecticut, Florida, Louisiana and Massachusetts—will no longer have to control year-round emissions of two pollutants—sulfur dioxide, responsible for acid rain and soot, and nitrogen oxides, which contribute to both smog and soot. Texas, by contrast, will have to reduce more pollution than in the initial proposal, which required the state's power plants only to address summertime smog-forming pollution.

The EPA chief told reporters the regulation would make sure no community has to bear the burden of pollutants in another state. She said just because pollution drifts far from a power plant “doesn’t mean pollution is no longer that plant’s responsibility.” She added: “Pollution that crosses state lines places a greater burden on (downwind) states and makes them responsible for cleaning up someone else’s mess.”

In addition, the EPA proposed requiring power plants in Oklahoma and five other states to control nitrogen oxide emissions during the summer smog season. If that proposal becomes final, power plants in 28 states will be covered by the regulation.

While the EPA says the new regulations will not cause the power to go out, almost everyone agrees that it will help close down some of the oldest, and dirtiest, coal-fired facilities. At the remaining plants, operators will have to use existing pollution controls more frequently, use lower-sulfur coal, or install additional equipment. “The EPA is ignoring the cumulative economic damage new regulations will cause,” said Steve Miller, president and CEO of the American Coalition for Clean Coal Electricity, a pro-coal industry association. Along with other pending regulations, Miller said they “are among the most expensive ever imposed by the agency.”

The regulation replaces a 2005 Bush administration proposal that was rejected by a federal court. The rule, which will start going into effect next year, will cost power plant operators $800 million annually by 2014. That’s in addition to the $1.6 billion spent per year to comply with the Bush rule that was still in effect until the government drafted a new one. The agency said that cost would be far outweighed by the public health benefits of cleaner air.

In the first two years, the EPA estimates that the regulation and some other steps will slash sulfur dioxide emissions by 73 percent from 2005 levels, and nitrogen oxides will be cut by more than half. Sulfur dioxide and nitrogen oxide pollution from power plant smokestacks can be carried long distances by the wind and weather. As they drift, the pollutants react with other substances in the atmosphere to form smog and soot, which have been linked to various illnesses, including asthma, and have prevented many cities from complying with health-based standards set by law.

The migrating pollution also produces haze in parks, and damages forests and lakes with acid rain. The 27 states subject to the rule are: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia and Wisconsin.

The Center for Auto Safety, citing recent crash tests, has renewed its demand for a government recall of 2.2 million Jeep Grand Cherokees from model years 1993 through 2004. The Center contends that a faulty fuel-tank design can cause the tank to rupture and burst into flames. In a recall petition to the National Highway Transportation Administration, the advocacy group said the vehicles have been involved in 64 deaths in 44 crashes where fire was “the most harmful factor.” The placement of the fuel tank behind the rear axle makes it more vulnerable to rupture in some kinds of crashes, the Center says. Clarence Ditlow, executive director of the auto safety group, in an interview with ABC News, said:

You can have the tank itself rupture, you can have the filler hoses pull off as they did in some of our crash tests, and it’s just a terrible design. This is the most dangerous vehicle on the road today, and we want it recalled.

The petition cited the case of Susan Kline, a New Jersey mother who was driving a 1996 Grand Cherokee when it was rear-ended by a Toyota SUV. The Jeep’s doors jammed on impact, and Mrs. Kline was unable to escape the burning vehicle. Her husband, Tom Kline, told ABC: “Imagine someone you’ve been with, that you’ve loved dearly for 33 years, being burned to death.”

The design is so bad that Chrysler frequently settles lawsuits with confidentiality agreements, the petition said. But Chrysler disputes the Center’s findings, saying that the vehicle meets the federal standard for fuel system safety, and that the group’s crash test was “three times as severe” as the government test. Chrysler insists that rear impacts resulting in fires are “extremely rare” and “occur no more often” in the older Jeep Grand Cherokee vehicles than in similar vehicles.

Chrysler changed the Cherokee’s design in 2005, moving the fuel tank in front of the rear axle—but said it did so to expand cargo space, not to improve safety. Since the redesign, there has been only one fatal fire crash in the Grand Cherokee, and the fuel tank design did not play a role in the deaths, the

Source: Associated Press

Source: Insurance Journal
petition said. NHTSA is investigating the vehicle’s safety.
Source: ABC News

Pennsylvania Lawsuit Seeks GM Repairs Of 400,000 Impalas

General Motors Co. has been sued by a Pennsylvania woman seeking to force the U.S. Automaker to fix rear-end problems on more than 400,000 Chevrolet Impala vehicles for 2007 and 2008 model years. In 2008, GM told dealers to replace the rear-wheel spindle rods on Impala cars used by police because the issue could cause the tires to wear out. In the lawsuit, the Plaintiff seeks class-action status and contends that GM should also repair cars sold to consumers because many contain the same problem. Plaintiff has charged GM with breach of warranty and asked the court to compel the automaker the repair or replace the rear spindle rods. Plaintiff has alleged that there are no relevant material differences between police vehicles and class members’ vehicles relating to the defective spindle rods. GM built about 24,000 police versions of the Impala in the 2007 and 2008 model years. According to the lawsuit, 423,000 Impala cars were sold over the two-year period. GM has confirmed that it sent a dealer notice regarding the rear suspension issue.

Donna Trusky, the Plaintiff in the lawsuit, has alleged that she bought an Impala in February 2008, but after 6,000 miles, the tread on the car’s rear tires were so worn that their use was “questionable.” A dealer paid for new rear tires and provided a front-end alignment, but did not mention the potential problem with the rear spindle rods, according to allegations in the lawsuit. In November 2010, with a little over 24,000 miles on the car, Ms. Trusky replaced the rear tires again for about $290.

It was alleged that GM “concealed the existence of the defect from class members, even those who presented their vehicles for repair of the defect.” Complaints about the issue have been filed with the National Highway Traffic Safety Administration, as well as on a number of auto websites, including www.edmunds.com.
Source: Insurance Journal

Audit Faults U.S. Monitoring Of Medical Device Recalls

Congressional auditors say U.S. health regulators are at fault for failing to track unsafe medical devices after they are recalled, opening the door to further risks to patients. The Government Accountability Office (GAO) found 21 high-risk recalls between 2005 and 2009 where companies were unable to correct or remove faulty devices in a report dated June 14th. Senator Charles Grassley, in a statement, had this to say:

“The FDA can’t tell if recalls of high-risk devices were carried out successfully because it lacks criteria for assessing device recalls and doesn’t routinely review recall data. It looks like the FDA is missing an opportunity to proactively identify and address risks presented by unsafe devices.

High profile recalls include last year’s massive recall of artificial hips from Johnson & Johnson’s DePuy unit. Some 93,000 patients worldwide had that line of hip implant. Medtronic had to recall heart defibrillator leads several years ago, and the FDA recently expanded a recall of coronary imaging catheters from Boston Scientific Corp. The FDA, which issued seven high-risk device recalls in June, says it has already taken steps to improve the recall process with a program started last November.

The GAO report suggests the FDA should review recall information to proactively identify trends, “types of recalls, devices most frequently being recalled, and underlying causes of recalls.” The GAO found several instances where a majority of the faulty devices remain unaccounted for, including over 409,000 insulin syringes with an incorrect dose.
Source: Insurance Journal

Cramming Fees Are Costing Consumers Millions

I doubt that many of our readers have heard the term “cramming” used in relation to their telephone bills. That type cramming has become a big problem for folks and businesses. Mysterious fees and services “crammed” onto phone bills are a nation-wide problem for U.S. consumers, resulting in a huge source of revenue for some of America’s biggest telecommunications companies. A report issued last month by Sen. John Rockefeller, D-W.Va., resulting from a year-long congressional investigation, says that three firms—Verizon, AT&T and CenturyLink/Quest—earned $650 million as their cut of cramming charges levied by third-parties since 2006. Cramming charges—such as unwanted $10-per-month voicemail or Web design services—have been frustrating phone customers for more than 15 years. This was due in part by ill-considered rules designed to enhance competition in local phone markets.

Most consumers don’t spot the small monthly fees, but even when they do getting refunds is extremely difficult. The telephone provider that sends the bills often refuses to issue refunds, instead referring consumers to the third-party firms, which are often unresponsive. The Federal Communications Commission estimates that 15 million to 20 million consumers are crammed every year. Sen. Rockefeller’s report says cramping could cost U.S. consumers $2 billion annually. Unfortunately, Congress has refused to fix the problem for more than a decade. Sen. Rockefeller had this to say:

I think it's embarrassing for the Congress...but they're big companies. They don't have to make money that way. I think it's reprehensible and...shameful behavior. And don't tell me they don't know about it. They have to know about it.

Crammers have jammed unauthorized charges onto dead people’s phone bills, government agencies’ telephone lines—even onto lines owned by AT&T. The report stated:

“Committee staff has found hundreds of egregious examples of cramming. Third-party vendors have enrolled deceased persons in their so-called services and charged family members’ telephone bills for it. They have charged telephone lines dedicated to fire alarms, security systems, bank vaults, elevators and 911 systems. Senior citizens’ telephones have been enrolled in web-hosting services, even though they have never used them. A children’s hospital was charged for a celebrity tracker e-mail service that provided daily celebrity news feeds, photos, and videos. A national bank’s telephone lines were charged for credit protection plans.

The FCC has proposed new rules that would require more obvious disclosures by third parties on phone bills. Under current rules, providers are forced to give third-party firms the chance to market services like toll-free numbers or website hosting using the providers’ equipment and billing services through an arrangement that has its origins in the original breakup of AT&T’s telephone monopoly. But it appears to be much too easy for third parties to attach unwanted items to consumers’ bills. Previous investigations have found that firms frequently trick consumers into signing up by using sweepstakes entries or cashing small
Dean Foods has agreed to settle a class action lawsuit brought by dairy farmers in Southeastern states for $140 million. The U.S. dairy company will pay the amount over 4 to 5 years into a fund that will be distributed to the dairy farmers. It will make an initial payment of $60 million upon preliminary approval by the United States District Court for the Eastern District of Tennessee. Subsequent payments of $20 million are to be made in each of the following four years. Dean Foods will take a charge in the second quarter on the settlement.

Source: Reuters

TOY LEAD LIMITS CUT TWO-THIRDS BY U.S. CONSUMER SAFETY PANEL

The U.S. Consumer Product Safety Commission voted last month to lower limits on lead content in children’s goods, starting next month, while raising concerns about the costs to retailers who may have to dispose of inventory. The 3-2 vote came four years after the discovery of lead paint in toys from China that prompted legislation expanding the safety agency’s powers. The Commission followed its staff’s recommendation to lower the maximum acceptable lead content to 100 parts per million, from 300 parts per million. The new limits will take effect on August 14th.

CPSC Chairman Inez Tenenbaum said:

“The scientific literature is abundant and has established there is no safe limit for lead. Technologically feasible does not mean economically feasible.”

The 2008 Consumer Product Safety Improvement Act required the Commission to adopt the 100-part-per-million limit for children’s products unless it could establish it wasn’t technologically possible for manufacturers to reach that level. Even some Democrats who voted for the tougher limits said Congress should have given the Commission more flexibility to apply the standard only on new products, rather than on items already in store inventories.

Source: Chicago Tribune

Macy’s Inc. has agreed to pay a $750,000 fine for failing to report for four years that it had sold kids’ clothes with drawstrings at the neck, a strangulation hazard. The U.S. Consumer Product Safety Commission announced the settlement last month, saying Macy’s had sold those items, including children’s sweatshirts, sweaters and jackets, at its namesake chain, Bloomingdale’s and Robinsons-May between 2006 and 2010.

Source: Bloomberg

Ford has recalled 2007 Ford Five Hundred and Mercury Montego sedans to repair a fuel tank that could leak in a crash. The nearly 3,000 sedans may have bad welds where the fuel filler
cases the vehicles will enter fail-safe mode, a condition of reduced power under which the cars can still be driven short distances. In some cases, though, the fuse for the power-supply circuit could blow, causing the vehicle to stop. Toyota says it will notify owners of affected vehicles by mail in mid-July, and after it has enough parts in stock it will send notices advising owners to make service appointments. Dealers will inspect the power modules and replace them if necessary. Owners may contact the car maker at www.toyota.com/recall or 800-331-4331 for the Toyota brand, or www.lexus.com/recall, or 800-255-3987 for Lexus.

**GM Recalls Pickups and SUVs**

General Motors has recalled almost 6,800 pickups from the 2011 model year because they might roll away even when the automatic transmission’s selector appears to be in Park. The pickups affected by the shift-lever issue are the Chevrolet Colorado and GMC Canyon equipped with the 4-speed automatic and either the 2.9-liter 4-cylinder or 3.7-liter 5-cylinder engine. GM told NHTSA that a defective clip could allow the shift lever to appear to be in Park when it is not. Apparently, a worker at the assembly plant discovered the problem.

The automaker also said it recalled 739 pickups and sport utility vehicles because of a possible loss of steering. The 739 SUVs and pickups being recalled for possible steering problems are the 2011 Cadillac Escalade and Escalade ESV; Chevrolet Silverado, Suburban and Tahoe; and GMC Sierra, Yukon and Yukon XL. According to GM, the intermediate steering shaft bolts were not properly tightened.

GM says it learned of the problem after a Suburban had a steering problem and the vehicle was inspected at a dealership. The automaker informed NHTSA that the problem could occur on vehicles that were repaired at the assembly plant because “an error in the cab build process required the original cab to be removed and replaced with a new cab.” The proper process was not followed when the new cab was installed. Alan Adler, a General Motors spokesman, wrote in an e-mail that the automaker was not aware of any accidents involving the affected vehicles in either recall.

**Volvo Models 60 Recalled**

The 2012 model Volvo S60 has been recalled. The software for the fuel pump units may not be compatible with all fuel pumps and components, resulting in insufficient fuel transfer in the pump unit. Under certain driving conditions, there may be engine hesitation or stalling. Dealers will upgrade the engine control module software free of charge. Call Volvo at 201-768-7300.

**BMW Recall**

BMW has recalled 923 of its 2011 X5 xDrive35d SUV’s because a problem with a belt tensioner could lead to the loss of power assist on the steering. BMW noted that the problem was limited to the xDrive35d, a diesel model.

**2011 Cadillac SRX Recalled**

The 2011 Cadillac SRX vehicles have been recalled. The vehicles fail to conform to the requirements of the federal motor vehicle safety standard No. 208, “occupant crash protection.” Air bags are programmed to turn off on the right side roof-rail air bag if the
passenger sensing system determines that the right front passenger seat is unoccupied. The right rear occupant may not be protected. Dealers will reprogram the sensing and diagnostic module free of charge. Call Cadillac at 866-982-2339.

**Kawasaki Recall**

Kawasaki has recalled almost 9,500 of its 2009–2010 KLX 250 dual-purpose motorcycles because the fuel tank may leak at the spot weld(s) on the side mount tabs. Caused by excessive clearance between the fuel tank and frame-mounted rubber damper, the fuel leakage at the welding point(s) could ignite and cause a dangerous explosion. Kawasaki dealers will inspect and correct the fuel tank clearance problem free of charge. Concerned Kawasaki KLX 250 owners can contact Kawasaki’s customer service department at 1-866-802-9381 (referencing Kawasaki Safety Recall No. MC11-04), and as always the NHTSA is available at 1-888-327-4236 and www.safercar.gov.

**Booster Seats Recalled**

Circo Child Booster Seats, sold at Target stores nationwide from January 2005 through June 2009 for about $13 have been recalled. The booster seat’s restraint buckle can open unexpectedly, allowing a child to fall from the chair. Consumers should immediately stop using the recalled booster seats and return them to any Target store for a full refund. Call Target at 800-440-0680.

**GE Zoneline Air Conditioners and Heaters Recalled**

GE Zoneline Air Conditioners and Heaters, sold by General Electric authorized representatives and HVAC distributors nationwide from March 2010 through March 2011 for $1,000 to $1,200 have been recalled. An electrical component in the heating system can fail, posing a fire hazard. Consumers should stop using the units in the heat mode and contact General Electric at 866-918-8771 or visit geappliances.com/products/recall to schedule a free repair.

**Hamilton Beach Recalls Toasters Due To Fire Hazard**

About 300,000 Hamilton Beach® classic chrome 2-slice toasters have been recalled by Hamilton Beach Brands Inc., of Glen Allen, Va. The heating element in these toasters can remain energized indefinitely when an item is placed in the toaster which may ignite the contents, posing a fire hazard if the toaster is near flammable items. Hamilton Beach has received 15 reports of toasters that did not pop-up as intended, including three reports of minor damage to kitchen cabinets. There were no reports of injuries. The Hamilton Beach recall involves model 22600 toasters with specific series codes. These series codes begin with the letters C or D, and have the format of CXXXXBI or DXXXXBI, where XXXX is a four-digit number ranging from 0190 through 5290. The model number and series code are printed on the bottom of the toaster.

The toaster has a chromed steel exterior, a front control panel with a rotary toast shade selector and function buttons arranged in an arc, a front removable crumb tray and Hamilton Beach printed across the front of the toaster. The toasters were sold at mass merchandisers and department, grocery and home center stores nationwide and various online retailers from February 2008 through June 2011 for between $30 and $40. Consumers should immediately stop using the recalled toasters and contact Hamilton Beach to receive instructions on how to obtain a free replacement toaster. For additional information, contact Hamilton Beach at (800) 379-2200 anytime, or visit the Hamilton Beach website at www.hamiltonbeach.com.

**Glass Votive Candle Holders Recalled Due To Fire and Laceration Hazards**

Greenbrier International Inc., of Chesapeake, Va., has recalled about 117,000 Glass Votive Candle Holders. The glass votive candle holders can shatter while in use, posing a fire and laceration hazard to consumers. The firm has received one report of the glass votive candle holder shattering. No injuries have been reported. This recall involves frosted or clear glass votive candle holders with French vanilla scented candles. The votive candle holders are 2 1/2 inches tall. Model number 976127 and date code 1010 are printed on the bottom of the glass votive candle holder. The candle holders were sold at Dollar Tree, Dollar Bill$, Deal$ and Dollar Tree Deal$ stores nationwide from December 2010 through April 2011 for about $1. Consumers should immediately stop using the candle holders and return them to the store where purchased for a full refund. For additional information, contact Dollar Tree Stores Inc. At (800) 876-8077, or visit the company’s website at www.dollarTree.com.

**Target Recalls Children’s Task Lamps Due To Laceration and Fire Hazards**

Target Corporation, of Minneapolis, Minn., has recalled approximately 13,000 Circo Children’s Task Lamps. Lamps may overheat, causing the adhesive inside the lamp socket to melt and migrate into the bulb area of the socket. The cooled glue can adhere to the light bulb base and make the bulb difficult to remove which can result in a broken light bulb, posing a risk of laceration to consumers. Melted flammable glue that migrates onto the electrical components of the lamp poses a risk of fire. Target has received six reports of glue on the lamp socket melting and migrating into the bulb area of the socket. No injuries have been reported. Four styles of the children’s task lamp are included in this recall with the names Striped, Sports, Dot or Flower Dot and have a label with the UPC number on the bottom. The lamps were sold exclusively at Target stores nationwide and Target.com from January 2011 to April 2011 for about $13. Consumers should immediately stop using the lamps and return them to any Target store to receive a full refund. For additional information, contact Target Guest Relations at (800) 440-0680 between 7 a.m. and 6 p.m. CT Monday through Friday, or visit the company’s website at www.target.com.

**Meijer Reannounces Touch Point Heater Recall**

About 13,000 Touch Point Oscillating Ceramic Heaters have been recalled by the importer Meijer Inc., of Grand Rapids, Mich., in 2010. They were sold for $25, $30, and $35 at Meijer, Meijer.com and Dollar Tree stores. The heater was sold with a label number 976127 and date code 1010. About 300,000 Hamilton Beach ® Classic Chrome 2-Slice Toasters have been recalled by Hamilton Beach Brands Inc., of Glen Allen, Va. The heating element in these toasters can remain energized indefinitely when an item is placed in the toaster which may ignite the contents, posing a fire hazard if the toaster is near flammable items. Hamilton Beach has received 15 reports of toasters that did not pop-up as intended, including three reports of minor damage to kitchen cabinets. There were no reports of injuries.

**Target Recalls Glass Votive Candle Holders Due To Laceration And Fire Hazards**

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Rapids, Mich. Originally, 6,700 were recalled in November 2010. The oscillating mechanism in the heaters can short out, posing a fire hazard to consumers. Meijer has received two reports of incidents involving fires that resulted in property damage. No injuries have been reported. This announcement involves previously recalled Touch Point oscillating ceramic heaters with model number PTC-902.

The grey/silver color heaters are about 10-inches tall, have a black screen across the front and controls on the top. The model number and UPC code 7-60236-58339 are printed on a metal label/plate on the bottom of the heater. Some models have an additional digit in the UPC code, making it a 12-digit code. In addition, some heaters will have a UPC code 7-13733-29222 sticker on the bottom of the packaging box. The heaters were sold at Meijer stores in Illinois, Indiana, Kentucky, Michigan and Ohio from October 2009 through April 2011 for about $25. Discount retailers, dollar stores, flea markets and retail liquidators nationwide sold the heaters from November 2010 through April 2011 for various prices. The heaters were sold after the original recall was announced in November 2010.

Consumers should immediately stop using the recalled heaters and return them to the nearest Meijer retail store for a full refund of the purchase price. Consumers who purchased heaters from other retailers should contact Meijer to arrange a refund. For additional information, contact Meijer at (800) 927-8699 or visit the company’s website at www.meijer.com.

**Changzhou Globe Tool Group Recalls Electric Log Splitters**

About 20,000 Task Force 5-ton electric log splitters have been recalled by Changzhou Globe Tool Group Co. Ltd., of China. The electric log splitters have a hydraulic arm that, during use, slides under the handle used to move the machine. The moving hydraulic arm poses a laceration or amputation injury hazard to individuals who place their hands on that handle while the splitter is in operation. There have been two reports of injuries including a fingertip amputation of an 18-year-old man and one finger laceration injury of a 60-year-old man. Both individuals were injured after placing their hands on the handle while the splitter was in operation. The log splitters are silver and black, electric 5-ton models. The item number and model number is printed on the power switch label at the rear of the log splitter. “Task Force” is printed on the side rail of the log splitters.

The splitters were sold exclusively at Lowe’s stores nationwide from January 2008 through March 2011 for about $300. Consumers should immediately stop using the recalled log splitters and contact Changzhou Globe Tool Group Co. Ltd. to receive a free set of warning labels including placement instructions. For additional information contact Changzhou Globe Tool Group Co. Ltd. Toll-free at (866) 456-8934 or send an e-mail to logsplitter@sunrisetools.ca.

**SAFETY LANYARDS RECALLED DUE TO FALL HAZARD**

About 375,000 Scorpio and Absorbica Shock Absorbing Lanyards worldwide have been recalled by Petzl America Inc., of Clearfield, Utah. Some lanyards are missing a safety stitch on the attachment loop, which can cause the lanyard to disconnect from the climbing harness, posing a fall hazard to consumers. No injuries have been reported in the U.S., but one fall injury was reported in France. This recall affects all Scorpio and Absorbica lanyards manufactured before May 2011. Affected Scorpio lanyards manufactured between 2002 and 2005 are model numbers L60 and L60 CK. These are yellow and blue Y-shaped lanyards with yellow stitching on both ends. They are connected by a metal O-ring to one end of a blue pouch which contains the tear-webbing shock absorber. The pouch has a tag on it with the word “PETZL” in white letters. The other end of the blue pouch has a blue and yellow webbing attachment loop that connects to the climbing harness. Affected Scorpio lanyards manufactured between 2005 and 2011 are model numbers L60 2, L60 2CK, L60 H, L60 WL. These are red, Y-shaped lanyards connected by a black metal O-ring to one end of a grey zippered pouch which contains the tear-webbing shock absorber. The other end of the pouch has a black webbing attachment loop that connects to the climber’s harness.

Absorbica comes in several models with varying lanyard configurations and several different connector options. Affected model numbers are L70150 L, L70150 IM, L70150 Y, L70150 YM, L57, L58, L58 MGO, L59, and L59 MGO. The lanyards have a black zippered pouch with yellow trim and the Petzl logo on the side. All have a common tear-webbing shock absorber accessible through the zippered pouch. This zippered pouch has a connector attachment on one end. The other end can have a connector attachment, a single lanyard or a Y-shaped lanyard. All lanyard options are constructed of black nylon webbing or rope and have either a connector attachment point or a snap hook connector sewn directly to the lanyard.

The lanyards were sold at Authorized Petzl dealers nationwide and in Canada from January 2002 through May 2011 for $75 to $220. Consumers should immediately stop using the lanyards and contact Petzl America Inc. for a free inspection and replacement of any non-conforming products. For additional information, contact Petzl America Inc. At (877) 740-3826 or visit the company’s website at www.petzl.com.

**SWING SETS RECALLED BY ADVENTURE PLAYSETS DUE TO FALL HAZARD**

Adventure Playsets, of Pittsburg, Kan., has recalled approximately 240,000 of their Adventure Playsets Wooden Swing Sets. A number of these products were recalled in November 2009 for a similar hazard, which listed 275,000 playsets in the U.S. And 6,800 in Canada. The wood in the posts of the fort sections on the swing sets can weaken due to rotting, posing a fall hazard. Adventure Playsets has received more than 500 complaints reporting concern over the weakened wood in the 2x4 plastic-coated uprights. One report of a fall was received when the ladder failed resulting in bruises and scratches. The swing sets come with swings, slides and ladders. Each set has a fort structure that uses green or cranberry colored plastic coated 2”x 4” wood upright posts and a green nylon fabric covered shade. The sets were sold under the following names: Bellevue, Bellevue II, Belmont, Durango, Durango II, Sedona, Tacoma, Tacoma II, Ventura, Venture II and Yukon. The name is
printed on the manufacturer’s instructions that came with the play set.

The playsets were sold at Academy Sports (the Yukon); Mills and Menards (the Ventura/II) from 2005 to 2007; Mills (the Belmont) in 2004; Toys-R-Us (the Bellevue/II); and Walmart (the Tacoma/II, Durango/II, and Sedona). The units sold for $300-$600. Consumers should immediately stop using the recalled swing sets and contact Adventure Playsets to obtain a free repair kit. Repair kits will include the appropriate angled or vertical upright posts for each model with instructions for dissembling and reassembling each set. For additional information, contact Adventure Playsets toll free at (877) 840-9068, visit the company’s website at www.recall.adventureplaysets.com or email the company at custservice@adventureplaysets.com.

**WEIGHT SYSTEMS RECALLED DUE TO DROWNING HAZARD**

Diving Unlimited International Inc. of San Diego has recalled their DUI Weight & Trim System Classic and DUI Weight & Trim System II. This includes about 1,454 units in the U.S. And 46 in Canada. Manufacturing defects in the lanyard connecting the handle to the pocket or the cable securing the pocket to the harness can prevent the weight pockets from easily detaching from the harness and releasing the weights when the handle is pulled. This poses a drowning hazard to consumers. The weight harnesses are made of heavyweight nylon and are black in color with gray handles. The DUI logo appears on the pockets. The Weight & Trim System Classic has two small weight pockets on each side. The Weight & Trim System II has one large weight pocket on each side. Systems with large silver stripes on the sides have been inspected or repaired and are not affected by this recall. They were sold at diving equipment retailers nationwide and in Canada between July 2010 and April 2011 for about $124. Consumers should immediately stop using the systems and call DUI at (800) 325-8439 or e-mail CustomerService@DUI-Online.com to receive a free repair of the system. For additional information, contact DUI Customer Service at (800) 325-8439, by e-mail at CustomerService@DUI-Online.com or visit www.DUI-Online.com.

**RUGBY CHILDREN’S PAIN & FEVER CONCENTRATED DROPS RECALLED**

About 898,000 Children’s Pain & Fever Concentrated Drops were recalled by Altairae Pharmaceuticals, Inc., of Aqua-bogue, N.Y and Rugby Laboratories, Inc., of Duluth, Ga. This over-the-counter medicine contains acetaminophen which calls for child-resistant packaging as required by the Poison Prevention Packaging Act. Although the original bottle has child-resistant packaging, a separate dropper unit provided for dispensing the drug to children does not. When in use, a child can access the medicine, posing serious health problems or death if more than the recommended dosage is consumed. The recall involves Rugby Children’s Pain & Fever Concentrated Drops (Acetaminophen Drops) in a 1/2 fl. oz. (15 ml) bottle size. The UPC code 305361936723 can be found with the bar code at the bottom of the box. The lot numbers can be found stamped into the bottom of the carton with the expiration date and above the label on the bottle printed in black. The drops were sold at drug stores, grocery stores and other retailers nationwide between January 2009 and June 2011 for about $4. Consumers should immediately store this product with the child-resistant closure in place and keep it out of the reach of children. To arrange for a free replacement dropper, contact Altairae Pharmaceuticals at (800) 258-2471 9 a.m. To 5 p.m. ET Monday through Friday. For additional information, contact Rugby Laboratories at (800) 645-2158.

**TOPSON DOWNS OF CALIFORNIA RECALLS WOMEN’S DRESSES**

Topson Downs of California, of Culver City, Calif., has recalled about 2,100 women’s dresses. The dresses fail to meet the federal flammability standard for wearing apparel, posing a fire hazard to consumers. The dress is a Bar III brand dress, and is fully lined with a checkered, multi-colored, and black pattern called “Mint Chili Combo” and was sold in five adult sizes, ranging from extra small to extra large. The dresses were sold exclusively at Impulse Department of Macy’s stores nationwide and on macy’s.com from March 2011 through May 2011 for about $60. Consumers should immediately stop using the recalled dresses and return them to any Macy’s for a full refund. For additional information, contact Macy’s toll-free at (888) 257-5949 or visit the Macy’s website at macy’s.com or contact Topson Downs at (800) 241-2975 between 9 a.m. And 5 p.m. PT or via email at customerservice@topsondowns.com. CPSC is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product.

**ROMAN SHADE KITS RECALLED DUE TO RISK OF STRANGULATION**

Wm. Wright Co., of Antioch, Tenn., has recalled about 48,000 roman shade make-it-yourself kits. Strangulations can occur when a child places his/her neck between the exposed inner cord and the fabric on the backside of the shade, or when a child pulls the cord out and wraps it around his/her neck. This recall involves all Wrights® “my home make-it-yourself” Roman shade kits with item numbers 1451007001, 1451008001 or 1451008001A. The kit fits windows of a maximum size of 48” W x 60” L. It includes 15 yards of Roman shade tape, 15 yards of drapery cord, 4-inch “L” brackets, 18 screws, one cord cleat and instructions. The item number and “Wm. Wright Co.” can be found on the back of the package.

The kits were sold at Wal-Mart, Jo-Ann Stores and other specialty textile and variety retail shops nationwide from December 2007 through June 2011 for between $20 and $25. Consumers should immediately stop using the Roman shades and contact Wm. Wright for a free repair kit including a fabric voucher, new instructions and warning tags. Unused kits should be returned to place of purchase for a redesigned kit. For additional information, contact Wm. Wright toll-free at (800) 545-5740 or visit the company’s website at www.simplicity.com.

Note: Examine all shades and blinds in your home. Make sure there are no accessible cords on the front side or back of the product. CPSC recommends the use of cordless window coverings in all homes where children live or visit.
**Cost Plus Inc. Recalls Wooden Animal Drum**

Cost Plus Inc. of Oakland, Calif. has recalled about 1,000 Wooden Animal Drums. The paint used on the drum is in excess of the maximum allowable lead level, a violation of the federal lead paint standard. The recalled toy is a wooden hexagon drum with pictures of animals on the six sides. SKU No. 424857 is printed on a sticker on the bottom of the drum. They were sold at Cost Plus World Market stores nationwide from December 2010 through May 2011 for about $7. Consumers should immediately stop using the toy and return it to Cost Plus World Market for a full refund. For additional information, contact Cost Plus toll-free at (877) 967-5362 or visit the company’s website at www.worldmarket.com.

**Mini Stars Building Sets Recalled Due to Choking Hazard**

Edushape Ltd., of Deer Park, N.Y., has recalled its Mini Stars building sets. This recall includes about 18,000 sets. Additional star building sets were recalled in September 2010. Plastic knobs can break from the center of the stars, posing a choking hazard to young children. CPSC and Edushape have received two reports of the knobs breaking off from the center of the stars. No injuries have been reported. This recall involves Mini Stars building sets. The Mini Stars measure three inches in diameter and are made of opaque plastic. Each star has six circular knobs protruding from a ring-shaped center. Edushape only makes Mini Stars in red, green, yellow or blue colors which are included in this recall.

The Mini Stars do not have any markings, codes or logos stamped into the plastic. They were sold in sets of 12, 24, 36, 48 and 72 pieces. The sets were sold at small retail stores nationwide, online at Toys R Us.com, Amazon.com and CSN and walmart.com from January 2007 through December 2009 for between $10 and $50. Consumers should immediately take the recalled Mini Star building sets away from children and contact Edushape for a free replacement set or credit towards another Edushape product of equal or lesser value. For additional information, contact Edushape at (800) 404-4744 or visit the company’s website at www.edushape.com.

**Baseball and Softball Gloves Recalled Due to Presence of Mold**

Mizuno USA Inc., of Norcross, Ga., has recalled their Mizuno Supreme Series and Ballpark Pro baseball and softball gloves. Some gloves were found to contain a variety of molds that could cause respiratory or other infections in individuals with chronic health problems, or in individuals who have impaired immune systems. The recalled items are leather Mizuno baseball and softball gloves. The gloves have a sewn-in white label on the heel of the glove with the words “Made in Vietnam” and the model number. Supreme Series gloves affected are further identified by the date code imprinted on the heel of the glove near the thumb opening. The gloves were sold at Walmart and Target stores nationwide from April 2010 through May 2011 for between $24 and $60. Consumers should immediately stop using the gloves and contact Mizuno USA to receive a full refund. For additional information, contact Mizuno USA Inc. At (800) 451-7913.

There were so many recalls since the July issue that once again we couldn’t get them all in this issue. 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. As indicated at the outset, you may also contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information.

**XXII. FIRM ACTIVITIES**

**Employee Spotlights**

**MIKE CROW**

Mike Crow, a lawyer in our Personal Injury Section, primarily handles car and truck litigation and premise liability cases. He has a special interest in brain injury cases. Mike is a graduate of Auburn University Montgomery, where he earned a B.S. in 1978 and M.S. in 1980. He graduated from Jones School of Law in 1986, where he earned his J.D. In 1987, Mike started to work with our firm, which at the time was Beasley & Wilson, during his second year of law school. At that time Mike did a little bit of everything, including working as a law clerk. There were then eight lawyers in our office, which at the time was located in a house on Hull Street. We did not operate in Sections as we do now.

After Mike passed the bar, he became a lawyer with the firm. Over the years, Mike has been successful in litigating against the “Big Box Stores,” including Wal-Mart, Home Depot and others. As a result, he has a wealth of knowledge of their practices and procedures. Mike also has handled several cases against a local School Board for section 1983 violations and Title IX violations. These cases range from young female students being sexually assaulted by a substitute teacher to the local school board failing to have and implement a Title IX policy. Mike says this about his work:

*What I like best about practicing law is how each case is different and how each case brings different challenges. When I am able to win a case for someone, I hope that I have helped someone who needed help.*

Mike currently serves as co-chair of the Montgomery County Bar Association grievance committee. He has served on the committee for the past 11 years. In 2009, he was appointed to serve on the Alabama State Bar committee Disciplinary Commission. He is a member of the American Association for Justice, the Interstate Trucking Litigation Group, and the Plaintiffs Interstate Trucking Lawyers of America.

Mike also serves on the Jimmy Hitchcock Committee which annually selects an outstanding Christian student athlete from the local community. Mike is on the Executive Committee of the Auburn University at Montgomery Basketball Booster Club, which is responsible for raising funds for the basketball program. He is a former player. Mike is also an active member of the Frazer United Methodist Church, where he has been appointed to serve on the Board of Stewards.

Mike is married to the former Marla Taylor and they have two children, Cade, who is 11 and Carson Ann who is ten. The Crow family has hosted Julie Verdy, a foreign exchange student from France, for the past two years. Julie, a Junior at AUM on a tennis scholarship, hopes to remain in the U.S. To continue her studies after graduation. The Crows consider Julie a part of their family. Mike says his children “have pretty much adopted Julie as a big sister.”

In his “down time,” Mike enjoys cycling, riding 15-20 miles about four times a week.
He also is avid waterfowl hunter. Mike enjoys competing in Retriever Field Trials with his three Labradors throughout the country and serves as a judge at these events two or three times a year. Mike is a very good lawyer and an even better person. He is a credit to the firm and we are blessed to have him with us.

GRAHAM ESDALE

Graham Esdale obtained his B.S. degree in Marketing from Auburn University before going to law school. After graduating from the University of Alabama School of Law in 1989, Graham started his law career with the Jefferson County District Attorney’s office where he was involved in over 150 trials. He was a member of the homicide and sex abuse division, which focused on the prosecution of these complicated and sensitive crimes.

Graham left the District Attorney’s office in 1994 to enter civil practice where he chose to focus on products liability and workplace litigation. Graham left Birmingham in the fall of 1996 to join our firm. His primary responsibilities have been in the area of products liability and workplace injuries.

Graham was recently named one of America’s “Best Lawyers” by U.S. News & World Report. He also was elected to the Alabama Chapter of the American Board of Trial Advocates (ABOTA), which is a high honor and recognition. ABOTA, a national organization comprised of trial lawyers, including both Plaintiff and Defense lawyers, is committed to the preservation of trial by jury. To be eligible for consideration, a lawyer must have tried at least 20 civil jury trials to verdict as lead counsel.

Graham has been involved in the firm’s tobacco litigation and other notable cases including a $114.5 million verdict against a bucket truck manufacturer and a $3 million verdict against Toyota Sudden Unintended Acceleration. Graham is a leader in the investigation of claims of personal injury and death related to Toyota Sudden Unintended Acceleration (SUA). Graham was one of the first lawyers in the country to file a lawsuit against Toyota alleging that Sudden Unintended Acceleration caused a personal injury and wrongful death.

In January of 2010, Toyota Motor Sales U.S.A. announced the suspension of manufacturing and sales of many of its bestselling models after a series of safety recalls involving millions of vehicles. The recalls involved both Toyota and Lexus vehicles, and mainly had to do with the problem of sudden unintended acceleration. Graham had been actively investigating SUA problems for about two years prior to the first recall, which happened in September 2009. Graham traveled to Washington, D.C., to attend the Congressional hearings.

Graham is married to the former Leigh Ann Hibbett of Florence, Ala., and they have two children, Whitney and Robert. Whitney is a sophomore in Pre-Med at Auburn University. Nine-year-old Robert is a music lover. Graham says Robert apparently has the goal of obtaining every musical instrument known to man. His latest requests are for a harp and a cowbell.

Graham has been a real asset to our firm. He works very hard and is totally dedicated to his clients. Graham believes in the civil justice system and we are fortunate to have Graham with us.

**OUR FIRM IS SUPPORTING RALLY IN THE ALLEY EVENT**

Beasley Allen will be the presenting sponsor for the Third Annual “Rally in the Alley” event to be held on August 11, 2011. This event signals the kickoff of the 2011 United Way Campaign and is a chance for many of its 48 agencies to showcase their programs and services. Additionally, EMERGE Montgomery uses this as a time to get involved with a community project, which will be announced at the event. EMERGE Montgomery is a program of Leadership Montgomery in partnership with the Montgomery Area Chamber of Commerce, which provides an opportunity for young professionals to connect with each other and the community.

Rally in the Alley will also feature live music, and participating restaurants will provide food and drink specials throughout the evening. Commemorative T-shirts and cups will be distributed at the event, which is free and open to the public. United Way agencies scheduled to be available at Rally in the Alley are: Autauga Family Support Center; Family Sunshine Center; SayNO; Child Protect; Sickle Cell Foundation; Brantwood Children’s Home; Mental Health America; Children’s Center of Montgomery; Salvation Army; Gift of Life; Lighthouse Counseling Center; M.A.R.C.; and American Red Cross.

Hopefully, lots of folks will attend this event, which should be a fun time for all. It’s a good way to find out how we all can get involved with our community by donating to the United Way and volunteering our time with one of these worthwhile programs. For more information about the River Region United Way, or to donate online, visit their website at riverregionunitedway.org.

**XXIII. SPECIAL RECOGNITIONS**

**JUDGE AND CIVIL RIGHTS ADVOCATE DIES**

U.S. District Judge Ira DeMent died last month. During his career as a judge and lawyer which spanned more than half a century, Judge DeMent was instrumental in bringing sweeping change to Alabama’s foster care, mental health and prison systems. He consistently sought to protect those who are the most vulnerable in our society. According to a former law clerk, Dana Taunton of our personal injury section, one of Judge DeMent’s favorite Bible verses was Luke 12:48, “To whom much is given, from him much will be required.” His commitment to be a good steward of the tremendous opportunities he was given was evident throughout his career. Judge DeMent made a lasting impact on the State of Alabama.

Judge DeMent served as a U.S. Attorney for eight years, a position to which he was appointed in 1969 and 1973 by then-President Richard Nixon. Judge DeMent prosecuted landmark lawsuits that reformed the mental health system where there were untold, ongoing abuses. Judge DeMent, as U.S. Attorney, also prosecuted a case on behalf of the Justice Department that addressed numerous injustices in Alabama’s prison system. Judge DeMent was a strong advocate for civil rights during a difficult period in Alabama’s history. Princeton University recognized Judge DeMent in 1976 for his work as U.S. Attorney with the Rockefeller Public Service Award in management of conflict. John D. Rockefeller III, in a letter to Judge DeMent, wrote that “… one of the great strengths of our society is the spirit of public service and the underlying importance of individual initiative. It was because your own work so typifies these qualities that you received the award.”

After his appointment to the federal bench in 1991 by President George H.W. Bush, Judge DeMent ruled that Alabama’s school prayer statute which authorized student-led, student-initiated school prayer was unconstitutional. Though unpopular among many Alabamians, Judge DeMent in accordance with his duty followed the law established by the United States Supreme Court. In another historic decision, Judge DeMent ordered an overhaul in the state’s treatment of abused and neglected children. Judge DeMent considered Judge Frank M. Johnson his mentor and tried to follow in his footsteps as a judge. I can say from experience...
in his courtroom, that he was highly successful in that endeavor. I can’t think of a better role model for any new judge.

Judge DeMent’s personal discipline went back to his days at Marion Military Institute, where he graduated in 1951 as a distinguished military student after graduating from Phillips High School in Birmingham in 1949. He served in the U.S. Army Infantry in Germany from 1953 to 1955, and in the Army Reserve and then the Air Force Reserve until 1989. He rose to the rank of major general and was awarded the Air Force Distinguished Service Medal, the military’s highest peace-time award. He previously had received the Legion of Merit.

Whether as a Judge, U.S. Attorney, Major General, or private lawyer, Judge Ira DeMent was deeply committed to justice and fairness and to duty and honor; he fearlessly pursued those ideals regardless of the popularity of his actions. Judge DeMent was a good man, a tremendous judge and achieved more in his lifetime than most anybody I have known over the years. He was my friend, a great public servant, and we will all miss him.

AN EDITORIAL RECOGNIZES A WORTHY CAUSE

Quite often lobby groups are in the news because of the tremendous success they enjoy in Congress and also in state legislative bodies. Most of those lobbyists work for powerful corporations. Few work for ordinary folks. But Alabama Arise is a group whose hard work often goes under the public’s radar. As a result, much of what Alabama Arise does and attempts to do goes unnoticed, even by the folks they do work for. A recent editorial that appeared in Ledger-Enquirer on July 7th is certainly worth reading. It is set out in its entirety below.

LOBBY FOR THE POOR WON’T MAKE ANY POLITICIAN RICHER

Alabamians are being inundated, and almost certainly disgusted, by the tawdry details of a federal trial involving big money that lobbyists for gambling interests allegedly paid lawmakers for votes to legalize casino-style electronic bingo. Meanwhile, a far humbler lobbying effort of a very different kind quietly continues in Alabama, with hardly a ripple in the pond of public or media attention. But it’s an effort that, if it should ever be successful, will be making a difference in the lives of Alabamians long after the names of sleazy casino bag men and money-grubbing lawmakers have been mercifully forgotten.

The decidedly unglamorous offices of a nonprofit called Alabama Arise sit near the bottom of the hill crowned by the Alabama Capitol, the seat of state power, money and influence. Alabama Arise is in effect a poor people’s lobby, an organization established to represent the interests of the state’s long underrepresented (politically, if not demographically) working poor. And among its many legislative efforts is the campaign to “untax” groceries.

Alabama is one of only two states (Mississippi, surely to nobody’s surprise, is the other) that still fully tax food. Rep. John Knight, D-Montgomery, a Vietnam vet awarded the Silver Star for battlefield valor, has exemplified a different kind of courage in his legislative career—a tireless campaign to chip away at Alabama’s unconscionable tax system. House Bill 242 was his latest effort to remove the state’s 4 percent sales tax on groceries; it failed for the fourth consecutive year, earning Knight the un-coveted Shroud Award for the deadest bill of the session. It didn’t even make it to the floor for debate.

So much for a change Alabama Arise says would free up $325 million for local economies and save every Alabama household the equivalent of two weeks’ groceries a year. Given Alabama’s legislative record, nobody should be surprised. The state’s tax structure is notoriously bottom-loaded: It shifts the heaviest tax burden down the economic ladder to those least able to pay, to the advantage of the politically connected and their legislative lapdogs.

Double-digit sales taxes are just one of the ways working families who can ill afford it get the Alabama tax shaft. The Washington-based nonprofit Institute on Taxation and Economic Policy calculated that Alabama’s state income tax is the nation’s third lowest for the top 1 percent of earners, and third highest for the bottom one-fifth. Throw in the innate regressiveness of sales tax, made infinitely more so in Alabama by the myriad exemptions that special interests enjoy, and those numbers become even more grotesque and morally reprehensible. Poor people don’t make for a promising source of lobbyist largess. Sooner or later, Alabama is going to figure out that they also don’t make for much of a tax base.

Alabama Arise should be commended for working hard, trying to help folks who have no powerful lobbyists. When legislators on occasion don’t seem to care about the problems of low income Alabamians, it’s very important to have groups such as AA around to remind them of the problem and needs of low income folks.

Source: capwiz.com

POLICE DOG IS A LOCAL HERO

Police officers in Alabama’s Capital City say their drugsniffing dog Daisy sniffed out $1.5 million in cash in a tractor-trailer rig stopped on Interstate 65 in Montgomery on July 15th. Officers are probing the source of the recovered money, which had cocaine residue on it. This is the largest drug seizure in city history. If proven, the money could be used by officials to bolster drug enforcement and public safety efforts. Daisy is a local hero!

JIM PRATT TAKES OVER AS PRESIDENT OF THE ALABAMA STATE BAR

James R. Pratt, III, a partner in the Birmingham law firm of Hare Wynn Newell & Newton, LLP has become president of the 16,600-member Alabama State Bar. He assumed office following the state bar’s annual meeting last month. Jim received his undergraduate degree from Auburn University and earned his law degree from Cumberland School of Law 1978. The Birmingham lawyer concentrates his law practice in the areas of personal injury litigation, products liability, and complex commercial litigation. We wish Jim the very best as he undertakes a most important job.

REBEKAH MCKINNEY NAMED NEW PRESIDENT OF ALAJ

Rebekah McKinney, a lawyer with Watson, McKinney & Artrip in Huntsville, has been elected president of The Alabama Association for Justice. She is the first female president of the 1,400 member group. Rebekah was sworn in at ALAJ’s annual convention. Rebekah, who earned a B.S. from Vanderbilt University in 1991, received her law degree from the University of Alabama School of Law in 1995. During her time in law school, she was a member of the Bench and Bar Legal Honor Society. She was admitted to the Bar of the State of
serves as vice president for a local manufacturing plant and is very active in community affairs. Let's take a look at the verse Ed sent in. It's one that we should all strive to live by.

Therefore, whatever you want men to do to you, do also to them, for this is the Law and the Prophets.

Matthew 7:12

Ronnie Holladay, who is very active in a number of agricultural organizations and is a good man, sent in one of his favorite verses for this issue. Ronnie and his wife Mitzi, who live in Tyler, Ala., are good friends of ours.

So we are always confident, knowing that while we are at home in the body we are absent from the Lord. For we walk by faith, not by sight. We are confident, yes, well pleased rather to be absent from the body and to be present with the Lord.

2 Cor. 5:6-8

Brad Goode, who serves as an associate pastor at St. James United Methodist Church, sent in his favorite scripture for this issue. Brad is a dedicated servant of His Lord and he does outstanding work at the church, especially with the young people.

For I am convinced that neither death nor life, neither angels nor demons, neither the present nor the future, nor any powers, neither height nor depth, nor anything else in all creation, will be able to separate us from the love of God that is in Christ Jesus our Lord.

Romans 8:38-39

XXV.

FavorItE BIBLE VERSES

My oldest granddaughter, Sara Beasley, asked me to put her favorite Bible verse in this month. It's one of the verses Sara memorized while working this summer at K-Kountry, which is one of the Kanakuk Kamps in Missouri. Sara says Jeremiah 29:13 has really helped her not to forget that she has to give God every part of her, without holding anything back from Him. In her own words, Sara wants to be “totally consumed by the Lord, so that He can reveal Himself to me and be in control of every aspect of my life.” Sara will be a junior at Auburn University this fall. She will be starting her third season as a majorette with the Auburn Marching Band when school starts this month.

You will seek me and find me when you seek me with all your heart.

Jeremiah 29:13

My good friend Ed Crowell, a Montgomery resident, says he tries his best to live by the Golden Rule. Having known Ed for over 40 years, I can say without hesitation that he has done so. Ed, who attained the rank of Brigadier General in the U.S. Air Force Reserves, was a valuable employee of Blount International for years. He currently

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TIMELY ADVICE FOR OUR TIMES

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

Edmund Burke

PROOF ENOUGH FOR A SMART MAN

I have carefully examined the evidences of the Christian religion, and if I was sitting as a juror upon its authenticity I would unhesitatingly give my verdict in its favor. I can prove its truth as clearly as any proposition ever submitted to the mind of man.

Alexander Hamilton

XXVI.
PARTING WORDS

SOME VERY WISE COUNSEL

Jay Wolf, the Senior Pastor at the First Baptist church in Montgomery, is a tremendous preacher and a very good man. Jay wrote a piece recently that I am passing on to our readers. It’s extremely wise counsel for all of us.

“INSTEAD OF WHINING, TRY SHINING!”

Philippians 2:14 instructs, “Do everything without complaining.”

It is easy to develop a critical spirit. I recently talked with a friend who confessed, “I have become a negative, bitter and unattractive person who is very hard to live with.” Another lady told me, “I took my husband for better or worse, but he’s a lot worse than I took him for!”

I recently read an editorial that observed, “America has become a nation of complainers.” We all have the capacity to turn a sunny day into a gripe session about having to wear sunscreen.

There are two types of complainers: the Perfectionist and the Martyr. The Perfectionist demands that everything be done to their standard and any perceived error reaps a crop of harsh criticism. The Martyr complains about all of their really special problems and the lack of help and sympathy they receive from others. The complaining Perfectionist repels friends and the whining Martyr drains them.

The better way is God’s way. Try to delete your whining and focus on shining by implementing the following suggestions:

• Choose a grateful spirit instead of a critical attitude. If you were graced by God to be born in America, and you enjoy the benefits of consistent food, shelter and transportation, then you are a blessed person who should be grateful to God and to others. When you quit focusing on your own navel and look at the drastic poverty and problems in our fallen world, it will prompt you to do a check up from the neck up and get rid of your stinking thinking and ungrateful attitude! Remember that you are blessed! Then praise God for your blessings which activates His presence because the Lord inhabits the praise of His people.

• Stop complaining. For the next 24 hours, intentionally delete negative griping, whining, and gossip-flavored communication. Follow the admonition of Matthew 5:16, “You are the light of the world...” which means you should shine bright and not whine about your plight.

• Start encouraging. Encouragement is the Miracle-Gro of the soul. Pour sincere affirmation on the people around you by refilling your spirit with Christ’s Spirit, which makes you an attractive and positive friend. Remember, a pat on the back is only 18 inches removed from a kick in the pants, but the results are miles apart. Consistently apply Hebrews 10:24 which coaches, “Encourage one another and all the more as you see the day of Christ drawing near.”

The Bottom line: Remember the light of the encourager attracts and sustains while the criticism of the complainer repels and drains. So choose TODAY to shine and not whine!

Rev. Jay Wolf
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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley’s law firm, established in 1979 with the mission of “helping those who need it most,” now employs 44 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.