time the corporate bosses, who were responsible for our economic woes, were receiving record bonuses. All of the efforts by government to right a sinking ship were ultimately designed to put the burden of fixing things on the backs of ordinary folks. Those who can best afford to bail out the economy have been virtually left untouched. That, in my opinion, is just plain wrong.

Our elected leaders—both on the national and state levels—must put aside petty and disruptive partisan politics and work together to solve our nation’s problems. They must do more than talk and make promises that can’t be kept. It doesn’t take an economist to realize that we must put folks back to work in this country. In that regard, it’s critically important that we get our manufacturing jobs back. We have needs that are not being met. For example, our schools and highways must be rebuilt, and our healthcare system must be made accessible for all Americans. Our leaders must deal with the host of other economic problems that we are all familiar with, and quit the bickering and stalling on finding solutions. But the bottom line is that we must all wake up and fight to save the middle-class!

**Alabama Collected Least In Taxes Per State Resident**

Politicians in Alabama have been telling us for years that we are overtaxed and each election year say that there will be no more taxes forced on us. While that may be “good politics,” it ignores the reality that Alabamians really don’t pay that much in taxes each year. Alabama’s state and local tax collections per resident ranked lowest among the 50 states in fiscal years 2005 through 2007, and ranked second-lowest in fiscal 2008, according to a Birmingham News study.

Next to Alabama’s $2,793, the lowest state and local tax totals collected per state resident in fiscal 2009 were $2,819 in Tennessee, $2,829 in South Carolina, $2,884 in Idaho and $3,053 in Mississippi. For most states, the 2009 fiscal year ended June 30, 2009. Personally, I believe we must raise taxes at the state level in Alabama and soon. The next two budgets will be a disaster and eventually our elected representatives will have to face reality and find additional sources of revenue.

Source: Associated Press

**Jury Service Is A Duty Of Citizenship**

All too many of us look on jury service as a burden and something to be avoided if at all possible. After all, jury duty takes time and can be boring and without purpose or meaning, according to some folks. Fortunately, most American citizens still look on jury service as one of the most important civic duties a person can perform. The protection of rights and liberties, as well as the redress of wrongs, is achieved because of the jury system. To say that it’s an important public service is an understatement. That is why the jury system is protected by the U.S. Constitution.

It has been said that in this country a jury is really our final check. It’s the people’s last safeguard against unjust laws and tyranny. I can think of nothing more important than serving on a jury and I sincerely hope and pray that our readers share that belief. Only when the public lets elected officials know how they feel—and keep the pressure on...
them—will the jury system regain its rightful place in the U.S. justice system.

**IPCC Report Confirms Climate Change**

Any person who really doubts that our world’s climate has undergone tremendous changes, and that greenhouse gases are a major culprit, must have been on another planet for the past decade. A recently-released report by the Intergovernmental Panel on Climate Change should get the attention of those who have been denying climate change. What can’t be disputed are the freakish weather disasters—from the sudden October snowstorm in the northeastern part of the United States to the record floods in Thailand—that have become commonplace occurrences.

Global warming, which is worldwide, is likely to spawn more similar weather extremes at a huge cost, according to the IPCC report. The panel of the world’s top climate scientists, who did the research, paint a scary future for a world already being hit with weather catastrophes costing billions of dollars. According to the report, costs will rise and some locations may even become “increasingly marginal as places to live.”

I have to wonder how some political leaders are still taking the “ostrich approach” when it comes to the climate change issues. If they have children or grandchildren, surely they are concerned about what the future holds for them. If they aren’t concerned or simply don’t care, I recommend they read the IPCC report. According to this report, there is at least a two-in-three probability that weather extremes have already worsened because of man-made greenhouse gases. That’s a pretty high percentage by any recognized standard.

The findings in the report mark a change in climate science from focusing on subtle changes in daily average temperatures to concentrating on the harder-to-analyze freak events that grab headlines, cause economic damage and kill people. Jerry Meehl, senior scientist at the National Center for Atmospheric Research, made this observation:

_The extremes are a really noticeable aspect of climate change. I think people realize that the extremes are where we are going to see a lot of the impacts of climate change._

The climate panel report measures the confidence scientists have in their assessment of climate extremes, both past and future. The report didn’t detail which regions of the world might suffer extremes so severe as to leave them only marginally habitable. But the report does say scientists are “virtually certain”—99%—that the world will have more extreme periods of heat and fewer of cold. It’s predicted by the scientists that heat waves could peak much hotter by mid-century and with even more intense heat waves by the end of the century.

The conclusion that heat-trapping greenhouse gases in the atmosphere are building up so high, so fast, some scientists now believe the world can no longer limit global warming to the level world leaders have agreed upon as safe. New figures from the U.N. weather agency reveal that the three biggest greenhouse gases not only reached record levels last year, but were increasing at an ever-faster rate, despite efforts by many countries to reduce emissions. It’s now believed by a number of scientists that it’s unlikely the world can hold warming to the target set by leaders just two years ago. Jim Butler, director of the U.S. National Oceanic and Atmospheric Administration’s Global Monitoring Division, observed: “The growth rate is increasing every decade. That’s kind of scary.”

Scientists can’t say exactly what levels of greenhouse gases are safe, but a great number fear a continued rise in global temperatures will lead to irreversible melting of some of the world’s ice sheets and a several-foot rise in sea levels over the centuries—the so-called tipping point. The findings from the U.N. World Meteorological Organization are consistent with other grim reports issued recently. Figures from the U.S. Department of Energy last month showed that global carbon dioxide emissions in 2010 jumped by the highest one-year amount ever. That simply can’t be allowed to continue.

The top two other greenhouse gases—methane and nitrous oxide—are also soaring. The U.N. Agency cited fossil fuel-burning, loss of forests that absorb CO2 and use of fertilizer as the main culprits. Since 1990—a year that international climate negotiators have set as a benchmark for emissions—the total heat-trapping force from all the major greenhouse gases has increased by 29 percent, according to NOAA.

The accelerating rise is happening despite the 1997 Kyoto agreement to cut emissions. It’s reported that Europe, Russia and Japan have about reached their targets under the treaty. But the United States, China, and India are all increasing emissions and that’s not good. The treaty didn’t require emission cuts from China and India because they are developing nations. The U.S. pulled out of the treaty in 2001, the U.S. Senate having never ratified it.

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Let’s consider what the climate disasters in the U.S. have cost us over the last decade. Deaths and health problems from floods, drought and other U.S. disasters related to climate change cost an estimated $14 billion during that time, according to a study found in the _Health Affairs Journal_. Kim Knowlton, a senior scientist at the Natural Resources Defense Council and a co-author of the study, said: “When extreme weather hits, we hear about the property damage and insurance costs. The healthcare costs never end up on the tab.”

The study looked at the cost of human suffering and loss of life due to six disasters from 2000-2009. It was pointed out by Dr. Knowlton that the study didn’t attempt “to capture all of the climate-related events that happened in the U.S. over that time period.” To put all of this in context, 14 weather disasters in the United States so far this year have cost at least $14 billion, according to Jeff Masters of the Weather Underground website. He says that health costs and deaths are considered in some of the data used to reach this figure. Scientists and economists from the non-profit NRDC, the University of California-Berkeley and the University of California-San Francisco estimated the health costs for the following events from 2000 to 2009. These costs were:

- **U.S. ozone air pollution, 2000-2002, $6.5 billion;**
- **West Nile virus outbreak in Louisiana, 2002, $207 million;**
- **Southern California wildfires, 2003, 5578 million;**
- **Florida hurricane season, 2004, $1.4 billion;**
- **California heat wave, 2006, $5.3 billion; and**
- **Red River flooding in North Dakota, 2009, $20 million.**

The study’s authors stressed that they chose events in the middle of the severity spectrum and left out some notably costly disasters, such as the 2005 hurricane season that included the devastating Hurricane Katrina. For example, in the case of Katrina, the healthcare costs were said to have been difficult to pinpoint. But in any event, the authors said that the six case studies used are examples of events related to climate change that are projected to worsen as the planet warms.

These six events, according to the study, resulted in an estimated 1,689 premature deaths, 8,992 hospitalizations, 21,113 emergency room visits and 734,398 outpatient visits. In dollars, the largest cost by far was for premature deaths at $13.3 billion, which number was based on the Environmental Protection Agency’s value of a statistical life, which is $7.6 million. This was not meant to put a value on any one life but to calculate
II. A REPORT ON THE GULF COAST DISASTER

BP MUST FACE GULF SPILL CLAIMS FROM ALABAMA AND LOUISIANA

Judge Barbier, in a most important order, ruled that BP Plc must face claims in lawsuits filed by the states of Alabama and Louisiana. The states can sue for negligence and products liability under general maritime law and will be allowed to recover punitive damages. The judge dismissed claims brought under state environmental laws, including demands for civil penalties, finding they were preempted by federal law governing the Outer Continental Shelf. Judge Barbier stated in his order:

Because the source of this discharge occurred within an exclusive federal jurisdiction, the OCS, the only available law is federal law. The state-law claims are dismissed.

We should never forget that the Macondo well blowout and the explosion that followed killed 11 workers and set off the worst offshore oil spill in U.S. history. Sometimes the passage of time results in our forgetting how truly bad a disaster really was. This was one of the worst. The explosion and spill led to hundreds of lawsuits against BP and its partners and contractors and all of the Defendants must be held accountable. As you may recall, Alabama was the first state to file suit and that has turned out to be very important for Alabama citizens. It has put our state in a leadership position in the MDL.

Also sued, in addition to BP, were Transocean Ltd., the Switzerland-based owner and operator of the Deepwater Horizon drilling rig that exploded; Halliburton Co., which provided cementing services; Cameron International Corp., which provided blowout-prevention equipment; and BP’s minority partners in the well, Anadarko Petroleum Corp. And Mitsui & Co.’s Moex Offshore LLC unit. Most of the Defendants argued that the federal Clean Water Act and Outer Continental Shelf Act trumped all claims under state law and that the Oil Pollution Act (OPA) displaced maritime law claims as well.

Judge Barbier had previously decided in suits brought by private parties that “claims of negligence and products liability under general maritime law were not preempted by OPA, provided that the Plaintiff alleged either physical injury to a proprietary interest or qualified for the commercial fisherman exception.” This finding was correctly applied by the judge to the states’ claims in his most recent order.

Judge Barbier said the states are likely to recover all their removal costs under OPA and that “if OPA’s liability cap does not apply, then the states may recover all OPA damages as well.” It should be noted that BP waived the $75 million damage cap under the Oil Pollution Act. Under OPA, Judge Barbier ruled that the states can recover “damage to natural resources and property, lost revenues and profits, and the cost of providing additional public services.”

Source: Bloomberg

FIENBERG REACTS TO THREAT OF FEBRUARY TRIAL

As the trial date in New Orleans draws nearer, Ken Fienberg is really feeling the pressure. He has increased the amounts shrimp and crab harvesters and processors will get from the Gulf oil spill claims operation under new rules released late last month by the Gulf Coast Claims Facility. This change, while an increase, is grossly inadequate for these claimants. It fails to account for the high fixed costs associated with the industries. Neither does it consider future losses adequately. Interestingly, the new rule doesn’t apply to claims over $500,000. To put it in simple terms, shrimpers and fishermen have been shortchanged by the GCCF. As you may recall, desperate claimants accepted much lesser amounts as final payments, a few months ago, believing they were getting a fair deal from the GCCF. Obviously, they weren’t and this latest move by Fienberg is “exhibit A.”

The new GCCF rules give any commercial crab or shrimp harvester or processor either four times the amount that they can document having lost in 2010 due to the spill, or their total documented losses to date, whichever is larger. But, it must be understood that in order to receive such a final payment, the claimant must sign a waiver agreeing not to sue anyone involved in the spill or seek any further compensation for losses. Previously, claimants could receive twice their 2010 losses and were told that was good for them.

Claimants and their lawyers must not forget that Ken Feinberg, the claims operation administrator, works for BP. His goal has been to save BP as much money as he possibly can. The new compensation formula undervalues how much shrimpers and crabbers are losing in the wake of last year’s spill. It fails to adequately account for investments in boats and equipment.

Shrimpers or crabbers who have already accepted a final payment and signed a waiver will not be eligible for more money under the new formula. The new rules also make it much tougher for those in Texas and the Florida Panhandle to get money from the claims operation. Losses in those areas “are no longer presumed to be the result of the oil spill,” according to a statement from the claims operation.

I can assure our readers that the February trial in New Orleans was the sole motivation for this latest settlement ploy by Feinberg. He knows claimants will do much better in the MDL and he also knows that BP wants to avoid facing a trial because of its horrendous conduct.

Source: Associated Press

AN OVERVIEW OF DEVELOPMENTS IN THE OIL SPILL LITIGATION

The Gulf oil spill litigation continues to move at a very rapid pace heading toward a trial starting on February 27th of next year. Here is a brief summary of several events and reports on the oil spill disaster. Currently, we have had 19 lawyers and a large number of support staff working virtually full-time on this litigation. As previously reported, our firm is currently representing over 2,500 individual clients in the MDL. We also have a lawyer from the firm, Rhon Jones, serving on the Plaintiffs’ Steering Committee (PSC). Rhon is working on some extremely important matters for all of the Gulf Coast states relating to damages.

BP and Nalco are not immune from liability for personal injury toxic exposure cases and can be subject to punitive damages. Judge Barbier, the federal judge handling the MDL litigation, has issued another major ruling in the oil spill case. This ruling pertains to folks who were exposed to oil and chemical dispersant while residing on the coast or working in the oil spill cleanup. Certain Defendants had requested Judge Barbier to declare that they were immune from suit. Under a theory of
derivative immunity, certain Defendants (including Nalco, the manufacturer of the chemical dispersant COREXIT 9500 and COREXIT EC 9527 used during the cleanup) contended that they were immune from suit because they were working at the direction of the federal government. The Plaintiffs’ Steering Committee correctly argued that, based on the known facts, BP took control of the cleanup operations and exceeded the permitted use of dispersant in the Gulf of Mexico. Judge Barbier sided with the PSC, and denied the Defendants’ immunity requirements.

In addition, Judge Barbier sided with the PSC and determined that medical monitoring costs may be available where a Plaintiff’s injury consists of a disease or symptom, or some sort of emotional distress that would qualify as an injury from exposure to chemical dispersant or oil constituents. Plaintiffs who did not allege a physical injury would not be able to seek medical monitoring costs, but could be entitled to relief if they started showing symptoms later.

The Court also stated that personal injury exposure Plaintiffs would be entitled to general maritime claims for negligence, gross negligence and maritime products liability claims against the chemical dispersant manufacturers. Finally, non-seaman Plaintiffs will be entitled to seek punitive damages for chemical exposure injuries based on previous Supreme Court precedent.

GCCF Audit Investigation Update.

Recently, two U.S. Senators, Roger Wicker from Mississippi, and Marco Rubio from Florida, authored an amendment to a Senate bill that would lay the groundwork for an audit of the Gulf Coast Claims Facility (GCCF). I am pleased to report that the Senate approved the amendment and has ordered an independent audit of the GCCF. U.S. Rep. Steven Palazzo, (R-Biloxi) made this observation:

A Department of Justice audit of the GCCF is overdue. Gulf Coast residents need certainty about the fairness and transparency of the claims process.

Since its inception, the GCCF has paid claims at an alarmingly slow rate—and many Gulf Coast residents have not been paid at all. During the Christmas season last year, the GCCF began its “quick pay” final claims process, which pays individuals $5,000 and businesses, $25,000 to settle their cases. While Claimants can file full review final and interim claims, the reality is, their interim claims are often denied with a “quick pay” final offer.

Hopefully, the GCCF audit, which is already in progress, will provide the needed transparency and fairness to people through-out the Gulf Coast. Regardless, I still believe very strongly that the MDL Court in New Orleans provides the most transparent, fair resolution to all oil spill claims. That court is the only place where complete justice for Claimants can be guaranteed.

Source: The Sun Herald

Oil Spill Fines By The Federal Government Against BP are but a “Slap on the Wrist.” BP, and its contactors Transocean and Halliburton, were cited in October by the Interior Department for numerous safety violations in operations that caused the Deepwater Horizon oil spill last year. The Department and the Coast Guard found in the report that BP, Transocean and Halliburton had failed to operate the drilling rig in a safe and responsible manner, had needlessly endangered their workers, had not followed proper well control procedures and had not properly maintained safety equipment, including the blowout preventer.

The claims represent the first time the government has cited contractors rather than just a well’s principal owner, in this case BP, for safety violations. The companies have 60 days to appeal the government’s citations. Michael R. Bromwich, head of the Department’s offshore safety office, had this to say:

The joint investigation clearly revealed the violation of numerous federal regulations designed to protect the integrity of offshore operations. To ensure the safe and environmentally responsible conduct of offshore operations, companies that violate federal regulations must be held accountable.

Even given the government’s findings, some believe the citations amount to nothing more than a slap on the wrist. Under the law, fines are capped at $55,000 per day, per incident for violations. Rep. Edward Markey, (D-Mass) calls for stronger penalties, saying:

The fine obviously does not even begin to approach the amount needed to be a deterrent against a repeat of this tragedy. That fine is a slap on the wrist.

Rep. Markey estimates that the total fine against BP would be $21 million for its seven violations, which by his estimates is only seven hours of profit for the company on a given day. Halliburton and Transocean would face at most $12 million in fines.

Source: Truth-out; Reuters; The New York Times

BP Wants US Probes Barred From Oil Spill Suits. The companies involved in the worst offshore oil spill in U.S. history are now trying hard to prevent government investigations blaming them for the disaster from being used against them by the people and businesses who are suing them. The trial scheduled for February will determine whether rig owner Transocean can limit what it pays Claimants under maritime law and assign percentages of fault to Transocean and other companies involved. BP, Transocean and Halliburton filed motions on November 7th seeking to keep certain government oil spill reports from being used in the trial. BP also wants the court to bar Plaintiffs’ lawyers from using past criminal, civil and regulatory proceedings against the company in the civil case.

BP And Coast Guard Want To Stop Oil Spill Cleanup. The U.S. Coast Guard and BP PLC have agreed on a plan to determine when oil spill cleanup work can stop along sections of the Gulf Coast. Environmentalists are not at all happy with this development and charge that, with the plan, the Coast Guard “let BP off the hook.” Hopefully, this announcement doesn’t mean that the cleanup is over. It does indicate that officials are starting to turn their attention to repairing the long-term environmental damage done by last year’s disaster. But environmental advocates said that too much oil is still hitting the coastline for officials to contemplate moving past the cleanup phase.

Mobile Baykeeper Casi Callaway pointed out that Alabama’s pristine sugar sand beaches have never had tarballs like are being seen now. She said that it’s clear this is BP’s oil and that BP must continue to clean it up very single time it washes ashore. The Louisiana-based Gulf Restoration Network echoed that view, saying that “BP’s oil is still in the Gulf, and it is the Coast Guard’s legal responsibility to hold BP accountable for cleaning it up.”

Under the plan, a host of government officials will determine whether a particular area is clean enough for continuous cleanup operations to stop. The required level of cleanliness varies by area. Beaches must have either no oil from BP’s blown Macondo well or as little oil “as reasonably practicable, considering the allowed treatment methods and net environmental benefit,” the plan said. In marshes and environmentally sensitive areas, there must be no “flushable” oil and no “thick oil.” The cleanup of such areas is limited by concerns that removing the oil could cause more environmental damage than leaving it in place.

When an area meets these tests, BP can stop continuously patrolling for oil. If oil is discovered after that point, it would be tested, and BP would only have to clean it up if the tests showed that it came from the company’s blown well. I am not comfortable with BP making that type call. There are a number of obvious questions, such as who will pay for the oil to be tested.

The Gulf Restoration Network believes that the plan does too little to monitor
whether additional oil is washing ashore. Citing similar concerns, officials from the state of Louisiana refused to approve the plan. But it appears Alabama and Mississippi are on board. Fortunately, Alabama Gov. Robert Bentley has reservations, saying it is “not yet time for cleanup work in Alabama to stop.” He stated that while Alabama has approved the plan his response can’t be taken as accepting that the cleanup is complete. BP officials told reporters that they and federal officials “believe that more than 90% of the impacted shoreline across the Gulf of Mexico from this event has achieved that standard of cleaning” laid out by the plan. I don’t believe for a minute that 90% of the oil is gone and neither do I believe that BP does either. Source: A&i.com

Dead Dolphins Continue to Wash Ashore. As we have reported previously, hundreds of dead dolphins have washed ashore since the Deepwater Horizon oil spill occurred, the last ones as late as November 27th. Unfortunately, those disturbing trends appear to be continuing. Since the oil spill occurred, about 600 dolphins have washed ashore. To put that number in perspective, only a handful of dolphins on average wash ashore each year. The obvious difference is—in those previous years—there was no oil spill. Suzanne Smith, stranding and rescue coordinator for the Audubon Nature Institute, has observed:

Everybody knows that there’s something going on. What that something is, is what we’re working really hard to try and find. We are doing necropsies.

The federal government, through NOAA, declared the Northern Gulf Coast area an “Unusual Mortality Event.” “We do know that BP put a historic amount of oil in the Gulf of Mexico. This decision rejected BP’s bid to use insurance coverage from Transocean Ltd to cover costs stemming from last year’s record oil spill in the Gulf of Mexico.” This decision rejected BP’s bid to gain access to $750 million of insurance coverage under nine separate policies. This was another legal setback recently for BP. As noted above, Judge Barbier ruled that BP Told It Can’t Use Transocean Insurance For Gulf Spill. Judge Barbier, in another important ruling, has rejected BP Plc’s bid to use insurance coverage from Transocean Ltd to cover costs stemming from last year’s record oil spill in the Gulf of Mexico. This decision rejected BP’s bid to gain access to $750 million of insurance coverage under nine separate policies. This was another legal setback recently for BP. As noted above, Judge Barbier ruled that BP Told It Can’t Use Transocean Insurance For Gulf Spill. Judge Barbier, in another important ruling, has rejected BP Plc’s bid to use insurance coverage from Transocean Ltd to cover costs stemming from last year’s record oil spill in the Gulf of Mexico.

A Look Back at the Great Exxon Valdez Fish Kill. Since the Deepwater Horizon oil spill occurred, many have compared the disaster to the Exxon Valdez oil spill that occurred in Alaska on March 24, 1989. When the Exxon Valdez ran aground in Prince Williams Sound, the ship spilled at a minimum 11 million gallons of oil. After the spill, the herring population started showing signs of sickness—including skin lesions. In 1993, the herring fishery population completely crashed and has never returned to normal in the Sound. Before the spill, the herring population played an important role in the diet of many species in the Sound, including seabirds, salmon and large predatory fish. In addition, the herring population was a major source of economic revenue for commercial fishermen that harvested the species.

Fast forward to the Deepwater Horizon oil spill. The disaster was so significant that by some estimates, the Macondo well was spilling an Exxon Valdez disaster every couple of days. When you look at what happened to the Prince William Sound herring population after the Exxon Valdez disaster, there should be no surprise that hundreds of dead dolphins are washing ashore, and fish are being caught in the Gulf with lesions, fin rot, discolorations, and missing appendages. University of West Florida biologist William Patterson, III, who has been studying fish, including red snapper, for 15 years, has never seen anything like this before. He says:

I’ve had tens of thousands of fish in my hands and not seen these symptoms in so many fish before. All those symptoms have been seen naturally before, but it’s a matter of them all coming at once that we’re concerned about.

Some fishermen who have fished certain parts of the Gulf for decades are now reporting that those areas seem dead. Scientists are continuing to wrangle over whether the current fish abnormalities are being caused by the oil spill. But, if you look at what happened to Prince William Sound after Exxon Valdez, I would ask our readers whether it is really any surprise we are seeing the same type of problems in the Gulf of Mexico after the Deepwater Horizon spill?

Source: Pensacola News Journal

Update on the Vessels of Opportunity Litigation. After the oil spill, folks along the Gulf Coast were hired in the Vessels of Opportunity (“VOO”) program by BP to work in cleaning up the oil spill. After signing their contracts, many of those workers were not actually placed in cleanup. Rather, they were placed on standby with strict orders to remain available at all hours of the day to be placed on call. While on standby, the workers were beholden to BP, and could not perform other work because once they were placed on call, the workers had a very limited amount of time to be ready to work. The alternative for many people if they performed other work was to lose what appeared to be the only stable job in the midst of the oil spill crisis. Some people waited months to actually be placed on call, only to be given a very limited amount of work—or in some cases, no work at all.

While BP has refused to pay these folks for their wait time, Judge Barbier has ordered that these claims be placed on a separate track where they hopefully can be resolved. Recently, the Plaintiffs’ Steering Committee filed a motion for summary judgment on the key contractual issues surrounding the VOO program, and I can now report that motion is fully briefed before the Court. After the Court rules on whether VOO participants are entitled to “off hire” pay, the parties will work to resolve these cases.

Our firm is currently reviewing and assisting folks that were not paid for their wait time in BP’s VOO program. If you have any questions about these claims, please feel free to contact Rhon Jones or Parker Miller, lawyers in our firm, at Rhon.Jones@beasleyallen.com and Parker.Miller@beasleyallen.com.

BP Told It Can’t Use Transocean Insurance For Gulf Spill. Judge Barbier, in another important ruling, has rejected BP Plc’s bid to use insurance coverage from Transocean Ltd to cover costs stemming from last year’s record oil spill in the Gulf of Mexico. This decision rejected BP’s bid to gain access to $750 million of insurance coverage under nine separate policies. This was another legal setback recently for BP. As noted above, Judge Barbier ruled that Alabama and Louisiana may recover punitive damages from BP and other companies for spill damages. Judge Barbier wrote concerning the pollution liabilities:

BP, under the drilling contract, assumed responsibility for Macondo well oil release pollution liabilities. The Deepwater Horizon incident entailed a subsurface release; thus, Transocean did not assume pollution liabilities arising from the incident.

Source: Insurance Journal

Personal Injury Claims. To say these recent rulings by Judge Barbier are significant for our clients would be an underestimate. Source: Insurance Journal

www.BeasleyAllen.com
ment. We currently represent a number of individuals who have injury claims. Many of our clients who worked in the cleanup program or resided close to the beach are suffering from severe headaches, nausea, diminishing respiratory function, continuing skin and eye irritations, and gastrointestinal problems. If you have any questions about personal injury claims related to exposure to oil and toxic chemical dispersant, please contact Parker Miller at Parker.Miller@beasleyallen.com or Kyle Shirley at Kyle.Shirley@beasleyallen.com.

The Trial in February, 2012. We fully expect the February trial to start as expected. Judge Barbier is a no-nonsense, all-business judge and he has kept both sides to this litigation focused and on track. We will be ready for trial and expect things to do well for the Claimants’ side.

Hopefully, the above summary will give our readers more insight into what is going on with the BP litigation. If you need more information on the subject, contact Sandra Walters at 800-898-2034 or by email at Sandra.Walters@beasleyallen.com and she will put you in touch with the appropriate lawyer in the firm.

III. DRUG MANUFACTURERS FRAUD LITIGATION

AN UPDATE ON THE MEDICAID FRAUD LITIGATION

A great deal has been written on the Medicaid fraud litigation (commonly referred to as Average Wholesale Pricing, or AWP). Our firm has been a leader in this litigation from the very outset and has tried more cases in this area than any other firm. We represent the states of Alabama, Mississippi, Louisiana, South Carolina, Kansas, Utah, Alaska and Hawaii in the litigation. To date, we have recovered over $400 million in settlements for these eight states. We are now about one-third of the way through all of the cases that we have filed, with the rest to be either settled or tried in time. For example, all of the cases in Hawaii have been settled. We are making good progress in Alabama, but still have ongoing negotiations with several companies. We are just beginning to negotiate settlements with a number of companies in Louisiana. There are also negotiations ongoing in the other states.

We currently have two verdicts, either on appeal or about to be on appeal, against Sandoz. In Alabama, a $78 million verdict is pending in the Alabama Supreme Court, awaiting a decision. In Mississippi, we obtained a $38.2 million verdict for that state and it will soon be on appeal. Considering the settlement total of $400 million and the jury verdicts ($78 million and $38.2 million), our AWP efforts so far have resulted in $503 million being recovered for taxpayers in the states we represent. But we still have the bulk of the cases ahead of us.

GLAXO SETTLES CASES WITH THE UNITED STATES FOR $3 BILLION

The British drug company GlaxoSmithKline has agreed to pay $3 billion to settle United States government civil and criminal investigations into its sales practices for numerous drugs. The settlement would be the largest yet in a wave of federal cases against pharmaceutical companies accused of illegal marketing, surpassing the previous record of $2.3 billion paid by Pfizer in 2009. In recent years, drug companies have been prime targets of federal fraud investigations, which have recovered tens of billions of dollars for Medicaid and Medicare.

The cases against GlaxoSmithKline include illegal marketing of Avandia, a diabetes drug that was severely restricted last year after it was linked to heart risks. According to federal prosecutors, the company paid doctors and manipulated medical research to promote the drug. GlaxoSmithKline had already set aside cash for the settlement.

To put things in perspective, the Glaxo settlement will trump the $2.3 billion Pfizer Inc. paid in 2009 relating to its marketing of the painkiller Bextra and other drugs, as well as the $1.4 billion Eli Lilly & Co. paid during the same year over sales of its Zyprexa anti-psychotic medicine. Abbott Laboratories agreed to pay at least $1.3 billion to settle claims by the U.S. government and 24 states alleging the company illegally marketed its Depakote epilepsy drug.

Federal prosecutors began an investigation in Colorado in 2004, later taken over by the U.S. Attorney in Massachusetts, into whether Glaxo promoted drugs for unapproved uses, and into ways Glaxo potentially influenced doctors. The probe concerns nine of the company’s best-selling products from 1997 to 2004, including the Advair lung treatment.

The agreement to settle its biggest federal cases should be completed next year, according to the company. It said $3 billion would settle not only the Avandia case, but also a Justice Department investigation of its Medicaid pricing practices and a nationwide investigation led by the United States attorneys in Colorado and Massachusetts into the sales and marketing of nine of its drugs from 1997 to 2004. GlaxoSmithKline hasn’t specified how much money would resolve each case, nor the possibility of criminal findings and fines, saying the final settlement remained under negotiation. GlaxoSmithKline, with a market value of more than $110 billion, had net profit of about $5 billion on sales of $43 billion in the year ending Sept. 30.

The company set aside $3.4 billion in January—eliminating its fourth-quarter profit—and $2.3 billion in July 2010 to resolve a variety of civil and criminal cases. Critics of the settlements made with drug companies argued for stiffer penalties, including prison sentences for corporate officials. Frances H. Miller, a Boston University law professor and health policy expert, put the settlement in the proper perspective, saying:

Although $3 billion is a very big number in terms of drug industry settlements, it’s not a very big number in relation to almost $50 billion in annual revenue for the world’s fourth-largest pharmaceutical company.

It should be noted that the health care sector accounted for more than 80 percent of the $4 billion in overpayments recovered by the government in 2010 as a result of whistleblower lawsuits and resulting fraud investigations by federal and state agencies.

Source: Bloomberg and Associated Press

MERCK ORDERED TO PAY $950 MILLION IN VIOXX CASE

Drug maker Merck will pay $950 million to resolve investigations into its marketing of the painkiller Vioxx. Merck will pay $321.6 million in criminal fines and $628.4 million as a civil settlement agreement. It will also plead guilty to a misdemeanor charge that it marketed Vioxx as a treatment for rheumatoid arthritis before getting U.S. Food and Drug Administration approval. Merck stopped selling Vioxx in 2004 after evidence showed the drug doubled the risk of heart attack and stroke. In 2007, our firm was directly involved in forcing Merck to pay $4.85 billion to settle around 50,000 Vioxx-related civil lawsuits.

According to the Justice Department, this settlement resolves allegations that Merck made false, unproven, or misleading statements about Vioxx’s safety in order to increase sales, and made false statements to Medicaid agencies about its safety. Merck will have to accept federal monitoring as part of the agreement.

Vioxx was approved by the FDA in 1999, but the government did not initially approve the drug for use in rheumatoid arthritis. That
meant doctors could write prescriptions for Vioxx for rheumatoid arthritis patients, but Merck could not promote the drug for that use. Merck promoted Vioxx for rheumatoid arthritis for three years and continued to do so after getting an FDA warning letter in 2001. The drug was approved as a treatment for rheumatoid arthritis in 2002. The government will get $426.4 million from the settlement, and $202 million will be distributed to state Medicaid programs for 43 states and the District of Columbia. Source: Associated Press

**Lawsuit Alleges Boca Hospital Cheated Medicare**

Boca Raton Regional Hospital has been accused by a former employee of cheating Medicare out of at least $2 million. In the lawsuit filed in U.S. District Court, Jeannette Lavoie claims hospital administrators intentionally used the wrong billing code to collect far more federal money for treating patients with heart problems than regulations allow. The lawsuit remained sealed for six months while the U.S. Justice Department weighed whether it would pursue the case. While federal attorneys decided not to, they could do so in the future. The lawsuit was filed under the False Claims Act, which allows citizens to sue to recover money for the government.

Under the Act, if Ms. Lavoie’s claims are correct, the hospital could be forced to pay three times the amount it overbilled Medicare. Lavoie could recover as much as 30% of whatever damages the hospital is forced to pay. Ms. Lavoie was director of case management at the hospital when she became concerned that the health care facility wasn’t properly reporting whether patients who received pacemakers, cardiac stents, angioplasties or other heart procedures were being treated on an inpatient or outpatient basis. In a random review of 30 patient charts, Lavoie’s department found 27 errors. When she brought her findings to hospital administrators, she claims they told her they were not going to resubmit bills. They expressed confidence auditors wouldn’t uncover the mistakes.

Between July 2006 and January 2008, when Ms. Lavoie left her job, the hospital submitted more than 600 fraudulent claims, the lawsuit alleges. While Ms. Lavoie didn’t leave her position “with a box of records,” it’s said to be unknown exactly how many false claims were submitted or over what period. In the first sealed lawsuit that was filed last year, the value of the fraudulent billing was set at $8 million. After additional records were obtained, the amount was reduced in an amended lawsuit that was filed in Septem-

**$8.3 Million To Go To Clinics For Poor And Underinsured**

The New Orleans-area system of primary care clinics for the poor and underinsured will receive an $8.3 million infusion as part of the settlement in a class-action lawsuit against health-care and pharmaceutical giant Johnson & Johnson. Pursuant to an order by U.S. District Judge Eldon Fallon, Daughters of Charity will receive $1 million toward construction of a permanent primary-care clinic in eastern New Orleans. The remaining $7.3 million will be transferred to the Louisiana Public Health Institute, a non-profit which will determine how the money is distributed among primary care clinics that concentrate their efforts on patients without private insurance.

According to New Orleans Mayor Mitch Landrieu, the disbursements will target the 9th Ward and eastern New Orleans, areas that have had a lack of health care services since Hurricane Katrina. Mayor Landrieu had this to say about the effect of the settlement:

*This charitable health care fund brings us one step closer to building a full-service hospital in New Orleans East and will also provide health care for those who are underserved in our community.*

Judge Fallon approved the latest distribution upon the recommendation of a joint team of lawyers representing both the Plaintiffs and Defendants in the case, which arose from scores of deaths and complications traced to Propulsid, once a popular heartburn drug. Source: NOLA.com

**IV. PURELY POLITICAL NEWS & VIEWS**

**Early Primaries Next Year In Alabama**

The change in the date for primary voting in Alabama may catch some folks in our state by surprise. Both the Democratic and Republican primaries will be held on March 13, 2012. Qualifying in the Republican primary has already started, but I don’t believe the public has paid much attention to politics or the candidates so far. That will change since the early voting will make candidates start their campaigns much earlier. One rule that Alabama politicians learn very early in their careers is that politics and football don’t mix well. For those who may not understand, I can assure them that football wins out every time!

**Tea Party Agenda Rules The GOP**

Now that the battle lines for next year’s general election have been drawn it certainly appears that the Republican Party has ceded the leadership role to the Tea Party and its wealthy right-wing backers, including the infamous Koch brothers. The Tea Party’s prescription for our ailing economy is lower taxes, fewer federal regulations, and a weak federal government. If that sounds familiar, it should. From 2001 to 2009, the George W. Bush administration drastically cut taxes and crippled our regulatory system, while literally starving public services. The budget deficit ballooned in part because President Bush also launched two wars, which have been largely fought on credit. While most Americans are hurting financially, it’s no coincidence that a small number of Americans are doing much better. Those at the pinnacle of the income pyramid are doing best of all—the top 1% now control 42% of the country’s financial wealth. But the vast majority of Americans are worse off—both economically and socially—and that’s a sad state of affairs.

More than 70% say the country, according to the polls, is on the wrong track. Yet the GOP clings to the proposition that we need more of the policies that brought us to this point. We have ignored solutions to problems and we are now paying a steep price for those mistakes and omissions. Tough fuel standards would have lowered global oil prices and reduced our dependence on imported oil. The nation could have begun to repair and restore our highways, bridges, mass-transit systems, sewers, and other infrastructure, preparing us to be more competitive in the 21st century. In 2001 we still had time and funding flexibility to keep our lead in renewable-energy technologies like wind and solar, instead of losing jobs, innovation, and supply chains to Europe and Asia. Proper regulations on offshore oil drilling could have prevented the Macondo blowout in the Gulf of Mexico; enforcement of the Clean Water Act could have saved hundreds of mountains in Appalachia from being blown to smithereens by coal-mining companies.

But we didn’t do any of that. And now the philosophy that led to the most devastating decade since the Great Depression is back again, this time in the name of deficit reduction and improving the economy. No serious
claiming it would hurt wealthy and middle paid. Republicans have fought that plan, exemption Alabama residents get on their groceries while paying for it by removing the pushed a bill that would take the sales tax off most other items. Democrats have long on groceries while raising the sales tax on year period, end the 4 percent state sales tax the Alabama Senate that would, over a four- Senator Dial should be commended for support a bill that takes the sales tax off gro - run on issues pertinent to a judicial race.

There will be at least three strong candidates in the race for Chief Justice of the Alabama Supreme Court in the Republican primary. As reported previously, Chief Justice Chuck Malone will seek a full term. He will be challenged by Judge Roy Moore, a former Chief Justice, and Judge Charlie Graddick, a Circuit Judge in Mobile and a former Attorney General. This should be a most interesting race and hopefully a ‘clean one,’

Justice Main will seek election to a full six-year term on the Alabama Supreme Court. Jim was appointed to the Court in January to finish the unexpired term of Justice Champ Lyons, who retired. Jim previously served on the Alabama Court of Criminal Appeals and had been the state finance director prior to becoming a judge. Jim qualified with the Alabama Republican Party on the first day for qualifying, which was November 14th. Thus far he has no announced opposition. Jim says his experience as the state’s chief financial officer will help him work with his colleagues on the Court to find solutions to the financial problems facing our state’s court system.

Justice Main to Seek Full Term on State’s High Court

The U.S. Supreme Court has agreed to decide the fate of President Barack Obama’s healthcare law, with an election-year ruling due by July on the U.S. healthcare system’s biggest overhaul in nearly 50 years. The Obama Administration had asked the nation’s Highest Court to uphold the centerpiece insurance provision. A total of 26 states have asked that the entire law be struck down.

The Justices, in a brief order, agreed to hear the appeals. The issue before the Court is whether Congress overstepped its powers by requiring that all Americans buy health insurance by 2014 or pay a penalty, a provision known as the individual mandate. The law provides more than 30 million uninsured Americans with medical coverage. The law is President Obama’s signature domestic achievement. It will be a major issue in next year’s election. I don’t expect the President, as he seeks another four-year term, to back up one bit in his defense of this law. Republican presidential candidates oppose the law and most Republicans in Congress want to repeal it.

According to a Supreme Court spokesw oman, oral arguments will take place in March. There are several potential outcomes—the High Court could leave in place the entire law, it could strike down the individual insurance mandate or other provisions, it could invalidate the entire law, or it could put off a ruling on the mandate until after it has taken effect. Legal experts and policy analysts predict that the healthcare vote will be very close on the nine-member Court. In fact, it could come down to Justice Anthony Kennedy, who often casts the decisive vote.

Paul Heldman, senior analyst at Potomac Research Group, which provides Washington policy research for the investment community, believes the law’s requirement that individuals buy insurance will be upheld. His opinion is that “the Supreme Court will leave much of the health reform law standing, even if it finds unconstitutional the requirement that individuals buy coverage.”

A company run by former American International Group Inc. Chief Executive Hank Greenberg has filed a $25 billion lawsuit against the United States, claiming that the government takeover of the insurer was unconstitutional. In its Complaint, Greenberg’s Starr International Co. said that in bailing out AIG and taking a nearly 80 percent stake, the government failed to compensate existing shareholders. This, it says, violated the Fifth Amendment, which bars the taking of private property for public use without just compensation. Starr said:

The government’s actions were ostensibly designed to protect the United States economy and rescue the country’s financial system. Although this might be a laudable goal, as a matter of basic law, the ends could not and did not justify the unlawful means employed.
It was alleged further that the United States “is not empowered to trample shareholder and property rights even in the midst of a financial emergency.” The lawsuit was filed with the U.S. Court of Federal Claims in Washington, D.C., which handles lawsuits seeking money from the government. The $25 billion estimate reflects what Starr called the value of the government’s stake on Jan. 14, 2011, when it swapped AIG preferred stock for 562.9 million common shares.

Once the world’s largest insurer by market value, AIG accepted $182.3 billion in federal bailout money beginning Sept. 16, 2008. This was amid a liquidity crisis spurred by its exposure to risky debt through credit default swaps. The government’s stake in AIG has fallen to about 77%. AIG itself has sued Bank of America Corp for $10 billion over alleged losses on mortgage securities.

Hank Greenberg left AIG in March 2005, after nearly four decades at the helm, amid questions by regulators over the company’s accounting practices. AIG in 2006 paid $1.64 billion to settle federal and state probes into its business practices, and in July 2010 agreed to pay $725 million to settle a shareholder lawsuit accusing it of accounting fraud and stock price manipulation.

Source: Insurance Journal

**Hackers Hit Chemical Companies In The U.S.**

Cyber attacks traced to China targeted at least 48 chemical and military-related companies in an effort to steal technical secrets, according to a report by a U.S. computer security company. California-based Symantec Corp. said in the report that the targets included 29 chemical companies and 19 others that make advanced materials used by the military. The security firm said the group included multiple Fortune 100 companies, but it did not identify the companies or say where they were located. But the report did say: “The purpose of the attacks appears to be industrial espionage, collecting intellectual property for competitive advantage.”

Security experts say China is a center for Internet crime. Attacks against governments, companies and human rights groups have been traced to China, though finding the precise source has been almost impossible. While China’s military is a leader in cyberwarfare research, the government has denied all allegations of cyberspying and actually claims it has been a target.

The latest attacks occurred between late July and September and used e-mails sent to companies to plant software dubbed “Poisonivy” in their computers. Symantec said the same hackers also were involved in attacks earlier this year on human rights groups and auto companies. The attacks were traced by Symantec to a computer system owned by a Chinese man in his 20s in the central province of Hebei. When contacted, the man provided a contact to Symantec who would perform “hacking for hire.” Symantec could not determine whether the Chinese man was a lone attacker, whether he had a direct or indirect role, or whether he hacked the targets for someone else. The firm called him Covert Grove based on a translation of his Chinese name.

The U.S. and Chinese governments have accused each other of being involved in industrial espionage. Security consultants say the high skill level of earlier attacks traced to China suggests its military or other government agencies might be stealing technology and trade secrets to help Chinese companies.

Another security firm, McAfee Inc., said in August it had found a five-year-long hacking campaign against more than 70 governments, international institutions, corporations and think tanks. It called the campaign Operation Shady Rat. In February, McAfee said hackers operating from China stole information from oil companies in the United States, Taiwan, Greece and Kazakhstan about operations, financing and bidding for oil fields. Thousands of Chinese computer enthusiasts belong to hacker clubs and experts say some are supported by the military to develop a pool of possible recruits. Experts say military-trained civilians also might work as contractors for companies that want to steal technology or business secrets from rivals.

China has the world’s biggest population of Internet users, with more than 450 million people online, and the government promotes Web use for business and education. But experts say security for many computers in China is so poor that they are vulnerable to being taken over and used to hide the source of attacks from elsewhere. Last year, Google Inc. closed its China-based search engine after complaining of cyber attacks from China against its e-mail service. That case highlighted the difficulty of tracking hackers. Experts said that even if the Google attacks were traced to a computer in China, it would have to be examined in person to be sure it wasn’t hijacked by an attacker abroad.

Cyber-attacks by Chinese and Russian intelligence services, as well as corporate hackers in those countries, have swallowed up large amounts of high-tech American research and development data. That stolen information has helped build their economies, U.S. intelligence agencies have concluded. The report, offering the first such detailed public accusations from U.S. officials, said computer attacks by foreign governments are on the rise and represent a “persistent threat to U.S. economic security.” Assessing the implications, the agencies said they “judge that the governments of China and Russia will remain aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly in cyberspace.”

U.S. officials have called for greater communication about cyberthreats among the government, intelligence agencies and the private sector, which owns or controls as much as 85% of computer networks. The Pentagon has begun a pilot program that is working with a group of defense contractors to help detect and block cyberattacks. The report, issued by the National Intelligence Director’s Office of the Counterintelligence Executive, comes out every two years and includes information from 14 spy agencies, academics and other experts.

Source: Claims Journal

**SETTLEMENT REACHED IN ANTHRAX DEATH CASE**

The widow of a tabloid photo editor who died in the 2001 anthrax mailings has settled her lawsuit against the U.S. government. Maureen Stevens, a Florida resident, and the government reached a tentative agreement that must be approved by the Justice Department. In her lawsuit, filed in a West Palm Beach federal court in 2003, Mrs. Stevens claimed that the government was at fault in failing to stop someone from working at an Army infectious disease lab from creating weapons-grade anthrax used in letters that killed five people and sickened 17 others. Her husband, Robert Stevens, was the first victim. A trial in her case had been set for early 2012.

Robert Stevens worked in Boca Raton at American Media Inc., the publisher of the National Enquirer, Sun and Globe tabloids, when he was exposed to anthrax. He died on October 5, 2001. The government contended that there was no proof its actions, or lack of adequate security or precautions, directly caused Mr. Stevens’ death. Mrs. Stevens contended that the U.S. Army Medical Research Institute of Infectious Diseases at Fort Detrick, Md., had a history dating to 1992 of missing pathogens and failure to track dangerous microbes. The government denied that claim. An FBI criminal investigation concluded in 2010 that a lone federal scientist, Dr. Bruce Ivins, staged the anthrax attacks in the fall of 2001. The anthrax was mailed to locations in Florida, New York and Washington, D.C., including a Senate office building.

Dr. Ivins committed suicide in 2008 as the investigation closed in around him. New documents filed in the Stevens’ lawsuit in the spring cast doubt on whether Dr. Ivins acted alone. In sworn statements, two of his superiors said they didn’t believe the scientist was
solely to blame for the attacks. According to the statements, W. Russell Byrne, the chief of bacteriology at the biodefense lab from 1998 to early 2000, told Mr. Stevens’ lawyers that Dr. Ivins “did not have the lab skills to make the fine powdered anthrax used in the letters” and that it would have been difficult for him to do the work at night undetected.

Gerard Andrews, who was chief of bacteriology at the biodefense lab from 2000 to 2003, told the lawyers it would have taken Dr. Ivins six months to a year to refine the anthrax spores used in the deadly mailings, instead of the roughly 20 hours the FBI found he spent at night in the lab. Andrews also said Dr. Ivins did not have the expertise to do the work and some of the necessary equipment wasn’t available at Fort Detrick at the time. The U.S. government reached a $5.8 million settlement with another former Fort Detrick scientist, Steven Hatfill, whom then-Attorney General John Ashcroft publicly identified as “a person of interest” in the investigation in 2001. Dr. Hatfill was eventually cleared, and he sued the government, accusing the Justice Department of violating his privacy. Richard Schuler represented Mrs. Stevens in this case and he did a very good job.

Source: [Insurance Journal](www.JereBeasleyReport.com)

### VIII. THE CORPORATE WORLD

#### FEDERAL GOVERNMENT SUES ALLIED HOME MORTGAGE FOR LENDING FRAUD

The U.S. Department of Justice has filed suit against Allied Home Mortgage Capital Corp and two top executives over fraudulent lending practices that have caused the government more than $834 million of insurance claims. In the Complaint, filed in the U.S. District Court in Manhattan, the Justice Department said Allied profited for years as one of the nation’s largest Federal Housing Administration lenders by “engaging in reckless mortgage lending, flouting the requirements of the FHA mortgage insurance program, and repeatedly lying about its compliance.”

Other Defendants in the lawsuit are Allied Chief Executive Jim Hodge, and Executive Vice President Jeanne Steel. The lawsuit seeks triple damages under the federal False Claims Act as well as civil penalties and other remedies. You may recall that the government has also charged Deutsche Bank AG with fraud in a lawsuit. The bank was accused of misleading the FHA into insuring risky mortgages. Deutsche Bank has sought to dismiss that lawsuit which seeks $1 billion in damages.

Source: [Insurance Journal](www.JereBeasleyReport.com)

#### WELLS FARGO AGREES TO SETTLE DERIVATIVE SUITS WITH MUNICIPALITIES

Wells Fargo & Co. has agreed to settle class-action lawsuits filed by various municipalities alleging bid-rigging by Wachovia’s municipal derivatives group. Wells Fargo, which acquired Wachovia in 2008, agreed to pay the larger amount of either $57 million or 65% of any restitution reached in any future settlement with state Attorneys General investigating Wachovia’s practices. The settlement must have court approval.

Wells Fargo noted the activities occurred before the merger and that the San Francisco-based bank continues to cooperate with regulators in their ongoing investigation. Wells Fargo said it received subpoenas from the Justice Department and the Securities and Exchange Commission, as well as from state agencies.

Wachovia is only one of several banks caught up in a sweeping investigation of the municipal derivatives business. In the past year, Bank of America Corp JPMorgan Chase & Co. and UBS AG have reached settlements with the U.S. Justice Department and state Attorneys General over allegations that their employees manipulated the bidding process for contracts used to invest the proceeds from bond offerings. The settlements have included more than $500 million in restitution and penalties.

Municipalities and other public agencies often invest money from municipal bond offerings because all the money isn’t spent at once. The municipalities hire brokers who seek out competitive bids for their investment contracts. But the bidding process has to meet Treasury rules because of the tax-exempt status of municipal bonds. Of course, they are monitored by the IRS. The investigation became public in 2007. At that time Bank of America self-reported its activities and reached a settlement.

Bank of America continues to face a pending class-action lawsuit. The bank has allocated $62.5 million to pay municipalities as part of its $137 million settlement. JPMorgan also faces a pending class-action suit. Morgan Stanley in August agreed to pay $6.5 million to settle class-action claims against the investment bank.

Source: [Insurance Journal](www.JereBeasleyReport.com)

#### VANGUARD TO PAY $2 MILLION IN WHISTLEBLOWER FRAUD LAWSUIT

Vanguard Healthcare, a Tennessee health care firm, has agreed to pay back some $2 million to the federal government in the latest in a series of Medicare and Medicaid fraud cases brought by federal prosecutors in central Tennessee. Total recoveries so far this year in that area top $100 million. According to U.S. Attorney Jerry Martin, the settlement with Vanguard is just the latest case in an ongoing effort to detect fraud and abuse in federally-funded health care programs. His office has made health care a priority and he says they have just gotten started. It was noted that the $100 million in expected recoveries this year compares to only $3 million in the prior year. Settlements obtained are:

- an $82.6 million judgment against Renal Care;
- a $9.25 million recovery from Guidant;
- an $11.1 million recovery from MedQuest.

Some of the cases were initiated by whistleblowers with the federal government joining in on the cases, while others were directly initiated by the U.S. Department of Justice. The Vanguard case stemmed from charges first brought by a former employee in 2003. Under provisions of the federal False Claims Act, the case remained under seal until September when the Department of Justice joined in on the case. As part of the settlement, the firm, which operates 18 nursing homes, agreed to implement an internal monitoring program and to educate its employees on compliance with federal rules.

The files made public recently revealed that Vanguard was charged with double billing for some services and submitting claims for patients on feeding tubes when they no longer qualified for Medicare coverage. It was alleged in the suit that the federal Medicare program and Medicaid programs in Tennessee and Mississippi were hit with substantial overcharges. The whistleblower, William B. Caldwell, a former employee, was an operations manager at Vanguard’s Imperial Manor nursing home in Madison. Caldwell charged that he warned company officials that they were filing claims in violation of federal law and they responded by firing him.

In the MedQuest case, the company was charged with submitting claims for radiology services that were supervised by unqualified individuals. Instead of radiologists, the company enlisted the services of a pediatrician and a psychiatrist. The company also was charged with improper billing and failure to notify the federal government of an...
ownership change. In that case, U.S. District Judge William J. Haynes Jr., in an Oct. 21 decision, denied the company’s request to reconsider his decision against it. However, Judge Haynes did agree to a slight adjustment in the $11.1 million penalty.

Source: Tennessean.com

IX.
CONGRESSIONAL UPDATE

INSIDER TRADING BY MEMBERS OF CONGRESS SHOULD BE ILLEGAL

Most folks I have talked with were shocked by the CBS 60 Minutes report on alleged insider trading by members of Congress. Since that report, momentum has been growing for an effort to ban members and Congressional staff from trading stocks or commodities based on confidential information they have on pending bills. I was totally unaware that a member of Congress could do what no other American citizen could do when it comes to insider trading.

A bill, called the “Stop Trading on Congressional Knowledge Act,” sponsored by Rep. Tim Walz, D-Minn., and Rep. Louise Slaughter, D-N.Y., would ban buying or selling stocks or commodities by a member of Congress or staffer who has “material nonpublic information” regarding legislative action that relates to a specific company or commodity. It would also prohibit House members and staff from disclosing information about any pending bill or amendment relating to a particular company or commodity if the member or staffer “has reason to believe” that the information will be used to buy or sell the company’s stock or the commodity. This bill should be passed without delay!

X.
PRODUCT LIABILITY UPDATE

JURY RETURNS $73 MILLION VERDICT AGAINST FORD MOTOR CO.

A jury in California returned a $73 million verdict last month against Ford Motor Co. Interestingly, the Plaintiffs’ lawyers turned down a settlement offer from Ford in the middle of jury deliberations. That was obviously a good decision. I understand Ford’s lawyers called Roger Dreyer, one of the Plaintiffs’ attorneys, at 5:30 a.m. in an attempt to settle the case. Roger told Ford that the time to settle was “long past.” The case, he said, demanded public accountability, for what he characterized as a major corporation’s “despicable” conduct in failing to notify consumers its vehicles were equipped with defective tires subject to a recall. The jury’s message established a resounding standard on holding giant corporations such as Ford accountable. The auto giant—at the last minute—wanted to settle and keep it confidential. Had the offer been accepted, the public would never have known what the jury had learned about Ford’s conduct.

The jury found Ford at fault for the April 9, 2004, crash that killed two members of the Fair Oaks Presbyterian Church and injured two more. On the way home from a statewide musical tour, the church caravan had just pulled onto an interstate highway and was on the final stretch on its return home to the Sacramento area. The vehicle involved in the case was an E-350 Econoline van. Witnesses at trial testified that the 15-passenger van began to shake, the result of a tread separation on the same type of tire that Goodyear, two years earlier, had notified Ford was defective. The driver William Brownell, pulled the van into the center median. But when he tried to turn back to the right, the vehicle spun sideways and rolled over four times, killing him and his front seat passenger.

Plaintiffs alleged in their lawsuit against Ford that the company never told its dealers about Goodyear’s 2002 notification that the tire was the subject of a replacement program. Ford sat on the information, because at the time the company was coming off the $2 billion Firestone/Explorer recall. The company didn’t want any more bad publicity about defective tires and vehicles that were prone to rollovers.

The jury awarded $23 million compensatory damages and $50 million punitive damages against Ford. The jury found that the company acted out of “malice or oppression” in not passing along the information about the bad tire. The foreman of the jury, a project manager for Cisco, had this to say:

For a company that is that large and a company that has gone through several of those experiences in the past, for them to not make the choice to make as many people aware as possible—just to increase the odds that more people would get those tires off their vehicles—that, to me, that’s why I did the fist at the end.

The jury also found the van’s design as having failed “to perform as safely … as expected.”

The passenger’s wife and two sons were awarded $17.5 million by the jury. The panel held Ford responsible for 59% of the fault and Goodyear 41%. Goodyear, which already has settled with the Plaintiffs, was not a Defendant. Brownell’s family had previously settled their lawsuits. Plaintiff Marlene Shirley, another passenger who sustained severe abdominal injuries, was awarded a separate $5.2 million. She had her seat belt loosely fastened while she slept on a middle seat. Ford’s lawyers said the loosely fastened belt was the reason for her injuries. The jury found Ms. Shirley 1% responsible. Ford 58.5% and Goodyear 40.5. A third Plaintiff, Alexander Bessonov, who suffered lacerations, was awarded $292,000. Roger A. Dreyer was the lead lawyer in this case. He is with Dreyer, Babich, Buccola and Wood, in Sacramento, Calif. He did a very good job in this case.

Source: Sacbee.com

HEAVY TRUCK CAB GUARDS MAY CREATE A SAFETY HAZARD

Federal regulations require after-market safety devices for added protection of heavy truck cab occupants. One major safety device required under the Federal Motor Carrier Safety Regulations (FMCSR) is a “header board” otherwise known as a “headache rack” or “cab guard.” The purpose of a cab guard is to protect the cab and occupants in the event of a load shift. A header board can be placed directly on a heavy truck behind the cab, attached to the frame rails, or can be attached to the trailer being pulled by the heavy truck. When attached to the trailer, the header board is commonly referred to as the “bulkhead.” FMCSR requires only one header board, either on the tractor or trailer. There is no requirement for a header board on a closed box trailer. The header board is part of the FMCSR’s cargo securement system, which includes trailer anchor points and cargo tie down materials such as cables or straps. Cargo securement is generally left to the discretion of heavy truck operators, with guidance from the FMCSR.

The FMCSR provides performance criteria, not design criteria, for cab guards. §393.114 governs the performance requirements of a cab guard (§393.106 prior to 2004 revisions). Performance requirements under §393.114 require that a cab guard be able to resist a static load equal to 50% of the weight of the cargo being transported uniformly distributed over the entire surface of the cab guard. For certain taller cab guards, the requirement is 40% of the weight of the cargo being transported. §393.114 also has a penetration requirement that no article being transported can penetrate the cab guard when the
vehicle decelerates at a rate of 20-feet per second, which is approximately 5 g's.

Cab guard manufacturers have taken the performance requirements of § 393.114 and translated them into a loose design protocol. In most instances, cab guard manufacturers have developed uniform weight distribution tests or static tests to determine if their cab guards can meet the performance requirements of §393.114. Our experience has shown that typically cab guard manufacturers statically load a welded aluminum cab guard that has been designed to fail at 20,000-25,000 pounds. According to the language of §393.114, such a guard would meet the performance requirement for cargo weighing 40,000-50,000 pounds. However, cab guard manufacturers are placing weight limitation stickers on their products that are somewhat misleading. In most instances warning stickers indicate that cab guards have been tested to “comply” with FMCSR requirements for suitable loads of 40,000-50,000 pounds. The manufacturers never inform operators that the cab guards have actually failed at static loads of 20,000-25,000 pounds. Thus, the warning labels give the impression that the guard will actually resist a load of 40,000-50,000 pounds.

More importantly, our experience with the cab guard industry is that they have never tested their products dynamically to determine how the product will perform under real-world accident conditions. Typically, cab guard manufacturers claim that as long as they comply with the performance criteria of §393.114, they have done all that is required from a product performance standpoint. In other words, they say, we comply with Federal Standards so our product is reasonably safe.

Interestingly, the FMCSR applies only to heavy truck operators, not cab guard manufacturers. In some instances, cab guard manufacturers cannot show that any product engineering ever occurred. In some cases, manufacturers have taken the position that their cab guards are not designed to protect the cab during accidents but rather during normal braking. However, the products are marketed as safety devices to protect drivers and occupants during the event of load shifts. Cab guard manufacturers generally admit that their product is intended to protect occupants from shifting cargo and admit that they have not restricted use to only non-accident circumstances.

Most cab guards are made of heat-treated aluminum. This material allows for the production of a light weight product that is relatively easy to maintain. However, welding heat-treated aluminum generally reduces the strength of the aluminum by one third. Welded aluminum is also subject to structural fatigue due to cyclical loading during truck operation. This structure fatigue also erodes the strength of the cab guard. Finally, welded aluminum will not bend or stretch under loads like steel. Therefore, when welded aluminum reaches its maximum load, it typically fractures and catapophysically fails. A steel cab guard will not fail in such a fashion and typically provides better protection to occupants, even past its predicted loading capacity. If a manufacturer is going to market a safety device, it should have appropriate engineering and design. Current aluminum cab guards generally miss their mark for safety. If you need more information on this subject, contact Ben Baker, a lawyer in our firm who handles this litigation, at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

**SALES OF USED TIRES IS A SAFETY RISK**

Our firm is currently handling a lawsuit where our client went to a local tire dealer in need of two rear tires. The tire dealer informed him, “It is your lucky day.” The dealer explained that they had a like new tire that matched his spare tire and for that reason he could get by with only purchasing one tire. What he did not tell our client is that the spare tire on his Ford Explorer had been recalled by Firestone and should have been taken out of service. The dealer also failed to inform our client that the tire he was selling was also a recalled tire. Even more unbelievable is that the recalled tire he sold to our client was almost 20 years old.

Predictably, the 20-year old recalled tire suffered a tread belt detachment resulting in the Ford Explorer rolling over, crashing, and rendering our client a paraplegic. That was a tragic result that should never have happened. A leading auto safety group is calling for used tire dealers and wholesalers to adopt stricter standards to inspect the millions of tires they sell to motorists every year. The sale of used tires is largely unregulated, and each year, worn tires are the cause of countless accidents, many of them ending in fatalities, safety advocates say. Some used tires are repaired, repainted or patched before sale, making it difficult for consumers to gauge their safety. Sean Kane, president of Safety Research & Strategies, had this to say:

*Without self-policing and a more transparent business model, used tire sellers are courting disaster. Regulators should examine how to ensure consumers are getting safe tires. Used tire sellers should adopt meaningful tire inspections that combine visual reviews with internal exams. There is no standard of care beyond a visual inspection, and they can't pick out all the unsafe tires.* The best method is for the industry to certify used tires, much as a dealer would offer a certified used car.

Americans discarded 300 million tires in 2005 and bought about 225 million replacement tires, spending more than $10 billion, the last year for which data is available. A search for used tires on the web turned up thousands of listings. An estimated 16 million tires sold annually are retreaded tires, which are tires that are made from used tires—primarily heavy truck tires. Those tires—made by many major manufacturers—are regulated, tested and given a new serial number.

Used tires have been the subject of growing concern by automakers and safety advocates. A primary reason for this concern is the age of these tires.

Mr. Kane submitted details about 108 accidents linked to tread separation of tires more than 6 years old to the National Highway Traffic Safety Administration. Those accidents resulted in 85 deaths. Nationwide statistics are not available. NHSTA has been conducting tests on new tires to determine their durability and may pursue a test this year to simulate aging. BMW AG, Ford Motor Co., DaimlerChrysler AG, Toyota Motor Corp. and Volkswagen AG have backed guidelines that tires should only be in service six years. Most consumers do not know how to read the DOT number in order to determine the age of a tire. Even for those that do, the numbering system is confusing and can be misleading.

A process called shearography, a method of detecting defects using lasers, can be used to identify unsafe tires. A machine using the process can non-destructively examine the inside of a tire, similar to the way an MRI is used in medicine. The machines cost $150,000 to $250,000. Shearography has been used for more than a decade to inspect airline tires; nearly all airplane tires are retreaded tires. It is capable of finding a multitude of problems produced by such things as faulty repairs, run flat tires (and) inner liner damage,” according to Dean Smith, a Tennessee-based retread tire consultant. He says used tires are a risk, adding: “You don’t know if it’s going to blow up, and you don’t know where it’s been.” We have learned through litigation that companies that recycle and resell used tires don’t always carefully inspect them. If you need additional information on this subject, or on tire litigation generally, contact Rick Morrison, a lawyer in our firm, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

Source: Detroit News Washington Bureau
XI. MASS TORTS UPDATE

YASMIN BIRTH CONTROL TARGETED FOR INCREASED RISK OF BLOOD CLOTS

A new study, released by the US Food and Drug Administration, reviewed the medical history of more than 800,000 women who were taking different forms of birth control between 2001 and 2007. Data from the research revealed that women who were taking Yasmin had a 75% greater chance of experiencing a blood clot than women taking older birth control drugs. According to the study, the medication contains estrogen along with a next-generation synthetic hormone called drospirenone, which is known to increase the levels of potassium that are present in the blood. The FDA compared the medical records of females that took Yasmin with those who were on the older drug levonorgestrel.

Yasmin and related drospirenone-containing pills were Bayer’s second-best-selling franchise last year, bringing in $1.6 billion in global sales for the pharmaceutical giant. Dr. Diana Zuckerman, president of the National Center for Women and Families, a consumer group for women’s health issues, told the AP:

At a certain point we have to ask why the FDA continues to approve drugs that are less safe and have no benefit compared to drugs already on the market. With all these different birth control options, why take the most expensive one that can also kill you?

Associated Press reported that a study involving more than 1 million Danish women found that Yasmin and other new medications had twice the risk of blood clots as women taking the older medication. This data was published in the British Medical Journal. The International Business Times reported that Bayer came out against the publication of the FDA study. The pharmaceutical company disagreed with the data and argued that it spent significant amounts of money to test these drugs. Bayer claimed that the authors applied the study methodology involving more than 1 million Danish women found that Yasmin and other new medications had twice the risk of blood clots as women taking the older medication. This data was published in the British Medical Journal. The International Business Times reported that Bayer came out against the publication of the FDA study. The pharmaceutical company disagreed with the data and argued that it spent significant amounts of money to test these drugs. Bayer claimed that the authors applied the study methodology in a certain way that was not fair.

INCREASE IN NUMBER OF PRESCRIPTION PAINKILLER-RELATED DEATHS

According to a report recently released by the Centers for Disease Control and Prevention, nearly 15,000 people died in 2008 of overdoses involving prescription painkillers such as Vicodin, OxyContin and Methadone. This is more than three times the number of deaths caused by these drugs in 1999. The number of overdose deaths is now greater than those of deaths from heroin and cocaine combined.

In 2010, about 12 million Americans aged 12 or older reported nonmedical use of painkillers last year. Enough prescription pain medications were prescribed to medicate every American adult around the clock for a month. The CDC cited a study that found 3% of physicians accounted for 62% of the painkillers prescribed. According to the CDC, painkiller abuse costs the U.S. healthcare system $72.5 billion annually from emergency room visits, hospitalizations and other drug treatments. The federal officials said:

Improving the way prescription painkillers are prescribed can reduce the number of people who misuse, abuse and overdose from these powerful drugs, while making sure patients have access to safe, effective treatment.

There are a number of things that can be done by Congress to help curb painkiller abuse. Perhaps the first place to start is to abolish direct consumer advertising by drug manufacturers. That would solve lots of problems for consumers and also for doctors. It’s the responsibility of doctors, not some marketing expert, to decide what medications patients should receive.

Sources: Wall Street Journal and www.cdc.gov

XII. BUSINESS LITIGATION

$11 MILLION AWARDED TO PROPERTY OWNERS IN LOUISIANA OIL LAWSUIT

A Louisiana judge has awarded more than $11 million to a Houma, La., family stemming from a dispute over unpaid oil royalties. Michael St. Martin and his wife, Virginia, filed a lawsuit in December 2006 alleging that I.P. Petroleum Co. and other parties failed to pay nearly $925,000 in royalties on oil and gas they produced from a well owned by the family. The well, just west of Houma, is owned by the St. Martins and the Delaware-based Quality Environmental Processes.

There are a number of wells on the property. Apparently, the family never had any troubles with the land prior to I.P. Petroleum coming along. It had subleased the well from Mobil, which was leasing it from the St. Martins and Quality Environmental. Quality is owned by members of the St. Martin family. It was alleged that I.P. Petroleum stopped paying royalties on July 1, 1997.

Royalties, which are fees companies agree to pay to a landowner for the right to produce oil on his or her property, are usually a percentage of the value of oil and gas produced. Questions arose over ownership of the well when royalties were due. Those claims had been settled in a separate lawsuit, but the royalties remained unpaid.

It was also alleged that I.P. Petroleum; International Paper Co. of Bastrop, its lawyer, John Pearce, and his law firm, Montgomery, Barnett, Brown, Read, Hammond & Mintz, “conspired and developed a plan by which (I.P.) retained for itself ‘suspended’ royalty payments” totaling about $107,000. The money was to be held until it was determined who owned the land. A five-day bench trial was held in May and September 2009 before District Judge Johnny Walker.

Judge Walker issued two orders last month in favor of the St. Martins and Quality Environmental. In one, he ordered I.P. Petroleum and International Paper Co. To pay about $6.7 million in combined penalties, which includes the royalties due, interest, damages and attorneys’ fees. The judge in that order said:

Despite legal demand by Plaintiffs, I.P. Petroleum Co., Inc., without legal justification or reasonable grounds, willfully and deliberately refused to pay Michael St. Martin and Virginia Rayne St. Martin, and Quality Environmental Processes Inc.

Judge Walker also ruled that Pearce and the New Orleans-based law firm, in a separate order, must pay about $4.55 million, including royalties, damages and attorneys’ fees. The court found that the $107,000 in royalties were deposited in the law firm’s account in 2003. According to the judge’s order, “(the funds were kept by Defendants, not returned to Pure Resources Inc., nor ever forwarded to Plaintiffs.”

Source: Claims Journal
WEST VIRGINIA BOARD AWARDED $2.6 MILLION IN LAWSUIT

The Charleston Sanitary Board will receive more than $2.6 million from a company it had hired to make compost out of yard waste and sewage sludge generated in the city. Circuit Judge Paul Zakaib Jr. found that O’Brien & Gere Engineers, based in New York, failed to design and build the composting facility as it promised. The city’s plan was to sell the compost generated by the new facility. But it was contended in the lawsuit that the facility that began operating in 1998 never worked properly.

The Charleston Sanitary Board filed the lawsuit in 2000, seeking $1.5 million in damages. Judge Zakaib awarded the board $1.57 million in damages and $1.06 million in interest. The judge wrote in his order:

“The city paid for an undersized composting plant that could not make compost until the (Sanitary) Board spent hundreds of thousands of dollars pre-treating the discharges of the West Virginia American Water Company to remove inert solids.”

The judge found that the constant changes in project managers made by O’Brien and Gere in the late 1990s contributed to design and construction problems. The new facility was built after new federal and state regulations in the early 1990s required the city to build more environmentally-safe ways of disposing of sewage sludge and yard waste. The new facility was built in an area very close to former sludge retention areas. OBG projected the cost of the new system to be more than $5.5 million.

Charleston Mayor Danny Jones has said the city lost $7.5 million from the whole project, including payments for engineering and designing a facility that failed to ever work properly. It was alleged that O’Brien and Gere failed to test and oversee the new composting facility properly during its design and construction. Judge Zakaib wrote further in his order:

“Nothing was done to insure that the factory personnel operated the equipment in the same manner as Board employees would have to operate the equipment.”

The judge’s opinion concluded that the engineering company breached its contract with the sanitary board. He also said O’Brien and Gere was guilty of “professional negligence” for failing “to do that which an engineer of ordinary prudence and in the exercise of ordinary care would do under the same or similar circumstances.”

Source: Claims Journal

Olympus Faces Investor Lawsuit In U.S. Over Alleged Fraud

Olympus Corp., the camera maker being investigated by Japanese, U.S. And United Kingdom authorities for alleged accounting irregularities, has been sued by an investor in its American depositary receipts seeking class-action status. Olympus, former president Michael C. Woodford, ex-chairman Tsuyoshi Kikukawa and current president Shuichi Takayama caused Olympus to engage in fraud, resulting in investor losses. The suit was filed in federal court in Pennsylvania.

The lawsuit by New York-based Sarraf Gentile LLP seeks class, or group, status on behalf of other investors in the U.S. Plaintiff Lloyd Graham, who bought Olympus ADRs on Oct. 27, seeks unspecified damages. Olympus shares fell by more than 34% on Nov. 8 in New York, the day the company reversed denials that there was any wrongdoing over $687 million in advisory fees paid on its $2 billion acquisition of Gyrus Group Plc in 2008. The company said it had paid the inflated fees to advisers to hide losses.

Kikukawa resigned last month and an internal investigation is continuing into allegations about accounting problems made by Woodford after he was fired on October 14th. Olympus says that its shareholders in Japan requested the company’s auditors sue directors for 139.4 billion yen ($1.8 billion) in compensation.

Source: Bloomberg

DEVELOPMENTS IN THE BERNARD MADOFF SAGA

Most of two lawsuits filed by Irving Picard against JPMorgan Chase & Co and UBS AG have been dismissed by a federal judge. Those suits sought $19.9 billion and $2 billion by Picard, the trustee seeking money for victims of Bernard Madoff’s fraud. The decision by U.S. District Court Judge Colleen McMahon in Manhattan is a huge setback for the trustee, but not for folks who were defrauded by Madoff. Picard has spent nearly three years liquidating Bernard L. Madoff Investment Securities LLC. JPMorgan had been Madoff’s main bank for two decades. Judge McMahon’s decision wipes out about $19 billion of Picard’s case against JPMorgan, the largest U.S. bank.

“The trustee’s theories fail,” Judge McMahon wrote in her opinion, finding that Picard had no power to pursue common law

Source: Los Angeles Times
claims against the banks, saying such claims properly belong to former Madoff customers. The judge returned what is left of the cases to the U.S. bankruptcy court in Manhattan. In concluding that Picard exceeded his power, Judge McMahon followed a July decision in another lawsuit by Judge Jed Rakoff, a colleague who dismissed about $8.6 billion of claims against HSBC Holdings Plc and other Defendants. Picard says he will appeal to the federal appeals court in New York.

Picard has filed roughly 1,050 lawsuits on behalf of former Madoff customers since the Ponzi scheme's firm collapsed on Dec. 11, 2008. The JPMorgan lawsuit has been his second-largest after a $58.8 billion case against Defendants, including Bank Medici AG founder Sonja Kohn and Italy's UniCredit SpA. In September, Judge Rakoff had capped potential damages in Picard's lawsuit against the owners of the New York Mets baseball team, who were also former Madoff customers, at $386 million, a reduction down from the $1 billion sought.

In the HSBC case, Judge Rakoff rejected what he called Picard's "convoluted theories," and accepted HSBC's arguments that the trustee could not pursue common law claims. Judge McMahon, in her decision, said she was "persuaded as well" by the essentially identical arguments raised by JPMorgan and UBS, and that the HSBC ruling "convincingly established" the trustee's lack of standing to pursue common law claims.

The bulk of Picard's cases are referred to as "clawback" lawsuits against former Madoff customers that Picard believes took too much cash out of the firm before its collapse. In contrast, the lawsuits against JPMorgan, UBS, HSBC, UniCredit and "feeder funds" that steered client money to Madoff, accused the Defendants of ignoring red flags about Madoff's fraud, in an effort to obtain more fees or commissions. JPMorgan argued that Picard failed to show anyone at the bank knew of Madoff's scheme or deliberately worked with him in order to earn more fees. It will be interesting to see how this case develops.

Source: Claims Journal

**ArthroCare Settles Investors' Lawsuit**

ArthroCare Corp. has agreed to settle an investors’ class-action lawsuit for $74 million. The medical device company, which moved its headquarters to Austin from California in 2004, had been accused by the Securities and Exchange Commission of inflating its revenues between 2006 and 2008. The company is also said to have overstated its profits by more than $53 million during that period by using a process known as “channel-stuffing” to make it appear that the company was selling more of its surgical products than it actually was. ArthroCare used a subsidiary company, DiscoCare Inc., to help it inflate its revenue and profits, according to the SEC. In that regard, the SEC said further:

ArthroCare repeatedly turned to DiscoCare to help it overcome quarterly revenue shortfalls by recording revenue from large orders shipped to DiscoCare at or near quarter-end. That revenue should not have been recognized.

Source: Insurance Journal

**Former Madoff Clients File $19 Billion Lawsuit Against JPMorgan**

Former customers of the massive Madoff Ponzi scheme have now filed their own class action lawsuit seeking to recover $19 billion from JPMorgan Chase & Co. It was claimed in this suit that the bank willfully ignored signs of fraud. The lawsuit, filed in federal court in Manhattan, claims the bank was "thoroughly complicit" in concealing Madoff's fraud.

This lawsuit comes less than a week after the Picard lawsuit mentioned above was dismissed for a lack of standing. Since that ruling said only victims of the fraudulent scheme can pursue such claims, it appears this lawsuit will meet that test and will go forward. The class action lawsuit asserts that even a cursory examination of the finances of Bernard L. Madoff Investment Securities LLC would have revealed that the money was not used to follow an investment strategy but simply flowed between Madoff and his customers.

It was alleged in the lawsuit:

JPMC chose to enable Madoff's fraud, not just through the various ways it participated in his activity, but by helping to cover Madoff's naked theft with the imprimatur of a globally recognized financial institution.

I anticipate the response to this lawsuit will be similar to that made in the Picard's lawsuit. In that case the bank argued that the trustee failed to show that anyone at the bank knew of Madoff's scheme or deliberately worked with him in order to earn more fees. It will be interesting to see how this case develops.

Source: Claims Journal

**XIV. INSURANCE AND FINANCE UPDATE**

**Life Insurer Sues Bank Of America Over Mortgages**

A lawsuit was filed last month against Bank of America Corp. And its Countrywide Financial unit alleging fraud in the sale of residential mortgage debt to a New York mutual life insurance company. National Integrity Life Insurance Co., which mainly sells annuity products, is seeking at least $93.8 million after investing in certificates issued through 24 securitizations that it had believed were safe, and which mostly carried “ triple-A” credit ratings.

The company contended that most of its certificates are now “junk,” after Countrywide abandoned its underwriting guidelines, failed to properly assign many mortgages underlying the certificates, and failed to properly transfer notes and loan files to the relevant trusts. The lawsuit, filed in the U.S. District Court in Manhattan, seeks to force Bank of America to buy back the certificates. It also seeks punitive damages and triple damages.

The Charlotte, N.C.-based lender faces many lawsuits over its disastrous 2008 acquisition of Countrywide, once the largest U.S. mortgage lender. Analysts now estimate that the $2.5 billion purchase has cost Bank of America more than $30 billion, including legal costs and writedowns.

Source: Insurance Journal

Source: statesman.com

www.BeasleyAllen.com
A Miami judge has given final approval to the $410 million Bank of America settlement in a class-action lawsuit that accused the bank of charging excessive overdraft fees to millions of debit-card customers. U.S. District Judge Lawrence King approved the settlement, which will give account holders as much as 45 cents on the dollar on their claim. Customers will automatically receive the payment since no paperwork is necessary.

There were objections to the settlement and to attorneys’ fees. The court found that the settlement was fair and adequate and reasonable. It was also recognized by the judge that the lawyers had worked very hard on the case. There were about 40 law firms and hundreds of lawyers involved in the case on the Plaintiffs’ side.

Lawsuits from around the country, which claimed banks charged excessive fees when debit-card users made purchases that exceeded their balances, were consolidated in 2009 in Miami. Bank of America was the first to settle among about 35 U.S. banks named in the class-action litigation. Other major banks include JPMorgan Chase, Citigroup, Wells Fargo and San Francisco-based Union Bank, which recently agreed to a $35 million settlement. That settlement has yet to be approved in court.

The Bank of America settlement benefits the bank’s customers who used their debit cards since 2001 and were charged overdraft fees as a result of “debit re-sequencing”—or the order in which postings were processed. The lawsuit charged that banks waited to process charges until days after a purchase was made, when users’ accounts were depleted; or manipulated charges so that large purchases that would deplete an account would be processed first, triggering overdraft fees on smaller purchases made earlier. Because some debit card users from the early years cannot be identified, the court set aside about 12.5% of the settlement for educational institutions that teach consumers about financial and banking practices.

Source: Miami Herald

**NEW BIAS CASE FILED BY FEMALE WAL-MART EMPLOYEES**

Female employees of Wal-Mart stores who claim that Wal-Mart discriminated against them have filed a lawsuit against the giant retailer. This new lawsuit comes months after the U.S. Supreme Court threw out a national class-action lawsuit. In this suit, their claims are limited to California stores of the retail chain. The lawyers filing the suit said an “armada” of other lawsuits will be filed in the next six months making discrimination claims in other regions of the country, as opposed to nationwide.

In rejecting the earlier lawsuit, the U.S. Supreme Court found that the Plaintiffs, who had sought back pay for as many as 1.5 million women nationwide, had failed to establish that the legal and factual issues involving all those women had enough in common to be examined as a single class. The latest lawsuit, filed in the United States District Court for the Northern District of California, alleges that Wal-Mart’s discriminatory practices on pay and job promotion affected more than 90,000 women currently or formerly employed at Wal-Mart and Sam’s Club stores in four regions in California and neighboring states.

It should be noted that in its June ruling in *Dukes v. Wal-Mart*, the U.S. Supreme Court did not determine whether Wal-Mart had discriminated against any women. Rather the Court in a 5-4 vote concluded that the lawsuit did not satisfy requirements that the group of people in the class had questions of law or fact in common. Writing for the majority, Justice Antonin Scalia said the case involved “literally millions of employment decisions.” The Plaintiffs, he added, were required to point to “some glue holding the alleged reasons for all those decisions together.”

The new lawsuit is said to have specifically been tailored to address the Supreme Court’s concerns. He said the Plaintiffs were subject to the “same decision makers” and that there was some sort of “overall animus directed at the women.” The lawsuit describes Wal-Mart’s California region as being governed by a “good old boy philosophy” where job opportunities were not posted, but were passed along word-of-mouth, usually to men. It was alleged that one California regional vice president, for instance, suggested that women did not seek management positions because of their “family commitments.”

Source: Miami Herald

**SEARS SETTLES DISCRIMINATION AND RETALIATION SUIT**

Sears, Roebuck & Co., which remains one of the nation’s largest retailers, will pay $100,000 and furnish other relief to settle a race, sex and age discrimination and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission. The EEOC charged that Sears subjected an African-American female employee over the age of 40 to race, age and sex discrimination as well as retaliation for complaining about it. In its lawsuit filed in September 2010, the EEOC charged that Mary Johnson, who worked in loss prevention at several Sears stores in the Oklahoma City area, including its Sequoyah and Midwest City locations, from 1982 until her termination in March of 2010, was passed over for promotion to supervisor several times beginning in 2007 in favor of younger, less experienced, white males. According to the agency, Sears retaliated against Johnson for her initial EEOC discrimination charge in September 2007 by subjecting her to worsening terms and conditions at work. Sears last passed over Johnson for promotion in early 2010, just prior to terminating her employment in March 2010 for complaining about its practices and participating in the EEOC’s investigative process. Sears denied that it discriminated against Johnson.

Race, sex and age discrimination and retaliation violate the Age Discrimination in Employment Act and Title VII of the Civil Rights Act, the federal law that bars employment discrimination due to race, sex and age. Sears agreed to a consent decree in which it will pay $100,000, furnish other relief and pay the EEOC’s investigative costs. Sears also agreed to a two-year supervisory and non-supervisory program to monitor its compliance with the law.

A California district manager for Sam’s Club said he had paid a female employee less than a male counterpart because the male manager “supports his wife and two kids,” the lawsuit says. It was alleged in the lawsuit that such attitudes were pervasive company-wide. At a 2004 meeting of district managers, it was alleged that Thomas Coughlin, then chief executive of Wal-Mart Stores, told the group that the key to their success was “single focus to get the job done,” and that “Women tend to be better at information processing.” He added that “Men are better” at focusing on a “single objective.”

The origins of the lawsuit date to 1999 when Stephanie Odle was fired after complaining that she was discriminated against because of her sex. Ms. Odle said she had discovered that a male employee with the same job and less experience was making $23,000 a year more than she was. The lead Plaintiff in the case decided by the Supreme Court, Betty Dukes, is also the lead Plaintiff in this latest case. Brad Seligman of Berkeley, Calif., and Joseph M. Sellers of Cohen Milstein Sellers & Toll in Washington D.C., are lead lawyers in the case for the women.

Source: New York Times
The consent decree says if the owner, Brian "Pat" August while the lawsuit was pending. The amounts ranging from $10,000 to $50,000. Payments to the women, who will receive a 30-month consent decree in addition to the

Resources and the EEOC agreed to a

opportunities if they protested. MMS

the women were threatened with losing their

over the allegations. According to the EEOC,

Mission filed suit against MMS Resources Inc.

U.S. Equal Employment Opportunity Com-

harassment suit

kenTUCKy COMPANY SETTLES EEOC

HARASSMENT SUIT

An Ashland, Ky., credit card processing

company has agreed to pay $365,000 to 11

former employees who said they were sexually

harassed by the company’s owner. The

U.S. Equal Employment Opportunity Com-

mission filed suit against MMS Resources Inc.

over the allegations. According to the EEOC,

the women were threatened with losing their

jobs, raises, promotions or other employment

opportunities if they protested. MMS

Resources and the EEOC agreed to a

30-month consent decree in addition to the

payments to the women, who will receive

amounts ranging from $10,000 to $50,000.

MMS Resources filed for bankruptcy in

August while the lawsuit was pending. The

consent decree says if the owner, Brian "Pat"

Reed, starts or buys another company, a

policy prohibiting sexual harassment against

employees must be established.

Source: Insurance Journal

XVI. PREDA TY LENDING

BANK OF AMERICA REACHES SETTLEMENT IN COUNTRYWIDE CASE

Bank of America Corp. has reached a settlement with former Countrywide Financial Corp. institutional investors who elected not to join a $624 million class-action case that won court approval in February. The terms of the settlement were not disclosed. The case was pending in the U.S. District Court for the Central District of California. Countrywide’s former auditor KPMG was not part of the settlement.

Blackrock Inc., the California Employees’ Retirement System (CalPERS) and other investors in July filed a lawsuit that alleged Countrywide and its top leaders perpetrated fraud "in a quest to triple Countrywide’s market share and enrich themselves at the expense” of investors. As previously reported, Bank of America acquired the former subprime lender on July 1, 2008.

Since buying Countrywide, Bank of America, the second-largest U.S. bank, has been besieged with lawsuits related to questionable loans and mortgage-backed securities issued by Countrywide during the housing boom. The $624 million settlement, referred to above, was one of the largest class-action settlements to emerge from the financial crisis.

Interestingly, federal regulators told Bank of America’s board in recent months that they want to see more progress in complying with a 2009 memorandum of understanding requiring the bank to fix governance, risk and liquidity management issues. The bank could face a public enforcement action if it doesn’t satisfy regulators.

Source: Insurance Journal

SOLDIER SUES TITLE LENDER OVER ABUSIVE PRACTICES

A soldier based at Fort Benning, Ga. has sued an Atlanta-based payday and title lending company and a subsidiary, claiming abusive practices that violate federal law. Staff Sgt. Jason Cox alleges in his lawsuit that he borrowed $3,000 from Alabama Title Loans against the title of his 2002 Dodge Durango. It’s alleged that the lender, a subsidiary of Atlanta-based Community Loans of America, charged him an interest rate three times that allowed by the Military Lending Act. The loan rolled over several times, and the debt escalated to $4,500 over several months. Sgt. Cox was unable to keep up payments, and the sport utility vehicle was repossessed in August from base housing on the Army post, which is located outside Columbus, Ga.

The suit, which ironically was filed on Veterans Day in U.S. District Court in Columbus, seeks class action status. Sgt. Cox’s lawyers include former Georgia Gov. Roy Barnes, who during his term as governor, cracked down on abusive practices by payday lenders and championed a law he later signed that also curbed abusive mortgage practices.

The Military Lending Act was enacted in 2007, after a report by the Department of Defense found that 17% of service members used payday loans and that “predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force.” The Act, among other things, caps the annual percentage rate on a loan to armed service members at 36%.

It’s alleged in the suit that Sgt. Cox was charged an APR of more than 100% and that loans made in violation of the Military Lending Act are void from the beginning. The suit alleges further that the bank used payday loans and that “predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force.” The Act, among other things, caps the annual percentage rate on a loan to armed service members at 36%.

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offices under the Community Loans of America umbrella of companies in 22 states, according to the suit. I wish Sgt. Cox the very best in his lawsuit. If what he alleges is correct—and I have every reason to believe it is—he should win and the payday lender should be punished severely.

Source: Atlanta Journal Constitution

XVII. PREMISES LIABILITY UPDATE

**NEBRASKA WOMAN ALLOWED TO SUIT AFTER ELEVATOR INJURY**

A Nebraska Supreme Court has ruled that a woman seriously injured in a fall down an empty elevator shaft at her workplace can sue a real estate company operated by her employers. Darlene Howsdan was an employee of a Lincoln funeral home in 2009 when she attempted to cut through a makeshift hallway often used by employees. The hallway was created in an elevator shaft by the top of an elevator car that usually rested on the building’s basement floor. But Ms. Howsdan didn’t know that the car had been moved. She fell 16 feet to the building’s basement floor and was badly injured.

Ms. Howsdan received workers’ compensation benefits, but sued the real estate company that owned the mortuary to recover additional damages. The company, Roper’s Real Estate, is owned and operated by the same shareholders as Roper & Sons Inc., which operated the mortuary. Roper’s tried to convince the court that it essentially was the same company as the mortuary, making workers’ compensation benefits Ms. Howsdan’s sole remedy for damages. But the state’s highest court disagreed, finding Roper’s Real Estate to be a separate entity from the funeral home, despite their corporate kinship. Supreme Court Judge John Gerrard, writing for the High Court, said:

*One cannot claim the benefits of incorporation without the burdens. So, when two companies are corporations which benefit from legally recognized identities separate and apart from one another, they must also bear the responsibility and liability of such separation.*

Ms. Howsdan can now proceed with her suit for unspecified damages, including lost wages and pain and suffering for the back injuries she received. Joel Bacon, a lawyer, with Keating, O’Gara, Nedved & Peter, based in Lincoln, Neb., represents Ms. Howsdan in her suit.

Source: Claims Journal

**OKLAHOMA RESIDENTS SUITE COMPANY OVER FLY-ASH PIT**

Residents in a southeast Oklahoma town have filed a lawsuit to close an old mining pit where fly ash from a nearby coal-powered plant is dumped. Seven Bokoshe residents and others sued AES Corp. in LeFlore County District Court. The lawsuit alleges that people living in more than half of the homes near the fly-ash pit have had cancer, and that dust blowing from the pit is causing respiratory illnesses.

The Plaintiffs are requesting the Court to force the company to stop the dumping, clean up the site, and pay for current and future fly-ash-related illnesses. The Plaintiffs are seeking more than $75,000 each in compensatory and punitive damages.

Source: The Tulsa World

**INDIANA FAIR STAGE COLLAPSE CLAIMS REACH 100**

The deadline for victims of the deadly Indiana State Fair stage collapse to file legal claims with the state has passed. Officials are now trying to figure out how much to pay each victim out of the allotted $5 million. The deadline to submit tort claims ended on November 1st. The Attorney General’s office had received 100 claims by November 2nd. Officials will accept more claims by mail so long as they were postmarked by the November 1st deadline.

The 100 claims cover everything from death of family members and serious injuries to emotional distress. The Attorney General’s office has been working to develop a system for paying out awards on the claims. But individuals can collect no more than $700,000, and state law limits the total pool of money to $5 million. According to the Attorney General’s office, families of people who died and those who were seriously injured will get priority.

It’s probable that there won’t be enough money from the fund to pay the claims. For example, if the state pays out the $700,000 maximum to the families of the seven people who were killed, it will spend up $4.9 million of the $5 million total, leaving about $100,000 for all of the other Claimants. This is why the state’s $5 million liability cap is much too low and really absurd.

The tort claim fund isn’t the only source for payment of claims. A separate State Fair Relief Fund to help victims will accept claims until Nov. 14. It consists of donations to help victims who were hospitalized as a result of the collapse. Lawyers also are considering lawsuits against others involved in the scheduled Aug. 13 Sugarland concert, including the band and the company that made the stage. A gust of wind toppled the stage rigging onto the crowd as the band was preparing to take the stage, killing seven people and injuring more than 40 others.

Source: Associated Press

**COURT UPHOLDS JURY VERDICT IN WAL-MART CASE**

The Colorado Supreme Court has upheld a jury verdict in the case involving a truck driver who slipped and fell on ice and grease while making a delivery to a Wal-Mart store in northern Colorado. The jury, after hearing the evidence, awarded nearly $10 million. The driver, 41-year-old Holly Averyt of Cheyenne, Wyo., had to undergo three spine surgeries, was unable to return to work, and lost her truck. City documents were introduced during the original trial that showed grease from the store’s deli didn’t get trapped in a device designed to keep it from getting into the sewer.

A jury awarded $15 million to the Plaintiff in November 2010. Wal-Mart appealed and a lower court granted the company a new trial, saying the award was “excessive, not supported by the evidence and could only be the result of prejudice and bias and the jury’s desire to punish Wal-Mart.”

The Supreme Court’s ruling threw out the order for a new trial, saying the Plaintiff’s lawyers had no requirement to disclose a document that could be easily found in public records. The Court also said any prejudice the jury may have harbored toward the Bentonville, Ark., company was due to its initial refusal to produce evidence or admit the existence of the grease spill. The Justices reduced the award amount by about $5 million. Bob Miller represented the Plaintiff and did a very good job.

Source: Associated Press

**ABSENTEE FATHER AWARDED $400,000 IN WRONGFUL DEATH SUIT**

A jury has awarded $400,000 in damages to a man whose five-year-old disabled daughter drowned at a children’s center while taking part in an after-school program. Anyah Raven Glossinger was found submerged in a mineral pool, where she was taking part in hydrotherapy, at the Angel View Crippled Children’s Center in Desert Hot Springs on Jan. 23, 2008. The youngster,
who had autism and was legally blind, died the next day.

Her father, Michael Glossinger, filed a wrongful death lawsuit in July 2008 against Angel View Crippled Children's Foundation, the Palm Springs Unified School District, three people who had worked with his daughter and United Cerebral Palsy of the Inland Empire, which operated the program. The jury awarded the father $40,000 in damages for past loss of companionship and $360,000 for future loss of companionship.

Anyah, who was diagnosed with low-functioning autism, was in a special education kindergarten class at a Palm Springs Elementary School at the time of her death. She lived with her mother in Cathedral City. Her father’s lawsuit claimed that three people affiliated with United Cerebral Palsy of the Inland Empire’s Little Bridge program knew Anyah was autistic and blind, yet did not give her a life-vest before she went into the pool. The child was unsupervised and without a lifesaving vest and drowned. The Little Bridge program was shut down by the state Department of Social Services in March 2008. Perhaps the reason for the low verdict in a case of this sort was due to the fact that the Plaintiff was an “absentee father.” I understand the mother had custody of the child. Nevertheless, the conduct by the Defendants was bad and a verdict justified based on media reports.

Source: mydesert.com

**Parents Allowed To Sue College In Son’s Death**

A court ruling will allow the parents of a freshman who died mysteriously in 2006 to continue their wrongful-death lawsuit against the College of New Jersey. Susan and John Fiocco, the parents of the student, claim lax security may have allowed a stranger to enter a dormitory on the Ewing, N.J., campus and kill their 19-year-old son. The student’s blood was found around a stranger to enter a dormitory on the Ewing, N.J., campus and kill their 19-year-old son. The student’s blood was found around

**South Carolina Judge Awards Sex Abuse Victim $14 Million**

A South Carolina Circuit Court judge has awarded a 27-year-old woman more than $14 million in civil damages in a suit brought against a former stepfather who sexually abused her as a child. The woman, Kelly Waldron Bowles, chose to go public with the case because “she wanted people to know what he did and she didn’t want him to get away with what he had done,” according to her lawyer, Joseph Griffith of Charleston. He added that his client “chose not to go the ‘Jane Doe’ route,” which was available to her.

Circuit Judge Stephanie McDonald ordered Donald Baxter to pay $7 million in punitive damages and slightly more than $7 million in compensatory damages following a trial in Berkeley County’s Court of Common Pleas. Judge McDonald found Baxter had committed sexual assault, sexual battery and intentionally inflicted emotional distress on the victim. Baxter pleaded guilty to aggravated assault and battery in 2003 and was sentenced to six years in prison, but he was allowed to serve two years of probation. Ms. Bowles said she pursued the civil case because she believed the 2003 sentence to be too lenient. Ms. Bowles testified in court how she had been molested repeatedly over a ten-year period.

Source: Insurance Journal

**Settlement Of A Sex Abuse Case**

Our firm recently settled a case against the Dale-Geneva Court Services Program, Inc., a private non-profit company authorized to provide probation-type services to persons who had been sentenced to the confinement of the Department of Corrections. These programs, commonly referred to as Community Corrections programs, are set up in just about every county in Alabama. In some counties the County Commission runs the programs. In other counties, the programs are run by private non-profit companies with state funding from the Department of Corrections.

In this case, Stewart, a convicted sex offender, had spent ten years in the custody of the Department of Corrections. After being released, he was arrested three more times on domestic violence charges. Stewart had also been arrested for a violation of the Community Notification Act. After his arrest for this violation, Stewart was allowed to make application and was accepted into the Community Corrections program even though the statute prohibited him from being accepted in the program. After being in the program less than six days, Stewart sexually abused a minor child. This sort of thing should never have happened. The amount of the settlement is confidential. The case was handled by Mike Crow in our firm and Robert Drummond of Fairhope, Alabama. They did a very good job.

**Jury Awards $27 Million In Damages In Indiana Explosion Lawsuit**

A jury has awarded $27 million in damages to a family over a propane explosion at a central Indiana horse farm that killed a man and injured three family members. The jury in Morgan County, Ind., awarded damages against the Defendants, including the Martinsville-based South Central Indiana REMC electric utility and its propane subsidiary. The verdict will be paid by the utility’s liability insurance carrier unless an expected appeal is successful. The 2004 explosion near Martinsville destroyed an indoor horse arena and fatally injured 32-year-old Steve Fredrick of Indianapolis who was house-sitting in an adjacent apartment. The decedent’s wife, their two-year-old son, another adult relative and two-year-old girl all received severe burns.

Source: The Reporter-Times

**$9.85 Million Awarded To Parents In Wrongful Death Lawsuit Against Daycare**

A Gwinnett County State Court jury last month awarded $9.85 million in damages in a wrongful death lawsuit brought by the parents of a toddler who died in an unlicensed daycare facility in Buford, Ga. The child’s parents, Kemi Green and Gbolohan Bankolemoh, enrolled their child, Abiola, in a daycare run by two individuals. The owners falsely claimed their operation was state-approved. The owner of the property was also named a Defendant in the lawsuit.

Judge John Doran presided over the civil trial. It was proved at trial that while Abiola was left unattended, the child fell into an unsecured pool and drowned on March 19, 2009. One of the owners is also charged with contributing to the delinquency of a minor in Gwinnett County. Jeffrey R. Harris and Alan Cleveland, two Georgia lawyers, represented the parents and they did a very good job in this case.

Source: Atlanta Journal Constitution

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**Source:**

www.BeasleyAllen.com
Inland Rig Worker Fell While Using Ladder To Go From Rig To Barge

Recently, a jury awarded $2,795,620.00 to Jude Lewis, a worker against Axxis Drilling, Inc. And Century Exploration Houston Inc. On November 19, 2009, the Plaintiff, a well tester, was working on an inland drilling rig owned by Axxis Drilling in Louisiana's Barataria Bay. In order to do his job, the Plaintiff had to cross from the drilling rig to a work barge stationed a few feet away. A ladder owned by Axxis bridged the gap. While the Plaintiff was crossing, the ladder slipped out from under him, and he fell five feet into the water. He sustained neck and back injuries. It was alleged that Axxis failed to provide a gangway. Another company, Century Exploration Houston Inc. was sued, but was dismissed long before trial.

The Defense argued that using a ladder was proper, because one deck was much higher than the other, which created a steep grade. The Defense also argued that the Plaintiff’s employer set up the ladder and was responsible for not adequately securing it. The Defense also argued that the Plaintiff was contributorily negligent for failing to exercise stop-work authority and report the condition to the rig’s supervisor.

The Plaintiff suffered neck and back injuries, and underwent a fusion at L5-S1. Surgery was also recommended at L4-L5 for adjacent-level disc disease. He sought $132,500 in past medical; $410,600 in future medical; $72,600 in past lost earnings; $679,920 in future lost earnings; $500,000 in past pain and suffering; and $500,000 in future pain and suffering. The Plaintiff could not lift heavy objects, and needed to use a neck brace and pain medication.

The Plaintiff's employer set up the ladder and was not contributorily negligent for failing to exercise stop-work authority and report the condition to the rig’s supervisor.

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Factory Dust Explosions Killing Workers While Safety Rules Lag

Each year, people are killed and maimed by explosions of finely powdered wood, metal or chemicals at factories around the country. Safety experts have been studying the threat posed by dust at industrial sites for nearly a decade. But so far tighter regulations haven’t been promulgated by federal agencies. Among the reasons for the delay are a cumbersome rulemaking process and disagreement among the agencies about how to best tackle the problem. Unfortunately, workers continue to die because of the delay.

In 2001, there were at least 281 dust explosions in the U.S. between 1980 and 2005 that killed 119 workers and injured 718. In 2007, it was recommended that the Occupational Health and Safety Administration create workplace rules to control dust and cut down on explosions. The Chemical Safety Board is charged with investigating industrial accidents, but it must rely on regulatory agencies like OSHA to effect change from its findings. The Chemical Safety Board wrote in its 2007 report:

Despite the seriousness of the combustible dust problem in industry, OSHA lacks a comprehensive standard to require employers in general industry to implement the dust explosion prevention and mitigation measures.

OSHA decided instead to initiate a National Emphasis Program that stepped up education and inspections at plants in key industries. While the aim is to reduce dust explosions, inspectors have had to use regulations related to worker training and housekeeping because dust-specific rules are still being developed. According to the Chemical Safety Board, the rules currently being used are insufficient for preventing dust explosions.
Numbers from the Chemical Safety Board, even though stricter dust rules were requested, indicate dust explosions have happened just as often. There have been at least 35 explosions with 26 dead and 128 hurt since the beginning of 2008.

Chemical Safety Board Chairman Rafael Moure-Eraso said in June that the plant shouldn’t reopen until it was completely redesigned. But the Board doesn’t have the power to close the plant. The Hoeganaes plant wasn’t redesigned, but it did reopen after what the company’s Vice President of Human Resources called “a comprehensive safety review.” The Hoeganaes plant’s last inspection before the explosions had been in 2008, and the inspector did not look for dust hazards or even enter production areas.

That’s despite Tennessee’s participation in the National Emphasis Program. According to a Tennessee OSHA official, Hoeganaes wasn’t on an OSHA list of plants considered to be at high risk for dust explosions.

According to Assistant Labor Secretary Jordan Barab, it’s too early to assess the effectiveness of the program. A 2009 OSHA status report found that inspectors had issued more than 4,900 citations at targeted factories in a little under two years. On average, those factories received twice as many citations as facilities not targeted by the program.

Similar rules for different workplaces have paid off. OSHA has had regulations governing combustible dust in grain handling facilities since 1987. A 2003 review of those rules by OSHA found they had reduced deaths from grain dust explosions by 70%. Those rules are very specific. Grain dust is not allowed to accumulate on surfaces to a depth of more than 1/8 inch in defined “priority areas” of the facilities. In the aftermath of the Kansas explosion, experts said the facilities generally are safer than ever, but that only so much can be done to prevent deadly blasts.

The coal mining industry also has rules to prevent dust explosions that require noncombustible rock dust to be sprayed throughout a mine. Everyone believes OSHA’s process for implementing rules for other industries needs to be so complicated. Professor Kaufman, who advised OSHA on its 1987 grain dust rules, acted as an expert witness on a panel that was convened to discuss new combustible dust regulations. He said the grain dust regulations were originally opposed by industry as too costly, but they were so effective that those same industries soon embraced them.

The Chemical Safety Board found that Hoeganaes submitted 23 dust samples from the Gallatin facility to an independent laboratory last year, and 14 were found to be combustible. It was reported that the problem at the plant was obvious to everyone there, even without a laboratory analysis. It’s high time that rules be put in place that will address an obvious safety problem that puts workers at risk for death or serious injury.

Source: Insurance Journal

OSHA CITES WISCONSIN SANDBLASTING COMPANY

The Occupational Safety and Health Administration has cited a Waukesha sandblasting company for 42 safety and health violations, including four repeat health violations. The citations against Neman Painting & Sandblasting LLC were announced last month by the federal workplace-safety organization. The citations come with proposed fines of just over $50,000.

OSHA says the alleged repeat health violations include failing to perform medical evaluations for employees who use respirators, and failing to properly label containers that hold hazardous chemicals. Some of the alleged safety violations involved machines without proper guards and failing to maintain clean conditions, according to OSHA. Neman has 15 business days to comply with the fines, contest the citations or request a conference with OSHA.

Source: Claims Journal

SAFETY LAPSES CONTRIBUTED TO WORKER’S DEATH IN VIRGINIA

Safety lapses and equipment failures contributed to the death of a Norfolk, Va., sanitation worker, according to a report. The worker, 51-year-old Jerry Holton, was crushed inside a recycling truck in February. The report by a city safety officer cites a lack of safety training and says both the city’s waste management department and the worker failed to follow certain rules. The report also says two safety systems on the truck didn’t work because the vehicle had been rewired to bypass the hopper door safety system. City officials haven’t been able so far to determine how the rewiring occurred. The report was obtained under the Freedom of Information Act. In October, the state cited Norfolk for 19 serious safety violations relating to the incident.

Source: Virginian-Pilot

MISMANAGEMENT SAID TO HAVE CAUSED NEVADA MINE ACCIDENT

Two men were killed in a Nevada mining accident partly because someone wedged a broom handle against a reset button to bypass an alarm that would have shut down the system. According to the Mine Safety and Health Administration, managers of Barrick Goldstrike’s Meikle Mine are responsible for the August 2010 accident in Carlin that killed Daniel Noel, and Joel Schorr. The two men were struck by a pipe that gave way in a ventilation shaft because it was clogged with excessive waste rock material.

MSHA said the pipe overfilled because the broom handle kept the loading system from tripping off. The agency blames managers for failing to ensure the safe operation, inspection and maintenance of the mine. The report from MSHA said:

Management failed to ensure that the pipe, its support system, and electrical system were maintained in a safe condition to protect all persons who could be exposed to a hazard from any failure of the system. Additionally, management failed to maintain the electrical sensors and alarm systems and ensure that these systems could not be by-passed. A broom handle was used to wedge the electrical control panel reset button so the aggregate delivery system would continue to operate and not trip out.

MSHA issued Toronto-based Barrick six safety violations as a result of the accident. MSHA terminated the last of the safety orders stemming from those violations on June 21 after Barrick constructed a new aggregate delivery system that eliminated the hazards. The men were being lowered in the cage to inspect the pipe when the accident occurred about 2 a.m. on Aug. 12, 2010. Rescue crews found their bodies 32 hours later at an area about 1,300 feet below ground at the mine about 55 miles northwest of Elko and 275 miles northeast of Reno. It marked the sixth and seventh fatalities at the mine since it opened in 1994.

One worker told investigators he had been asked to be on lookout on the day shift before the accident “because another employee had wedged a broom handle against the electrical control panel reset button and he wanted to be alerted if a supervisor was approaching,” according to MSHA’s report. Investigators for MSHA discovered a modified broom handle hidden near the instrument panel reset button. The report said:

The end of the broom handle had been shaped with a notch of the correct size to allow it to be used to jam the panel reset button. Investigators positioned the broom handle and found it to fit perfectly when wedged between an electrical junction box and the instrument panel reset button.

This sort of thing evidences a total disregard for safety of employees working in coal.
mines and indicates the use of the handle wasn’t a one-time happening.

Source: Claims Journal

SETTLEMENTS REACHED IN REMAINING WEST VIRGINIA SAGO MINE LAWSUITS

Settlements have been approved in the six remaining wrongful-death lawsuits filed by the families of miners who died in the 2006 Sago Mine disaster in West Virginia.

Circuit Judge Charles King also signed off on several other settlements of lawsuits brought by family members other than those who were administering the victims’ estates. Terms of the settlements were confidential. The workers were killed after a powerful methane gas explosion tore through the underground mine in Upshur County just as two crews were starting work Jan. 2, 2006. Of 13 workers, only one survived.

The mine was operated by Wolf Run Mining Co. At the time it was owned by International Coal Group, which sold the mine earlier this year to St. Louis-based Arch Coal.

Source: Insurance Journal

BOAT IN FATAL GREAT LAKES ACCIDENT UNSTABLE

A sailboat that capsized in a storm during the annual race from Chicago to Mackinac Island, killing two crew members, was not suited for the competition because its sails were too big for its weight, a sailing group says. The report by U.S. Sailing criticized the design of the WingNuts boat, saying its sail area was too large for its weight under the conditions of the long Great Lakes competition. The Kiwi 35-foot sport boat overturned on July 18th in Lake Michigan off the northwest Michigan coast near Charlevoix, killing Mark Morley, the skipper, and Suzanne Makowski-Bickel, a crew member. A competing vessel rescued the other six crew members from the Saginaw-based yacht.

The report said:

WingNuts was a highly inappropriate boat for a race of this duration, overnight, without safety boats, and in an area known to have frequent violent thunderstorms. Her capable crew and preparation could not make up for the fact that she had too little stability, which led to her being blown over by a severe gust.

U.S. Sailing was requested to investigate the incident by the Chicago Yacht Club, the race organizer. Greg Miarecki, rear commodore for the Chicago Yacht Club, said officials had reviewed the WingNuts’ stability but it didn’t raise concerns. He said the report concluded that the stability index that had been used may not have been the best indication of whether the boat was too unstable to be in the competition. After reviewing the report, Mr. Miarecki says it appears “there’s now some discussion about having a stability index that’s different or additional,” and that he “would certainly welcome that.” Organizers say 355 boats and roughly 3,500 crew members took part in the annual race, which finishes off Mackinac Island in the straits where Lakes Michigan and Huron meet.

It was determined by the Charlevoix County medical examiner that Morley and Makowski-Bickel drowned after severe head trauma made them incapable of saving themselves. County Sheriff Don Schneider said his 11-week investigation found that the crew acted properly and no one was at fault in the accident. The report will also be studied by Detroit’s Bayview Yacht Club and could bring changes to another race next summer, the Beer Bayview Mackinac Race, which runs up Lake Huron from Port Huron to Mackinac Island, according to 2012 race chairman Greg Thomas. He added:

I am sure we’re going to have requirements about stability and righting moment and who we permit to race. Whatever we have to do to improve the safety of our race, I can promise you it will get done. It’s not going to go ignored.

According to Mr. Thomas, such accidents have inevitably led to safety improvements in the sport of sailing. Apparently, these were the first fatalities in the 190 Mackinac races that these two lakes have hosted over the years.

Source: Chicago Tribune and Detroit Free Press

WRONGFUL DEATH SUIT FILED AGAINST BOATERS

The family of a University of Utah molecular biologist who was killed while swimming in the Pineview Reservoir has filed a wrongful-death suit against the three men in the boat who ran her over. Esther Fujimoto, an avid swimmer, was hit and killed by the boat on August 21st while swimming 200 to 300 feet offshore. The wrongful death suit was filed in a Utah state court against Skyler Shepherd, Colton Raines and Robert Cole Boyer.

The suit alleges that Boyer was driving the boat when it hit Ms. Fujimoto. The propeller “tore into her torso and lower abdomen, causing critical injuries,” according to the suit. It was further alleged that Boyer and Raines had smoked marijuana prior to the accident and that all three had consumed alcohol. The boat turned around after Ms. Fujimoto was hit and a witness heard one of the boaters yell, “Hey lady, are you all right?” It was alleged that the Defendants talked to the decedent, but did not offer to help her and left the scene. The decedent was left in the water bleeding and severely injured. The suit contends the three men failed their “duty” to use “reasonable care” to avoid an accident by “operating the power boat in a negligent and reckless manner,” driving under the influence, failing to keep a proper lookout, failing to help Ms. Fujimoto after hitting her, and failing to get help for her. The Defendants were accused of willful and malicious conduct.

Safety on the waterways in this country doesn’t get the attention that highway safety does. But the consequences of negligent or willful conduct by boat operators can be just as bad.

Source: deseretnews.com
The High Cost of Healthcare

There is certainly room for serious debate over what has caused the extremely high costs of healthcare in this country. We hear the cry each year for limits on the rights of individuals to recover damages in a courtroom when they are injured or damaged. The claim is that frivolous lawsuits and large verdicts increase the cost of our healthcare. That is simply not true and there can be little doubt about it. These claims are a fraud on the public and are designed so that insurance companies and those in the medical field can simply retain more of the money they receive. And the money involved—in so-called defensive medicine typically a few million dollars—is nothing compared to the costs of the massive frauds by pharmaceutical companies who scam the public in various ways for billions of dollars each year. Some of the schemes that pharmaceutical companies have commonly used, which may well be violations of Federal and State False Claims Acts, include:

• Off-Label Marketing of Drugs: One common scheme by pharmaceutical manufacturers has been to market or promote their drugs to physicians for an off-label or unapproved use. Although physicians may prescribe a drug for an off-label use, pharmaceutical companies violate federal law, including the False Claims Act, when they market, promote or encourage physicians to use their drugs in an off-label or non-FDA approved manner.

• Illegal Kickbacks: One common scheme has been for pharmaceutical companies to provide payments or other financial incentives to hospitals and/or physicians in order to induce them to prescribe their drugs to patients. Such payments or financial inducements can come in many forms, including:
  - Bonus payments to physicians and hospitals;
  - Lavish dinners and lunches;
  - Tickets to sporting events, other forms of entertainment and golf outings;
  - Payments for attending conferences, lectures or other meetings;
  - Payments for serving on “advisory boards” which are excessive compared to the work being performed;
  - Research funding and unrestricted educational grants;
  - Phony or sham drug trials; and
  - Free samples of drugs, which physicians then sell to patients.

These and other financial inducements can be a violation of the Federal Anti-Kickback statute, 42 U.S.C. §1328-7(b)(2), the Federal False Claims Act, as well as various other federal and state laws and regulations.

• Inflating the Price of Pharmaceuticals: Medicare and many State Medicaid programs determine the amount they will pay for drugs based upon a figure known as the Average Wholesale Price (AWP) for that drug. The AWP is determined by information reported by pharmaceutical manufacturers. One common type of fraud has been for pharmaceutical manufacturers to inflate the AWP of their drugs and to use that inflated cost to provide a financial inducement for pharmacists, Pharmacy Benefits Managers; Insurers; and Group Purchasing Organizations to prescribe their drugs. Such inducements violate the Federal Anti-Kickback statute, the Federal and State False Claims Acts, as well as various other federal and state laws and regulations. It also constitutes common law fraud because false prices are reported by the drug manufacturers.

• Best Price Fraud: In order for a pharmaceutical manufacturer to sell its drugs to the Medicaid Program, it must agree to charge the program the lowest price at which the manufacturer sells to drug wholesalers, pharmacists, HMOs, Group Purchasing Organizations, and other private sector customers. In order to induce these private insurers, wholesalers, pharmacists and businesses to purchase and prescribe their drugs, and to include them on their preferred formularies, pharmaceutical manufacturers have offered their drugs at prices below the best price offered to Medicaid. Many times these discounted or nominal prices are concealed from the government through other agreements between the pharmaceutical companies and the private insurers, wholesalers, pharmacists and businesses. The pharmaceutical companies conceal these discounts so as to avoid having to provide rebates to Medicaid to match the discounted price they are providing to private insurers, wholesalers, pharmacists and businesses. This violation of the Medicaid Best Price requirement can be a violation of Federal and State False Claims Acts.

Lawsuits have been filed to recover billions of dollars from pharmaceutical companies for these practices. However, it’s widely believed that billions of dollars in false and fraudulent claims and practices by pharmaceutical companies remain undetected. A combination of confidentiality rules in place and lack of staffing both at the federal and state levels, the drug manufacturers have been able to get away with cheating governments for years.

Source: Pertragolio Gordon website

Another Death in Cantaloupe Listeria Outbreak

We have written in prior issues about the most serious listeria problems that have caused both deaths and illnesses. In early November, the death toll in an outbreak of listeria in cantaloupe had reached 29. This came when federal health authorities said an eighth person has died in Colorado. According to the Centers for Disease Control and Prevention, 139 persons have been sickened or killed in 28 states through November 3rd. While the tainted Colorado cantaloupes have been off store shelves for weeks, the symptoms of listeria can take up to two months to appear. That poses a serious problem. So far, deaths have also been reported in Indiana, Louisiana, Maryland, Nebraska, New Mexico, New York, Oklahoma, Texas and Wyoming. As previously reported, Jensen Farms in Holly, Colo., recalled the cantaloupes on September 14th.

Source: Associated Press

McDonald’s Drops McMuffin Egg Factory Over Health Concerns

McDonald’s will no longer accept eggs from Sparboe Farms, one of the country’s biggest egg companies, which had been supplying eggs to the company. Sparboe Farms was the subject of an ABC News investigation broadcast last month on 20/20 and World News with Diane Sawyer. It was cited by the Food and Drug Administration for “significant...and serious violations” in the production of eggs. In one of the most forceful enforcement actions since last year’s salmonella egg outbreak, the FDA issued a company-wide warning letter to Sparboe Farms, the country’s fifth largest egg producer.

Citing “serious” and “significant violations” at five different locations, the FDA cited at least 13 violations of the recently-enacted federal egg rule meant to prevent dangerous salmonella outbreaks. David Acheson, a former FDA food safety chief and now an industry consultant, said: “This is a warning...
that there is a systemic problem, not just at one barn or one location.” The ABC News broadcast included undercover video taken over the summer inside Sparboe facilities in three states by an animal rights group, Mercy for Animals, that shows unsanitary conditions and repeated acts of animal cruelty.

The Sparboe facility in Vincent, Iowa, had produced all eggs used by McDonald’s restaurants west of the Mississippi River. In its statement, McDonald’s said its decision was based on concerns about “the management of Sparboe facility,” and that “McDonald’s expects all of our suppliers to meet our stringent requirements for delivering high quality food prepared in a humane and responsible manner.” The Mercy for Animals activist who went undercover to record the video inside Sparboe told ABC News chief investigative correspondent Brian Ross:

I saw workers do horrendous things to birds, they were thrown, grabbed by the neck, they’re slammed in and out of cages.

Nathan Runkle, the executive director of Mercy for Animals, said the video shows how health hazards can be linked to large scale, low-cost egg producers, which are referred to as factory farms. He believes these farms, while the model of efficiency, place an emphasis on profit over animal welfare.

The 2010 salmonella outbreak affected more than 1,900 people and was traced to a different Iowa egg producer, Wright County Egg. More than a half-billion eggs had to be destroyed. The episode produced a nationwide health scare over the safety of eggs. Salmonella in eggs is easily killed when both the white and the yolk are cooked thoroughly enough to be hard. Many of those sickened last year ate custard at a California catering hall that had eggs from Wright County Egg. More will be said about this company below.

Source: whas11.com

WRIGHT COUNTY EGG FARM SETTLES WITH SALMONELLA VICTIMS

A settlement has been reached between Wright County Egg and dozens of people who had been sickened after eating salmonella-tainted eggs. The agreement will include six-figure payments for two children. This is the first round of settlements with the Iowa egg producer blamed in the outbreak. The settlements were reached with about 40 salmonella victims during a mediation conference. The payouts will come from Selective Insurance, the company’s insurer.

While the settlements are confidential, details of three became public when a federal judge in Iowa approved settlements totaling $366,000 for children from Texas, California and Iowa who were hospitalized after becoming sick. Payments varied widely depending on how seriously the Claimant was sickened.

According to federal officials, 1,900 people fell ill during the outbreak that started in July 2010 and was later linked to contaminated eggs supplied by Wright County Egg and Hillandale Farms of Iowa. Both companies voluntarily recalled 550 million eggs nationwide. Regulators put most of the blame on Wright County Egg, based in Galt, Iowa, which sold chickens and feed to Hillandale. Wright County Egg also had more illnesses linked to its eggs and was cited for numerous violations.

Inspectors found samples of salmonella at both farms along with dead chickens, insects, rodents, towers of manure and other filthy conditions. A Congressional investigation revealed that Wright County Egg’s testing found salmonella samples more than 400 times between 2008 and 2010.

Salmonella is a bacteria that typically causes fever, cramps and diarrhea within 12 to 72 hours of eating a tainted product. It lasts for several days and can require hospitalization. The largest of three settlements made public last week was $250,000 for a three-year-old boy who had severe diarrhea and vomiting and collapsed days later at preschool, where his mother found him on the ground shivering and holding his right leg in pain. The boy had to spend a week in the hospital because the infection had spread to bones and muscles and was life-threatening.

Two other settlements were approved: $100,000 was awarded in the case of an 11-year-old Newbury Park, Calif., girl who fell violently ill and was hospitalized for four days; and $16,000 was awarded to a 16-year-old Urbandale, Iowa, girl who was rushed to the emergency room after eating a restaurant sandwich dipped in egg-batter and fried.

On November 10th, U.S. District Judge Mark Bennett approved the settlements, which include compensation for medical bills, legal fees, and money for the children’s pain and suffering that won’t be available until they turn 18. The settlement for the three-year-old includes $70,000 for his parents, $15,000 to cover medical expenses and a $100,000 annuity to be invested from which he’ll receive guaranteed payments of $25,000 at age 18, $50,000 at 21 and $119,059 at 25. Details of the settlement in the other cases were confidential. The children’s settlements had to be approved by a federal judge because they are minors. That is why they became public.

The settlements won’t end the legal problems facing Austin “Jack” DeCoster, who built an egg empire stretching from Maine to Iowa and has a long record of labor, health and environmental violations. His son, Peter DeCoster, ran Wright County Egg. There are many Claimants who have not settled their cases. A number of cases are being mediated and it is expected that more settlements will be announced fairly soon. DeCoster’s companies have $26 million in insurance coverage spread out over three policies. They likely have a large punitive damage exposure for their prior history of salmonella testing, which they didn’t reveal to the government, and the prior history of Mr. DeCoster and other egg farms that have been fined many millions of dollars.

Source: MSNBC

XXI. ENVIRONMENTAL CONCERNS

BP TO PAY TEXAS $50 MILLION FOR REFINERY POLLUTION

While most of the attention to BP’s safety problems has been focused on its involvement in the tragedy in the Gulf of Mexico, the company has other issues. For example, the oil company agreed recently to pay Texas $50 million for air pollution violations at a Gulf Coast refinery where a 2005 explosion killed 15 workers. The settlement between BP Products North America and the State of Texas, announced by Attorney General Greg Abbott, resolves 72 emissions violations between 2005 and now. The Attorney General said in a Houston news conference that “the violations include some that contributed to the massive explosion six years ago at the Texas City refinery.” Attorney General Abbott said the settlement set a record in Texas. He had this to say about BP’s conduct:

“There are rules that must be followed and if you violate those rules there will be consequences. They exposed Houstonians ... To poor air quality and now they’re paying the price for it.

The announcement of the settlement came as BP PLC struggles to resolve issues surrounding the infamous April 2010 explosion at the company’s offshore rigging platform in the Gulf of Mexico that killed 11 people and caused the biggest offshore oil spill in U.S. history. It also comes just a few months after the company indicated a desire to sell the Texas City refinery. The settlement could make it easier for the company to find a buyer, because its pollution liabilities with the state have now been resolved. In August
NHTSA Opens Formal Probe Into GM Volt Fire Risk

The National Highway Traffic Safety Administration has opened a formal investigation into fire risks involving General Motors' Volt vehicles. According to NHTSA, it is taking the action after re-creation last month of a May crash test resulted in fires in two out of three tests. The agency said that it’s too soon to tell whether the investigation will lead to a recall of any vehicles or parts. If NHTSA identifies an unreasonable risk to safety, there will surely be a recall. The agency said it “will take immediate action to notify consumers and ensure that GM communicates with current vehicle owners.”

Earlier in November, the agency said it was looking into the safety of batteries used to power electric vehicles after fire broke out in a Volt battery pack three weeks after a side-impact crash test. NHTSA said it was not aware of any fires resulting from actual crashes on roadways. NHTSA recognizes that “electric vehicles have incredible potential to save people money at the pump, help protect the environment, create jobs and strengthen national security by reducing dependence on oil.” But safety is also a factor to be considered.

NHTSA is working with manufacturers to ensure they have appropriate post-crash protocols and to help inform emergency services of the potential for post-crash fires in electric vehicles. GM said that “the focus and research continues to be on battery performance, handling, storage and disposal after a crash or other significant event, like a fire, to better serve first and secondary responders.”

In the May crash test, the Volt’s 400-pound lithium ion battery pack was damaged and a coolant line was ruptured. Toyota Motor Corp.’s Prius, which dominates the hybrid vehicle market, is powered by older nickel metal hydride battery technology. Last month’s tests aimed to simulate a real-world, side-impact collision into a tree or pole, followed by a rollover.

After a test on November 16 that did not result in a fire, a temporary increase in temperature was recorded in a test on Nov. 17, according to NHTSA. It said that battery pack caught fire. During the test on Nov. 18, using similar protocols, the battery pack was rotated within hours after being impacted and it began to smoke and emit sparks.

Source: Claims Journal

Hot Fuel Litigation Is On Schedule

As we have reported in previous issues, lawyers in our firm are working hard in the Hot Fuel multi-district litigation centered in the District of Kansas. The case involves almost every major oil company in the United States, and seeks to give consumers who purchase motor fuel at retail the same benefit the oil companies enjoy at every level of the distribution chain—to compensate for temperature. As the temperature in motor fuel rises, the volume of the motor fuel expands. But, the energy in that motor fuel stays the same—meaning less energy per cubic inch for the purchaser. For decades, the oil companies have used a U.S. petroleum gallon, which is equal to 231 cubic inches at 60 degrees Fahrenheit, to ensure that intra-industry fuel transfers were fair and consistent. Oil companies refuse to do the same, however, for consumers. Rather, the companies temperature correct only when it benefits them.

In Canada, where fuel is denser as a result of the cooler temperature, oil companies account for the temperature of fuel. But, in the United States, where the temperature is much warmer, the oil companies have fought for years to keep temperature correction off the market. Every year, the companies make billions off consumers in this country by selling hot, non-temperature-corrected fuel.

The hot fuel case encompasses consumer class actions in all southern states. The first hot fuel trial will be for consumers in the State of Kansas, and it’s set to take place in May, 2012. Previously, Judge Vratil of the District of Kansas certified an injunctive class for consumers in the State of Kansas. After the ruling, the Plaintiffs were also able to beat back the Defendants’ appeal of the Court’s class ruling. Recently, the Defendants filed 250 separate dispositive motions and Daubert motions. In the aggregate, those motions contained 7,000 pages of briefing and more than 50,000 pages of exhibits. While these are extremely difficult cases, we feel confident that the Defendants’ motions will be defeated.

Our firm’s Hot Fuel litigation team is led by Plaintiffs’ Steering Committee member Rhon Jones and Parker Miller, who are
working very hard in the case. Parker is heading up the response briefs for Alabama, Mississippi, Tennessee and Georgia. Helping Rhon and Parker on this project are Grant Cofer, Kyle Shirley, Ryan Kral and Will Fagerstrom, lawyers in the firm. They are all doing an outstanding job in what is a difficult, but very important case. If you have any questions about the Hot Fuel litigation, contact Parker Miller at Parker.Miller@beasleyallen.com, or Grant Cofer at Grant. Cofer@beasleyallen.com.

STUDY CLAIMS SIGNIFICANT NUMBER OF CRIBS CONTAIN HARMFUL CHEMICALS

A report released last month, by Clean and Healthy New York, a project of Women’s voices for the Earth, said that a significant portion of crib mattresses sold in the U.S. contain one or more potentially dangerous chemicals. The finding comes despite previous efforts made by manufacturers to reduce the number of harmful chemicals. The report found that 52% of mattress models surveyed were made with conventional materials, including toxic chemicals, and 20% of mattress models were made without chemicals of concern, but with potential allergens. Only eight percent of mattress models included in the report were made without any chemicals of concern or allergens.

One of the mattress models, the Sealy Baby Firm Crib Mattress, is a top-seller among parents. It uses a vinyl cover coated with an antibacterial. Despite a statement on the company website that the mattress “does not contain any harmful chemicals,” researchers said that the process itself of vinyl manufacturing requires the use of toxic chemicals.

The researchers also warned parents to be on the lookout for other misleading health claims, such as: The addition of soybean or other plant oils to polyurethane foam (which does not decrease use of chemicals of concern) to reduce “carbon footprint” or the use of one or more layers of organic cotton. In one case, the cotton material was then covered with vinyl. Bobbi Chase Wilding, deputy director of Clean and Healthy New York, observed:

The mattress does matter. We call on manufacturers to eliminate toxic chemicals and fully disclose what materials they are using. Parents deserve to protect their babies while they sleep.

Companies demonstrate varying degrees of public disclosure about the chemicals in their mattresses, according to the researchers. Only half of the manufacturers in the study provided full information about the materials used in cribs—even though many of the chemicals the researchers tested for have been shown to cause harm in the past. Dr. David Carpenter, director of the Institute for Environment and Health at SUNY Albany School of Public Health, had this to say:

There is a strong connection between chemicals in our environment and many of today’s common health problems, including asthma, learning and developmental disabilities, cancer, infertility, and obesity. This report will help parents choose safer mattresses for their babies and illuminates the need for further changes to how mattresses are made.

Source: Foxnews.com

FALLS FROM BUMBO BABY SEATS CAN CAUSE SERIOUS HEAD INJURIES

Due to the serious risk of injury to babies, CPSC and Bumbo International Trust of South Africa are urging parents and caregivers to never place Bumbo Baby Seats on tables, countertops, chairs or other raised surfaces. Infants aged three months to ten months old have fallen out of the Bumbo seat and suffered skull fractures and other injuries. CPSC and Bumbo International say they are aware of at least 45 incidents in which infants fell out of a Bumbo seat while it was being used on an elevated surface which occurred after an October 25, 2007 voluntary recall of the product.

The recall required that new warnings be placed on the seat to deter elevated usage of the product. Since the recall, CPSC and Bumbo International have learned that 17 of those infants, ages three months to ten months old, suffered skull fractures. These incidents and injuries involved both recalled Bumbo seats and Bumbo seats sold after the recall with the additional on-product warnings.

CPSC and Bumbo International are also aware of an additional 50 reports of infants falling or maneuvering out of Bumbo seats used on the floor and at unknown elevations. These incidents include two reports of skull fractures and one report of a concussion that occurred when babies fell out of Bumbo seats used on the floor. These injuries reportedly occurred when the infants struck their heads on hard flooring, or in one case, on a nearby toy.

The Bumbo seat is labeled and marketed to help infants sit in an upright position as soon as they can support their head. The product warnings state that the seat “may not prevent release of your baby in the event of vigorous movement.” Infants as young as three months can fall or escape from the seat by arching backward, leaning forward or sideways, or rocking.

At the time of the 2007 recall announcement, CPSC was aware of 28 falls from the product, three of which resulted in skull fractures to infants who fell or maneuvered out of the product used on an elevated surface. CPSC and Bumbo International are now aware of at least 46 falls from Bumbo seats used on elevated surfaces that occurred prior to the 2007 recall, resulting in 14 skull fractures, two concussions and one incident of a broken limb. Approximately 3.85 million Bumbo seats have been sold in the United States since 2003.

Source: U.S. Consumer Product Safety Commission

JOHNSON & JOHNSON STARTS REMOVING TOXINS FROM BABY PRODUCTS

As a result of pressure from activists, Johnson & Johnson announced on November 17th that it is continuing efforts to remove two harmful chemicals from its iconic baby shampoo and other baby products in the U.S. An international coalition of consumer and environmental groups has been pressing J&J since May 2009 to remove two potentially cancer-causing chemicals from products, including its signature Johnson’s Baby Shampoo, long advertised under the slogan “No More Tears.”

The Campaign for Safe Cosmetics had been emboldened after finding the health care giant had removed the two chemicals—1,4-dioxane, considered a likely carcinogen, and quaternium-15, a chemical that releases the preservative formaldehyde—from products in several other countries, including the U.K., Scandinavia and South Africa. But in the U.S., China and elsewhere, the products contain trace amounts of the potentially cancer-causing chemicals.

The company’s decision comes as it faces increased scrutiny over its product quality. That’s after J&J has conducted more than two dozen product recalls over the past two years for problems ranging from glass and metal shards in liquid medicines and improper levels of active ingredients to nauseating odors in product bottles and painful, defective hip implants.

While this was said to have been an important step forward, all of us can look forward to the day when all Johnson & Johnson’s products are free of carcinogens and other chemicals of concern. Johnson & Johnson told The Associated Press that it expects to remove all quaternium-15 from its hundreds of baby products within about two years—and even sooner for baby shampoo. It’s already started providing some versions with alternative preservatives.
The company said it’s been working with global suppliers to require them to reduce traces of 1,4-dioxane to less than four parts per million and that most already meet that standard. Johnson & Johnson said in a letter sent on November 17th to the campaign’s director, Lisa Archer that the company’s “long-term goal” is to keep seeking new alternatives that don’t produce 1,4-dioxane in the manufacturing process. The company, which also makes Band-Aids, medical devices and biologic drugs, has repeatedly said formaldehyde-releasing preservatives are safe and legal.

But, according to the campaign, there are no U.S. standards for those chemicals in personal care products. The campaign and outside experts say the chemicals irritate the sensitive, highly-permeable skin of babies and, combined with all the other chemicals to which babies and toddlers are exposed, contribute to health risks. The groups responsible for keeping the pressure on Johnson & Johnson until the company finally did the right thing should be commended for their dedication and perseverance.

Source: USA Today

DID YOU CHANGE BATTERIES WHEN YOU CHANGED YOUR CLOCKS?

The U.S. Consumer Product Safety Commission reminded consumers last month that when they changed their clocks on November 5th they should have changed the batteries in smoke alarms and carbon monoxide (CO) alarms. Since Daylight Saving Time ended on Sunday, November 6th, I hope everybody has followed the recommendations and changed batteries. If not, all should do so. CPSC Chairman Inez Tenenbaum said in her statement:

Smoke and carbon monoxide alarms save lives by alerting you to a fire or CO buildup. They can’t do their job if the batteries aren’t working. Protect your family by replacing smoke and CO alarm batteries at least once each year.

In addition to changing batteries every year, CPSC recommends consumers test their alarms monthly. Smoke alarms should be placed on every level of the home, outside sleeping areas, and inside each bedroom. According to the CPSC, about two-thirds of fire deaths occur in homes with either no smoke alarms or smoke alarms that don’t work. Fire departments responded to more than 386,000 residential fires nationwide that resulted in nearly 2,400 deaths, more than 12,500 injuries, and $6.92 billion in property losses annually, on average, from 2006 through 2008.

In addition to changing batteries in smoke alarms, the CPSC urges consumers to stay in the kitchen while cooking to help prevent fires. It says that cooking fires accounted for the largest percentage of home fires, an annual average of nearly 150,000 or 38.7%, from 2006 through 2008. The CPSC says CO alarms should be installed on each level of the home and outside sleeping areas. CO alarms should not be installed in attics or basements unless these areas include a sleeping area. It should be noted that combination smoke and CO alarms are available to consumers.

Carbon monoxide is an odorless, colorless, poisonous gas that consumers cannot see or smell. CPSC says an average of 184 unintentional non-fire CO poisoning deaths associated with consumer products, including portable generators, occurred annually from 2005 through 2007. To protect against CO poisoning, schedule an annual professional inspection of all fuel-burning appliances, including furnaces and chimneys. Home heating systems were associated with 70 deaths, or 38% of CO poisoning deaths, in 2007, the largest percentage of non-fire CO poisoning deaths.

Source: CPSC

PORTABLE GENERATOR HAZARDS REPORTED BY THE CPSC

The use of portable generators is pretty common around the country. While the generators are useful when temporary or remote electric power is needed, they also can be hazardous, posing safety risks. The primary hazards to avoid when using a generator are carbon monoxide (CO) poisoning from the toxic engine exhaust, electric shock or electrocution, fire and burns. Every year, people die in incidents related to portable generator use. Most of the incidents associated with portable generators reported to the CPSC involve CO poisoning from generators used indoors or in partially-enclosed spaces.

It should be noted that when used in a confined space, generators can produce high levels of CO within minutes. When using a portable generator, folks must remember that they cannot see or smell CO. Even if you don’t smell exhaust fumes, you may still be exposed to CO. Danger labels are required on all portable generators manufactured or imported on or after May 14, 2007. If you start to feel sick, dizzy, or weak while using a generator, you must get to fresh air immediately. There is no room for delay. The CO from generators can rapidly kill a person.

It should be noted that CPSC documents are in the public domain. A CPSC document may be reproduced without change in part or whole by an individual or organization without permission. But if it is reproduced, the Commission would like to know how it is used. You can write the U.S. Consumer Product Safety Commission, Office of Information and Public Affairs, 4330 East West Highway, Bethesda, MD 20814 or send an e-mail via CPSC’s Online Form.

Source: CPSC

SPIN MASTER AGREES TO $1.3 MILLION CIVIL PENALTY

The U.S. Consumer Product Safety Commission has announced that Spin Master, Inc. of Los Angeles, Calif., and Spin Master Ltd. of Toronto, Canada, have agreed to pay a civil penalty of $1.3 million. The penalty agreement has been accepted provisionally by the CPSC. The settlement resolves staff allegations that Spin Master knowingly failed to report the defect and hazard associated with Aqua Dots to CPSC immediately, as required by federal law. The settlement also resolves CPSC staff allegations that Spin Master knowingly imported and sold Aqua Dots, which were toxic and a banned hazardous substance, in violation of federal law.

Aqua Dots was a children’s craft kit and toy that consisted of tiny beads of different colors that stuck together when sprayed with water, allowing children to create various shapes and designs. CPSC staff alleges that by the middle of October 2007, Spin Master had received reports that children, and a dog, had become ill and received emergency medical treatment after ingesting Aqua Dots. On October 18, 2007, Spin Master learned that Aqua Dots contained 1,4-butyleneglycol (TMG), which, upon ingestion, metabolizes to the controlled substance gamma hydroxybutyrate (GHB). The following day, Spin Master learned that TMG is harmful if swallowed, and upon ingestion, targets the kidneys and central nervous system.

It also was alleged by CPSC staff that in the ensuing days and weeks, Spin Master continued to receive reports of children falling ill after ingesting Aqua Dots. Spin Master also learned that children who ingested a similar product containing TMG, which was manufactured by the same overseas factory, had also become ill. Spin Master did not report any of the incidents to CPSC in a timely manner. In early November 2007, CPSC received two reports of children who had ingested the product, become ill, fallen into comas, and required hospitalization. On November 5, 2007, CPSC staff notified Spin Master of an ingestion illness incident that it had received. Two days later, Spin Master and CPSC announced a voluntary recall of about 4.2 million units of Aqua Dots.
The recall announcement noted that children who swallow the beads can become comatose, develop respiratory depression, or have seizures. While Spin Master had enlisted an outside testing company to evaluate the toxicity of the product, the testing was inadequate. Aqua Dots craft kits were sold nationwide from April 2007 to November 2007, for between $17 and $30.

Federal law requires manufacturers, distributors, and retailers to report to CPSC immediately (within 24 hours) after obtaining information reasonably supporting the conclusion that a product contains a defect which could cause 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. It was alleged by staff that the chemical composition of Aqua Dots rendered the product a banned hazardous substance. Federal law prohibits the importation and sale of banned hazardous substances.

The U.S. Consumer Product Safety Commission 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. Folks can report their experiences with the product on SaferProducts.gov.

Source: prnewswire.com

**More On The Problems Related To Magnets**

Reports of incidents involving these high-powered ball-bearing magnets have increased since 2009. Specifically, CPSC received one incident report in 2009, seven in 2010 and 14 through October 2011. These 22 incidents have involved children ranging in age from 18 months to 15 years old. Of the reported incidents, 17 involved magnet ingestion and 11 required surgical removal of the magnets. When a magnet has to be removed surgically, it often requires the repair of the child's damaged stomach and intestines.

In an effort to reduce the incidents associated with magnets, CPSC staff worked with the toy industry and other stakeholders to develop a standard to prevent magnets from detaching from toys. As of 2008, this standard is mandatory. It prohibits magnets and magnet components that are loose and of a size that could be swallowed from being in toys for children under 14 years of age. Based on the number of incidents involving young children accessing magnets intended for adults, as well as the growing number of teenagers misusing the product, CPSC again has been prompted to launch a magnet awareness campaign. This multipronged initiative includes a grassroots effort with public safety partners, public service videos targeted for parents and teenagers, along with social media outreach. CPSC is warning parents and medical professionals about the extreme danger facing children who swallow multiple magnets.

CPSC offers the following tips to avoid magnet ingestion injuries and advice on what to do if you suspect that your child has swallowed magnets: Keep small magnets away from young children who might swallow them. Look out for loose magnet pieces—and regularly inspect toys and children's play areas for missing or dislodged magnets. If you suspect that magnets have been swallowed, seek medical attention immediately. Look for abdominal symptoms, such as abdominal pain, nausea, vomiting and diarrhea. Note that in x-rays multiple magnetic pieces may appear as a single object.

Source: USA Today

**Toy Safety Issues Still Alarming**

Toy recalls have been declining since a tough new product-safety law was enacted in 2008. There were 34 toy recalls in the 2011 fiscal year, which ended September 30th, down from 172 in 2008. Even so, a Consumer Product Safety Commission report released last month shows toy-related deaths of children younger than 15 increased last year.

Even with the improvements, injuries remain alarmingly high, according to CPSC Chairman Inez Tenenbaum. It was reported that 17 child fatalities last year were toy-related, up from 12 in 2010. Almost half were from choking on balloons and balls—products so common they are hard to regulate. The report also shows nearly 252,000 children younger than 15 were treated in emergency rooms due to toy-related injuries last year. That number has remained constant in the last few years. Scooters that aren't motorized continued to be the category with the most injuries.

The once-voluntary toy standards are now mandatory because of the Consumer Product Safety Improvement Act. By January 1st, toymakers will need to have an independent laboratory certify that their products meet the new law's requirements, including those for lead content, lead paint and small parts. Major retailers, including Target, Walmart, Kmart and Toys R Us, have required this third-party testing since the law took effect in 2008. But there are still other challenges.

CPSC reported last month that 11 children since 2009 have required surgery after swallowing the tiny ball magnets from a popular office desk toy sold under brand names including Buckyballs and Nanospheres. The high-powered magnets continue to be a safety risk to children. From toddlers to teens, children are swallowing these magnets and the consequences are severe. Although the risk scenarios differ by age group, the danger is the same. When two or more magnets are swallowed, they can attract one another internally, resulting in serious injuries, such as small holes in the stomach and intestines, intestinal blockage, blood poisoning and even death.

Source: USA Today

**Blue Rhino Pre-Filled Propane Tank Class Action Lawsuit Settlement**

A settlement has been reached in a consumer fraud class action lawsuit (In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation, MDL) that is pending in the U.S. District Court for the Western District of Missouri. The lawsuit alleged that Blue Rhino, together with certain competitors, reduced the amount of propane gas in the cylinders it sold to its customers without disclosing the reduced fill to its customers and by misrepresenting or failing to disclose the actual fill of the cylinders to its customers.

The lawsuit sought to recover the money that customers were allegedly overcharged due to Blue Rhino's conduct. If the settlement is not approved by the Court, Blue Rhino will argue, among other things, that the case should not be a class action. The named Plaintiffs settled with Blue Rhino on behalf of all Blue Rhino tank exchange customers. Blue Rhino has made a commitment to its sales and marketing practices, and agreed to pay Class Members who make valid and timely claims according to a formula described in the Settlement Agreement. You are a Class Member if you purchased or exchanged one or more pre-filled Blue Rhino propane gas cylinders in the U.S. between June 15, 2005 and October 11, 2011, and did not resell the cylinder.

To participate in the proposed Settlement Fund, a person must submit a timely Claim Form to the Claims Administrator. Claim Forms must be postmarked or sent by email no later than May 23, 2012. Persons staying in the class may object or comment on the Settlement. To be excluded from the proposed Settlement, a person must submit a written request for exclusion to the Claims Administrator postmarked no later than January 9, 2012. Objection must be filed no later than January 10, 2012 with the Court.

Source: LawyersandSettlements.com

**BUTTON-SIZE BATTERIES ARE DANGEROUS FOR CHILDREN**

The button-size batteries commonly found in electronics are also proving to be very dangerous. Safety advocacy group Safe Kids USA says the number of injuries and deaths associated with the batteries has quadrupled in five years. The batteries can easily lodge in a child’s throat and burn through the esophagus in as little as two hours, according to Safe Kids. Toys designed for young kids should make it more difficult to remove the batteries. But Angela Mickalide, Safe Kids’ research director, says her group is also concerned about toys and remotes intended for older children and adults that might be exposed to younger kids.

Source: USA Today

**LIST OF UNSAFE CHRISTMAS TOYS RELEASED**

A new report from a Connecticut public interest advocacy group says there are still dangerous or toxic toys available for sale this holiday season. The Connecticut Public Interest Research Group, joined by the Connecticut Children’s Medical Center, released the 26th annual Trouble in Toyland report on November 22nd. It found toys with high levels of toxic substances on store shelves, toys that pose choking hazards and toys that are potentially damaging to children’s ears.

ConnPIRG said it visited numerous national toy stores, malls and dollar stores in September and October, identifying potentially dangerous toys. Congress in 2008 placed limits on certain chemicals in toys, including lead. ConnPIRG’s national umbrella organization has created an interactive site for smart phones that includes information on recalled toys, as well as safety tips.

**COLLEGE SERVER WITH 176,000 FILES HACKED**

Virginia Commonwealth University has reported that a school server including personal data of more than 176,000 current and former faculty, staff, students and affiliates has been hacked. The University is notifying everyone who may have been affected. The University says that it believes the likelihood that the data included in the files was compromised is “very low.” The breach was first discovered on October 24th.

Data included either a name or electronic identification, Social Security number and, in some cases, date of birth, contact information and various programmatic or departmental information. The school says the server was taken offline and a forensic investigation was launched in an effort to identify what had happened and what led to the compromise. VCU says it has been working with local and federal officials during the investigation.

Source: Claims Journal

**MORE COMPLAINTS INVOLVING AGGRESSIVE DEBT COLLECTORS**

As consumers struggle to pay their bills, complaints about debt collectors are growing faster than any other industry, according to federal regulators. The Federal Trade Commission reports that the number of complaints about debt collectors rose from 104,766 a year in 2008 to 140,036 in 2010. The FCC has stepped up enforcement, taking ten companies to court in the past three years, compared with six in the previous three years.

The conduct of debt collectors is a major consumer protection problem. In hard times, people have a harder time paying, and debt collectors have to work harder to go after them. Some debt collectors cross the line and violate the law. The FTC prosecutes the worst cases. A lawsuit filed by the FTC accuses employees of Rumson, Bolling & Associates of screaming at debtors, calling them “deadbeat,” “white trash,” “cracker head” and “scumbag.” This sort of thing, simply put, cannot be tolerated.

Source: USA Today

**FORECLOSURE FIRM THAT MOCKED HOMELESS AT PARTY TO CLOSE**

An embattled foreclosure law firm—criticized for a Halloween party which mocked the homeless, and which was recently shunned by Fannie Mae and Freddie Mac—will close. According to a spokesman for Steven J. Baum P.C., the firm will shut down. The shutdown was confirmed after the firm sent a notice of mass layoffs to state labor officials. The firm will fulfill remaining work before closing its doors and laying off the last of its 89 employees.

The firm’s demise began after photographs surfaced of employees dressed like homeless people for a Halloween party in 2010, which prompted Fannie Mae and Freddie Mac, the nation’s largest mortgage lenders, to stop referrals. In October, the firm agreed to pay a $2 million fine after a federal probe. Its practices are currently being investigated by the New York Attorney General.

Source: USA Today

**150 WEBSITES SEIZED FOR SELLING FAKE GOODS**

Federal authorities have seized the domain names of 150 websites accused of selling counterfeit or pirated merchandise. The seizures were announced on “Cyber Monday,” the day that for many shoppers kicks off the online holiday shopping season. Officials from Immigration and Customs Enforcement’s Homeland Security Investigations, the National Intellectual Property Rights Coordination Center, the Department of Justice and the FBI Washington Field Office, participated in the investigation, dubbed “Operation In Our Sites.” Officials said the websites—which sold professional sports jerseys, golf equipment, designer handbags and sunglasses, footwear and DVDs, among other items—will now greet visitors with a seizure banner that notifies them of the federal action and informs them that copyright infringement is a federal crime. ICE Director John Morton had this to say:

More and more Americans are doing their holiday shopping online, and they may not realize that purchasing counterfeit goods results in American jobs lost, American business profits stolen and American consumers receiving substandard products. The ramifications can be even greater because the illicit profits made from these types of illegal ventures often fuel other kinds of organized crime.

Federal law enforcement agents made undercover purchases of products from online retailers suspected of selling counterfeit goods. In most cases, the purchases were shipped directly into the United States from suppliers in other countries. If the products’ trademark holders confirmed that the purchased products were fake or otherwise illegal, investigators obtained seizure orders from federal magistrate judges for the domain names. The notice then replaced the home pages of 150 websites selling counterfeit goods. Among the domain names seized: cheapnflshop.com, discountuggboots-sale.com, jeresygreatdeal.com, louisvuitton-bags-forcheap.com, officialpumashop.com, reeboksstore.com and wholesalecheapdv.com. Since the operation was launched in June 2010, the IPR Center has seized 350 domain names.

Source: Associated Press
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 November issue. There continue to be a number of recalls by automakers. Readers are encouraged to contact Shanna Malone, the Executive Editor of the Report, if more information is needed on any of the recalls mentioned below. We would also like to know if we have missed any safety recalls that should be included in this issue.

**Toyota Recalls 550,000 Vehicles On Steering Issue**

Toyota Motor Co. has recalled 550,000 vehicles worldwide, including more than 420,000 in the United States, to replace an engine component that could hamper steering. Models involved include the Toyota-branded Camry sedan, Solara coupe, Highlander SUV, and Sienna minivan for the 2004 and 2005 model years. The recall also covers the 2004 Toyota Avalon sedan and 2006 Highlander HV. Toyota luxury brand Lexus models recalled were the 2006 Lexus RX 400H SUV as well as the 2004 and 2005 ES330 sedan and RX330 crossover.

The recall is the latest in a reputation-damaging series that began in the fall of 2009, mainly involving complaints of unintended acceleration linked to defective floor mats and gas pedals. This recall affects 283,200 Toyota and 137,000 Lexus vehicles in the United States, bringing the total in the country so far this year to a little more than 3.5 million vehicles.

Toyota will replace the crankshaft pulley on the six-cylinder engines of the models. The company said the outer ring of the pulley may not be aligned with the inner ring. If the condition were not fixed, a component of the power steering pump could be detached from the pulley and force the driver to put in more effort to steer. About 27,000 vehicles were recalled in Canada and 38,000 recalled in Japan, according to Toyota.

**GM Recalls Chevrolet Equinox and GMC Terrain**

GM has recalled Chevrolet Equinox and GMC Terrain small SUVs from the 2012 model year because the tire pressure monitoring system fails to meet federal standards. The recall affects 33,964 Equinoxes and Terrains built from July 18 through September 6. A car’s build date can be found on a sticker affixed to the driver-side door jamb.

The small SUVs have been big sellers for GM, which has been selling them as fast as it can make them. The completely redesigned Equinox and new Terrain rolled out as 2010 models and sales have continued to grow. Sales in September were up 33% for the Equinox from the month in 2010 and Terrain sales were up 45%. The tire monitoring system is designed to illuminate the tire pressure warning light when the pressure in a tire is 25% below the recommended cold tire pressure. On the recalled SUVs, the warning light won’t illuminate until the tire pressure is more than 25% below the recommended cold tire pressure.

An underinflated tire can cause tire overloading and overheating, leading to a blowout and possible crash. It also wears out your tires, causes poor handling and cuts your fuel economy. GM dealers will update the body control module free of charge. For more info, affected owners can call Chevrolet at 800-630-2438, GMC at 866-996-9465.

**Volvo Recalls About 20,000 Vehicles**

Volvo has recalled 7,000 2006-12 C70 convertibles and 12,000 2011-12 S60 midsize sedans—the recently redesigned model—because the optional spare tire kit has incorrect label information. In the affected cars, there are incorrect tire and loading information labels, according to Volvo. The misinformation can lead to improper tire inflation and result in a tire failure, increasing the risk of a crash.

**Lotus Recalls Elise Sports Cars In U.S. For Oil-Line Leaks**

Group Lotus Plc, the British sports-car maker, has recalled 5,037 Elise and Exige cars in the U.S. because oil-cooler lines may detach, causing oil to spray and increasing the risk of a crash or a fire. Group Lotus, a unit of Proton Holdings Bhd. (PROH), announced the recall of the model year 2005 and 2006 cars on the U.S. National Highway Traffic Safety Administration website. Proton is Malaysia’s state-controlled carmaker. New Lotus Elise cars sell for as much as $54,990, according to Motor Trend magazine. New Exiges sell for as much as $74,950, according to the magazine. The recalled cars may have oil spray from detached lines onto tires or into the

**BMW Recalls Vehicles For Potential Fire Hazard**

BMW North America has recalled certain vehicles from the 2008 through 2011 model years to correct a possible problem with overheating circuit boards that could cause fires. In a document filed with the National Highway Traffic Safety Administration, the car maker said the recall affects a total of 32,084 vehicles including 5 Series, 5 Series Gran Turismo, 7 Series, and X5 and X6 sport utility vehicles. The models involved have eight- or 12-cylinder turbocharged engines.

In these vehicles, BMW said, a circuit board for the electric auxiliary water pump can overheat. This can lead to a fire in the engine compartment. Under the recall, BMW dealers will replace the auxiliary water pump free of charge. Owners may contact BMW customer relations and services at 800-525-7417.
engine regulator said.

The company said that a leaking oil-cooler hose could potentially pose a safety concern. Lotus said it was not aware of any injuries that have resulted from this condition. Lotus says it is “working on a remedy and as soon as possible will notify the appropriate authorities, its customers and dealers and will provide a timetable for completion.” The cars’ manufacturing process has been changed since those with the defect were made, according to the company.

**Arctic Cat Recalls ATVs Due To Crash Hazard**

About 1,384 Arctic Cat All-Terrain Vehicles have been recalled by Arctic Cat Inc., of Thief River Falls, Minn. The ATV’s steering tie-rod can bend, causing loss of control which poses a crash hazard. Arctic Cat has received three reports of bent tie-rods. No reports of injuries have been received, according to the company. The recall includes all 2011 Arctic Cat XC 450 ATVs and some 2012 Arctic Cat XC 450 ATVs. Recalled 2012 model year ATVs can be identified by the last six numerals of the Vehicle Identification Number (VIN) in the following ranges: 6V0101 through 6V0178 and 700101 through 700250. The VIN is located on the lower front frame tube below the front bumper. The recalled ATVs are black and orange or black and lime green and display the words “Arctic Cat” on each side of the cowl ahead of the handlebars. The model number “450 XC” is on the front center of the cowl.

The all-terrain vehicles were sold at Arctic Cat dealerships nationwide since February 2011 for between $6,500 and $6,900. Consumers should immediately stop using these ATVs and contact their local Arctic Cat ATV dealer to schedule a free repair. Registered owners have been directly notified about this recall by mail. For additional information, contact Arctic Cat at (800) 279-6851 between 8 a.m. and 5 p.m. CT Monday through Friday or visit the firm’s website at www.arctic-cat.com.

**Trek Recalls Bicycles With Bad Bolt**

About 27,000 Trek 2012 FX and District bicycles have been recalled by Trek Bicycle Corporation, of Waterloo, Wisc. The bolt that secures the seat saddle clamp to the seat post can break posing a fall hazard. Trek has received four reports of incidents with one injury involving a broken tooth and lip injury. The bicycles affected by this recall include the following models: Model Year 2012: Trek 7.2 FX, 7.3 FX, 7.4 FX, AND 7.5 FX; District, and 9th District bicycle models: WSD, Livestrong and Disc models. The model name is found on the bicycle’s frame. Consumers can determine the model year by looking at the SKU number stamped on the bottom bracket, which is found near the pedals. If the last two digits of the SKU are 12, the bicycle is a Model Year 2012 bicycle.

The bicycles were sold at specialty bicycle retailers nationwide between May 2011 and September 2011 for between $550 and $1,100. Consumers should stop riding the bicycles immediately and contact an authorized Trek dealer for a free replacement bolt. For additional information, contact Trek at 800-373-4594 between 8:00 a.m. And 6:00 p.m. CT Monday through Friday or visit the company’s website at www.trekbikes.com.

**Kiddieland Recalls Disney-Branded Fairies Plastic Trikes**

About 12,000 Disney Fairies Plastic Racing Trikes have been recalled by the manufacturer Kiddieland Toys Limited, of Scituate, Mass. Disney licensed its brand name to Kiddieland. 9,000 Disney Princess Trikes were recalled in April 2011. The plastic fairy figures protrude from the top of the handle bar posing a laceration hazard if a child falls on them. CPSC and Kiddieland have received one report of a three-year-old girl from Ohio who suffered a facial laceration near her right eye. This recall involves the Disney-branded Fairies Plastic Racing Trike. The trike is green and purple with a white seat and yellow wheels. On top of the handlebar, there is a Tinkerbell figure and three other rotating fairy figures. “Disney Fairies” is printed on the label in front of the trike just below the handlebar.

The trikes were sold exclusively at Target stores nationwide from July 2009 through December 2009 for about $50. Consumers should immediately take the trikes away from children and contact Kiddieland for a free replacement handlebar with an enclosed rotating display. For additional information, contact Kiddieland at (800) 430-5307 anytime, or visit its website at www.kiddieland.com.

**Hand Trucks Recalled By Harper Trucks Due To Injury Hazard**

About 292,000 Hand Trucks have been recalled by Harper Trucks Inc., of Wichita, Kan. When the tires are overinflated, they can explode causing the wheel hub to separate or break, ejecting pieces of the hub. This poses an injury hazard to bystanders. Harper Trucks has received 19 reports of overinflated tires exploding that resulted in 19 injuries, including broken bones, loss of sight in one eye, contusions and lacerations. “Harper Truck” and the model number can be found on an adhesive sticker on the hand truck frame’s cross member. Hand trucks with two-piece, grey metal wheels are not included in this recall.

The trucks were sold at The Home Depot from September 2008 through March 2009 and Sam’s Club from January 1993 through January 2002 for between $28 and $42. Consumers should stop using the product immediately and contact Harper Trucks for a free repair kit that includes either lock washers to secure the four bolts on the 3-piece, metal/chrome plated wheels or new design replacement tires for the 1-piece composite tires. For additional information, contact Harper Trucks toll-free at (800) 835-4099 between 8:30a.m. And 4:30 p.m. CT Monday through Friday, e-mail wheels@harpertrucks.com or visit the company’s website at www.harpertrucks.com. The U.S. Consumer Product Safety Commission (CPSC) is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. Please tell us about your experience with the product on SaferProducts.gov.

**Ikea Recalls Wardrobe Mirror Doors Due To Laceration Hazard**

IKEA North America Service, of Conshohocken, Pa., has recalled their PAX AURLAND wardrobe mirror doors. This includes about 1,700 in the United States and 500 in Canada. The mirror glass can detach unexpectedly from the wardrobe door, fall and shatter, posing a laceration hazard to consumers. IKEA has received reports of 14 incidents, including one minor injury in Europe. No inci-
stains. This recall involves Dutailier E3540C2, E5100C2, E5140C2, E5530C2, E9000C2 and E9100C2. The Dutailier Group toll-free at (800) 363-9817 on Monday through Thursday from 8:30 a.m. to 5:00 p.m. ET, and on Fridays from 8:30 a.m. to 4:00 p.m. ET.

**Dutailier Group Recalls Drop-side Cribs Due To Hazards**

About 440 Drop-side cribs have been recalled by Dutailier Group Inc., of Quebec, Canada. The slats on the drop side can detach from the top and bottom rails creating a space between the slats. An infant or toddler's body can become entrapped in the space, which can lead to strangulation and/or suffocation. A child can also fall out of the crib. The firm is aware of 16 reports in which the slats on the drop side became detached from the top or bottom of the drop side rails of a crib. No injuries have been reported.

This recall involves full-size, drop-side wooden cribs with part numbers that begin with E1230C2, E3500C2, E3540C2, E5100C2, E5140C2, E5530C2, E9000C2 and E9100C2. The Dutailier logo and the part number can be found on labels on the inside of the end panels. The cribs were sold at children's products stores and other baby specialty stores from January 2009 through February 2010 for between $425 and $775. Consumers should immediately stop using the recalled cribs and contact Dutailier Group to receive a free repair kit which consists of a new fixed side to replace the drop-side of the crib. In the meantime, parents are urged to find an alternate, safe sleeping environment for the child, such as a bassinet, play yard or toddler bed depending on the child's age. For additional information, contact the Dutailier Group toll-free at (800) 363-9817 on Monday through Thursday from 8:30 a.m. to 5:00 p.m. ET, and on Fridays from 8:30 a.m. to 4:00 p.m. ET.

**Refrigerators Recall Expanded Due To Injury Hazard**

Liebherr-Canada Ltd of Ontario, Canada, has recalled Liebherr Freestanding 30-Inch Wide, Bottom Freezer Refrigerators. The refrigerator's door can detach, posing an injury hazard to consumers. Liebherr has received 16 additional reports of doors detaching on the freestanding refrigerators, including two reports of injuries involving bruising and strains. This recall involves Liebherr freestanding 30-inch wide, bottom freezer refrigerators with model and index numbers listed below. The refrigerators were sold individually or as side-by-side companion units. The refrigerators come in a stainless steel finish.

“Liebherr” is on the upper center of the refrigerator door and the top interior control panel. The model number can be found on a label located behind the bottom drawer on the left interior side of the single door refrigerator. The refrigerators were sold at appliance and specialty retailers nationwide from February 2004 through July 2009 for between $3,500 and $3,800. Consumers with recalled refrigerators should contact Liebherr immediately to schedule a free in-home repair. Consumers should check their refrigerator immediately to see whether the door hinge pin has become loose as indicated by a popped up hinge pin at the top. If the hinge has not become loose and the door is functioning properly, consumers may continue to use the refrigerator until it is repaired.

**Fireside Gel Fuel Recalled**

The U.S. Consumer Product Safety Commission announced a voluntary recall of 23,400 bottles of Fireside Gel Fuel due to burn and fire hazards. The gel fuel produced by Evergreen Enterprises of Richmond, Va., can unexpectedly splatter and ignite, posing a fire risk, the commission said in a statement. The recalled bottles include pourable gel fuels in 30-ounce plastic bottles that were sold with or without citronella oil.

“Fireside” and “Gel Fuel,” as well as “Evergreen” and “Flag & Garden” are printed on the bottles. The gel fuel was sold from December 2010 through September 2011 for about $10. Consumers should stop using the gel fuel and return the bottles to the company for a full refund. Consumers can call 877-558-1511 for information.

**Motion Sensing Wall Switches Recalled By HeathCo**

HealthCo, LLC has recalled about 75,000 Heath®/Zenith and WirelessCommand® motion sensing wall switches. The recall was necessary because a small amount of leakage current passes through the electric circuit, including the socket, when the switches are in the auto mode and the light is off. If consumers fail to disconnect the power at the circuit breaker and make contact with both terminals inside the socket while replacing the bulbs, there is a risk of an electric shock. This recall involves Heath®/Zenith and WirelessCommand® motion sensing wall switches. The product replaces a standard household wall switch and is designed to turn off the attached lighting load when motion is no longer detected in the room. The products come in white or ivory. The brand name and model number can be found on a label located on the side of the switch. Model numbers are available on request by emailing Shanna Malone at Shanna.Malone@beasleyallen.com.

The switches were sold at mass merchants, electrical distributors, hardware retailers and online retailers from August 2007 through August 2011 for between $20 and $25. Consumers should immediately stop using the recalled wall switches and contact the company for a free wall switch replacement. For additional information, contact HeathCo toll-free at (855) 704-5438, email hzproductnotice@healthcolc.com or visit the company’s website at www.heath-zenith.com/hzproductnotice.
More CooperVision Contact Lenses Recalled

Nearly 5 million more CooperVision contact lenses have been recalled because they may cause blurry vision, eye pain, and injuries requiring medical treatment. CooperVision Inc. says it will expand its recall of Avaira soft contacts to include 4.9 million Sphere lenses, which have already been shipped to customers around the world. The problem appears to be the level of silicone oil left on the lenses during the manufacturing process, according to a company news release.

In August, the company recalled nearly 780,000 Avaira lenses after the FDA received dozens of reports of eye pain and vision problems from wearers. But the FDA felt that recall was too muted, and in October, the agency issued its own urgent warning about Avaira lenses and pressured CooperVision to step up its efforts to alert the public. Customers who experience problems should remove the lenses immediately and contact their eye care provider. People who are concerned that they may have received recalled lenses can check their lot numbers at www.coopervision.com/international-recall or through the free recall hotline, 1-855-526-6737. Recalled lenses should be returned to the store where they were purchased or to the eye care provider who prescribed them.

Magnetic Sketchboards Recalled Because of Choking Hazards

Battat Inc., of Plattsburgh, N.Y., has recalled their Toulouse-LapTrec magnetic sketchboards. This includes about 95,000 in the United States and 4,300 in Canada. The sketchboards were manufactured by Rainbow Force Plastic Products, of China. The magnetic tip of the drawing pen can dislodge from the pen, posing a choking hazard to children. Battat has received 19 reports of the magnetic tip separating from the pen. No injuries have been reported. This recall involves the Toulouse-LapTrec magnetic sketchboard, which has a white plastic writing surface bordered by either a red or brown plastic frame, and has a bean bag type backing. The sketch board has four animal shapes across the top—a rabbit, dog, cat and duck. The multicolored magnetic pen is affixed to the front of the sketchpad.

The model number BX1026 (red frame) or BX1027 (brown frame) can be found on a paper wrapper that comes with the product at the time it was purchased. They were sold at Target and Barnes & Noble stores nationwide and by various online retailers from March 2010 to March 2011 for about $16. Consumers should immediately take recalled sketchboards away from children and contact Battat to receive a free replacement sketchboard. For additional information, contact Battat toll-free at (866) 665-5524, or visit Battat’s website at www.battatco.com.

Kotex Tampons Recalled Over Bacterial Contamination

Kimberly-Clark is recalling about 1,400 cases of Kotex tampons because of plastic tubing that may be contaminated with bacteria that could cause dangerous infections. The recall applies to limited lots of Kotex Natural Balance Security Unscented Tampons Regular Absorbency distributed to Walmart, Fry’s and Smith’s stores in eight states. They were sold in 18-count and 36-count boxes with SKU numbers of 15063 and 15068.

The tampons were recalled after company tests detected the bacterium Enterobacter sakazakii, which could cause health problems, including vaginal infections, urinary tract infections, pelvic inflammatory disease or other, potentially life-threatening infections. Women with existing health problems, including cancer, HIV or compromised immune systems, are at higher risk for infection. Kimberly-Clark says it has received no reports of illness linked to the products.

The products were shipped between Oct. 29 and Nov. 2. They went to Walmart stores in Iowa, Kansas, Missouri, Nebraska, New Mexico and Texas; to some Fry’s stores in Arizona; and to some Smith’s stores in Utah and Arizona.

Consumers who have the products should stop using them and contact Kimberly-Clark’s consumer office at 1-800-335-6839. Anyone who has been using the products and experiences unusual vaginal discharge, headache, rash, fever, vomiting or abdominal pains, should contact a doctor. No other Kotex products are affected by the recall and Natural Balance Security Tampons that don’t contain the listed SKU numbers or lots are safe to use, according to the company.

Hunting Knife Sets Recalled Due To Laceration Hazard

About 13,000 Winchester® Hunting Knife Sets have been recalled by Legendary Blades, of Portland, Ore. The latching mechanism for the knife’s interchangeable blades can unexpectedly fail and release the blade. This poses a laceration hazard to consumers. This recall involves Winchester Hunting Knife Sets with model number 31-000801. The model number is printed on the back, lower right corner of the packaging. The knife sets have a single handle with a lock release button and four interchangeable blades. “ Winchester®” is printed in red on the knife set’s handle and is etched onto the side of each of the four blades.

The knives were sold at Sporting goods stores nationwide from July 2011 through September 2011 for about $20. Consumers should immediately stop using the recalled knife sets and contact the firm for a free replacement product of equal or higher value. For additional information, contact Gerber Legendary Blades toll-free at (877) 314-9130 between 9 a.m. and 5 p.m. PT Monday through Friday, or visit its website at www.gerbergear.com. The U.S. Consumer Product Safety Commission (CPSC) is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. Please tell us about your experience with the product on SaferProducts.gov.

Build-A-Bear Recalls Teddy Bear Swimwear Set

Build-A-Bear Workshop®, of St. Louis, has recalled its swimwear Set with Inflatable Inner Tube. The inner tube accessory can be pulled over a small child’s head, posing a strangulation hazard. Build-A-Bear received one report of an incident in which a three-year-old girl pulled the inner tube over her head and had difficulty removing it. The inner tube is part of the three-piece Fruit Tutu Bikini swimwear set for teddy bears, which includes a two-piece fruit-print bikini. The inner tube is 9 inches in diameter and pink with white and yellow flowers printed on it. The model number of the swimwear set is 017220
and is located on the price sticker on the “Build-A-Bear” cardboard tag. The inner tubes were sold at Build-A-Bear Workshop® stores nationwide and online at www.buildabear.com from April 2011 to August 2011 for $12.50. Consumers should immediately stop using the inner tube and return it to any Build-A-Bear Workshop® store to receive a $5 store coupon. If it is not possible to return the inner tube to a store, consumers may contact the company for information about how to receive a refund.

**Cub Scout Jackets Recalled**

About 5,400 Cub Scout Wind Tech jackets imported by Boy Scouts of America, of Charlotte, N.C. have been recalled. The jackets were sold at Boy Scouts of America retail outlets nationwide and online at www.scoutstuff.org from November 2009 through July 2011. The blue jackets are nylon with a polyester liner, long-sleeve, with a full zip front and a Cub Scout wolf head emblem embroidered on the upper left chest. The jackets were manufactured in China. The jackets have retractable cords with toggles at the hood/neck area and at the waist, which can pose a strangulation or entrapment hazard to children.

Contact the Boy Scouts of America at 855-873-2408 by cellphone, or visit its website at www.scoutstuff.org.

**Glass Bowls Recalled Because of Laceration Hazard**

Fantasy glass bowls imported by Libbey Glass Inc., of Toledo, Ohio have been recalled. The bowls were sold at Libbey Outlet stores, Home Outfitters and to commercial customers for use in food-service establishments nationwide from August 2010 through September 2011. This recall includes the Fantasy glass bowls sold with a lop-sided shape with one side taller than the other. The bowls are made of clear, colorless glass and were sold in only one size as 8.5 ounces. The bowls measure about 5 3/8 inches in height on the tallest side and about 2 1/4 inches across the base. The glass bowl can break when subjected to sudden temperature changes or impact, posing a laceration hazard. The firm has received one report of a glass bowl breaking while being washed in a commercial dishwasher. No injuries were reported.

Consumers should immediately stop using the recalled glass bowls. Consumers can return the glass bowls to the point of purchase for a refund. Commercial customers should contact Libbey Glass Inc. To arrange for destruction of the product and receipt of a credit or refund. For additional information, contact Libbey Glass Inc. At (800) 982-7063 or visit its website at www.libbey.com.

**Ashland Brand Glass Vases Recalled Due to Laceration Hazard**

Michaels Stores Inc. of Irving, Tex., has recalled their Ashland™ Glass Vase. The glass vases can break or fracture when a consumer picks them up, posing a laceration hazard. The firm has received four reports of the vase shattering, causing lacerations to the hands for all four. One person had surgery, two got stitches. The vase is rectangular and made of clear glass. It is 12 inches tall, 8 inches wide and 2.5 inches deep. The SKU number “425827” and UPC number “6-927619-661665” are printed on a label on the bottom of the vase. They were sold exclusively at Michaels Arts & Crafts Stores from January 2008 through October 2011 for about $20. Consumers should stop using the vase and return it to a Michaels Arts & Crafts store for a full refund. To avoid the risk of breakage and possible injury, handle the vase with care. For additional information, contact Michaels at (800) 642-4235 Monday through Saturday from 8 a.m. To 8 p.m. And Sunday from 9 a.m. To 6 p.m. CT or visit its website at www.michaels.com.

**Company Recalls Meat and Poultry Pie Products**

An Oklahoma-based company has recalled nearly 9,000 pounds of frozen meat and poultry pie products. Some products from Original Fried Pies, Inc. contain a preservative called sodium benzoate that doesn’t appear on package labels. The Food Safety and Inspection Service of the Department of Agriculture says sodium benzoate is not approved for use as an added ingredient in meat and poultry products.

The Davis, Okla.-based company’s recall includes three different kinds of cheese sauce and another sauce with vegetables and chicken. It was distributed for use at restaurant locations in Arkansas, Colorado, Mississippi, Missouri, Oklahoma and Texas. There haven’t been any reports of illness tied to eating the mislabeled products.

**Rite Aid Has Recalled 12 Oz. Tins Of Rich Fields Butter Cookies**

Rite Aid has initiated a chainwide recall of approximately 85,000 tins of butter cookies distributed by Rite Aid under the Rich Fields brand name because of the possibility of contamination with Bacillus cereus. This microorganism may cause diarrhea, nausea and/or vomiting.

This recall affects only 12 oz. Tins featuring either a decorative castle or Christmas designs and sold exclusively in Rite Aid stores. Affected products can be identified by the UPC codes 01249596519 and 88411804619 located directly beneath the bar code on the bottom of each tin. No other Rich Fields or Rite Aid brand products are affected by this voluntary recall.

The recall was initiated after the company conducted quality testing on the affected product because of an uncharacteristic odor. Customers should not eat the cookies and can return them to any Rite Aid store for a full refund.

Information regarding the recall is available online at www.RiteAid.com or by calling 1-800-RITE-AID Monday through Friday from 8 a.m. To 8 p.m. EDT and Saturday from 9:30 a.m. To 6 p.m. EDT. Rite Aid also is contacting customers who purchased the affected products using their wellness+ loyalty card in order to inform them of the recall.

**Smucker Recalls Jars Of Chunky Peanut Butter**

J.M. Smucker Co. recalled thousands of 16-ounce jars of its Smucker’s Natural Peanut Butter Chunky because of possible salmonella contamination. The Ohio-based company says the jars covered in the recall would have been purchased in mid-November. They have “Best if Used By” dates of Aug. 3, 2012 and Aug. 4, 2012, plus the production codes 1307004 and 1308004. Smucker says 3,000 jars are being recalled from stores. Another 16,000 had never left warehouses. Salmonella is bacteria resulting in fever, cramps and diarrhea that lasts for several days and can require hospitalization. Smucker says no illnesses have been reported. The product was distributed in: Arkansas,
Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Virginia, Wisconsin and the District of Columbia.

Once again, there have been so many recalls since the November 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.

XXIV.

FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

CHAD COOK

Chad Cook, a lawyer in our Mass Torts Section, has been heavily involved in the Fosamax, Heparin, Reglan and Zithromax litigation. Chad also assists in investigating new drugs and medical devices which present a serious danger to consumers. Chad is a graduate of the Thomas Goode Jones School of Law. After graduating from Jones in 2002, Chad was hired as a staff attorney for the firm. He is now a shareholder in the firm. His practice focuses on pharmaceutical litigation, representing victims of defective prescription drugs and medical devices.

Currently, Chad is one of 11 lawyers from around the country selected to oversee the consolidated litigation as part of the Plaintiffs Steering Committee (PSC) in the Fosamax Products Liability Litigation. This litigation, which encompasses hundreds of cases against Merck Sharp & Dohme, Corp., involves femur fracture injuries, and is consolidated under U.S. District Judge Garrett E. Brown, Jr., in the District of New Jersey. Chad also is on the Plaintiff's Discovery Committee in the Fosamax MDL. This MDL is in the Southern District of New York Federal Court before Judge John F. Keenan, and involves cases of osteonecrosis of the jaw. Chad also assists with serving on the Fosamax Science and Administrative Committees for this litigation.

In addition to his work at Beasley Allen, Chad has served as an instructor in Civil Procedure and Evidence at Faulkner University and as a member of the Legal Studies Advisory Committee. Chad also serves as a Mentor for the Thomas Goode Jones Professional Development Program which gives law school students an opportunity to connect with practicing attorneys, discuss the practice of law, and promotes professionalism.

Chad is also a member of the Alabama Chapter's Cystic Fibrosis Foundation Young Professionals Leadership Committee and is a Board member for The Montgomery County Association of Justice as well as a Board member for Montgomery Partners in Education, where community members volunteer as tutors, mentors and partners, helping students to build skills and to find the link between school and the future.

Chad and his wife, the former Sharon Broadfoot, are both from the Montgomery area. They have a six-year-old son named Parker. The Cooks are members of First Baptist Church in Montgomery. Chad serves on the Board of the Nehemiah Project, a program designed to bring church leaders, businesses, civic organizations and city officials together to address the spiritual and social needs of Montgomery's inner city. Chad is a very good lawyer who works very hard for his clients. We are most fortunate to have him with us.

MELISSA PRICKETT

Melissa Prickett came to work at the firm in 1996. She is a member of our Mass Torts section and currently is involved in the DePuy hip replacement litigation and the hormone therapy litigation. Melissa serves on the Governing Committee and various sub-committees in the Prempro Multi-District Litigation. She previously worked on our Baycol and Celebrex/Bextra litigation. Melissa also serves as the Director of Operations for the Mass Torts Section and oversees the day-to-day operations of that section.

Melissa graduated from Jones School of Law in 2001. While at Jones, she served as a member of the Law Review Board and was recognized as Outstanding First Year Student. She was active in the Student Bar Association and held the positions of First-Year Senator and Vice-President. She also was selected Who's Who Among Students in American Universities and Colleges.

Melissa is a member of several associations and has served as a guest scoring judge in local moot court competitions. She serves as a mentor to members of the Women Students Association at Jones School of Law. Melissa has been a guest speaker at local seminars and at senior citizen centers on pharmaceutical litigation. Melissa is married to Michael Prickett, and they have two sons. They are members of Frazer United Methodist Church and are active in the Children's Ministry. Melissa is also a very good lawyer. She works hard for her clients and also does an excellent job in her management function for the Section. We are most fortunate to have Melissa with us.

KELLY ALLEN

Kelly Allen, who is in our Graphics and Litigation technology department, has been with our firm for over eight years. In her current position, Kelly creates various types of graphics for use in trials, mediations, and seminars. She also helps to prepare exhibits and deposition designations for use at trial and helps to set up courtrooms and war room technology for the trials. Kelly attends trials with the lawyers and legal assistants and provides the technology required for use of electronic evidence in the courtroom. Kelly assists with numerous firm events such as seminars and other functions, where technology is needed for those events. Prior to being assigned to graphics/trial technology, Kelly was a legal assistant in Mass Torts Section for almost two years.

Kelly comes from an Air Force family, and as a result she has lived in a number of places. She spent ten years on active duty with the USAF and several more years working in civil service. Kelly worked on computer systems in the B-52G model bombers. She also worked in human resources and ultimately wound up in the Air Force JAG department. Kelly served for a number of years overseas in Japan and Guam. Her husband, Michael, is now retired from the USAF and currently works for a contractor through the Pentagon.

Kelly’s daughter Morgan just completed graduate school at Auburn University and works for the State of Alabama as a behavior analyst. Her oldest son Clayton is a boxer and her youngest, Logan, is a junior in high school, attending The Learning Place. Kelly has a bachelor's degree in Paralegal Studies with a minor in management from the University of Maryland. Currently, she is an active member of the Board of Advisors for the Air Force JAG paralegal school. Kelly enjoys traveling and reading. She is a most valuable employee who is involved in a challenging and critically-important field of work. Kelly does excellent work for the firm. We are fortunate to have her with us.

VALERIE SCROGGINS

Valerie Scroggins came to work at the firm in September 2000 as a receptionist in the Consumer Fraud Section. She is now a Legal Secretary, working with Larry Golston. She has been in this position since 2004 and is responsible for case management, client
contact and general secretarial duties. She often assists other members of Larry’s Section in a number of areas. Valerie also has served in administration and as database administrator for this Report.

Valerie is married to Mike Scroggins, who works at L. L. Hodge Machine Works. They are very active in their church at First Baptist of Posey Cross Roads. Valerie has a daughter, Shanna Culp, who has one son, Jordan, and is expecting another son in March 2012. Shanna’s husband Jud serves in the Army. Valerie also has a son, Trevor Stange, who works at Pigg Enterprises in Prattville. He and his finance Nikki have one son, Carter, who is three months old. Trevor also has a step-son, Layton. Valerie also has three step-children and nine step-grandchildren. She enjoys reading, cooking and spending time with family and friends. Valerie is a very good employee and she says that she really enjoys her work and likes helping folks who need our help. We are most fortunate to have Valerie with us.

**Beasley Allen Legal Strategies Conference**

Our firm hosted its fifth annual Legal Strategies Conference & Expo at the Renaissance Hotel & Spa at the Convention Center in Montgomery last month. The two-day event was open to all Alabama lawyers in the local community while showcasing the state coming to Montgomery for the conference. Hopefully, it was a meaningful experience for them.

Other legal issues addressed at the conference included Product Liability, Mass Torts, and Consumer and Investor Fraud. Special programs covered the topic of Legal Ethics, presented by Tony McLain, General Counsel, Alabama State Bar. An address by Jim Pratt, President, Alabama State Bar, who spoke on the topic of tort reform and the importance of lawyers becoming involved with the Bar’s activities, was a highlight of the conference. We really appreciated lawyers from all over the state coming to Montgomery for the conference. Hopefully, it was a meaningful experience for them.

Valerie also said that the conference:“The Importance of a Strong Judiciary,” and the Governor observed that “the judicial branch … is the one that keeps our state, the one that keeps our nation, on the right track.”

Other highlights of this year’s conference included remarks from Judge Charles Price, Attorney General Luther Strange, Morris Dees, Founder and Chief Trial Counsel of the Southern Poverty Law Center, and Mary Bauer, Legal Director at the Southern Poverty Law Center. John Crowly, founder and director of the Big Oak Ranch, was a special guest speaker for the third consecutive year at the Prayer Breakfast held on Friday morning. John brought audience members to tears with stories of some of the children helped by this special ministry, which provides a loving Christian home and family for youngsters in need.

**Jones School of Law Officially Opens New Allen Law Center**

A ribbon cutting ceremony was held last month celebrating the grand opening of the new Allen Law Center on the campus of Thomas Goode Jones School of Law. The new law school facility was named in honor of Greg Allen, a Jones alumnus, who has been a very strong supporter of the school. Greg served as chairman of the steering committee in Jones’ effort to obtain full accreditation from the American Bar Association, which was accomplished in December 2009. Greg is a member of the advisory board for the school and teaches products liability seminars. The school’s mock trial competition, The J. Greg Allen Trial Competition, also is named in Greg’s honor.

**New Officers Elected By The Alabama State AFL-CIO**

Alabama AFL-CIO will have a new president for the first time in years. Members elected a president and secretary-treasurer at their annual convention. Stewart Burkhalter, who served as president, had been in office for a long time. He has now retired. State AFL-CIO delegates elected Al Henley of Montgomery to succeed “Buck” as president. At the meeting, Bren Riley of Etowah County was elected secretary-treasurer. Bren is a full-time union employee in Gadsden and is former vice president of the United Steelworkers Local 12 at Goodyear Tire & Rubber Co.

**AL AND I HAVE BEEN FRIENDS FOR OVER 20 YEARS. HE IS A GOOD MAN AND WILL BE AN OUTSTANDING PRESIDENT. ONE OF THE UNION PRESIDENT’S PRIMARY JOBS IS TO WORK WITH THE ALABAMA LEGISLATURE AND TO PROMOTE ORGANIZED LABOR’S AGENDA IN GOVERNMENT ARENAS. THE SECRETARY-TREASURER IS THE ORGANIZATION’S BUSINESS MANAGER. AL BECAME A MEMBER OF THE COMMUNICATION WORKERS OF AMERICA IN 1972 WHEN HE WORKED FOR BELLSouth. HE SERVED AS SECRETARY-TREASURER FOR EIGHT YEARS.**

Al’s challenge will now be to keep labor’s voice relevant in our state. Alabama union membership was about 15% in the early 1990s, but last year fell to 10.1%, or 183,000 members, according to the Bureau of Labor Statistics. About 54,000 were affiliated with the AFL-CIO. Al, as president, plans on using his position to call attention to work force issues. He had this to say:

**Union membership has declined all over the country. We’ve lost a lot of political power, but we’ve still got a voice and we’ll use it. Working people have been disrespected and not appreciated. Alabama is a poor state made up of a large majority of good union and non-union workers. This gives us the opportunity to tell the truth when it relates to regular working folks.**

I wish Al and Bren the very best as they take on tremendous challenges. They have their work cut out for them. Hopefully, they can bring about a new awareness of how important union membership can be for working men and women.

Source: Gadsden Times
Favorable Bible Verses

John Croyle, the Executive Director of the Big Oak Ranch, sent in a verse for this issue. John, who played football at the University of Alabama under Coach Paul “Bear” Bryant, gave up a promising career in the NFL to do the Lord’s work at the Ranch. There is no telling how many young people, who came to the Ranch to live, had their lives turned around and went on to lead productive lives. John says that Big Oak Ranch exists for the development of young men and women. While at the Ranch, the youngsters experience a daily walk with Christ. Providing a solid Christian home for children needing a chance is a very good thing. This is a tremendous ministry and one that is badly needed.

But Jesus called them to Him and said, “Let the little children come to Me, and do not forbid them; for of such is the kingdom of God.”

Luke 18:16

Allen Newton, the new Senior Pastor at St. James United Methodist Church in Montgomery, furnished a verse for this issue. Allen and his family moved from Panama City, Fla., to Montgomery to serve at the church. He is off to a good start at St. James. Allen is doing a very good job keeping all of us there involved in the various ministries at the church.

I am the vine, you are the branches. He who abides in Me, and I in him, bears much fruit; for without Me you can do nothing. By this My Father is glorified, that you bear much fruit; so you will be My disciples.

John 15:5 & 8

Jami B. Herrington, a registered nurse who receives the Report, sent in two verses for this issue.

Let him that stole steal no more: but rather let him labor, working with his bands the thing which is good, that be may have to give to him that needeth.

Ephesians 4:28

And whatsoever ye do, do it heartily, as to the Lord, and not unto men.

Colossians 3:23

My very good friend, Bill Wynn, sent in one of his favorite verses for this issue. Bill, who is from Baldwin County, serves on the Alabama Pardon and Parole Board and is a good man.

Heaven and earth will pass away, but My words will by no means pass away.

Matthew 24:35

Kym Klass, a very good reporter with The Montgomery Advertiser, spoke at the Women of Hope luncheon in Montgomery recently. Kym’s mother died with breast cancer at an early age, and Kym learned how to take a tragedy and turn it into a blessing for women in the fight against breast cancer. My wife Sara attended the luncheon and said Kym’s message was both encouraging and uplifting. Kym sent us a verse for this issue.

Be still, and know that I am God; I will be exalted among the nations, I will be exalted in the earth!

Psalms 46:10

Anne Graham Lotz, the daughter of Dr. Billy Graham, furnished a verse for this issue. Anne has a tremendous ministry, continuing the evangelistic efforts started by her father years ago.

For where two or three are gathered together in My name, I am there in the midst of them.

Matt 18:10

Marilyn Holis Maddox, a very good lawyer from Birmingham, who also is a distinguished and gifted author, says the verse below should be read by all of us.

Do not lay up for yourselves treasures on earth, where moth and rust destroy and where thieves break in and steal; but lay up for yourselves treasures in heaven, where neither moth nor rust destroys and where thieves do not break in and steal. For where your treasure is, there your heart will be also.

Mat 6:19-21

My good friend, Joe Pate, who currently serves as Associate Athletic Director at North Carolina State, sent in his favorite verse. Joe, who is a native of Ashford, Ala., is an avid turkey hunter and a good man. He also was a very good coach and recruiter. Joe recruited Phillip Rivers from Athens, Ala., and brought him to North Carolina State. That young man is now a star quarterback in the NFL.

The heavens declare the glory of God; And the firmament shows His handiwork.

Psalm 19:1

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news. If you have a topic you would like to have on the show, let either Gibson or me know and we will consider it. You can contact us at 800-898-2034 or by email at Gibson.Vance@beasleyallen.com.

**RECOGNITION DUE FOR A JOB WELL DONE**

I wrote about a very important case in a previous issue, but failed to give proper credit to the lawyer who handled the case. John Stamps, a very good lawyer from Bessemer, Ala., represented April Mack in a lawsuit which brought about an important change in Alabama law. In a unanimous decision, the Alabama Supreme Court expanded legal protections for the unborn child when it ruled that Alabama’s wrongful death statute applied to the unborn child at any stage of development. This means that a wrongdoer can be tried civilly for the death of an unborn child regardless of viability. April Mack was 12 weeks pregnant with Baby Mack in September 2007, when she was in a car accident that later resulted in the miscarriage of her unborn child.

**CORRECTION NEEDED**

I made an error in the last issue that needs to be corrected. I was informed by a reader that I had listed Eric Cantor, the House Majority Leader, a Republican from Virginia and one of the Tea Party zealots, as Alan Cantor. For that I apologize. I realize fully that nobody likes to be called by the wrong name. I also apologize to my friend, Alan Cantor, who is a very good lawyer. The two are not to be confused.

**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.

2Chron 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, Which they have prescribed. To rob the needy of justice, And to take what is right from the poor of My people, That widows may be their prey, And that they may rob the fatherless.

Isaiah 10:1-2

The only title in our Democracy superior to that of President is the title of Citizen.

Louis Brandeis, 1937

U.S. Supreme Court Justice

I believe that banking institutions are more dangerous to our liberties than standing armies. If the American people ever allow private banks to control the issue of their currency, first by inflation, then by deflation, the banks and corporations that will grow up around the banks will deprive the people of all property until their children wake-up homeless on the continent their fathers conquered.

Thomas Jefferson 1802

**XXVIII. PARTING WORDS**

The Thanksgiving Holiday which we celebrated last month was a time for families to thank God for the many blessings and provisions that He has provided. It’s a time when all of our cares and concerns can be put aside, allowing us to focus on the many good things in our lives. Unfortunately, a great deal of media focus during Thanksgiving is always put on what has become known as “Black Friday.” I have never really liked that label and even though the very popular sales are good for folks looking for bargains, and for the retailers, there should never be anything “black” about Thanksgiving. It should be a bright and joyful time for families. It also helps us get ready to celebrate the Christmas season.

The season of Advent started at our church on November 27th with Rick Morrison, a lawyer in our firm, his wife Estee and one of their children, Mere Grace, lighting the first Advent candle. Advent is the time during which the church celebrates the first coming of Jesus Christ and anticipates the second coming. It’s a very special time for all Christians. The celebration of the birth of Jesus Christ gives hope for all of us and provides a great ending to a year that has been filled with turmoil, strife and hurt around the world. But more importantly, the celebration gets us ready for the New Year.

All of us at Beasley Allen wish for all of you and your families a blessed Christmas and a happy, healthy, and productive New Year. I am looking forward to 2012 and hope you are, too. May God continue to bless you!

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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.