The leadership in the Alabama Legislature should have realized by now that passage of the ill-advised immigration law was a monumental mistake on its part. From all accounts, this bill was drafted by the sponsors and passed by the House and Senate with little thought or concern as to its adverse consequences. There was no real debate on the bill in either chamber and that too was a big mistake. I suspect some legislators voted on the bill without having ever read it. I believe the bill was passed primarily for political gain and little else. In any event, the law has been a disaster for our state.

The damage to our image is only one facet of how badly the new law has hurt our state. The total confusion over the bill and the tremendous expense required to study, enforce and defend the law, along with the economic losses suffered in the business community, have been quite evident. Leaders in the private sector have to be greatly concerned over what has happened. The Birmingham Business Alliance, a well-respected group, has asked the Legislature to make significant revisions to this new law during the upcoming 2012 legislative session. According to the largest business organization in the seven-county area, employers in the region have expressed grave concerns about this law and the unintended consequences it has imposed on employers, particularly those already struggling in an uncertain economy. The BBA had this to say in a news release:

*Furthermore, business leaders believe the law as currently written does not reflect the values of fairness and compassion embraced by Alabama citizens.*

The enormous damage this law has done to our state is not only being felt in the business community, but it has greatly concerned industrial developers. Most people feel that the law has caused tremendous harm in both camps. When you consider how dependent our state's economy is on foreign investment, it's hard to believe that the officials defending the law don't recognize a major economic problem. Both current and potential investors have to be greatly concerned. James T. McManus, chief executive of Energen Corp., who is also chairman of the BBA, said in a news release:

*The BBA believes it is important to enact immigration laws that can be administered in a fair and even-handed way. Revisions to the current law are needed to ensure that momentum remains strong in our competitive economic development efforts. We value the leadership of Governor (Robert) Bentley in acknowledging that simplification of the law is necessary. We also appreciate the willingness of the legislative leadership to improve the law. We stand ready to work with all of them to develop revisions to the statute that will preserve our ability to grow Alabama's economy and create jobs.*

Each day more folks are realizing that the Legislature made a big mistake in passing this new law. I don't believe even those responsible for drafting the bill could have foreseen all of the problems it has caused. Without any doubt, the BBA is concerned that the law:

- taints the image and perception of Alabama, both nationally and internationally;
- has vague and uncertain penalties on businesses and individuals violating the new law;
- imposes unreasonably severe penalties; and
- will be difficult to enforce at a local level, putting a burden on struggling governmental entities.

There are so many serious problems with the immigration law that it would be virtually impossible to list them all. For example, it has put a tremendous burden on law enforcement officers, school officials and personnel and probate offices around the state, without providing any funding.

Legislative proponents of the bill have suggested some revision is possible, but say they oppose a wholesale repeal of the immigration law. If they continue to take that position, it may turn out to be another very big mistake. But when you consider this law was the handiwork of politicians like Sen. Scott Beason, who has been labeled by a widely-respected federal judge as a “racist,” it was bound to create bad news for our state. Those who followed Sen. Beason’s lead should have anticipated that this law would badly hurt our state’s image.

Any real needs on the immigration front should be addressed by the federal government. Our elected leaders in Alabama, and that certainly includes the legislative leadership, should turn their attention to the vast number of extremely serious problems facing our state. The time, effort and expense of attempting to implement and follow this ill-advised law, as
well as the tremendous costs to defend it, could be better spent on problem-solving in our state.

I firmly believe this law should be repealed. We lived through and survived an era in Alabama during which politicians routinely played the “race card” for political gain. We can ill afford to turn the calendar back to those days. Hopefully, reason, along with a sense of decency and plain old common sense, will prevail. If that happens, and the law is repealed, our leaders can then get on with the business of dealing with and solving the many very serious problems facing our state.

Source: Associated Press, Birmingham News an AL.com

**LOW RATINGS FOR CONGRESS**

Recent polling numbers are not good news for any members of Congress and especially bad for any who are running for reelection. All of the legitimate surveys of the public reveal record-low approval for Congress. For example, the latest Fox News poll showed 12% approval and 83% disapproval. At about the same time, the CBS/New York Times poll had approval at 11% with disapproval at 84%.

A third survey by Gallup was similar (14% approval and 82% disapproval). Anybody trying to find a silver-lining in these numbers will have an impossible task. Interestingly, the low ratings are across the political spectrum. Republicans, Democrats and Independents all gave Congress an approval rating of between 11% and 15%. The current yearly average by Gallup—which has been in the polling business for years—was the lowest the company had tracked since 1974. The question is: who benefits from the strong disapproval of the performance on members of the House and Senate?

The bottom line is simply that the public is totally dissatisfied with the performance of both parties in Congress. But some political observers believe the last year has been much harder on Republicans. Their leaders have been so busy attacking the President and blocking his programs that they have neglected to consider how their partisan efforts are being perceived by the public.

It should be noted that one of the sore spots with the public relates to honesty and ethics. For example, in the Gallup poll only 7% rate members of Congress’ honesty and ethical standards as “very high” or “high.” I am not sure how to evaluate those findings, but the very low numbers on ethical conduct surely don’t help anybody in Congress. But when you plug in the ratings of “very low” and “low” being 64%, I suspect that spells bad trouble for incumbents who are seeking another term next year. The high and low ratings for Congress, being the worst ever recorded, surely sends a clear message that the public is fed up with Congress. But will all of this affect next year’s elections? Stay tuned!

**COULD NEWT GINGRICH BE PRESIDENT?**

It is appearing more and more with each passing day that Newt Gingrich may actually have a chance to be the Republican nominee for President. If anybody had told me 12 months ago that the former House Speaker would be leading the pack, I would have said that person was as “crazy as a loon.” Frankly, the very thought of this man even having a chance to be President is hard to believe. In fact when you consider that possibility, it’s a very scary thought. Based on his past, Gingrich should never even be considered as a person to lead our country as President. I suspect that I am not the only person who feels this way.

Gingrich’s rise to the top of the Republican Presidential field has even caused some leading Republicans to be greatly concerned. That group includes some members of Congress. Based on media reports, those who served with Gingrich in the House remember all too well the turmoil of nearly two decades ago when he was Speaker. The GOP field is very weak and apparently that has allowed Gingrich to rise to the top. But just as we were getting this issue ready to go to the printer, Gingrich was beginning to lose ground in public opinion polls.

Regardless of how bad he has been in the past, some astute observers believe Gingrich has the discipline and stamina to outlast Romney and, down the road, face President Obama in the general election. But the reality is, if he survives the primaries and the GOP convention, it will be most difficult for Gingrich to run away and hide from his past. I don’t believe for a minute that the American people will support Gingrich in the general election if he winds up as the GOP nominee. But I suppose stranger things have happened in past elections.

**ALABAMA SECRETARY OF STATE OPPOSES NATIONAL POPULAR VOTE**

Alabama Secretary of State Beth Chapman has come out against a proposal to change the Electoral College system and award the presidency to the winner of the national popular vote. Beth believes this “is an end run around the Constitution,” and that the change would be bad for Alabama. Her views were recently made known in an appearance on a panel discussion at the Heritage Foundation, a conservative think tank that opposes the National Popular Vote plan. Beth contended during the event that a national popular vote would disenfranchise the citizens of Alabama and other small states. She said that presidential candidates would focus their campaigns on only the largest, most populous states, and would virtually ignore the others. That is most likely an accurate assessment.

Under the National Popular Vote plan, states would award their electoral college votes, not to the winner of the popular vote within their state, but to the winner of the national popular vote. The proposal has been endorsed by nine state legislatures. Advocates of the National Popular Vote plan argue that states such as Alabama are disenfranchised in the current system because Presidential candidates focus only on closely contested swing states, not states where one party has an overwhelming advantage.

Source: AL.com

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

**JUSTICE DEPARTMENT ORDERS AUDIT OF OIL SPILL CLAIMS FACILITY**

The Department of Justice has asked an outside firm to audit the handling of claims by the Gulf Coast Claims Facility. While that was good news, I believe it was overdue. But in any event, it’s a good thing that the GCCF will finally be audited. U.S. Associate Attorney General Thomas Perelli wrote in a letter to officials with New York-based BDO Consulting that the concerns over the improper handling of claims documents, unnecessary delays in
processing claims, and inconsistent payments for similarly-situated claimants by the GCCF will be looked into. The audit will be paid for by the Claims Facility and will be supervised by the Department of Justice. Local and federal officials have been asking for an audit for a long time.

U.S. Rep. Jo Bonner, R-Mobile, who asked Attorney General Eric Holder for such an audit this summer, had this to say:

For nearly a year and a half, thousands of coastal residents and business owners have struggled with a failed claims system that has arbitrarily awarded payments and subjected claimants to lengthy delays without explanation. All of these people deserve to know how Mr. Feinberg has been conducting his claims operations.

Ken Feinberg and the GCCF have been the subject of harsh criticism for many months by Gulf Coast residents, lawmakers and others unhappy with the handling of claims. For example, Rep. Bonner has questioned why less than 39 percent of claimants have received money from the GCCF—particularly since Feinberg says that only a fraction of claims are fraudulent. It’s hard to justify the GCCF going this long without being audited. As expected, Feinberg defended his handling of claims. Hopefully, this audit will cause claimants to receive better treatment from the GCCF. But the court system, without question, remains the best place for a claimant to be.

Source: AL.com

MORE CITATIONS FOR BP FROM THE FEDERAL GOVERNMENT

BP was hit with five more safety citations from the U.S. government relating to the Gulf of Mexico explosion and oil spill. The latest set of government citations for BP come on top of seven “incidents of noncompliance” that the U.S. Bureau of Safety and Environmental Enforcement handed out to the company in October. James Watson, Director of the Bureau, said in a statement:

Further review of the evidence demonstrated additional regulatory violations by BP in its drilling and abandonment operations at the Macondo well.

The details of the fines had not been released at press time, but the Bureau will consider civil penalties after the 60-day appeal period for the citations is completed. By law, BP faces fines of up to $35,000 a day, per incident, for the violations. The new citations for BP focus on the failure to conduct an accurate pressure integrity test and failure to suspend drilling operations when the approved safe drilling margin for its well was not maintained. As we have come to expect, BP immediately attempted to downplay the citations. It said in a statement that the issues raised in these latest citations “played no causal role in the accident.” BP said it plans to appeal these notices, as well as the notices issued earlier.

BP SETTLES WITH CAMERON INTERNATIONAL

Cameron International, the maker of the Deepwater Horizon blowout preventer, has entered into a settlement with BP whereby it will pay $250 million to the oil giant. BP said the settlement was “in the mutual best interests,” of the two companies. The companies are dropping all claims against one another.

As has been reported, and mentioned again in this issue, the non-jury trial in New Orleans is slated to begin in February. The trial will determine fault relating to the explosion and oil spill. The settlement by BP with Cameron won’t end the legal fighting over the blowout of the Macondo well, which was owned by BP and two partners, MOEX and Anadarko. BP has already settled claims with those two companies and a third company, Weatherford, the maker of a part used in the well. Bob Dudley, BP group chief executive, said that the settlement with Cameron allows BP and Cameron to put their “legal issues behind us and move forward to improve safety in the drilling industry. This settlement will have no real effect on the exposure of BP and Cameron to all of the victims of the disaster.

Source: Associated Press

BP Claims Halliburton Intentionally Destroyed Evidence

BP has accused Halliburton of having “intentionally destroyed evidence” related to the explosion aboard the oil rig in the Gulf of Mexico that led to the worst oil spill in U.S. history. BP made this accusa-

Halliburton has steadfastly refused to provide these critical testing and modeling results in discovery. Halliburton’s refusal has been unwavering, despite repeated BP discovery requests and a specific order from this Court. BP has now learned the reason for Halliburton’s intransigence—Halliburton destroyed the results of physical slurry testing, and it has, at best, lost the computer modeling outputs that showed no channeling. More egregious still, Halliburton intentionally destroyed the evidence related to its nonprivileged cement testing, in part because it wanted to eliminate any risk that this evidence would be used against it at trial.

BP stated in its pleadings that two Halliburton employees testified under oath about destroying notes and samples related to analyzing the stability of a similar cement mixture that was used in the failed oil well. One of the witnesses was Ricky Morgan, Halliburton Global Advisor in Gulf Cementing. BP is attempting to have a “third-party specialist” examine a Halliburton computer, claiming “such an examination might well recover the missing modeling results, or shed light on the circumstances of their apparent disappearance.”

BP and its two contractors—Halliburton and Transocean, which owned the Deepwater Horizon rig where the explosion occurred—have been pointing fingers at each other in legal battles and in the media for months, attempting to shift blame. But
remember, in September the final federal report on the spill said BP, Transocean and Halliburton all share responsibility for the deadly explosion and ensuing oil spill. The three companies “violated a number of federal offshore safety regulations,” according to the report, which was issued by the Bureau of Ocean Energy Management, Regulation and Enforcement.

The report concluded that a key cause of the explosion was a faulty cement drilling barrier at the well site. It was stated in the report that “(t)he precise reasons for the failure of the production casing cement job are not known. The report stated further that the disaster was “the result of poor risk management, last minute changes to plans, failure to observe and respond to critical indicators, inadequate well control response, and insufficient emergency bridge response training by companies and individuals responsible for drilling” at the site.

BP was “ultimately responsible” for operations at the site “in a way that ensured the safety and protection of personnel, equipment, natural resources, and the environment,” the report concluded. But Transocean, as owner of the rig, also was “responsible for conducting safe operations and for protecting personnel onboard.” Meanwhile, Halliburton—as a BP contractor—was “responsible for conducting the cement job, and .. had certain responsibilities for monitoring the well,” the report said.

You may recall that a spokesman for BP said in September that the company agreed with the report’s conclusion. Scott Dean, a BP employee, observed that: “(t)he Deepwater Horizon accident was the result of multiple causes, involving multiple parties, including Transocean and Halliburton.” Interestingly, Dean also said that BP “acknowledged its role in the accident” and the agency took “concrete steps to further enhance safety.”

In response to the report, Halliburton has continued to deny any responsibility for the tragedy. Zelma Branch, a Halliburton spokeswoman, said the report “incorrectly attributes the operation decisions to Halliburton.” In that response, she stated that:

Every contributing cause where Halliburton is named, the operational responsibility lies solely with BP. Halliburton takes the position that all the work it performed with respect to the well was completed in accor-
dance with BP’s specifications for its well construction plan and instructions.

Contrary to BP’s assertions, Halliburton said the post-incident testing referred to in its motion was not conducted on rig samples. Rather, it says the informal testing referred to in its motion used off-the-shelf materials that yielded results that Halliburton believes have little or no relevance to the case. Halliburton said testing before the blow-out using rig samples and formal lab processes showed that the cement slurry was designed to be stable, a finding it claims is backed up by testing done by the U.S. Department of the Interior.

Source: CNN

THE BLAME GAME AMONGST THE WRONGDOERS CONTINUES

We must not forget that in addition to the oil, hundreds of thousands of gallons of chemical dispersant were pumped into the Gulf. At the peak of the crisis, in June 2010, 37% of Gulf waters—a total of 88,522 square miles—were closed to fishing due to contamination. We believe that there is plenty of responsibility on the part of all the wrongdoers to go around as to the cause of this tragic occurrence. In my opinion, no Defendant will be able to escape liability, no matter how hard they try. We look forward to the trial in February and are confident justice will be done.

BP and its contractors have all been working very hard for months trying to shift blame on each other. They have all filed lawsuits against each other for the oil spill. Halliburton has responded to BP’s claims of evidence being destroyed by saying BP has been aware of post-blowout tests for some time, but chose this late date in the litigation to mischaracterize the results of such tests.

Halliburton has accused BP of fraud and defamation, among other claims. BP has asked Judge Barbier, who oversees the spill litigation, to sanction Halliburton by ruling that Halliburton's slurry design was “unstable,” which it contends could be used at the trial to assign blame and damages for the well. As you know, the trial is scheduled to begin next month and I expect it to proceed on schedule.

Source: Claims Journal

ENGINEERING EXPERTS HIT SAFETY CULTURE IN BP SPILL

Engineering experts who studied the BP oil spill are blaming what they say are the drilling industry’s inadequate safety practices for many of the bad decisions that led to the oil spill. The new report, from the National Academy of Engineering, a group that advises the federal government, is not good news for any of the Defendants in the oil spill litigation. The report’s authors portray a “deficient safety culture” that led BP to rely on blowout preventers as equipment that just couldn’t fail—even though there were previous failures of the devices that were well-documented. The report says blowout preventers are treated like drilling’s circuit-breakers, but there’s no safety group certifying them in the same way that Underwriters Laboratories approves key electrical safety devices in homes. The experts do say drilling safety has improved in the Gulf of Mexico, but I have to wonder to what extent.

Sources: WSFA.com and Associated Press

FINAL SPILL RESTORATION REPORT RELEASED

The Gulf Coast Ecosystem Restoration Task Force, a group formed by President Barack Obama to create a recovery plan for the Gulf Coast environment, released its final report last month. The group announced $50 million in funds to start the process designed to help the recovery process after the massive oil spill. Lisa Jackson, head of the Environmental Protection Agency, said in a written statement:

After the Deepwater Horizon disaster, this task force brought together people from across the Gulf Coast in unparalleled ways to talk about how we tackle both the immediate environmental devastation, as well as the long-term deterioration that has for decades threatened the health, the environment and the economy of the people who call this place home. It has all come to this moment—when we move from planning and researching to supporting real, homegrown actions aimed at restoring this vital ecosystem.

The U.S. Department of Agriculture will release the $50 million, through its Natural Resources Conservation Service, to help improve water quality, increase water con-
servation and enhance wildlife habitat in seven Gulf river basins. In Alabama, the Fish River Basin and the Escambia River Basin, which the state shares with Florida, will receive part of the money. In Mississippi, the Jordan River Basin is included. The task force's report called for efforts to:

- stop the loss of Gulf wetlands and beaches;
- reduce excess nutrients flowing into the Gulf from agricultural and urban sources; and
- make coastal communities more resilient.

Much of the work, however, will have to wait for progress from two federal efforts that are expected to provide most of the restoration funding. The first is the Natural Resource Damage Assessment (NRDA), which requires officials to determine the extent of damage following natural disasters, and propose projects to make up for that damage. The companies deemed responsible for the disaster are to bear the expense related to recovery. While BP has paid out over $1 billion for early restoration projects under NRDA, that is just a drop in the bucket. Research continues and the final tally of needed recovery work is still to be determined, but you can rest assured, it will be a huge amount of money. Certainly, it’s a much greater than BP has projected.

The second major source of funding for recovery plans could come from Clean Water Act fines, expected to total between $5.4 billion and $21.1 billion. Unfortunately, none of this money is set aside for Gulf restoration under current federal law. But Senators and House Members from the Gulf Coast states are working hard to send 80 percent of the revenue from the spill fines to the Gulf states. Under their plan, much of the fine money could be spent on either environmental or economic recovery efforts. We should all encourage our members of Congress to support this effort.

Source: Associated Press

**Changes Recommended For Offshore Drilling**

There is another new report from the National Academy of Engineering and the National Research Council that is worthy of mention. This report recommends a number of corrective actions for both the oil industry and government regulators. The report, released last month, was requested by the Department of Interior. The panel of scientists and engineers said that oil companies need to focus more on safety; the blowout preventer fail-safe device on offshore rigs must be redesigned; and the government regulatory system should be overhauled—but also granted new powers and resources—to prevent a repeat of last year's unprecedented Gulf oil spill. The report identified a long list of “suitable and cost-effective corrective actions” that the authors said would dramatically reduce the likelihood of a similar spill happening in the future. The report said:

The committee believes that material improvements to the management and safety systems used by the companies engaged in offshore oil development, along with enhancements to the regulatory regime can and should be made, and that such efforts will materially improve all aspects of safety offshore.

The report represents the “consensus view of a committee of 15 experts,” from academia, industry and government. The committee was chaired by Donald Winter, a former Secretary of the Navy and current professor of engineering at the University of Michigan. The report pointed out that government regulators were “ineffective” prior to the Deepwater Horizon rig blowout. Several government agencies are currently responsible for oversight of various aspects of drilling operations, the report said, and their responsibilities sometimes overlap. Certainly, that must change. The report says “a single U.S. government agency should be designated with responsibility for ensuring an integrated approach for system safety for all offshore drilling activities.”

Anybody who has been heavily involved in the BP litigation will tell you that the government must do a better job of training its regulators and of collecting, and studying, data on near-disasters on offshore rigs. While at times critical of regulators' past actions, the report also recommended providing them with new powers. Government officials should review “safety-critical points” when wells are being built or abandoned. At such points, work should not be allowed to continue until regulators give their approval, according to the report. The report said:

**Many challenges beyond those addressed in this report must be faced to revitalize the regulatory process. In particular, the administration and Congress will need to provide the funding and flexibility in hiring practices that will allow the Bureau of Safety and Environmental Enforcement to enhance its capability and capacity.**

Committee members also recommended a host of changes for oil companies and the contractors they rely on. It was stated in the report that the lack of a strong corporate safety culture is evident in “the multiple flawed decisions that led to the blowout.” Industrial management involved with the disaster failed to appreciate or plan for the safety challenges presented by the Macondo well, according to the report. It strongly recommended that workers be better-trained.

The failure to focus on safety in corporate research was said to be a problem. The efforts of industry and government relating to research and development “have been focused disproportionately on exploration, drilling, and production technologies as opposed to safety,” the report said. The fact that multiple corporations are often behind a single drilling operation can also complicate safety efforts.

BP PLC, Halliburton and Transocean—and all of the wrongdoers responsible for the massive oil spill—have often attempted to deflect responsibility to one another in the wake of the spill. A well's "operating leaseholder company" should take the lead in implementing safety procedures for the entire process, the report said. Companies and regulators also need to do a better job of disclosing, and learning from, their drilling mistakes, according to the report. It was stated in the report:

**Corporations should investigate all such reports and disseminate their lessons-learned findings in a timely manner to all their operating and decision-making personnel and to the industry as a whole.**

A large segment of the report was dedicated to a discussion relating to the blowout preventer (BOP), a fail-safe device on the Deepwater Horizon rig. The report said that "(t)he BOP system was neither
of the joint state-federal Medicaid program, the states pay pharmaceutical providers hundreds of millions of dollars a year. In some of the AWP lawsuits, average wholesale prices have been as much as 6,000 percent higher than the drug’s true cost. The drug companies have been furnishing false prices to the states and that fraud has costs taxpayers huge sums over the years.

AWP lawsuits have been brought by the government and 21 states against nearly every large drug maker for the fraudulent reporting of drug prices to the state Medicaid agencies. Our law firm currently represents the citizens of Alabama, Alaska, Hawaii, Kansas, Louisiana, Mississippi, South Carolina, and Utah, along with the Attorneys General of those states, in lawsuits seeking to recover hundreds of millions of dollars in overpayments as a result of the drug manufacturers’ fraudulent price reporting scheme.

Source: TAF Newsletter

III. DRUG MANUFACTURERS FRAUD LITIGATION

SANDOZ AGREES TO A $150 MILLION SETTLEMENT

The Sandoz unit of Novartis has agreed to pay $150 million to settle a False Claims Act case originated by Ven-A-Care of the Florida Keys, a specialty pharmacy in Florida. The lawsuit was filed by a whistleblower, along with the states of Florida and California, alleging that Sandoz intentionally misrepresented pricing information in a deliberate effort to increase the payments it received from Medicaid. As part of the settlement, the federal government will receive $86.5 million, Florida will receive $15.2 million and $40 million will go to California. The remaining $8.3 million will go to Ven-A-Care, the realtor, which was the Plaintiff filing the whistleblower lawsuit.

This is only the latest settlement stemming from years of Medicaid fraud (Average Wholesale Price) lawsuits against drug manufacturers for the intentional and fraudulent misreporting of their drug prices in order to increase the payments they receive from the state Medicaid systems. Under federal and state law, Medicaid payments to drug providers are derived using a series of pricing levels that the companies disclose to reporting services, which in turn provide the pricing information to state governments. As part

Obviously, the public doesn’t realize the magnitude of the problem. If it did, there would be major changes in how Corporate America operates in dealing with federal and state programs as contractors.

Source: Boston Globe and Los Angeles Times

**JUDGE UPHOLDS $327 MILLION VERDICT AGAINST JOHNSON & JOHNSON**

A South Carolina judge has upheld a $327 million civil penalty against health giant Johnson & Johnson, which in March was found guilty by a jury of overstating the safety and effectiveness of Risperdal, its former blockbuster antipsychotic drug. This is the biggest verdict in the country over the marketing of Risperdal. The pill for schizophrenia and bipolar disorder once brought J&J more than $3.4 billion in annual sales.

As we have previously reported, Johnson & Johnson has been involved for years in litigation over alleged kickbacks, promotion for unapproved uses and other efforts to boost Risperdal over competing drugs. Dozens of pending state and federal cases allege illegal marketing practices for Risperdal, including one case set for trial this month. Texas is seeking more than $1 billion in that case.

Interestingly, Texas joined a whistleblower’s lawsuit over alleged kickbacks paid more than a decade ago to several doctors who were officials in the state’s mental health department. It’s alleged that the payments were made to give Risperdal preference over other antipsychotic drugs. One former official is accused of accepting honoraria from J&J to fly around the country urging doctor colleagues in other states’ Medicaid and mental health programs to use Risperdal over other drugs.

In the South Carolina case, Circuit Court Judge Roger Couch denied Johnson & Johnson’s motions asking either for a new trial or to overturn or amend the verdict. Johnson & Johnson says it will appeal this ruling. On March 22, a jury in the Spartanburg Court of Common Pleas found that Johnson & Johnson and subsidiary Janssen Pharmaceuticals, which makes Risperdal, violated state law by giving doctors deceptive information about the drug’s risks and effectiveness. During the trial, there was compelling evidence in the form of internal e-mails from J&J employees and officials that the marketing staff was promoting the drug as being better than what the science actually showed.

Risperdal and similar antipsychotic drugs have been linked to increased risk of strokes and death in elderly dementia patients, seizures, major weight gain, onset of diabetes and potentially fatal high blood sugar, plus many more common but less serious side effects.

On June 3, 2011, in the South Carolina case, Judge Couch ordered J&J to pay civil penalties amounting to $327.1 million. That’s the total of fines of $4,000 for each of more than 43,000 letters touting Risperdal that Johnson & Johnson distributed to doctors, plus $300 each for 509,000 free samples given to doctors that contained detailed package inserts describing the medication’s effects and safety.

Risperdal marketing and promotion is also the subject of a number of criminal and civil federal investigations. States including Alaska, Arkansas, Louisiana, Massachusetts, Mississippi, Montana, New Mexico, Pennsylvania, Texas and Utah have pending cases against J&J. Those cases seek reimbursement of Medicaid payments for Risperdal, compensation for treating patients who suffered adverse reactions, penalties for violations of state consumer fraud statutes, damages for “overpayments,” or other fines or penalties.

Attorneys General of about 40 states, “have indicated a potential interest in pursuing similar litigation against” Johnson & Johnson. I understand they have obtained agreements to stay running of the statute of limitations while they pursue a “coordinated civil investigation” regarding potential consumer fraud actions in connection with the marketing of Risperdal.

Source: Google.com

**IV. RECENT SETTLEMENTS BY THE FIRM**

**THE PHILADELPHIA STORY**

Our firm was able to settle a Hormone Replacement Therapy (HRT) lawsuit last month after three weeks of trial in Philadelphia, Pa. The jury had awarded $72.6 million to three Plaintiffs in the case. The link between hormone replacement drugs and breast cancer was at issue in the trial. The jury, after determining that the HRT drugs, Premarin, Provera and Prempro, caused the Plaintiffs’ breast cancer, set the value of actual compensatory damages in the case against Wyeth Pharmaceuticals.

The verdict was delivered in the first phase of a reverse-bifurcated trial. This is a procedure in which the jury first determines causation and compensatory damages before determining liability. The liability phase of the trial, which was to determine if punitive damages are due, was set to proceed two days later. This approach for a trial makes the job of the Plaintiffs’ lawyers much harder. But Wyeth agreed to settle the case before we could get that phase started.

Hormone Replacement Therapy, including drugs such as Premarin, Prempro and Provera, was prescribed to treat the symptoms of menopause until 2002, when a comprehensive women’s health study was halted as a result of increasing incidents of breast cancer. The drugs also were promoted for off-label uses, including prevention of cardiovascular disease and Alzheimer’s disease.

By marketing these drugs for uses that were never approved by the FDA and downplaying the risk of breast cancer, Wyeth put the lives of thousands of women at serious risk. The drug manufacturer hid the risks from thousands of women as well as doctors across the United States. In the Philadelphia trial, the jurors didn’t get to see all of the very bad liability documents.

In the case of Elfont v. Wyeth, the jury assessed Plaintiff Susan Elfont’s damages at $20 million. Ms. Elfont had taken HRT drugs for more than two years and developed breast cancer. In the case of Mulderig v. Wyeth, the jury assessed Judy Mulderig’s damages at $24.75 million. Ms. Mulderig took HRT drugs for more than 11 years before being diagnosed with breast cancer. In the case of Kalenkoski v. Wyeth, the jury assessed Bernadette Kalenkoski’s damages at $27.85 million. Ms. Kalenkoski took HRT medication for just under five years before being diagnosed with breast cancer.

The jurors weren’t allowed in the first phase to see a great number of documents that would have shown how truly bad Wyeth had been. These would have been admitted into evidence in the liability phase. The amount of each settlement is confidential. I can say, however, that our clients can now get on with their lives and they were completely satisfied with their
settlements. These brave women should be commended for having the courage to take on a powerful drug company. Their commitment should help thousands of other HRT victims get justice in their claims.

Ted Meadows, from our firm, along with Tobi Millrod and Matt Leckman, lawyers with Pogust Braslow & Millrod, tried this case for the three Plaintiffs. Russ Abney, Navan Ward, Danielle Mason and Matt Teague, all lawyers in our firm’s Mass Tort Section, helped get this case ready for trial and assisted during the actual trial. They all did a tremendous job.

Firm Reaches Settlement In Sikorsky Helicopter Crash

On January 4, 2009, Tommy Ballenger, the pilot of a Sikorsky helicopter, and seven others, were killed in a crash in that occurred in Louisiana. They were flying in a Sikorsky S76C++ helicopter owned by PHI, Inc., when the aircraft was struck by a red tailed hawk weighing only 2 ½ pounds. This is referred to as a bird strike, a common occurrence, and one that should not have caused this helicopter to crash. Mr. Ballenger and seven others died in the crash with one passenger surviving. The bird impact to the aircraft caused the Sikorsky helicopter’s throttle control levers to go from fly to the near idle position, a condition that prevented continued flight. The bird strike also caused the after-market windscreens manufactured by Aeronautical Accessories, Inc. to fail, thus disrupting the cabin environment. The pilot and co-pilot were totally confused and were unable to keep the helicopter flying. They had less than four seconds to recognize their most severe problems, take corrective action, and keep the helicopter flying. That was impossible according to experts and it was conceded that there was no pilot error that contributed to the crash.

It took a long and hard-fought battle to finally obtain justice for Tommy Ballenger’s family. The two Defendants, Sikorsky and AAI, hired a number of law firms and tried very hard to avoid liability. There were hundreds of thousands of pages of manufacturing documents produced, as well as dozens of lengthy depositions taken across the country over a period of numerous weeks. These depositions covered various safety issues in the case and involved over a dozen experts. Collectively, the Plaintiffs’ expert expenses approached one million dollars in all eight cases. It was abundantly clear from the outset that the Defendants intended on waging a war of attrition. Seven of the cases were already settled, and the Ballenger case was set for a multi-week trial before U.S. District Judge Myron Thompson to start on December 5th.

Ultimately, we were able to show that both the Sikorsky helicopter and the AAI windscreens were each defectively designed. The throttle on the helicopter was subject to “uncommanded movement,” caused by a bird strike-induced shock load. Two previous events had occurred where similar Sikorsky helicopters had experienced a reduction of engine power as a result of a bird strike. Sikorsky also knew from other sources that it had a serious safety problem. But Sikorsky failed to do anything to correct the known problem. Most shocking is that we were able to show that the Sikorsky S76 C++ is believed to be the only helicopter in the world that has experienced this problem because of its faulty design. All other helicopters with a similar throttle placement are believed to have a locking mechanism in place to prevent this type occurrence. Despite this hazardous and dangerous design, Sikorsky did not include an audible low rotor warning device that would have alerted the pilots to this hazard. This type audible warning is used by other manufacturers.

AAI made a cast acrylic windscreens for the helicopter that failed in flight as a result of the bird impact. The failure of the windscreens resulted in hurricane-force winds coming into the cockpit that in turn caused a total loss of the cabin environment, disorienting the pilots and preventing a safe landing. It has been known in the helicopter industry since the 1970s that cast acrylic is a poor choice for helicopter frontal windscreens due to the danger they pose to pilots in flight.

Greg Allen, Chris Glover and I worked on this case along with Jimmy Carlton, a lawyer from Eufaula, Ala. We were especially well pleased with the result in this case because of the difference it will make, not only for our clients, but also for aviation safety. Some product liability lawyers work their entire careers and are never able to see a real difference made in the safety of products as a direct result of their work.

In this case, I’m convinced that because the families of these eight victims stood up to Sikorsky and AAI, the Sikorsky S76C++ now has a safer throttle that locks in position, low rotor warnings made available to pilots, and with warnings sent to operators encouraging them to no longer fly the helicopter with this cast acrylic windscreens. Our clients, Ann Ballenger, the widow, and Tom Ballenger’s daughter Mary Anna, were well-pleased with what we consider to be an excellent settlement for them.

Firm Reaches Settlement In Fort McClellan Radio Tower Collapse Case

Our law firm, along with the law firm of Marsh, Rickard and Bryan, recently resolved two wrongful death cases for $6 million. Our clients were conducting repairs on a radio tower. The two men were approximately 40 feet up on a tower when a bucket truck operated by an employee of Barnhart Crane & Rigging Co. carelessly backed over a guy wire that supported the tower. As a result, another guy wire failed and caused the tower to collapse. Despite being correctly tied off to the tower, the two men, both married and with children, fell 40 feet and died.

Our investigation into this matter revealed that these tragic deaths were clearly preventable. The driver of the bucket truck, an employee of Barnhart, had scouted the site for hazards and worked around the tower for two days. The driver admitted that he knew the location of the guy wires that he eventually struck. Prior to these deaths, Barnhart employees had followed company guidelines and CDL driver’s guidelines to use a spotter before traveling under guy wires with commercial vehicles. The driver failed to follow those policies before the tower collapsed.

Sadly, another employee of Barnhart Crane & Rigging Co., was sitting in the passenger seat and should have served as the spotter, which would have prevented the bucket truck from striking the guy wire. Also, Barnhart had another safety program entitled “GOAL” (Get Out and Look), but testimony from the company’s Safety Director revealed that the employees of the Gadsden office failed to follow that policy. These tragic deaths would have been avoided if either of these two simple and well-known safety procedures had been followed.

The two cases were settled for $6 million ($3 million each) by the families of the two victims. The settlement came just days before the trial was to start in Anniston, Ala. Chris Glover and Cole Portis from our firm, along with David Marsh and Jeff Rickard from Birmingham, represented the families of the two co-workers. The two firms worked well together and obtained a very good result for the families. David and Jeff are excellent lawyers. They, along with Chris and Cole, did a very good job in this case.

V. LEGISLATIVE HAPPENINGS

KAY IVEY GIVES HER THOUGHTS ON THE UPCOMING LEGISLATIVE SESSION

Alabama Lt. Gov. Kay Ivey stated recently that there will be legislation in the upcoming session favoring job creation and business development. She says that bills to be introduced in Legislature this spring will include a constitutional amendment giving the Governor and the Alabama Development Office more flexibility to offer incentives for economic development projects and a bill that gives tax credits to businesses hiring veterans who return from military service.

Kay also says that the state must prepare its residents to be a part of the current and future job market, and that will come about through better education. She believes that a well-trained, educated workforce will be necessary to handle the jobs required to lead Alabama into the 21st century. She also recognizes that the legislators will be facing tough economic struggles in the next session.

Kay, who has made a very good impression in her first year as Lt. Governor, also says she expects lawmakers to address constitutional reform and prison sentence reform in the session. She reminds all of us that the state simply doesn’t have any more money to continue building prisons for a growing prison population.

More On The Session

Based on all reports, the upcoming regular session will be one of the most difficult ever for members of the House and Senate. To put it in plain, understandable language, our state is flat broke. Either additional revenues must be found or good and needed programs will have to be drastically cut by the legislators. We can no longer afford to ignore the reality that revenues must be found. In my opinion, increasing sales and income tax rates shouldn’t be an option. That leaves property tax increases and closing corporate tax loopholes as the most logical sources of new revenues.

Alabama governors and legislators have patched and borrowed for decades with no real long-range fiscal planning by any governor. “Robbing Peter to pay Paul” was always a favored approach when the state’s fiscal problems were being dealt with. Depending on the federal government to fund state programs kept things afloat during the Riley years, but as has been widely reported, a major source of those funds has dried up. Eventually, those in control of state government must realize that additional revenues are badly needed. Hopefully, that time will come soon!

VI. COURT WATCH

KEY RULING ON PREEMPTION IN METOCLOPRAMIDE MASS TORT LITIGATION

A state trial judge in Philadelphia has denied generic drug manufacturers’ motions to dismiss state law claims filed by approximately 2,000 Plaintiffs. The suits were over injuries allegedly caused by metoclopramide, the generic form of Reglan. The pretrial ruling by Common Pleas Court Judge Sandra Mazer Moss, who oversees the drug’s mass tort litigation, rejected the Defendants’ argument that the U.S. Supreme Court’s decision in Pliva v. Mensing foreclosed any state law recovery by the Plaintiffs.

A number of reasons were offered by the Plaintiffs saying why Mensing does not foreclose failure-to-warn claims, many of which have been recognized by other state courts since that decision was delivered, according to Judge Moss. In her ruling, the jury held that the generic drug manufac-

turers failed to carry the “heavy burden” Pennsylvania law imposed to show “with certainty” that there is no legal recovery possible on the state claims.

The Plaintiffs contended that manufacturers should have engaged in risk management strategies, suspended drug sales, and communicated their drug labeling to the medical community beyond the label itself—considerations they say were not raised in the Mensing decision. Decided in June, the Mensing court held that state failure-to-warn claims conflicted with federal regulations governing inadequate warning labels used by generic drug manufacturers, and therefore were preempted under the Supremacy Clause.

Since the 5-4 ruling was issued by the U.S. Supreme Court, lower courts have split on the reach of the Mensing’s decision. Judge Moss noted in her decision that some courts, including the Fifth and Sixth Circuits, have dismissed all state law claims while other federal and state courts in Alabama, Nevada, and South Carolina have carved out exceptions, the theory being that the Mensing decision forecloses only the state claims concerning the product label itself. But Judge Moss declined the Plaintiffs’ request to issue a broad ruling on Mensing “carve outs,” concluding that any such decision “must await a state-by-state analysis.”

William Curtis of Dallas, Texas, a lawyer who represents Plaintiffs in metoclopramide cases, believes the decision to be a significant step in addressing the limited scope of preemption in generic drug cases. He had this to say:

Judge Moss’s decision confirms a few basic things about the Mensing decision. Mensing is not a grant of immunity to the generic manufacturers. Instead, it says that one part of one cause of action—failure to warn by failing to change the content of the label—is now preempted. But the other causes of action against a generic manufacturer, such as negligence, misrepresentation, failure to communicate a warning, breach of warranty, and the like are still viable claims depending on the facts of the case and the state law.

Developed in the 1960s, metoclopramide is prescribed to treat digestive disorders. The FDA approved it in 1980 under the brand name Reglan and the drug has

www.BeasleyAllen.com
been available in generic form since 1985. According to the FDA, the drug has been linked in studies to tardive dyskinesia, an incurable neurological disorder characterized by involuntary and repetitive muscle movements. Studies have shown that up to 29 percent of patients who use the drug for several years develop the disorder.

Source: Justice.org

JUDGE DISMISSES FEDERAL LAWSUIT OVER RAPEs AND ASSAULTS IN MILITARY

A federal judge has dismissed a lawsuit filed by 28 current and former military service members who say they were raped and abused by their comrades. The suit, filed in February, named former Defense Secretaries Robert Gates and Donald H. Rumsfeld as Defendants. The Plaintiffs said they wanted to force the Pentagon to change how it handles such cases. They say there is an atmosphere in the military conducive to rape and assaults.

U.S. District Judge Liam O’Grady said in an order released last month that the Plaintiffs, current and former troops, have no right to sue under the law they cited. Notwithstanding the “egregious allegations” raised in the lawsuit, Judge O’Grady wrote notwithstanding the “egregious allegations” raised in the lawsuit, Judge O’Grady wrote, “there is no evidence of a lack of planning and environmental management by the companies.”

Source: Calgaryherald.com

MASSACHUSETTS SUES BANKs OVER FORECLOSURES

Massachusetts filed suit against five major banks last month over deceptive foreclosure practices including such things as the “robo-signing” of documents. This could have an effect on negotiations between lenders and state prosecutors across the nation over the same issue. I’m not so sure that’s a bad thing. The Massachusetts lawsuit named Bank of America Corp., JPMorgan Chase & Co., Wells Fargo & Co., Citigroup Inc., and GMAC as Defendants. It was filed in Massachusetts by Attorney General Martha Coakley who has a history of standing up for consumers and victims of corporate abuses.

The Complaint alleges that the banks violated Massachusetts law with “unlawful and deceptive” conduct in the foreclosure process, including unlawful foreclosures, false documentation, robo-signing, and deceptive practices related to loan modifications. As previously reported, in the foreclosure industry, robo-signing is the practice of a bank employee signing thousands of documents and affidavits without verifying the information contained in the document or affidavit.

The filing of this lawsuit comes as settlement talks have been dragging on now for more than a year between major banks and the Attorneys General from all 50 states over fraudulent foreclosure practices that drove millions of Americans from their homes following the bursting of the housing bubble. In October of 2010, major banks temporarily suspended foreclosures following revelations of widespread fraudulent foreclosure practices by banks. The talks have been designed to institute new guidelines for mortgage lending nationwide. It was anticipated to be the biggest overhaul of a single industry since the 1998 multistate tobacco settlement.

But, over the past year, several obstacles arose. Attorneys General from different states have disagreed over what terms to offer the banks. In September, California announced it would not agree to a settlement over foreclosure abuses that state and federal officials have been working on for more than a year. Attorney General Coakley, along with Attorneys General Eric Schneiderman (New York) and Beau Biden (Delaware), have contended that banks should not be protected from future civil liability. Other states, including Kentucky, Minnesota and Nevada, have raised concerns about the extent of legal civil immunity the banks would receive as part of a settlement. All of these are legitimate concerns.

Both sides have also argued over the amount of money that should be placed in a reserve account for property owners who were improperly foreclosed upon. It has been reported that many of the larger points of the settlement, including a $25 billion cost for the banks, have been worked out, but that hasn’t been announced by the Attorneys General who are handling negotiations. The lead negotiator on behalf of state Attorneys General is low. Attorney General Tom Miller. Apparently, he has his work cut out for him on this project.

Source: Insurance Journal

CANADA PULLS OUT OF KYOTO CLIMATE CHANGE PROTOCOL

Canada will be the first country to withdraw from the Kyoto Protocol on climate change, according to an announcement made last month. This deals a symbolic blow to the already troubled global treaty. Environment Minister Peter Kent broke the news on his return from talks in Durban. Countries had agreed there to extend Kyoto for five years and work out a new agreement forcing all big polluters for the first time to limit greenhouse gas emissions.

Canada, a major energy producer, which critics complain is becoming a climate renegade, has long complained Kyoto is unworkable precisely because it excludes so many significant emitters. Canada’s former government signed on to Kyoto, which dictated a cut in emissions to 6 percent below 1990 levels by 2012. By 2009, Canada’s emissions were 17 percent over 2005 levels.

Source: Insurance Journal

VII. THE NATIONAL SCENE

BRAZIL FILES $10.6 BILLION LAWSUIT AGAINST CHEVRON AND TRANSOCeAN OVER OIL SPILL

A lawsuit, seeking $10.6 billion in damages, has been filed against Chevron Corp. and Transocean Ltd., one of the world’s largest operators of offshore drill rigs. The suit, filed by Brazilian public prosecutors, is based on the Defendants’ roles in a November oil spill near Rio de Janeiro. The civil suit also attempts to suspend the companies from operating in Brazil. Chevron has already been fined $28 million by environmental authorities for the spill, which the company says leaked about 2,400 barrels of crude into the ocean for several days after a drilling problem on November 10, 2010. The prosecutors say they found during investigations that Chevron and Transocean were not capable of controlling the damages caused by the leakage. They said further that this is “evidence of a lack of planning and environmental management by the companies.”

Source: Hamptonroads.com

Source: Insurance Journal
above the 1990 levels, in part because of the expanding tar sands development.
Source: Claims Journal

VIII. THE CORPORATE WORLD

WELLS FARGO SETTLES BID-RIGGING CLAIMS FOR $148 MILLION

Wells Fargo & Co. has agreed to pay $148 million to settle claims arising out of a big-rigging scheme by Wachovia Corp. San Francisco-based Wells Fargo acquired Wachovia Bank in 2008. Federal agencies, including the Securities and Exchange Commission and the Justice Department, as well as Attorneys General in 26 states, were investigating Wachovia for overcharging governments for investment services. The government accused the bank of bid-rigging in connection with investments sold to public entities.

Alabama government entities will collect more than $1.1 million from the settlement. As most in Alabama will recall, Wachovia was a major banking giant in Birmingham after acquiring Magic City-based SouthTrust Corp. in 2004. This settlement concludes a five-year investigation into how Wall Street banks conspired to maximize income on investments they sold to public agencies through rigging competitive auctions and allocating the market among themselves.

Previously, JPMorgan Chase & Co. had settled a similar case. I wonder if the GOP members of Congress are aware of how truly bad the big banks really were and how poor the government’s regulation has been. That regulation aided and abetted the wrongdoing by the big banks. Hopefully, there are enough Senators and Representatives who are not so tied to the big banks that they will help take the necessary steps to achieve badly-needed and stronger regulation of these banks.
Source: Al.com

SEC CHARGES EX-FANNIE AND FREDDIE CEOS WITH FRAUD

Two former CEOs at mortgage giants Fannie Mae and Freddie Mac are the highest-profile individuals to have been charged in connection with the 2008 financial crisis. In a lawsuit filed in New York, the Securities and Exchange Commission brought civil fraud charges against six former executives at the two firms, including former Fannie CEO Daniel Mudd and former Freddie CEO Richard Syron. The executives were accused of understating the level of high-risk subprime mortgages that Fannie and Freddie held just before the housing bubble burst.

Robert Khuzami, SEC’s enforcement director, stated that executives at both Fannie Mae and Freddie Mac told the world “that their subprime exposure was substantially smaller than it really was.” Khuzami noted that huge losses on their subprime loans eventually pushed the two companies to the brink of failure and forced the government to take them over. There has been widespread criticism of federal authorities for not holding top executives accountable for the recklessness that triggered the 2008 crisis. Hopefully, this filing is the start of more to come.

Fines against executives charged in SEC civil cases can reach up to $150,000 per violation. SEC Chairman Mary Schapiro has asked Congress to raise the limit to $1 million. The SEC has brought other cases related to the financial crisis since it began a broad investigation into the actions of Wall Street banks and other financial firms about three years ago. For example, Goldman Sachs & Co. agreed last year to pay $550 million to settle charges of misleading buyers of a complex mortgage investment. JPMorgan Chase & Co. resolved similar charges in June of last year and paid $153.6 million. Citigroup Inc. also agreed to pay $285 million to settle similar charges. But that settlement was recently rejected as being inadequate by a federal judge in New York City. Thus far, charges against prominent top executives have not happened. It will be interesting to see now if more individuals are charged.
Source: Associated Press

IX. CONGRESSIONAL UPDATE

CONGRESS HAD BETTER GET DOWN TO WORK

It’s quite evident that the public is fed up with the partisan politics and petty bickering that have caused Congress over the past three years to be totally unproductive and not responsive to the will of the American people. In fact, the level of disapproval is as bad as you could ever imagine. The approval rating of Congress is at an all-time low. It’s time for members of the House and Senate to wake up, face reality and then get down to work.

We wrote on how poorly the American people rate members of Congress in the Capitol Observations section. But, at press time, there was no indication that the House leadership had taken time to read the poll information. If they did, they have totally ignored what they read. Their performance over the past year reminds me of a spoiled child who doesn’t have a clue
how folks in the real world live and simply
want their way on every issue. The recent
performance by the Republican leadership
in the House on the payroll tax issue was
as bad as I have ever seen. They showed a
total disregard for working men and
women in that battle and they lost.

**CONGRESS SHOULD PASS THE STOCK ACT
WITHOUT DELAY**

There is a very important bill awaiting
action in Congress—that if passed would
improved the image of Congress. Rep.
Spencer Bachus first said there would be a
vote on the bill, Stop Trading on Congres-
sional Knowledge Act (STOCK Act), on
December 14th, but it appears something or somebody changed his mind. This bill
would clarify that laws against insider
trading apply to members of Con-
gress. One would think that all members
of the U.S. Senate and House of Represen-
tatives would support this legislation. A
Senate bill on the same subject was
reported out of committee last month and
will go to the full Senate for consider-
ation. Hopefully, that bill will be passed and sent
to the House.

A good friend of mine, who is much
more in touch than I am with what goes on
in our Nation's Capitol, says we shouldn't
hold our breath waiting for the House to
take action on this matter. He says too
many members of Congress have taken
advantage of an apparent loophole in the
existing law, and for that reason, they don't
want any changes. If that is true, I doubt
this needed legislation will ever become
law. Maybe the public simply doesn't care,
or perhaps it's more likely they just don't
know what is going on in Congress. I
suspect that the latter is correct. If so, an
informed public is badly needed, and that
will require the media to do its job.

**GRIDLOCK CONTINUES OVER CONSUMER
FINANCIAL PROTECTION AGENCY**

I doubt that many folks outside Washing-
ton, D.C. even know that there still is no
director for the new Consumer Financial
Protection Bureau. In fact, it appears it
may be a long while before there is a direc-
tor. Senate Republicans are using their
opposition to former Ohio Attorney
General, Richard Cordray, who has been
ominated by the President to lead the
new Bureau, to keep the needed agency
from functioning at its peak capacity. Inter-
estingly, Senate Republicans claim their
problem is not with Cordray, whom Presi-
dent Barack Obama nominated for the job
back in July. They claim it's really with
how the Bureau is designed. Before they
will let a director be confirmed, the
Republicans say they want changes made
to the agency. My guess is that the Big
Banks are driving this opposition train.

Democrats contend Republicans are
ignoring ordinary people and casting them
aside to protect big banks and Wall Street
from "a new cop on the credit card and
mortgage beat." Republicans dismiss the
charge, however, saying they are trying to
protect the country from more regulatory
overreach that they claim "will bury Main
Street under its weight." Somebody should
remind them, as if they didn't already
know, that the lack of regulation of Corpo-
rate America, and specifically the Big
Banks, almost destroyed our nation's
 economy.

The new agency is one of the signature
aspects of the 2010 Dodd-Frank financial
oversight law enacted in response to the
2007-2009 financial crisis. The Bureau is
charged with overseeing markets for finan-
cial products like credit cards and home
loans in response to concerns that some
shiftless lenders were preying on consum-
ers in the lead-up to the financial crisis.
Republicans contend the Bureau has too
much power and needs to be more care-
fully watched by Congress. To this end
they want it to be run by a board, rather
than a director, have its budget approved
by Congress, and give other regulators
more authority to veto its regulations.

Even with the gridlock in the Senate, the
consumer agency has begun doing its man-
dated work. The agency opened its doors
in July and has been working on issues like
setting up a consumer complaint website
and drafting sample credit card and mort-
gage forms it hopes will make it easier for
borrowers to understand loans. It also has
staff onsite at large banks across the
country keeping an eye on the industry. In
fact, Cordray actually leads the Bureau's
enforcement division, and may for some
time. Hopefully, he will eventually be con-
ferred by the Senate.

Source: Insurance Journal

**X. PRODUCT LIABILITY UPDATE**

**A REPORT ON HEAVY TRUCK CAB GUARDS**

Federal Motor Carrier Safety Regulations
require 18-wheelers to have cab guards, also
called headache racks, to prevent shifting
cargo from contacting the cab of
heavy trucks. The problem with many cab
guards is that they are designed of welded
heat-treated aluminum which results in a
weakening of the cab guard over time. The
weakening of the cab guard due to fatigue
stress is relatively unknown to drivers.
Many welding requirements established by
national organizations are not followed by
cab guard manufacturers.

The failure to follow such guidelines
results in poor welds, poor quality control,
and poorly-designed cab guards for their
intended purpose of protecting truck
occupants. In addition, cab guards are
rarely tested to determine how the product
will perform in realistic accident condi-
tions. As long as the cab guard complies
with federal standards, manufacturers
claim the cab guard is reasonably safe. The
unreasonably dangerous design of the cab
guard combined with the manufacturer's
failure to test the cab guard under realistic
accident conditions too often result in a
cab structure that will disintegrate around
a driver during a wreck, leaving very little
chance of survival.

Our firm pursues claims against cab

guard manufacturers under a number of
legal theories. First, the Plaintiff can allege
design defect in the manufacturer's choice
and usage of aluminum since the material
fails when put to its intended use of pro-
tecting occupants from shifting cargo. An
alternative design would be to use steel
since steel will bend and stretch, unlike
aluminum, which breaks when not prop-
erly engineered. In addition, welded alumi-
num products are susceptible to fatigue,
whereas, welded steel products have
nearly an infinite fatigue life. Second, the
Plaintiff can challenge the manufacturer's
use of non-certified welders in welding the
aluminum cab guard. In many cases, cab
guard manufacturers train welders on the
job instead of hiring welders who have
already been certified even though alumi-
num welding is more difficult than
welding steel. Third, the Plaintiff can chal-
lenge the manufacturer's failure to follow
the American Welding Society’s specific standards for welding aluminum. Finally, the Plaintiff can allege that the manufacturer was negligent in testing its product.

Lawyers in our firm have handled successfully several defective cab guard cases. Currently, our firm is working on a case involving a single vehicle accident involving an 18-wheeler with a heat-treated aluminum cab guard. When the 18-wheeler was forced off the road, the cargo of logs shifted forward, impacting the cab guard. The cab guard failed and allowed the cargo to crush the driver’s cab. As a result of the defective cab guard, the driver suffered injuries that caused his death. If the cab guard had been made of steel and not heat-treated aluminum, the cab guard would have been more flexible and prevented the rush of cargo into the cab.

If you would like more information regarding cab guards, please contact Ben Baker, Cole Portis or Stephanie Stephens at 800-898-2034 or by email at Ben.Baker@beasleyallen.com; Cole.Portis@beasleyallen.com; or Stephanie.Stephens@beasleyallen.com.

**JURY AWARDS $6.2 MILLION VERDICT TO WOMAN IN NEBRASKA**

A jury in Nebraska last month awarded nearly $6.2 million to a woman who suffered serious injuries in a 2009 car crash. The bulk of the award will be paid by Nissan Motor Co. for using what was alleged to be a flawed seat belt system in its vehicles. The jury returned the verdict in favor of Amanda Maddox, 35, who was a passenger in the 2001 Nissan Pathfinder. Ms. Maddox has had dozens of surgeries and was disabled in the June 2009 head-on collision. The driver of the other vehicle, Edward Sapp, was killed in the crash that happened on U.S. Highway 127 near Junction City. Sapp was drunk and driving on the wrong side of the road when he crashed into Ms. Maddox’s Nissan vehicle, which was being driven by her husband.

Source: Centralkynews.com

**LAWSUITS BLAME FIRES ON STAINLESS STEEL FLEXIBLE GAS LINES**

Several lawsuits have been filed blaming flexible stainless steel gas lines for fires sparked by lightning strikes. I understand that the flexible corrugated tubing, developed in Japan to avoid breaks in earthquakes, is being used more frequently in new homes in the United States. According to reports, some fire officials have raised concerns that electrical charges from lightning strikes can travel along the tubing and then puncture it, causing gas leaks and igniting fires.

One problem with the pipes, known as CSST, is that the pipes are very unpredictable as to when they will fail. As a result, it may be a very difficult product for the manufacturers to make safe. It was reported that one manufacturer, Omega Flex Inc., now sells the tubing wrapped in a special covering to make it more resistant to lightning strikes. Manufacturers also say faulty installation—without proper grounding—can be another factor in fires. This is a problem to watch closely. It could be a major area of concern for homeowners.

Source: ABA Journal

**XI. MASS TORTS UPDATE**

**Pfizer Has Settled About Half Of The Prempro Cases**

Pfizer, Inc., the world’s largest drug maker, says that it has settled almost half of the lawsuits over its menopause drugs. Additionally, the company reported that it also has increased the funds set aside to resolve the rest of the cases. This comes from information in the company’s regulatory filing with the SEC. Pfizer and its Wyeth and Pharmacia & Upjohn units have settled about 46 percent of the lawsuits alleging that the companies’ hormone-replacement medicines, including Prempro and Premarin, caused breast cancer. Pfizer reported to the SEC that it added $68 million to the $772 million it had previously reserved for the cases. Pfizer officials said in the filing:

*We have recorded a charge of $260 million in the first nine months of 2011 that provides for the minimum expected costs to resolve all the remaining hormone-replacement actions.*

More than 6 million women took Prempro and related menopause drugs to treat symptoms including hot flashes and mood swings before a 2002 study highlighted their links to cancer. Wyeth’s sales of the medicines exceeded $2 billion before the release of the Women’s Health Initiative study referred to above, which was sponsored by the National Institutes of Health.

Until 1995, many menopausal women combined Wyeth’s Premarin, an estrogen-based drug, with progestin-laden Provera, made by Pfizer’s Upjohn unit, to relieve their symptoms. Wyeth combined the two hormones in its Prempro pill. Pfizer acquired Wyeth in 2009. The companies hid from both the medical community and the public the fact that the drugs were increasing the risk of breast cancer for women.

There have been more than 10,000 claims filed in courts against the companies alleging that their menopause drugs caused breast cancer. Those lawsuits included more than 8,000 cases consolidated in federal court in Arkansas, as well as suits filed in state courts in Pennsylvania, Nevada and Minnesota. In May, Pfizer disclosed the $772 million reserve, saying that it had resolved a third of the cases, which would be about 3,300. The November filing indicated that Pfizer has now settled almost 5,000 of the suits.

Wyeth and Upjohn have lost ten of the 18 Prempro cases decided by juries since 2006. They resolved some of those cases by way of settlements. Other decisions against them are still on appeal. As reported in this issue, a Philadelphia jury ordered the Pfizer units to pay $72.6 million in compensatory damages to three women who blamed the drugs for their breast cancers. Pfizer agreed to settle the case before jurors were asked to decide whether the company should face punitive damages. The amounts of the settlements are confidential.

While the $260 million reserved by Pfizer may seem large, it’s not nearly enough. The reserve won’t provide enough money to cover settlements of all of the remaining outstanding claims. If cases are allowed to go to trial and result in large verdicts for the Claimants, the reserved amount definitely won’t be enough. Based upon the size of the jury verdicts to date, and the fact that multiple appellate courts have now affirmed some of those verdicts, this new amount of money set aside by Pfizer is grossly insufficient to resolve all of the remaining claims. Nevertheless, we are moving forward on
behalf of the hundreds of Claimants who have valid claims.
Source: Bloomberg News

**AN UPDATE ON ACTOS LITIGATION**

Lawyers in our Mass Torts Section continue to evaluate hundreds of Actos claims for individuals who have been diagnosed with urinary bladder cancer after ingesting Actos to treat their type-2 diabetes. Actos is manufactured and marketed by Takeda Pharmaceuticals, a Japanese pharmaceutical company with U.S. operations headquartered in Illinois. Actos is currently marketed as a stand-alone drug and well as in combination with metformin (Actoplus Met), metformin extended release tablets (Actoplus Met XR), and glimepiride (Duetact), all of which are designed to treat type-2 diabetes.

The Judicial Panel on Multidistrict Litigation met on December 1, 2011, in Savannah, Georgia, to consider MDL No. 2299, in re: Actos Products Liability Litigation. The seven district judge panel heard oral arguments on motions seeking the coordination and transfer of all Actos cases pending in the federal court system to a single United States District Judge for coordinated pretrial proceedings. After hearing oral arguments, the panel recently determined that centralization of the Actos litigation in the Western District of Louisiana would serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.

If you or someone you know has been diagnosed with bladder cancer after taking Actos, or you need more information on this subject, call Roger Smith, a lawyer in our Mass Torts Section at 800-898-2034 or by email at Roger.Smith@beasleyallen.com. We are happy to work with anybody to investigate your potential case.

**AN UPDATE ON YAZ AND YASMIN LITIGATION**

The FDA Reproductive Health Drugs Advisory Committee, on December 8, 2011, overwhelmingly concluded that Bayer should warn that users of its 4th generation, drosperinone-containing oral birth control pills, Yaz and Yasmin, are at an increased risk of blood clots than users of 2nd generation birth control pills. Regulatory officials in Europe had previously required Bayer to change its warning label to accurately reflect the increased risk of blood clots with Yaz and Yasmin usage.

Court documents unsealed last month indicate that Bayer withheld safety data from the FDA during the market approval process of Yasmin. While that should shock most folks, none of our lawyers were even surprised over that revelation. David Kessler, former FDA Commissioner, concluded in his expert report filed in the Yaz/Yasmin Multidistrict Litigation (MDL) that Bayer withheld vital adverse event information from the FDA in order to obtain marketing approval for Yasmin in 2001. Bayer agreed to remove the confidentiality designation on the report last month, but after the deadline for submitting written materials for panel consideration.

During the committee meeting, the advisory panel heard presentations from the FDA which included data obtained from a Kaiser Permanente study sponsored by the FDA. This study found that users of Yasmin were at an increased risk of blood clots compared to users of 2nd generation birth control pills. The agency also presented information from numerous, independent medical studies which have likewise concluded that drosperinone-containing oral birth control pills double the risk of blood clots in comparison with 2nd generation pills. Kessler, the former FDA Commissioner, had this to say about the concealment:

*Had I, or a medical review officer, known these facts prior to approval, further investigation would be warranted before a decision on Yasmin’s NDA could be made.*

Bayer presented data to the panel defending its drosperinone-brand. Only Bayer-funded studies have found no increase in risk in Yaz or Yasmin users. Meanwhile, over 10,000 lawsuits have been filed against Bayer, and the bellwether trial process is in full swing. The first MDL bellwether trial involving a pulmonary embolism injury will start on January 9, 2012, while the first Pennsylvania bellwether trial involving a pulmonary embolism injury will start on January 23, 2012.

If you want more information on this subject, contact Roger Smith at 800-898-2034 or by email at Roger.Smith@beasleyallen.com

**INCREASED FAILURE RATES FOUND IN ALL MODERN METAL-ON-METAL HIP IMPLANTS**

When deciding which hip implant components to utilize in a replacement surgery, surgeons have a range of possibilities available to them. Particularly, surgeons can choose from components made from metal, ceramic, or plastic pieces to construct the ball-and-socket structure. The metal-on-metal combination, marketed as more durable, has increased in popularity over the past several years. However, the August 2010 recall of the DePuy ASR hip implant created heightened scrutiny over all-metal hip implant devices. Recent reports have emerged indicating all-metal implants (not just the ASR device) fail at a greater rate than the traditional metal-on-polyethylene or ceramic-on-polyethylene implants.

One report, published last month in the *British Medical Journal*, found that patients who received metal-on-metal implants were twice as likely to require repeat surgery as those who received traditional implants. Moreover, the analysis found all-metal hip implant patients fared no better in functioning or conducting daily activities than patients with more traditional hip implants. In other words, no added benefit was found for modern metal-on-metal implants to justify the added risk of implant surgery. And, more importantly, the idea that metal-on-metal hip implants are more durable than metal-on-polyethylene was proven to be false. The report, which was sponsored by the FDA, analyzed the results of 18 studies involving 3,139 patients and more than 830,000 operations reported in registries.

The high failure rate of the ASR has compromised the health of thousands of patients. The ASR device was recalled after it was revealed that the device had an alarming failure rate, with patients suffering from pain, swelling, dislocations, and toxic levels of metal ions in their blood. Any person who has had a hip replacement should contact their orthopaedic surgeon to determine whether they received a DePuy ASR or Pinnacle metal-on-metal hip implant. For more information on this subject, contact Navan Ward, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Navan.Ward@beasleyallen.com. As we have reported, Navan serves on the PSC in the MDL.

Source: Thomas Reuters.

SPECIAL MASTER APPOINTED TO HELP SETTLE FOSAMAX CASES

A special settlement master has been appointed in the Fosamax multidistrict litigation. John D. Feerick, a law professor at Fordham University School of Law in New York, was appointed by U.S. District Court Judge John F. Keenan, who is overseeing the MDL. The lawsuits allege that the osteoporosis drug causes a unique “jaw death” illness that destroys the jaw bone, also called osteonecrosis of the jaw, and that drug maker Merck failed to warn about the risks. Our firm has handled a number of these claims. If you need additional information on this development, or about any other facet of the Fosamax litigation, contact Chad Cook at 800-898-2034 or by email at Chad.Cook@beasleyallen.com.

ARKANSAS COURT AFFIRMS $50 MILLION VERDICT FOR RICE FARMERS

The Arkansas Supreme Court affirmed a nearly $50 million verdict last month for farmers who suffered economic losses after genetically altered rice seeds produced by Bayer CropScience contaminated the food supply and hurt their crop prices. Bayer had appealed a verdict last year out of Lonoke County, Ark., that awarded farmers $5.9 million in actual damages and $42 million in punitive damages. The company claimed that Arkansas lawmakers set a limit on punitive damages and that no jury award should “shock the conscience.” It obviously believed that this award was shocking, but the High Court on appeal disagreed.

Farmers contended that rice prices fell after federal regulators announced in 2006 that an experimental strain of rice was found in the U.S. long-grain rice supply. The rice had not been approved for human consumption. Bayer argued that any damages were minimal. The High Court obviously disagreed. If you need additional information on the rice farmers’ litigation, contact Leigh O’Dell at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com.

Source: Claims Journal

SETTLEMENT REACHED IN CHINESE DRYWALL SUIT

A Chinese drywall manufacturer has agreed to pay hundreds of millions of dollars to settle court claims by thousands of Gulf Coast property owners who blame the product for damaging their homes. The settlement announced last month by U.S. District Judge Eldon Fallon calls for Knauf Plasterboard Tianjin Co. to create an uncapped fund to pay for repairs in an estimated 4,500 homes, mostly in Florida, Louisiana, Mississippi and Alabama. According to Russ Herman, lead attorney for the Plaintiffs, the estimated value of the settlement is between $800 million and $1 billion.

Property owners alleged in class action suits that the drywall contained impurities including a high sulfur content that in humid climates emitted harmful odors and fumes causing damage to property and health. Relief under the settlement includes remediation of the property, payment for personal injury claims and compensation for losses due to foreclosures and short sales. Properties that have a mixture of Knauf’s drywall and other Chinese drywall will receive partial payments.

Russ says 55 percent of the people who would benefit from the settlement live in Florida and 35 percent in Louisiana. Judge Fallon, who is overseeing between 10,000-12,000 drywall cases in multidistrict litigation, must approve the settlement before any money is distributed. Russ, Chris Seeger, and other lawyers on the Plaintiffs’ Steering Committee have done a tremendous job in this most difficult litigation.

Source: AL.com

XII. BUSINESS LITIGATION

JURY AWARDS $11.4 MILLION IN BUSINESS FRAUD LAWSUIT

An Alabama jury awarded $11.4 million last month to HTI, a Birmingham company, and Ligon Capital, a hydraulic cylinder company it owns. The jury found that CNH America acted fraudulently while negotiating with a competitor of the hydraulic company, HTI, before CNH ended its business with HTI in 2008. The

lawsuit, filed in Jefferson County Circuit Court in 2009, contended that HTI was left holding more than $2 million in specialty products CNH had ordered and another $300,000 in products it delivered without payment. HTI also had paid for unreimbursed expedited freight costs, the lawsuit said.

Jurors found that CNH had a duty to disclose its plans to replace HTI as a supplier and the jury found CNH deliberately chose to defraud the Plaintiff during the business relationship. Ligon Capital and HTI were awarded $3.8 million in compensatory damages and $7.6 million in punitive damages.

Source: AL.com

XIII. AN UPDATE ON SECURITIES LITIGATION

OUR FIRM CONTINUES TO HANDLE CASES INVOLVING SECURITIES FRAUD

Lawyers in our firm continue to handle cases involving securities fraud. “Churning,” one of the most common problems we encounter, involves unnecessary and excessive trading of an investor’s account in order to generate broker commissions. This is fraud, pure and simple. Investors should review their accounts on a regular basis to ensure that the account is being properly handled and that they are not losing money to unscrupulous fee generation.

Another common problem we see is “Suitability.” Investments for some investors may not be appropriate for others. A broker should account for factors such as an investor’s age, overall financial situation, investment objectives, and risk tolerance when recommending investments. We have witnessed elderly clients losing their life savings in high risk investments, when their circumstances dictated that safer, more conservative investments be made.

We have seen other cases where an investor’s portfolio is not adequately diversified. A “hot” investment may create a windfall for the investor over a short period of time, but problems arise when the investment flames out and there is nothing left to back it up. Investors should
consult with their broker to be sure that their investments meet their needs, and that their broker is not “putting all of their eggs in one basket.”

Most investor claims of securities fraud are required to be brought in arbitration before the Financial Industry Regulatory Authority (FINRA). We have not met an investor yet who knew their claim was subject to arbitration—and, furthermore, we have not met an investor who was happy to learn that he or she had lost the right to trial by jury! Arbitration is more expensive than the traditional jury trial system, as the arbitrators (typically a panel of three) are all compensated at a rate of several hundred dollars per hour. These fees are charged not only for the final arbitration hearing, but also for work the arbitrators perform in the “pre-hearing” process, including handling motions, reviewing documents, and other matters.

That being said, there has been a little good news for investors with respect to FINRA arbitration. In the past, FINRA’s three arbitrator panels have been composed of two public arbitrators and one arbitrator presently or previously employed in the securities industry. The industry-connected arbitrator was often predisposed to side with the securities industry Defendants. Earlier this year, however, FINRA announced that the Securities and Exchange Commission approved FINRA’s proposed rule change allowing customers the opportunity to have an “all-public” panel of arbitrators. Although not as fair as our time-honored and tested jury trial system, removing the requirement of a securities industry arbitrator from FINRA panels is a good start for investors. If you need more information or would like to discuss securities fraud claims in greater detail, contact Scarlette Tuley (Scarlette.Tuley@beasleyallen.com), Archie Grubb (Archie.Grubb@beasley allen.com), Bill Hopkins (Bill.Hopkins@ beasleyallen.com) or Andrew Brashier (Andrew.Brashier@beasleyallen.com), all lawyers in our Consumer Fraud Section.

**Securities Class Action Suit Proceeding to Trial**

Bill Hopkins, a lawyer in our firm’s Consumer Fraud Section, is working with the Law Firm of Robbins, Geller, Rudman & Dowd, L.L.P. in a securities class action lawsuit that is pending in a South Carolina court. The case, which is proceeding to trial, was filed by the City of Ann Arbor Employees’ Retirement System, on behalf of itself and all others similarly situated, against Sonoco Products Company, its Chairman of the Board and CEO Harris E. DeLoach, Jr. and former CFO Charles J. Hupfer. The lawsuit alleges the Defendants violated Section 10(b) of the Securities Exchange Act of 1934.

Sonoco is a global supplier of industrial and consumer packaging and packaging services headquartered in Hartsville, S.C. While Sonoco met or exceeded earning estimates for fourteen consecutive reporting periods, in late 2006, the company provided certain key customers price concessions and deductions. Additionally, the company’s flexible packaging division lost an account with one of its largest customers when it decided not to match a competing bid for the customer’s business. The Plaintiff contends that while the Defendants knew these issues would adversely impact financial results, they failed to report this information and also allegedly cushioned the 2007 forecasts from the deleterious effects of the price concessions and lost business by artificially inflating gains from productivity.

On February 7, 2007, Sonoco issued a press release announcing its financial results for the fourth quarter and year end 2006. Sonoco did not disclose any information regarding the price concessions and lost volume or the impact these issues could have on the company’s financial performance in 2007. Soon thereafter, DeLoach sold 155,000 shares of stock. On September 18, 2007, Sonoco officially lowered its third quarter 2007 earnings guidance and, for the first time, disclosed “lower volumes” and “price reductions in certain flexible packaging without offsetting reductions in costs”.

On September 30, 2010, the South Carolina district court entered an order granting Plaintiffs’ Motion for Class Certification. The Class was certified for those purchasers of Sonoco’s common stock between February 7, 2007 and September 18, 2007. Defendants sought permission from the Fourth Circuit Court of Appeals to appeal the order granting class certification. The Fourth Circuit denied their petition.

On September 22, 2011, the South Carolina district court denied the Defendants’ Motions for Summary Judgment. The Defendants again sought permission to file an interlocutory appeal with the Fourth Circuit Court of Appeals and permission was again denied. The Court has just approved the Plaintiffs’ proposed Class Action Notice for class members and approved the Plaintiffs’ Motion to Distribute the Class Notice. It is anticipated this case will be set for trial in the Spring of 2012.

If you or someone you know has purchased stock or another security and believe the decision to make the purchase was based upon false or misleading information, there may be a viable case for violation of the securities laws. If you have any questions about this case, or about securities litigation generally, contact Bill Hopkins at Bill.Hopkins@beasleyallen.com.

**Merrill Lynch To Pay $315 Million To Settle Mortgage-Loans Lawsuit**

Merrill Lynch & Co., which is now owned by Bank of America, has agreed to pay $315 million to settle a mortgage-securities lawsuit. Many observers believe this could well be the first of a long line of settlements. Investors are stepping up efforts to recoup losses from the mortgage meltdown. Bank of America had previously set aside funds for this settlement. Wells Fargo & Co. reached a similar settlement earlier this year with a group of pension funds for $125 million.

The Merrill Lynch agreement rates as the largest known settlement of a securities class-action case brought by investors in mortgage-backed securities that aren’t backed by the government. The case was brought by a variety of public retirement systems, including Public Employees’ Retirement System of Mississippi, as lead Plaintiff. It was alleged in the lawsuit that securities backed by pools of mortgages didn’t match up with sellers’ promises. The agreement will now go before U.S. District Court judge Jed Rakoff for approval. It should be noted that this judge rejected a $53 million settlement between Bank of America and the Securities and Exchange Commission proposed in 2009 before reluctantly approving a later $150 million agreement he called “half-baked justice at best.” Based on his prior rulings and observations, this settlement had better be real good or it may not get approval from Judge Rakoff.

Currently, there is a backlog of similar lawsuits against Bank of America and other big U.S. banks. Many large financial institutions are trying to put the financial crisis at bay.
behind them and satisfy investor concerns about their future profitability. Stocks of major U.S. banks have been under pressure for all of last year, amid concerns about how much it will take to settle all of the claims arising out of the financial crisis. Perhaps Bank of America, which purchased troubled mortgage lender Countrywide Financial in 2008 and securities firm Merrill Lynch & Co. in 2009, has the greatest exposure in the mortgage litigation. Poor, and almost non-existent, regulation made it very easy for the big banks to hoodwink investors and now they are paying for their wrongdoing.

The Merrill Lynch lawsuit relates to about $17 billion in mortgage-backed securities. The lawsuit doesn’t say how much investors lost but touches on delinquency rates for individual securities. An amended Complaint filed in July 2010 alleged offering documents for the mortgage-backed securities either made untrue statements or omitted material facts regarding the underwriting standards purportedly used in originating of the underlying mortgages; the maximum loan-to-value ratios used to qualify borrowers; the appraisals of the properties underlying the mortgages; the debt-to-income ratios permitted on the loans; and the ratings of the mortgage pass-through certificates themselves.

It was alleged in the lawsuit that the delinquency, foreclosure and bank-ownership rates on the underlying mortgages have soared since issuance. As of June 2010, more than a third of the underlying loans in 15 of the 19 securities purchased by the Plaintiffs were more than two months behind in their payments, in foreclosure, or repossessed and owned by a bank, according to the lawsuit. In seven of these trusts, the rate is at or above 50%.

Bank of America has settled other mortgage-related cases for larger amounts, including a subprime-related securities suit by shareholders for $475 million, a subprime-securities class-action settlement stemming from the actions of Countrywide for $624 million, and $1.1 billion to bond insurer Assured Guaranty Ltd. to settle claims about poor-performing mortgage bonds guaranteed by Assured. Bank of America also agreed to pay $8.5 billion to settle claims by a group of high-profile investors that lost money on securities purchased before the U.S. housing collapse. That settlement still needs court approval.

There are many more securities cases working their way through the courts. For example, there are 13 federal securities lawsuits pending in Los Angeles against Countrywide Financial before U.S. Judge Mariana Pfaelzer. There are seven more cases awaiting final approval in that same court. Those include a $10 billion suit from insurer American International Group Inc. alleging Bank of America, Merrill Lynch and Countrywide packaged securities backed by defective mortgages.

Source: Wall Street Journal

E-TRADE AND INSURERS SETTLE MORTGAGE CLASS ACTION LAWSUIT FOR $79 MILLION

E-Trade Financial and its insurers have agreed to pay $79 million to settle class action lawsuits brought against the online brokerage as a result of losses in its mortgage and home equity loans portfolio in 2007. E-Trade was sued by investors who alleged the company violated securities law and breached its fiduciary duty to shareholders in relation to the massive losses it suffered following the collapse of the subprime mortgage market.

The company claimed the losses incurred were caused by a “worldwide economic catastrophe” and that it has not violated the law. E-Trade’s portion of the settlement payment is around $10.75 million with the balance being paid by its insurance carrier. The agreement requires court approval to become final. It is expected that the court will decide that issue in the first quarter of this year.

Source: Insurance Journal

CALIFORNIA ANNOUNCES SETTLEMENT OVER PRICE-FIXING SCHEME

A $553 million settlement has been reached by California’s Attorney General with manufacturers for allegedly engaging in price fixing of flat screen LCD (Liquid Crystal Display) panels found in monitors, laptops and televisions. In October 2010, a lawsuit was filed by California Attorney General Kamala D. Harris against ten companies—LG Display Co., Ltd. and LG Display America, Inc.; Samsung Electronics, Co., Ltd.; Sharp Corporation; Toshiba Corporation, Toshiba Mobile Display Co., Ltd.; and Hitachi, Toshiba Mobile Display Co., Ltd. for price-fixing LCD panels and paid $400 million in federal fines. Defendant, AU Optronics Corporation and AU Optronics Corporation America, along with several employees, have been indicted on federal charges of price fixing. The criminal trial is scheduled for January 2012 in the United States District Court for the Northern District of California.

California consumers and government entities will receive a significant portion of the more than $500 million settlement, with an exact percentage to be determined later, according to Harris’ office. Following completion of the litigation, California consumers and businesses can file claims for monetary relief. Information about how to file a claim will be available at the Attorney General’s website, www.oag.ca.gov, or by calling 800-952-5225.
There is an insurance coverage for motorists that can be most important in the event that a motorist is involved in a serious motor vehicle accident. Uninsured/Underinsured (UM/UIM) motorist coverage is an option that is available to all motorists in Alabama. Under Ala. Code § 32-7-23, no automobile liability policy shall be delivered or issued without uninsured motorist coverage. The named insured has a right to reject such coverage in writing. Unfortunately, many folks are totally unaware of the need for this type coverage.

If you are involved in a motor vehicle accident, you cannot assume that the other driver will have sufficient liability insurance coverage to take care of your injuries and damages. When the coverage of the other driver who caused the accident is not adequate to cover the injured motorist’s losses and damages, including medical bills, lost income and the like, the uninsured/underinsured coverage under your own automobile insurance policy can be most beneficial.

For example, Julia Beasley, a lawyer in our Personal Injury Section, handled a case for a young man who was involved in a motor vehicle crash. He was struck from behind by another vehicle operated by a person who was highly intoxicated and traveling at about 100 miles per hour. The reckless conduct of that driver caused our client severe and permanent injuries. Unfortunately, the other driver had no liability insurance at all.

Without the uninsured motorist coverage under our client’s own policy, he would not have received any financial assistance to take care of himself, and his lifelong medical needs were tremendous. In that situation, the uninsured motorist coverage of our client’s employer, as well as his personal uninsured motorist coverage, applied. The additional UM coverage allowed this case to be settled satisfactorily for our client.

Uninsured/underinsured coverage also applies in a “hit and run” accident where the owner or operator of the vehicle who caused the accident is unknown. In a recent case, which was also handled by Julia Beasley, our client was struck from behind by an 18-wheeler on an interstate highway in Alabama. His vehicle rolled over several times resulting in our client being badly injured. The driver of the 18-wheeler did not stop after causing the collision and left the scene. Although attempts were made to identify and locate the truck driver, those attempts were unsuccessful. Our client’s automobile insurance policy, which provided uninsured motorist benefits, was sufficient to compensate him for his injuries and damages.

Under the Alabama statute, uninsured/underinsured motorist coverage is intended to protect those “who are legally entitled” to recover damages from owners and operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death. It is a good idea to check your automobile insurance policy and make sure you have adequate uninsured motorist coverage.

A policyholder is allowed to “stack” the coverage of three vehicles that have uninsured motorist coverage if the injuries and damages exceed the limits of the responsible party’s liability policy. The cost of additional uninsured motorist coverage is fairly reasonable. So, my advice is to get as much coverage as possible from your carrier. If you need more information on this subject, contact Julia Beasley at 800-898-2034 or by email at Julia.Beasley@beasleyallen.com.

**Judge Dismisses JPMorgan Lawsuit Against Insurers**

A state appeals court in New York has ruled that a JPMorgan unit cannot force insurers to pay a $250 million settlement between failed investment bank Bear Stearns and government regulators. Reversing a trial court, the appeals court dismissed a lawsuit against Chubb Corp.’s Vigilant Insurance Company, a unit of Lloyd’s of London, were not responsible for paying losses incurred through “any deliberate, dishonest, fraudulent or criminal act or omission,” according to the policy, as long as there was an “adverse final adjudication to that effect.” Justice Andrias wrote in the court’s opinion:

*Read as a whole, the offer of settlement, the SEC Order, the NYSE order and related documents are not reasonably susceptible to any interpretation other than that Bear Stearns knowingly and intentionally facilitated illegal late trading for preferred customers, and that the relief provisions of the SEC Order required disgorgement of funds gained through that illegal activity.*

Vigilant Insurance Company, a unit of Chubb Corp., and several other insurers, including Travelers, Liberty Mutual and Lloyd’s of London, were not responsible for paying losses incurred through “any deliberate, dishonest, fraudulent or criminal act or omission,” according to the policy, as long as there was an “adverse final adjudication to that effect.” Justice Andrias wrote in the court’s opinion:

> Source: Insurance Journal

**Mississippi Court Overturns Win For Insurer In Katrina Lawsuit**

The Mississippi Supreme Court has overturned a judgment in favor of an insurance company in a wind versus water case. A Pascagoula home was hit by 6.3 feet of storm surge during Hurricane Katrina in 2005, resulting in severe damage. The National Flood Insurance Program paid Michael Robichaux and his wife, Mary, who has since died, policy limits for the loss of their home and its contents—$136,500 for the home and $70,400 for contents. At issue in the lawsuit was whether Nationwide Mutual Fire Insurance Co. owed the Robichauxes any money for wind damage.

It was contended in the lawsuit that the homeowners were owed at least $60,000. Nationwide denied their claims, but for different reasons than the company used in...
Affected by the ruling, but there are bound difficulty with their insurance companies.

Good news for policyholders who have had storm surge. The Court said Nationwide other structures and personal property by damage prior to the destruction of the home, based on expert reports. The Court, said there were “genuine issues of material fact” over whether structures and personal property covered under the Robichaux’s policy “were damaged by wind prior to the destructive force of the storm surge.”

In the earlier wind versus water case, the Supreme Court decided Mississippi law requires insurance companies to prove that a hurricane’s tidal surge, rather than wind, caused a loss in order to deny coverage. Wind and water are separate forces, the Court reasoned, that cause different types of damage. Wind damage is covered under an all-perils policy.

In the Robichaux case, Nationwide contended storm surge caused all the damage to the home, based on expert reports. The case was remanded on the issue of whether wind was a proximate cause of damage prior to the destruction of the other structures and personal property by storm surge. The Court said Nationwide has the burden of proving that the other structures under Coverage B were damaged by an excluded peril. Justice Kitchens wrote in the opinion:

The converse is true with regard to the Robichauxes’ burden of proving that personal property under Coverage C suffered accidental, direct, physical loss as a result of one of the enumerated perils, namely wind-storm.

This ruling by the Supreme Court is good news for policyholders who have had difficulty with their insurance companies. I am not sure how many claims will be affected by the ruling, but there are bound to be a good number.

Source: Insurance Journal

**XV. EMPLOYMENT AND FLSA LITIGATION**

**Bank of America Settles Loans-Bias Case For $335 Million**

In the largest residential fair-lending settlement in history, Bank of America Corp. has agreed to pay $335 million to settle allegations that its Countrywide Financial Corp. unit discriminated against minority homebuyers. The U.S. Department of Justice announced the decision last month. The agreement settles a civil complaint that the mortgage lender charged black and Hispanic borrowers higher fees and steered them into costlier mortgages than other buyers from 2004 to 2008, a period when the company originated millions of home loans. It also marks Charlotte, N.C.-based Bank of America’s latest step to move past the mortgage-related troubles that have been a big problem for the bank since it inquired Countrywide in 2008.

The Justice Department’s complaint said Countrywide—once one of the nation’s largest single-family mortgage lenders—discriminated against more than 200,000 minority borrowers, charging them higher fees and interest rates than white homebuyers because of their race or national origin, not their creditworthiness. Countrywide also steered minority buyers into subprime mortgages, which came with higher costs and unpredictable adjustable interest rates than white homebuyers. The California Supreme Court to provide guidance on whether the California labor code applies to nonresident employees when they perform work in the state. In June, the California High Court ruled that it did, finding that not applying California law would encourage employers to substitute lower-paid temporary employees from other states for California employees.

The Justice Department began investigating Countrywide’s lending practices for potential patterns or practices of discrimination after referrals by federal regulators in 2007 and 2008. Hopefully, this practice will not be tolerated by any lending institution in the future. They should have learned a good lesson.

Source: Miami Herald

**U.S. Appeals Court Revives Oracle Overtime Lawsuit**

A federal appeals court last month revived a class-action lawsuit against Oracle Corp, basing its ruling on a state court decision that employers in California must pay nonresident workers for overtime work performed in the state. The U.S. Court of Appeals for the 9th Circuit reversed a federal district court ruling in favor of Oracle. Under California’s wage and hour laws, the Appellate Court found, Oracle could be liable for unpaid wages if it did not compensate out-of-state computer trainers for overtime work performed in the state.

Oracle employees who were residents of Arizona and Colorado sued the company for not paying them overtime for work performed in California. The trial judge granted summary judgment in Oracle’s favor. On appeal, the 9th Circuit asked the California Supreme Court to provide guidance on whether the California labor code applies to nonresident employees when they perform work in the state. In June, the California High Court ruled that it did, finding that not applying California law would encourage employers to substitute lower-paid temporary employees from other states for California employees.

Employment lawyers and business groups argued the ruling would drive business away from California, reduce business travel and lead to a spike in wage-and-hour lawsuits against companies doing business in the state. Such fears have not materialized. While reviving the bulk of the employees’ claims, the 9th Circuit rejected their argument that California laws should apply to overtime work performed outside of California under the facts of the case. The 9th Circuit sent the case back.
down to the district court for further proceedings. Charles R. Russell, a lawyer with the California firm of Callahan, Thompson, Sherman & Caudill, who represents the employees, says the 9th Circuit agreed with the Supreme Court’s common sense analysis. He said: “If you’re a business in California, you will have to comply with California’s overtime laws. You can’t treat people differently because they live in a different state.” That certainly appears to be a correct assessment.

Source: Reuters

**Hospital Systems Receive Favorable Ruling Over Meal Breaks Policy**

A recent ruling affects a class action lawsuit that had been filed against two of Pittsburgh’s major hospitals, alleging violations of the Fair Labor Standards Act. It was alleged in the Complaint that the hospitals automatically deducted a half-hour from an employee’s time records even when the employee worked through a meal break, resulting in the employee not being compensated for all hours worked. But the court ruled in the case that there wasn’t enough evidence to show that the hospital companies had a policy of not paying employees who worked through their meal breaks. As a result of the ruling, any employees who want to pursue their claims will have to do so by filing their own individual lawsuits, rather than filing as a group.

Source: Pittsburgh Tribune-Review

**XVI. Predatory Lending**

**Banks May Have Illegally Foreclosed On 5,000 Members Of The Military**

For months, major banks have been dealing with the fallout of the “robo-signing” scandal, following reports that the banks were improperly foreclosing on homeowners and, in many instances, falsifying paperwork that they were submitting to courts. Banks have been forced to go back and re-examine foreclosures to ensure that homeowners did not lose their homes unlawfully. In the latest episode of this mess, the Office of the Comptroller of the Currency (OCC) has found that ten banks—including Bank of America, Wells Fargo, and Citigroup—may have improperly foreclosed on up to 5,000 active members of the military.

The data released by the OCC are based on estimates prepared by lenders and their consultants. Bank of America said it is reviewing 2,400 foreclosures involving active-duty military families to see if they were conducted properly. Wells Fargo is reviewing 870 foreclosures and Citigroup is looking at 700 cases.

Also under review are 575 foreclosures at OneWest, formerly known as IndyMac; 87 at HSBC; 80 at US Bancorp; 56 at Aurora (formerly known as Lehman Brothers Bank); 25 at MetLife; six at Sovereign; and three at EverBank. Back in April, JPMorgan Chase, which was not one of the ten banks that the OCC examined, agreed to a $56 million settlement over allegations that it had overcharged members of the military on their mortgages. Chase Bank has even auctioned off the home of a military member the very day that he returned from Iraq. Two other mortgage servicers agreed in May to settle charges of improperly foreclosing on servicemembers.

Even without the banks illegally foreclosing, military members have been hard hit by the foreclosure crisis. Last year alone, 20,000 members of the military faced foreclosure, a 32 percent increase over 2008. The newly-created Consumer Financial Protection Bureau is tasked with ensuring that military members are treated fairly by financial services companies—a job that is obviously necessary—but Republicans in Congress have, so far, refused to confirm a director for the agency, leaving it unable to fulfill all of its responsibilities. That failure is inexcusable and the public should be outraged.

Source: thinkprogress.org

**Bank Said To Have Pushed Minorities Into Subprime Mortgage Loans**

It has been reported that many of the largest banks in the U.S. discriminated on a regular basis against minority borrowers. One of the most pernicious practices in which these banks engaged during the lead-up to the financial crisis, was pushing minority borrowers into subprime loans. This was done even when many of them clearly qualified for prime loans. Many believe Wells Fargo was one of the worst offenders, with bank officials calling the subprime loans that it pushed in poor, black neighborhoods “ghetto loans.” There is no doubt that this rampant predatory lending helped inflate the housing bubble. A Center for American Progress investigation found huge racial disparities in lending at the big banks that wound up getting bailed out, with minority borrowers far more likely to receive high-priced loans.

A former banker for Chase—James Theckston—told Nicholas Kristof, a New York Times columnist, that not only did his bank push minority borrowers into higher-priced loans, but senior executives then tried to cover up the racial disparity in their banks’ lending. Theckston says that some account executives earned a commission seven times higher from subprime loans, rather than prime mortgages, so they looked for less savvy borrowers—those with less education, without previous mortgage experience, or without fluent English—and pushed them into subprime loans.

Theckston said that these “less savvy borrowers were disproportionately blacks and Latinos,” and “they ended up paying a higher rate so that they were more likely to lose their homes.” Senior executives seemed aware of this racial mismatch, he recalled, and frantically tried to cover it up. Mr. Theckston explained it this way:

*The bigwigs of the corporations knew this, but they figured we’re going to make billions out of it, so who cares. The government is going to bail us out. And the problem loans will be out of here, maybe even overseas.*

In 2006, Chase made high-price loans to 16.4 percent of white borrowers, while nearly half of black borrowers and more than one-third of Hispanic borrowers received high-price loans. These disparities help explain why, according to a new report from the Center on Responsible Lending, Latinos and blacks are twice as likely to have been impacted by the housing crisis as whites. In fact, “approximately one quarter of all Latino and African-American borrowers have lost their home to foreclosure or are seriously delinquent, compared to just under 12 percent for white borrowers.”

Source: thinkprogress.org
Two of the victims died of heatstroke. The third victim's organs shut down due to hypothermia and prolonged sweat lodge exposure. The victims' families also settled a civil lawsuit against the owners of the retreat center that Ray rented for his five-day so-called “Spiritual Warrior” event. The Plaintiffs alleged in the lawsuits that the conduct of Michael and Amayra Hamilton, the owners, led to the deaths of the three men and caused the others' injuries. The terms of that settlement were confidential.

An interesting note about Ray. He owned a 7,000 square-foot house in Beverly Hills that he bought for $4 million in 2009. The so-called ceremony that caused the deaths and injuries was weird to the extreme. The people who attended were required to go without food or water for three days out in the desert, before coming into the sweat lodge.

Source: USA Today

JURY FINDS TOWN RESPONSIBLE IN BOY’S DROWNING

A New Jersey jury has found the town of Ridgewood legally responsible for a 13-year-old boy's drowning in a municipal pool, awarding $10 million in damages. Nine lifeguards were on duty at the time and a witness reported the incident. For some reason, the manager sent out a search team to check around the pool and in the parking lot, but not in the pool. The primary witness in the case was an 1-year-old child, a friend of the boy.

In the summer of 2008, 13-year-old Soo Hyeon Park, his parents, and nine-year-old sister were visiting from Korea, and were staying in Ridgewood, N.J., with friends who emigrated many years ago from Korea. They were planning to drive to Rhode Island where they would spend a year while their father, Seong Wook Park, served a sabbatical as a maritime researcher. On July 15, Soo Hyeon's mother took him, his sister and the two boys from the host family, aged 13 and 11, to the town pool.

All four children started in the shallow end, but the three boys headed out into the deep end because they wanted to climb onto a diving raft. When the 11-year-old got onto the raft he saw Soo struggling in the deep end and heard him cry out “I can’t breathe” in Korean. The boy panicked, jumped into the pool and swam toward Soo, who had already begun to go under water, but he was unable to save him.

The boy notified Soo’s sister, who in turn told her mother. They immediately went to the manager’s office next to the pool and told him that the boy had just seen someone drown. When he asked the boy where he saw this, the boy pointed out the window to the deep end. The manager ordered the lifeguards to search around the pool, in the playground and around the parking lot. When they finally searched the water 45 minutes later, they found the boy’s body at the bottom of the pool.

Two theories of liability—negligent supervision and negligent response—were presented to the jury. The first required showing that the town’s lifeguards were negligent in failing to see a swimmer in distress; the second required proving that they were negligent in conducting a land search instead of searching the pool. While the Defense argued that Soo was not in obvious distress, the Plaintiffs’ aquatics expert testified that unless a swimmer in trouble suffers a heart attack or stroke, he or she will put up a noticeable struggle.

The jury found the town liable for negligent supervision, but didn’t reach the question of whether its response was negligent. The jurors also rejected the town’s claims that the Plaintiffs were partly to blame, finding no comparative fault. The jury returned a $10 million verdict that included $4 million for Soo’s conscious pain and suffering, $2 million to each of his parents, $1 million to his sister and $1 million for the family’s loss of guidance, support and services. Neil S. Weiner, a lawyer with Weiner Carroll & Strauss, located in Montvale, N.J., represented the family and did a very good job.

Source: Lawyers USA Onlin.

CASE INVOLVING BRAIN-DAMAGED WOMAN SETTLED IN NEW YORK

Eric County will pay $7 million to settle a lawsuit filed by a woman who suffered brain damage after she nearly drowned in a public pool two years ago. Jannette Morales’ lawsuit blamed the county for not properly training or supervising lifeguards at the city-owned pool. Eric County operated the pool for the city at the time of the incident. Ms. Morales, then 37, was pulled out of the water by her son after he found her floating in the crowded pool on a summer afternoon in August 2009. Accord-
ing to the lawsuit and court documents, two lifeguards on duty failed to see she was in trouble and didn’t help the son as he tried to rescue her.

Source: Wall Street Journal

XVIII. WORKPLACE HAZARDS

A LOOK AT PRODUCT LIABILITY CASES IN THE WORKPLACE

Unlike the laws that govern ordinary people, the laws regarding workplace safety offer unfair protections to businesses that expose employees to unnecessary and preventable dangers. In fact, workers compensation laws (originally enacted to provide financial protection for injured workers) often act to restrict the types of lawsuits that can be brought for workplace injury and in many cases prevent the injured employee or his family from being able to sue at all. In addition to the risks associated with mismanaged and poorly-supervised worksites, all too often a defective product also plays a role in a workplace injury or death.

Over the years, lawyers in our firm have represented scores of individuals who have been severely injured by a defective product used in a workplace. If a supervisor removes a guard from a saw and an employee is later injured, the supervisor and the company may be liable for that removal. Additionally, if the removal of the guard was foreseeable to the manufacturer, the product may be defective under Alabama law. Examples of cases we have handled involving defective products that caused workplace injuries include: wood-working machinery that lacked anti-kickback teeth to prevent violent ejection of wood pieces into a nearby worker, a tractor-mounted posthole digger that lacked a guard to prevent a worker from being entangled in an exposed rotating bolt, an excavator quick coupler that failed and allowed the excavator bucket to fall onto a worker, a horizontal boring machine that lacked proper torque control and operator presence technology to prevent the machine from overturning and crushing a worker, ungrounded electrical equipment, and many more instances of workplace injury and death caused by defective products.

In addition to defective products which cause workplace injuries, many cases arise out of the failure of an employer to follow established safety procedures for hazardous activities. Our firm currently represents the family of a man who was electrocuted while installing underground power lines in a north Georgia neighborhood. While the case is in its initial stages, it appears that the power company hired a subcontractor to do much of the work and failed to properly supervise the worksite.

Significantly for our case, the power company failed to ensure that its electrical transformers were locked and properly insulated. Sadly, our client’s husband inadvertently contacted unguarded electrical connectors inside an open transformer cabinet and was killed in an incident which could have been easily prevented if the power company simply followed its own safety procedures. We look forward to developing this important workplace death case and will update you as it progresses. If you would like more information on workplace liability or any facet of safety relating to workers, contact Mike Andrews at 800-898-2034 or by email at Michael.Andrews@beasleyallen.com.

COMPANY TO PAY $210 million IN WEST VIRGINIA MINING DISASTER SETTLEMENT

The owner of a West Virginia coal mine where an explosion killed 29 men in 2010 will pay nearly $210 million in a historic settlement arising from the worst U.S. coal mining disaster in decades. U.S. Attorney Booth Goodwin announced the settlement last month, calling it a “revolutionary resolution.” This is the largest settlement ever resulting from a criminal investigation into a U.S. mine disaster. As part of the agreement, Alpha Natural Resources will not be charged with crimes, but individuals still could face criminal prosecution. Alpha Natural Resources acquired Massey Energy after the explosion at Upper Big Branch.

The agreement includes more than $46 million in criminal restitution to the miners’ families for violations at Upper Big Branch. Another $128 million will fund cutting-edge mine safety upgrades, research and training, and $35 million in penalties for federal mine safety violations was also included.

The settlement does not prevent the future prosecutions of individuals on criminal charges in the April 2010 blast. Alpha Natural Resources assumed the civil and some criminal liability when it bought Massey Energy in June. Although the settlement addresses some potential criminal liability, it does not resolve any potential criminal violations by any company officers or agents. This is in contrast to a previous government deal with Massey that drew widespread objections for including a promise not to prosecute any officers or employees of the company.

Investigators found that the Upper Big Branch explosion was linked to poor safety practices by Massey. Investigators also found evidence of a coverup of safety conditions at the site. Civil lawsuits against Alpha won’t be affected by the settlement with the Justice Department and MSHA. Those lawsuits will continue through the system.

Source: USA Today

RECORD FINE AGAINST PG&E FOR 2008 BLAST APPROVED

The California Public Utilities Commission has approved a record $38 million fine against Pacific Gas and Electric Co. relating to a series of safety violations that led up to a Christmas Eve 2008 explosion outside Sacramento that killed a homeowner. PG&E had already signed off on the fine—the largest ever imposed in California for gas safety violations—after an administrative law judge rejected a $26 million settlement as being too low. The penalty suggests that PG&E could face much costlier fines for any safety violations the state finds in connection with a Sept. 9, 2010, blast in San Bruno that killed eight people and destroyed 38 homes. The Commission opened an investigation into that disaster last year, but at press time had not formally charged the company with wrongdoing.

The agency’s action resolved a case that the commission filed two years after the explosion in Rancho Cordova (Sacramento County), well after federal investigators concluded that PG&E missteps were to blame. Before the unanimous vote to approve the penalty, a litany of violations leading up to the explosion were laid out. A distribution pipe exploded killing 72-year-old Wilbert Paana and injuring his daughter and granddaughter. Many of those previous violations were similar to factors in the San Bruno disaster. There were incidents involving the use of faulty pipe, flawed inspection procedures and long delays in emergency response.

The recent problem started when workers installed substandard pipe in a 2006 repair at the Paana home. PG&E failed to test the line at the time, and did not recheck it even after a similarly faulty repair was discovered nearby. A PG&E technician, who responded to reports of a gas smell in the neighborhood the day of the explosion, discovered the leak in front of the Paana house. But she found nobody home and apparently went to her vehicle to await help without posting a warning. Reportedly, the technician missed Paana and his family when they returned. PG&E took hours to send a properly trained and equipped crew to the site to fix the leak. The fatal explosion occurred just after that crew arrived.

State and federal investigators discovered that PG&E crews went to the Paana home several times in September 2006 to deal with a leaky plastic distribution pipe. The crew installed a new 6-inch piece of plastic pipe whose walls were too thin to qualify as standard ground pipe. The inferior piece came loose from a connector, causing the line to leak. The gas ignited when Mr. Paana's granddaughter lit a cigarette in the home.

PG&E admitted to state investigators that crews and company supervisors had not followed proper procedures during pipe installations. The three hours it took to get a qualified crew to the neighborhood was found to be unreasonable. Since the two explosions—one in Rancho Cordova, and the other in San Bruno—safety procedures have been tightened. The company has also replaced its senior management since the San Bruno disaster.

The $38 million is not only the largest-ever fine against a California utility for gas-related violations, it is one of the few fines of this sort that the Public Utilities Commission has ever imposed. State regulators did not levy a single fine against PG&E for violations of natural gas safety laws during a ten-year period from 2000 to 2010 in which the utility was charged with more such infractions than the rest of the state's major pipeline operators combined.

Source: sfgate.com

**North Carolina Investigates Deadly Cotton Gin Accident**

North Carolina workplace safety investigators have been looking into what killed a worker at a Jones County cotton gin. It was reported that 62-year-old Dennis Foy, who died from his injuries, was moving cotton bales in a warehouse with a forklift. He was found on the ground surrounded by bales weighing several hundred pounds, each having fallen from a stack.

The company, its insurance company and the state's Occupational Safety and Health Division are investigating. According to Neal O'Briant, who is with the State Labor Department, it's typically three to four months between an accident and any decision whether to penalize an employer with citations.

Source: Kansas Free Press

**OSHA Proposes $195,930 Fine Over Fatal Accident In Missouri**

A Missouri company could face nearly $200,000 in fines after the U.S. Occupational Safety and Health Administration cited 37 health and safety violations in an investigation that began after a fatal accident that occurred in June of last year. A worker at Resource Management, a suburban St. Louis company, died June 12 in an accident involving a baling machine at the recycling company. Twenty-two of the 37 violations are considered serious, according to OSHA. The agency proposed fines of $195,930. Resource Management had 15 business days to comply, request an informal conference with OSHA, or contest the findings.

Source: Claims Journal

**More Safety Violations Cited At Mississippi Electrical Plant**

Federal workplace safety officials have again cited a Mississippi electrical and lighting maker for unsafe practices. The U.S. Occupational Safety and Health Administration accused Laurel-based Howard Industries of eight rules violations, which could carry a fine of up to $59,000. The company, which also makes computer and other equipment, has more than 3,000 employees at plants in and around Laurel. It also has plants in Mendenhall, Miss., and Weirton, W.Va.

The latest violations are for Howard's plant in Laurel that makes radiators for electrical transformers. OSHA officials cited Howard for repeat violations on two issues—allowing employees to work on machines that were not safely disabled, and using electrical equipment that wasn't fully grounded. OSHA cited six other violations, including failing to make sure workers are protected when using chemicals or grinding equipment. Clyde Payne, the head of OSHA's Jackson, Miss., office, said the citations arose from an inspection six months ago. He said OSHA visited the plant because of its high rates of injury and work-related illness.

According to federal records, the Howard plant had five times as many recorded work-related illnesses and injuries in 2009 as the national average for factories. Howard did not respond to requests for comment. The company has been accused of more than 130 rules violations in the last five years, according to OSHA records. Howard has paid or agreed to pay more than $300,000 in fines to the agency in the five-year period.

Despite the company's record, Payne said that OSHA believes safety is improving at Howard's plants. Less optimistic were officials with the International Brotherhood of Electrical Workers, which represents employees at some of Howard's plants, although not the plant recently cited. Roger Doolittle, a lawyer for the union's Local 1317, had this to say:

*This appears to be yet another example of Howard Industries' failing to comply with federal rules.*

Howard has also had problems with federal authorities over employing illegal immigrants. After agents detained nearly 600 illegal immigrants in 2008, the largest such raid in U.S. history, Howard pleaded guilty to conspiracy to violate immigration laws and was fined $2.5 million.

Source: Insurance Journal

**Wrongful-Death Suit Filed By Worker’s Family**

The estate of Javier Salinas, a construction worker who fell more than 50 feet to his death at the Chelsea Piers construction site in Stamford, Conn., has filed a wrongful-death lawsuit against the man's employers, Ashford Properties Construction Inc., and its parent company, the Ashford Company Inc.; Merritt Contractors Inc.; Stamford Exit 9 LLC; Chelsea Piers Connecticut LLC. American Building Group Inc.; and American Building Group LLC are all named as Defendants in the suit.

Filed in state Superior Court in Bridgeport on behalf of Salinas’ widow, the suit
A woman who was struck by a school bus when she was in high school and lost her left leg was awarded $14 million by a Pennsylvania jury last month. The award will likely be reduced under an unjust state law. Ashley Zauflik, 22, spent a month in a medically-induced coma and had her leg amputated after the January 2007 crash that occurred in the Philadelphia suburbs. The National Transportation Safety Board found that the driver stepped on the accelerator, not the brake, before crashing into a crowd of students during dismissal at a local high school. The driver had disputed that finding, but the School District admitted liability before trial.

The trial judge is expected to reduce the award to $500,000, the cap allowed under a 1980 Pennsylvania law that protects municipalities and school districts. The lawyer representing the Plaintiff will attempt to negotiate a higher settlement with the district and, if unsuccessful, appeal the cap to the state Supreme Court. The High Court last upheld the limit in 1986. It is obviously much too low in a serious case such as this one.

Ms. Zauflik testified that the crash left her “disfigured” and struggling with depression. She has had trouble using a prosthetic leg and relies instead on crutches or a wheelchair to ambulate. Ms. Zauflik finished high school at home and is now enrolled in an online college course. Her mother told the jury of the difficulty she had telling her daughter about the amputation when she regained consciousness.

The jury award includes $11 million for pain and suffering and other non-economic damages, and about $3 million for past and future medical expenses. The award will pay for better prosthetic devices that will allow the Plaintiff to be more active. Experts estimated her lifetime medical expenses at more than $5 million, most of it for the prosthetic devices, which must be refit periodically. The $500,000 cap applies to all awards stemming from a single incident. Seven others have sued over injuries from the crash. If the cap is upheld, Ms. Zauflik could have to share the $500,000 with any others who are successful with their claims. Tom Kline, a lawyer with the law firm of Kline & Spector, a Philadelphia firm, represents the Plaintiff and is doing a very good job. Hopefully, Tom will be able to help a most deserving client get complete justice in this case.

Source: Claims Journal

**NO CELLPHONE, AND NO TEXTING BY DRIVERS**

Texting, emailing or talking on a cell phone while driving a motor vehicle is simply too dangerous to be allowed. Federal safety investigators declared last month that such activity should be banned. All states were urged to impose total bans except for emergencies. The unanimous recommendation by the five-member National Transportation Safety Board would make an exception for devices deemed to aid driver safety such as GPS navigation systems. A group representing state highway safety offices called the recommendation “a game-changer.” Hopefully, that will prove to be the case.

Unfortunately, most the states don’t appear to be ready to support a total ban at this point. Hopefully, this move by the Board will start a needed discussion. Jonathan Adkins, a spokesman for the Governors Highway Safety Association, believes that it will. NTSB chairman Deborah Hersman acknowledged the recommendation would be unpopular with many people and that complying would involve changing what has become ingrained behavior for all too many Americans. While the NTSB doesn’t have the power to impose restrictions, its recommendations carry significant weight with federal regulators and both federal and state lawmakers.

Currently, 35 states and the District of Columbia ban texting while driving, while nine states and D.C. bar hand-held cell-phone use. Thirty states ban all cellphone use for beginning drivers. But enforcement is generally not a high priority, and no states ban the use of hands-free devices for all drivers.

Source: Associated Press

**DRIVER TEXTED 11 TIMES BEFORE DEADLY CRASH IN MISSOURI**

A deadly highway crash in Missouri last year involved texting and driving. In that incident, a 19-year-old pickup truck driver sent or received 11 texts in the 11 minutes immediately before the crash, according to federal investigators. The driver sent six texts and received five texts, with the last text just before his pickup crashed into the back of a tractor-trailer, beginning a chain collision. The pickup was rear-ended by a school bus, which in turn was rammed by a second school bus. The pickup driver and a 15-year-old student on one of the school buses were killed. Thirty-eight other people were injured in the Aug. 5, 2010 incident.

Nearly 50 students, mostly members of a high school band from St. James, Mo., were on the buses heading to the Six Flags St. Louis amusement park. The incident was said to be a “big red flag for all drivers.” It’s not possible to know from cell phone records if the driver was typing, reaching for the phone or reading a text at the time of the crash, but it’s clear he was manually, cognitively and visually distracted. The tragic consequences of texting while...
driving should get the attention of lawmakers around the country.

Source: CBS

$36 Million Settlement In Lawsuit Over Bus-Trailer Crash

The owners of a Canadian charter bus and a tractor-trailer have agreed to pay $36 million to settle a lawsuit arising out of a 2005 highway collision in western New York that killed four people and injured 19. The settlement with Coach Canada and two Pennsylvania trucking firms came as a number of trials were set to begin last month. The bus was carrying a Canadian youth hockey team from Windsor, Ontario, when it swerved off an interstate highway about 30 miles south of Rochester and slammed into the truck parked on the side of the highway. Two insurers for Coach Canada are paying $22.5 million—almost two-thirds of the settlement—and three insurers for the truck operator, J & J Hauling Inc. of York Springs, Pa., and trailer owner Verdelli Farms of Harrisburg, Pa., are contributing $13.5 million.

Investigating officers suspected that driver fatigue and inexperience led to the crash. The 24-year-old bus driver had driven for the bus company for two months. Witnesses said he was driving erratically before the crash. The driver pleaded guilty to a logbook violation and a traffic violation of failing to stay in the proper lane and was fined $300. The bus was chartered in Windsor by the hockey team and was traveling to a ski resort when the crash occurred at dusk. Authorities alleged the bus driver lied about the hours he worked in another job during the three days before the crash and failed to report in the driver’s log book that he drove team members around Rochester in the six hours before they embarked on the ski trip. Commercial drivers are required to maintain accurate logs of their work hours and break times.

Source: Washington Post

Jury Awards $11.35 Million In Airplane Crash Case

A Philadelphia jury awarded a doctor and his fiancé $11.35 million last month for injuries suffered in a 2007 plane crash outside Atlanta. Dr. Robert Marsico Jr., 47, a dermatological surgeon from Akron, and Heather Moran, a 39-year-old professional pilot, were fortunate to survive the crash. The verdict was against Winner Aviation, a Pennsylvania-based company that maintained the plane. The jury found that the plane had not been properly maintained prior to the crash.

Ms. Moran flew the twin-engine Cessna Skymaster airplane, which was owned by Dr. Marsico. Shortly after taking off from DeKalb-Peachtree Airport in Atlanta, the aircraft developed engine problems and crashed in a non-populated area near a water treatment facility. The crash knocked Ms. Moran unconscious, but she was revived by Dr. Marsico, whose legs were crushed. As Ms. Moran was helping Dr. Marsico get out of the plane, a wing exploded—engulfing both of them in fire. Dr. Marsico suffered lung and respiratory system injuries from breathing in flames and fuel and third-degree burns. Ms. Moran suffered third-degree burns to 40 percent of her body. As a result, she can no longer fly because she has been unable to pass the FAA’s medical examination.

Dr. Marsico’s plane was maintained for several years by Winnet Aviation, which serviced it at the Youngstown-Warren Airport. The Skymaster was plagued with recurrent problems with its rear engine, which doesn’t get cooled because very little air blows over it. Maintenance of that engine requires vigilance and regular repairs. On the day of the takeoff, the rear engine lost power. While the plane is designed to run on one engine, the front engine failed to deliver the power for Ms. Moran to keep it airborne, making an emergency landing necessary. Further inspections of the engines—which survived the crash—showed that Winnet Aviation did not repair the rear engine and that the front engine was due for an overhaul that was not performed.

Following the crash, Dr. Marsico was in an induced coma in an Atlanta hospital. It took many months and surgeries before he was able to return home. Fortunately, Dr. Marsico’s hands were not severely burned. He can’t walk normally, but he has been able since 2009 to provide medical care to his patients. Jamie R. Lebovitz, a Chicago lawyer, along with Arthur Allen Wolk from Philadelphia, handled this case and they did a very good job for their clients.

Source: Cleveland.com

Jury Awards $10 Million In Segway Accident

A Connecticut jury has awarded $10 million to a 23-year-old man who suffered a brain injury in an incident involving a Segway vehicle. The jury in the Bridgeport Superior Court found that New Hampshire-based Segway Inc. and two employees were responsible for John Ezzo’s injuries. The incident happened in September 2009 at a company demonstration of its two-wheeled vehicle at Southern Connecticut State University in New Haven.

The Segway is a two-wheeled electric scooter. It’s described as a pedestrian enhancement vehicle that is designed to operate in close quarters. Ezzo was riding the Segway blindfolded and without a helmet through an obstacle course set up by company workers when he fell off and injured his head. Ezzo had to drop out of the university because of the injury and now works as a handyman. Robert Adelman, a lawyer with the Bridgeport law firm of Adelman, Hirsh and Newman, represented the Plaintiff in this case and did a very good job.

Source: Claims Journal

Jury Awards $8.5 Million In Wrongful Death Lawsuit

A New Hampshire jury has awarded a woman and her two children $8.5 million in a wrongful death lawsuit against a trucking company. A federal court jury in Concord found last month that Loignon Champ-Carr Inc. negligently caused the death of 38-year-old Jon Paul Lacaillade II. The man was killed in 2008 when a Loignon tractor-trailer ran over and killed him while he was bicycling in Porter, Maine. Lacaillade’s widow, Michele Lacaillade, and their two children filed suit last year against the company, which is based in Quebec, but has a U.S. presence in Cornville and Jackman, Maine.

Source: Insurance Journal

Jury Awards Survivor Of Bus Crash $7.2 Million

A Colorado woman, who was injured in an early morning, roll-over crash involving a Greyhound bus in rural Texas in December 2007, was awarded $7.2 million last
month by a Dallas jury. The Plaintiff, Ashley Reedy, alleged the Greyhound driver was using a cell phone while driving in icy conditions on an interstate highway in Wheeler County, Texas. The bus driver braked improperly as he approached a wreck that had occurred on the highway. He lost control of the bus, which rolled over. Ms. Reedy suffered injuries to her head, neck and back.

It was proved during the trial that Greyhound had hired an unqualified driver who was improperly trained. The bus driver received three speeding convictions shortly before Greyhound hired him. He had used his cell phone 17 times in the three hours before the accident. Jurors awarded 24-year-old Ms. Reedy $2.2 million in damages and $4.8 million in punitive damages, after finding that Greyhound and its driver were grossly negligent causing the crash. Ryan Zehl and Kevin Haynes, lawyers with Houston-based Fitts Zehl LLP, represented Ms. Reedy in this case and they did a very good job.

Source: sacbee.com

**Settlement in Death of Police Officer**

A settlement has been reached in a civil lawsuit filed in 2010 in the hit-and-run death of a Lexington, Ky., police officer. The suit was filed by Brandy Durman, the widow of officer Bryan Durman, who died after being hit by an SUV while investigating a routine traffic accident on April 29, 2010. The Defendant was Glenn Doneghy, 35, the driver who was convicted on second-degree manslaughter in Durman’s death. The amount of the settlement in the civil suit was confidential.

Doneghy also was found guilty of leaving the scene of an accident, second-degree assault and possession of cocaine, which are all felonies. He was also found guilty of possession of marijuana, fourth-degree assault and possession of drug paraphernalia, all misdemeanors. Circuit Judge James Ishmael sentenced Doneghy to 20 years, and said he regretted that state law won’t allow him to do more. Joe C. Savage, a lawyer with Savage, Elliott, Houlahan, Moore, Mullins & Skidmore, located in Knoxville, handled the case and did a very good job.

Source: Kentucky.com

**FAA Passes Rule Aimed at Increasing Rest For Airline Pilots**

The Federal Aviation Administration has passed a rule that will require passenger airline pilots to work fewer hours and get longer breaks between shifts. The revised U.S. aviation regulations were spurred by a crash that killed 50 people nearly three years ago. The new rule, announced on December 21st, aims to keep flight crews as alert as possible and reduce mistakes. The rule was delayed for years by airline opposition over cost and scheduling concerns. Transportation Secretary Ray LaHood said that the new rule “gives pilots enough time to get the rest they really need.”

The policy, which was last updated in the mid-1980s, would reduce the maximum work day from 16 hours to 14 hours per day. Pilots would get at least 30 consecutive hours free from duty on a weekly basis, a 25 percent increase over current policy. The rule also sets a ten-hour minimum rest period prior to flight duty, a two-hour increase over the old rule. The FAA imposed a “fitness for duty” standard on pilots, who would have to certify before starting work that they are well rested.

Airlines have two years to comply with the new standard. The rule would cost airlines an estimated $297 million over ten years, nearly $1 billion less than an estimate included in a 2010 FAA proposal. Airlines strongly pressured regulators to change certain provisions due to cost concerns. As a result, the measure spent extended time under review by the White House budget office. The final measure wound up exempting cargo carriers and dropping certain reporting requirements.

At press time, the biggest airlines hadn’t endorsed the policy, saying they would review the rule first. The Air Line Pilot Association also said it was reviewing the rule. That group, which represents pilots at United Airlines, Delta Air Lines, and several regional carriers, opposed the exemption for cargo airlines, including FedEx Corp and UPS Inc.

The fatigue rule change was ordered by Congress following the crash of a Colgan Air commuter flight near Buffalo N.Y., in February of 2009 that killed 50 people. While investigators did not blame the crash on fatigue, they did say the crew of the plane, operating as Continental Connection Flight 3407, was “probably over-tired” during the late night flight from Newark.

Source: Insurance Journal

**A New Rule For Truckers**

The Obama Administration decided against a reduction in truckers’ daily hours behind the wheel, but made other changes aimed at fighting driver fatigue. The rule issued last month by the Federal Motor Carrier Safety Administration continues to permit drivers to be on the road for up to 11 hours daily, something favored by the trucking industry, but would reduce by 12 hours the maximum number of hours a driver can work within a week to 70 hours. A 34-hour gap between the end of one week and the start of another remains unchanged, under the new Federal Motor Carrier Safety Administration rule. But truckers cannot drive after working eight hours without first taking a break of at least 30 minutes.

The rule takes effect in 18 months and would apply to the operations of companies like FedEx Corp., UPS Inc. and YRC Worldwide. More than a decade in the making and the subject of two court appeals, this is the most comprehensive trucker rule rewrite in more than 65 years. The agency considered imposing a ten-hour daily maximum but said scientific data did not support a reduction. The rule does put more emphasis on limits to driver hours over a week or more.

Consumer and safety groups said they may go to court again over the 11-hour provision, first imposed by the Bush Administration. The last federal appeals challenge involved a settlement in 2009 to let the Obama Administration come up with a plan. Henry Jasny, general counsel for Advocates for Highway and Auto Safety, which spearheaded previous legal challenges along with unions and consumer interests, says they are “still looking for some kind of rationale for the rule.”

The trucking industry favors the longer daily driving limit to maintain capacity, but doesn’t like a provision aimed at giving drivers more flexibility for rest breaks during overnight hours. Its trade group, American Trucking Associations, said the rule would increase heavy truck traffic on highways during busy morning commuting periods. Large truck crash deaths rose more than 8.7 percent in 2010 to 3,675 from a year earlier, according to Transportation Department figures. Most of those
killed were occupants of passenger cars involved in accidents with large trucks.

Fatigue was cited in between 1.4 to 2.1 percent of truck-related fatal crashes between 1999-2007, according to the latest government safety data. Lawyers in our firm say, based on what they have learned handling cases involving highway crashes, that driver fatigue is a very big problem. Hopefully, the new rule is a step in the right direction. But, from a highway safety perspective, it shouldn’t be the last step. 

Source: Insurance Journal

XX.
HEALTHCARE ISSUES

CONCERNS ABOUT OVERUSE OF ANTI-PSYCHOTIC DRUGS ON NURSING HOME PATIENTS

In the United States, elderly patients with dementia are too often prescribed anti-psychotic drugs to calm their disruptive behavior, a costly and risky practice that should end. Instead, more care should be taken to determine why dementia patients may be acting up and treat those underlying causes, lawmakers were told at a hearing of the Senate Committee on Aging. Daniel Levinson, Health and Human Services Inspector General, testified: “As the Baby Boomer generation ages, it is imperative to address the overuse and misuse of antipsychotic drugs among nursing home patients.”

Recent government audits have raised concerns about the use of antipsychotics by elderly people with dementia in nursing homes, raising their risk of death and wasting money for the US healthcare system. For instance, more than half of such prescriptions were wrongly paid for in 2007 by government Medicare because the patients did not exhibit symptoms of schizophrenia or bipolar disorder, amounting to about $230 million in waste. One audit showed 14 percent of nursing home residents had Medicare claims for antipsychotic drugs.

But another panel member, Toby Edelman, senior policy attorney in the office of the Center for Medicare Advocacy, said that audit’s estimate was low because it only included some kinds of anti-psychotics. Ms. Edelman had this to say about the situation:

“Nursing facilities’ self-reported data indicate that in the third quarter of 2010, 26.2 percent of residents had received antipsychotic drugs in the previous seven days. That is approximately 350,000 individuals. Facilities reported they gave antipsychotic drugs to many residents who did not have a psychosis, including 40 percent of patients at high risk because of behavior issues.”

Edelman also pointed out that this issue is far from new, and that the same Senate committee had issued a report on the misuse of drugs in nursing homes back in 1975, and held a workshop on the topic two decades ago. The practice persists, even though it is against federal law, because of serious understaffing in nursing facilities, high turnover of staff, and “aggressive off-label marketing of anti-psychotic drugs,” she said.

The pharmaceutical giant Eli Lilly in 2009 paid almost $1.5 billion in settlement for off-label promotion of its drug Zyprexa as a treatment for dementia. The drug is FDA-approved for bipolar disorder and schizophrenia. According to Tom Hlavacek, executive director at Alzheimer’s Association’s southeastern Wisconsin chapter, elderly people with dementia are sometimes prescribed these potent drugs for behaviors that have other causes.

Urinary tract infections, tooth decay, arthritic pain, or simply moving a patient from one place to another can lead to agitated behaviors. He told lawmakers that their “experience indicates that these care transitions can exacerbate behaviors and often lead to escalating drug treatments.” Experts said solutions could include creating stronger penalties for inappropriate prescribing, and a renewed focus on trying non-pharmacological approaches to a problem first. Jonathan Evans, a doctor who specializes in caring for frail elders, had this to say:

“Most doctors treat unwelcome behavior in all settings as a disease that requires medication. These drugs are used as chemical restraints. Behavior is not a disease. Behavior is communication. And in people who have lost the ability to communicate with words, the only way to communicate is through behavior. Good care demands we figure out what they are telling us and help them.”

The public should demand that the federal government do a better job of regulating the out-of-control and politically-powerful drug industry. The public would be shocked if it only knew how poorly regulated the drug manufacturers are. The blame really is with Congress and results from the tremendous political power of the drug industry.

Source: New York Daily News

SUIT FILED OVER TAINTED CANTALOPE

An Nebraska man has sued Jensen Farms, of Holly, Colo., alleging it is responsible for the tainted cantaloupe that made him and his daughter sick with listeriosis. The lawsuit was filed in federal court by Dale Braddock against Jensen Farms and other companies that he says handled or otherwise were involved in getting the product to his kitchen table. As you will recall, Jensen Farms recalled its whole cantaloupes on September 14th. According to federal health officials, at least 29 deaths have been linked to the listeria outbreak in a dozen states.

Source: Lawyers USA Online

XXI.
ENVIRONMENTAL CONCERNS

ENVIRONMENTAL GROUP IDENTIFIED TEN STATES WITH COAL ASH POLLUTANTS

A Washington, D.C.-based environmental group says its research has identified new sites in ten states where coal ash appears to have contaminated groundwater or soil at unsafe levels. The Environmental Integrity Project, in a report released last month, said the 20 sites are in addition to 67 “potential damage” pollution cases that the Environmental Protection Agency has documented and another 70 coal ash sites that the project previously identified.

The report adds seven sites in Illinois, three in South Carolina, two each in Iowa and Texas and one each in Tennessee, Kentucky, Georgia, Florida, Indiana and Nevada. The EPA is struggling with a proposal to regulate coal ash as hazardous material. In Congress, some Republicans...
are trying to block the stricter regulation in legislation and in a rider to a pending appropriation measure.

Source: Claims Journal

**Alabama Ranked Eighth on List of “Filthy 15” States for Air Pollution**

Alabama made a list recently, but it didn’t bring good news to our state. Toxic emissions from coal-fired power plants in the state rank Alabama number eight among the “Filthy 15” states, according to a new analysis by the nonprofit advocacy group, Environmental Integrity Project (EIP). These rankings are based on the total releases of arsenic, chromium, hydrochloric acid, lead, mercury, nickel and selenium. The totals are drawn from reports submitted by utilities to the U.S. Environmental Protection Agency.

Unlike other industries that face federal clean air restrictions on the release of air toxics, the utility industry won a temporary exemption to the 1990 revisions to the Clear Air Act and has continued to fight hard against the proposed regulations. Southern Company, Alabama Power’s parent company, has vocally opposed the regulations, claiming they could force the shutdown of some plants. Bruce Niles, the director of the Sierra Club’s Beyond Coal initiative, and other advocates, contended that the technology exists and has existed for decades to reduce emissions. They say power companies have made dire predictions of economic consequences that simply haven’t panned out.

Environmental advocates contend that the benefits to health would outweigh the costs of updates. The EPA has estimated that the power plant air toxics rule would avoid between 6,800 and 17,000 premature deaths each year. The agency is facing a court-ordered deadline to adopt air toxics rules for power plants, which will force reductions of mercury, acid gases and fine particulates, which contain heavy metals.

Alabama ranks sixth in the nation for electrical power generation, and a majority of that power is generated by the nine coal-fired power plants in the state. Despite Alabama’s ranking among the top eight states for toxic releases, there are suggestions in the numbers released by EIP that pollution controls are having some effect. Hopefully, that is an accurate appraisal.

Source: AL.com

**Mercury Pollution Rules to Hit Power Generating Plants**

A rule limiting the amount of mercury and other toxic air pollutants power plants can emit likely will force changes at coal-fired generating units in Alabama and around the country. The Environmental Protection Agency finalized the rule last month, after more than a decade of debate.

Environmentalists and health advocates hailed the decision as one of the most significant public health and environmental protections in years, one that will decrease air pollution and cut the mercury contamination that has led to widespread warnings against eating fish caught in state waters. Michael Churchman, executive director of the Alabama Environmental Council, said that the new rule “is a victory for clean air in Alabama and across our country.”

But not everyone is happy with the new rule. Some in the power industry, including Alabama Power’s parent Southern Company, have complained that the rule would force either costly environmental upgrades or the shutdown of generating units in a short time frame, which could lead to higher costs for consumers and reliability problems. Some other companies in the industry, however, have urged the EPA to proceed with the rule because they have already complied and want a level playing field. An Alabama Power spokesman said the company is reviewing the rule. Utilities, which in 1990 won what was to be a temporary exemption from Clear Air Act requirements faced by other industries, will have four years to meet the limits imposed in the rule. That’s a year longer than originally proposed.

There are about 1,400 coal and oil-fired electric generating units at 600 power plants that will be covered by the standards. About 40 percent of coal-fired units don’t use pollution control devices to limit mercury, metallic toxics, acid gases and organic air toxics, including dioxin. Alabama ranks sixth in the nation for electrical power generation, and a majority of that power is generated by the nine coal-fired power plants in the state.

Nationally, EPA estimates that when the rule is fully in effect in 2016, the nation will see 2,800 fewer cases of chronic bronchitis, 4,700 fewer heart attacks and 130,000 fewer cases of aggravated asthma. The EPA estimates the new rule would decrease hospital and emergency room visits by 5,700 a year and cut by 540,000 the number of days of work people miss due to air pollution-related medical problems. The EPA estimates the new standards will prevent up to 11,000 premature deaths nationwide and 360 in Alabama, while creating up to $3 billion in health benefits in the state in 2016. However, the EPA also estimates the total national cost of the rule will be $9.6 billion a year.

Sources: AL.com, The Birmingham News and The Montgomery Advertiser

**EPA Issues $79,000 Fine for Nevada Company’s Hazardous Waste Facility**

Federal environmental regulators have fined 21st Century Environmental Management of Nevada LLC $79,500 for mishandling the storage of hazardous waste at a facility in Fernley, Nev. The U.S. Environmental Protection Agency announced the fine last month against the company. According to the EPA, a series of federal violations were found during an inspection in 2010. Among other things, they found hazardous waste being stored in unpermitted areas, in cracked and deteriorated containment areas and in at least one leaking container. The company was cited under its Resource Conservation and Recovery Act program. The act requires hazardous substances to be stored and disposed of in a way that safeguards public health and the environment.

Source: Associated Press

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**XXII. THE CONSUMER CORNER**

**A $4.3 Million Settlement for Consumers in Georgia**

Nelson, Hirsch & Associates, Inc., a Georgia debt collections company, and its owner, Tanya Santiago, have entered into an Assurance of Voluntary Compliance with the Georgia Governor’s Office of Consumer Protection (OCP), resolving charges that the company committed multiple violations of the federal Fair Debt Collection Practices Act and the Georgia Fair Business Practices Act. The investigation by OCP stemmed from a series of reports from consumers who stated that Nelson, Hirsch & Associates harassed and deceived them by:
• Failing to disclose that it was a debt collector attempting to collect a debt;
• Threatening consumers with arrest, imprisonment or charges of fraud if they did not pay the debt;
• Refusing to send consumers written proof of the debt owed;
• Collecting more than the amount owed or authorized;
• Threatening to call the consumer’s employer and have the consumer’s wages garnished;
• Falsely representing to consumers that it was affiliated with a law firm and/or that the caller was a fraud investigator;
• Continuing to contact consumers even after they told the company to stop calling them;
• Calling consumers at unusual hours such as before 8:00 am or after 9:00 pm;
• Calling consumers at work, knowing that their employers prohibited such contact;
• Speaking to consumers in a harassing and abusive manner;
• Threatening consumers’ family members; and
• Calling repeatedly, sometimes as much as 50 times a day.

Under the Assurance, Nelson, Hirsch & Associates and Ms. Santiago are required to cease business operations. Further, Ms. Santiago must refrain from engaging in any aspect of debt collection activities in Georgia or in connection with Georgia consumers for a period of at least five years. In addition, the company and Ms. Santiago will forego collection of 5,809 consumer accounts that they had purchased from creditors who had previously written off the debts. These accounts total $4,307,658. The company must also pay a $26,000 civil penalty and reimburse OCP for investigative and legal expenses in the amount of $24,000. John Sours, Administrator of the Governor’s Office of Consumer Protection, had this to say:

\[\text{We are sending a strong and clear message that this kind of abuse and harassment of consumers, and the egregious disregard for the law that these practices typify will not be tolerated.}\]

The Georgia agency should be commended for taking this action. It was brought to my attention by Tammy Massengale, a dedicated public servant, who is with OCP. The agency continues to do good work for all Georgia citizens. Protecting consumers is a responsibility that some in government refuse to do. It’s good to see that our neighboring state has public officials who recognize their responsibilities and will work to get the job done.

Source: OCP News Release

**WAL-MART PULLS FORMULA AFTER BABY DIES IN MISSOURI**

Wal-Mart removed a batch of powdered infant formula from more than 3,000 stores nationwide after a Missouri newborn died from a rare infection, after consuming the formula. The bacteria in question occur naturally in the environment and in plants such as wheat and rice. But the most worrisome appearances have been in dried milk and powdered formula. That is why manufacturers routinely test for the pathogens.

Wal-Mart pulled the Enfamil Newborn formula from shelves as a precaution following the death of the infant in Lebanon, Mo. At press time, the government had not ordered a recall. The manufacturer, Mead Johnson Nutrition, said tests showed the batch was negative for the bacteria before it was shipped. Additional tests were under way at press time.

Wal-Mart said it felt that it was best to remove the product until it learned more. Customers who bought formula in 12.5-ounce cans with the lot number ZP1K7G have the option of returning them for a refund or exchange. While the product is not exclusive to Wal-Mart, the manufacturer has not said how widely distributed the formula was among other stores.

A second Missouri infant became sick after consuming powdered baby formula in the last month, but that child recovered, according to state health officials. Powdered infant formula is not sterile, and experts have said there are not adequate methods to completely remove or kill all bacteria that might creep into formula before or during production.

Preliminary hospital test results indicated that the Missouri infant died of a rare infection caused by Cronobacter sakazakii. The infection can be treated with antibiotics, but it’s deemed extremely dangerous to babies less than one month old and those born prematurely. The family submitted two types of infant formula for testing—the powdered version and a pre-sterilized, ready-to-eat liquid—as well as the distilled water used to prepare the powdered product. The infant was taken to a pediatrician on December 15th—a week after he was born—after showing signs of stomach pain and lethargy. When the pain persisted the next day, his parents took him to an emergency room.

The infant died at a hospital in Springfield after being removed from life support. The Missouri Department of Health advised parents to follow safety guidelines for preparing powdered infant formula, including washing hands, sterilizing all feeding equipment in hot, soapy water and preparing enough formula for only one feeding at a time.

Source: Associated Press

**LAWMAKERS BLOCK SAFETY RULES FOR LITHIUM BATTERY SHIPMENTS**

Lawmakers responded to pleas from industry and foreign governments on December 2nd with a tentative agreement to block the Obama Administration from requiring that air shipments of lithium batteries be treated as hazardous cargo because of the danger of fires during flight. The deal came in talks in Congress on a long-term funding bill for the Federal Aviation Administration. The bill effectively will block new battery-shipment rules by insisting the U.S. follow international standards, which are less stringent.

Pilot unions said the international standards do not provide enough safety and are weaker than rules the Administration proposed nearly two years ago but never made final. The unions and the National Transportation Safety Board have sought for several years new rules on air shipments of the batteries to prevent fires that could cause air crashes and deaths. A fire broke out five years ago in cargo containing lithium batteries and other goods on a United Parcel Service plane, forcing an emergency landing in Philadelphia, Pa. No one was killed, but one of the pilots said he was only able to escape with seconds to spare. The cause of the fire was not conclusively determined, but batteries were suspected.
Last year, another UPS plane with a fire raging on board, and carrying thousands of lithium batteries, crashed near Dubai in the United Arab Emirates, killing both pilots. The accident is still under investigation, but preliminary reports indicate investigators have focused much of their attention on the batteries. Mark Rogers, who heads the Air Line Pilots Association’s committee on hazardous cargo, stated: “We’re very concerned that unless this issue is addressed we’ll continue to see accidents and we’ll continue to see fatalities.”

The U.S. should not “adopt an existing international standard on lithium batteries that’s generally recognized as inadequate,” Robert Travis, president of Independent Pilots Association, which represents UPS pilots, said in a statement. Travis believes the FAA bill “is an opportunity for the U.S. to lead by setting a higher standard on the carriage of lithium batteries.” The use of rechargeable lithium-ion and non-rechargeable lithium-metal batteries has soared since the late 1990s. Millions of products from laptops to cell phones to watches contain the batteries. And, in an age of increasing globalization of trade, those products often are shipped by air to and from the United States and other countries.

Source: Insurance Journal

**RECALL PUTS SUBARU SALES ON HOLD**

We are listing the recall of Subaru’s 2012 Impreza, Legacy and Outback vehicles in the Recalls Section. The recall has put sales on hold for dealers. The Subaru dealers are suddenly left with few new cars to sell because of the recall and stop-sale order prompted by braking system problems in the vehicles. It should be noted that Forester and Tribeca crossovers aren’t affected. The trouble with the recalled models is that the driver has to push the brake pedal too far down before it slows or stops the car. Subaru is shipping new brake master cylinders to fix the problem both in cars in stock and those already sold, according to a Subaru spokesman, Michael McHale.

The recall, quietly begun by Subaru on November 25th—very interesting timing—applies to about 3,000 cars sold and an undisclosed number in inventory. Subaru already was short on new cars as a result of strong sales coupled with supply problems arising from March’s earthquake and tsunami in Japan.

*Autoweek* says the faulty master cylinders made their way into cars produced at Subaru’s plants both in Japan and Lafayette, Ind. The publication reported that the National Highway Traffic Safety Administration had received about 130 complaints about the problem. Interestingly, NHTSA’s safecar.gov recall site showed no record of the Subaru brake recall. NHTSA says the documents were received on November 26th and a recall notice was then published on the NHTSA site. The government requires that new cars be taken off sale when replacement parts aren’t readily available during safety recalls.

Source: azcentral.com

**FEDERAL AGENCY TO HOLD HEARING ON AIR SHOWS AND RACES**

A federal hearing will examine the safety of air races and air shows after a horrific crash killed 11 people and injured more than 70 at an event in Reno. While the hearing before the National Transportation Safety Board will not be solely related to the Sept. 16 disaster at the National Air Race Championships, the 47-year-old competition will be included in the review. Chairman Deborah Hersman and all five agency board members plan to participate in the hearing this month which is scheduled to start on January 10th at NTSB headquarters in Washington, D.C. This is a clear sign that the issue is considered to be especially important.

The hearing will attempt to gather information on safety regulations and oversight in the planning and execution of air races and shows. Testimony at the hearing will come from regulators, aviation organizations, industry groups and airport authorities. They will be questioned about safety practices, procedures and protocols. Since there is not yet a witness list, it’s not known whether any Reno officials are invited to testify.

The hearing is separate from one that will be held to determine what caused a modified World War II-era aircraft dubbed “The Galloping Ghost” to crash into the apron of the grandstand filled with thousands of people at Stead Airport. The victims included the pilot, Jimmy Leeward, a veteran movie stunt pilot and air racer who competed at the Reno air races since 1975. Photos showed a tail part known as an elevator trim tab missing as the P-51D Mustang climbed sharply then rolled and plunged nose-first at more than 400 mph into box seats. It was the first time spectators had been killed at a national competition since the races began 47 years ago in Reno. But 20 pilots, including Mr. Leeward, have died in that time, according to race officials.

Source: Insurance Journal

**FOLLOWING HUNTING SAFETY RULES A MUST IN ALL STATES**

Hunting of all sorts is extremely popular in Alabama, as most know, and we are in the deer hunting season at present. A state wildlife official has strongly recommended that hunters review and follow safety rules. A number of deer hunters are killed each year and while the numbers aren’t real large, any death is one too many. Firearms deer season, the most popular hunting season in Alabama, opened November 19th. All hunters should review safety rules and follow them to the letter. Ray Metzler, assistant chief of the wildlife division of the Alabama Department of Conservation and Natural Resources, says:

Safety should be at the forefront while hunting. If a hunter is going to use an elevated stand, they should unload their gun before getting in the stand and before getting off the stand.

Ray is the former hunter education coordinator for the Department. In hunter safety classes, students are instructed that before getting in a stand, their gun should be unloaded, the safety should be on, the action open and the muzzle pointed down. Each year more than 250,000 licensed hunters take to the state’s fields and woods, according to the Department’s website. Fortunately, fatalities among hunters are rare, according to figures released by the Department.

Over the past two years, the leading cause of injuries and fatalities among hunters has been related to tree stand accidents, according to the Department’s data. In 2010, there were 18 tree stand accidents reported, with five of them being fatal. Of the hunters who fell to their deaths in Alabama last year, one was in Autauga County and one was in Dallas County, records show. In 2009, there were 14 tree stand accidents reported, with one fatality.

Hunters using elevated stands also should use full-body harnesses while they
are on the stand and while they are climbing up or climbing down from the stand, Metzler said. Last season there were four firearms-related accidents reported with one fatality, according to state data. A 16-year-old died while hunting in Choctaw County when his gun was dropped inside a shooting house and discharged. In 2009, there were 11 firearms-related accidents reported with one fatality, records show.

Source: Montgomery Advertiser

TV Sports Personality Files Invasion Of Privacy Lawsuit

Erin Andrews, the well-known ESPN reporter, has filed a lawsuit in Tennessee State Court, accusing the Nashville hotel where she was unknowingly videotaped in the nude in 2008 of invasion of privacy, negligence and infliction of emotional stress. In addition to the West End Marriott Hotel, Ms. Andrews also named convicted perpetrator Michael Barrett in the lawsuit. Barrett, an Illinois resident, was sentenced to two and a half years in federal prison in 2010 for stalking Ms. Andrews as she traveled around the country to cover sporting events for ESPN and filming her in her hotel rooms.

The popular sports broadcaster is seeking $10 million in damages for each alleged count—$4 million from Barrett and $6 million from the hotel. She alleges in the lawsuit that Barrett called the Marriott and was told which room Ms. Andrews would be staying in and then rented the room next to her. Ms. Andrews was in Nashville in 2008 to cover a Vanderbilt University football game. The case garnered national attention when it first broke after the videos were leaked to the Internet. After removing or altering the peephole to her hotel room door, Barrett video recorded Ms. Andrews changing clothes and posted the videos to the Web. It is alleged in the Complaint:

The unknowing and unwelcome filming of (Andrews) while she was changing and the further dissemination of unauthorized, private videos of (Andrews) in the hotel rooms has caused and continues to cause her great emotional distress and embarrassment.

Interestingly, Marriott has changed its policies since the incident. Reportedly, it “updated” its “guest registration procedures to further enhance guest privacy.” Mary Parker, a very good Nashville lawyer, represents Ms. Andrews. We wish her well in this matter.

Source: Tennessean.com

XXIII. RECALLS UPDATE

Again, we have a number of safety-related recalls to write about. 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 December 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.

HONDA EXPANDS RECALL OF RISKY AIRBAGS

Honda has expanded its previously-announced recall of vehicles with risky airbags to nearly 900,000 vehicles. The Japanese automaker expanded its earlier recall of Honda and Acura vehicles from model years 2001 through 2003 that were sold in the U.S. Originally, Honda said that it needs to replace the driver's airbag inflator, which has a risk of deploying with too much pressure. The high-pressure airbags could cause the inflator casing to rupture, possibly resulting in injury or fatality, the automaker said.

Honda added 603,000 vehicles to the recall on November 24th. The automaker said the additional cars need to be brought in to an authorized dealer for inspection, because they may contain faulty parts. The automaker said it has determined that 640 questionable airbag parts were sold for installation in cars for collision repair or other reasons.

Honda said because it is unable to determine the specific vehicles that may have received the affected service parts through existing information, the company will inspect an additional 603,000 vehicles and replace those parts as necessary. The expanded recall applies to certain cars of the following makes and model years: 2001 and 2002 Accord, 2001 to 2003 Civic, 2001 to 2003 Odyssey, 2002 and 2003 CRV, 2003 Pilot, 2002 and 2003 Acura 3.2 TL and 2003 Acura 3.2 CL.

SUBARU AND HONDA RECALL VEHICLES DUE TO BRAKE ISSUES

Subaru of America has recalled three of its car models and Honda Motor Co. is recalling some motorcycles, all because the brakes can malfunction. The Honda recall covers 126,000 GL-1800 motorcycles from the 2001 to 2012 model years. A problem with a secondary brake master cylinder can cause the rear brake to drag, possibly causing a crash or fire. In documents sent to the National Highway Traffic Safety Administration, Honda said that 26 complaints have been received, including two about fires. In one case, a customer had to put out the flames with a fire extinguisher. Honda said the problem has not caused any crashes or injuries. Company documents say that only 4 percent of the recalled vehicles have the defective part.

The Subaru recall involves nearly 32,000 Legacy, Outback and Impreza models from the 2012 model year. A defective brake master cylinder could cause the brake pedal to travel farther than expected. Federal safety regulators say this could cause a driver to misjudge the amount of pressure needed to stop quickly.

Subaru says no crashes or injuries have happened because of the defect. The company has received 112 reports of the problem, mostly through its dealer network. Only about 3,000 of the cars were sold, and the rest are either on dealer lots or en route to dealers. They will be fixed before being sold, the company said. The recall does not include WRX/STI models of the Impreza.

In both the Honda and Subaru cases, customers will be told to take their cars to dealers for an inspection. If necessary, the parts will be
replaced. The Subaru recall began last month, while the Honda recall was expected to start early this month.

FORD RECALLS FUSION AND MILAN SEDANS TO FIX WHEELS

Ford has recalled more than 128,000 Ford Fusion and Mercury Milan sedans from the 2010 and 2011 model years because the wheels can fall off the cars. The recall affects only cars with 17-inch steel wheels built from April 1, 2009 through April 30, 2009, and from Dec. 1, 2009 through Nov. 13, 2010. According to NHTSA bolts holding the wheels on can fracture, causing a vibration. If the vibration is ignored, the wheels can separate from the car. Ford says it's not aware of any crashes or injuries caused by the problem. Dealers will replace the lug nuts on all four wheels and check the rear disc brake surface. The recall is expected to begin around January 24th.

FORD RECALLS F-SERIES PICKUPS THAT COULD SHIFT OUT OF PARK

Ford is recalling certain 2011 F-150 pickups and 2012 F-250, F-350, F-450 and F-550 heavy-duty trucks for transmissions that can be shifted out of “park” without pressing the brake pedal. The recall was announced last month by the National Highway Traffic Safety Administration. The problem with the brake/shift interlock violates federal safety regulations and would allow shifting into gear without braking, “increasing the risk of a crash or injury to a nearby pedestrian,” NHTSA says on its website.

The recall affects F-150s built from Sept. 9, 2011 through Sept. 22, 2011, and HDs built from Sept. 12 through Sept. 22. The build date can be determined from the label on the driver’s door pillar. Ford will notify owners beginning next week and dealers will inspect for and replace faulty interlock switches. For more information, you can call the Ford customer center at 1-866-436-7332 or NHTSA’s safety hotline at 1-888-327-4236 (TTY 1-800-424-9153).

NISSAN RECALLS CROSSOVER VEHICLES

Nissan Motor Co. is recalling more than 7,000 of its 2011 Rogue crossover vehicles in the U.S., because the electric power steering can fail. Documents filed with NHTSA say that the circuit boards controlling the power steering may not have been installed correctly. The solder between the terminal and the circuit board can crack, causing the board to fail. “As the circuit board fails, the power steering assist feature will stop functioning, increasing the force needed to steer the vehicle and increasing the risk of a crash,” the documents say. A Nissan spokesman said there have been no reported accidents or injuries because of that defect.

NISSAN RECALLS SENTRA COMPACT CARS FOR ENGINE STALLING

Nissan has also recalled nearly 34,000 Sentra compact cars because of a battery cable problem that could cause the engines to stall. According to documents filed with the National Highway Traffic Safety Administration, a zinc coating on the cable bolts could be too thick. That can cause a voltage drop that can damage the engine control computer. The documents say the cars can stall while moving and it may not be possible to restart them, increasing the risk of a crash.

The problem affects some 2010 and 2011 Sentras equipped with MR-20 engines. Nissan says it will replace the positive battery cables free of charge. Nissan also is recalling more than 28,000 Juke small crossover SUVs from the 2011 model year. A turbocharger bracket problem can cause engine stalling.

GOLF CARS, SHUTTLES AND OFF-ROAD UTILITY VEHICLES RECALLED

About 21,900 TXT golf cars, Cushman shuttle vehicles and Bad Boy off-road utility vehicles have been recalled by E-Z-GO, a Textron Company, of Augusta, Ga. The threaded end of the rack rod ball joint can break and the ball joint can become displaced, causing the driver to lose steering control. This can result in a crash. The firm says it’s aware of 71 reports of the ball joint breaking, 13 of which resulted in the ball joint displacing. No injuries have been reported. The recalled vehicles are gas- and electric-powered, four-wheeled vehicles with bench seats for the driver and passengers. The brand and model names are printed on the side and front panels of the vehicles. Serial numbers are printed on a plate or label located on the exterior of the vehicle below the driver’s seat.

The vehicles were sold at E-Z-GO and Bad Boy dealers nationwide from February 2011 through July 2011 for between $6,650 and $10,650. Consumers should immediately stop using the recalled vehicles and contact E-Z-GO or an authorized dealer for a free repair. E-Z-GO and E-Z-GO dealers are contacting known owners. For additional information, contact E-Z-GO toll-free at (800) 774-3946 between 8 a.m. and 5 p.m. ET or visit its website at www.ezgo.com.

NAUTILUS RECALLS 10,000 ELLIPTICALS THAT MAY CAUSE FALLS

Nautilus Inc. has recalled about 10,000 elliptical exercise equipment units due to a fall hazard. The company, which makes health and fitness products, agreed to recall its Schwinn 460 model of elliptical trainers after it received nine reports of foot plates detaching or breaking during use. One incident resulted in a consumer striking his knee. The products were sold online and at specialty fitness retailers and sporting goods stores nationwide between July 2008 and May 2011 for about $1,000. Shares slid 1.2 percent, to $1.72, in recent trading. The stock is up 13 percent in the past three months.

TANKLESS WATER HEATERS RECALLED DUE TO RISK OF CARBON MONOXIDE POISONING

Navien America Inc., of Irvine, Calif., has recalled about 13,000 Navien Instantaneous on Tankless Water Heaters. An unstable connection can cause the water heater’s vent collar to separate or detach if pressure is applied. A detached vent collar poses a risk of carbon monoxide poisoning.

to the consumer. According to the company, no incidents have been reported. Navien tankless hot water heaters are white with “T-Creator” and “NAVIEN” on the front. Recalled model numbers are CR-210(A), CR-240(A), CC-180(A), CC-210(A) and CC-240(A) manufactured in 2008. A label on the side of the water heater lists the model number along with the manufacturing year in YYYY format. The heaters were sold by wholesale distributors to in-home installers nationwide from February 2008 through March 2009 for between $1,500 and $2,100.

Consumers should immediately stop using and check the model and manufacture year information on their Navien water heater. Consumers with recalled water heaters should immediately contact Navien to schedule a free repair. Navien will replace all Nylon 66 vent collars with PVC collars. Consumers who continue use of the water heaters while awaiting repair, should have a working carbon monoxide alarm installed outside of sleeping areas in the home. For additional information, contact Navien at (800) 244-8202 between 8 a.m. and 5 p.m. PT Monday through Friday, or visit its website at www.navienamerica.com.

Mophie Rechargeable External Battery For iPod Touch Recalled

Mophie of Paw Paw, Mich., has recalled its rechargeable external battery case. The recalled product is a Mophie Juice Pack Air rechargeable external battery which consists of a lithium polymer battery built into a plastic case designed to snap onto the back of an iPod Touch 4G music player. Mophie says it has received 110 reports of the case becoming deformed due to heat, and nine reports of minor burns. Only cases with serial numbers beginning “TR113” through “TR120” are subject to the recall. If your case is affected by the recall, stop using it immediately, and contact Mophie at (877) 308-4581 or its recall website (www.mophie.com/exchange) for instructions on receiving a replacement product.

Rocketfish Recalls Battery Cases For iPhone

Rocketfish is recalling its Model RF-KL12 Mobile Battery Case for the iPhone 3G and 3GS, due to a fire hazard. The case can overheat while charging, leading to a fire. Customers reported 14 incidents with the case, including three reports of minor burns to consumers, and four reports of minor property damage. Case owners should immediately stop using the case, and contact Best Buy for instructions on returning the product in exchange for a $70 Best Buy gift card in the U.S. (or a $105 gift card in Canada). Best Buy can be reached at (800) 917-5737.

Hamilton Beach Toasters Recalled Due To Fire Hazard

Hamilton Beach has recalled the Hamilton Beach Classic Chrome 2-slice toaster. Consumers should stop using the toaster immediately. According to the USCPSC, when the toasters are first plugged into the outlets, the heating element can be energized although the toaster lifter is in the up or off position, which can pose a fire hazard if the toaster is near flammable items.

Hamilton Beach says it has received five reports of toasters being energized when first plugged into an outlet. There have been no reports of injuries or property damage. The recall involves model 22602 toasters. The model number is printed on the bottom of the toaster. The toaster has a chromed steel exterior, a front control panel with a rotary toast shade selector and function buttons arranged in an arc, a front removable crumb tray and “Hamilton Beach” printed below the control panel.

The toaster was sold at mass merchandisers and department, grocery and home center stores nationwide from August 2011 through November 2011 for between $19 and $34. Also, some of these toasters were sent to consumers as replacements for model 22600 toasters recalled in June 2011. For additional information, contact Hamilton Beach at (800) 576-6600 anytime, or visit its website at www.hamilton-beach.com. General toaster safety information available from Hamilton Beach at http://tinyurl.com/43va5sd

Strollers Recalled By Bugaboo Americas Due To Fall Hazard

Bugaboo Americas, of El Segundo, Calif., has recalled their Bugaboo Bee Strollers. The front swivel wheels can lock while the stroller is in motion, causing the stroller to tip and posing a fall hazard. Four incidents have been reported where the stroller’s swivel wheels locked and the stroller tipped over. In two of these incidents, a baby and a toddler suffered minor injuries. The recalled strollers are made for newborns and toddlers up to 37 pounds. They are sold in two frame colors: silver and all black. The stroller’s seat comes in black or denim colors and canopy colors include yellow, black, khaki, blue, pink and red, plus special collections colors such as tangerine, soft pink, light green, dark purple, denim and the Missoni print collection.

Production dates from January 2011 through September 2011, which are printed with the month abbreviated and year, i.e “Jan. 2011”, the “Bugaboo Bee” name and company address are printed on the date code label located on the stroller frame under the seat unit. “Bugaboo Bee” is also printed on the side of the seat backrest. The strollers were sold as Toys R Us, Buy Buy Baby and other baby product stores nationwide, online at Bugaboo.com and other online retailers between February 2011 and September 2011 for about $650. Consumers should immediately stop using the recalled strollers and contact Bugaboo or the retailer where the stroller was purchased to receive free replacement swivel wheels. For additional information, contact Bugaboo at serviceus@bugaboo.com or at (800) 460-2922 between 7 a.m. and 4 p.m. PT Monday through Friday, or visit its website at http://www.bugaboo.com/non-swiveling-wheels.

Bugaboo Car Seat Adapter Recalled Due To Fall Hazard

Bugaboo Americas has also recalled about 64,000 Car Seat Adapters. When the adapter is used on a stroller that
also has a wheeled board accessory attached for transporting a standing toddler, and the car seat is positioned so the child faces forward, the car seat can disconnect from the adapter and fall. Bugaboo says it has received one report of the car seat disconnecting from the adapter and stroller frame, causing a minor injury. This recall involves the Bugaboo car seat adapter models 80400GC01 and 80401GC02.

The adapters are devices designed to attach car seats to stroller frames. They are made of silver aluminum tubing and black plastic connecting parts. The adapters were sold at Babies “R” Us, Buy Buy Baby, Neiman Marcus, other department stores and independent juvenile stores, Bugaboo.com and other online retailers nationwide from December 2005 to July 2011 for about $45. Consumers should immediately stop using the adapter and contact Bugaboo for a free service kit and decals. For additional information, contact Bugaboo at serviceus@bugaboo.com or (800) 460-2922 between 7 a.m. and 4 p.m. PT Monday through Friday, or visit its website at www.bugaboo.com.

**COLORFUL HEARTS TEDDY BEARS RECALLED DUE TO CHOKING HAZARD**

Build-A-Bear Workshop Inc., of St. Louis, Mo., has recalled their Colorful Hearts Teddy Bears. The teddy bear’s eyes could loosen and fall out, posing a choking hazard to children. The Colorful Hearts Teddy is a stuffed animal about 16 inches high with black plastic eyes. The bear’s fabric covering is printed with multi-colored heart shapes. The bears were sold at Build-A-Bear Workshops nationwide and online at www.buildabear.com from April 2011 through December 2011 for about $18 in the U.S. and $23 in Canada. Consumers should immediately stop using the product immediately and return it to the retailer where purchased for a refund, exchange or store credit. For additional information, contact Bugaboo toll-free at (800) 460-2922 between 7 a.m. and 4 p.m. PT Monday through Friday, or visit its website at www.bugaboo.com.

**ICE CREAM DIPPERS RECALLED OVER IMPACT HAZARD**

The Pampered Chef, of Addison, Ill., has recalled about 20,000 ice cream dippers because the cap and seal can fly off and cause injuries. When the liquid-filled ice cream scoop is exposed to warm water, the cap and seal at the end of the scoop handle can fly off with substantial force. The Pampered Chef says it has received 16 reports that include damage to kitchen items and six reports of personal injuries. They include cuts, bruises and redness caused by caps coming off the base of the handle. The maker is the Zeroll Co of Fort Pierce, Fla. The dipper was sold from July to September 2010 for about $15.

**TARGET RECALLS CIRCO CHILDREN’S TRAVEL CASES**

Target Corporation, of Minneapolis, Minn., has recalled about 139,000 units of Circo “17” Children’s Travel Cases. The surface coating on the travel cases contain excessive levels of lead, violating the federal lead paint standard. The Circo brand label is found on the fabric handle attached to the top of the travel case. The girls’ version has a heart/butterfly/daisy pattern on either a pink or teal background with a plush butterfly attached to the zipper pull. The boys’ version has a pattern of three jet planes in red/blue/green on a red or blue airplane-patterned background with a blue plush jet plane attached to the zipper pull. ‘Date codes can be found on either the round Circo hang tag underneath the UPC bar code or on the second white tag sewn inside the cover of the zippered main compartment of the travel case. The cases were sold exclusively at Target stores nationwide and Target.com from April 2011 through August 2011 for approximately $21. Consumers should stop using the product immediately and return it to and Target store for a refund. For additional information, contact Target at (800) 440-0680 between 7 a.m. and 6 p.m. CT Monday through Friday, or visit its website at www.target.com.

**TYSON FRESH MEATS INC. RECALLS 41,000 POUNDS OF GROUND BEEF**

Tyson Fresh Foods Inc. has recalled about 41,000 pounds of ground beef products that may be contaminated with E. Coli O157:H7. The products that are subject to recall are: 10-pound chubs of “Chuck Fine Ground Beef 80/20,” packed in cases of eight. The products have a “Best Before Or Freeze By” date of 11/13/11 and “EST. 245C” on the box label.

The products were shipped to 16 states, including Alabama, Mississippi, Florida, Georgia, Louisiana, and Tennessee. The problem was discovered during routine FSIS monitoring and there has been no report of illness with the consumption of these products. Customers with questions...
regarding this recall should call the company at (866) 328-3156.

HANNAFORD SUPERMARKETS IN NORTHEAST RECALLING GROUND BEEF

The Hannaford supermarket chain, which has stores in New England and New York, has recalled ground beef with a sell-by date of December 17 or earlier because it may be contaminated with salmonella. Fourteen people have fallen ill, and ten of them reported purchasing ground beef at Hannaford stores in Maine, New York, New Hampshire and Vermont between October 12 and November 20, according to the USDA’s Food Safety and Inspection Service. Seven people were hospitalized; no deaths have been reported.

Maine-based Hannaford said in a statement most of the people who fell ill had eaten its 85-percent lean ground beef. Among the varieties being recalled are Hannaford’s regular ground beef and its Taste of Inspirations Angus and Nature’s Place brands, with content ranging between 73 percent and 90 percent lean. Hannaford said the precise amount of beef being recalled is undetermined, but that all the beef affected by the recall has been removed from stores.

The type of salmonella detected in the beef through a USDA and Centers for Disease Control investigation is the salmonella typhimurium strain, which is resistant to some commonly prescribed antibiotics, according to Hannaford and the USDA. Salmonella infections can be life-threatening, particularly for people with weak immune systems. Symptoms include diarrhea, stomach cramps and fever within six to 72 hours. The chain has about 170 stores in Maine, Vermont, New Hampshire, Massachusetts and New York.

Once again, there have been a good number of recalls since the December issue and 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

LAWSYERS RECOGNIZED BY THE FIRM

Each year our firm selects lawyers who have done exceptional work during the year. This year Rhon Jones was selected as the firm’s Litigator of the Year. The annual recognition is presented each year to the lawyer who demonstrates exceptional professional skill throughout the course of the year and best represents the firm’s ideal of “helping those who need it most.”

In addition to selecting the overall “top lawyer,” the firm also recognized excellence in each of its sections, naming the Lawyer of the Year for each section. Honorees for 2011 are LaBarron N. Boone, Personal Injury Section Lawyer of the Year; H. Clay Barnett, Fraud Section Lawyer of the Year; Navan Ward, Jr., Mass Torts Section Lawyer of the Year; Chris Glover, Product Liability Section Lawyer of the Year; and Chris Boutwell, Toxic Torts Section Lawyer of the Year.

We are blessed to have lawyers in our firm who work hard for their clients and who always put their clients’ interest first. This has to be a priority in the firm for all of us. The lawyers who received the awards this year were recognized for exceptional performances in their respective areas of expertise. But each recognizes that their being honored could never have happened without lots of hard work by other lawyers and support staff in their section. I am proud and personally honored to be a part of the Beasley Allen team.

EMPLOYEE SPOTLIGHTS

Laurie Weldon

Laurie Weldon, who has been with the firm for ten years and a half years as a Legal Assistant, works with Ben Baker in our Product Liability Section. Laurie has always been interested in the legal field, starting her career as a court reporter. She worked for six years in that field. Because she wanted to start a family, she switched to working an 8-5 job as a legal secretary for a defense firm. Laurie worked her way up to paralegal. She then made the move to our firm.

Laurie says she loves what she does here because of the contact she has with clients who are always hurting or have lost a loved one. Laurie feels she was brought to our firm so she could help her clients walk through some of the darkest times of their lives. She says being able to help get a client through a bad day makes her realize that she’s done something good for that day. Laurie says when they achieve a good result for their clients, it’s most always a positive, life-changing event for all of them. Laurie says being here gives her an opportunity, through her work, to make a difference in a person’s life, a person whom she otherwise would never have met.

Laurie has been married to Jack Weldon for 23 years and they have two daughters, Hannah (17 years old), a senior at Edgewood Academy, and Mady (14), a sophomore at Edgewood Academy. They live in Deptsville and attend Cold Springs Church of Christ. Laurie’s hobbies are her two daughters and following them through their teenage years. She says they are involved in every female sport available to them. Laurie says spending time with family and friends in her downtime is “icing on the cake!” Laurie is a good employee, who does excellent work, and who is dedicated to the clients she works for. We are fortunate to have Laurie with us.

Katie Tucker

Katie Tucker, who has been with the firm for ten years, currently serves as Legal Assistant to Ted Meadows and Russ Abney. Katie has worked on a number of very important cases, including the ongoing HRT cases. She does outstanding work and has been a very important member of the litigation team in the HRT cases. Katie has been married to Gerald Tucker for 12 years and they have a five-year-old daughter, Georgia. In her spare time, Katie enjoys family time—whether it is an art project with her daughter or scuba diving with her husband. Katie is a very hard worker and is dedicated to her job. She does excellent work and is a definite asset to the firm. We are most fortunate to have Katie with us.
THE FIRM’S TELEVISION SHOW

As previously reported, The Beasley Allen Report is shown each week on WSFA-TV 12 in Montgomery. Hosted by Beasley Allen Shareholder and Past President of the American Association for Justice, Gibson Vance, this 30-minute show shares information about important cases, talks with expert attorneys and public officials, and provides valuable insight about topics that affect the public’s rights and access to civil justice. Each week the show features other Beasley Allen lawyers, as well as community leaders. From all accounts, the response to the show has been very good. You can watch the show in the old Law Call time slot each Sunday evening following the 10 o’clock news.

XXV.
SPECIAL RECOGNITIONS

PUBLIC CITIZEN WORKED HARD FOR CONSUMERS LAST YEAR

As anybody who reads our monthly report knows, I am a big fan of Public Citizen. In my opinion, Public Citizen is one of the most effective consumer advocacy groups around, if not the most effective, and one that works extremely hard for U.S. consumers. This organization does a tremendous job for the American people on consumer issues. Sadly, soulless and insatiably greedy multinational corporations dominate our politics, our economics and our lives in this country. That results in them putting profits over safety in all too many cases. The problems these huge corporations have created for the American people, our nation and the world are countless. While it’s very easy to feel hopeless and helpless and become discouraged, there is hope. Public Citizen is doing its part to make things better. I will list just a few of Public Citizen’s accomplishments over the past year:


• Public Citizen continued to play a vital role in preserving public interest legal victories through its Supreme Court Assistance Project. Through writing briefs, holding moot courts for lawyers preparing for Supreme Court arguments, and representing parties before the Court, Public Citizen is involved in nearly a third of the Court’s cases each year. Already in the 2011-2012 term, the consumer advocacy group has argued before the Court two cases involving important consumer protections.

• Public Citizen petitioned the FDA to ban the diet drug orlistat (Alli, Xenical) and the Alzheimer’s drug donepezil (Aricept 23), two prescription drugs for which the risks far outweigh the benefits. Over the years, Public Citizen has successfully petitioned the FDA to remove 27 dangerous drugs from the market.

• Public Citizen deflected yet another instance of corporate overreaching in the U.S. Supreme Court, this time in Federal Communications Commission v. AT&T. Public Citizen argued that corporations do not have personal privacy rights under the Freedom of Information Act, and the Court agreed.

• Public Citizen massively expanded its “Democracy Is For People” campaign to overturn the Supreme Court’s disastrous Citizens United v. Federal Election Commission ruling. More than a million people signed petitions for a constitutional amendment to keep corporate cash from overwhelming our elections.

• Public Citizen helped launch the Coalition for Sensible Safeguards, a broad alliance that is challenging the U.S. Chamber of Commerce’s attack on fundamental consumer, health and safety protections.

• The Food and Drug Administration was asked to remove several dangerous drugs from the market. I suspect Public Citizen is viewed by Big Pharma as its worst enemy.

• Public Citizen worked with allied organizations to delay approval of the Keystone XL dirty oil pipeline, which would cause more oil spills, drive up gas prices and negatively impact climate change.

• Public Citizen issued a report proving that caps on medical liability in Texas do nothing to reduce the costs or improve the effectiveness of health care for the state’s citizens.

• Public Citizen successfully defended a group of young climate activists who were sued by Koch Industries for the “crime” of exercising their First Amendment free speech rights.

• Public Citizen helped pass 14 energy efficiency and renewable energy bills in the Texas legislative session. Public Citizen generated a record number of comments submitted to the Securities and Exchange Commission and other regulators on CEO pay.

• Public Citizen overcame White House delays to force issuance of an important new rule to protect child agricultural workers.

• Public Citizen also petitioned the Occupational Safety and Health Administration to adopt a new rule protecting workers from excessive heat exposure.

• Public Citizen coordinated a large national coalition on shareholder protection—aiming to advance the principle that a corporation should not spend money on elections without authorization from its shareholders.

• Public Citizen led the push for tight restrictions on energy speculators, urging the Commodity Futures Trading Commission to establish firm position limits in energy derivative markets.

Each and every day, the folks at Public Citizen imagine a brighter future and work relentlessly to make it a reality. This is one of few organizations in the country with the ability to lobby in the halls of power, litigate on behalf of the public interest, produce data-driven research, and mobilize hundreds of thousands of supporters across the country to defend democracy and curb excessive corporate power. Even though Public Citizen did lots of good work last year, there is much yet to be done.

But there is nothing that Public Citizen can accomplish without people from coast to coast, and from all walks of life, supporting them. All of us working together can assure that consumers will be able to stand up to the corporate giants. It will take that sort of effort to make good things
happen and to slow down and hopefully stop the bad. Think about all that Public Citizen has done over the past year, and then consider seriously what the organization can do this year if we all help them.

Public Citizen is heading into its fifth decade—in a shared struggle to save American democracy from the abuses and excesses of corporations and their cronies who believe that the Machiavellian pursuit of profits is the pinnacle of human ambition—and they need the help of all Americans. You can provide financial support to Public Citizen which is needed to keep the group’s work going forward. That will be one of the best investments you can make. If you want more information go to www.Citizen.org.

Source: Public Citizen

XXVI.
FAVORITE BIBLE VERSES

My brother Billy Beasley sent the following verse to me on my birthday last month. Billy, a pharmacist in our home town of Clayton, currently serves in the State Senate. He is working hard to get Alabama’s immigration law repealed. Hopefully, he will be successful.

But as it is written: Eye has not seen, nor ear heard, Nor have entered into the heart of man The things which God has prepared for those who love Him.

1 Cor 2:9

Jim Martin, a very good lawyer from Eufaula, Ala. sent in one of his favorite Bible verses for this issue. Jim and his twin brother John grew up in my hometown of Clayton. His mother and my mother were the very best of friends and were both pillars in the Clayton Methodist Church.

Trust in the Lord forever, for the Lord, the Lord, is the rock eternal.

Isaiah 26:4

Dr. Terry Stallings, a good friend and a tremendously talented physician, sent in his favorite verse for this issue. Terry, who practiced in Montgomery for several years, is now living in Mobile. He is associated with the University of South Alabama in a teaching and supervisory role.

And we rejoice in the hope of the glory of God. Not only so, but we also rejoice in our sufferings, because we know that suffering produces perseverance, perseverance, character, and character, hope. And hope does not disappoint us, because God has poured out his love into our hearts by the Holy Spirit, whom he has given us.

Romans 5: 2-5

Billy Irvin, who is the Director of Ministries Relations with Faith Radio in Montgomery, sent in a verse for this issue. The radio station plays a very important role in the spiritual life of thousands of persons in central and south Alabama.

Now to Him who is able to do exceedingly abundantly above all that we ask or think, according to the power that works in us.

Eph 3:20

XXV.
CLOSING OBSERVATIONS

Closing Out The Year

Things were very busy for all of us at Beasley Allen last year. The lawyers and staff personnel in each section of the firm have lots going on and are working very hard. But being able to help folks who need help makes the hard work and all of the effort and expense worthwhile. We are blessed to have had the opportunities to be involved in a number of exciting projects during 2011. We all look forward to the New Year with great anticipation.

The trial next month in New Orleans involving BP, and all of the others responsible for the massive oil spill in the Gulf of Mexico, should be one of the highlights of the New Year. Rhon Jones and all of the lawyers and staff in his Section are really looking forward to that trial. We also have a number of important cases set in several states very early this year. I predict that 2012 will be another good year for Beasley Allen clients.

We appreciate very much all of the lawyers we work with outside the firm. Without them, we would not be able to help as many folks as we do. We are thankful for those associations. I am truly blessed to be a part of Beasley Allen and look forward to the New Year.

A Monthly Reminder

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

2 Chron7:14

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

Edmund Burke
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

XXVI. PARTING WORDS

I asked Leigh O'Dell to write this section of the Report this month. Leigh is a shareholder in the Mass Torts Section and a strong Christian. She is also a very good tennis player. I appreciate very much Leigh doing this for us and I believe all of you will be blessed by what she says.

This past Christmas season I was struck anew by the love of God. Jesus, God's Son through whom all things were created (Col. 1:16), laid down His crown and subjected Himself to His creation. Jesus left the throne of God, submitted Himself to the womb of a woman, was born in the filthy surroundings of animals, lived a life characterized by perfection and persecution, and ultimately, allowed Himself to be sacrificed on a cross for one purpose—because of His love for you and me. What amazing love!

And as I reflect on God's great love, how should that impact the way I approach 2012? This year more than ever I want to be guided by God’s priorities, not the push and pull of our hectic world. Jesus outlined what our priorities should be: “You shall love the Lord your God with all your heart, with all your soul, and with all your mind. This is the first and greatest commandment. And the second is like it: “You shall love your neighbor as yourself.” (Matt. 22:37-38).

Our first priority should be to love God. How do we do that. Jesus shows us the way, “He who has My commandments and keeps them, it is he who loves Me.” (John 14:21). We express our love to Him by being obedient, by following His direction as outlined in the Bible. And, as we do that, He promises that we will abide in His love and that He will reveal Himself to us.

And, our second priority should be to love others. Our world is full of tremendous hurt and heartache, pain and poverty. What an incredible difference it would make if we set our focus not on our own rights or needs, but allowed God to use us by loving others. Love them when they are unlovable. Love them when they are strangers. Love them when they are different—a different race or religion. To esteem them better than ourselves. (Phil. 2:3). For our attitudes about others to be characterized by compassion (1 Peter 3:8). To forgive others as we have been forgiven if we are in Christ.

Are our resolutions this year going to be limited to diet and exercise? To the nominal or the life-changing. Let’s resolve to change our focus and through His power, make God’s priorities our priorities this year. Love Him. Love each other. May God bless you abundantly in 2012!

I wish for each of you a happy, healthy and productive New Year. May God continue to bless you and your families and co-workers.

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