I.
CAPITOL
OBSERVATIONS

ALABAMA’S IMMIGRATION LAW MOVING
THROUGH THE JUDICIAL SYSTEM

The Court of Appeals for the Eleventh Circuit, in its ruling last month, stayed the parts of Alabama’s immigration law that require proof of lawful residency in the U.S. And track immigration information about newly-enrolled students. The Court did not block provisions dealing with immigration status checks during traffic stops, contracts with illegal immigrants, or government business transactions. The ruling doesn’t bind the panel of the Court that will hear the main arguments concerning the merits of the appeal.

The Court said the Plaintiffs had met the four tests for an injunction on the sections it blocked, including: substantial likelihood they will prevail on the merits of the appeal; a substantial risk of irreparable injury to the parties unless the injunction is granted; no substantial harm to other interested persons; no harm to the public interest. Hispanic parents began withdrawing their children from the schools after Judge Sharon Blackmon refused to block the school registration requirement.

The law required new students to show proof of citizenship or lawful immigration status at the time they enrolled. But schools weren’t allowed to deny students entry, if that information was not provided. The other section that was blocked required people to carry proof they are in the U.S. legally. The order issued by the Atlanta-based Appeals Court followed requests by the U.S. Justice Department and the group of 36 Plaintiffs to stay the law pending an appeal of the earlier ruling by the District Court that left parts of it in place. Regardless of what the Eleventh Circuit does in its final order, the case will wind up in the U.S. Supreme Court. Frankly, I will be greatly shocked if the law survives the constitutional challenges. But it seems certain that the U.S. Supreme Court will make the final call on this law.

Source: AL.com

VOTERS DEMAND THAT CONGRESS DEAL
WITH THE DEFICIT

All recent polling reveals that the American people back President Obama’s proposal to raise taxes on the wealthy and his commitment to protect Medicare from any significant changes. He appears to have a majority of U.S. citizens with him on each issue. The message from the polls is that the GOP’s polar opposite positions on these two very important issues puts the party way out of step with the public. But both parties should also get a strong message from all of the polls that the public wants to see the deficit addressed in a serious and bi-partisan manner. The highest number I have seen came from the Washington Post/Pew poll that found that 81% of Americans believed that the federal budget deficit was a problem that needs to be addressed now, with just 14% saying that it should be addressed only when the economy improves.

But when you look further into the results, you find that the public has definite ideas on how to address the deficit problem. The clear message is that they aren’t for just any deficit reduction plan. For example, the public strongly supports raising taxes for the wealthy and large corporations, but they strongly oppose major changes to Medicare, Medicaid and Social Security. Interestingly, folks are ambivalent about cuts to defense spending. The latest NBC/WJS poll found that 78% of Americans felt that cuts to Medicare were an “unacceptable” way of reducing the deficit, with 51% saying this approach was “totally unacceptable.” A recent CNN/ORC poll showed 64% did not want changes to Medicare or Social Security.

The results from all of the recent polling should send a strong message to members of Congress that something must be done about the federal deficit, but that no dramatic budget cuts will be tolerated in Medicare, Medicaid and Social Security. The polls also show that most Americans believe increased revenues should be a part of the solution, and that the wealthy and large corporations should do more and actually bear the brunt of the needed increases. I believe that any member of the House or Senate who continues to protect those politically-powerful groups—to the detriment of these three programs—will have to answer for it at the polls next year.

There Is A Message From The Wall Street Protests

The Occupy Wall Street protests have spread across the country and in the process have captivated the media’s attention. But, more importantly, the protests coincide with what could be a broader change in American attitudes towards elected leaders and the policies they advocate. Unfairness combined with the corrupt motives of reckless financiers triggered a brutally harsh and oppressive economic crisis. The wrongdoers who caused the crisis accepted the government bailouts and then went on to become even richer. But what about the middle class?
They were left to struggle because of the failing economy, with many losing their jobs and even their homes.

The results from recent polling show that President Obama’s standing on core middle class advocacy measures has greatly improved. The polls also reveal that Congressional Republicans are increasingly viewed as the party that stands behind and supports Wall Street. Moreover, while Republicans try to claim that the President is engaging in “class warfare,” most Americans believe that his policies are common-sense and provide further evidence of whose side he is on. Based on what the polls tell us about discontent amongst the masses, it’s not good news for the GOP members of Congress. It’s quite evident that many of them owe their very existence to the super rich in this country, and as a result they have little regard for ordinary folks.

The protests provided a new voice for folks who are disenchanted with the influence that corporate American has in our political process. Whether related or not, the protests coincide with a change in public attitudes towards elected leaders in Washington and the public’s perceptions of who is fighting for them. Republicans have tried hard to place President Obama’s policies out of line with the views of most Americans. But if we can believe the recent polls, their strategy has failed. For example, a recent ABC News poll gives the President a 20-point lead over Congressional Republicans on protecting the interests of middle class Americans.

Meanwhile Americans overwhelmingly believe that the Republicans are primarily concerned about protecting the interests of wealthy Americans. It’s significant that a whopping 70% of the American people feel that way. The bottom line—as I see it—is that ordinary folks are fed up with our political system and are not happy with what has been happening in our Nation’s Capitol. The partisan manner in which Congress has been dealing with extremely serious problems that affect the American people is unacceptable. It’s time for Congress to get down to work and—for a change—start to work for real people. That certainly appears to be the message being sent to Congress by the American people. But the question is—are the members of the House and Senate listening?

**Motivation Is Strong For Wall Street Protestors**

We often hear some smart folks on Wall Street saying that it’s their job to “raise capital and put it to good use.” But it appears—according to a recent editorial in USA Today—that some on Wall Street have found it hard to get the job done. The failure is most evident in the huge fortunes that Wall Street—defined broadly in the editorial as New York’s major banks, plus hedge funds and private equity houses—poured into high-risk mortgage products, triggering a financial crisis and ruinous recession.

We have seen the attempt in the form of bailouts to correct the stupid mistakes and deliberate acts of fraud by many on Wall Street. While the bailouts have been highly unpopular, overlooked is the fact that they did serve to avert a deep depression in this country. The protests mentioned above are motivated by deep-seeded feelings against what is perceived as “corporate greed.” While I’m not sure where the protests are actually headed, nor what the final outcome will be, it certainly appears the protestors are on to something. Financial institutions that should be the enablers of economic growth have become, at least in part, destructive to the U.S. economy. According to USA Today, there are five legitimate reasons why folks—left, right and center—should all be angry at Wall Street. These are the reasons listed in the editorial:

- **Economic distress.** The Great Recession was a direct consequence of Wall Street’s insatiable demand for mortgages to package into securities and sell. This demand spurred reckless lending, abetted by the government, and inflated a huge housing bubble, the bursting of which continues to inflict pain on millions of people more than three years later with no end in sight.

- **Bonus excess.** The bonus system has gone beyond a means of rewarding talent and is now Wall Street’s primary business. Institutions take huge gambles because the short-term returns are a rationale for their rich payouts. But even when the consequences of their risky behavior come back to haunt them, they still pay huge bonuses. Last year, bonuses paid to New York City-based securities industry employees totaled $20.8 billion, up from $17.6 billion in 2008—this at a time when unemployment nationally is above 9% and household incomes are stagnating.

- **Brain drain.** Because of this outsized compensation, banks and hedge funds lure some of the country’s smartest people away from more productive endeavors, such as creating and building companies. That’s not easily fixed. People have every right to make their own choices. But the nation suffers if its best brains are busy manufacturing risk through schemes such as high-frequency computerized trading rather than creating jobs.

- **Too big to fail.** The largest institutions have grown so large that the failure of any one of them is a cataclysmic event. While last year’s bank reform law creates a system for a rapid, supposedly bailout-free dissolution of failing institutions, it is highly questionable whether future leaders would let them go under. Bank CEOs know this, and it gives them confidence to pile on risk.

- **The Washington racket.** Through lobbyists and campaign contributions, the banking industry has long had its way in Washington. This was evident in the Clinton-era legislation that repealed a post-Depression safeguard and allowed banking behemoths to combine banking and brokerages under one roof. It was even more apparent during the Bush Administration when Washington closed its eyes to reckless subprime lending. Now, after a brief period of contrition, the bank lobby is back in full force. Demands that megabanks maintain more conservative balance sheets, so bailouts won’t be needed, are cast in Alice-in-Wonderland fashion as Big Government intrusion, not taxpayer protection. And hedge fund managers continue to enjoy an indefensible tax break that allows them to pay just 15% on earnings that sometimes exceed $1 billion a year.

Wall Street’s misbehavior, as bad as it has been, wasn’t the only thing that contributed to almost destroying the economy. USA Today says folks around the country increasingly see “Wall Street’s shortcomings as a form of modern thievery,” and that’s a pretty good assessment of what happened. If things don’t change soon, Wall Street will have a lot more to worry about than the protesters. Investors have
to be greatly alarmed over what they are now learning about how Wall Street operates and their future involvement in the market will be more guarded.

The American people, as a whole, also have good reason to be fed up with the extremely poor regulation by the federal government and also with Congress being controlled by the big banks on issues directly affecting the banks. The cries by some on the right that we have too much regulation—and that it hurts business—often rings sort of hollow when one considers how truly bad Wall Street has been. It’s past time to clamp down and make the big banks do right. Putting the Glass-Steagall Act back on the books by Congress would be a good start and certainly a step in the right direction.

When it comes to the relationship between Congress and ordinary folks, I am reminded of something Harry Truman was purported to have said while he was in office. The plain-spoken 33rd president, perhaps out of his frustration in dealing with Congress, observed: “If you want a friend in Washington, get a dog.” Ordinary folks might consider trading in a few key members of Congress for a good dog!

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**The President Calls For Taxing Millionaires**

According to at least one American president, the wealthy in this country should pay their share of taxes. Before my GOP buddies jump to conclusions and attack Presidents Jimmy Carter, Bill Clinton or Barack Obama, they should take a deep breath and read further. The belief relating to taxes was that of President Ronald Reagan. In a stirring 1985 speech, he called for fair taxation of millionaires. Recently, that speech has been compared by some to a similar speech made a few weeks back by President Obama.

In his 1985 speech, President Reagan vowed to “close the unproductive tax loopholes that have allowed some of the truly wealthy to avoid paying their fair share.” He said that these loopholes “sometimes made it possible for millionaires to pay nothing while a bus driver was paying 10 percent of his salary.” President Reagan aptly said “that’s crazy.” President Reagan added: “It’s time we stopped.” I am in total agreement with these two presidents, both Reagan and Obama. Moving in their suggested direction is badly needed and long overdue.

All of the GOP candidates for president seem to like using the Reagan name quite often—even though loosely on occasion—as they talk with potential voters. But I wonder how many of these candidates agree with the “Gipper” on his tax plan.

What do you think?

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**II. A REPORT ON THE GULF COAST DISASTER**

**BP And Other Contractors Are Sanctioned For Gulf Oil Spill**

On October 12th, the U.S. offshore drilling regulator formally issued sanctions against BP and the major contractors involved in the explosion on the Deepwater Horizon rig. Because of the passage of time and a great public relations campaign by BP, many have forgotten that 11 workers were killed and more than 4 million barrels of oil were spilled into the Gulf of Mexico. The newly-formed Bureau of Safety and Environmental Enforcement (BSEE) filed 15 “incidents of noncompliance” (INC) against the companies. The agency did not release details of how much the companies may face in fines.

Under the law, the companies face fines of up to $35,000 per day, per incident, for the violations. In its final report on the accident issued in September, the Interior Department outlined infractions committed by the companies. BP, owner of the well, received the lion’s share of the sanctions, with seven notices for violations ranging from failure to protect health and property to failing to keep the well under control at all times.

In a first for the Department, BP’s contractors (Transocean, which owned the Deepwater Horizon rig, and Halliburton, which carried out cementing on the well), also face sanctions. These contractors each received four notices of violations, with Transocean accused of failing to properly maintain the rig’s blowout preventer and Halliburton accused of not properly cementing the well.

The three companies will have 60 days in which to appeal the sanctions. The agency will likely impose civil penalties for the notices once the appeal period has ended. Any fines imposed by the drilling agency would be separate from the ongoing lawsuits by the Justice Department against BP and Transocean. Transocean has already said it will appeal its sanctions.

BP, in a typical public relations ploy, said it has taken steps to enhance safety and that the sanctions show that its contractors also played a role in the spill. In a statement, BP said that it will “continue to encourage other parties, including Transocean and Halliburton, to acknowledge their responsibilities in the accident.” As we have reported, BP and its contractors are embroiled in a number of lawsuits blaming each other for the spill.

Traditionally, the Interior Department has only gone after well operators for rule infractions. But after last year’s spill, the Department has asserted that it has authority to regulate contractors. The decision to sanction Transocean and Halliburton reflects the “severity of the incident” and the Department’s commitment to holding all parties accountable. Michael Bromwich, director of BSEE, said in a statement:

*The joint investigation clearly revealed the violation of numerous federal regulations designed to protect the integrity of offshore operations; these INCs are the next step in vindicating the regulatory program designed to protect the interests of the public.*

Before all of the fall-out resulting from the wrongdoing by BP and others is over, the sanctions imposed by BSEE will pale in comparison to the amounts paid out to the victims, including individuals, business owners, state governments and the federal government.

Source: Claims Journal

**Effects Of The Oil Spill Are With Us And Will Continue For Years To Come**

A coalition of Gulf Coast environmental groups said in a recent report that last year’s oil spill is still a “developing disaster.” The groups called on government officials to reinstate a moratorium on new deepwater drilling and rethink claims that Gulf of Mexico seafood is safe to eat. The report from the Waterkeeper Alliance said:

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www.BeasleyAllen.com
Across the Gulf Coast, oil continues to wash ashore along beaches and wetlands. Local and state economies and household budgets are still suffering, and health impacts, potentially from exposure to the mixture of crude oil and toxic dispersant, are being reported.

In addition to criticizing BP, the majority owner of the Macondo well, the report questioned certain parts of the federal government’s response. The report was produced jointly by Mobile Baykeeper, Lower Mississippi Riverkeeper, Louisiana Bayoukeeper and four other Waterkeeper groups, from Seabrook, Texas, to Apalachicola, Fla. Some government and business leaders have maintained that the spill’s environmental effects were minimal and have largely been addressed. That is simply not a correct assessment of the situation. It’s even more surprising that some in the scientific community have questioned the severity of the spill. That really makes me wonder what’s going on. Clearly, environmental advocates came to a very different conclusion in the report.

The report also reminds us that oil continues to hit shorelines along the Gulf Coast. That is occurring even though there hasn’t been a hurricane that would have resulted in oil coming ashore. We need to address the problem and fix it—not hide it. Mobile Baykeeper’s executive director, Casi Callaway, said she believes strongly that the problems must be addressed and solutions found.

The report said officials should continue to study the spill and its impact well into the future, pointing out that the effects of the Exxon Valdez spill in Alaska have continued for decades. The report listed a number of health problems that fishermen suffered in the wake of the spill and continue to experience, including severe headaches, vomiting and nausea, fatigue and difficulty breathing. “At the time of this writing, Gulf Coast communities remain without adequate diagnosis or treatment for these health concerns,” the report said.

As we have reported on numerous occasions, BP has continually attempted to minimize the spill and its effects. The report said that throughout most of 2010 and 2011, “it has been evident that BP is running a public relations campaign, more than a recovery effort.” That is absolutely true and I must say BP is very good at public relations and it has spent hundreds of millions in that arena.

Many along the coast are saying, “Thank goodness for the court system.” If it weren’t for the litigation relating to the oil spill and its aftermath, folks and businesses in all of the Gulf Coast states would be largely “up the creek without a paddle.” I am convinced that because of the MDL in New Orleans—and a tough and fair judge in charge—justice will be done and hopefully soon. But let there be no doubt that justice must include the payment of total damages to all who have been hurt and damaged as a result of the wrongdoing by BP and the other corporate Defendants.

Source: AL.com

ANNANDARKO SETTLES WITH BP FOR $4 BILLION

Andarko Petroleum Corp. will pay BP PLC $4 billion to settle any claims BP may have against Andarko related to liability for last year’s Gulf of Mexico oil spill. Andarko owned a 25 percent interest in the Macondo well. BP owned a 65 percent stake in the well and as all should know led the drilling operation. MOEX, an arm of Mitsui & Co., owned a 10 percent stake in the well. You may recall that in May, MOEX agreed to pay $1.065 billion to settle any claims.

In addition to the $4 billion lump sum payment, Anadarko will transfer all of its 25 percent interest in the well to BP and stop its pursuit of allegations of gross negligence with respect to BP. Anadarko also has the opportunity to recover up to $1 billion through a share of any money BP can recover from third parties or insurance proceeds. While much of it has traveled under the national media’s radar screen, BP has been busy collecting from some of its partners in the Macondo well, including $1.065 billion from MOEX Offshore 2010, plus $75 million from Weatherford International.

Source: Associated Press

III. DRUG MANUFACTURERS FRAUD LITIGATION

AN UPDATE ON THE AWP VERDICT IN MISSISSIPPI

As we reported in the last issue, our law firm, led by Dee Miles and Clay Barnett, tried a case on behalf of the State of Mississippi and obtained a $58.2 million verdict against pharmaceutical giant Sandoz, Inc. The lawsuit was based on Sandoz’s allegedly publishing inflated “average wholesale prices” that the Mississippi Division of Medicaid used to reimburse pharmacists for drugs. These inflated prices caused Mississippi’s Division of Medicaid to overpay pharmacists, a marketing scheme designed by Sandoz to sell more drugs in the State of Mississippi than its competitors. For the uninformed, “AWP” stands for “average wholesale price” and was the fraudulent price reported to Mississippi by Sandoz, Inc.

As is customary, Sandoz filed post-trial motions with the court asking the judge to throw out the verdict for various reasons and to reduce the amount of punitive damages and penalties awarded against Sandoz. On October 4th, Judge Thomas Zebert denied Sandoz’s motions relating to the compensatory damage award of $23,661,618.00. He also affirmed the $2,699,000.00 civil penalty awards against Sandoz for violations of Mississippi’s Consumer Protection Act. Thus, the court has affirmed and left intact $26,360,618.00 in damages for the state.

In addition, the court had previously assessed punitive damages against Sandoz in the amount of $11,830,809.00, based on what the court described as “punishment for fraudulent conduct” by Sandoz in its dealings with the State. As is routine in punitive damage award cases in Mississippi, the court must now hold a hearing to determine the fairness of the amount of punitive damages awarded by the court. Post-trial hearings to evaluate the assessment of punitive damages are common in all states. Mississippi has a statutory requirement for a post-trial hearing. As a result, a final judgment will not be entered in this case until an evidentiary hearing concerning the fairness of the punitive damages has been concluded. We will
promptly update our readers on developments in this most important case for the State of Mississippi and taxpayers in that state.

**Kentucky Settles With Pfizer**

Kentucky has reached a settlement with pharmaceutical giant Pfizer, Inc. over the illegal off-label marketing of its urology drug Detrol. The settlement concludes a government investigation into allegations that the company engaged in off-label marketing schemes to promote the sales of Detrol for uses that were not approved by the Food and Drug Administration. The settlement will result in $152,607 being paid to the state’s Medicaid program.

The FDA approved Detrol in March 1998 for the treatment of overactive bladder with symptoms of urge urinary incontinence, urgency and frequency. Pfizer’s promotional activities were designed by the company to increase the prescribing of Detrol for uses in men for which it was not approved. These uses included treatment for benign prostate hyperplasia, bladder outlet obstruction and lower urinary tract symptoms. The investigation began with a whistleblower lawsuit filed in a Boston federal court by two former Pfizer employees.

Source: Associated Press

**Johnson & Johnson Unit Agrees To $85 Million Fine For Misbranding Drug**

Johnson & Johnson’s Scios unit has agreed to pay an $85 million fine and plead guilty to misbranding the heart drug Natrecor. Scios was charged in July with misbranding the medicine because its labeling lacked adequate directions for use. Under a plea agreement reached after months of negotiation with prosecutors, Scios will be placed under organizational probation for three years in addition to paying the fine. The settlement was filed in federal court in San Francisco and approved by the court.

Source: USA Today

**IV. Purely Political News & Views**

**Two Protesting Groups Have Very Little In Common**

I read an article recently by Fred Smith, the founder and president of the Competitive Enterprise Institute, that got my attention. Mr. Smith, who is extremely conservative in his views, was discussing a few things that the folks who have been protesting Wall Street and the Tea Party crowd have in common. I had never even considered the possibility that there was anything that the two groups have in common. After reading the Smith article, I am now even more convinced they have very little, if anything, in common. In fact, their missions are totally different and the Wall Street group doesn’t have any billionaires supporting them.

As expected, Mr. Smith attempted to defend the Tea Party as being against what he described as “crony-capitalism,” while making it appear the Wall Street protesters were all “anti-capitalist.” Regardless of how one might feel about those labels, there is one thing for certain, and it’s that folks all around the country are fed up with the antics of the Wall Street bankers. The public’s discontent is also aimed at the failure of the federal government to really go after the wrongdoers.

Most folks wonder why somebody hasn’t been prosecuted. It doesn’t take reading the results of a professional poll to figure out that the widespread discontent also includes Congress. In fact, the discontent will be felt by members of Congress at the polls next year.

**V. Significant Settlements By The Firm**

**Leaking Underground Storage Tank Case Settlements**

Our firm recently settled two separate lawsuits in Alabama against the owners of underground storage tank (UST) systems. One lawsuit involved a UST leak at a gasoline station in Tuskegee. The other lawsuit involved a UST leak from another gasoline station, this one located in Montgomery.

The Tuskegee lawsuit was brought on behalf of twelve individuals who owned property adjacent to or near the Defendant’s gasoline station on East Martin Luther King Drive. In this case, the Defendant’s USTs leaked gasoline into the soil and groundwater near our clients’ properties. The toxic gasoline constituents migrated off the Defendant’s property and onto adjacent and nearby properties contaminating them with dangerous chemicals, including benzene. On some properties closest to the USTs, the benzene contamination reached concentrations above the regulatory screening levels established by the Alabama Department of Environmental Management.

In addition to suffering damages resulting from the trespass of dangerous chemicals onto their property, some of our clients suffered nuisance caused by activities and equipment used to remove the contamination from the soil and groundwater. Clean-up of this site is ongoing.

The Montgomery lawsuit involved similar facts. A leak from Defendant’s UST system caused toxic gasoline constituents to migrate from the Defendant’s property onto our client’s adjacent property. Because of the contamination, our client suffered a reduction in property value and a diminishment in their ability to use their property.

Rhon Jones, Chris Boutwell and Luke Bentley, all lawyers in our firm’s Toxic Torts Section, worked on these two cases. They did a very good job for our clients. The terms and amounts of these settlements are confidential, but we are well pleased with both outcomes. The Tuskegee case was referred to us by the law firm of Hamilton, Sexton & Berry and Montgomery lawyer Joel Gregg. In fact, Joel also referred the Montgomery case to our firm. If you would like more information on these cases, believe that your health or property has been harmed by a leaking UST, or have any questions concerning them you can contact Chris Boutwell in our office at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com.
SETTLEMENT IN WORK-RELATED CASE

Our firm recently settled a lawsuit that was pending in Etowah County, Ala. We represented Terry Franklin, a driver for Koch's Poultry, in the case that arose out of a motor vehicle accident. On the date at issue, Mr. Franklin had picked up a load of chickens with his commercial vehicle and was traveling back to the processing plant in Gadsden. While traveling back to the processing plant, Mr. Franklin encountered a drunk driver who made a left hand turn in front of his vehicle, causing a collision.

Mr. Franklin sued a local bar where the drunk driver had been drinking prior to the wreck as well as the uninsured motorist carrier for Koch's poultry, his employer. He also sued his employer for his workers' compensation benefits. Our client suffered a shoulder injury, neck injury, a concussion and traumatic glaucoma to his right eye. He has had an interior cervical fusion surgery and receives pain management for his continued neck pain. Mr. Franklin was unable to go back to work either as a truck driver, or as a diesel mechanic, which are the only two vocations he has known.

The case settled for a confidential amount. In addition to the monetary amount paid, the settlement left medicals open and included a waiver of the workers' compensation lien. The case was handled by Mike Crow from our firm and Donald Rhea, a very good lawyer from Gadsden. They did an excellent job in the case and reached a very good settlement for Mr. Franklin.

VI.
LEGISLATIVE HAPPENINGS

BILL PREFILED TO REPEAL ALABAMA'S IMMIGRATION LAW

A bill has been pre-filed in the Alabama State Senate that would repeal the controversial and, I believe, ill-advised immigration law. My brother Billy Beasley, who voted against the legislation when it was rushed through the Legislature with almost no debate, is the chief sponsor of the repeal legislation. It's quite apparent that the sponsors of this law had done little if any real homework on what the consequences of the bill's passage would be for the state. For example, they obviously never considered how it would affect business owners, farmers, law enforcement officers, school officials, industrial recruiters, churches, and many others. Neither does it appear that any real thought was put into who would pay the tremendous cost of enforcing the new law. In fact, I am convinced the sponsors had no clue as to how it would be enforced.

In my opinion, this ill-advised and highly disruptive law should be taken off the books. The effect it would have on Mexicans who had been in our state legally never crossed the minds of the bill's sponsors. But as long as we have folks like Sen. Scott Beason from Jefferson County in control of what happens in state government, I fear we will see more of this sort of thing. Some Capitol Hill observers believe that those who pushed the bill through the legislative process, with no planning and without allowing any real debate, showed a lack of sound judgment.

IT'S IMPORTANT TO SAVE JEFFERSON COUNTY FROM BANKRUPTCY

Most all Alabamians have heard of Jefferson County's critically severe financial problems, but most likely very few know how truly bad things really are. Because of the importance of this matter to the entire state, I believe the Alabama Legislature has an obligation to help Jefferson County avoid bankruptcy. That will require a Special Session of the Legislature to help fix the county's problems. David Perry, chief of staff for Gov. Bentley, said recently that a wide range of solutions are still under discussion. But the Governor has made it very clear that the Jefferson County Legislators must get together before he will call a Special Session. To really solve the county's problems, the Jefferson County delegation will have to get together and be a part of the solution instead of being a major part of the problem.

If Jefferson County's problems aren't solved, and very soon, every municipality, school board, and county commission in the state, as well as ordinary folks who pay taxes, will be adversely impacted. I see this as a statewide problem. Common sense tells me, we can't afford to let our state's largest county continue down a road to financial destruction. If that happens, all Alabama citizens will be affected adversely. It appears members of the Jefferson County delegation are divided over proposals to help solve the county's sewer debt and operating budget woes. All of the Jefferson County legislators must put the interests of the citizens in their county first. There are a few who haven't done that. There are ten bills being advertised that deal with Jefferson County's problems.

Many people in our state do not realize the adverse consequences that would result if our largest county was forced to file bankruptcy. But folks who deal in such things as government financing and industrial recruitment know that it would be very bad for all of Alabama. In my opinion, the impact of bankruptcy would be devastating!

Source: Al.com

VII.
COURT WATCH

THE UPCOMING JUDICIAL ELECTIONS

Even though we haven't even gotten to Thanksgiving on the calendar, it should be noted that judicial elections in Alabama are just around the corner. The party primaries will be held in March next year, which is earlier than in the past, and that means we will only have about five months to hear from the candidates. There will be five seats coming open for the Supreme Court. Hopefully, both political parties can agree to keep “politics” out of those races to the extent possible and actually work to elect their candidates strictly on merit and qualifications.

I believe that’s what the public wants and it’s something that it certainly deserves. One thing is for certain: politics and electing judges are not a very good mix. Hopefully, at some point in time election laws in our state will be changed in a manner that will really take politics out of judicial elections. Perhaps the first place to start reform is in the area of campaign finance.
STATE FARM SAID TO HAVE GIVEN $2.4 MILLION TO ILLINOIS JUDGE

It has been reported that State Farm allegedly gave campaign donations to Judge Lloyd Karmeier in 2004 during one of the nation’s most expensive judicial races. The judge won his race, becoming a member of the Illinois Supreme Court. It was also reported that once on the Court, Judge Karmeier voted to overturn a billion-dollar verdict against State Farm in 2005. At the time, it was known that Judge Karmeier received donations from State Farm during his judicial race. Interestingly, Judge Karmeier declined to recuse himself, according to reports.

The State Supreme Court was said to have analyzed the potential bias at the time, and found none. Apparently, the Court thought State Farm had only raised $350,000 of Judge Karmeier’s donations. Apparently, that, according to media reports is because $350,000 is the amount that State Farm told the Court it donated when company officials were asked. Apparently, an FBI investigation discovered later that State Farm actually gave between $2.4 and $4 million in donations for Judge Karmeier’s judicial campaign.

I am not sure what motivated State Farm to give a wrong number to the Court, but the true amount of donations contributed by the company certainly puts Karmeier’s ruling in a much different light. It also creates a much bigger chance that Judge Karmeier wasn’t completely impartial. Lawyers, including former U.S. Senator Fred Thompson, have filed a class action suit against State Farm, claiming that the giant insurance company defrauded the Court. They are asking that the Supreme Court reconsider its decision to overturn the $1 billion verdict. It will be most interesting to see how all of this plays out.

Source: Findlaw.com

ALABAMA HOPES MEDIATION CAN EASE COURT OVERLOAD

It was reported by the media that “Mediation Week” was observed in Alabama last month. Some seem to believe that mediation is a potential remedy for the overloaded court dockets in our state. The Alabama Bar Association declared October 16 through October 20 as “Mediation Week.” Gov. Robert Bentley issued a proclamation naming Friday, October 21st as “Mediation Day” in Alabama. The enthusiasm for mediation was said to be inspired in large part by economics as the state’s court system struggles with cutbacks and layoffs. I really don’t believe mediation is the solution to correcting the severe problems caused by an underfunded court system, but it should help some in the short run.

While most lawyers are familiar with how mediation works, most non-lawyers probably have very little knowledge about mediation. When a case goes to mediation, a neutral third party works to help the two sides reach their own settlement agreement rather than leaving the outcome up to a judge or jury. The mediator has no power or authority; he or she is really just a person who applies common sense and persuasion to get opposing parties to agree on a settlement. According to Montgomery County Circuit Court Judge Tracy McCooey, mediation helps clear court dockets, but it also helps the people involved come to a satisfactory settlement. She observed:

It resolves things a lot quicker. Mediation is a wonderful thing as often as you can use it. Mediation is most often employed for civil cases, although the court more recently has begun to use it more often in certain criminal cases. Misdemeanor cases often are referred from city court for mediation.

Judy Keegan is the executive director of the Alabama Center for Dispute Resolution. She has championed the use of mediation since the Alabama Center for Dispute Resolution was created by order of the Alabama Supreme Court in 1994. Judy has been the director for the entire time. Since 1994, there has been a general upward trend in the use of mediation in our state. State-registered mediators reported handling 4,512 cases in 2010, with about 73 percent of those cases being settled. While that’s a very good record, I would like to know more about what type cases were involved.

Frankly, I must confess that I have mixed feelings about mediation. At first, I wasn’t for it and that was mostly because I felt so strongly about the jury system. But I have learned over time and through experience with mediation that it will work in some cases. Successful mediation really depends on the mediator and the willingness by both sides in a dispute to negotiate in good faith. Fortunately, there are some real good mediators in our state. But it’s important to understand that the mediator is neither a judge nor an arbitrator, and can’t make a party do anything.

Source: Montgomery Advertiser

VIII.
THE NATIONAL SCENE

THERE WILL BE MORE CYBER THREATS IN COMING YEAR

The year ahead will feature new and sophisticated means to capture and exploit user data, as well as escalating battles over the control of online information that threaten to compromise content and erode public trust and privacy. Those are the findings cited by the Georgia Tech Information Security Center and the Georgia Tech Research Institute in their report, Georgia Tech Emerging Cyber Threats Report for 2012. According to the findings, specific threats to follow over the coming year include, among others:

• Search Poisoning—Attackers will increasingly use SEO (search engine optimization) techniques to optimize malicious links among search results, so that users are more likely to click on a URL because it ranks highly on Google or other search engines.

• Mobile Web-based Attacks—Expect increased attacks aimed specifically against mobile Web browsers as the tension between usability and security, along with device constraints (including small screen size), make it difficult to solve mobile Web browser security flaws.

• Stolen Cyber Data Use for Marketing—The market for stolen cyber data will continue to evolve as botnets capture private user information shared by social media platforms and sell it directly to legitimate business channels such as lead-generation and marketing.

Most citizens don’t realize how serious the cyber threat really is. Since we live in an era where computers are a part of our daily lives, it’s essential that government and the private sector work together in
BASKETBALL LEGEND SUES NCAA OVER IMAGE USE

Basketball legend Bill Russell, former star center for the Boston Celtics, has filed suit against the National Collegiate Athletic Association, accusing it of using his likeness from his college playing days without paying him or seeking his consent. The Complaint is the latest to claim the NCAA violates federal antitrust laws by keeping former student basketball and football athletes from receiving compensation for the commercial use of their images and likenesses. The Association has denied wrongdoing in all of those cases.

Electronic Arts Inc., the second-largest U.S. video-game maker, is also named as a Defendant in the lawsuit, filed in federal court in Oakland, Calif. Russell accuses that Defendant of using his image in a “Tournament of Legends” feature on an NCAA basketball video game. Russell, who led the University of San Francisco to NCAA championships in 1955 and 1956, alleges in the Complaint that the NCAA sells $150 videos of the team’s championship games. At least 54 clips featuring Russell are available through the website of the NCAA’s for-profit business partner, and photos of him are available through an NCAA online store, according to the Complaint. Russell is seeking a court order blocking further sale of the videos and video games, plus disgorgement of profits from them and unspecified damages.

As most all sports fans will recall, Bill Russell won 11 NBA titles with the Celtics and was a five-time NBA Most Valuable Player. He is second on the career list for rebounds with 21,620, trailing only Wilt Chamberlain, his rival throughout the 1960s. Jon King is the lawyer who represents Mr. Russell in his lawsuit and he may well be on to something. It will be very interesting to see how this lawsuit works out.

Source: Bloomberg

IX.
THE CORPORATE WORLD

COMMISSION ON WARTIME CONTRACTING ISSUES FINAL REPORT

The federal government’s Commission on Wartime Contracting has issued its final report, finding that $31 billion to $60 billion dollars in taxpayers’ money was wasted between fiscal year 2002 and fiscal year 2011. The final report states that this is a conservative estimate of money lost through American and foreign contractors. The commission urges Congress to develop specific goals for government contractors instead of utilizing contingency goals and objectives. Additionally, the report notes that new and enforcement mechanisms are necessary to prevent further fraud and abuse.

Operations in Iraq and Afghanistan averaged approximately $12 million dollars every day for the past ten years in waste. Millions of dollars were paid from the U.S. Government to the Taliban or insurgents fighting our armed forces. The Taliban and insurgents threaten harm to the employees of government contractors unless they pay “protection fees.” Contractors regularly capitulate to the insurgents’ demands and pay them out of the funds that the U.S. Government (American taxpayer money) has provided them.

But, the insurgents aren’t the only ones to blame for the billions of dollars wasted. The report cites inadequate competition for contracts as a major problem. Contracts are routinely awarded without competitive bidding and are then extended without a review of the contractor’s performance or reopening the contract to competitive bidding. In addition, the military regularly awards contracts without giving any task orders or expectations to guide government contractors. Therefore, the contractors are free to use the funds as they see fit and not in a manner that best accomplishes the contract’s goals.

Finally, there is also a problem with the proliferation of subcontractors. The majority of subcontractors come from cultures in which bribes and kickbacks are a normal part of business. The United States has little control over these subcontractors, and therefore has little oversight as to how they spend their money on kick-
backs. The report also found that Afghan subcontractors “have proved to be unreliable, while agency oversight has been especially difficult to implement.”

Because of contractor’s abuse of American taxpayers’ funds, the reputation of the United States has suffered abroad. Unfortunately, contractors do not limit their fraudulent activities with taxpayers’ money to Iraq and Afghanistan. Every year, government contractors, by submitting false claims for payment, defraud millions of dollars from the state and federal governments. When contractors commit fraud against the U.S. Government, they can be held accountable. The federal False Claims Act allows whistleblowers to file complaints to recover the damages done to the federal government. Whistleblowers who come forward and report wrongdoers can be awarded between 15% to 30% of the federal government’s recovery. Therefore, if the government recovers $1 million dollars, the whistleblower could receive a reward between $150,000 and $300,000.

Our firm takes fraud against the federal and state governments seriously. If you have any information in regard to contractors or subcontractors defrauding the federal or state governments, then please let us know. Andrew Brashier, a lawyer in our Consumer Fraud Section, has been investigating False Claims Act cases. He can be reached at 1-800-898-2034, 334-269-2343 or Andrew.Brashier@beasleyallen.com.


**REGIONS’ EMPLOYEE INDICTED IN MORTGAGE FRAUD**

A Regions Bank branch manager and 19 others have been accused by federal prosecutors of operating a $40 million mortgage fraud scheme in Miami. It was reported that Ivette Carreno, a manager at Regions, was instrumental in getting fraudulent loans approved. An indictment was returned last month in U.S. District Court in South Florida. Ms. Carreno and the others face 30 years in prison on each count they face if they are found guilty.

According to Birmingham-based Regions Financial Corp., the largest bank based in Alabama, it says it first discovered the fraud and reported it to authorities. It should be noted that the bank itself hasn’t been accused so far of any criminal wrongdoing. Regions could have civil exposure on the $20 million in bank losses stemming from the fraudulent and uncollectable loans. There are other lenders mentioned in the indictment, but none of them are Defendants. Those are IndyMac Bank, Flagstar Bank, Washington Mutual Bank and HSBC Mortgage Corp.

Prosecutors said the fraud started in 2006 and continued to 2008. About 200 home equity lines of credit were secured under false pretenses. The proceeds of the wrongdoing were shared among the almost two dozen participants. So it appears this didn’t just happen overnight and certainly wasn’t isolated in scope. Also of note was the depth of participation, requiring conspiracy among people in almost every facet of the real estate industry. That’s a very sad commentary when you consider who all is affected by the wrongdoing. The accused include the bank officer Carreno, mortgage brokers, a title agent, a home appraiser and several sales representatives. Concerning the conduct, prosecutors said in a statement:

**Even by South Florida fraud standards, today’s prosecution is shocking. Never before have we seen so many real estate and bank industry professionals charged in a single indictment.**

Otherwise, the fraud was said by the prosecutors to be pretty much straightforward. Properties were identified for purchase and people were recruited to file mortgage applications that included phony income, employment and credit-history information. Obviously, this sort of thing can’t happen unless individuals working in the various fields, including the bank, actively participated in the fraud. Also, others in management roles in the bank have to be almost blind to what’s going on.

It was alleged that the cooperation of appraisers and mortgage originators was purchased with bribes. The bank manager, Carreno, was paid to see that the loan applications were approved. Applications in some cases were for credit lines on properties that weren’t even owned by the applicants. Regions operates 81 branches in the Miami metro area, giving it a 3 percent deposit market share, according to the Federal Deposit Insurance Corp. The company has 1,800 branches in 16 states, and is the Birmingham metro area’s largest private-sector employer, with 6,000 workers. Regions says it’s working to eliminate such actions. The bank says since it uncovered this fraud, it has “further strengthened” its internal controls “in order to swiftly deter and identify questionable mortgage practices.” Nevertheless, this situation is just another example of how bad things have been in our banking system.

Source: AL.com

**ORACLE TO PAY $199.5 MILLION TO SETTLE OVERBILLING CHARGES**

Oracle will pay more than $199.5 million to settle accusations that it overbilled the federal government over a period of nine years. The settlement ends a lawsuit claiming that Oracle induced the General Services Administration to buy $1.08 billion in software from 1998 to 2006 by falsely promising the same discounts offered to favored commercial customers. The Justice Department joined the whistleblower lawsuit and was involved in bringing about the settlement.

The settlement is the largest ever obtained by the General Services Administration under the False Claims Act. A former Oracle employee, Paul Frascella, filed the lawsuit in 2007. Tony West, an assistant Attorney General in the Justice Department’s civil division, had this to say in a statement:

**Companies that engage in unlawful or fraudulent practices to secure government business undermine the integrity of the procurement process and create an unfair advantage.**

The government joined the whistleblower’s case in federal court in Alexandria, Va., and filed its own Complaint last year. It claimed Oracle had given companies discounts of up to 92 percent, but the government’s discounts ranged from 25 to 40 percent. As is the usual “company line,” Oracle denied that it committed any fraud whatsoever. But this wasn’t Oracle’s first rodeo. Oracle paid $98.5 million in 2006 to settle a case over GSA pricing at PeopleSoft.

I have to wonder what it will take for our leaders in Washington to wake up. Over the years, corporations doing business with the government have been allowed to cheat and sometimes pay fines and then continue doing business with the government. If you doubt this, all you have
to do is check the record. Does allowing this sort of thing to continue make sense?
Source: New York Times

**Citigroup Paying $285 Million to Settle SEC Fraud Charges**

Citigroup has agreed to pay $285 million to settle civil fraud charges by the federal government that it misled buyers of complex mortgage investments just as the housing market was starting to collapse. According to the Securities and Exchange Commission, Citigroup, the big Wall Street bank, bet against the investments in 2007 and in so doing made $160 million in fees and profits. Sadly, investors who become victims lost millions.

The penalty is the biggest involving a Wall Street firm accused of misleading investors before the financial crisis since Goldman Sachs & Co. paid $550 million to settle similar charges last year. As you may recall, JPMorgan Chase & Co. also settled similar charges in June and paid $153.6 million. All the cases have involved complex investments called collateralized debt obligations. Those are securities that are backed by pools of other assets, such as mortgages. Citigroup's payment includes the fees and profit it earned, plus $30 million in interest and a $95 million penalty. The SEC says the money will be returned to the investors.

Interestingly, in the July-September quarter, Citigroup earned $3.8 billion. It's also most revealing that CEO Vikram Pandit was awarded a multi-year bonus package this year that could be worth nearly $23.4 million if performance goals are met. At the height of the financial crisis in 2008, regulators were greatly concerned that Citigroup was on the brink of failure. The big bank received $45 billion as part of the $700 billion government bailout. There is something wrong when a huge corporation cheats, its customers suffer huge losses, and the cheating company and its CEO rake into tremendous profits and bonuses, and on top of that the government bails out the cheater and nobody goes to jail.

In the civil lawsuit filed against Citigroup, the SEC said the bank's traders discussed in late 2006 the possibility of buying financial instruments in order to essentially bet on the failure of the mortgage assets being assembled in the deal. Rating agencies downgraded most of the investments that Citigroup had bundled together just as many troubled homeowners stopped paying their mortgages in late 2007. That pushed the investment into default and cost its buyers—hedge funds and investment managers—several hundred million dollars in losses.

Citigroup bet that the investments would fail, but never told investors it had done so. Even though Citigroup designed the investment to fail, it told investors it had been designed by an independent manager, according to the SEC. Citigroup's marketing materials said the investments were picked by Credit Suisse. In an email about the deal, one Citigroup banker asked another not to tell Credit Suisse that it was designed for Citigroup to profit.

Credit Suisse also reached a settlement with the SEC. Two divisions of the bank agreed to pay a $1.25 million civil fine. It will also return $1 million in fees and pay $250,000 in interest.

**X. CONGRESSIONAL UPDATE**

**Nothing To Report From Congress**

I wish that we could report this month that Congress has been hard at work—acting on important legislation in a bi-partisan manner—and that progress is really being made. But, unfortunately, the reality is that Congress is locked into a virtual shutdown with most leaders looking ahead to next year's elections. To say that a monumental stalemate exists in the halls of Congress is a most accurate assessment of what has been going on. The public is fed up with the way things are done in Congress and with how lobbyists for Corporate America actually run the show. There is still time for responsible members in both the House and Senate to wake up and start working for middle and low income citizens. Hopefully, that will happen before it's too late.
in Los Angeles County, and is overseeing more than 100 cases filed in California state courts against Toyota Motor Corporation, has ruled that a class action brought by Orange County District Attorney Tony Rackauckas would be among the first cases to go to trial. This case is to run concurrently with unspecified additional “Bellwether” cases in the state court system. Judge Mohr has requested briefs from the lawyers relating to which cases will be in that grouping.

Just as a reminder, these sudden, unintended acceleration lawsuits came about after a recall of more than 8 million Toyota vehicles world-wide, including 6 million in the United States. With that many recalls, it doesn’t take a genius to figure out that real safety problems persist at Toyota. The majority of the lawsuits point to design defects ranging from the electronic throttle control system, failure to program a brake override system, or even the possibility of defective gas pedals, floor mats, or other electronic issues. The MDL lawyers are in the midst of a storm of discovery. Toyota has denied any electronic defect causing sudden unintended acceleration. There is much work to be done.

In addition to the individual death and injury cases that will be tried in the Toyota MDL, numerous class action Complaints also are pending before Judge Selna in the California MDL. Judge Selna has ruled that each of the state class actions will be governed by their own law, but the discovery for these cases remains consolidated for all class action Complaints regardless of the state in which they were originally filed. The discovery in the class action cases is also ongoing.

In summary, these Toyota cases are currently running on at least five litigation tracks: the Federal MDL in California; the California State Court MDL; the Texas State Court MDL; the New York State Court MDL; and the class action case currently pending in the federal MDL in California, also with Judge Selna. We will continue to update you on any new developments that occur with this very important Toyota MultiDistrict Litigation case involving the sudden unintended acceleration issue. If you have any questions, contact Dee Miles or Graham Esdale, lawyers in the firm’s Personal Injury Section, at 800-898-2034 or by email at Dee.Miles@beasleyallen.com or Graham.Esdale@beasleyallen.com. Graham is handling individual cases in state courts that involve injury or death.

XII.
PRODUCT LIABILITY UPDATE

SUVs AND PICKUPS MAKE HEADWAY IN SAFETY IMPROVEMENTS

We seldom have the opportunity to applaud efforts of the automobile industry in the Report. But when their efforts to improve the safety of their vehicles start making a difference, we should take note and give credit where credit is due. The Insurance Institute for Highway Safety (IIHS) has released a study demonstrating that the redesigned front-ends in the newer model SUVS and pickups by the automobile industry have led to fewer injuries and deaths when colliding with passenger cars and minivans.

IIHS, a nonprofit group financed by the insurance industry, attributed the findings to a voluntary effort between the Institute and automakers that began in 2003. Automakers pledged to design the front ends of their SUVS and pickup trucks so that they would be less likely to kill passengers riding in smaller vehicles during a collision. Modern SUVS and pickups, the study found, were no more deadly than modern cars in front-to-front and front-to-side crashes, provided the SUVS and cars were of similar weight.

While a mismatch in vehicle mass would still heighten the risk of death, the geometric “compatibility” among SUVS, pickups and cars lowers the risk. “In the past, you had both a geometry mismatch and a mass mismatch, leading to a pretty bad problem,” said Joe Nolan, the Institute’s Chief Administrative Officer and co-author of the study. As mentioned earlier, the program began in 2003 when it seemed likely that the National Highway Traffic Safety Administration (NHTSA) would begin work on a compatibility standard. Instead, a voluntary program was proposed by several groups representing automakers, as well as the Insurance Institute.

The voluntary agreement contained two major measures. Primarily, cars would need to do a better job of protecting heads in side-impact crashes. Secondly, the fronts of SUVS and pickups would need to be designed to make them less likely to ride over a car’s bumper. NHTSA asked automakers to address the compatibility issue amid concern about the changing vehicle mix on U.S. roads. In response, the Alliance of Automobile Manufacturers, the Association of Global Automakers, and the Institute led a series of meetings in 2003 to come up with solutions. Participating automakers included BMW, Chrysler, Ford, General Motors, Honda, Hyundai, Isuzu, Kia, Mazda, Mercedes, Mitsubishi, Nissan, Subaru, Suzuki, Toyota, and Volkswagen.

The companies agreed to build the front-ends of SUVS and pickups so that their energy-absorbing structures would line up better with those of cars, reducing the likelihood that an SUV or pickup would over-ride a car in a collision. Better alignment allows both vehicles’ front-ends to manage the crash energy, helping to keep it away from the occupant compartments. The automakers also pledged to strengthen head protection in all vehicles in order to improve outcomes when an SUV or pickup strikes another vehicle in the side. They accomplished this by installing more head-protecting side airbags.

The recently-released study examined SUVS, pickup trucks, cars and minivans that were one to four years old in 2000-2001 and looked again at vehicles that were one to four years old in 2008-2009. Researchers separated each of those three vehicle classes into weight categories that ascended by 500 pounds. Next, they compared the number of occupants killed in two-vehicle crashes between cars and minivans exclusively. The cars or minivans in which people were killed could have been of any age, size and weight.

In the largest reduction of vehicular deaths noted, the death rate for people in cars or minivans that were hit by SUVS weighing 3,000 to 3,499 pounds declined by 65 percent, from 44 deaths per million in 2000-2001 to 16 in 2008-2009. At the high end of the weight spectrum, the authors observed a 45 percent decline in deaths for SUVS that weighed more than 5,000 pounds.

Regarding the death rate for people in cars or minivans that were hit by other cars or minivans that weighed 3,000 to 3,499 pounds, the authors found that the death rate was virtually identical—17 deaths per million—as when those cars were hit by SUVS. 16 deaths per million. In some weight categories, cars hit by other cars showed a lower death rate than cars hit by SUVS, but the difference was minimal.

Researchers attributed the improvements to the redesign of the front ends of
SUVs and pickups, which were previously known to override the lower bumpers of vehicles they struck. The stronger architecture and proliferation of side-curtain air bags in cars and minivans was also a position factor according to the researchers. Joe Nolan, the Institute’s Chief Administrative Officer, made this observation:

*By working together, the automakers got life-saving changes done quickly. The new design has made a big difference on the road.*

What Mr. Nolan had to say is pretty much what lawyers in our firm who handle product liability cases have been saying all along. When automakers decide to put safety over profits, life-changing results can be achieved. In this instance, the automobile industry as a whole made their SUVs and pickup trucks more compatible with the smaller passenger cars and minivans on the public highways. As a result, serious injuries and death rates have been dramatically reduced. We applaud the industry’s efforts in improving the safety of their vehicles. If you would like more information on this subject, contact Dana Taunton at 800-898-2034 or by email at Dana.Taunton@beasleyallen.com.


**THE DUNLOP 402 HARLEY-DAVIDSON TIRE**

As has been widely reported, motorcycle use is on the rise in this country. In fact during the last decade, motorcycle ridership has increased over 50%. No longer are motorcyclists limited to the “Easy Rider” stereotype that we have seen on roadways for decades. In fact, it is estimated that now almost 10% of all motorcycle owners are women. Harley-Davidson has also developed a strong following among Baby Boomers and retirees. As a result, the number of fatalities and serious injuries involving motorcycle riders has increased steadily. More motorcyclists were killed last year than in any year since the National Highway Traffic Safety Administration began collecting fatal crash data in 1975.

Many of the injuries and deaths are caused by defective bikes and/or the motorcycle’s unsafe components. Aprilia, Big Dog, BMW, Buell, Decati, Harley-Davidson, Honda, Kawasaki, Suzuki and Yamaha all instituted safety-related recalls of their motorcycles last year. Some of the defects commonly found with motorcycles include defective tires, swing arms, forks, throttles, kick stands, wheel spokes, crash bars, brake systems and helmets.

One of the primary safety issues facing motorcyclists are defective tires. Like passenger tires, motorcycle tires are susceptible to design and manufacturing defects which lead to failure. While a tire failure can cause a passenger vehicle to be uncontrollable, a motorcycle is much more likely to suffer a loss of control should its tire fail. Severe injuries and death are almost a certainty in these types of wreck caused by tire failures. For example, our firm is currently handling a case where our client was seriously injured when the rear tire, a Dunlop D402, failed while he was riding his Harley-Davidson Screaming Eagle. The failure caused his motorcycle to go out of control.

The Dunlop 402 is made by Dunlop specifically for Harley-Davidson. These tires are experiencing numerous failures in the field and are responsible for several deaths and numerous injuries. Recently, one of the motorcycle world’s leading safety advocates lost his life when a Dunlop 402 on his Harley experienced a sidewall blowout.

The defect with Dunlop 402 is in the bead seat area of the tire. This is the area where the rubber of tire essentially fits to the rim. Because there are design and manufacturing defects in this area of this tire, the tire can and does experience a sudden loss of air which leads to a catastrophic failure. When this tire fails, its loss of air pressure can be so sudden and severe that the sidewall actually blows out. When that happens, the tire looks like it was shot with a shotgun from the inside out.

Goodyear, Dunlop and Harley have been aware of the issues with the 402 tires for a long time. Yet, they have failed to take any corrective actions such as a recall or a change of design with the tire. If you need more information on this subject, contact Rick Morrison, a lawyer in our Products Liability Section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com. Rick has successfully handled a number of cases for clients involving motorcycles and bad tires.

**JURY RETURNS $20 MILLION VERDICT IN POOL SLIDE SUIT**

A Massachusetts jury has ordered Toys `R Us to pay more than $20 million to the family of Robin Aleo, who was killed when an inflatable pool slide partially collapsed at a 2006 party. The slide purchased from the toy retailer was not tested to determine if it met certain safety standards. Ms. Aleo, who lived in Colorado, was visiting family in Andover, Mass., when she slid head-first down the slide and it partially collapsed. The woman suffered fatal injuries when she struck her head on the pool’s edge. Lawyers for Toys ‘R Us argued at trial that the regulations cited did not apply to that inflatable slide. Obviously, the trial judge and jury disagreed.

Source: Associated Press

**XIII. MASS TORTS UPDATE**

FDA PANEL URGES MORE PRE-MARKET TESTING OF VAGINAL MESH PRODUCTS

On September 9, 2011, an FDA Advisory Panel recommended that vaginal mesh products be reclassified to Class III devices and that more stringent pre-market testing be required prior to approval. Class III devices are required to undergo full pre-market approval which includes safety testing. In addition, Special Controls may be instituted such as physician labeling, patient labeling, pre-market studies, performance standards, patient registry, and importantly, enhanced postmarket surveillance. Most mesh products currently are exempt from pre-market testing. Instead, they are approved under 510(k) review which only requires a showing that a device is substantially similar to another device previously approved.

Transvaginal mesh products are used to repair conditions in women such as pelvic organ prolapse (POP) and stress urinary incontinence (SUI). Pelvic organ prolapse is the bulge of organs/structures surrounding the vagina into the vaginal opening or extending beyond the vaginal opening, caused by a laxity of supporting tissue of the vagina. Stress Urinary Incontinence is the involuntary leaking of urine associated with an increase in intraabdominal pressure which may be caused by straining, physical activity, coughing or sneezing.

From 1992 until 2010, the FDA approved 168 vaginal mesh devices used for repair of POP or SUI. These products were approved using the 510(k) process and they did not undergo preclinical testing. Most of these devices were approved between 2001 and 2010. Serious complications associated with surgical mesh for vaginal repair of pelvic organ prolapse and stress urinary incontinence have increased dramatically along with the flood of additional mesh devices onto the market. From 2008 until 2010, nearly 3,000 adverse events have been associated with surgical repair of POP and SUI using the transvaginal placement of mesh. These adverse events include organ perforation, bleeding, urinary incontinence, fecal incontinence, pelvic pain, infection, discomfort during intercourse, and the need for corrective surgeries.

Our Mass Torts Section is investigating claims where women have experienced any of the above conditions following the transvaginal placement of mesh for POP or SUI repair. If you or a loved one has suffered such an injury, please contact Leigh O’Dell, a lawyer in our Mass Torts Section, at Leigh.Odell@beasleyallen.com.

AN UPDATE ON THE FOSAMAX FEMUR FRACTURES LITIGATION

Recently, the FDA’s Reproductive Health Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee held a joint meeting to discuss the appropriate duration of use for Fosamax and other bisphosphonates. Among other things, the committees discussed the risks and benefits of these drugs. As you may recall from our previous articles on bisphosphonates, these are drugs prescribed for the treatment of bone loss and osteoporosis.

Earlier this year the FDA required manufacturers of bisphosphonates to include language in their labels stating that the optimal duration for patient use has not yet been determined and that patients should consult with their physicians on a regular basis to re-evaluate their use of these medications. The FDA, as reports of atypical fractures continue to emerge in long-time bisphosphonate patients, has had to take a
stronger position. It has become a sensitive topic for the FDA.

This is another instance where the FDA has weighed in on bisphosphonates. You may recall last year, that the FDA required language regarding an increased risk of atypical femur fractures after an American Society for Bone and Mineral Research task force concluded that the risk does, in fact, exist.

There have also been recent developments in New Jersey where the Judicial Panel for Multi District Litigation has consolidated all federal cases under In re: Fosamax Products Liability Litigation (No. II), MDL 2243. This litigation encompasses hundreds of cases against Merck Sharp & Dohme, Corp. involving femur fractures. The cases are consolidated under U.S. District Judge Garrett E. Brown, Jr. in the District of New Jersey.

Chad Cook, a lawyer in our firm's Mass Torts Section, has been selected to help direct this litigation. He is one of 11 lawyers appointed by Judge Brown to the Plaintiffs Steering Committee (PSC), which will oversee the consolidated litigation. Our firm continues to investigate new claims involving individuals who took Fosamax and suffered a femur fracture. If you need more information on Fosamax, contact Chad Cook at 800-898-2034 or by email at Chad.Cook@beasleyallen.com.

Failure Rates for DePuy All-Metal Hip Implants Continue to Rise

Recent reports indicate that metal-on-metal hip implant failures are rising at an alarming rate. The Federal Drug Administration has received more Complaints related to metal-on-metal hips during the first six months of this year than during the past four years combined. The National Joint Registry for England and Wales reports that the DePuy ASR has the highest failure rate of all metal-on-metal hips, with a 29% failure rate for patients who were implanted with the ASR six years ago.

The DePuy ASR is not the only all-metal hip implant with a growing failure rate. An analysis of the FDA's computerized reporting database, the Adverse Events Reporting System (AERS), reveals that reported failures of the DePuy Pinnacle is also on the rise. AERS allows health care professionals and consumers to report adverse events caused by drugs or medical devices.

Between July and September of this year, the FDA received 709 Pinnacle AERS reports, compared to 556 reports in the previous six months (January—June) and 556 in all of 2010.

The problems with the metal-on-metal Pinnacle device have led to lawsuits around the country, much like the ASR device. In fact, according to recent court documents, over 500 DePuy Pinnacle Complaints have been consolidated in the Multi-District Litigation (MDL) in the North District of Texas in front of Judge Ed Kinkeade. This is a sharp increase when compared to June of this year, when about 50 Complaints had been consolidated. Many expect the number of claims to increase steadily as lawyers continue to investigate and file new Pinnacle claims in federal court.

All of the Pinnacle suits involve similar allegations, such as design and manufacturing defects, and a failure to warn physicians and patients of the implants' serious risks of adverse events. In many cases, the complications from the Pinnacle implants required additional surgery to revise or replace the hip replacement.

Unlike the Depuy ASR, DePuy has not recalled the all-metal version of the Pinnacle Device. But, on May 6, 2011, the FDA issued a post-market surveillance study of all-metal hip replacement devices. The study requires manufacturers of metal-on-metal hip implants to monitor adverse events of metal-on-metal devices already on the market. As a result, if you have a metal-on-metal hip replacement device, your surgeon may be contacting you to find out how your device is functioning.

Any person who has had a hip replacement should contact their orthopaedic surgeon to determine whether they received a DePuy ASR or Pinnacle metal-on-metal hip implant. For more information on this subject, contact Navan Ward, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Navan.Ward@beasleyallen.com. As we have reported, Navan is on the PSC for the MDL.


Revised Avandia Warnings Are Inadequate

A U.S. District Court in Pennsylvania has ruled that updated product warnings concerning the diabetes drug Avandia may not have adequately warned users of the risks of heart attack and stroke. This ruling came when the court denied a motion for summary judgment in a pending case. The judge hearing the motions has been assigned to hear Avandia cases by the federal panel on multidistrict litigation. As we have previously reported, GlaxoSmithKline aggressively marketed Avandia without warning of increased risks of heart attack and stroke compared to other diabetes drugs.

In this case, GlaxoSmithKline sought to dismiss certain Plaintiffs who took Avandia after the drug company updated its product warnings in 2001. In the alternative, the drug company wanted the court to dismiss the claims of certain plaintiffs who took Avandia after revised warnings were issued in 2007. The updated Avandia label adopted in 2001 generally warned users of the risk of congestive heart failure. A new Avandia label introduced in 2007 included similar warnings with more detail concerning risks for specific patient subpopulations. The 2007 label also included a black box warning that Avandia directly causes congestive heart failure in some patients.

The court concluded that it could not be said as a matter of law that the revised Avandia warnings adequately warned users of the drug's risks. The court said in the ruling:

[GlaxoSmithKline] has stressed repeatedly that a label need only be adequate, not perfect. The court does not require a showing of perfection to find a label adequate as a matter of law; instead it requires a finding that no questions of fact remain as to a label's accuracy, clarity and completeness regarding the scope and nature of the risk in light of what a manufacturer knew or should have known at the time a cause of action arose. The court cannot make such a finding here. … In short, a reasonable jury could conclude that although the 2001 and 2007 labels warned about [congestive heart failure] risks, they did not do so specifically enough or directly enough.

The ruling is sound and is very important in this litigation. It's for a jury to decide whether or not the warnings are adequate. GlaxoSmithKline had a duty to warn of the safety risks and the warnings had to reflect what the manufac-
JURY RETURNS A $104 MILLION VERDICT IN A PROPOFOL CASE

In the third trial over a rash of hepatitis C infections caused by contaminated vials of the anesthetic propofol at Las Vegas colonoscopy and endoscopy clinics, a jury has ordered two drug makers to pay $104 million to 71-year-old Michael Washington and his wife Josephine. It was contended at trial that Teva Pharmaceuticals, which makes the drug, and Baxter Healthcare Corp., the company that marketed it, knew that the jumbo 50 ml and 100 ml vials of propofol were at risk of being reused for multiple patients in shorter surgeries. The Plaintiffs said smaller, single-dose prefilled 10 ml syringes should be used.

Plaintiffs have now won three consecutive cases resulting in three large verdicts being returned in each of the cases. Two days prior to the latest verdict, another jury in the very same courthouse awarded $182.5 million to three patients infected in the outbreak. In April 2010, a jury awarded $505 million in the first trial. Unlike the other trials, the latest was the first time the Plaintiffs won on a defective design claim.

The defective design claim holds the drug companies accountable for selling the 50 ml vials in clinics. It will definitely have an impact on marketing. There were two claims in the case: a claim that it was negligent to put a product on the market and not try to modify it and to sell it to endoscopy centers; and a defective design claim that nobody under any circumstance needs a 50 ml vial.

Jurors returned a verdict of $7 million for Mr. Washington and $7 million for his wife. It should be noted this exceeded the $5 million each that their lawyer requested. The jury also awarded $90 million in punitive damages ($60 million against Teva and $30 million against Baxter) which speaks to the Defendants’ conduct. It was quite obvious that the jurors intended to punish the Defendants.

The Plaintiffs’ lawyers in this case were Richard H. Friedman of Friedman Rubin in Seattle; Patti S. Wise of Edward M. Bernstein and Associates in Las Vegas; and Matthew L. Sharp of Matthew L. Sharp in Reno, Nev. They did a very good job in the case.

Source: Lawyers USA Online

XIV. BUSINESS LITIGATION

CONNECTICUT LAWSUIT OVER PUBLIC BOND RATINGS SETTLED

Moody’s Investors Service Inc., Standard & Poor’s and Fitch Inc. have reached settlements with the State of Connecticut resolving claims that the credit rating companies unfairly gave lower ratings to public bonds. Connecticut sued Moody’s, S&P and Fitch, claiming that because of deceptive practices by these companies, the state, municipalities and school districts paid higher interest rates than they should have on bonds they issued, and bought unnecessary bond insurance.

Former Connecticut Attorney General Richard Blumenthal sued the ratings agencies in July 2008, calling the system “a secret Wall Street tax on Main Street.” The current Attorney General George Jepsen obtained the settlement, under which the companies will credit Connecticut about $900,000. That will be used to offset the expense of obtaining future ratings on the sales of state bonds.

A number of officials including U.S. Representative Barney Frank, Bill Lockyer, California’s treasurer, and others had complained that the credit-rating companies systematically graded municipal bonds lower than corporate bonds, forcing government borrowers to pay higher interest rates. Moody’s, S&P and Fitch were also key players in the mortgage-backed securities meltdown that recently occurred on Wall Street. These rating agencies put profits over integrity and failed to perform their important debt rating duties honestly and objectively. This is just one more example of why Wall Street needs more regulation and oversight, not less.

Source: Bloomberg

COURT ORDERS BOSTON CHIROPRACTOR TO PAY MILLIONS TO INSURERS

A Massachusetts court recently ordered a Boston chiropractor and the clinics he owns to pay millions of dollars in damages to five insurers. The companies, Encompass Insurance, Norfolk & Dedham Mutual Fire Insurance, OneBeacon Insurance, Premier Insurance and Commerce Insurance, had sued Dr. Jason Corbett, the chiropractor, who operates a number of clinics in the Boston area. Dr. Corbett initially sued several insurers, claiming that the insurers unevenly denied personal injury protection (PIP) benefits claims made by his clinics on behalf of patients. He charged that money was owed to him for chiropractic services reportedly given to numerous patients involved in automobile accidents.

But after an investigation, the insurers counter-sued in 2005. In their lawsuit, the insurers alleged that Dr. Corbett committed fraud, civil conspiracy, unfair business practices, and violations of the Federal Racketeer Influenced and Corrupt Organizations (RICO) Act. The insurers said they had paid out substantial sums because of Dr. Corbett’s fraudulent activities. Certain individual employees at Corbett clinics have also been added as Defendants in insurers’ counter lawsuit filed by the insurers.

A Suffolk Superior Court judge agreed with the insurers, stating that Dr. Corbett was responsible for “misrepresentations” and that the fraud stemmed “from chiropractic patients treated at the Corbett clinics who were referred to the clinics by runners or who received unnecessary treatment.” Dr. Corbett and his clinics were ordered by the judge to pay $859,000 to Encompass and $1.1 million to Norfolk & Dedham. Similar amounts were awarded to OneBeacon, Premier, and Commerce. The judge said in his order:

The Defendants engaged in a pattern and practice of medical billing insurance fraud to obtain money from the insurers...by submitting chiropractic invoices containing excessive charges seeking payment for excessive and/or non-existent chiropractic treatment.

This was a very strong case involving fraudulent conduct and the testimony in the case showed how very bad Dr. Corbett’s conduct was. For example, a chiropractor who was temporarily employed at the clinics testified by deposition that:

patients were to receive a certain regimen of physiotherapy modalities
was created. It would sway back and forth, a safety hazard some 65 feet off the ground and then closed this year. Since the ride lifts riders which began operating in 2006, has been of warranty and negligence. The ride, the case alleges breach of contract, breach violations, the Defendant, built the ride and had repaired. It was reported by runners and who had not been involved in genuine accidents. 

The conduct revealed in this case during the trial can’t be tolerated. The case is Commerce Ins. Co. et. Al v. Jason Corbett et. Al., Suffolk Superior Court in the Commonwealth of Massachusetts.

DOLLYWOOD SUES GERMAN BUILDER OVER RIDE MALFUNCTION

The Dollywood theme park, which is located in East Tennessee, has filed a $500,000 lawsuit against a German company over a ride that park officials claim has malfunctioned. The suit, filed in Sevier County Circuit Court, contends that the Timber Tower ride has not worked properly and has not been satisfactorily repaired. It was reported by The Mountain Press, a local paper, that HUSS Park Attractions, the Defendant, built the ride and had a contract to repair it. The Complaint in the case alleges breach of contract, breach of warranty and negligence. The ride, which began operating in 2006, has been closed this year. Since the ride lifts riders some 65 feet off the ground and then would sway back and forth, a safety hazard was created.

Source: Associated Press

DEBT COLLECTORS MAY BE VIOLATING TELEPHONE CONSUMER PROTECTION ACT

Several class action lawsuits have been filed recently against third-party debt collectors, including Portfolio Recovery Associates, LLC, alleging their practices violate the Telephone Consumer Protection Act (TCPA). As you may know, TCPA is a federal law which restricts the use of automated equipment to dial cellular telephones. The statute specifically prohibits and makes it unlawful to use any automatic telephone dialing system or pre-recorded voice to make any call to a paging service, cellular telephone, specialized mobile radio service or other radio common carrier or any other service for which the party called is charged for the call.

Many debt collection agencies use predictive dialers. Predictive dialers place calls without human intervention until a connection is made, in which case the dialers then attempt to connect the recipient with a debt collector. In most cases, the debtor has not authorized automated placement of calls to his or her cell phone and in many instances did not even provide their cell number to the Defendant or original creditor. Furthermore, many debt collection agencies are violating the TCPA while trying to collect debts which have already been charged off by the original creditor. The TCPA allows victims to receive statutory damages even if the Defendant’s actions are only negligent. If you or someone you know has been the subject of a robo-call or pre-recorded call to their cell phone, or you need more information on this matter, you can contact Bill Hopkins at Bill.Hopkins@beasleyallen.com.

Source: Insurance Journal

XV.
AN UPDATE ON SECURITIES LITIGATION

JMORGAN AND BANK OF AMERICA SUED OVER MORTGAGE DEBT LOSSES

Since the last issue of the Report, more lawsuits have been filed against JPMorgan Chase & Co. And Bank of America Corp. by investors claiming losses on $4.5 billion of bad mortgage debt. The Plaintiff, Scalink Funding Ltd., claims it lost money after buying nearly $2.4 billion of residential mortgage-backed securities (RMBS) from JPMorgan and $1.6 billion from Bank of America from 2005 to 2007. The Plaintiff says it relied on offering materials that were misleading about the quality of the underlying loans.

Scalink, an Irish entity, oversees risky RMBS that contributed to the near collapse of Germany’s Landesbank Sachsen AG. Interestingly, another German company, Landesbank Baden-Württemberg, raised similar claims in a separate lawsuit against JPMorgan over $500 million of RMBS that it bought. Each of the lawsuits accuses the banks of packaging large amounts of high-risk mortgages by such issuers as Countrywide Financial (now owned by Bank of America), Bear Stearns, and Washington Mutual (now owned by JPMorgan), in pursuit of higher profits. It’s alleged further in the lawsuit that:

This misconduct has resulted in astounding rates of default on the loans underlying the defendants’ RMBS and massive downgrades of the (investors’) certificates, the vast majority of which are now considered ‘junk.’

In the lawsuits, the investors are seeking compensatory and punitive damages. The cases were filed in the New York State Supreme Court in Manhattan. In a separate lawsuit filed in the same court, Britain’s Barclays Plc was sued by Germany’s HSH Nordbank AG, which said it lost $40 million after being misled into buying risky RMBS.

Banks are facing a good number of lawsuits by mortgage securities investors seeking to hold them responsible for losses on debt that turned toxic once the housing and credit crises began more than four years ago. These slip-shod and highly risky lending practices were bound to cause problems if the economy ever hit a snag. As we have previously reported, Bank of America is seeking court approval of an $8.5 billion global settlement covering investors in mortgage pools with $174 billion of unpaid Countrywide principal balances.

As we mentioned in the October issue, Bank of America and JPMorgan are also among lenders negotiating with regulators including all 50 state Attorneys General on a multibillion-dollar accord addressing foreclosure abuses. The cases are all

Supreme Court rejected the appeal against Blackstone Group LP, alleging the private equity firm failed to disclose problem investments before its 2007 initial public offering, allowing the case to proceed. The Justices refused to review whether a U.S. Appeals court in New York used the wrong legal standard when it ruled that the lawsuit by investors could go forward. A federal judge had initially dismissed the lawsuit.

The lawsuit alleges that New York-based Blackstone failed to properly disclose a $331 million investment in FGIC, a bond insurer hurt by subprime mortgages; a $3.1 billion investment in Freescale Semiconductor Inc, which would lose a key contract; and some commercial real estate investments. The lawsuit attempts to hold Blackstone, co-founder and Chief Executive Stephen Schwarzman, co-founder Pete Peterson and others responsible for investor losses.

Blackstone, one of the world's largest and best known private equity firms, offered 153 million common units at $31 each when it went public in June 2007, raising $4.7 billion. It had $88.4 billion under management at the time. Blackstone had contended that the appeals court disregarded “a long-standing rule of thumb” that omissions affecting less than 5 percent of the assets under management are likely to be immaterial to a firm's business as a whole. The Plaintiffs contended that the appeals court ruling was correct and that there were no important policy concerns that merited Supreme Court review.

David Brower, a lawyer with Brower, Piven, a law firm of Robbins Geller, was the lawyer for the Plaintiffs. He observed:

*This case has sharply reined in certain practices within the investment banking community, where many financial advisers regularly gamed the M&A process through double-dip engagements.*

If anybody wonders why ordinary citizens are protesting all they have to do is review all of the massive wrongdoing on Wall Street. In my opinion, we are very close to total dissatisfaction with how the big banks have been operating and also with how weak government regulation has been. The case is In Re Del Monte Foods Company Shareholders Litigation, pending in the Delaware Chancery Court.

Source: Insurance Journal
**XVI. INSURANCE AND FINANCE UPDATE**

**TRANSIT AUTHORITY SUES INSURER FOR $13 MILLION OVER LOST REVENUE**

Washington Metropolitan Area Transit Authority (METRO) has filed a lawsuit against its insurer, Lexington Insurance Co. of Boston, claiming that the insurer failed to indemnify the Authority for the revenue losses in the train system’s ridership following the 2009 crash that killed eight passengers. Metro is seeking to recover some $13 million from Lexington Insurance. The Complaint was filed in U.S. District Court for the Eastern District of Virginia.

Metro claims it has suffered “falling ridership and consequential loss of revenue” because of the June 2009 crash that killed a train operator and eight passengers and injured many more. Metro estimates some 6 million rides were lost following the crash, with fares ranging from $1.95 to $5. The train system is still not restored to normal operations as a result of the accident. Metro had paid $1.86 million in premiums for up to $50 million of coverage per incident, including losses resulting from partial, complete or potential suspension of business.

Lexington says it has paid out $1.21 million in claims thus far related to the crash. Lexington Insurance is owned by its parent company, AIG-owned insurer Chartis, and is a U.S.-based surplus lines insurer. It operates through several divisions: property, casualty, programs, health-care, personal lines; and specializes in a number of industry practices: real estate, higher education, transportation, and public entity.

Source: Insurance Journal

**TEXAS INSURER IN NEW YORK BOAT ACCIDENT PLEADS GUILTY TO FRAUD**

Christopher Purser has pleaded guilty to a charge related to selling fraudulent insurance policies, including one to a company that owned a tour boat which capsized in a New York lake in 2005, killing 20 tourists. Purser pleaded guilty in a Houston federal court last month to a charge of conspiracy to commit wire fraud. Authorities said Purser sold fraudulent policies from 2004 to 2006 in Texas and across the country.

One of the policies he sold was to Shoreline Cruises Inc., which operated the Ethan Allen, a boat that tipped over on Lake George in northern New York in October 2005. According to officials, none of the claims made against the policy could be paid. Purser could serve up to 20 years in prison when he is sentenced in January 19th. According to Texas regulators, associates of the companies involved are suspected of peddling millions of dollars in nonexistent insurance.

The Texas Department of Insurance in 2005 shut down what it said was an unauthorized insurance scheme that may have cost apartment owners and condominium associations millions of dollars in premiums for bogus property and liability coverage. Purser was named as a respondent in the Department’s order. In addition to Purser, other respondents named in the 2003 order were: International Property Owners Association Ltd., Mandaluyong, Philippines; UAC Ltd., Managua, Nicaragua; and Dennis Ray Hamann, Katy.

Source: Insurance Journal

**ALLSTATE FILES $4.5 MILLION INSURANCE FRAUD CLAIM**

Seeking to recover $4.5 million from medical providers in a scheme to allegedly bill insurance companies for procedures that were medically unnecessary and in many cases inappropriate, Allstate Insurance Company filed counterclaims and Complaints against the perpetrators. Allstate filed counterclaims and a third party Complaint alleging that two New York medical professional corporations—Cambridge Medical P.C. and Pine Hollow Medical, P.C.—were fraudulently incorporated through a scheme using the names of licensed medical physicians, and that a lay-owner, who was not a physician, secretly owned and controlled the medical professional corporations. Cambridge filed a civil lawsuit seeking to recover billing from Allstate. The insurer responded with its counterclaims and a third party Complaint.

Allstate alleges in its counterclaims and third party Complaint that these corporations fraudulently billed Allstate Insurance Company. The claims were filed following an investigation by Allstate’s Special Investigative Unit and seek reimbursement for personal injury protection benefits Allstate paid on behalf of its customers during time frames specified in the counterclaims and third party complaint. Since 2003, Allstate has filed 32 fraud lawsuits in New York State, seeking more than $175 million in damages.

As I have mentioned on numerous occasions, corporate entities such as Allstate appear to really “like” the court system when they consider themselves to be victims. But when they are the wrongdoers, the corporate bosses have a totally different mind set.

Source: Claims Journal

**XVII. EMPLOYMENT AND FLSA LITIGATION**

**A VICTORY FOR WORKERS IN OVER-TIME-PAY CASE**

It’s been decades since Congress enacted the Fair Labor Standards Act of 1938 (FLSA). This is the federal law that, in part, guarantees workers overtime pay for hours worked over 40 in a single workweek. Yet how to remedy a company’s FLSA violations remains a topic for debate. To illustrate the debate, imagine an employee works 60 hours a week, while earning a weekly salary of $600. This employee later files suit alleging he was wrongfully denied overtime compensation, and contends he is entitled to time-and-a-half pay for all hours worked over 40 each week for the last three years. The company disagrees, taking the position that if the employee is entitled to back overtime pay, he is only entitled to one-half pay for hours worked over 40.

This method is known as the fluctuating workweek method, and companies have attempted to apply it in order to drastically reduce their liability. In the above example, based on the time-and-a-half pay method, the employee would be entitled to $70,200 in back wages. Based on the one-half pay method, the employee would only be entitled to $15,600 in back wages. The differing calculations would result in a difference in damages of $54,600, which is extremely beneficial to the employer.

Recently, a court rejected an employer’s attempt to use this economically-advantageous calculation. In Perkins v. Southern New England Telephone Co., the District
of Connecticut court found that applying the fluctuating workweek method of overtime compensation requires that an employer actually contemporaneously pay an overtime premium of one-half pay for overtime hours in addition to the employee’s salary. Further, the court noted that allowing an employer to take advantage of this approach actually provides a perverse incentive to violate the law by creating a windfall for the employer if found liable. Thus, the court held that the employer couldn’t apply the fluctuating workweek method when calculating FLSA damages. This was a real victory for employees. If you have any questions about this type litigation contact Lance Gould or Larry Golston in our Consumer Fraud Section at 800-898-2034 or by email at Lance.Gould@beasleyallen.com or Larry.Golston@beasleyallen.com.

$4 Million Sutherland Settlement Of Overtime Lawsuit Approved

Sutherland Global Services Ltd. has settled a class-action lawsuit alleging it failed to pay its call center telemarketers the overtime they were owed. The lawsuit, filed in 2005 in U.S. District Court for the Western District of New York, was brought by a pair of Rochester employees of the Perinton-based business process outsourcing company. The suit eventually grew to ten named employees and hundreds of unnamed workers, who claimed they regularly worked more than 40 hours a week but were not paid overtime. Sutherland agreed in July to a $4 million settlement to be divided among members of the class. U.S. District Judge David G. Larimer has given final approval to the settlement, which winds up the litigation.

Source: Democratandchronicle.com

XVIII. PREMISES LIABILITY UPDATE

Jury Awards $1.5 Million In Electrical Shock Case

A Greene County, Ala., jury awarded $1.5 million last month to a man who was shocked by low-hanging power lines in 2006. Ronald McCarter, 52, sued Black Warrior Electric after he was shocked while working for a paving company. The worker was helping to pave a portion of Alabama Highway 14 when the vehicle he was operating struck the lines, sending 7,600 volts of electricity through his right arm.

More than twice the amount of electricity that was used for the electric chair went into the man’s right hand and out of his right elbow. The Plaintiff can now only perform limited tasks with his right arm and is in constant pain. He wears a sleeve to reduce swelling and can no longer contract his hand. Two doctors testified at the trial that Mr. McCarter will suffer from pain for the rest of his life.

National codes require that power lines that carry that amount of voltage must be placed a certain height above the ground. According to evidence at trial this incident never would have happened if Black Warrior Electric had hung those lines at the proper height, maintained and inspected them. Black Warrior Electric is expected to appeal the decision.

Source: Tuscaloosa News

ALARM COMPANY SETTLES WITH WOMAN’S ESTATE

ADT Security Services Inc. settled a lawsuit last month that was filed because of a failed home burglar alarm system. The estate of Teri Lee, a mother of four children, filed the suit against ADT. The amount to be paid under the settlement is confidential. Ms. Lee and her boyfriend were shot and killed in her rural Washington County home in 2006. This incident occurred just weeks after the homeowner bought a state-of-the-art ADT alarm system in an effort to protect herself against her ex-husband, who had made threats and was considered to be violent.

Homeowners who contract with companies to install intrusion alarms in their homes do it for protection in their homes. In this case, the system failed and there was no protection. When the break-in occurred there was no audible alarm, nor were police notified. Many alarm companies rely on contract language to insulate themselves from liability. In my opinion, that shouldn’t be allowed since it’s definitely against public policy. Many of the alarm contracts used by Alabama companies attempt to shield the companies from liability for personal injury or death in the event of an alarm malfunction, a faulty installent, or a failure to monitor. Bill Harper and Paul Peterson, lawyers from Woodberry, Minn., represented the Plaintiff in the Lee case and did a very good job.

Source: Claims Journal

FAMILY OF STUDENT WHO WAS KILLED SUES SECURITY COMPANY

A lawsuit has been filed against a security company by the mother of a college student who was killed after she attended a Metallica concert in Charlottesville, Va. The lawsuit was filed in Roanoke County Circuit Court against Regional Marketing Concepts Inc., doing business as RMC Events. RMC provided security at the concert which took place in 2009.

Morgan Harrington, a student at Virginia Tech, who was 22 years old, disappeared after she left the John Paul Jones Arena and was denied re-entry. Her body was found in January 2010 in a hayfield in Albemarle County. It was reported in the media that the “no re-entry” policy is common practice for events like the Metallica concert. Even so, it would seem that security personnel would be concerned over the safety of a female, who was alone, and tried to get back in the concert. It would appear that denying re-entry to a female—depending on the time and location—would be risky for a security company. Surely, they must have some type of provision for that situation in their contract.

Source: The Roanoke Times

XIX. WORKPLACE HAZARDS

Jury Verdict Against Kinder Morgan Energy Partners

A jury in Clark County, Nev., returned a verdict last month against Kinder Morgan Energy Partners in a work-related lawsuit brought by the family of a worker. Rick Lewis worked as a gasoline tanker-truck driver for the company in California and Nevada. From 2002-2008, he loaded gaso-
line at the Kinder Morgan terminal in Las Vegas between one to seven times per day and delivered the fuel to various retail outlets. As you may know, gasoline contains up to 3% benzene. Kinder Morgan operates various pipelines and approximately 180 bulk terminals nationwide. The Plaintiffs contended that Mr. Lewis’s repeated exposures to benzene in gasoline at the Kinder Morgan terminal caused him to develop Myelodysplastic Syndrome (MDS).

The Plaintiffs’ claims against Kinder Morgan were based on negligence and strict products liability. The jury found that Kinder Morgan was negligent and also liable as a distributor. It was contended that the Plaintiffs’ DNA showed specific chromosomal damage linked in the scientific literature with exposure to benzene. Kinder Morgan failed to monitor its premises for benzene exposure and disregarded normal industrial hygiene practices. It also failed to provide warnings to this worker and others on the premises of the dangers of benzene exposure from gasoline through normal bulk loading operations at its terminal.

Kinder Morgan claimed that gasoline is not a carcinogen, and contended further that benzene exposures were not a hazard at its Las Vegas terminal, or at its other locations. Kinder Morgan also claimed that it was not a “distributor” of benzene-containing gasoline, but the place involved was only a storage facility. Kinder Morgan also argued that the cause of Mr. Lewis’s MDS was unknown.

The $7.5 million verdict was broken down by the jury as follows: $700,000.00 for past medical expenses; $2,500,000.00 for the worker’s pain and suffering; $1,000,000.00 for past grief and sorrow of Hilarie Lewis; $2,500,000.00 for future grief and sorrow of Hilarie Lewis; and $800,000.00 for the loss of past and future income and earning capacity.

Prior to trial, confidential settlements were reached between Plaintiffs and several gasoline refiners. Plaintiffs had sought punitive damages, but the court granted summary judgment on that issue prior to trial. Kinder Morgan’s offer prior to trial was $20,000.00. Both parties had a number of experts in various fields, including toxicology, epidemiology, industrial hygiene oncology, and hematology. The Plaintiffs were represented by Keith Patton, Justin Shrader, and Robert Shuttlesworth of the Houston firm Shrader & Associates, LLP, and Cliff Marcek from Las Vegas. They did a very good job in this case.

**Lawsuit Filed Arising Out Of Firefighter’s Death**

The daughter and son of a Chicago firefighter have filed suit against the owners of an abandoned South Shore laundromat, alleging that their failure to properly maintain the building resulted in their father’s death last year. The wrongful death lawsuit was filed by Jennifer Stringer and Edward Stringer, Jr. Against the owners of Sing Way Cleaners. Their father, Edward Stringer, Sr., was among the firefighters dispatched to a fire at the abandoned building in December of last year. As some of the firefighters went inside to put the fire out, others cut holes in the roof to ventilate the building. The roof suddenly collapsed, killing Stringer and another firefighter, and injuring 19 others.

Jennifer Stringer contends her father’s death could have been prevented if the building had been up to code. The children say they want their lawsuit to result in tougher legislation being passed, as well as stronger enforcement of building codes in order to promote firefighter safety. I believe that firefighters should be protected from the dangers of abandoned and neglected buildings and that owners should be held accountable. Records in this case indicate the city had cited the owners for 14 separate violations, but the building was never repaired. Homeless people often sought shelter there. It appears that a definite safety risk was created and that it was allowed to continue to exist.

Source: Chicago Tribune

**State Cites Virginia City For Sanitation Worker’s Death**

The State of Virginia has cited the city of Norfolk, for 19 serious safety violations stemming from the death of a city worker who was crushed inside a recycling truck. According to a report from the Virginia Department of Labor and Industry, the violations include a safety mechanism on the truck that wasn’t working when 51-year-old Jerry Holton was killed. The worker’s body was found inside the truck in February.

The state agency also found problems at the city’s maintenance facility, including oxygen and acetylene cylinders within 20 feet of each other. The Virginian-Pilot obtained the report through the Freedom of Information Act. City Manager Marcus Jones says the city had corrected problems that led to 18 of the citations before they were issued.

Source: Virginian-Pilot and Claims Journal

**Henry Gordy Fined $1.1 Million For Failure To Report Safety Issue**

According to the U.S. Consumer Product Safety Commission, Henry Gordy International, Inc. (Henry Gordy), of Plainfield, N.J., has agreed to pay a civil penalty of $1,100,000. The penalty agreement has been provisionally accepted by the Commission. The settlement resolves CPSC staff’s allegations that Henry Gordy knowingly failed to report the safety defect and hazard with the “Auto Fire Target Set” immediately to CPSC, as required by federal law. CPSC staff also alleges that the firm made a material misrepresentation to CPSC staff in the course of staff’s investigation into the target sets.

According to CPSC staff, Henry Gordy knew on or about May 2006 that the target set was defective and could cause harm but failed to report this to CPSC. The target set is defective because if a child places the soft, pliable, plastic toy dart into his or her mouth, the toy can be inhaled into the throat and can prevent the child from breathing. Henry Gordy made a material misrepresentation to CPSC staff in the course of the staff’s investigation into the target sets in May 2009. The staff says Henry Gordy failed to report all of the information the company was then aware of.

In May 2010, Family Dollar Stores, Inc. And CPSC announced the recall of about 1.8 million Auto Fire Target Sets because Henry Gordy refused to conduct the recall. By that time, there were three deaths associated with the target set. Auto Fire Target Sets were sold exclusively by Family Dollar between September 2005 and January 2009 for about $1.50 each. Each set came with a toy gun; soft, pliable, plastic toy darts; and a small target.

Federal law requires manufacturers, distributors and retailers to report to CPSC immediately (within 24 hours) after obtaining information reasonably support-
ing the conclusion that a product contains a defect which could create a substantial product hazard, creates an unreasonable risk of serious injury or death, or fails to comply with any consumer product safety rule or any other rule, regulation, standard or ban enforced by CPSC.

Companies also must specifically report to CPSC choking incidents involving small balls, latex balloons, marbles, or toys containing these items or other small parts. Companies that receive information about children choking on any of these items and, as a result, dying, suffering serious injury, ceasing breathing for any length of time or being treated by a medical professional must report this information to CPSC immediately. In agreeing to the settlement, Henry Gordy denies CPSC staff allegations as to the existence of a defect or that it knowingly violated the law.

Pursuant to the Consumer Product Safety Act, the CPSC must consider the appropriateness of the penalty to the size of the business or the person charged, including how to address undue adverse economic impacts on small businesses. The CPSC is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of consumer products under the agency’s jurisdiction. Deaths, injuries, and property damage from consumer product incidents cost the nation more than $900 billion annually.

The CPSC says it’s committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard. CPSC’s work to ensure the safety of consumer products—such as toys, cribs, power tools, cigarette lighters, and household chemicals—contributed to a decline in the rate of deaths and injuries associated with consumer products over the past 30 years. Under federal law, it is illegal to attempt to sell or resell this or any other recalled product.

Source: pmnewswire.com

XX.
TRANSPORTATION

GOVERNMENT TRUCK SAFETY REPORT

As we have stated on numerous occasions, highway crashes involving large commercial trucks and buses are a nationwide problem. Over 3,600 persons in this country died as a result of crashes involving these vehicles in 2009. Until recently, the Federal Motor Carrier Safety Administration (FMCSA) and its state partners tracked the safety of motor carriers by conducting resource intensive compliance reviews (records audits) of a small percentage of carriers. The FMCSA began its compliance, safety, and accountability (CSA) program in 2004. It is a pilot program intended to identify and evaluate carriers and drivers posing high safety risks. The FMCSA has focused on three key CSA program oversight activities to evaluate carriers.

The FMCSA fully expected to implement the CSA program by late 2010. One of the main tools the FMCSA is going to use to evaluate drivers and carriers is the new Safety Measurement System (SMS). That system will use more roadside inspections and other data to identify and suspend at-risk carriers and drivers.

Close to a year after the anticipated completion date, the GAO report found the new safety measurement system (SMS) program still can’t be used to get unsafe carriers off the road. This is because the program has not completed the rule-making needed to do so. Secondly, the report found that the other safety measure that was going to be implemented couldn’t be used because the technology needed to implement the program won’t be completed until 2012.

In short, the FMCSA has not provided comprehensive information to Congress. Therefore, Congress can say it lacks the information needed to make decisions based upon the FMCSA pilot program initiated back in 2004, some seven years ago. If you would like to read the full GAO report go to http://www.gao.gov/products/gao-11-858.

FINAL REPORT ON KENTUCKY CRASH THAT KILLED 11

The National Transportation Safety Board has released the final written report detailing the fatal 2010 truck crash that killed 11 people on a Kentucky highway. This effectively closes the Board’s investigation. The report included the previously-disclosed recommendation that truckers and bus drivers be barred from using a cell phone while operating a vehicle, one of the most significant highway safety measures recommended since the push for mandatory seat belts decades ago. The March 26, 2010, crash killed an Alabama truck driver and ten members of a Kentucky Mennonite community riding in a van en route to a wedding. The NTSB sent its recommendation to the Federal Motor Carrier Safety Administration and to all 50 states for action.

Source: Associated Press

SETTLEMENTS REACHED IN TRAIN DERAILMENT CASES

The husband of a woman who died in a 2008 train derailment in Illinois has settled his lawsuit against three railroad companies for $22.5 million. Jose Tellez, 40, was with his wife Zoila and their daughter on June 19, 2009 when a Canadian National Railway Company train with 114 cars, including 74 tankers filled with ethanol, derailed as it travelled from Freeport to Chicago. Zoila Tellez was killed as she ran from their car while on fire from the explosions that resulted from the derailment. Jose Tellez also was badly burned as he tried to run for safety.

The couple’s 19-year-old daughter, who was in the car at the time, settled her individual claim for injuries she sustained in the incident for $13.75 million. She was about 6 1/2 months pregnant at the time and lost the baby as a result of her injuries. Her case, which was handled by the Joseph Parente Law firm, was settled during jury deliberations.

The family was waiting for the train to pass when 18 cars containing two million gallons of ethanol derailed nearby at a washout a few yards west of the intersection. An explosion resulted with a “massive fire ball” engulfing the family’s car. In the suit, filed against the Canadian National Railway Company, the Plaintiffs alleged that the railroad was negligent in the operation, maintenance and supervision of the train. It was claimed the company was negligent in the maintenance and inspection of the railroad track. In addition to the Canadian company, its subsidiary companies, the Illinois Central Railroad Company and the Chicago, Central & Pacific Railroad Company, were named as Defendants.

About 20 minutes before the derailment, the Winnebago County 911 center phoned

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the Canadian company at its headquarters in Montreal, Canada and warned officials that a portion of the track, which turned out to be near the derailment, had been washed out. According to documents and witness testimony at trial, officials noted that the engineer of the train had noticed water conditions on the track minutes away, but instead of slowing down, the engineer actually sped the train up. Proper communication between railroads like these in the Canadian National Railway system is an absolute necessity. Railroads carrying hazardous cargo that travel through crowded residential areas such as Chicago and Rockford must be extra cautious about their cargo and any dangers in their path.

Philip Harnett Corboy Jr., who is with the Chicago firm of Corboy and Demetrio, represented Mr. Tellez. The Joseph Parente law firm represented the daughter in her claim. All of these layers did very good jobs for their clients.

Source: Chicago Tribune

$1.5 Million Verdict Returned Against Taxi Company

A jury in North Carolina found in favor of the estate of James Lafayette Taylor Jr., last month, awarding $1.5 million in damages in a lawsuit against Gastonia’s Metro Cab. The decedent was hit and killed by a cab belonging to the cab company in 2007. Mr. Taylor, 64, who was blind, was hit by the cab driven by Rodney Charles Garrett. The cab driver is partially blind himself. Mr. Taylor suffered brain injuries and he ultimately died eight months later as a result of his injuries. The cab driver is blind in one eye and required corrective surgery or lenses in the other. He also had other disabilities, which were proven during the trial.

The cab struck Mr. Taylor shortly after 5 a.m., as he was walking along on a city street in front of the Gaston County Courthouse. The decedent suffered a head injury when he hit the taxi's windshield. He was walking in the middle lane and was wearing dark clothes at the time. He was also carrying a white cane to indicate he was blind. The jury found that the decedent was not at fault in the incident.

Defendants named in the suit were: Subhan Chaudhary, owner of Metro Cab; Metro Cab; Shaukat Ali, owner of the taxi that hit Taylor; and SS Metro Enterprises LLC. Aaron Low, a Gastonia lawyer, represented the decedent’s family and he did a very good job.

Source: Charlotte Observer

XXI. HEALTHCARE ISSUES

LISTeria in Cantaloupe And Lettuce Causes a Serious Look At Nation’s Food Safety

America’s sense of food safety has taken a new blow with the discovery of listeria, a potentially deadly food-borne disease, in cantaloupes and lettuce. We reported last month on the recalls that were under way after deaths were reported for just the tainted cantaloupes. The romaine lettuce recall came later and it included some lettuce shipped into Alabama. The public is rightfully concerned and farmers growing the produce are also hurting economically. The bottom line is that we must do a better job of regulation, including inspections, in the area of food safety.

Source: AL.com

DIRTY FACILITY SAID TO HAVE CAUSED ListerIA OUtBREAK

It was reported late last month that unsanitary conditions at the packing plant that handled fresh cantaloupes from the Jensen farm in Colorado likely contributed to one of the deadliest listeria outbreaks in U.S. history. Thus far the most lethal outbreak of the foodborne bacteria in more than two decades has killed at least 25 people and sickened 123 others, according to health regulators. The FDA reported that the design of the packing plant allowed water to collect in pools and made it difficult to clean and sanitize the facility. The firm was packing cantaloupes under “unsanitary conditions where they may have become adulterated,” according to Sherri McGarry, a senior adviser at the FDA’s Office of Foods. The packing plant is part of Jensen Farms, the source of the tainted melons that were first investigated in late August and have infected people in 26 states.

Prior to this outbreak, the plant had not been inspected by the FDA since it was registered in July of 2010. That’s difficult to justify. Listeria monocytogenes is a frequent cause of U.S. food recalls in processed meats and cheeses, but contamination in fresh produce is a new and disturbing development. Perhaps timely inspections would have headed off the listeria problem.

Listeria is present in many parts of the agricultural environment, from decaying vegetation to the fields where food is grown. But it rarely causes serious illness. The organism needs to get on food and grow to levels where it can cause disease. Since it can grow at low temperatures, that can happen anywhere along the food chain. Both the FDA and Jensen Farms have said this packing facility won’t distribute any more food until the agency deemed it safe. Since the growing season is over the facility is not currently open.

Source: Reuters

EXPERTS SAY TAINTED SEAFOOD ENTERING THE U.S.

Seafood infected with bacteria or tainted with drugs and antibiotics banned in the U.S. is finding its way into the U.S. This is according to state and federal officials, consumer advocates, academics and food safety experts. That’s certainly not good news. The U.S. imported more than 17.6 million tons of seafood in the last decade. Unfortunately, only about 2 percent of imported seafood is inspected, and only 0.1 percent is tested for banned drug residues, according to the U.S. Government Accountability Office, the investigative arm of Congress. That’s especially alarming because 80 percent of the seafood in America is imported. The FDA admits that it can’t say for sure how many of the samples pass or fail.

In more than half of cases when seafood is rejected, the fish are deemed filthy, meaning they were spoiled or contained physical abnormalities, or it was contaminated with a foodborne pathogen. About 20 percent of those cases involved salmonella. We had best make some big-time changes in how the government inspects foreign seafood coming into this country.

Source: MSNBC
XXII. ENVIRONMENTAL CONCERNS

TVA COAL ASH TRIAL IS OVER AND WE Await COURT’S RULING

The first phase of the TVA trial in Tennessee concluded on October 12th. The trial involved five cases consolidated for trial and those five cases include approximately 230 Plaintiffs whose property rights have been affected by the coal ash spill near Kingston, Tenn. The question before the court in this Phase I Trial related only to whether TVA may be held liable for the massive coal ash spill that occurred on December 22, 2008, releasing over 1 billion gallons of coal ash sludge onto 300 acres and into local waters. As a government corporation, TVA enjoys sovereign immunity for conduct within its discretion. However, in this case, TVA may be held liable if conduct outside of its discretion was the cause of the spill.

In multiple orders leading up to trial, the District Court Judge in the Eastern District of Tennessee denied TVA’s motions for summary judgment and ruled that TVA may be held liable upon showing that TVA violated its own policies and procedures, failed to adequately train personnel, failed to construct the coal ash ponds as designed, and negligently maintained the ash disposal facilities. Each of these items has been ruled as being outside of TVA’s discretionary immunity. Therefore, if the Judge accepts Plaintiffs’ evidence on these items as a cause of the dike failure, TVA may be held liable for the ash spill.

The trial lasted nearly four weeks and the Plaintiffs called a total of eleven live witnesses and presented four witnesses by deposition. Interestingly, of those fifteen witnesses, all but five were TVA employees. Two of the remaining five witnesses were Geosyntec Consulting Inc. engineers who were TVA contractors. The other three were expert witnesses, including one independent dam safety expert who was a member of the Tennessee Department of Environment and Conservation (TDEC) Advisory Board that reviewed the causes of the spill. TVA put on two live witnesses and two witnesses by deposition, including one TVA employee, two engineers from WorleyParsons Corpora-

tion (another TVA contractor) and one expert. The majority of Plaintiffs’ case was based on TVA’s own employees and contractors and TVA’s own documents.

Because there is no jury for the coal ash spill litigation, the Judge will decide the case. Unlike a jury trial, the September bench trial concluded without a verdict. At the conclusion of the trial, the Judge instructed the Parties to file post-trial briefing by January 12, 2012. If the Court decides in the Plaintiffs’ favor and finds that TVA’s non-discretionary acts caused the spill, we will then move into Phase II of the trial proceedings. Phase II will involve Plaintiffs’ damages and will answer the question of how much TVA owes the property owners whose property rights have been affected by the ash spill.

A second set of cases had been set for trial beginning November 1st, but the lawyers in those cases stipulated with TVA that evidence presented during our September trial will serve as the evidence in their cases as well. If you need additional information on this case, contact David Byrne or Brantley Fry in our firm at 800-898-2034 or by email at David.Byrne@beasleyallen.com or Brantley.Fry@beasleyallen.com.

$35 MILLION WEST VIRGINIA COAL SLURRY SETTLEMENT

In a prior issue of the Report, we reported on the $35 million settlement with hundreds of people who contended a Massey Energy subsidiary poisoned their wells with coal slurry. More than 300 people gathered at the Kanawha County Courthouse last month to discuss the settlement reached in July with Rawl Sales & Processing. Members of the public not involved in the case were prohibited from attending the meeting of the mass litigation panel. The settlement was confidential and the hearings were also confidential.

Ohio County Circuit Judge James P. Mazzone, who heads the panel of judges presiding over the case, filed an order on September 14th stating that the settlement would “not be subject to distribution beyond the (mass litigation) panel and all information regarding the terms of the settlement agreement will remain strictly confidential.”

A coal slurry plant operated by Rawl Sales & Processing pumped about 1.4 billion gallons of polluted fluids into abandoned underground mines in Mingo County between 1978 and 1987. Coal slurry is created by washing coal, after it comes out of a mine, to help it burn cleaner. More than 350 lawsuits that were filed claimed toxic slurry waters leaked out of abandoned mines and polluted water in aquifers and wells.

The Plaintiffs claimed the polluted waters caused health problems, including chronic gastrointestinal disorders, skin cancers and major organ cancers. Many also alleged that they have suffered developmental disorders and learning disabilities from exposure to lead and other toxins when they were children. Massey Energy previously paid $5 million to finance a medical monitoring fund for people filing the lawsuits. Most of them live in the towns of Rawl, Lick Creek, Merrimac and Sprigg in Mingo County. Massey is now owned by Virginia-based Alpha Natural Resources, which bought the company in June for $7.1 billion.

Source: Insurance Journal

XXIII. THE CONSUMER CORNER

NHTSA UPGRADES PROBE OF 382,000 SATURN ION CARS

The National Highway Traffic Safety Administration has upgraded an investigation of more than 382,000 Saturn Ion cars for possible steering problems. The agency has opened the engineering analysis after the agency and Saturn, a brand General Motors discontinued in 2009, received more than 4,000 complaints about sudden loss of electronic power steering assist in cars from model years 2004 through 2007. Sixteen of the complaints said the power steering warning lamp had illuminated before or during the loss of power steering assist and the increased effort required to steer contributed to a crash, according to NHTSA. At least two of the crash claims indicated the driver was injured.

According to NHTSA, GM has received 17,585 warranty claims related to the issue. A GM spokesman says the automaker is cooperating with NHTSA. Last year, GM recalled 1.05 million Chevy Cobalt and Pontiac G5 vehicles to correct a
defect in the electronic power steering assist motor. The defect was described by NHTSA as a buildup of brush debris mixed with oily material that caused the motor to stop functioning. NHTSA said it was “the same problem identified in the current subject vehicles.”

Previously NHTSA investigated the sudden loss of power steering assist in model year 2005 through 2010 Chevrolet Cobalt vehicles. In May 2011, GM provided NHTSA with complaint, warranty and power-steering system information for the Ion, as well as the Pontiac G6 and Chevy Malibu. In that response, GM indicated the power-steering system used in those vehicles was the same as that used in model year 2005 to 2010 Cobalts and Pontiac G5s. NHTSA says it has duplicated the power-steering system failure in both a Cobalt and an Ion previously tested.

Source: Claims Journal

Honda Investigating After Airbags Went Off For No Reason

Honda Motors has started an investigation into a Georgia case of airbags exploding for no reason. A Georgia man, Chris Androvic, says he was driving his Honda when what he described as an “explosion” occurred from behind the wheel of his 2008 Honda Accord coupe. He was going about 65 miles per hour at the time, when all of a sudden his airbags deployed. Androvic said his car shows no sign of a crash or any type of side impact. But inexplicably, the bags above his head and in his seat deployed. He said the bags drapes over the side windows, cutting his visibility. Fortunately, he was able to stop his vehicle without further incident.

According to a report by WSBTV, there have been 12 side airbag complaints involving 2008 Honda Accords. That’s the same number of incidents Honda said prompted its recall last year of driver’s side airbags that deploy too forcefully. You can check federal safety records through www.safercar.gov.

According to WSBTV, the dealer billed the owner for $5,600 to repair the airbag system. There has been no recall for side bags that deploy without warning to my knowledge. Honda sent WSBTV a statement about the incident. It said that neither NHTSA nor Honda have initiated any recall action and that a recall would be initiated only when a defect has been observed in a sufficient number of cases. The statement said further that neither NHTSA nor Honda has been able to find evidence of a defect in a fair number of documented cases. Honda said that none of “these airbag deployment accounts” have been linked to a “common condition or defect.” Subsequently, NHTSA sent WSBTV another statement saying, “NHTSA is aware of the complaints involving side curtain airbags in certain Honda vehicles and there is no formal investigation open at this time.”

NHTSA said that while there have been no injuries, fatalities or fires associated with these complaints, the agency continues to monitor the issue. When considering whether to open an investigation, NHTSA said it takes into account “the severity as well as the frequency of an occurrence,” but there is “no pre-set number of complaints that would trigger an investigation.” It was reported that Honda representatives have agreed to inspect Mr. Androvic’s car. Honda is providing a rental vehicle while the inspection takes place. Jim Strickland, a consumer investigative reporter at WSBTV, has been on top of this story and has developed a great deal of interesting information.

Source: WSBTV

Half Of Child Booster Seats Pose Risks

A recent report reveals that half of children’s car booster seats can’t ensure a proper fit with all safety belts. The Insurance Institute for Highway Safety (IIHS), which released the report last month, said six seats were so bad that it recommended parents avoid them. Booster seats, which are recommended for children who have outgrown forward-facing child seats, are designed to raise children up so adult-size safety belts fit properly. Anne McCartt, the Institute’s research chief, said that “not all boosters are doing that well.”

Children ages four to eight in booster seats are 45% less likely to be injured in a crash than those using only seat belts. Booster seats were rated by IIHS based on how well they fit the roughly 20 million children ages four to eight with the lap and shoulder belts in a wide range of vehicles. IIHS says its ratings are important because it’s impossible to tell which booster seats are better just by comparing prices or features. Although IIHS says booster seats have improved in the three years it has been testing them, the Institute is concerned that those requiring parents to check the fit still outnumber the good ones. Of 83 seats tested, 41 got a “check fit” rating because they don’t consistently fit well with belts and 36 were rated “best bets” or “good bets” by IIHS. Ms. McCartt had this to say concerning the lack of understanding by parents:

“A lot of parents don’t understand that the purpose of the booster seat is to ensure the vehicle safety belts fit the child, because if they don’t there is a potential for injury.”

Child-safety advocate Joseph Colella calls it “a very significant regulatory shortfall” that the National Highway Traffic Safety Administration doesn’t evaluate booster seats based on how well they position seat belts, as “that is their primary function.” Mr. Colella, of Traffic Safety Projects, says while IIHS’ ratings put pressure on manufacturers to improve belt fit, it should be required, not voluntary.

Four booster seats made by Evenflo and two by Dorel's Safety 1st brand were rated so poorly that IIHS recommended consumers not use them. Those seats are: the Evenflo Chase, Express, Generations 65 and Sightseer models and Safety 1st's All-in-One and Alpha Omega Elite. IIHS said the seats don’t “provide proper belt fit.” If seat belts aren’t positioned properly, children can hit parts of the vehicle in a crash and even be injured by the belts, which can slice into internal organs.

According to IIHS, states that raised requirements for booster seats to cover children through ages seven or eight years had 17% fewer fatal or debilitating injuries to booster-seat-age children. IIHS singled out Harmony Juvenile Products, a Canadian company, as a “standout” in booster seat design because all five of its seats were “best bets.” The first inflatable booster seat, the BubbleBum, also got the top rating. The companies whose seats didn’t fare well either criticized the report or simply touted their seats as being good and safe.

Booster seats that can be used with or without their high backs were tested both ways and often had different ratings. Fourteen of these “dual-use” booster were “good” or “best” when backs were used, but got a “check fit” rating when backless. It was pointed out by Mr. Colella that “(t)
he best protection is not provided by ‘a
booster’ but by ‘the right booster’ for the
child and the vehicle.” Most folks don’t
realize that child safety seats have an expira-
tion date. While the dates are on the safety
seats, stores selling them as a rule
don’t tell the purchasers. A typical warning
would be: “Do not use this car seat after December 2012.” Lesley Seaton, a
spokesperson for the SafeKids Northeast
Florida, said there are common mistakes
with child safety seats, including using
expired ones. She says that the car seats do expire. It was pointed out that the shelf
life of a car seat varies on different brands.

Parents should always check the seat’s
manual for an expiration date and should
also check the seat. The seats need to have
a shelf life for a number of reasons. The
harness strap itself that holds the child in safely can be frayed and torn, but
still look fine. The seat may have been part
of a recall that was missed. We believe that
more information must be made available
by both the manufacturers and sellers of
booster seats for children. Finally, consum-
ers should look at model numbers and manufacture dates when consulting the
rating by IIHS.

Source: USA Today and WDAM.com

POULTRY GROWERS AWARDED NEARLY $26
MILLION

A landmark judgment has been awarded
to Arkansas and Louisiana poultry growers
in a lawsuit against one of the nation’s
largest chicken producers. A federal judge
ordered Pilgrim’s Pride to pay nearly $26
million to 91 growers in the El Dorado,
Arkansas area. It was reported in 2010 that
chicken growers had their lives devastated
when Pilgrim’s Pride idled its plant in El
Dorado. With no income and mounting
debt, many of them faced foreclosure,
bankruptcy, and severe emotional distress.

On September 30th, after being in court
for two years, a federal judge ruled in favor
of the growers finding that the corpora-
tion’s decision to idle its El Dorado plant
was “motivated by a desire to manipulate
the price of chicken,” thereby violating an
anti-trust law. Magistrate Judge Charles
Everingham ordered Pilgrim’s Pride to pay
about $25.8 million to the growers. Indi-
vidual growers will receive payments rang-
ing between $9,000 and $900,000. This is the largest verdict for a
group of poultry growers against a poultry
company.

The El Dorado growers were said to be
very good people who work very hard on
their farms with each having invested large
sums of money in their operations. The
investment in a single farm can be as high
as a million dollars. The growers hope Pil-
grim’s Pride will either sell its idle El
Dorado plant or re-open it. Last November,
a spokesman said that the corporation
planned to re-open two idled facilities by
2012, but at that time had not decided
which ones. Other litigation against Pil-
grim’s is pending and involves Arkansas
chicken growers in Batesville, DeQueen,
Hope and Lewisville. According to reports,
those cases are expected to go to trial.

Mark C. Brodeur, a lawyer from Dallas,
Texas, served as lead counsel for the Plain-
tiffs. He and the other lawyers involved in
the case did a very good job.

Source: Associated Press

FEDERAL GOVERNMENT LOOKS FOR WAYS
TO REDUCE TABLE SAW INJURIES

A rather serious safety problem exists in
this country and unfortunately it gets very
little media attention. For example, about
ten people lose a finger or have a hand
mangled in a table saw each day in the
U.S. The government has now decided to
take a closer look at the saws and deter-
mine how to make them safer. The Con-
sumer Product Safety Commission has
voted unanimously to begin writing a rule
aimed at reducing injuries from table saws.

Chairman Inez Tenenbaum says the
“injuries resulting from the use of table
saws are, in many cases, particularly grue-
some.” The CPSC estimates that consumers
suffered about 67,300 medically treated
blade-contact injuries annually in 2007 and
2008 with an associated injury cost of
$2.36 billion in each of those years. The
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blade-contact injuries annually in 2007 and
2008 with an associated injury cost of
$2.36 billion in each of those years. The
industry says those numbers don't reflect
the newly designed guard systems that
manufacturers started putting on saws in 2007 as a way to shield woodworkers
and others from injury.

Source: KATC.com

NEW RECALL OF ALCOHOL WIPES RAISES A
BIG QUESTION

A massive recall of potentially contami-
nated alcohol prep pads by a second
manufacturer is raising questions about an
entire category of medical supplies, non-
sterile pads and swabs. According to Dr.
Christine Nyquist, a Colorado infection
control director who blew the whistle on
dangerous bacteria in alcohol wipes last
fall, there is no place for a non-sterile
alcohol prep pad in a hospital setting.

According to Dr. Nyquist and a number
of other microbiology experts, the
growing debate is whether the non-sterile
pads and wipes routinely used in hospitals,
clinics and private homes to clean skin
before shots and other procedures should
be curtailed—or even banned—because of
the potential for infection. While sterile
pads have had some problems, the non-
sterile pads pose a much larger safety
problem. Barry A. Friedman, a microbiol-
gist and sterilization expert who advises
drug and device manufacturers, observed:

I don't believe non-sterile products
such as this should be used in a situ-
ation where you are using inject-
ables. I have a feeling what we're seeing is the tip of the iceberg.

The comments by Drs. Nyquist and
Friedman follow the recent recall of nearly
300 million individual non-sterile alcohol
prep products manufactured and distrib-
uted by Pacific Disposables International
Inc. of Orangeburg, N.Y. The recall, which
dates back two years, was initiated
because the pads may have been contami-
nated with Bacillus cereus, a potentially
life-threatening bacterium, according to
the federal Food and Drug Administra-
tion. A hemophiliac patient reported
developing a bacterial infection caused by
Bacillus cereus after PDI alcohol prep
pads tainted with the germ were used
during an infusion, according to an FDA
inspection report. An FDA official said
that the company was urged to recall the
products in June, but didn't respond until
September.

The PDI recall follows this year's highly-
publicized global recall of hundreds of mil-
lions of alcohol and iodine wipes and pads
made and sold by the Triad Group and
H&P Industries, Inc. of Hartland, Wis. The
presence of Bacillus cereus bacteria in
Triad prep products has been blamed for
deaths and devastating infections in
patients nationwide. Federal officials shut
down these companies in June to prevent
distribution of tainted medical wipes and
other supplies.

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Cereus infections in sick children and the connection between unusual Bacillus cereus infections in sick children and Triad Group alcohol wipes. Dr. Nyquist takes the position that all “alcohol prep pads should be sterile.” The FDA must take action to make sure that this problem is resolved. In the meanwhile, the debate over the issue continues. Because of the importance from a health and safety perspective, we will continue to monitor this issue.

Source: MSNBC

**VISA AND MASTERCARD ACCUSED OF PRICE FIXING BY ATM OPERATORS**

VISA Inc. And MasterCard Inc., the world's largest payment networks, have been sued by a trade group representing operators of automated teller machines over claims that the companies fix prices and suppress competition among ATM networks. The trade group, in the lawsuit filed last month in federal court in Washington, accused Visa and MasterCard of antitrust violations for restricting independent ATM operators from charging varying prices for customers using alternative networks such as STAR, Shazam Inc. or TransFund. Under a uniform agreement, the operators can't charge less for transactions over a network that competes with Visa and MasterCard, according to the Complaint.

New Federal Reserve rules have reduced the fees charged to merchants for debit-card purchases. Visa and MasterCard processed cash transactions totaling at least $547 billion in the United States last year, including withdrawals from ATMs, according to company filings. It was alleged in the Complaint:

The ATM restraints prevent ATM operators from offering their customers a discount or benefit for completing a transaction over a network that is less costly to the ATM operator. Consumers cannot be rewarded for using a lower cost and more efficient network.

The allegations were made by the National ATM Council Inc., a trade group based in Jacksonville, Florida, and 13 operators of ATMs in nine states. The Plaintiffs, who are asking to represent the 350 non-bank ATM operators nationwide, are seeking triple damages. The ATM operators claim that the “overwhelming” majority of so-called PIN debit cards used for ATM transactions are branded by Visa or MasterCard. In order to accept one of these cards, an ATM operator must have access to the Visa and MasterCard networks. Independent or non-bank operators must be sponsored by a financial institution that is a member of the Visa and MasterCard networks.

Visa, MasterCard and their member banks require the service fee for any transaction at an ATM to be “no less than the amount charged at that ATM or terminal for a Visa or MasterCard transaction,” even for transactions that don’t use the companies’ networks, the Complaint alleges. Plaintiffs contend:

*By restricting their ability to attract customers to lower cost ATM services through lower prices, the ATM restraints put a competitive straitjacket on ATM operators.*

It will be interesting to see how this lawsuit winds up and how it affects, not only the actual parties, but also consumers. We will watch for the outcome with great interest.

Source: Bloomberg

**REEBOK TO PAY $25 MILLION TO CONSUMERS OVER SHOE CLAIMS**

Reebok will pay $25 million to customers to settle charges by the Federal Trade Commission that it made deceptive claims in ads that its toning shoes would strengthen and tone the legs and buttocks of those who wear them. The athletic shoe and apparel company is also barred from making any claims of the strengthening effects of the shoes unless they are backed by scientific evidence. The company is owned by German shoe company Adidas. Consumers will be paid either directly from the FTC or through a court-approved class action.

**PEDIATRICS GROUP WARNS AGAINST CRIB BUMPER PADS**

Bumper pads should not be used in cribs because babies can suffocate against or be strangled by the popular bedding product. The American Academy of Pediatrics has set the guideline for its physicians as part of updated policies to create safer sleep environments for babies and reduce the risk of sudden infant death syndrome, or SIDS. This is a safety issue that is still being hotly debated. But in my opinion the Academy should be listened to on this matter.

Source: Lawyers USA Online
The trade group for makers and sellers of infant bedding says bumper pads, which wrap around the inside of a crib and tie to crib slats, help prevent head injuries and limb entrapment. It also disputes that there is evidence that the products can cause babies to suffocate. But the Academy’s new guidelines state there is no evidence that bumper pads prevent injuries and say they pose a potential risk of suffocation, strangulation and entrapment.

The Chicago Tribune did a thorough investigation into this matter and that work resulted in this safety issue finally getting some needed attention. Federal regulators with the Consumer Product Safety Commission have gotten reports for years of babies suffocating against bumper pads, yet they have failed to warn parents or investigate all the deaths. The regulators have hesitated to take a stance on the safety of bumper pads, saying they are trying to determine if there is a scientific link between bumper pads and suffocation, or if blankets, pillows or medical issues played a primary role in the babies’ deaths.

Bumpers were originally made to cover spaces between crib slats that were too far apart. Regulations changed in the 1970s, mandating that slats be spaced closely enough that babies wouldn’t fall out or get their heads caught. But the products are still widely sold. Every five years the American Academy of Pediatrics updates its official policies, which serve as a guide to pediatricians and other medical professionals throughout the country. Previously, the policies stated that if crib bumpers were used, they should be thin, firm, well-secured and not "pillow-like"—a vague term that irked safe-sleep experts and SIDS groups. Nancy Cowles, director of Kids in Danger, a safety advocacy group observed: “It was just confusing. I think this clarifies things—bare is best.”

In a statement, the Academy said that although the number of deaths associated with sudden infant death syndrome has declined in the last two decades, sleep-related deaths from suffocation, entrapment and asphyxia have increased. Besides stating that bumper pads should not be used, the group also recommended that babies always sleep on a firm surface, not in car seats or other products that babies sit in. Wedges and positioners shouldn’t be used, and the policies recommend breast-feeding and immunizations to reduce SIDS deaths.

Mrs. Cowles and other safe-sleep experts often promote the “ABCs” of safe sleep—babies should sleep alone, on their backs and in a crib. Infants can lack the motor skills and strength to turn their heads if they roll against something that blocks their breathing. Dr. Michael Goodman, a member of the Academy’s task force and a neonatologist at York Hospital in Pennsylvania, said parents who remove bumpers from cribs should not add other soft bedding like pillows or blankets instead. “Soft is just bad,” he said.

Federal officials have investigated at least a dozen deaths where bumpers appeared to play a role. In those fatalities, the Consumer Product Safety Commission said bumpers were not clearly the culprit because other items were also in the crib. But in reviewing the CPSC’s own records, the Tribune found that in many of those cases, babies who died were found with their faces pressed into bumper pads. The Chicago Tribune also found at least 17 additional cases in which the CPSC did not investigate a child’s death even though the Commission had reports on file suggesting bumper pads played roles in the fatalities. The Tribune looked into some of these cases and found that medical examiners and coroners said bumper pads were involved in the suffocations.

Federal Product Safety Database Faces First Legal Challenge

Praised by consumer advocates and denounced by manufacturers, a new federal database for safety complaints about everything from baby gear to household appliances is facing its first legal challenge. A motion has been filed in federal district court in Maryland by an unnamed manufacturer—labeled “Company Doe”—which seeks to stop the Consumer Product Safety Commission from publishing online a complaint about a product the company makes. Company Doe’s lawyers claim there is no factual, scientific or medical evidence to support the complaint, which involves an injury to a child. The motion asks a judge to grant the company anonymity for all pleadings, documents and forms related to what it calls “baseless allegations.”

Launched in March and overseen by the Commission, SaferProducts.gov is a database where people can file complaints, for public view, of injury or worse from everyday products such as cribs, high chairs, space heaters and power tools. The legal wrangling could have a potentially crippling impact on the database. If this case is allowed to proceed under seal, it could lead to challenges by other manufacturers—undermining the database by squelching safety complaints from consumers and others in the courts for months or years. It appears CPSC will defend the database. The Commission will file a motion to have the court documents unsealed. Scott Wolfson, a Commission spokesman, stated:

So far, there are more than 3,300 incident reports that the public has open access to view in the database. Many of these incident reports involve serious cases of deaths and injuries.

It appears from the motion that the complaint against Company Doe was filed by an unnamed government agency. It will be interesting to see how the court deals with this motion. There are plenty of safeguards built into the system to protect companies. Hopefully, the database will be preserved and allowed to do its job.

Source: Insurance Journal

XXIV.
RECALLS UPDATE

Each month we hope to have fewer safety-related recalls to write about. But again there have been a very large number of product recalls over the past weeks. Serious safety-related recalls have become commonplace. The following are some of the more significant recalls since those reported in the October issue. Automakers recalled more than 800,000 cars and trucks during a single week last month for defects including faulty airbags. Readers are encouraged to contact Shanna Malone, the Executive Editor of the Report, if more information is needed on any of the recalls. We would also like to know if we have missed any safety recalls that should be included in this issue.
Volkswagen has recalled more than 168,000 cars with diesel engines because of a defect in the fuel injectors that could cause fires, according to the National Highway Traffic Safety Administration. The recall affects some 2010 to 2012 Volkswagen Golf and 2009 to 2012 Jetta models. Also affected are some Audi A3 models from the 2010 through 2012 model years. Volkswagen says cracks can develop in the fuel injectors of 2-liter diesel engines. Fuel can leak and could cause a fire. But the company says it doesn’t know of any fires or injuries from the problem. Volkswagen will replace the fuel injector line on one of the cylinders free of charge.

NHTSA had opened an investigation into the fuel leaks in August, but that inquiry was limited to the 2011 Jetta TDI. Even though Volkswagen described the recall as voluntary, under federal regulations once a manufacturer determines it has a safety problem it has no choice but to notify NHTSA within five business days of its plan for a recall or face civil penalties.

ENGINE PROBLEMS PROMPT CHRYSLER RECALLS

The iconic Chrysler Town & Country minivan and several other Chrysler vehicles have been recalled because debris in engines could cause them to fail. Certain 2012 Chrysler Town & Country, Chrysler 200, Dodge Charger, Dodge Durango, Dodge Grand Caravan, Dodge Journey and Jeep Grand Cherokee models with 3.6-liter engines could experience engine seizure because of connecting rod bearing failure, according to the National Highway Traffic Safety Administration. Engine seizure could increase the risk of a crash.

Chrysler says it will replace defective engines free of charge. The automaker will notify owners if their cars are subject to the recall, but drivers can also check by entering their vehicle identification number on Chrysler’s website. Owners with questions can also call Chrysler at 1-800-853-140 and get more information from the NHTSA at 1-888-327-423.

CORVETTES RECALLED FOR WEAK REAR-HATCH HINGES

General Motors has recalled almost 5,800 of its 2011-12 Chevrolet Corvette coupes because the rear hatch could come off in a crash. In a report dated October 3rd and filed on NHTSA’s Web site, GM said the rear hinges were not strong enough to meet the federal safety standard for door locks and door-retention components.

One of the goals of that standard is to reduce the chance of an unbelted occupant being thrown from a vehicle during a crash. The company said the problem was discovered by a supplier during testing for a European safety standard. GM investigated and found the defective hinges all came from a single roll of heat-treated steel. In a news release, GM said that it was not aware of any crashes, injuries or complaints resulting from the problem. About 200 vehicles are being recalled in Canada.

JETTA SEDAN RECALLED

Volkswagen Jetta sedans (year model 2011) have been recalled. In some of these vehicles, manufactured from March 18, 2010, through August 22nd, the stainless-steel exhaust tip may extend beyond the original length of the exhaust pipes. This makes it possible for a driver or passenger’s leg to make contact with the tip, posing a burn hazard. Owners may contact Volkswagen at 800-822-8987. Dealers will inspect and replace the stainless-steel exhaust tips as necessary, free of charge.

BAD BOY BUGGIES RECALLS SOME MODELS

Bad Boy Buggies, an off-road utility vehicle company, has recalled 3,200 buggies because the steering arm assemblies may break this during operation. The recall involves the Bad Boy LT, Classic, XT, XTO and XT Safari model electric off-road utility vehicles. The models were sold nation-wide from August of 2009 through June of 2011.

According to the company, it has 15 reports of the steering arm assembly breaking. When this occurs, the driver loses control of the vehicle. The company manufactured the vehicles at BB Buggies in Augusta, Georgia, and Bad Boy Enterprises LLC in Natchez. Owners should stop using the buggies and contact the company. For more information, you can contact BB Buggies at 855-738-3711 or visit its website at www.badboybuggies.com.

HARLEY-DAVIDSON RECALLS OVER 300,000 MOTORCYCLES

Harley-Davidson Inc has recalled 308,474 motorcycles worldwide due to problems with the rear brake light switch. Certain 2009-2012 Touring and Trike models are being recalled because the rear brake light switch may be exposed to excessive heat from the exhaust system. The excessive heat may cause the switch to not activate the brake lamp or activate the brake lamp when no brake is applied. It may also cause a fluid leak at the brake light switch.

The company recalled about 250,000 units in the United States and about 50,000 outside. Harley shipped 210,494 motorcycles internationally and shipped an average of 306,000 motorcycles each month from 2000 to 2010. The company has issued other smaller recalls in recent years, including one for 142,000 motorcycles in November 2009 for an issue related to fuel tank mounts.

MORE THAN 1,800 THOMAS BUILT BUSES RECALLED

A major school bus manufacturer has recalled more than 1,800 buses to repair a faulty part. The parent company of High Point, N.C.-based Thomas Built Buses initiated a safety recall campaign and alerted the National Highway Transportation Safety Administration. The manufacturer says a bolt included in the clamp assembly may break when subjected to stress. The recall, according to NHTSA, involves three series of Thomas Built school buses manufac-
tured from September 1st through December 31st of last year. The recall involves clamps on engines supplied for the buses by Cummins Inc. Thomas Built Buses is a unit of Daimler Trucks North America LLC, which is part of German Automaker Daimler AG.

**SHERMAG HAS RECALLED DROP-SIDE CRIBS**

Shermag Inc., of Quebec, Canada, has recalled its drop-side cribs. This includes about 2,300 in the U.S. And about 800 in Canada. The drop-side rail hardware on the cribs can break or fail, allowing the drop side to detach from the crib. When the drop side detaches, a hazardous gap is created between the drop-side rail and the crib mattress in which infants and toddlers can become wedged or entrapped, posing risks of suffocation and strangulation. In addition, children can fall out of the crib when the drop-side rail falls unexpectedly or detaches from the crib. Drop-side rail failures can also occur due to incorrect assembly or with age-related wear and tear. CPSC and the company say they are aware of 21 incidents involving drop sides that failed or detached. No injuries have been reported, according to the CPSC.

This recall involves wooden drop-side cribs with hidden drop-side hardware. The cribs were sold in various colors. Model numbers 202647, 211047 and 272547 are included in this recall. The cribs were sold separately and as part of the “City Lights,” “Fairy Tales” and “Dormez Vous” furniture collections. “Shermag” is printed on a tag on the mattress springs. The model numbers can be found on stickers and warning labels on the crib’s headboard or footboard. The cribs were sold at The Land of Nod and other baby specialty stores from September 2004 through December 2008 for between $400 and $800. Consumers should stop using these cribs immediately and contact Shermag to request a free repair kit that will immobilize the drop-side. Parents were urged to find an alternate, safe sleeping environment for children, such as a bassinet, play yard or toddler bed depending on the child’s age. For additional information, contact Shermag at (800) 567-3419 or visit its website at http://www.shermag.com.

**MEIJER RE-ANNOUNCES ROMAN SHADES AND ROLL-UP BLINDS RECALL**

Meijer Inc., of Grand Rapids, Mich., has recalled 3,200 “Innovations” and “At Home with Meijer” Roman shades and roll-up blinds. 240,000 were originally recalled in March 2010. The potential danger of the Roman shades is that strangulation can occur when a child places his/her neck between the exposed inner cord and the fabric on the backside of the blind or when a child pulls the cord out and wraps it around his/her neck. The potential danger of the roll-up blinds is that strangulation can occur if the lifting loops slide off the side of the blind and a child's neck becomes entangled on the free-standing loop or if a child places his/her neck between the lifting loop and the roll-up blind material. This recall involves previously recalled “Innovations” and “At Home with Meijer” Roman shades and roll-up blinds that were redistributed to stores and sold to consumers after March 2010 without a repair kit. The Roman shades are made with fabric or bamboo and the roll-up blinds with bamboo. A label reading “Innovation” or “At Home with Meijer” can be found under the headrail.

The shades were sold at discount retailers, dollar stores, flea markets and other retail liquidators nationwide from March 2010 through September 2011 at various prices. Originally the products were sold at Meijer stores between January 2004 and December 2009 for about $40 before being recalled. Consumers should immediately stop using the Roman shades and the roll-up blinds and contact the Window Covering Safety Council for a free repair kit at (800) 506-4636 anytime or visit www.windowcoverings.org. Consumers can also return the products to any Meijer store for a full refund. For additional information about this recall, contact Meijer at (800) 927-8699 between 9 a.m. and 5 p.m. ET Monday through Friday or visit the company’s website at www.meijer.com.

All shades and blinds in a home should be examined. Homeowners should make sure there are no accessible cords on the front, side, or back of the product. The CPSC recommends the use of cordless window coverings in all homes where children live or visit. The agency 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. Information can be supplied at www.SaferProducts.gov.

**CAREFUSION INITIATES CLASS I RECALL OF ENVE VENTILATORS**

CareFusion, a leading global medical device company, issued the following update regarding its recall of 128 EnVe™ ventilators affecting 29 customers. The FDA has classified this action as a Class I recall. The recall only affects EnVe ventilators manufactured between December 2010 and May 2011.

On September 12th, the company sent an urgent Medical Device Recall Notification to customers stating the identified potential risks associated with the EnVe ventilators. The issues include: a potential delay in resuming ventilation after reconnection; a potential automatic reset; and a potential for disconnection upon transport. Failure to adequately ventilate may lead to hypoxia or hypercarbia, which may result in serious neurological injury or death. A Class I recall is defined as a reasonable probability of serious adverse health consequences or death associated with use of the defective units.

In the notification letter, customers were provided serial numbers of affected devices. CareFusion is conducting a field corrective action to update the hardware and software on affected ventilators. The company determined the root cause for each issue and is committed to updating each device in a timely manner with minimal disruption to customers.
Customer inquiries related to this action should be addressed to CareFusion Technical Support at 800-554-8933. Any adverse reactions experienced with the use of this product, and/or quality problems should also be reported to the FDA’s MedWatch Program: by mail at MedWatch, HF-2, FDA 5600 Fishers Lane, Rockville, MD 20852-9787; by phone at 1-800-332-1088; by fax at 1-800.FDA.0178 or at www.fda.gov/medwatch.

**POOL PUMP MOTORS RECALLED DUE TO ELECTRICAL SHOCK HAZARD**

Nidec Motor Corporation, of St. Louis, Mo. And Emerson Motor Company, a division of Emerson Electric Co., of St. Louis, Mo., have recalled about 2,000 Ecotech EZ® Variable Speed pool pump motors. The pump cover is not properly grounded posing an electrical shock hazard. The recalled motors are variable speed swimming pool pump motors with a 6.5 inch diameter steel frame painted black with a square or C-flange mounting. The rating plate is on the side of the pump and “EMERSON. CAT.NO.EVSS3” and “MODEL M63PWBLE-121.H.P. 3.0, S.F.1.15” is printed on the plate.

The motors were sold at pool motor distributors, pool dealers and pump manufacturers nationwide from September 2010 through August 2011 for about $1,000. Customers should stop using the recalled pool pumps immediately and call Nidec Motor Corporation to arrange a free repair. For additional information, contact Nidec Motor Corporation toll-free at (866) 278-6920 or visit its website at www.nidec-motor.com.

**LOSi NiMH BATTERY CHARGER RECALLED DUE TO BURN AND FIRE HAZARDS**

Horizon Hobby Inc., of Champaign, Ill., has recalled its Losi NiMH Start-Up Combo Charger. The charger and battery can emit excessive heat, posing a burn and fire hazard. Horizon Hobby has received eight reports of the batteries emitting excessive heat. No injuries have been reported. The Losi NiMH Start-Up Combo Charger is black, measures 4” x 2” and has model number LOSB9904. The model number is printed on the back of the product’s packaging with the bar code. A Losi logo sticker is on the front of the charger, along with another sticker bearing the instruction: “Use only with 7.2V NiMH Batteries 1500mAh or higher.” On the back of the charger is a sticker with voltage and current ratings for input (100-240VAC, 1.0A) and output (8.5V, 3A) along with another Losi logo.

The charger was sold at hobby stores nationwide. Consumers should immediately stop using this product and contact Horizon Hobby for a refund of the retail value. For additional information, contact Horizon Hobby toll-free at (877) 504-0233 or visit its website at www.horizonhobby.com/losicombo.

**MARSHALL GROUP RECALLS MARSHALL GARDENS PATIOGLO BIO-FUEL GEL**

About 39,000 Marshall Gardens Patio-Glo Bio-Fuel Gel bottles have been recalled by Marshall Group, of Elkhart, Ind. The pourable gel fuel can ignite unexpectedly and expel onto people and objects nearby when it is poured into a firepot that is still burning. This hazard can occur if the consumer does not see the flame or is not aware that the firepot is still ignited. Gel fuel that expels and ignites can pose fire and burn risks to consumers that can be fatal. The Marshall Group has received four reports of incidents, resulting in three injuries with burns requiring hospitalization. This recall involves pourable gel fuels packaged in 32 oz. clear plastic bottles and sold with or without citronella. The label on the container says “PatioGlo bio-fuel gel” or “Citronella PatioGlo.” The fuel is poured into a metal cup in the center of ceramic firepots or other decorative lighting devices and ignited. The following products are included in this recall:

- **Size—Model Number—SKU**
  - 32 oz.—PG-32—845095015023
  - 32 oz.—PGC-32—(Citronella)—845095015030

The bottles were sold at gift shops, home and garden stores, and online stores nationwide from November 2010 until August 2011 for between $7.99 and $11.99. Consumers should immediately stop using the pourable gel fuel in firepots and return all bottles to the company for a full refund. For additional information, contact the Marshall Group at recall@marshallgroupcorp.com or toll-free at 855-270-8482 between 8 a.m. and 5 p.m. ET Monday through Friday or visit the company’s website at http://marshallgroupcorp.com.

**ENCISION RECALLS CERTAIN ELECTRODE PRODUCT**

Encision Inc., a medical device company owning patented surgical technology that is emerging as a standard of care in minimally-invasive surgery, has recalled certain electrode tips used in its AEM® surgical systems. It was learned that certain tips could become susceptible to breaking off as a consequence of aggressive cleaning of the tip. The tips covered by the voluntary recall are Encision’s ES388X Series Reusable Suction-Irrigation Electrodes.

All of the affected instruments will be replaced at no charge to the customer. Encision has contacted customers by letter and will provide them with replacement instruments as soon as they are available. The Company has developed a replacement instrument and is currently working with the FDA to obtain approval of the replacement. Until the FDA provides its approval, the company will not be able to provide replacement products to customers. In the interim, the company has provided customers with the prior version of the product, which it says is not susceptible to the same issues as the recalled product. Customers may contact the company’s customer service at 800-998-0986.

**BALLARD DESIGNS RECALLS STEP STOOLS DUE TO FALL HAZARD**

About 2,500 Ballard Designs “Stafford” step stools have been recalled by Ballard Designs, Inc. of Atlanta, Ga. Plastic tabs on the feet of the step
stools can cause the stools to be unstable, posing a fall hazard to consumers. Ballard Designs has received six reports that the stools were not stable, including two reports of falls resulting in minor injuries. This recall involves Ballard Designs “Stafford” step stools made of wood painted black or white. “Ballard Designs” is printed on a sticker under the bottom of the step. “Made in China” is printed on the underside bottom of the step stools. Also printed on the underside bottom of the step stools is one of the following five numbers: 100097965, 100099019, 100097230, 100100584 or 100102942. All recalled stools also have four plastic tabs affixed to the feet of the step stool.

Ballard Design stores in Florida, Georgia and Ohio sold the stools. They were also sold through Ballard Designs catalogs, on www.ballarddesigns.com and www.hsn.com from July 2009 through May 2011 for about $80. Consumers should immediately remove the four plastic tabs from the feet of their step stools. Instructions are available online at www.ballarddesigns.com under the Product Safety page or by contacting Ballard Designs at the number below.

Ballard Designs is directly contacting all known purchasers. For more information, contact Ballard Designs toll-free at (888) 606-2627 or visit its website at www.ballarddesigns.com.

**IKEA Recalls Children’s Tents**

Swedish furniture store IKEA has recalled a children’s folding tent it sold over the summer. IKEA is recalling the BUSA children’s folding tent. The steel wire frame of the tent could break, producing sharp wire ends that could puncture the tent’s cloth covering and possibly injure the tent’s occupants. According to IKEA, about 58,000 tents were sold in the United States and Canada.

The tent was sold in August and September for around $8. It is described as a cube-shaped children’s folding tent with model number 90192009. The brand name BUSA and IKEA and the model number are printed on a sewn-in label attached to an interior seam in the tent. The tent frame is made of flat steel wire and the tent material is pale green polyester fabric with turquoise, pink and white trim. The tent was manufactured in Vietnam.

According to IKEA, three incidents involving the tent have been reported, resulting in one minor injury. None of the reported incidents were in the United States. Anyone who purchased the tent can return it to the nearest IKEA store for a full refund. For additional information, contact IKEA at (888) 966-4532 or visit www.ikea-usa.com.

**Jogging Strollers Recalled Due To Choking Hazard**

B.O.B. Trailers Inc., of Boise, Idaho, has recalled their B.O.B. ® single and double strollers. This includes about 411,700 in the United States and 27,000 in Canada (357,000 units were recalled in February 2011 due to strangulation hazard posed by canopy drawstring). The stroller canopy’s embroidered logo’s backing patch can detach, posing a choking hazard to babies and young children. The company has received six reports of children mouthing the detached patch. Gagging and choking were reported in two incidents. In each of the reported incidents, the children were seated in an infant car seat attached to the stroller.

This recall involves all B.O.B. strollers manufactured between November 1998 and November 2010. Strollers manufactured after October 2006 have a white label affixed to the back of the stroller’s leg with the manufacturing date. Strollers with no manufacturing date listed were produced prior to October 2006 and are included in this recall. The strollers were sold in single seat and double-seat models. The BOB®, Ironman® or Stroller Strides® brand name is embroidered on the canopy of the strollers.

The strollers were sold at REI, Babies R Us and other children’s product and sporting goods stores nationwide and Amazon.com between November 1998 and October 2011 for between $280 and $600. Consumers should immediately stop using the recalled strollers until they remove the embroidery backing patch from the interior of the canopy’s logo. Consumers should contact B.O.B. Trailers for instructions on removing the backing. For additional information, contact B.O.B. Trailers toll-free at (855) 242-2245 or visit the company’s website at www.bobnotices.com.

**Gas Rangetops Recalled Due To An Explosion Hazard**

About 470 GE Monogram® Pro Rangetop with Grills have been recalled by General Electric—Appliances, of Louisville, Ky. Burners on Rangetops operating on liquefied petroleum (“LP” or propane) may fail to ignite or light if the gas control knob is left in a position between OFF and LITE, posing a risk of delayed ignition or explosion. GE has received six reports involving explosions in units operating on LP gas.

The grills operate on liquefied petroleum (“LP” or propane) or natural gas. The Rangetop units are either 36 or 48 inches wide with a stainless steel finish and the GE Monogram® badge located on the front center of the unit. The burner control knobs are located on the front panel that overhangs the cabinet. The model and serial numbers can be found on a label located behind the far left burner knob, or on the bottom of the unit. All LP models and only natural gas models that have been converted for use with LP gas are included in the recall. GE has notified known owners of natural gas units and will provide a free repair for any consumers who converted their Rangetop with Grill to LP gas.

The grills were sold by General Electric authorized representatives and distributors nationwide from May 2008 through August 2011 for between $3,400 and $4,700. Consumers who are operating the product on LP (propane) gas should stop using the product immediately, turn off the gas supply to the product, and contact GE to schedule a free repair. For additional information, contact General Electric toll-free at (866) 645-3956, or...
visit its website at www.geappliances.com/products/recall.

**Big Lots Recalls Glider Recliners With Ottomans**

About 375,000 Microfiber Glider Recliners with Ottomans and Leather Glider Recliners with Ottomans from Big Lots, of Columbus, Ohio, have been recalled. An exposed gap between the moving parts of the chair and the base framework can allow access to toddlers and infants, posing an entrapment hazard. In addition, other exposed moving parts on the chair and the ottoman can pose finger pinching and crushing hazards to older children and adults.

CPSC received two reports of children under age two who were found trapped at the neck between horizontal components of the frame at the back of the chair. Fortunately, in both incidents, adults were able to release the children who suffered no permanent injuries.

The Microfiber Glider Recliner and Leather Glider Recliner are reclining glider/rocking chairs on a swivel base. Both the chair and ottoman sit on circular metal bases made from 1.25 inch metal tubing and have cushions covered in either light brown or green microfiber fabric or dark brown simulated leather fabric. A label under the seat of the chair identifies the manufacturer as Dongguan Shindin Metal & Plastic Products Ltd. There is a small label on the front metal rod under the label on the front metal rod under the seat that states “Maximum wt load 250 lbs.”

The gliders were sold at Big Lots stores nationwide from January 2005 through December 2009 for about $170. Consumers should immediately stop using the chairs and contact Big Lots for a free repair kit that covers the base framework and the moving parts of the chair and ottoman. For additional information, contact Big Lots toll-free at (866) 244-5687 or visit its website at www.biglots.com.

**Sony Recalling 1.6 Million LCD TVs Over Heat Problems**

Sony Corp. has recalled 1.6 million LCD televisions globally because of a defect that can trigger overheating, smoke and melting parts. Sony says it has received 11 such reports in Japan, though none involved injuries or damage beyond the TVs. The models subject to the recall in Japan are the Bravia KDL-40X5000, KDL-40X5050, KDL-40W5000, KDL-40V5000 and KDL-40V3000. The defective part—an inverter transformer used for LCD backlights—is also used in models sold overseas. But Sony says it has not received reports of similar problems. The company is releasing local recall information for customers in each affected market.

**Contact Lens Recall Re-Issued**

CooperVision, one of the nation’s largest eye care companies, is stepping up efforts to publicize the recall of more than a half-million contact lenses after coming under pressure from federal health regulators. On October 11th, CooperVision issued its second announcement on an August recall of 600,000 Avaira Toric contact lenses sold widely at stores such as Costco, Wal-Mart and LensCrafters, and linked to pain, red eye and blurred vision by wearers. The FDA said earlier that more effort was needed to alert consumers to the defective products, which contain a residue caused by a manufacturing problem. The debate between Pleasanton, Calif.-based CooperVision and the FDA over the recall underscores the agency’s limited authority to dictate the handling of recalls. That’s something that should be changed in my opinion.

**Target Recalls Frog Halloween Costume Masks Over Suffocation Fears**

Even though Halloween will have come and gone before this issue is read, I felt that the following recall should be brought to the attention of our readers. Last month, Target recalled about 3,400 frog masks for fear that children using them could suffocate. The retailer warned parents to immediately return the masks. The Consumer Product Safety Commission announced the recall, stating that the cheap $1 masks lack proper ventilation. No incidents regarding the masks have yet been reported. Target had exclusive sale rights on the plush masks, and has offered full refunds to anyone who returns the potentially dangerous masks. If any are still around after Halloween they should be taken away from children. I suggest that they be destroyed and not just thrown in the trash.

**Recalls For Pottery Barn Dolls**

There has been a recall for Pottery Barn dolls. It includes Pottery Barn Kids’ soft dolls [Chloe, Sophie, Audrey], available exclusively at Pottery Barn Kids stores nationwide, online at www.potterybarnkids.com and in Pottery Barn Kids catalogs. The dolls were sold from July 2006 to April 2011 for about $40. The hair on some of these dolls may contain loops that are large enough to fit around a child’s head and neck, and these loops pose a strangulation hazard. Consumers should take the dolls away from children immediately and cut the looped hair to prevent the hazard. Call Pottery Barn Kids at 855-880-4504 or visit www.potterybarnkids.com for instructions on how to return the affected dolls for a merchandise credit.

**Guidecraft Twist and Sort Toys Recalled**

There has been a recall of about 760 Twist and Sort Toys due to a choking hazard. The toy includes four posts, one with threading and the other three with small, horizontal pegs that provide obstacles for toddlers to twist on to the large peg triangular and square shapes. The toys were imported from China by Guidecraft Inc., of Winthrop, Minn., and sold nationwide from September 2009 through November 2010 for about $20. The small pegs can detach, posing a choking hazard, according to the CPSC. Consumers were advised to take the toys from children and contact Guidecraft for a replacement.
of equal value. Consumers can call 888-824-1308 for information.

**Kraft Recalls Some Velveeta Shells & Cheese**

Kraft Foods Global, Inc. has recalled three types of their Velveeta Shells & Cheese single-serve microwaveable cups. There is a possibility that there may be small, thin wire bristle pieces in the cups. The items being recalled are the Velveeta Shells & Cheese Original Microwaveable Cups (singles and four packs of 2.39 oz. microwaveable cups) with a “Best When Used by Date” of March 25, 2012 to March 20, 2012 and March 29, 2012 to April 12, 2012. Velveeta Shells & Cheese Made with 2% Milk Microwaveable Cups (singles and four packs of 2.19 oz. microwaveable cups) with a “Best When Used by Date” of April 29, 2012 to May 14, 2012. The ‘Best When Used By Date” is on the bottom of the package.

The company says there have been no reports of injuries or complaints. Approximately 137,000 cases of the affected products were shipped in the United States. Anyone who has purchased any of these products, should not eat them. Return them to the store where purchased for an exchange or full refund. Persons can also contact Kraft Foods Consumer Relations, Monday through Friday, at 1-800-308-1841.

**Contaminated Tomatoes Are Recalled**

A tomato brand distributed in Connecticut and New York may be contaminated with salmonella and has been recalled. The recall involves Andrew Williamson Fresh Brand organic grape tomatoes. Being recalled are:

- Organic grape tomatoes, 10.5-ounce plastic, clam shell shaped containers with the UPC code 033385655925
- Organic grape tomatoes, 7-ounce plastic, clam shell shaped containers with the barcode 20025465; marketed under Fresh & Easy brand. The label on both of the products contains the words “limited edition” and “product of Mexico.”

If consumers have any recalled product, they should throw it away or return it to the store where they bought it. If the product was purchased in Rhode Island, the consumer should report it to the Office of Food Protection at 401-222-2749. Symptoms of salmonellosis include diarrhea, fever and abdominal cramps. Anyone with these symptoms should contact their healthcare provider for evaluation and treatment. Consumers can contact the company at 619-661-6000 or email questions to info@andrew-williamson.com.

**Lettuce Recall Covers 19 States And Canada**

The recall over listeria contamination in lettuce has been expanded. Notice has gone out to 19 states and Canada. True Leaf Farms of Salinas initially announced a recall of 90 cartons of romaine lettuce shipped to Oregon, Idaho and Washington. But Church Brothers, which sells and markets the farm’s produce, says the recall involves near 2,500 cartons.

According to the company, most cartons went to institutions such as restaurants and cafeterias, which were notified about the recall. Only 90 cartons went to retail sales, and those were the ones mentioned in the initial announcement. The company issued the recall after a random check by federal officials found a sample tested positive for listeria. No illnesses were reported. The states covered by the recall include Alaska, Alabama, Arizona, California, Colorado, Connecticut, Florida, Illinois, Kentucky, Maryland, Minnesota, Missouri, Nevada, New York, Ohio, Oregon, Pennsylvania, Tennessee and Vermont.

**GIANT EAGLE RECALLS LETTUCE ON LISTERIA THREAT**

Pittsburgh’s Giant Eagle Inc. is recalling packaged iceberg lettuce because of the potential threat of listeria contamination. Listeria-tainted cantaloupes have killed at least 23 people across 12 states in recent weeks, matching the death toll in a 1998 outbreak. The U.S. Food and Drug Administration has told Giant Eagle about the presence of listeria in a routine test of Giant Eagle Farmer’s Market eight-ounce package of shredded iceberg lettuce.

The lettuce was produced by River Ranch Fresh Foods LLC, with a use-by date of October 14. There have been no reported cases of customer illness because of eating the food. The packaged product affected is Giant Eagle Farmer’s Market Shredded Iceberg Lettuce. The lettuce also was used in a small number of prepared deli ring sandwiches.

**Recall Issued For HEB Spinach Spring Mix Bag**

A precautionary recall has been issued for H-E-B Spinach Spring Mix Bagged Salad Product. Taylor Farms, the vendor that produces H-E-B Spinach Spring Mix Bagged Salad, encourages customers to check their refrigerators for the 5 oz. size of the product, as well as all deli items made using this product. The products, sold at H-E-B stores across Texas, are being recalled as a precaution following possible contamination identified by Taylor Farms.

While no reports of illnesses have been received, the voluntary recall was issued by H-E-B, in an abundance of caution, to ensure the safety of its customers. Customers can return the recalled products to any H-E-B or Central Market store for a full refund. Customers with concerns or questions can contact H-E-B Customer Relations at 210-938-8357 or 1-800-432-3113.

**Osamu Corporation Recalls Frozen Ground Tuna**

Osamu Corporation of Gardena, CA, has recalled up to 1,800 cases of frozen ground tuna. The FDA found decomposition in several samples of the product and also found elevated histamine levels in samples taken from one retail location. Osamu Cor-

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poration is recalling the product since decomposed product may promote formation of histamine. Histamine consumed in food can cause reactions that exhibit symptoms of tingling or burning sensation in the mouth, facial swelling, rash, hives and itchy skin, nausea, vomiting or diarrhea. However, individuals may experience symptoms differently. Persons developing these symptoms should seek medical attention.

The frozen ground tuna was shipped to three distributors from 08/18/11 to 09/08/11. The distributors removed the product from the marketplace and are destroying any remaining product. The three distributors are AFC Corporation, Red Shell Foods and Pacific Fresh Fish Company. Three illnesses due to elevated histamine levels have been reported to date, all involving sushi purchased at a single location. The cause of the elevated histamine levels found in the ground tuna at that location is presently unknown.

Customers who have purchased the frozen ground tuna from one of the distributors should return it to the distributor for a full refund. Consumers with questions may contact the company at 1-310-327-6376.

**GROUND BEEF RECALLED DUE TO **
E. coli **O157:H7 CONTAMINATION**

Approximately 337,775 pounds of ground beef products from Commercial Meats Co. have been recalled due to potential E. coli O157:H7 contamination. E. coli O157:H7 is a specific strain of bacteria that can cause abdominal cramping, nausea, vomiting, bloody diarrhea, and potentially life-threatening kidney failure. The problem with the recalled meat was discovered during a routine inspection by the Food Safety Inspection Service (FSIS), which confirmed a positive result for E. coli O157:H7. There have been no reports of illness related to the contamination, according to the FSIS.

EMSL Analytical, Inc. Tests for E. coli and other pathogens in food products. Joseph Frasca, Senior VP of Marketing at EMSL, says they use various validated methods that are recognized and accepted by regulation agencies. EMSL also offers rapid pathogen screens where appropriate and requested. For more information on EMSL’s testing services, please contact EMSL at (800) 220-3675, www.EMSL.com, or www.FoodTestingLab.com.

**RECALL ISSUED ON NIKE ALL-AMERICAN SANDWICHES**

Landshire of St. Louis, Missouri, has recalled 1,751 cases of the Nike All-American sandwich because it has the potential to be contaminated with Listeria Monocytogenes, an organism which can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. Although healthy individuals may suffer only short-term symptoms such as high fever, severe headache, stiffness, nausea, abdominal pain and diarrhea, Listeria infection can cause miscarriages and stillbirths among pregnant women.

The Nike All-American sandwiches were distributed nationwide at retail supermarkets. The sandwich subject to the recall is Landshire Nike All-American. This is a pre-packaged, individually wrapped white package sandwich that weighs 7.25 ounces (206 grams). The UPC code is 9748801741 5. The sandwiches involved have a lot number of 11 237 6. The lot number is printed in black ink on the side or back of the package.

No illnesses had been reported at press time. The recall was the result of a routine sampling taken by the North Carolina Department of Agriculture & Consumer Services for retail food establishments. Consumers who have purchased the Nike All-American were urged to return it to the place of purchase for a full refund. Consumers with questions may contact Landshire, at 1-800-468-3354.

Once again, there have been so many recalls since the October issue that we were unable to 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.

**EMPLOYEE SPOTLIGHTS**

**JULIA ANNE BEASLEY**

Julia Beasley came to work for the firm as an associate in March of 1992 and became a shareholder in January of 1998. Julia is in the firm’s Personal Injury/Products Liability Section and has handled a variety of cases since joining the firm. Her primary focus is motor vehicle litigation involving serious personal injuries or deaths. Those cases continue to constitute the bulk of Julia’s workload.

Julia graduated from Huntington College where she played varsity tennis. She then attended and graduated from Cumberland Law School. After graduation, Julia came to work with us. Julia is a member of The Fresh Anointing House of Worship in Montgomery. She also is involved in many charity events in the community, as well as a number of non-profit organizations. Julia competes on a local and national level in cutting horse competitions with her horses, which include Duallin in the Snow (Vern), Thee One (Strawberry) and several others. She currently owns seven cutting horses and competes on the circuit in the South. Julia enjoys having friends and family come to her barn to see and ride the horses. Julia is also a member of the National Cutting Horse Association.

Julia is a member of the UAB Health Center Advisory Board and also serves as a Trustee of the Southeastern Livestock Exposition. Recently, Julia was elected as a Fellow in the Alabama Law Foundation. She has also been selected for inclusion on the 2012 Best Lawyers in America list, published by U.S. News & World Report. Julia has settled numerous cases recently for substantial amounts, including these two:

- A case against a trucking company whose driver was traveling at an exces-
sive speed, causing a collision so horrific that it ripped the other car in half, killing the driver and its passenger;

- A case involving a drunk driver traveling at 100 mph, who crashed into the rear of her client’s vehicle, causing him to be paralyzed.

Julia is a very good lawyer who works very hard for her clients. She is totally dedicated to obtaining good results for them and will fight to see that justice is done. We are fortunate to have her with the firm.

FRANK WOODSON

Frank Woodson joined our firm in 2001. He was a former partner in the general litigation firm of Turner, Onderdonk, Kimbrough & Howell in Mobile, Ala., where his practice focused on litigation, both Plaintiff and Defense. Since coming with us, Frank’s practice has focused on Mass Torts related to pharmaceuticals. His primary efforts have been on behalf of clients who suffer from severe injury to their shoulder joint as a result of the use of a pain pump after shoulder surgery. Frank is working with lawyers in Oregon who discovered the problems with these pain pumps.

Frank was also very active in the Vioxx litigation. Beginning in 2005, he served as the Vice Chairman of the sales and marketing committee for the Vioxx MDL in New Orleans. Frank participated in several of our firm’s Vioxx trials. He led a team of lawyers who prepared video deposition cuts for several Vioxx trials as well as other aspects of a Vioxx MDL trial package.

Frank has handled several cases that were not classified as mass torts. He is investigating claims involving drugs that cause Stevens Johnson Syndrome (SJS), having successfully resolved claims for two clients who were blinded by SJS. In late 2008, he worked to resolve a claim for a child who required a liver transplant after ingestion of an antibiotic and in 2009 resolved the claim of a family of another child who died from liver failure after ingestion of an antibiotic.

Frank currently serves on the Board of Directors of the Alabama Association for Justice. He also serves on the board for St. James School. Frank is married to the former Marti Glaze of Tuscaloosa, Ala., and they have four children. They are active members of Frazer United Methodist Church, where Frank serves on the Board of Stewards. He also is a member of the Harbor Light Sunday School class and serves as an usher in the contemporary service. Frank, a very good lawyer, fights very hard for his clients. He is very well respected in the Mass Torts arena. We are fortunate to have him with the firm.

KIM VAUGHN

Kim Vaughn, who currently works as a Paralegal for both Bill Hopkins and Alison Douillard in the Fraud Section of the firm, has been with the firm for four years. Kim is responsible for helping draft legal documents and tracking cases. She also assists with research and trial preparation. Kim handles scheduling events, which is very important. Kim assists both her lawyers in class action litigation involving business torts, fraud, products liability, trade secrets, unfair trade practices, insurance matters, employment and drug pricing litigation. She is a very dedicated employee who works extremely hard to accomplish the very best results possible for our clients. Kim had previously worked in the Nursing Home, Product Liability and Personal Injury Sections of the firm.

Kim was born in Gainesville, Fla., and grew up in Trenton, a little farming community outside of Gainesville. Kim is married to Stuart Vaughn, who is from Gainesville, and they have an 18-year-old son, Aaron. Kim obtained an AS degree in Legal Assistant/Paralegal studies from Santa Fe Community College in Gainesville. Her hobbies include photography, gardening, cooking, playing Bunko and spending time with family and friends. We are fortunate to have Kim with us.

KWANZAA WHITE

Kwanzaa White, who has been with the firm for ten years, serves as the Receptionist in the firm’s Consumer Fraud Building. The job of a receptionist in our firm is very important and also quite demanding and challenging. Receptionists deal with a variety of folks on a daily basis. They are the first persons to have contact with potential clients and visitors. They also have to handle a tremendous number of telephone calls daily.

Kwanzaa has been married to her husband, James White, for 11 years and they have a nine-year-old daughter, Alexandria (Lexi), who keeps her parents very busy. Kwanzaa, originally from Opelika, now lives in Montgomery. Kwanzaa, who graduated with a B.S. in Liberal Arts from Auburn University in Montgomery, loves to read, run and do other physical exercises. She volunteers at her daughter’s school and in church. Kwanzaa also really enjoys spending time with family and friends. She says that knowing Jesus as her Lord and Savior has been her biggest accomplishment. Kwanzaa is a most valuable employee and she is dedicated to making things in her building go well. We are blessed to have her with us.

Greg Allen and Rhon Jones, two of our lawyers, were named recently as “Lawyers of the Year” by Best Lawyers. Greg Allen was named the “Montgomery Best Lawyers Product Liability Litigation—Plaintiffs Lawyer of the Year” for 2012, and Rhon was named “Montgomery Best Lawyers Litigation—Environmental Lawyer of the Year” for 2012. Best Lawyers is the oldest and most respected peer-review publication in the legal profession. After more than a quarter of a century in publication, Best Lawyers is designating “Lawyers of the Year” in high-profile legal specialties in large legal communities. Only a single lawyer in each specialty in each community is being honored as the “Lawyer of the Year.”

Best Lawyers compiles its lists of outstanding lawyers by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. The current, 18th edition of The Best Lawyers in America (2012) is based on more than 3.9 million detailed evaluations of lawyers by other lawyers. The lawyers being honored as “Lawyers of the Year” have received particularly high ratings in surveys by earning a high level of respect among their peers for their abilities, professionalism, and integrity. Greg and Rhon have each been selected for inclusion in Best Lawyers in America for 2011 and 2012. Steven Naifeh, President of Best Lawyers, says, has this to say:

We continue to believe—as we have believed for more than 25 years—that recognition by one’s peers is the

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most meaningful form of praise in the legal profession. We would like to congratulate Greg Allen on being selected as the ‘Montgomery Best Lawyers Product Liability Litigation—Plaintiffs Lawyer of the Year’ for 2012, and Rhon Jones as ‘Montgomery Best Lawyers Litigation—Environmental Lawyer of the Year’ for 2012.

This is quite an honor for Greg and Rhon and one that is certainly deserved. We are very proud of them.

**DR. DAVID BRONNER HAS BEEN GOOD FOR ALABAMA**

Dr. David Bronner, who has headed up the Retirement Systems of Alabama since 1973, has been very good for Alabama. He has done a tremendous job for the public employees who have been in the system. In our state, Dr. Bronner has advised the governors who sought his advice and would listen. His advice was always good. Those who did listen benefited, as did the people of Alabama. His vision and leadership has also reached far outside of Alabama. David Bronner is a definite asset to our state and its people. He has been able to stay above the political infighting that has held our state back for years. Hopefully, he will be able to resist any attempts to inject politics into the retirement system.

**GRANT ENFINGER MOVES UP TO NASCAR**

Grant competed at the Toledo Speedway in Ohio last month and had a good run, finishing fifth. This was the season finale for the ARCA Series, with Grant ending the season fourth in points. Before heading to Ohio, Grant stopped off at Charlotte Motor Speedway to announce that he will move up to NASCAR’s Sprint Cup Series next year. He will be driving the No. 93 Chevy for Sinica Motorsports. Grant says this is “definitely a dream come true” and is something he has been working for all of his life. Grant will become the first Alabama driver to race regularly in the Cup Series since 2002, when Hut Stricklin of Calera and Steve Grissom of Gadsden were still racing.

Sinica is owned by George Sinica, a native of Argentina, and will run a partial schedule of ten to 15 Cup races in 2012 as well as a few Cup races later this year. The team gets its cars from Richard Childress Racing. This is a tremendous opportunity for Grant. After Grant left Toledo, he raced a NASCAR truck at Talladega, posting a 12th place finish at the world’s fastest speedway. He will spend the rest of the year testing Sinica Cup cars in preparation for the 2012 season.

Grant drove the Beasley Allen car for several years and we all knew that he would eventually get a break and would go up to NASCAR. He did a great job for us. Grant has 13 top ten finishes and one pole in 18 ARCA races this season with a best finish of second at the season’s first race at Toledo. He has an average finish of 8.9. We wish Grant the very best as he moves into the NASCAR ranks.

**THE FIRM’S WEEKLY TELEVISION PROGRAM**

As you may recall, our firm has participated in a weekly television program on WSFA TV featuring Gibson Vance, one of our lawyers, as the moderator. The program, Law Call, allowed viewers to call in and to ask questions about legal topics. We included other lawyers as guests. In October, we started a new program, The Beasley Allen Report. This new show moves away from the call-in format, allowing us to spend more time sharing information about important cases, talking with lawyers with expertise in specific fields and with public officials.

We believe this new format will provide valuable insight into topics affecting the public’s rights and access to Civil Justice. The new show will still be hosted by Gibson, and it also will feature other Beasley Allen lawyers, as well as community leaders. Look for the show in the old Law Call time slot, every Sunday evening following the 10 o’clock news, on WSFA-TV12 (Channel 12 in Montgomery).

**XXVII. FAVORITE BIBLE VERSES**

Dr. George Mathison, who is the Senior Pastor at Auburn Methodist Church, sent a verse for this issue. As some of you may know, my friend George is John Ed’s brother. I am told that George taught John Ed all that he knows. Their father, Si Mathison, was a great preacher and he has to be looking down from Heaven and feeling mighty good about his “boys.”

For every beast of the forest is Mine, And the cattle on a thousand hills. I know all the birds of the mountains, And the wild beasts of the field are Mine. “If I were hungry, I would not tell you; For the world is Mine, and all its fullness.”

Psalm 50: 10-12

Bryant Boydstun, Jr., a very good lawyer with Abbey, Adams, Byelick & Mueller, a law firm located in St. Petersburg, Fla., sent in the following verse.

Let us therefore come boldly unto the throne of grace, that we may obtain mercy, and find grace to help in time of need.

Hebrews 4:16

Brenda Bowman, Development Director for Alabama Arise, sent in a verse that she says has meant a great deal to her over the past several weeks. Brenda and all of the folks at Alabama Arise work hard for Alabamians who are quite often ignored by many of our elected leaders.

*There is no fear in love; but perfect love casts out fear, because fear involves torment. But he who fears has not been made perfect in love.*

1 John 4:18

Pastor Bruce Burks, who serves at the Oak Grove Missionary Baptist Church in Midway, Ala., sent in his favorite verse for this issue. Pastor Burks lives in Louisville and is a good man.

*For everyone who asks receives, and he who seeks finds, and to him who knocks it will be opened.*

Matthew 7:8

Jami Dittmeier, who is with Breakthrough, sent in a verse for this month. Breakthrough is a ministry that operates a Christian book and gift store in Lincoln, Va.

*Give, and it will be given to you: good measure, pressed down, shaken together, and running over will be put into your bosom. For with the*
same measure that you use, it will be measured back to you.

Luke 6:38

My good friend Rosemary Elebash sent in a verse for this issue. Rosemary is the Alabama Director of National Federation of Independent Business and she works extremely hard and effectively for her members. She and her husband Brian are good folks. They have a son, Sams, who currently attends Troy University.

Willa Carpenter, who is the firm’s Human Resources Liaison, gave me a verse for this issue. As we have said on many occasions, Willa is a most valuable employee in our firm and we are blessed to have her with us. She is an inspiration to us all.

Whoever believes in Him should not perish but have everlasting life.

John 3:16

Another good friend, Father Manuel Williams, furnished three verses for this issue. Father Manuel, who is with Resurrection Catholic Missions in Montgomery, says these verses guide him in his daily walk with Jesus.

You have been told, O man, what is good, and what the Lord requires of you: Only to do the right and to love goodness, and to walk bumblingly with your God.

Micah 6:8

Finally, brothers, whatever is true, whatever is honorable, whatever is just, whatever is pure, whatever is lovely, whatever is gracious, if there is any excellence and if there is anything worthy of praise, think about these things.

Philippians 4:8-9

God is love, and whoever abides in love abides in God and God in him.

1 John 5:16

Willa Carpenter, who is the firm’s Human Resources Liaison, gave me a verse for this issue. As we have said on many occasions, Willa is a most valuable employee in our firm and we are blessed to have her with us. She is an inspiration to us all.

For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish but have everlasting life.

John 3:16

XXVIII.

CLOSING OBSERVATIONS

THE COMFORT AND POWER OF GOD’S WORD

According to Dr. Norman Vincent Peale, a devoted man of God, the first five minutes of the day are the most important minutes of the day because during that time “you condition your mind and set your course for the day.” Dr. Peale said he would arise very early every morning, and that the highlight of his day would be when he would go into his study and “spend those initial moments in devotion with God.” Dr. Peale said he would first get down on his knees and pray. He would then open his Greek New Testament and allow God to speak to him through His Holy Word. That’s certainly a good way to start each new day!

SOME VERY GOOD ADVICE

Dr. George Mathison, who sent in a verse for this issue, also has some good advice for us. George says: when a person is discouraged they should read John 14; when a person is exhausted, they should read Hebrews 12:1-2; and when we feel guilty, we should read 1 John 1:5-9. This is very good advice for all of us since we all have these feelings from time-to-time. It’s good to be reminded of the availability of the scriptures and I appreciate George sending them to me.

MONTHLY REMINDERS

If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then will I hear from heaven and will forgive their sin and will heal their land.

2 Chron 7:14

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

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortune,
FREEDOM, DEMOCRACY AND OPPORTUNITY FOR ALL

The Martin Luther King, Jr. Memorial in Washington was officially dedicated on October 16th, which brought back memories—both good and bad—for all who were around during the turbulent times between 1950 and 1970. It’s difficult to believe that it’s been nearly a half-century since Dr. King’s words about his dream of a color-blind, but racially equal society, rang out to the almost 300,000 folks gathered in Washington in 1963, with millions more watching on television that day. Dr. King’s historic “I Have a Dream” speech given during the March on Washington carried a strong and lasting message.

I wish I could report that the dream has become a reality, but the sad truth is, I can’t. While we have made tremendous progress in the United States, we still have a long way to go when it comes to racial equality and harmony. Unfortunately, there are still some who resist change in this arena. Hopefully, that will change one of these days, with the last traces of racism snuffed out, and when it does, we will all be better for it. My prayer is that day will come soon.

XXIX.
PARTING WORDS

We are reminded each night on the evening news about how bad things are today in the world. Not a day passes without some senseless act of violence taking a life and on many occasions, multiple lives are lost. Then we read and hear constant media accounts of how some large corporations cheat their investors or cause injuries or deaths to consumers because the bosses put profits over safety. There are almost daily reports in the media about the severe illegal drug problems that are widespread across the country. Drugs cause untold hurt and misery to thousands of individuals and families. The problems caused by a weak economy have resulted in loss of jobs and high unemployment in the U.S.

It appears that neither government, nor our elected leaders, regardless of how hard they may try, can really make things better for us. So there has to be a better answer on how to solve all of our massive problems. Many are searching for that answer. Perhaps the Holy Bible would be a good place to turn for the answers. There is no better source than Jesus Christ. Jesus is the only hope for our world. Because of His death on the cross, we can have not only forgiveness, but the assurance of Heaven in the future and the power to live an abundant life during these troubled times. When Jesus was confronted by the religious leaders of the day, who questioned him constantly, He answered as one who is completely wise, providing guidance on how to live. The following is one such exchange:

Teacher, which is the great commandment in the law?” Jesus said to him, “‘You shall love the LORD your God with all your heart, with all your soul, and with all your mind.’ This is the first and great commandment. And the second is like it: ‘You shall love your neighbor as yourself.’ On these two commandments hang all the Law and the Prophets.”

Matt. 22:36-40

The first four of the Ten Commandments given by God to the children of Israel are contained in Jesus’ statement: “Love the Lord your God with all your heart and with all your soul and with all your mind.” The last six commandments are enclosed in the statement: “Love your neighbor as yourself.” It would certainly take away much of the hurt, injury and pain that folks suffer because of how they are treated by others if we followed Jesus’ teachings. In fact, it would be a guarantee that a peaceful world would result if folks loved God and loved each other as themselves.

May God bless each of our readers and their families. Hopefully, we can all learn from Jesus how to deal with a complex and troubled world. Following the teachings of Jesus is recommended for all regardless of gender, age, skin color or social status. If you don’t believe Jesus provides the answers, give Him a try.

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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 over 50 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.