I. CAPITOL OBSERVATIONS

ALABAMA WINS THE NATIONAL CHAMPIONSHIP

While college football isn’t exactly a matter of life or death in Alabama, it is about as close as it gets during the fall of each year. As we all know, the University of Alabama won the BCS National Championship game last month, making it three straight for my state. Alabama won the title in 2010, as Auburn University did last year. Alabama totally dominated LSU in the Super Dome matchup on January 9th, leaving no doubt about the Crimson Tide being the best team in the land. This made it six consecutive national titles for the SEC.

To say that Alabamians have become accustomed to winning championships in football is perhaps an understatement, but in fact it’s a reality. We have certainly had our share of titles over the years. Football dominates the news during the fall in Alabama and much of what happens each weekend revolves around football. Our universities do everything possible for their teams to be in the hunt for the National Championship each year. The teams enjoy tremendous support from their respective fan bases. We pay our coaches extremely well. Auburn and Alabama head coaches have salaries in the multi-million dollar range. Few consider the salaries to be excessive and I suspect the coach at each school earns his pay.

I am a huge football fan and enjoy a winning team as much as anybody. But I have to wonder if we don’t have our priorities a little bit out of kilter when it comes to the big picture in Alabama. Consider the fact that our state ranks fairly low in a number of other areas, all equally as important as football to the people of our state, and it becomes quite evident that we have neglected those areas. Perhaps we should take an objective look at our priorities and make a few changes on the non-football side of the ledger.

Let’s suppose we began placing the same emphasis on our state’s public school system as we do on football, starting at the earliest stages of a student’s involvement with the system. If ever we were willing to do that, lots of lingering problems in Alabama would be solved, both for the short and long range. I seriously doubt that we would ever again hear any of our politicians saying “no new taxes this year or ever,” which has been a common theme for political candidates and office holders over the years. Our state has failed to progress as it should have because of misplaced priorities and a lack of long-range planning. Let’s take a look at a few of the areas where we have fallen short:

- Nobody can truthfully say that we have ever made public education our top priority and we have suffered economically and socially as a consequence.
- Even though we have made industrial development a fairly high priority in Alabama, the level of emphasis there pales in compassion to our zeal for winning a conference or national championship.
- A football coach at Auburn or Alabama who fails to win will soon be shown the door. But we allow some politicians to hang around even though they contribute very little to our state’s economy or to the state’s general well-being.
- Another prime example of neglect concerns our highways in Alabama. We ride on roads in our state, including our interstates, which are in bad need of maintenance and repair. There are even bridges that are considered to be very dangerous.
- We have school buildings that are in a sad state of repair in many counties.
- It’s a sad fact that we don’t pay our teachers on a basis comparable to other states in this part of the country. Instead, we allow politicians to attack teachers in order to score political points.
- Neither do we pay police officers a decent wage, even though they put their very lives on the line for us every day.
- Our legislature passes laws—such as HB 56 (the ill-advised immigration law)—with little thought or concern as to how it will affect our state.

All of these areas of concern should rank much higher on our list of priorities. Perhaps it’s time to make something other than winning football programs our top priority in Alabama. Football could still reign as “King of the Hill,” because it will never slide very far down on the list of priorities in Alabama. But let’s try making the essential functions of government our top priorities on a permanent basis and then see what happens. There can be little doubt but that public education is the place to start. Once we get our priorities in order, starting with education, we can still celebrate football championships and that’s good. But we would also be celebrating other top-level achievements in Alabama.

THE SUPER RICH ARE GETTING RICHER

The American people are beginning to realize that the super rich are getting richer, and are doing so at their expense. Two-thirds of Americans now believe there are conflicts between the rich and poor, an issue that surfaced clearly in the Republican primary debates. This is an issue that will carry over into the general election. The findings, reported in a recent Pew Research Center nationwide survey, showed that 66% of Americans believe there are “very strong” or “strong” conflicts between the rich and the poor. That figure is an increase of 19% from 2009. Those holding that belief now include majorities of Democrats, Republicans and
Independent, as well as whites, blacks and Hispanics.

Newt Gingrich and other GOP challengers to Mitt Romney have been highly successful in their attacks for the former governor’s work at Bain Capital, a private equity firm. They have charged that Romney and Bain are responsible for massive layoffs at companies acquired by Bain. Interestingly, these attacks are coming from Republicans, not Democrats. It’s obvious that the attacks on Romney have paid off.

According to Pew Research, the changes in attitude “over a relatively short period of time may reflect the income and wealth inequality message conveyed by Occupy Wall Street protesters across the country in late 2011 that led to an increase in media attention to the topic.” Pew says “the changes also may reflect a growing public awareness of underlying shifts in the distribution of wealth in American society.” According to the most recent U.S. Census Bureau data, the proportion of overall wealth “held by the top 10% of the population increased from 49% in 2005 to 56% in 2009.”

The Pew survey found that among Republicans, 55% believed there were conflicts between the rich and poor, an increase of 17% from 2009. Democrats were at 73%, an increase of 18%, while Independents were at 68%, a jump of 23%. Whites believing there are conflicts between rich and poor increased by 22% to 65% since 2009, while 74% of blacks held that view and 61% of Hispanics. The increase among blacks and Hispanics was 8 and 6 points, respectively.

The obvious message from all of the recent polling is that most Americans are greatly concerned over the state of our nation’s economy. But the overwhelming majority believe only a very small group of individuals at the top of the economic ladder are doing well, with the rest of Americans doing not so well. A lesson our political leaders should get from all of this is that the demise of the middle class is perhaps the most serious issue facing this country. The attacks on the middle class must stop and those who are doing the attacking must be controlled. If we fall in this ongoing battle, our country will be the loser.

Source: Newsmax.com

The American People Have Good Reason To Be Mad

The strong feelings of discontent among the American people revealed in the Pew survey, and in several other recent polls, have intensified over the past several years for a number of reasons. I believe this discontent has come about largely as the result of the Wall Street meltdown which started in 2007, and climaxing in 2008 when our nation’s economy was on the verge of collapse. One example of why folks are mad definitely involves Wall Street and specifically the Big Banks and for good reason. Working men and women, as well as retirees, also started to see executives at huge corporations making salaries in the $50 million range, some doing things that bordered on criminal and avoiding prosecution, and being paid huge severance packages when they were let go.

The housing collapse that almost brought about another Great Depression had a root cause that few people knew about at the time. Big Banks fraudulently packaged “bad mortgages” as securities and sold them, knowing the under-collateralized mortgages, made by property owners who couldn’t afford them, would result in defaults. By any standard, these were very bad investments. The series of events revolving around those mortgages took place over a relatively short period of time and involved practices that nobody outside the loop knew about and few people really understood at the time.

The public learned the hard way about such things as subprime mortgages, collateralized debt obligations (CDOs) and credit default swaps (CDSs). The banks sold CDSs through Goldman Sachs, which in effect became a middle man, making a huge financial killing in the process. Insurance was bought from AIG to protect the sellers of the CDSs when the mortgages failed.

Goldman Sachs made the scheme work by bundling good and bad mortgages, acquiring triple A ratings for the CDOs, which made the instruments very attractive, and the rest is history. We now know that companies like Goldman Sachs were actually betting on the bundled mortgages to fail. The executives at the big banks paid themselves huge bonuses, made a fortune, and during all of this our economy almost collapsed.

Our government bailed out the banks, at a huge cost to taxpayers, and more bonuses were paid out by the very banks that were bailed out. Sadly, these bonuses went to the very same executives. AIG received bailouts to cover its losses and the government hasn’t been repaid by the huge insurance company. The American taxpayers footed the bill for all of this. When people finally saw how the top executives at the big banks profited at their expense, they were “mad as heck,” and let the world know they were fed up. This widespread discontent is being reflected in all of the polls that I have seen. I don’t believe we have seen the end of this discontent and that’s bad news for those politicians who cater to the super rich.

Source: USA Today

Alabama Public Television Revives Capitol Journal

Alabama Public Television has brought back Capitol Journal, its news and public-affairs program. APT shut down the program in July when it closed its Montgomery studio and laid off more than a dozen people. The revived program will have a smaller staff working from APT’s studio at the State House
in Montgomery. APT public information director Mike McKenzie had this to say:

We always intended to bring it back, we just had to find a different way to put the program on the air, given the resources that were available to us, sharing the news of the state and what’s happening at the Legislature.

Hosts for the new Capitol Journal will be Don Dailey, who for 21 years was news director and morning news anchor at WZZK-FM in Birmingham, and Olivia Stacey, a former anchor for public television station WUFT in Gainesville, Fla. Erica Lembo, an APT reporter based in Birmingham, will report on education issues in the Legislature. Two reporters from public radio station WVAS-FM in Montgomery, Karen Brown and Marcus Hyles, also will cover the Legislature for Capitol Journal as well as WVAS.

APT will also air hour-long Capitol Journal programs about issues and news each Friday, starting at 8 p.m. The shows will feature interviews of newsmakers and panel discussions by guest journalists. During the Legislature’s regular session, APT also plans to air 30-minute shows about the session on Monday through Thursday nights, starting at 10:30 p.m. The first of those programs is scheduled for February 6th. The 10:30 p.m. programs will stop after the legislative session ends, but the Friday shows will continue. The legislative session by law must end by May 21st.

I really enjoyed the news programming on APT and missed Capitol Journal when it left the air. I hope the show will now be available to Alabamians on a permanent basis. Public Television provides a service to the people of Alabama and it should be supported.

II. A REPORT ON THE GULF COAST DISASTER

JUDGMENT DAY APPROACHES IN NEW ORLEANS

Judge Barbier, who is in charge of the BP oil spill litigation, will hear the first phase of this litigation on February 27th. This may be the fastest incident of this magnitude to come to trial that I have ever seen. The first phase of the trial is expected to last a couple of months with a brief intermission between the first phase and the second phase.

As we have reported, the first phase will cover “blowout liability,” in which Judge Barbier will hear evidence that speaks directly to the events leading up to the catastrophic event that took 11 lives and devastated the Gulf of Mexico region. After hearing the evidence, Judge Barbier will not only determine who all is responsible for causing the explosion aboard the Deepwater Horizon, but he will also apportion fault between all of the wrongdoers.

We will also learn from the first phase of the trial whether Transocean will be entitled to limit its liability solely to the value of the Deepwater Horizon vessel (roughly $27 million), or whether the court will find that Transocean ignored the problems aboard the rig that caused the explosion—rendering it fully liable for all damages assessed against the company. I believe Transocean will lose on this issue.

There will be quite a few witnesses who will testify during the trial. Many of those witnesses will be experts on various issues, including the blowout itself, the blowout preventer, cementing, safety, oversight, and industry practice and procedure, among others. Numerous individual depositions were taken, including depositions of representatives of all of the main players aboard the rig. These witnesses, coupled with the huge number of documents produced in this case, will tell the full story about what led up to the Deepwater Horizon’s demise.

As I write this update, BP and others are trying to do what so many other large companies do when they are caught red-handed—hide the information that tells the true story from the public under the guise that those documents and information are “trade secrets” or “confidential” communications. But one way or another, the American public is going to hear the true story. Based on what we have learned, that story is not going to be good for BP, Halliburton, Transocean and others.

The Plaintiffs’ Steering Committee (PSC) has done a tremendous job keeping the case on track in order for it to come to trial this quickly, while at the same time not taking any short cuts or sacrificing on discovery efforts. Not only has the PSC expended a considerable amount of time and money in pushing the litigation forward, the lawyers on the committee have reviewed over 43 million pages of documents, taken almost 300 depositions—some of those in London, England at BP’s corporate office—and entered into the record over 6,000 deposition exhibits. In addition, the PSC has worked to help all Gulf Coast residents receive fair treatment by holding Ken Feinberg to task in administering the GCCF.

The PSC has also fought back numerous important motions to dismiss by the Defendants, which if qualified, could have been devastating to the claims. The victories are almost too many to count and include issues dealing with the following: traditional maritime law claims, punitive damages, a fair causation burden on Oil Pollution Act claims, medical monitoring, and many others. And when the Defendants appealed those rulings, the PSC won each time. All the while, economic damage and environmental committees worked hard to assess the tremendous damages that the oil spill created. Rhon Jones from our firm, a member of the PSC, has been a leader in that effort.

We look forward to the upcoming trial and are convinced it is the first major step towards justice for all those that have been injured by the oil spill. BP is being forced to turn over to the PSC internal documents, including emails, that are extremely damaging to the company. BP never thought this information would ever be made public. If you have any questions about the oil spill case or the upcoming trial, please feel free to contact Rhon Jones or Sandra Walters in our firm’s Toxic Torts section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or Sandra.Walters@beasleyallen.com, respectively. Sandra is the Section Head Administrator and Rhon, as you know, is the Section Head.

III. DRUG MANUFACTURERS FRAUD LITIGATION

AVERAGE WHOLESALE PRICE SETTLEMENTS

We are pleased to announce that over the past several months our law firm has obtained combined settlements of over $100 million on behalf of the States of Alabama, Mississippi, Louisiana, Kansas, Utah, South Carolina, Alaska and Hawaii. These settlements came in lawsuits filed against approximately 16 drug manufacturers. The settlement amounts for the states were based on drugs purchased during the relevant time period for each state. To date, we have collected over $450 million in settlements for the states we represented in the AWP litigation. At press time, we were in negotiations with numerous Defendants on behalf of these states. We will periodically update our readers as those settlements are finalized.

JOHNSON & JOHNSON TO PAY $1 BILLION IN RISPERDAL MARKETING PROBE

Johnson & Johnson will pay more than $1 billion to the U.S. and most of the 50 states to settle a civil investigation into marketing of its antipsychotic Risperdal. J&J, the world’s largest health products company, reached the
agreement with the U.S. Attorney in Philadelphia. Negotiations over a possible criminal plea were still under way at press time for this issue.

The U.S. government has been investigating Risperdal sales practices since 2004, including allegations the company marketed the drug for unapproved uses. The company had been in negotiations with the U.S. Justice Department to settle the investigation. As you may recall, J&J disclosed in August that it reached an agreement to settle a misdemeanor criminal charge related to Risperdal marketing. The company is discussing paying another $400 million to settle that portion of the investigation.

Risperdal, once J&J’s best-selling drug, generated worldwide sales of $24.2 billion from 2003 to 2010, reaching $4.5 billion in 2007. After that, J&J lost patent protection and sales declined. The settlement represents 31% of Risperdal’s peak sales in 2007, before generic versions of the medicine eroded revenue. It’s about 5.6% of the drug’s cumulative sales since 2003.

The Food and Drug Administration approved Risperdal in 1993 for psychotic disorders, including schizophrenia. Since that market is very limited, J&J’s Janssen unit set out, without approval, to sell Risperdal for bipolar disorder, dementia, mood and anxiety disorders and other unapproved uses. The drug was later approved by the FDA for other uses. Company officials said in an SEC filing in May that they had reserved funds to resolve the government’s claims over Risperdal marketing. The drugmaker, in an August filing, said that it had added an unspecified amount to the reserve to cover criminal penalties.

I understand that a majority of states will join with the federal government in this settlement. Each state will have to decide whether to join the federal government’s settlement or pursue its own case. Typically, states with cases in court continue to pursue their own. It has been our experience that states do much better they file their own claims.

J&J and Janssen have been sued by 12 states, including Texas, South Carolina and Louisiana, over Risperdal marketing. The Attorneys General of the other states “have indicated a potential interest in pursuing similar litigation against” Janssen, J&J said in its quarterly SEC filing in November. A jury in Louisiana, in a case involving claims that the company downplayed the drug’s risks, awarded that state $257.7 million in 2010. A South Carolina judge last year ordered J&J to pay $327 million over Risperdal sold in that state. There is an ongoing trial in Texas which started on January 9th. That case was filed by the State of Texas against J&J and Janssen.

Hundreds of Janssen salespeople sold Risperdal to doctors, nursing homes, Veteran’s Administration facilities and jails, according to documents produced in the Louisiana case. Marketers gave doctors materials about studies of unapproved uses for Risperdal. Janssen sponsored clinical trials of its effects on other illnesses. In 1994, 1999 and 2004, the FDA ordered Janssen to stop making false and misleading marketing claims about Risperdal’s superiority.

The FDA told J&J in 1999 that it marketing materials for geriatric patients overstated Risperdal’s benefits and minimized risks. A J&J business plan for the next year called for increasing the drug’s market share for elderly dementia sales, an unapproved use, according to the documents brought forward in the Louisiana suit. The FDA didn’t approve Risperdal for bipolar disorder until 2003. In 2006, the regulator approved it for symptoms related to autism in children and teens. The FDA approved the drug to treat bipolar children and teens the next year. The drug was never approved for dementia. J&J said in its August SEC filing:

*Discussions have been ongoing in an effort to resolve criminal penalties under the Food Drug and Cosmetic Act related to the promotion of Risperdal.*

*Certain issues remain open before a settlement can be finalized. The ultimate resolution of the above criminal and these civil matters is not expected to have a material adverse effect on the company’s financial position.*

Risperdal is a member of a class of drugs, known as atypical antipsychotics, that includes Eli Lilly’s Zyprexa and AstraZeneca’s Seroquel. Lilly, AstraZeneca and two other J&J competitors making these drugs have paid $2.7 billion to resolve government claims that the companies pushed the drugs for unapproved uses. Lilly paid more than $1.7 billion to resolve state and federal investigations over Zyprexa, and AstraZeneca has paid almost $590 million. Pfizer Inc. paid $301 million for its drug Geodon. Source: Bloomberg News

**MERCK SETTLES VIOXX CLAIMS IN CANADA**

Pharmaceutical giant Merck has agreed to pay up to $36.8 million to settle all lawsuits brought against the company in Canada over its former best-selling painkiller Vioxx. As we all know, Merck withdrew Vioxx from the market in 2004 after interim clinical trials linked the anti-inflammatory drug to a higher risk of heart attacks and stroke. Under the settlement with the Plaintiffs in Canada, Vioxx users will share in a payout of between $11.3 million and $26.3 million depending on the final number of Claimants. A further $10.5 million will be set aside for legal costs.

The Canada settlement will have to be approved by the courts. In 2007, our firm was directly involved in the litigation that led to Merck paying $4.85 billion to settle more than 95% of the Vioxx lawsuits in the United States. And in November, Merck agreed to pay nearly $1 billion to the federal government to resolve criminal and civil charges for wrongfully marketing Vioxx as a drug in the U.S. To help rheumatoid arthritis.

**IV. PURELY POLITICAL NEWS & VIEWS**

**THE GOP PRESIDENTIAL FIELD GETS SMALLER**

The field of candidates seeking the GOP nominee for President this year appears to be the weakest since 1964, when Arizona Senator Barry Goldwater wound up with the nomination. At the outset of the current battle to pick a standard bearer, I really thought that Texas Gov. Rick Perry would wind up with the nomination. But Gov. Perry soon took himself out of contention, as did Godfather’s Pizza CEO Herman Cain, who at one point had surged to the top in the polls. Two other candidates, Rep. Michelle Bachman and former Utah Governor John Huntsman, never seemed to get off the ground and they too dropped out of the race. That left four candidates in the race, but most observers believe only two of them have any real chance of getting the nomination.

Of the four, Texas Rep. Ron Paul may be the most sincere and certainly speaks his mind on all of the issues. But even with very good support among younger voters, Dr. Paul is too extreme on most issues even for the Tea Party zealots. For that reason, he is unacceptable to the top dogs in the national Republican Party. It doesn’t appear that former Senator Rick Santorum, who won the Iowa caucus, will have the money necessary to last much longer in the race. Some believe he will be out of the race by the time this issue is mailed.

That leaves two candidates Mitt Romney and Newt Gingrich, who regardless of what happened in Florida—will likely slug it out right up to the convention. Since we had to send this issue to the printer on January 30th, we don’t know the outcome of that state’s primary. But based on recent polling I suspect Romney will emerge as a double-dig-
its winner in Florida. But regardless of who wins there, the contest will continue.

Frankly, I am not sure which of these two men would be worse for America. Mitt Romney, who doesn’t have a job but still paid taxes on over $40 million in earnings in the last two years, comes across as perhaps the weakest of an extremely weak field. Nevertheless, Romney still appears to be the leader for the nomination. That’s because Gingrich, who won big in South Carolina, and who up until the Florida debates had surged in the polls, is far too scary to be President. Newt is highly intelligent, quick on his feet, and extremely well prepared on the issues. But he has lots of things in his background that, if he gets the nomination, would haunt him in the general election.

If Gingrich were to win in an upset in Florida that will virtually guarantee that the campaigns will go on to March 6 when 11 states will vote. Even if he loses, however, most believe the former speaker is in for the duration. That means that February—with few states voting—will feature more candidate debates and lots of campaigning in the Super Tuesday states. That is most likely when the real leader going into the convention will finally emerge.

I will concede that Gingrich is smart, knowledgeable on issues and a fighter who goes for the kill when the opportunity arises. But this man simply has no business being President of the United States of America. Because Romney simply can’t connect with ordinary folks, I believe Gingrich has a good chance of winding up as the nominee. Of course, the GOP leadership could wake up, realize neither Gingrich nor Romney can win, and start looking for a “good” candidate. If that happens, another name may surface and that name could be “Bush” or “Daniels.” We may well be looking at a brokered convention. Stay tuned!

V.
RECENT SETTLEMENTS BY THE FIRM

A FURTHER UPDATE ON THE AWP LITIGATION

As we mentioned in the Capitol Observations section of this issue, our law firm has represented the States of Alabama, Mississippi, Louisiana, Kansas, Utah, South Carolina, Hawaii and Alaska in their AWP (Average Wholesale Price) Litigation over the past several years. Fortunately, we have successfully tried a number of these cases and are now are settling cases with a number of the companies in those eight states. We were pleased to announce that our firm has recently obtained over $100 million in settlements over the past several months in this litigation. We are in the process of finalizing those settlements.

To date, we have settled cases amounting to a total of $450 million in the AWP litigation for the eight states we currently represent. We still have over $116 million worth of judgments either on appeal or pending in the post-trial motion stage of the litigation in two states.

These recent settlements vary in amounts depending upon the states usage of a particular company’s drugs in the Medicaid program. These settlements involve some 16 companies, but claims for the states are negotiated separately. No settlement is dependent on what happens in any other state.

Our firm views the representation of the Attorneys General in each of these eight states as a great honor and privilege. It also carries with it a tremendous responsibility to make sure that each state is adequately compensated by the companies which falsely reporting prices to the states’ Medicaid programs. This litigation has been tremendous public service for the citizens of each of the states we have represented. We will continue to work to see that justice is done in each state for the wrongdoing by the pharmaceutical companies to the states’ Medicaid programs. This litigation has been extremely complicated and very expensive. The drug companies have access to the very best legal talent as well as a group of experts who have been paid millions to defend the companies.

In addition to the pharmaceutical companies reporting of false prices to the Medicaid programs, our firm has also initiated litigation against a pharmaceutical wholesaler, McKesson, which the states have alleged increased prices an additional 5% on some 1,900 different types of drugs during a certain time period. This was going on during the same time that the pharmaceutical companies were reporting false prices. We now have cases pending against McKesson in the States of Kansas, Louisiana, Alaska and Hawaii.

All of these Medicaid programs were severely taken advantage of in terms of the prices being reported by the pharmaceutical industry and some wholesalers during the period of time from 1991 through 2010. These cases are just one example of why healthcare costs are spiraling out of control in the country. We believe this litigation has been a huge step in the right direction in the fight to curb the abuse of inflated costs that we must all pay for in the healthcare industry.

A number of lawyers from our firm have been actively involved in this litigation. They include Dee Miles, Roman Shaul, Clay Barnett, Chad Stewart and Alison Douillard. They have done an outstanding job in this massive and most difficult litigation. Our support staff also has done a tremendous job in the handling of these cases. The drug manufacturers have been tough opponents in this litigation. They are powerful politically and have used their connections to full advantage in several of the states. In fact, the companies—through what I consider to have been political pressure—were able to keep at least one state from filing suit. That cost the taxpayers of the state several hundred million dollars. The drug companies also have access to, and can afford, the very best legal talent. They also can on highly-paid experts to assist them in defending the AWP cases. We will keep our readers posted on any new developments that occur with this litigation, including verdicts, settlements or appellate actions.

SETTLEMENT IN BTSI DEFECT CASE

Our firm settled a very important case last month just a few days before trial was set to start in federal court in Opelika, Alabama. On the day she was injured, our client drove her 2002 Mountaineer SUV to make a payment at her local insurance office. Because the insurance company had her paperwork ready, our client merely had to drop off the payment at the front desk. When she parked her SUV at the insurance company front door, she left the vehicle running and left her six-month-old daughter and two-year-old niece buckled in their car seats while she dropped off her payment. After she left her payment at the desk, she walked back outside to her SUV to find her two-year-old niece standing in the driver’s seat. When the child turned to move to the rear seat, the SUV lurched forward and pinned our client against the insurance building. As a result of her crushing injuries, our client’s left leg was amputated above the knee and her right leg developed a serious swelling condition known as lymphedema.

During the course of our investigation, our engineering expert discovered that the SUV was equipped with a safety device known as a brake transmission shift interlock (BTSI). The purpose of the BTSI is to prevent the gear shift lever from being moved from park into gear without the operator first stepping on the brake pedal. Our expert discovered that the BTSI in our client’s SUV suffered from a design defect that sometimes prevented it from operating properly. Specifically, on occasion, when the operator shifted the SUV into park, the BTSI failed to lock the shift lever in park. As a result, the gear shift
lever could be moved from park into gear without requiring that the operator first step on the brake.

On the day she was injured, the defective BTSI allowed our client’s niece to inadvertently move the shift lever into a forward gear. Clearly this is a very dangerous defect and we were prepared to present the jury with overwhelming evidence of the defect and safer alternative designs which would have prevented this tragedy.

The case was settled on the eve of trial with the amount being confidential. Our client was well-satisfied with the settlement and can now get on with her life. Mike Andrews, who represented our client, is currently investigating several other instances where a vehicle moved after being placed in park and killed or seriously injured someone outside the vehicle. He may be reached at 800-898-2034 or at Mike.Andrews@beasleyallen.com.

VI. LEGISLATIVE HAPPENINGS

THE ALABAMA LEGISLATURE COMES TO TOWN THIS MONTH

In a world free of political influences, Alabama’s state legislators would come to town on February 7th, immediately get down to work, and do some good business. In fact, their performance during the Regular Session would benefit all Alabamians and not just a favored and select few. That approach would also mean that lobbyists and special interest groups would no longer be able to set the agendas and virtually decide what bills pass and become law. It would be a welcomed change from the way things have worked in the past legislative sessions. The members of the House and Senate, in a bi-partisan effort, would then be able to do all of the following:

• Set long-range priorities for state government and follow up with sound long-range planning;
• Make public education the real priority in our state for the first time;
• Restructure our state’s tax laws;
• Find badly-needed revenues and then adequately fund the essential functions of state government, including public education at every level;
• Cut out unnecessary corporate loopholes in our tax system;
• Repeal the sales tax on groceries;
• Pass meaningful constitutional reform;
• Enact a statewide ban on the use of cell phones while driving a motor vehicle;
• Repeal the ill-advised immigration law;
• Set an example on the state level that would discourage racism in our state; and
• Allow reasonable debate on all bills with full debate on the more important ones during the session.

I am reasonably sure that none of our Alabama readers who keep up with the legislature believe much, if any, of the above will actually happen. But I wonder if any of them have ever considered how things would be in our state if the legislators really worked to benefit all Alabamians and not just a select few? I hope that, because of the prospects of an extremely difficult session, caused by a lack of money, members of the House and Senate will make 2012 the year Alabama really turns the corner, enabling Alabama to finally reach its full potential as a state.

We have good folks throughout Alabama, who are up to any challenge, and our state has been blessed with more than its share of the nation’s natural resources. So why haven’t we done better as a state? Why are we so far behind in so many areas of concern? In my opinion, the one thing that has been lacking in state government is strong and effective leadership in both the Executive and Legislative branches of government. It’s high time for our elected officials to step up to the plate, make the required tough decisions, and then lead our state in the right direction. I believe Gov. Robert Bentley is a man with the courage required to take on this battle. But if he does, the governor will need lots of help. If Governor Bentley will meet this challenge and do the things necessary to right the ship of state, we can then watch Alabama grow and prosper in the years to come like never before.

JURISDICTION AND VENUE CLARIFICATION ACT SIGNED INTO LAW

A bill passed in Congress (H.R. 394) last year has flown pretty much under the radar. The U.S. Senate gave final passage to the Federal Courts Jurisdiction and Venue Clarification Act of 2011, and President Obama signed it into law. Some believe the Act contains the most far-reaching package of revisions to the Judicial Code since the Judicial Improvements Act of 1990. The changes deal primarily with removal and venue. We will write on this new law in more detail in the March issue. At this juncture, I will mention a few of the changes made. The Act:

• revises the “separate and independent” claim provision of §1441(c), dealing with the removal of civil actions that include both federal and unrelated state claims. The new provision requires severance and remand of claims not within the original or supplemental jurisdiction of the district court.
• codifies the “rule of unanimity” for removal in cases involving multiple Defendants. Each Defendant is given 30 days in which to initiate removal.
• resolves several issues relating to the determination of the amount in controversy when the Defendant removes a civil action based on diversity. It adopts a “bad faith” exception to the statutory provision pro-
hibiting removal of a diversity case more than one year after filing.
• completely rewrites Chapter 87 on venue, abolishing the distinction between backup venue in diversity and federal-question cases.
• eliminates §1392’s separate provision dealing with “local” as opposed to “transitory” actions.
• further abrogates the Supreme Court decision in *Hoffman v. Blaski*, 363 U.S. 335 (1960), by authorizing transfer of venue to a district where the action could not have been brought initially, as long as all parties consent.
• narrows the resident-alien proviso now located at the end of 1332(a), which appears to be the only provision affecting original jurisdiction.

The Act’s provisions will apply to newly-filed actions starting 30 days after enactment. I haven’t attempted to cover all of the ramifications of the law and would welcome any comments from lawyers around the country on the new law. Hopefully, we will be able to give our readers a little better read on the Act next month.

**A LOOK AT MEDICARE LIENS AND SETTLEMENTS**

A case, decided in an Alabama federal court in 2010, involving Medicare liens, was brought to my attention last month. That case should be of interest to all lawyers who represent parties—both Plaintiffs and Defendants—in personal injury lawsuits. As you may already know, the existence of Medicare liens can create a real problem when settlements are reached involving personal injury claims. Medicare is a payer of last resort, which simply means any entity with a duty to pay, such as an insurance company, must pay before Medicare does. Generally, a payment may not be made by Medicare if payment has been made, or could be made, by another responsible party. If Medicare has already made a payment, it has a statutory right, either by subrogation or private cause of action, to recover the payment made.

In 2007, Congress addressed growing financial problems with Medicare by enacting statutory reforms that restated Medicare’s status as a payer of last resort. But these statutes, Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), brought about the largest and most intensive reporting requirements in Medicare history. For example, MMSEA requires that all entities that pay, either by settlement or judgment, to any personal injury Plaintiff, must report that information to the Centers for Medicare and Medicaid Services (CMS). This reporting requirement places all who are involved in handling the proceeds of a settlement at risk for civil penalties and damages.

In the case referred to above, which was before U.S. District Judge Karen Bowdre (who sits in the Northern District of Alabama, Eastern Division), the U.S Government filed suit in 2009 against two insurance companies and several other Defendants for violations of the Medicare Secondary Payment Statute (MSP). This is a section of the Social Security Act that is used by Medicare to assert its payer of last resort status. The Defendants in the case had been involved in a settlement resolving a large toxic tort lawsuit. The government alleged in the case before Judge Bowdre that the Defendants had failed to reimburse Medicare for conditional payments which had been made for injuries to Medicare beneficiaries.

The government could have brought suit against the individual Medicare beneficiaries, but instead, elected to go after the corporate and insurance company payors. While the case was dismissed because the government had failed to file the lawsuit in a timely manner, the court’s opinion is still important. It provides valuable insight into how the government will proceed against entities accused of violating the MSP statute. The basis of the government’s claim was that the settlement included 907 Medicare beneficiaries and that the Defendants failed to reimburse Medicare for conditional payments made by the Medicare program for medical treatment related to the beneficiaries’ injuries as required under the MSP statute.

The government alleged that the Defendants “knew or should have known that one or more of the Claimants were Medicare-eligible individuals on whose behalf Medicare was entitled to recover any conditional payments.” It was alleged further that the Defendants failed to reimburse Medicare for conditional payments made by the Medicare program for medical treatment related to the beneficiaries’ injuries as required under the MSP statute.

The government alleged that the Defendants “knew or should have known that one or more of the Claimants were Medicare-eligible individuals on whose behalf Medicare was entitled to recover any conditional payments.” It was alleged further that the Defendants failed to reimburse Medicare for conditional payments made by the Medicare program for medical treatment related to the beneficiaries’ injuries as required under the MSP statute. The total settlement involved in the original case that was settled was $300 million. For the claimed violations, by the Defendants, the government sought:

• Reimbursement of the alleged Medicare conditional payments, plus interest;
• Double damages against the Defendants; and
• Declaratory relief against the Defendants requiring them to give notice to CMS of all future payments to Medicare beneficiaries, and to ensure that they make appropriate payments to Medicare before any future settlement payments.

Judge Bowdre wrote the opinion in the case [*U.S. v. Stricker* (CV-09-2423)] on September 30, 2010. The judge assumed that the Defendants were “primary payers” under the MSP statute, but recognized that the statute of limitation defense raised by the Defendants was valid. The Defendants were subject to the three-year statute of limitations because they had no contractual relationship with the government. The statutory obligation was triggered by the underlying tort claim. Judge Bowdre rejected the government’s argument that the statute of limitations could not begin to run until the Claimants returned sufficient releases to satisfy a participation threshold. Instead, she focused on the plain language of the MSP statute to bar the claim pursuant to the statute of limitations defense.

The unpublished decision in *Stricker* went out on the government’s failure to file in suit in a timely manner. While the statute of limitations defense protected the Defendants in the case, the result could well have been very different had the suit been filed in a timely manner. The message learned is that lawyers must use great caution when settling claims where there is the potential that Medicare beneficiaries are to receive payments under the settlement. *Stricker* can be considered as a guide and a warning to all lawyers who handle personal injury claims, either for the Plaintiff or on the Defense, where Medicare beneficiaries are Plaintiffs.

Lawyers handling claims, whether a mass tort, or a single case, must determine if a settlement will involve any Medicare beneficiaries. There is still uncertainty regarding CMS’s policy and procedures in pursuing these claims. A number of issues will have to be answered by the courts. Because of the new enforcement rules, if Medicare has paid any portion of a Plaintiff’s medical expenses, all parties must take steps to protect themselves due to the statutory Medicare lien. Of course, defense lawyers, as well as insurers, must be extremely careful to protect themselves when lawsuits are settled that involve Medicare liens.

Source: *Insurance Journal*

### $322 MILLION ASBESTOS LAWSUIT VERDICT VACATED IN MISSISSIPPI

A Mississippi judge has vacated a $322 million lawsuit verdict that had been hailed as the largest asbestos award for a single Plaintiff in U.S. history. Defense lawyers had asked the Mississippi Supreme Court to remove the presiding judge in the case because he allegedly neglected to disclose that his parents had been involved in similar asbestos litigation against one of the very same companies. A specially appointed judge, William Coleman, issued the order vacating the verdict and award.

The case from Smith County, Miss., involved a lawsuit filed by Thomas Brown, who claimed he had inhaled asbestos dust while mixing drilling mud sold and manufactured by Chevron Phillips Chemical Co. And Union Carbide Corp. The Plaintiff, who was 48 at the time of the award in May, said he was diagnosed with asbestosis and required to take oxygen 24-hours a day. The jury awarded Brown $22 million in compensatory damages and $300 million in punitive damages. It was the biggest asbestos award ever to a single Plaintiff.

Union Carbide first asked Circuit Judge Eddie Bowen to vacate the verdict not long after the record award was handed down. The company also asked Judge Bowen to step down from the case. When the judge didn’t respond, Union Carbide asked the Mississippi Supreme Court to remove him. Union Carbide claimed Judge Bowen was a practicing attorney when his father and mother sued Union Carbide, seeking $1 million for emotional distress. The company said that after the trial, it “learned that Judge Bowen’s father had filed two asbestos lawsuits, one of which remains pending; and that both Judge Bowen’s father and mother had settled asbestos claims with UCC and other Defendants based on a diagnosis of asbestosis—which is the same disease claimed in this case.”

Union Carbide claimed in its motion that Judge Bowen’s bias and prejudice against Union Carbide and Chevron Phillips were clear from his rulings, comments in front of the jury, and his coaching of the Plaintiff’s attorney when his father and mother sued Union Carbide, seeking $1 million for emotional distress. The company said that after the trial, it “learned that Judge Bowen’s father had filed two asbestos lawsuits, one of which remains pending; and that both Judge Bowen’s father and mother had settled asbestos claims with UCC and other Defendants based on a diagnosis of asbestosis—which is the same disease claimed in this case.”

The decision clears churches and religious institutions to follow their teachings in employment decisions regarding its leaders. Unfortunately, the Court does not set forth a clear definition of what a leader is, beyond referring to them as “ministers.” Nevertheless, the decision would appear to cover the hiring and dismissal of priests, rabbis and other religious leaders. The decision stops short of declaring that the exemption applies to other types of lawsuits by employees against religious employers.

The unanimous decision was hailed by many others. Needless to say, this ruling will definitely have an effect and likely will be hotly debated in the coming months.

Source: Insurance Journal

**Supreme Court Rules That Ministers Not Covered By Discrimination Laws**

The U.S. Supreme Court released an opinion last month that has already created a great deal of discussion. The Court ruled in the opinion that religious groups and churches may hire and fire their leaders without being subject to laws against discrimination in employment. For the first time, the Court, in a unanimous landmark ruling, recognized a “ministerial exemption” to the nation’s employment discrimination laws. Chief Justice John G. Roberts Jr., writing for the Court, said:

The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. When a minister who has been fired sues her church alleging that her termination was discriminatory, the First Amendment has struck the balance for us. The church must be free to choose those who will guide it on its way.

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Source: Insurance Journal

Source: Insurance Journal


9
FEDERAL JURISDICTION OVER CONSUMER TELMARKETING CLAIMS UPHOLD

The U.S. Supreme Court unanimously ruled last month that consumers injured by violations of the Telephone Consumer Protection Act (TCPA), which outlaw abusive telemarketing practices, may bring lawsuits in federal courts as well as state courts. Public Citizen represented Marcus Mims, the successful Plaintiff, in the case. The Court’s opinion, written by Justice Ruth Bader Ginsburg, accepted without reservation, all of the arguments made by Public Citizen in support of Mims’ right to choose a federal court to assert his claims.

The TCPA forbids such practices as calls to cell phones that use automatic dialers, calls to residences that use prerecorded messages, and unsolicited junk faxes. The Act says that consumers who are victims of such practices can sue for up to $1,500 per violation. The Act specifies that those lawsuits may be brought in state courts. But, as the High Court ruled, the act does not prevent consumers from going to federal court, where they can invoke the federal courts’ general jurisdiction over all cases that are based on federal law.

The decision will make it possible for Plaintiffs with large claims that are suited to federal law. It also may facilitate class actions that could not be brought if TCPA claims were limited to state courts.

Source: Public Citizen

VIII. THE NATIONAL SCENE

THE AMERICAN PEOPLE MUST BE PROTECTED

Two years have now passed since the U.S. Supreme Court handed down its unbelievably bad Citizens United v. Federal Election Commission ruling. The bad effects of that opinion must be changed and I’m fairly certain the Court won’t do it. Instead, it will take a constitutional amendment to get the job done. There is an urgent need to overturn the decision and ensure that democracy is for people—not corporations—and I believe the time is ripe for Congress to act.

There is a growing disgust across the land with the obscene amounts of money being spent in politics, a direct result of the high court’s ruling. There also is an increasing awareness among ordinary citizens of the corrupting influence corporations have over politics in this country. Public Citizen has led the fight to correct the problems caused by the Court’s ruling and fortunately the consumer advocacy group is continuing the fight.

The Supreme Court’s ruling, issued on Jan. 21, 2010, said that corporations can spend unlimited sums to influence elections. The effect on that year’s midterm Congressional elections was immediate. We are now seeing massive amounts of corporate money being funneled into the presidential primaries. Robert Weissman, president of Public Citizen, had this to say:

Citizens United subverts the essence of democracy, which means rule by the people. Overturning the Supreme Court’s Citizens United decision with a constitutional amendment is the first step in fixing our broken political system and opening the door to address the great challenges facing the country, from putting people back to work to averting catastrophic climate change.

In the wake of the Citizens United ruling, campaign spending by outside groups has skyrocketed. In the 2010 election cycle, the first since the Supreme Court ruling, outside groups spent well over $300 million. A huge number of Super PACs have been created, amassing huge amounts of money used for attack ads. A prime example is Restore Our Future, the Mitt Romney-supported Super PAC, that has used ads against Newt Gingrich. Meanwhile, Republican strategist Karl Rove and his Crossroads groups are going to raise and spend $240 million in the 2012 elections. The infamous Koch brothers say they plan to spend at least $200 million. All this corporate money promises to help make this election record-setting.

Public Citizen is working with more than 60 organizations committed to overturning the Supreme Court’s decision by way of a constitutional amendment. According to all recent polling, the vast majority of the American people believe there is too much money being spent in politics. But to get the needed change, it will take a grassroots movement. There are a number of organizations that are working with Public Citizen to bring about the change. Information about Public Citizen’s amendment campaign is available at www.DemocracyIsForPeople.org.

If you agree that spending in politics should be controlled, get involved with Public Citizen and the other groups and work to make this election record-setting.

Source: Public Citizen

THE SEC CAN MANDATE DISCLOSURE OF CORPORATE POLITICAL SPENDING

After the 2010 election cycle brought an onslaught of corporate campaign contributions, the Corporate Reform Coalition—made up of institutional investors managing a combined total of $800 billion in assets, as well as public officials, legal scholars, good government groups and CEOs—called on the Securities and Exchange Commission to issue rules on corporate political spending. Ten prominent corporate and securities law professors filed a petition with the SEC in August of 2011, urging the Commission to require publicly traded companies to disclose their political spending. The petition has since garnered a number of supportive comments filed with the SEC from investors, including mutual fund managers, good corporate actors, good government groups and other stakeholders.

The petition calls on the SEC to ensure that shareholders be told how corporations they “own” are spending their money. It took a while for the public to realize that corporate executives were using millions of dollars of other people’s money to influence the outcome of elections. In addition this money was being used to develop a wide range of public policy issues, including such things as environmental protection, public health and safety and financial regulatory reform, to name just a few. The request to the SEC is simply to require companies to disclose these political payments so that investors can evaluate and mitigate the risks.

Source: Public Citizen

LORELEY FINANCING SUES CITIGROUP OVER $1 BILLION INVESTMENTS

We wrote on collateralized debt obligations (CDOs) in another section of this issue and attempted to explain how these instruments played a major role in almost destroying our economy. In a lawsuit arising out of this complicated debacle, Loreley Financing has sued Citigroup Inc. for fraud involving nearly $1 billion worth of CDOs purchased in 2006 and 2007. Citigroup is accused of defrauding Loreley into purchasing “fraudulent investments that are now worthless.” It’s alleged in the suit, filed in New York State Supreme Court in Manhattan, that Citigroup used the CDOs to offload the risks of toxic mortgage-backed securities on its books and to help preferred clients “short” the housing market.

Loreley Financing is a group of special-purpose entities formed to invest in CDOs. The entities are organized under the laws of Jersey in the Channel Islands. The entities, whose claims include fraud and unjust
of Medicare and Medicaid fraud, pharmaceutical companies, offering perks or incentives to medical sales executives, knew that federal regulations prohibit medical supply companies from doing business with any entity engaged in illegal kickbacks. Mason blew the whistle on his employer, resulting in an $85 million dollar settlement with $23.4 million paid to Mason and $6 million paid to his lawyers.

Our lawyers predict that these settlements will create a powerful incentive for more whistleblowers to come forward in 2012. For more information on qui tam suits, contact Archie Grubb or Andrew Brasheir at 800-898-2034 or Archie.Grubb@beasleyallen.com or Andrew.Brasheir@beasleyallen.com.

Our Firm Continues To Investigate Qui Tam Suits

Lawyers in our firm continue to investigate qui tam suits brought under the False Claims Act, 31 U.S.C. § 3729 et seq. Qui tam suits, commonly called “whistleblower suits,” are suits brought by private citizens on behalf of the United States to recover monies owed to the government. The law provides citizen-plaintiffs, called “relators,” with powerful incentives—sometimes up to 30% of the amount recovered—to report instances of fraud against the federal government. It should be noted that the relator must have first-hand knowledge of the alleged fraudulent activity.

Common qui tam cases involve instances of Medicare and Medicaid fraud, pharmaceutical fraud, government contract fraud, and other public benefit fraud. For example, studies have revealed that up to 10% of Medicare charges are fraudulent. Typical fraudulent schemes involve billing Medicare more than once for the same service, charging for services not performed, billing for expensive equipment and only providing cheaper equipment, or routinely waiving copayments.

The False Claims Act protects whistleblowers who are “denied, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment” for acts done in furtherance of filing a qui tam claim. Penalties for such conduct include reinstatement with seniority, double back pay with interest, other special damages incurred due to discriminatory treatment, and attorney’s fees and costs. This is true even if the case is never filed, as long as the employee’s claims could legitimately support a False Claims Act case.

A good example of a successful qui tam suit was the Milberg firm’s handling last year of a False Claims Act case against medical supply giant Medline. Sean Mason, a Medline sales executive, knew that federal regulations prohibit medical supply companies from offering perks or incentives to medical service providers like hospitals and healthcare facilities that make claims to Medicare or Medicaid. But Mason also had firsthand knowledge that Medline was routinely violating this law, involving millions of dollars of illegal kickbacks. Mason blew the whistle on his employer, resulting in an $85 million dollar settlement with $23.4 million paid to Mason and $6 million paid to his lawyers.

Our lawyers predict that settlements like these will create a powerful incentive for more whistleblowers to come forward in 2012. For more information on qui tam suits, please contact Archie Grubb or Andrew Brasheir at 800-898-2034 or Archie.Grubb@beasleyallen.com or Andrew.Brasheir@beasleyallen.com.

The Pay Scale For Some Corporate CEOs Isn’t Too Shabby

Based on recent reports, it appears that the current pay scales for some CEOs in Corporate America are way out of line. An excellent article on this subject appeared recently in USA Today. From all accounts, 2011 was the year of the $50-million-plus salary for CEOs. Huge employment contracts, retention deals, stock-option gains, bonuses and golden parachutes created huge windfalls for a number of CEOs. Even those on their way out because of improper conduct fared extremely well, which is difficult to understand. All of this comes at a time when a tremendous number of Americans are hurting with many of them being in very bad financial shape. Thousands have lost their jobs and their homes and others are simply having a hard time making ends meet.

A very good analysis of company filings with the Securities and Exchange Commission appeared in the USA Today article. The following is a list of CEOs who did very well last year:

- Walt Disney’s Robert Iger, whose 2011 compensation is valued at over $52 million. That includes $31.4 million in pay and perks and $21.4 million from stock options and vested shares.
- Apple’s Tim Cook—$578 million, including $376 million in restricted stock after replacing the late Steve Jobs.
- Qualcomm’s Paul Jacobs—$50.6 million, including $28.9 million from stock options.
- Tyco International’s Ed Breen—$68.9 million, including stock and option gains worth $52.4 million.
- J.C. Penney’s Ron Johnson—$51.5 million, including $50 million in restricted shares after signing on in November.

All of this comes at a time when executive pay has become a real sore point among rank-and-file workers. It has given rise to movements such as Occupy Wall Street. Corporate governance experts say most of these salaries aren’t warranted. It’s rather difficult to imagine anyone making these sorts of salaries, especially in bad economic times.

It was reported that exit packages for the executives are even more lucrative. For example, Nabors Industries will pay Chairman Gene Isenberg $126 million when he steps down, while Motorola Mobility CEO Sanjay Jha and Temple-Inland CEO Doyle Simons are due more than $60 million once merger deals are finalized.

I believe that publicly-held companies will have to deal with their shareholders on compensation packages for top-level executives more carefully in the future. In past years, annual meetings were generally of the dull sort, but I predict those days are over. Shareholders will start asking tough questions of those who decide how to pay corporate bosses and how much. They had best have some good answers.

Montana Farmers File Class Action Lawsuit Against MF Global

A group of Montana farmers have filed a class action lawsuit against MF Global to recover money they claim was stolen from their personal accounts with the New Jersey firm. Defendants in the case include MF Global principals Jon Corzine, Christine A. Serwinski and David Simons; JP Morgan Chase and Co.; and PricewaterhouseCoopers LLP. As you may recall, Corzine was a former governor of New Jersey and served as a U.S. senator.

The Montana farmers claim they had their farmers’ segregated accounts raided of thousands of dollars when the brokerage firm MF Global reported $1.2 billion of customer money was missing after it declared bankruptcy last year. The farmers’ money was used to guarantee futures contracts for their grains and cattle sales, as well as to lock in prices for fuel, fertilizer and seeds for coming years’ production.

The farmers’ accounts were supposed to be kept separate from funds deposited by people using MF Global to invest in commodities and international finance markets. The class action lawsuit claims MF Global lost huge sums in bad investments on European government bonds, and tried to cover the

IX. THE CORPORATE WORLD

Source: Insurance Journal

losses by stealing from the segregated customer accounts.

PricewaterhouseCoopers audited MF Global’s records and internal controls, while JP Morgan Chase was the firm’s primary banker. Interestingly, JP Morgan had been fined 30 million (British) pounds in 2010 “for failing to protect segregated funds.” The case was filed in Missoula because both the farmers and the Defendants have connections to Missoula County. There are 38,000 potential members of the Plaintiff’s class who allegedly lost money in MF Global accounts. Since the Plaintiffs were unlikely to get their money through the bankruptcy court, they elected to file suit.

Source: missoulian.com

A MOST SIGNIFICANT RULING IN A FRAUD SUIT AGAINST COUNTRYWIDE

As a result of a ruling by a New York state court judge, it will be much easier for the bond insurer MBIA Inc. To pursue its $1.4 billion lawsuit accusing Bank of America Corp’s Countrywide Financial unit of fraudulently inducing it to insure risky mortgage-backed securities. New York State Supreme Court Justice Eileen Bransten ruled last month that in order to show fraud, MBIA need only show Countrywide misled it about the $20 billion of securities it insured, not that the misrepresentations caused its losses.

MBIA accused Countrywide of misrepresenting the quality of underwriting for about 368,000 loans backing 15 financings it insured between 2005 and 2007, while the housing market was booming. MBIA said it would not have provided insurance on the agreed terms had it known how the loans were made. While not ruling on the merits, Judge Bransten lowered the burden of proof on MBIA to show Countrywide committed fraud and breached its insurance policies. Judge Bransten wrote that:

No basis in law exists to mandate that MBIA establish a direct causal link between the misrepresentations allegedly made by Countrywide and claims made under the policy.

Judge Bransten also said MBIA may try to prove financial damages, while agreeing with Countrywide that it “will not be an easy task.” The judge rejected Countrywide’s argument, however, that MBIA’s only remedy was to void its insurance policies. MBIA had said that would be unfair to investors. Bank of America has lost one of its key defenses in the ongoing litigation over mortgage put-backs by the monoline insurers. Judge Bransten issued a similar ruling last month against Countrywide in a case brought by another insurer, Syncora Holdings Ltd’s Syncora Guarantee unit.

Bank of America has had lots of mortgage-related problems since it bought Countrywide in 2008. In a November regulatory filing, Bank of America said unresolved litigation could “significantly” boost costs and materially impact future results. It also said that, through Sept. 30, it had resolved about half of the $6 billion of fraud and warranties claims tied to monoline-insured transactions, including $2 billion in an April settlement with Assured Guaranty Ltd. MBIA meanwhile was restructured by New York’s insurance department in 2009 after the company, which traditionally insured municipal bonds, incurred big losses from insuring mortgage debt. Bank of America and some other banks are challenging that restructuring.

Source: Insurance Journal

WHAT DO YOU KNOW ABOUT PHARMACY BENEFIT MANAGERS?

We hear the term Pharmacy Benefit Managers (PBM) from time to time and read on occasions about some of their activities. But I wonder how many folks really know what PBMs are and what they actively do. My guess is that most folks don’t have a clue. For the uninformed, PBMs administer almost every prescription drug insurance plan in the U.S. The first PBMs were created in the 1980s, and in recent years, they have taken on great importance.

The three largest PBMs managed drug benefits for over 200 million Americans, representing 95% of folks in this country with prescription drug coverage. Up until recently, the PBM industry was dominated by there three large companies, Medco, Caremark and Express Scripts. Together they administered 80% of insured prescriptions and 90% of insured mail order prescriptions. Each of these companies had annual revenues of over $15 billion. But now because of a recent transaction, there are two main players. Express Scripts bought Medco Health Solutions in December of last year for $29.1 billion, further increasing the power and influence of PBMs.

The PBMs are now working hard to increase their size and negotiating power. The PBMs process prescriptions for the groups that pay for drugs, usually insurance companies or corporations, and use their size to negotiate with drug makers and pharmacies. This latest deal continues the consolidation trend. It also illustrates how the industry is becoming more than just an administrator and negotiator. For example, it should be noted that the PBMs operate extensive mail-order pharmacies. That has the potential to drive out local competition and that’s very dangerous for persons buying prescription drugs. Once they control the market, the cost of those prescription drugs will go up sharply and consumers will again be the loser.

There is another area of abuse concerning the PBMs. They increase their profits by retaining payments from drug companies to promote their drugs. The PBMs are allowed under the existing law to accept rebates from the drug companies and that has been a tremendous money-maker for them. The goal of the drug companies is to increase sales of their most profitable products, which plays into the heads of the PBMs. This allows the PBMs to rake in tremendous profits through this rebate system. It’s most significant that the PBMs don’t pass these huge profits on to the insurance plans or to consumers. The bottom line is that the rebate system has developed into a great thing for the drug companies as well as for the PBMs. It also has a huge potential for abuse. Congress must take a serious look at how the PBMs operate and then take the actions necessary to protect the American people.

Source: www.BeasleyAllen.com

X. PRODUCT LIABILITY UPDATE

TOXIC GASES ARE DANGEROUS AND SILENT KILLERS

Toxic gases can kill and injure people as easily and as quickly as an armed intruder. These gases can harm or injure over a period of time, or instantaneously, depending on the amount of exposure. These silent, harmful gases are produced naturally and intentionally and subject unsuspecting people to harm or death in the workplace and even in their homes. With respect to the workforce, if a person works in the oil and gas industry, farming or processing of livestock they should be aware of the potential presence of toxic gases. If potential for toxic gases exists, there should be safety procedures and safety devices in place to limit or prevent exposure.

With respect to our homes, it is important to determine the likelihood of exposure. We must know the detection methods, and what can be done to limit or prevent exposure. The most common toxic gases are hydrogen sulfide, carbon monoxide and methane.

Hydrogen sulfide is commonly called sewer gas or stink damp because of its rotten egg smell. It’s a colorless, flammable and extremely hazardous gas. Hydrogen sulfide...
occurs naturally in crude petroleum, natural gas, volcanic gases and hot springs. It can also result from bacterial breakdown of organic matter. At high concentrations, the ability to smell the gas can be completely lost in an instant. Just a few breaths of air containing high levels of hydrogen sulfide can cause death.

Our firm has handled cases in the past involving hydrogen sulfide exposures. One such case was at an oil and gas facility. Currently, we have a case going to trial in March involving an exposure to hydrogen sulfide from a poultry delivery truck. The exposures in one of the cases resulted in the death of the first exposed individual and respiratory problems to others attempting to save their fallen co-employee.

Carbon monoxide is an odorless, colorless and toxic gas. Like hydrogen sulfide, carbon monoxide is impossible to see and taste. Unlike hydrogen sulfide, however, carbon monoxide does not have a smell at any level of concentration. In low concentrations, Carbon Monoxide causes flu-like symptoms such as headaches, dizziness, nausea and fatigue. The gas is fatal at very high concentrations. Carbon monoxide originates from unventilated kerosene and gas space heaters, leaking chimneys and furnaces, gas stoves, generators and other gasoline powered equipment. It can also derive from tobacco smoke. Our firm has handled several cases in the past involving carbon monoxide exposure.

Methane, like hydrogen sulfide and carbon monoxide, is colorless. Similar to carbon monoxide, methane is odorless. In commercial natural gas production, trace amounts of smelly organic sulfur is added to give the gas a detectable smell. Methane is the principal component of natural gas and can be produced by the anaerobic bacterial decomposition of plant and animal matter. Methane is not toxic when inhaled, but it can cause suffocation by reducing the concentration of oxygen inhaled. The principal use of methane is fuel and an undetected gas leak could result in an explosion or asphyxiation. Our firm is currently handling a case involving a methane exposure which caused or contributed to the death of the exposed individual.

In the workplace, strict compliance with the employer’s safety protocol dealing with toxic gases is highly recommended. Safety can be improved by focusing on detection procedures in place and appropriate use of equipment designed to limit or prevent inhalation of toxic gases. Industries that engage in the creation of toxic gases, as well as industries where these toxic gases are the byproduct of a process, should inform their employees of the risks and prepare them to deal with an exposure. OSHA mandates specific procedures, training and safety equipment for these industries.

In our homes, it’s important to ensure that heaters, fireplaces, generators or any equipment that create toxic gases are properly maintained and used properly. Damaged home heating devices, as well as devices improperly used, can injure or kill an entire family while they sleep. When dealing with toxic gases, knowledge is power. The inability to see and sometimes smell the presence of toxic gases can be fatal. The families we have represented have first-hand knowledge of the consequences of failing to deal with these threats properly whether in the workplace or at home.

If you need additional information or have questions concerning this subject, contact Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com. Kendall has successfully handled a number of cases involving toxic gases.

**CHILD SAFETY SEATS MUST BE MADE SAFE FOR CHILDREN**

Few safety-related decisions a parent can make are more important than the decision to place their child in a child safety seat when that child is a passenger in a motor vehicle. But the seat must be properly chosen and then must be used correctly. The statistics can’t be ignored, and they show that an infant in a proper child safety seat has 71% less likelihood of receiving a fatal injury in a vehicle crash. A toddler’s chances of survival increase by more than half (54%). There is really no reason why a child shouldn’t be placed in a child safety seat. When riding in a vehicle I strongly recommend all that parents use them for their children. These seats are provided to protect the children and must be designed properly. They must also be used properly.

Most child seats are never called upon to provide safety to the children they were designed to protect and serve only as seats for a child to sit in while riding in a vehicle. But the real purpose of a child safety seat is to protect children. Unfortunately, some child seats fail in the one task they were designed to perform and that is to protect children.

What are some signs that a safety seat may have failed in a collision? If a child in a child safety seat is seriously injured or killed in a wreck and not others in the vehicle, that is a sure sign of a problem. Many times the child safety seat fails, breaks or detaches from its base. In such cases, the seats should be inspected by an expert to determine how it performed.

A child safety seat can be to blame in a side impact if the child is unexplainably seriously injured or killed. Also, a child safety seat can be the cause of paralysis in children in certain scenarios, especially when children are sitting in booster seats. The problems with car seats are extensive. A car seat may not be designed to be compatible with the vehicle in which it is used. In such a case the seat can’t be properly tightened in the vehicle. Fortunately, car installed latches and top tethers have lessened incompatibility issues.

Older car seats with overhead shields present can cause serious injuries from head contact to the shield. Fortunately, these seats haven’t been manufactured since the early 2000s and that’s a good thing. Many safety experts believe that car safety seats should employ a five-point harness. Five-point harnesses are by far the safest restraint and can easily be placed in a child safety seat. Until that happens, there will continue to be safety problems with safety seats for children.

Finally, it should be noted that structural failures are not uncommon. Components needed to properly restrain the occupants can break, or the seat itself can become detached, and such incidents can cause serious injuries and even the death of a child. If you have any questions about child safety seats, contact Chris Glover, a lawyer in our firm, by calling 800-898-2034 or by email at Chris.Glover@beasleyallen.com. Chris has successfully handled a number of cases involving defective child safety seats.

**FAMILY SETTLES PESTICIDE-RELATED WRONGFUL DEATH LAWSUIT**

The family of two girls who died just days after a fumigant was placed around their home has settled its wrongful death lawsuit filed against Bugman Pest and Lawn Inc., a pesticide company, located in Bountiful, Utah. The lawsuit was filed by the family of Rebecca Kay Toone, age four, and her sister, Rachel Ana Toone, 15 months, who died in February of 2010.

According to authorities who investigated the deaths, the girls might have inhaled phosphine fumes emitted from tablets of Fumitoxin, a rat poison. The Utah Medical Examiner’s Office reported that the girls had elevated levels of phosphorus in their bodies. The girls’ deaths came after an exterminator for Bugman applied Fumitoxin pellets around the family’s home in a manner allegedly “inconsistent with the labeling.” The complaint named the pest control company and its owners as Defendants. The complaint sought compensatory damages for the deaths.

The pest control company pled guilty in federal court to the unlawful use of a registered pesticide, a misdemeanor, in October. It
was stated that the use of the pesticide resulted in the deaths of the two children. Less than two months after the Toone girls died, the U.S. Environmental Protection Agency prohibited the residential use of Fumitoxin. The Utah Department of Agriculture and Food—which regulates the use of pesticides—also tightened its rules and increased accountability after the deaths, mandating that consumers be notified in advance and given specific written information when products labeled “danger” are used. Peter Summerill, a lawyer with Hasenayer, Summerill, & Wahlquist, a firm located in Ogden, Utah, represented the family in the civil suit and did a very good job.

Source: Desert News.com

XI.
MASS TORTS
UPDATE

Our Mass Torts Section has been very busy over the past year with that activity has carried over into the New Year. Andy Birchfield heads up the section and Melissa Prickett serves as the Section Administrator. Currently, we have 16 lawyers and 66 staff personnel in the section. I will give a summary of the Section’s current activity. Lawyers and staff in the Section are currently investigating and/or litigating the following:

• **Actos**
The FDA has approved updated warning labels for Actos, a prescription medication used to treat Type 2 diabetes. The updated label states that Actos usage for more than one year may cause bladder cancer. Actos, manufactured by Takeda, has been under FDA review since September 2010. In June 2011, the FDA issued a warning for Actos, while at the same time, drug regulators in France and Germany suspended use of the drug. We are currently investigating claims involving usage of Actos, Actoplus Met, Actoplus Met XR, Duetact and bladder cancer.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

• **Transvaginal Mesh**
The FDA has issued an updated safety communication warning doctors, health care professionals and patients that the placement of surgical mesh through the vagina to treat pelvic organ prolapse and stress urinary incontinence may present greater risk for the patient than other non-mesh procedures. This is also called transvaginal mesh. According to the FDA, reported complications from the transvaginal placement of the mesh include erosion of the mesh into the vaginal tissue, organ perforation, pain, infection, painful intercourse and urinary and fecal incontinence. Often women require surgery to remove the mesh. In some cases, this can require multiple procedures without successfully removing all of the mesh. Currently, we are investigating cases involving mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldera, and Johnson & Johnson.

Lawyer: Leigh O’Dell
Primary Staff Contact: Melissa Bruner

• **Antidepressants**
SSRI-antidepressants such as Celexa, Lexapro, Luvox, Paxil, Prozac and Zoloft are prescribed to treat depression. Studies over the last several years have shown an increased risk of heart birth defects in children born to mothers who took SSRI-antidepressants in the first trimester. Most of the cardiac defects observed in these studies were atrial or ventricular septal defects, conditions in which the wall between the right and left sides of the heart does not completely develop. We are currently investigating claims of birth defects involving children whose mother was taking an SSRI during pregnancy.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

• **Chantix**
We are investigating claims of suicide or attempted suicide resulting in permanent injury involving Chantix. Chantix (USA) or Champix (European and other countries), known generically as varenicline, is marketed by Pfizer as a prescription medication used to treat smoking addiction.

Lawyer: Frank Woodson
Primary Staff Contact: Cathy Perry

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

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

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

Lawyer: Chad Cook
Primary Staff Contact: Tabitha Dean

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

We would like to review any cases involving individuals who have had a DePuy hip device implanted and all individuals unsure of the type of hip device implanted if the person has had revision surgery, or the person is experiencing hip pain, hip swelling or difficulty walking.

Lawyers: Navan Ward and Melissa Prickett
Primary Staff Contacts: Janet Pair and Donna Puckett

• **EBIce Cold Therapy Cases**
These cases involve injuries caused by cryo-therapy devices typically pre-
scribed by orthopedic surgeons and podiatrists after a surgical procedure. “Cold Therapy” is used by a physician or podiatrist in order to minimize pain and swelling related to the surgery. With no or very little instruction and essentially no warnings, a patient uses the device by placing the pad on the affected area, fills the ice chest with ice and water and the circulating pump inside the ice chest circulates cold water through the tubes and cooling pads. Without instruction the patient, thinking that more cooling is better, will subject the skin and underlying nerves around the affected area to very cold temperatures. Injuries resulting from these devices can be dramatic and typically fall into two categories, nerve-only damages and skin injury with nerve damage. The skin injury with nerve damage cases will have visible injuries like frost bite.

Lawyer: Russ Abney
Primary Staff Contact: Amy Brown

- **Fosamax®**
  Fosamax® (alendronate sodium), manufactured by Merck, is in a class of drugs called bisphosphonates. Fosamax® is commonly used in tablet form to enhance the quality of magnetic resonance imaging (MRI) and can place patients at risk for developing a potentially fatal disease known as Nephrogenic Systemic Fibrosis (NSF) or Nephrogenic Fibrosing Dermopathy (NFD). People who develop NSF or NFD may experience a thickening of the skin and other organs, which can limit their ability to move or extend joints, and can lead to significant pain and even death. Other problems may include dark patches on the skin that appear rough and hard with raised plaques or papules, which are elevations of the skin. Joint and bone pain, as well as swelling of the feet and hands have also been reported. The FDA first warned about NSF and NFD associated with Gadolinium in June of 2006 and again in December of 2006. As of April of 2007, the FDA had received a considerable number of additional cases involving these conditions.

There are five Gadolinium-based contrast agents which are FDA-approved. One is the Omniscan Contrast Dye, manufactured by GE Healthcare. It is designed for intravenous use in MRI for the brain and the spine. In a recent study, five of the nine patients diagnosed with NSF received an MRI involving Omniscan Contrast Dye. Other studies have shown similar results. The other Gadolinium-based agents include OptiMARK, Magnevist, MultiHance and Prohance. Manufacturers of these products include Bayer Schering Pharma, GE Healthcare, Tyco Healthcare and Bracco Diagnostic, Inc. We are currently evaluating these Gadolinium-based contrast agents involving patients who have developed nephrogenic systemic fibrosis or Nephrogenic Fibrosing Dermopathy.

Lawyer: Roger Smith
Primary Staff Contact: Linda Reynolds

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

Criteria: Children born with birth defects to a mother who has documented use of Paxil® during pregnancy.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

- **Hormone Therapy**
  For years, women have taken Hormone Therapy (HT) to reduce the symptoms of menopause. Studies now show that HT medications such as Prempro and Premarin can increase the risk of breast cancer, ovarian cancer, stroke and heart disease. We are currently investigating potential claims against the manufacturers of HT medications. There are a number of cases set for trial in several states over the next few months and others will soon be set. We currently have 660 cases either filed or soon to be filed.

Lawyers: Ted Meadows, Melissa Prickett, Russ Abney, Navan Ward James

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

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

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

Lawyer: Frank Woodson
Primary Staff Contact: Cathy Perry

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

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

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

**PUNITIVE DAMAGE AWARDS Upheld In HORMONE REPLACEMENT THERAPY CASES**

On January 3, 2012, the Superior Court of Pennsylvania released two extremely important opinions in the Hormone Therapy Replacement drug cases. The first case is *Kendall v. Wyeth Pharmaceuticals, Inc.*, and the second is *Barton v. Wyeth Pharmaceuticals, Inc.* In each case, the Court affirmed punitive damage awards involving Wyeth, Pharmacia & Upjohn, Inc. Wyeth was a Defendant in both cases with Upjohn only being a Defendant in the *Kendall* case. The claims against both Wyeth and Upjohn were based on the conduct of each Defendant in the sale of their drugs promoted for the treatment of menopausal symptoms. The Plaintiff in each case contended that the drugs caused breast cancer and that the Defendants failed to provide adequate warnings concerning the breast cancer risks of the drugs.

Examining the evidence supporting a punitive damage award against Wyeth, the Court concluded that the evidence demonstrated that Wyeth, as early as the 1970’s, knew of a link between its drug, Premarin, and breast cancer, but failed to warn physicians or pursue definitive studies about the risk. Additionally, the Court concluded that the evidence demonstrated that Wyeth:

- actively sought to suppress information about the risk of breast cancer associated with Premarin/Prempro;
- promoted the drugs for unapproved off-label uses; and
- that the drug company’s primary motivation was profit.

The Court held that Wyeth’s conduct was sufficient to support a claim that Wyeth acted with a wanton disregard for the rights of others under Illinois law. The Court rejected Wyeth’s arguments that compliance with FDA regulations prohibited the imposition of punitive damages and evidence of Wyeth’s marketing conduct should not have been admitted at trial.

Examining the evidence supporting a punitive damage award against Upjohn, the Court concluded that Upjohn was on notice that its drug, Provera, caused mammary cancer in rats as early as 1961 and exacerbated breast cancer in humans as early as 1965. The Court noted that Upjohn did not study the risk of breast cancer despite actively promoting Provera to be used with exogenous estrogens for the treatment of menopausal symptoms, a use that was not
approved by the FDA. In fact, the FDA repeatedly denied Upjohn's requests for such a use due to the lack of sufficient studies.

The Court rejected Upjohn's argument that punitive damages were not warranted for an “unknown” risk of breast cancer associated with Provera because Upjohn stuck its head in the sand and failed to conduct studies to explore a possible risk between Provera and breast cancer. That failure was despite Upjohn conducting studies on potential benefits of Provera, including osteoporosis.

Additionally, Upjohn did not include any warning about the possible risk of breast cancer in humans in the Provera label. The Court held that the evidence was sufficient to support a claim that Upjohn acted with wanton disregard for the users of Provera. The Court also rejected Upjohn's arguments concerning compliance with FDA regulations and admission of Upjohn's marketing materials.

In Kendall, the Court affirmed a compensatory award of $6.3 million and reinstated a $28 million dollar punitive damage award against Wyeth ($16 million) and Upjohn ($12 million). The Court reversed the trial court’s remittitur of the punitive damage award.

In Barton, the Court affirmed a compensatory award of $3,746,344.97 and modified the trial court's remittitur of the punitive damage award by increasing the punitive damage award to $7,492,689.94. That was a 2:1 ratio of punitive damages to compensatory damages. These two appellate court decisions are very important and told the story of how truly bad these companies have been. I believe the well-written opinions have to be considered good news for Plaintiffs in other cases and very bad news for the Defendant companies.

**Boston Judge Orders Drug Companies To Settle Breast Cancer Case**

A federal judge in Boston, last month, ordered 14 drug companies to negotiate settlements for 53 women whose breast cancer was allegedly caused by an anti-miscarriage drug their mothers took decades ago. The ruling by U.S. Magistrate Judge Marianne Bowler came after closing arguments on motions by the drug companies to exclude testimony from experts for the women who believe there is a link between DES, or diethylstilbestrol, and breast cancer in daughters over 40. Judge Bowler rejected those motions and ordered the drug companies to enter mediation. The women are suing drug companies who made and promoted DES, a synthetic estrogen, from about 1938 to the early 1970s. Aaron Levine and Julie Oliver-Zhang, lawyers with Aaron M. Levine and Associates, are representing the plaintiffs in this case.

*Source: Insurance Journal*

**Reglan Litigation Update**

The following is a requested update on the Reglan litigation in Philadelphia. Even though a state trial judge has ruled on generic drug manufacturers’ preliminary objections seeking dismissal of the claims asserted against them, the viability of the Plaintiffs’ claims are still in question and could be subject to further delay. Recently, generic drug manufacturers involved in the Philadelphia litigation jointly filed a petition for permission to appeal Judge Moss' order to the Superior Court of Pennsylvania.

Under Pennsylvania law, the Defendants are permitted to appeal under sections 702(b) and 742 of the Pennsylvania Judicial Code when there is an order involving a controlling question of law to which there is a substantial ground for difference of opinion that an immediate appeal from the order may materially advance the ultimate determination of the matter. Here, the controlling question of law is whether, under Mensing, Plaintiffs’ claims against generic Defendants are preempted by federal law.

Many courts, including the 5th, 6th, and 8th Circuit Courts of Appeal, as well as district courts in Louisiana, Arkansas, Florida, Indiana, Georgia and New Jersey, have all dismissed state law claims raised against generic drug manufacturers. To add further support to their argument that appeal is proper under the circumstances, the generic Defendants also argue that Judge Moss’ decision was a collateral order separable from and collateral to the main cause of action, making the issue immediately appealable.

Plaintiffs who have filed suit around the country contend that Mensing may preempt failure to warn claims, but that does not imply that Mensing granted generics immunity from all tort liability. Specifically, generics are not preempted from failing to adequately communicate warnings that are consistent with information found in the labeling of its brand-name counterpart. In fact, it was alleged before the trial court in Philadelphia that no Reglan manufacturer, generic or brand, communicated the 2004 label changes, which specifically warned that drug therapy with Reglan/metoclopramide should not exceed twelve weeks, to physicians. It was this failure to communicate that led to the chronic over-prescribing of the drug and the multitude of injuries that resulted.

After Judge Moss’ ruling, the bellwether trial process reconvened in Philadelphia with the first trial set to begin in May 2012. It is unknown at this time whether the generics’ petition for appeal will disrupt the upcoming trial settings. If you need more information on this subject, contact Danielle Mason at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com. Danielle has been actively involved in this litigation.

**Lawsuit Filed Against Tylenol Maker Over Boy’s Death**

A lawsuit has been filed in Philadelphia against Johnson & Johnson Inc. Alleging Very Berry Strawberry Children's Tylenol was linked to the death of a two-year-old boy. In the lawsuit filed in Philadelphia Common Pleas Court, the parents, Daniel and Katy Moore, allege their son received a larger dose than normal of acetaminophen causing liver damage and his ultimate death. The suit names Tylenol's manufacturer, Johnson & Johnson, and its McNeil Consumer Healthcare subsidiary as Defendants.

When McNeil Consumer Healthcare initiated several recalls for children’s products in 2010, it communicated that information to the Food and Drug Administration, consumers, retailers and healthcare professionals. There were various reasons for those recalls, but they were not related to serious adverse events, as alleged in this suit. McNeil announced a recall April 30, 2010, of more than 136 million bottles of liquid infants' and children's products, due to metal particles, incorrect doses and musty-smelling pills among other issues. A Congressional hearing on the subject was held in May 2010. Joseph Messa, a Philadelphia lawyer, represents the parents in the lawsuit.

*Source: UPI.com*

**Dangerous Medical Device Should Be Removed From the Market January 12, 2012—citizen.org**

Public Citizen believes that the Food and Drug Administration’s failure to remove from the market a medical device that is supposed to prevent strokes in patients who are at high risk of such events because of severely narrowed brain blood vessels represents a reckless disregard for patient safety. Public Citizen filed a petition with the FDA in December, seeking to protect the public. Since the December petition, the manufacturer of the Wingspan Stent System-Stryker—and an FDA official have made public statements implying that the continued failure of the FDA to remove this dangerous medical device from the market is justified.

The two said the failure to act is related to some alleged lack of comparability between the subjects in the Stenting and Aggressive
Further study, funded by the National Institutes of Health and published in September 2011 in the New England Journal of Medicine, found a 2.5-fold higher risk of suffering a stroke or dying within the first 30 days in patients who had the device implanted than those who received medical treatment alone. Enrollment in the study was stopped in April 2011—earlier than anticipated—because of these serious safety problems and a lack of evidence that the device provided any benefit. Dr. Michael Carome, deputy director of Public Citizen’s Health Research Group, who was the author of the petition, had this to say:

The Wingspan Stent System was thought to be too dangerous to implant in any more subjects in the SAMMPRIS trial, and it is likewise too dangerous to use in the hundreds of patients who have clinical characteristics similar to those of the SAMMPRIS trial subjects and the population of patients eligible for treatment with this device under the FDA-approved HDE indication. Due to the FDA’s unconscionable decision to delay withdrawal of the agency’s approval of the Wingspan Stent System HDE, the continued use of this device exposes patients to an unacceptable risk of serious harm, including death. Given the evidence of significant harm with no evidence of any benefit, there is no justification for any additional patients to be treated with this dangerous device. The only way that further use of the device can effectively and definitely be prevented is to immediately remove the device from the market, as it clearly cannot be said to provide reasonable assurance of safety. Rather, it guarantees an unreasonably high risk of harm. To allow any further implantation of this device would be highly unethical as well as a violation of FDA laws and regulations.

Hopefully, the FDA will recognize that the further use of the device creates an unreasonable risk of harm to the public. I agree with Public Citizen that the approval of this device should be withdrawn by the FDA and the device pulled from the market.

Source: Public Citizen

**COURT GIVES PRELIMINARY APPROVAL TO CHINESE DRYWALL SETTLEMENT**

U.S. District Judge Eldon Fallon has given his preliminary approval to the settlement that calls for a Chinese drywall manufacturer to pay hundreds of millions of dollars to resolve court claims by thousands of Gulf Coast property owners who say the product wrecked their homes. In his order, Judge Fallon said that he believes the proposed settlement to be “fair, reasonable and adequate.”

Knauf Plasterboard Tianjin Co. Agreed in December to create an uncapped fund to pay for repairing roughly 4,500 properties, mostly in Florida, Louisiana, Mississippi and Alabama. The settlement also would create a separate fund capped at $30 million to pay for other types of losses, including those blaming drywall for health problems. Judge Fallon will hold a “fairness hearing” on the settlement agreement before giving his final approval.

Source: Montgomery Advertiser

**Olympus Sues Executives For Damages In Cover-Up**

Olympus Corp. has sued 19 former and current executives for damages that the Japanese camera and medical equipment maker says it has suffered over a massive cover-up of investment losses. The lawsuit, filed by Olympus on behalf of the company in Tokyo District Court, targets former CEO Tsuyoshi Kikukawa, current President Shuichi Takayama and 17 other executives that the company says participated in or knew about the fraudulent activity. The scheme—which first came to light after former President Michael Woodford blew the whistle—has raised serious questions about corporate governance in Japan, and whether major companies are complying adequately with global standards.

Financially battered Olympus said the lawsuit follows a report from an investigation by an independent panel that the Tokyo-based company had set up. Then-President Masatosh Kishimoto, as well as subsequent executives—including Kikukawa—knew about the scheme, the company says. A small circle of employees was also involved. It was reported that six board members implicated in the report, including Takayama, will resign at the next shareholder meeting, scheduled for March or April. Kikukawa is being sued for 3.6 billion yen ($47 million). The company is seeking smaller amounts from other Defendants, including 1 billion yen ($13 million) from Kishimoto.

Under Japanese law, auditors represent the company when executives on the board are targeted in damage lawsuits. In the Olympus lawsuit, three auditors, two of them outsiders, are representing the company. None of them were implicated in the scandal. Olympus alleges in the lawsuit that it suffered direct losses to its finances, in terms of fees and interest paid to run the scheme—as well as losses stemming from the improper handling of the scandal after it surfaced. It’s alleged further that the “credibility of Olympus’ corporate governance and the public’s trust of Olympus were seriously damaged.”

Japanese prosecutors, which have begun a separate investigation, raided company headquarters and Kikukawa’s home in December. Olympus barely met its mid-December deadline to avoid being removed from the Tokyo Stock Exchange by filing corrected earnings for the April-September first half and for the past five fiscal years. Olympus’ stock plunged amid the scandal and it’s now trading at about half of its pre-scam value.

Sources: Claims Journal and Associated Press

**FORMER RED SOX CATCHER WARNS ARBITRATION CLAIM**

Former Red Sox catcher Doug Mirabelli, a two-time World Series champion, and his wife Kristin, have won their securities claim against Merrill Lynch. An arbitration panel ruled last month that Merrill Lynch must repay Mr. & Mrs. Mirabelli more than $1.2 million in damages and fees for providing inappropriate investment advice to them. The Financial Industry Regulatory Authority (FINRA) arbitration panel awarded the full amount of the Claimants’ out-of-pocket losses. The Claimants received their entire initial investment, as well as all legal fees and associated arbitration costs. The panel basically put the Mirabelli’s back in a position that they would have been in had they never met the Merrill Lynch adviser.

The Mirabelli’s invested all of their liquid assets, about $1.8 million, with Merrill Lynch in early 2008. The advisor then put those assets into his team’s income portfolio, which was made up of 33 dividend-paying growth stocks. Because the account was collateralized through loans, if the value of the account fell below $1 million in value, the Mirabellis would need to sell out of the secu-
Economic Consulting, a global firm of economic experts with its main office in New York City, issued its semi-annual report that contains this information and a great deal more. The Mirabelli’s suffered a loss of about $800,000.

It was contended that Merrill Lynch put the Mirabelli’s assets in “inappropriate” investments and recommended the purchase of “unsuitable securities.” The arbitrators obviously agreed with the Claimants. Barry Lax, a lawyer with Lax & Neville, a firm located in New York City, represented the Mirabellis and did a very good job.

Source: Insurance Journal

XIII.
AN UPDATE ON SECURITIES LITIGATION

A REVIEW OF SECURITIES CLASS ACTIONS
IN 2011

Our firm in recent years has become much more involved in class action litigation, especially in lawsuits involving securities brought by shareholders. We plan to be much more active in that field in the future. We have several lawyers who specialize in class action litigation. We learned early-on that it’s a field of law that requires expertise in a number of different areas. Bill Hopkins, who had a strong background in class action litigation in South Carolina, joined the firm in 2010 and he has been a very good addition.

A recent report took a look at what is going on in that field. It was reported by NERA Consulting that there was little change in the number of securities’ class action lawsuits filed in the U.S. during 2011. The pace of filings of class actions under federal securities and commodity laws, according to the report, held relatively steady in 2011, as compared to the previous three years. The report did point out, however, that there has been a substantial change in the make-up of suits filed.

The report, “Recent Trends in Securities Class Action Litigation: 2011 Year-End Review,” indicates there has been an increase in cases involving Chinese companies listed in the U.S. And in merger and acquisition objection lawsuits. A decline in credit-crisis cases was also noted in the report. NERA Economic Consulting, a global firm of economic experts with its main office in New York City, issued its semi-annual report that contains this information and a great deal more.

The report also found that the average settlement values of securities class actions fell to $31 million in 2011, well below the 2010 average of $108 million, but still the third-highest on record. It was projected by NERA Trends authors that there will be 232 shareholder class action filings in 2011. This is pretty much in line with levels observed in 2008, 2009, and 2010, with the highest number being in 2008. 245. Suits objecting to a merger or an acquisition have accounted for 29% of filings so far in 2011, and filings against Chinese companies have accounted for approximately 18%. That pace is a bit slower than NERA projected in June when it forecast there would be 260 filings for all of 2011. There were 130 filings of securities class actions from January to June of this year.

One interesting development involved settlements in securities class action lawsuits. The number of settlements also declined in 2011. Average settlement values of securities class actions fell to $31 million in 2011. The following are some additional trends mentioned in the report:

• Securities class actions against financial sector companies accounted for roughly 16% of cases in 2011, as contrasted with nearly half in 2008 and 2009. Filings against companies in the electronic technology and technology services sector accounted for the largest percentage in the year, with 21% of filings. Health technology and services companies accounted for 15% of filings.

• Filings of credit crisis-related class actions largely subsided in 2011, with 11 cases filed. Such litigation is approximately a third of its level last year, when it had already declined by about two-thirds from its 2008 peak.

• Aggregate Plaintiffs’ attorney fees, at $594 million, fell in 2011 to their lowest level since 2004. This decline is largely attributed to the combination of the lower average and median settlement size, and fewer settlements occurring in 2011.

• Cases were filed considerably more quickly in 2011 — the average time to file in 2011 was 109 days, as compared to 175 days last year.

The work done by the authors of the report is greatly appreciated. It helps lawyers keep up with litigation trends in this area of law. You can get more information on the subject by going to www.NERA.com.

Sources: Insurance Journal and NERA.com

CONSUMER WATCHDOG TARGETS PAYDAY LOANS

Anybody who has been reading this Report over the past several years should already know that I am not a fan of the payday lenders. If there has ever been any doubt, let me resolve it by saying that I am not. I consider this industry to be one that preys on and takes advantage of folks on a regular basis. Few people know how politically active and powerful this industry is both at the federal and state levels. Payday lending is now a $7 billion a year industry in the United States. Millions of Americans with limited income see this as their only way to get quick cash to pay for an unexpected expense. The market is so lucrative that some traditional banks now offer their version of the payday loan, called a deposit advance.

While some states limit the interest rate payday lenders can charge, a few states actually ban these loans. While payday lenders have to comply with federal law, there has been little federal oversight in the past. Hopefully, that’s about to change. The Consumer Financial Protection Bureau held a hearing in Birmingham, Ala., last month on payday lenders. Richard Cordray, the CFPB’s newly-appointed executive director, said his agency will examine both bank and nonbank institutions offering these short-term, small-dollar loans. Cordray had this to say:

We recognize that there is a need and a demand in the country for emergency credit. At the same time, it’s important that these products actually help consumers and not harm them. We know that some payday lenders are engaged in practices that present immediate risks to consumers and are illegal. Where we find these practices, we will take immediate steps to eliminate them.

Payday loans are supposed to be short term: 14 days. As the name implies, they are supposed to get a person to the next pay day, when they will be able to repay the loan. Here is how a payday loan works. Let’s say a person needs $100 and the interest rate for that two week period is 17%. He or she writes a postdated check made out to the lender for $17. If they can’t pay that amount when the two weeks is up, the borrower keeps $17, the loan is extended and another $17 fee is added on. It’s quite common for the borrower to be unable to pay the loan when due.

The borrowers often roll-over their debt when they can’t repay it. They wind up living off that borrowed money at an annual interest rate of 400% to 600% or more. Steven Stetson, a policy analyst with Alabama Arise, an anti-poverty group based in Montgomery, said at the hearing that folks get “churned through the system” six, eight, ten times a year. He said that “If we have laws against gouging for gas and water, we ought to have
laws against gouging for loans." He is absolutely correct.

Director Cordray said at the meeting that the CFPB will look into the long-term use of payday loans. He talked about a consumer who had contacted the agency and who had taken out a $500 loan to pay for a car repair. But at the end of two weeks, the man couldn’t repay the loan. It’s been nine months and the borrower has paid $900 on that loan and still has $312 more to go. The money is withdrawn directly from his paycheck and now the man doesn’t have enough left to pay his bills. I suspect that’s a story that could be told in every state where payday lenders operate.

Folks who use payday loans tend to have less income, fewer assets and lower net worth than the average American family. Reportedly, they are disproportionately people of color. The industry insists it is serving people who are denied credit and shut out of the traditional banking system. They obviously like the current system. There have been tremendous abuses in that system and there are some badly needed changes. Hopefully, Director Cordray and the new agency will bring them about.

Source: Associated Press

U.S. SHAREHOLDERS SUE LLOYDS

American shareholders have filed suit against the Lloyds Banking Group of Britain and former bank executives, alleging they were misled by the Defendants over the government’s rescue of HBOS in the depths of the financial crisis in 2008. The bank, along with Victor Blank, who stepped down as chairman of Lloyds, and Eric Daniels, the former chief executive, were named as Defendants in the class-action lawsuit filed in New York. It’s alleged that the Defendants had a “reckless disregard for the truth.”

The bank’s board is accused of making misleading statements about the government-engineered takeover of HBOS, which at the time was called by Mr. Daniels a “fantastic opportunity to create the U.K.’s leading financial services group and create great value for both sets of shareholders.” But weeks later, Lloyds had to turn to the government for a bailout, surrendering a 43% stake in return for a $17 billion ($26.4 billion) injection of taxpayers’ money. Shareholders claim they were not told about a deterioration in HBOS’s finances, and the extent of the problem became known only when the bank posted a worse-than-expected £10 billion loss in February 2009.

Source: New York Times

JUDGE Allows SUIT ALLEGING GE MISLED INVESTORS TO PROCEED

A federal judge has refused to dismiss a lawsuit accusing General Electric Co. and its chief executive of misleading investors about the conglomerate’s financial health and exposure to risky debt during the 2008 financial crisis. The decision by U.S. District Judge Richard Holwell, who sits in Manhattan, keeps alive litigation seeking to hold the company responsible for investor losses during a six-month period when its stock price fell to about $10 from about $26, causing its market value to tumble by more than $150 billion. Investors claimed that GE withheld information regarding its health and the health of its GE Capital finance arm, including exposures to subprime and other low-quality loans. They also said GE misleadingly touted itself as being safer than rivals, despite the effects of the financial crisis.

Judge Holwell also let stand some claims accusing bank underwriters of omitting statements from offering documents for a $12.2 billion GE stock offering in October 2008. He dismissed several other claims, and did not rule on the case’s merits. Judge Holwell said investors led by the State Universities Retirement System of Illinois adequately alleged that GE made material misrepresentations during the crisis about its access to commercial paper and ability to maintain its dividend. He also let the investors pursue claims alleging that company officers, including Chief Executive Jeffrey Immelt and Chief Financial Officer Keith Sherin, misled them and had sufficient intent, known as “scienter,” to mislead. Judge Holwell wrote in the opinion:

Immelt’s categorical statements that investors could ‘count on’ a dividend and that GE was having ‘no difficulties’ issuing commercial paper are not the sort of cautious statements one would expect of a CEO attempting to come to grips with the effects of the economic crisis on his company. A CEO is allowed to convince the public to invest in his company, but not at the expense of providing it with accurate information about the company’s financial health. Taking the factual allegations in the (complaint) as true, the inference that Immelt acted with scienter is at least as compelling as the inference that he did not.

Among the banks that were sued were Bank of America Corp., Citigroup Inc., Deutsche Bank AG Goldman Sachs Group Inc., JPMorgan Chase & Co., and Morgan Stanley, court records show. The lawsuit covered investors who owned GE stock from Sept. 25, 2008 to March 19, 2009. During that period the Fairfield, Conn.-based company cut its dividend and lost its “triple-A” credit rating. It also received a $3 billion infusion from Warren Buffett’s Berkshire Hathaway Inc. GE’s many products include jet engines, turbines and light bulbs. Interestingly, GE also owns part of NBC Universal, in which Comcast Corp. holds a majority stake.

Source: Insurance Journal

A CHANGE IN SETTLEMENT LANGUAGE BY THE SEC

U.S. securities regulators have said that Defendants can no longer settle civil cases using “neither admit nor deny” language if they have already admitted to wrongdoing in parallel criminal cases. The policy change, announced by Securities and Exchange Commission Enforcement Director Robert Khuzami on January 9th, applies only to instances where a Defendant has already admitted to violating criminal laws. It comes after a federal judge in New York rejected a proposed $285 million settlement between the SEC and Citigroup, in part because the bank had not admitted to wrongdoing. However, in that case, no parallel criminal charges have been filed.

Apparently, the SEC felt it wasn’t necessary to include its traditional “neither admit nor deny” approach if a Defendant had already been criminally convicted of the same conduct. For years companies have admitted to a narrow set of facts in resolving a criminal case with the Justice Department, while neither admitting nor denying more colorful language in an SEC complaint. In one of the most egregious examples, Bernard Madoff pleaded guilty for his role in a multi-billion dollar Ponzi scheme in 2009, but neither admitted nor denied the allegations in a settlement with the SEC.

More recently, insurance brokerage firm Aon admitted to accounting errors to resolve criminal bribery charges with the Justice Department, but neither admitted nor denied related allegations from the SEC. The practical impact of the change could be limited. Since Defendants will not be required to admit to allegations beyond those in a criminal case, it could do little to help private litigants sue on similar grounds, a concern companies have long raised. The SEC policy change comes after a review by senior enforcement staff that began last spring, according to Khuzami, who says it’s “unrelated” to the Citigroup ruling.

Source: Insurance Journal

www.BeasleyAllen.com
XIV. INSURANCE AND FINANCE UPDATE

COURT UPHOLDS AWARD FOR TRAVELERS IN LAWSUIT

A New York appellate court has affirmed a $420.4 million ruling in favor of The Travelers Companies, which is, of course, a large insurer. This ends one of the longest-running and most complex asbestos-related litigations in history. The dispute has to do with the obligations of certain reinsurers to Travelers, which joined in payments of nearly $1 billion to cover asbestos claims against Western MacArthur. Travelers subsequently sought to recover some of its payments from its reinsurer companies.

Among those reinsurers is the U.S. unit of industry leader Munich Re and units of the insurer and reinsurer ACE Ltd. In October 2010, a lower New York court ruled that the reinsurers were obliged to help cover Travelers. That ruling was affirmed on appeal by the appellate division of New York Supreme Court. The court ruled that the reinsurer companies were bound by a concept known as the “follow the fortunes doctrine,” which holds that reinsurers share the burdens taken on by the insurance companies with which they do business.

The appellate court found that the lower court “correctly determined that the follow-the-fortunes doctrine required Defendants to accept the reinsurance presentation made by (Travelers unit) USF&G.” The events giving rise to this case started in 1948, when USF&G first wrote a liability insurance policy for Western Asbestos Co. By the late 1970s, victims harmed by asbestos began to sue Western Asbestos’ successor company, Western MacArthur. In turn, in 1993 Western Asbestos sued USF&G and two other insurers seeking indemnification.

In 2002, the parties reached a settlement, which resulted in Western MacArthur going into bankruptcy. USF&G then sought indemnification from its reinsurers. Travelers was represented on the appeal by Simpson Thacher & Bartlett, a New York law firm, and they did a very good job in this complicated matter.

Source: Insurance Journal

ALLSTATE FILES ANOTHER FRAUD CASE LAWSUIT IN NEW YORK

Allstate Insurance is trying to recover more than $1.1 million from 16 New York-area Defendants in a civil lawsuit filed by the insurance company. This was the ninth insurance fraud lawsuit filed by Allstate in 2011. The Complaint, filed in Federal District Court, as a Declaratory Judgment/Recovery action, says that a chiropractor, along with one layperson and two lay entities, illegally owned and controlled three professional medical corporations allegedly owned on paper by a medical doctor and used them to submit fraudulent billing to Allstate. In addition, four other individuals and four other companies were also named as being part of the overall scheme to submit fraudulent bills to Allstate.

Allstate contends in the lawsuit that professional service corporations were actually owned and controlled by laypersons, rather than by licensed medical professionals. The lawsuit also alleges that the Defendants submitted claims for services that were performed by independent contractors in violation of the No-Fault Law. Allegedly, there were also incidents of illegal referrals to a person who had a financial interest. The suit contends that B.J.Y. Freeport Medical, P.C., B.Y.M.D., P.C. And Innovative Medical, P.C. were fraudulently incorporated through a scheme using the name of Benjamin Yentel, M.D., a licensed medical doctor. But, in reality, those medical entities were actually run by Stanley Anderson, D.C. And his wife Jill Anderson. Not one of these individuals is a medical doctor. Two management companies also were utilized to effectuate this scheme, according to Allstate. They were HSLL, Inc. And Steady Management Corp.

Included in this lawsuit are claims for improper self-referral against Oasis Physical Therapy, P.C. And also an unjust enrichment claim against Ranj Corporation, Top Rehab Inc., and Soft Touch Acupuncture, P.C. The lawsuit was filed following an investigation by Allstate’s special investigative unit and seeks reimbursement for personal injury protection benefits Allstate paid on behalf of its customers during timeframes specified in the lawsuit.

It should be noted that since 2007, Allstate has filed 36 separate fraud lawsuits in New York alone. In these suits, Allstate sought almost $200 million in damages. It’s good to know that Allstate not only agrees that the civil justice system should be alive and well, but also that the insurance giant believes in punishing wrongdoers in the courts it plans to do.

Source: Insurance Journal

XV. PREDATORY LENDING

RECORD FAIR-LENDING SETTLEMENT BY BANK OF AMERICA

Bank of America Corporation has agreed to pay a record $335 million to compensate Countrywide Financial Corporation borrowers who were charged more for home loans based on their race and national origin. According to the United States Department of Justice, Countrywide, which was acquired by Bank of America in 2008, assessed higher fees and higher interest rates to more than 200,000 black and Hispanic borrowers. The DOJ also stated that Countrywide had steered minorities into higher-cost subprime mortgages from 2004 to 2007, even when they would qualify for prime loans.

The review that was conducted covered 2.5 million loans, which included data on terms and creditworthiness of borrowers. According to the Justice Department, Countrywide allowed its loan officers and brokers to vary interest rates and fees and it was aware that it was discriminating against minorities, while whites with similar credit profiles received prime loans. Bank of America has been cleaning up the liabilities it inherited with the takeover of Countrywide for several years now as the North Carolina-based bank has committed around $40 billion for mortgage refunds, lawsuits and foreclosures since 2007.

This settlement resolves a lawsuit brought by Illinois Attorney General Lisa Madigan who also alleged discriminatory lending practices by Countrywide. According to Attorney General Madigan, the settlement provides for an independent administrator to distribute payments to borrowers identified by the Justice Department. Compensation to borrowers could reach more than $1,000 per loan, and the exact size will depend on who originated the loan and whether the borrower was steered into a subprime product. The settlement checks should start going out to qualified borrowers in about 24 months.

Bank of America is still in negotiations, along with four other mortgage servicers, to settle unrelated probes from U.S. regulators and several state Attorneys General involving
the use of so-called robo-signers by the companies to improperly submit foreclosure documents without first properly verifying them. Before its acquisition, Countrywide was the biggest provider of subprime mortgages in the U.S. Regulators have said these loans were offered disproportionately to minorities and were more likely to end in default. Countrywide was also one of the worst when it comes to how it treated folks. Bank of America saved Countrywide from possible bankruptcy in July 2008 when it purchased the company for $2.5 billion. It had to know, or at least be highly suspicious of how truly bad Countrywide was at the time and ran the risk of massive litigation.

Borrowers with questions about the settlement referred to above can send an e-mail to countrywide.settlement@usdoj.gov and request information. But, if you have any questions about predatory lending, or mortgage servicing fraud generally, contact Bill Robertson, a lawyer in our firm’s Consumer Fraud Section at 800-898-2034 or by email at Bill.Robertson@beasleyallen.com. Bill is currently handling cases against Countrywide, Bank of America and several other companies involving predatory lending practices. He is also handling cases involving mortgage servicing fraud against several companies.

**LIABILITY UPDATE**

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**EXXON TO PAY MONTANA $2.4 MILLION**

Exxon Mobil Corp. will pay more than $2 million in penalties and cleanup costs to Montana for a pipeline rupture in July that spilled an estimated 1,500 barrels of oil into the Yellowstone River. Under the agreement between Exxon and the Montana Department of Environmental Quality, the Texas-based oil company will pay a fine of $1.6 million. This is the largest penalty ever levied in Montana for violations of its water quality regulations. Exxon also would reimburse Montana $760,000 for state cleanup expenses and cover any future costs should the state incur them.

The proposal is open for public comment through February 21. Exxon’s Silvertip pipeline burst on July 1 at a crossing beneath the flood-swollen Yellowstone River near Billings, Montana, about 150 miles downstream from Yellowstone National Park. The company originally put the size of the spill at 1,000 barrels of crude but has since revised the volume of oil released into the river at 1,500 barrels, Montana environmental officials said.

The settlement represents only part of Exxon’s liability stemming from the pipeline rupture, according to Montana Department of Environmental Quality Director Richard Opper. Exxon in November estimated its overall response to the spill, including cleanup, would cost $135 million and said it had reached settlement agreements with more than 95% of riverside property owners affected by the accident. In addition, Exxon must still settle with the state for any damages assessed by the Montana Attorney General under the state’s natural resource laws. The cause of the accident, which occurred amid historically high water levels on the pristine river, remains under investigation by the federal Pipeline and Hazardous Materials Safety Administration. Exxon said in a statement that it regretted the incident and took full responsibility for the cleanup.

Source: Bloomberg News

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**LAWSUITS FILED ARISING OUT OF DEADLY ARKANSAS FLOOD**

Three Texas residents whose children were injured when floodwaters swept 20 people to their deaths at an Arkansas campground have filed a lawsuit in federal court against the U.S. Forest Service and the National Oceanic and Atmospheric Administration. The claim, filed by three residents of Smith County, Texas—Natisha Rachal and Benjamin and Judy Pate—seeks damages for personal injury and wrongful death in connection with a June 11, 2010, flash flood at the Albert Pike Recreation Area near Glenwood. The federal agencies are accused of failing to “properly maintain the severe weather and flooding warning system” at the campground and not correcting “known communications problems that prevented campers from learning of the imminent danger of flooding.”

Seven children and 13 adults from Arkansas, Louisiana and Texas died after heavy rains inundated the remote valley in the Ouachita Mountains and pushed the Little Missouri River out of its banks. The Plaintiffs’ sons were camping with nine others. The campground has a documented history of weather-alert radio signals could reach the workers installed a new transmitter so warnings were issued in the middle of the night and never reached those at the campground. The camp had no ranger on-site, no cellphone service and no sirens, and deputies at the nearest sheriff’s departments were at least an hour’s drive away. After the flood, workers installed a new transmitter so weather-alert radio signals could reach the campground.

Roy Payne, a lawyer with Gregorio, Gregory & Payne, located in Shreveport, La., represents the family in this case. Another Louisiana family, which lost three of its members in the flood, filed a lawsuit last year. It will be interesting to see how these cases develop as they progress through the system.

Source: Yahoo News

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**INVESTMENT BANKER FILES SUIT OVER SEXUAL ASSAULT IN HOTEL ROOM**

An investment banker on a business trip to Finland has sued the Starwood Hotels chain, saying a front desk clerk gave her room key to a drunken man who then assaulted her in bed. Alison Fournier, a New York investment banker who now lives in Florida, was assaulted in her hotel room in Helsinki a year ago, according to the lawsuit filed in U.S. District Court in Manhattan against Starwood Hotels & Resorts Worldwide Inc. Ms. Fournier says she was in bed in her room at the Hotel Kamp on her first work trip abroad on January 15, 2011, when she awoke to “someone climbing into her bed groping at her.”

Fearing imminent rape, Ms. Fournier, then age 30, fled to the front desk clad in a bathrobe and screamed for help, only to be told by front desk staff “that the man was her husband.” The T-shirt-wearing attacker, clearly intoxicated and claiming at 4 a.m. to be the Plaintiffs’ husband and that he had locked himself out of the room, was given a key to the room without any attempt to verify his claim. Ms. Fournier’s lawyer, Gloria Allred, said the assailant was an American staying at the hotel who had made overtures to the woman earlier and been rebuffed.

Starwood said in a statement its policy is to ensure proper identification and verification before issuing a room key. That should be a policy and practice for all hotels and one that must be strictly adhered to. The suit seeks unspecified damages for gross negligence, economic loss, physical and emotional distress and pain and suffering. Ms. Fournier went public with her lawsuit hoping to “warn other women who may be travelling alone of the danger that they may face.” Any person has the right to feel safe in a hotel room. In that regard, hotels have a duty to act responsibly to protect their guests. If the allegations in this lawsuit can be proved, this
hotel failed to perform its duty in a grossly negligent manner.

Ms. Fournier was unable to return to work as a banker, saying she felt unsafe even in the most ordinary circumstances. A graduate of Princeton University and Harvard Business School, Ms. Fournier quit her high-six-figure-paying job as a vice president at an unnamed investment banking firm and left New York City to be nearer her family in Florida. "Business travel is often a critical part of a successful career, and women should not have to fear travelling or wonder if they will be targets of violence when they are staying alone in a hotel," Ms. Fournier said in a statement. The Hotel Kamp operates under Starwood's international Luxury Collection chain.

Gloria Allred, a founding partner at Allred, Maroko & Goldberg, located in Los Angeles, Calif., represents Ms. Fournier in this case. This is a most important case that will be watched very closely by the hotel industry and by working women who must travel in their jobs.

Source: Reuters

**SAN BERNARDINO COUNTY SETTLES MOTORCYCLE CLAIM FOR $3 MILLION**

San Bernardino County has agreed to pay $3 million to settle a lawsuit that blamed dangerous road conditions for a motorcycle crash that left a passenger with head and neck injuries. Lisa Hermann sued the county after a 2007 crash on a road where recent heavy rains had washed out part of the road. A trench was left and the crash occurred before crews made repairs.

Source: Insurance Journal

**FLORIDA JURY AWARDS $3 MILLION IN DAY CARE ABUSE CASE**

A Florida jury awarded $3 million last month to the family of a young girl who was sexually abused at a day care center. The Miami-Dade Circuit Court jury found Discovery Day Care at fault after a lengthy trial. Trial testimony showed that the day care center director's son admitted abusing the girl on multiple occasions when he was left alone with the children in 2008.

Testimony also showed that a center employee falsified documents related to the abuse. The abuse happened when, the girl now eight, was a preschooler. The boy was 13 at the time and later pleaded guilty to sexual battery in juvenile court. The daycare center's lawyer said the verdict would be appealed. Jeff Herman, a lawyer with Herman, Mermolstein, & Horonitz, located in Miami, Fla., represented the family in the case and did a very good job. Jeff is a nationally recognized lawyer for victims of sexual abuse.

Source: Claims Journal

**XVII. EMPLOYMENT LITIGATION**

**NOVARTIS SETTLES OVERTIME CASE**

A Novartis AG U.S. subsidiary has agreed to pay $99 million to settle long-running overtime litigation involving its sales representatives. A group of current and former sales representatives sued Novartis Pharmaceuticals Corp. in 2006, seeking overtime pay for hours worked in excess of 40 hours a week. A federal district judge in New York agreed with Novartis that the sales representatives were exempt from federal overtime rules. But the Second U.S. Circuit Court of Appeals disagreed and reversed the lower court’s ruling in July 2010. The U.S. Supreme Court declined to hear the case last year. That led to negotiations which ultimately resulted in this settlement.

The settlement is subject to final court approval. U.S. District Judge Paul A. Crotty, sitting in Manhattan, said at a pretrial conference that he would grant preliminary approval to the settlement when he received it. A fairness hearing was scheduled by the court for May 31. If approved, Novartis will have to compensate its sales representatives for years of overtime pay. David Sanford, a lawyer with Sanford Wittels & Heisler, represented the sales representatives in this case, and he did a very good job.

Source: Wall Street Journal

**TENNESSEE PLANT FAILED TO PROTECT AGAINST EXPLOSIONS**

A company knew of the explosive danger of dust throughout its Tennessee plant, but didn’t do enough to prevent three separate blasts that killed five people last year. That was the finding of the U.S. Chemical Safety Board, which released a final report last month on the three accidents at the Hoeganaes Corp. plant in Gallatin, near Nashville. The report found that the dust was first noted by an insurance audit in 2008, which prompted safety testing by the plant. Company officials learned that the dust was combustible, but the federal panel found it didn’t properly follow through on its plans to prevent an accident. Investigator-in-charge Johnnie Banks says his own visits to the plant have shown improvements, but he wouldn’t speculate on whether the plant is now safe for workers. Hopefully, those in charge of safety at the plant will take all necessary steps to prevent a disaster.

Source: Insurance Journal

**OSHA CITES RAILCAR COMPANY FOR WORKER’S DEATH**

American Railcar Industries Inc., headquartered in Saint Charles, Mo., was cited by OSHA for ten serious safety violations after an employee was electrocuted while performing repair work on a tanker-style railcar on July 25th at the company’s work site near Marmaduke. Upon receiving a fatality report from the employer, OSHA initiated an investigation at the company’s facility and found that workers were being exposed to electrical shocks from welding equipment. The violations include:

- failing to provide personal protection for employees conducting cutting and welding operations;
- failing to properly mark the power supply and control boxes for voltage, current and wattage;
- failing to use fixed wiring instead of flexible cords and protect the wiring from possible damage;

Source: Insurance Journal
• failing to remove defective electrical equipment from service; and
• failing to inspect and mark web slings.

American Railcar Industries, which employs about 260 workers at the Marmaduke facility and about 1,500 workers nationwide, designs and manufactures railcars. The proposed penalties total $61,400. The company has 15 business days from receipt of the citations to comply, or request an informal conference with OSHA. Obviously, these are extremely serious violations if OSHA’s findings are correct.

OSHA Cites Mississippi Shipyard For 50 Safety Violations

The Occupational Safety and Health Administration has cited a Pascagoula, Miss., shipyard for 50 safety violations and has proposed penalties of $176,444. According to OSHA, the penalties against Huntington Ingalls Industries and five subcontractors come from a June inspection after receiving a complaint about safety hazards. Huntington Ingalls was cited for violations carrying penalties of $160,300. The violations found by OSHA included: blocked exits; tripping and fall hazards; allowing lead, arsenic and cadmium dust to accumulate in a lunch area; and the dispensing of flammable liquids in improper containers.

Five subcontractors were cited for violations that included improper handling of compressed gas cylinders and other safety and electrical hazards. One subcontractor received no monetary penalty. Ingalls says it took this as an opportunity to make its operations safer. The company said in a statement:

The OSHA inspection was an opportunity for us to identify opportunities to further enhance our safety program. We monitor the safety of our shipyard and shipbuilders daily and we are focused on continually improving. In fact, injuries and lost time cases in Pascagoula are down in 2011 from 2010 by 15 and 8% respectively. Wherever possible, inspection citations were corrected immediately or corrective action plans were immediately implemented. We share OSHA’s commitment to the safety of our shipbuilders and appreciate this opportunity to further improve our safety program.

It’s good to see a company taking an OSHA citation and using it to improve safety practices. Hopefully, the intent is to actually do what the company says in the statement.

Source: Claims Journal

OSHA Fines South Dakota Grain Company For Violations

A South Dakota grain company is facing $95,000 in fines after federal investigators found more than a dozen safety violations. OSHA has proposed penalties amounting to $95,000 against LaBolt Farmers Grain Company Inc., which is located in LaBolt. Three of the 13 citations were considered serious, including failing to effectively train workers entering confined spaces and grain bins. A serious violation is when there is substantial probability that death or serious physical harm could result from a hazard that the employer knew or should have known about.

Source: Claims Journal

XIX. TRANSPORTATION

DEPARTMENT OF TRANSPORTATION BANS HAND-HELD CELL PHONE USE BY DRIVERS

The U.S. Department of Transportation’s latest attempt to eliminate distracted driving became effective the first week of January 2012. In November 2011, U.S. Transportation Secretary Ray LaHood announced a final rule prohibiting interstate truck drivers from using hand-held cell phones while operating their vehicles. The final rule provides the following:

• It prohibits commercial drivers from using a hand-held cell phone while operating a truck or a bus
• The rule imposes a $2,750 penalty for each offense and disqualification from operating a commercial motor vehicle after multiple offenses
• It suspends the driver’s CDL after two or more serious traffic violations
• The rule holds commercial truck and bus companies liable for their employees’ offenses by imposing a maximum penalty of $11,000 for allowing their drivers to use hand-held cell phones.

Specifically, the final rule prohibits commercial drivers from holding, dialing, or reaching for a hand-held cell phone. The driver may initiate, answer, or terminate a call by touching a single button and only if the cell phone is accessible from where the driver is sitting in his seat. A driver is prohibited from reaching into the passenger seat, under the driver’s seat, or into the sleeper berth for the cell phone. Drivers may still use CB Radios, GPS, and fleet management systems. Drivers may also use hand-held cell phones for emergency purposes. Federal Motor Carrier Safety Administration Administrator Anne S. Ferro said of the new regulation:

The final rule represents a giant leap for safety. It’s just too dangerous for drivers to use a hand-held cell phone while operating a commercial vehicle. Drivers must keep their eyes on the road, hands on the wheel and head in the game when operating on our roads. Lives are at stake.

It remains to be seen how this new regulation will be enforced. This ban comes almost two years after a fatal trucking accident in Kentucky involving an Alabama truck driver. The trucker had just made a call that lasted one second before he crossed over the median, striking a van carrying a family of 12. The trucker and ten of the family members died in the crash. During the National Transportation Safety Board’s investigation, it was learned that the trucker had used his cell phone 69 times while driving in the previous 24 hours before the accident, including four calls in the minutes before the crash.

Distracted driving accounted for 5,474 deaths and half a million injuries in 2009. Many large trucking companies had already banned cell phone use before this regulation became effective. If you would like more information on this issue, please contact Cole Portis at Cole.Portis@beasleyallen.com or Stephanie Stephens at Stephanie.Stephens@beasleyallen.com.


$17.8 Million Awarded In Marine Jet Crash Lawsuit

A federal judge has ordered the U.S. Marine Corps to pay $17.8 million for the 2008 crash of a fighter jet into a San Diego home that killed four people. U.S. District Judge Jeffrey Miller made the award at the conclusion of a non-jury trial. The Marine Corps accepted responsibility for the crash in 2008 of the F/A-18D into San Diego’s University City neighborhood. The crash claimed the lives of Don Yoon’s wife, mother-in-law and two daughters. Mr. Yoon was at work when the crash occurred.

The Marine Corps said the aircraft went down because of mechanical failure, as well as pilot and ground personnel error. The pilot ejected safely. The Corps has said that a series of mistakes ultimately led the pilot of the malfunctioning jet to bypass a coastal base and fly over neighborhoods toward an
inland base. The victims were 36 year old
Youngmi Lee Yoon, her daughters Grace, 15
months, and Rachel, two months; and
Seokim Kim Lee, 59, who was visiting from
South Korea. The judge ruled the children’s
deaths robbed their father of “the comfort,
companionship, society and love a young
child is capable of providing to a new parent
and, then, in later life.” The judge allocated
nearly $10 million to Don Yoon, nearly $4
million to his father-in-law and the remainder
to the father-in-law’s three adult children.
Source: Los Angeles Times

**FATAL ATV CRASH LAWSUIT SETTLED FOR $2.7 MILLION**

A $2.7 million settlement has been reached
in a wrongful death lawsuit involving an all-
terrain vehicle crash. The crash killed
19-year-old Jonathon Byram, a college student
from Maryland. The decedent was a passen-
ger on the ATV driven by Mark Renehan,
another college student, when the vehicle
flipped over. The fatal crash occurred in
the early morning hours of July 5th after a 2009
Independence Day party.

Renehan was charged with homicide
while driving under the influence and with
involuntary manslaughter. A jury later acquit-
ted him on the criminal charges. The vic-
tim’s father, Daniel Byram, filed the civil
lawsuit in federal court, alleging that
Renehan was intoxicated and driving exces-
sively fast, causing the death of his son. The
suit charged that Renehan’s family served
alcohol to the students in their home on a
“continuous basis” over several hours prior to
the wreck. It was reported that Renehan
admitted to state police he had consumed
alcohol. Kevin Foley, a lawyer based in Scran-
ton, Pa., represented the Byram family and he
did a very good job in the case.
Source: The Times Tribune

**WIDOW SETTLES LAWSUIT FROM 2009 BUS CRASH**

The widow of a bus driver who died in a
collision with a tractor-trailer near Casper,
Wyo., has settled her lawsuit against the
crashing company. The settlement came
about a month before the case was scheduled
to go to trial. The suit was filed against
Darren Nelson Trucking and its driver,
Steven Burson, for the wrongful death of the
bus driver, Donald Bonner. He died when his
Arrow Stage Lines bus struck a tractor-trailer
that had overturned on Interstate 25. Twenty-
nine passengers on the bus were injured in
the crash.

The lawsuit accused Burson of failing to
use flares or emergency triangles to warn
drivers that his truck was partially blocking
the highway. It also claimed Darren Nelson
Trucking hired Burson with knowledge that
he had a bad driving record, with multiple
traffic citations in his past. Lawyers for the
Defendants claimed Burson wasn’t able to set
flares or emergency triangles because he was
still trapped in the tractor-trailer. They also
denied the trucking company was negligent
in training and supervising its driver.

The crash occurred early on Dec. 5,
2009. According to allegations in the lawsuit,
Burson had been driving for 11 hours straight
when he lost control of his tractor-
trailer. The unit came to rest on its side, par-
ally blocking the northbound lanes of the
highway. Burson told Wyoming Highway
Patrol troopers that he had veered to the left
to avoid deer on the highway. But two troop-
ers walked the area, and failed to find any
tracks in the snow. The Arrow bus collided
with the tractor-trailer a short time after the
first crash. The bus driver, Bonner, 61, was
killed instantly.

Bonner’s widow, Debra, filed the lawsuit
in a Wyoming federal court. Several passen-
gers have also filed lawsuits. Some of the pas-
sengers expressed concern that Bonner was
driving too fast for the road conditions and
appeared distracted during the drive. Although the morning was clear, the
highway was icy in spots. One passenger told
investigators he had approached Bonner with
his concerns and was warned to go back to
his seat or be kicked off the bus. In November,
four passengers settled claims in their
lawsuit filed against both Arrow and Darren
Nelson Trucking. The cases of three other
passengers are still pending. A trial in that
case is set for March. Darren Nelson Truck-
ing is no longer in business.
Source: Trib.com

**NTSB FAULTS PILOTS IN FATAL HELICOPTER CRASHES**

Federal safety investigators have blamed
pilots who tried to outrun approaching
storms in two fatal medical helicopter
ashes in South Carolina and Tennessee, for
the crashes. The National Transportation
Safety Board issued very similar findings in
each crash, saying the pilots could have made
safer decisions, but risked flying into bad
weather in order to return home. Two pilots
and four flight nurses were killed in the 2009
and 2010 crashes. The board studied an
increase in crashes involving medical heli-
copters between 2002 and 2005 and found
there to be recurring safety issues, including
a lack of flight risk evaluations and less strin-
gent requirements for flights without
patients on board.

In the September 2009 crash in South Car-
olina, the NTSB said the Texas company that
operated the medical helicopter, OmniFlight,
concluded to the crash because it did not
have a formalized dispatch system that
required its pilots to check in with dispatch-
ers before taking off. The system could have
helped the pilot realize there were storms
between the Charleston hospital where he
dropped off the patient and the helicopter’s
home base in Conway, the safety board said
in a report on the accident. The pilot in the
South Carolina crash likely became confused
by low clouds and stormy conditions and lost
control of his helicopter, the NTSB said. He
elected “to enter the area of bad weather,
while there was ice and rain, and unsure whether the visibility was above a mile. He did not follow
the medical facility’s established dispatch
procedures,” the investigators noted.

In the March 2010 crash in Tennessee, the
NTSB said the pilot was finishing a 12-hour
night shift and told another pilot he thought
he had about 18 minutes to return to his home
and thought it the wisest course of action to
continue toward the hospital.

Source: Trib.com

**DRIVER AND BAR SUED OVER ALCOHOL-
RELATED DEATH**

A wrongful death lawsuit has been filed by
the estate of Samuel Stephens, a 24 year old,
in the Superior Court of Pierce County. The
wrongful death suit was filed against Captain
Jack’s Bar and Grill, its owners, and Joseph P.
McNeil, the drunk driver whose car crashed
into the victim’s car. Stephens was killed in
a car wreck involving the drunk driver. The
crash occurred on September 20, 2010. Ste-
phens was driving on a public highway about
2 a.m. when McNeil’s car crossed the center
line of the highway and crashed into his car.

The victim, who was engaged to be
married at the time of his death, was working
at a church as a youth pastor. McNeil pleaded
guilty to vehicular homicide and in April was
sentenced to two years, seven months in
prison. As part of his plea deal, McNeil
admitted being under the influence of
alcohol at the time of the crash.

It was alleged in the civil lawsuit that
McNeil consumed far too much alcohol at
Captain Jack’s. It was further alleged that the
employees of the bar sold numerous alco-
holic beverages over a considerable number
of hours to McNeil, its customer. McNeil
departed in the early-morning hours on the
day of the incident, in an obviously intox-
icated condition. The Plaintiffs contend
Captain Jack’s employees served McNeil too
much to drink and let him drive away even
though he was obviously drunk. The lawsuit
tests the Defendants failed to “properly
instruct, educate and supervise their employ-
ees to avoid selling alcoholic beverages to
obviously intoxicated patrons.” Patrick Duffy,
a lawyer from Sumner, Wash., represents the
state in the lawsuit.
Source: www.JereBeasleyReport.com

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base in Brownsville, which is about 55 miles northeast of Memphis. The pilot reportedly told another pilot that he “wanted to get the helicopter out” and was going to leave the flight nurses behind. But the nurses returned to the helicopter before the pilot was able to leave the hospital.

On its return trip, the helicopter likely ran into the leading edge of the storm, which included heavy rain, lightning and wind gusts up to 20 knots. The report said there was no evidence that the helicopter was struck by lightning before it crashed. “Based on these conditions, the helicopter likely encountered severe turbulence from which there was no possibility of recovery, particularly at a low level,” the report said. The report noted that while the helicopter ran into bad weather, the crash wouldn’t have happened if the pilot had chosen to remain at the hospital. The report stated:

The pilot made a risky decision to attempt to outrun the storm in night conditions, which would enable him to return the helicopter to its home base and end his shift there, rather than choosing a safer alternative of parking the helicopter in a secure area and exploring alternate transportation arrangements or waiting for the storm to pass and returning to base after sunrise when conditions improved. This decision-making error played an important causal role in this accident.

The report also noted that the pilot was nearing the end of his shift, during which he had flown previous missions and may have had limited opportunities to rest. “The pilot’s length of time awake, his night shift and the accident occurred at an early hour that can be associated with degraded alertness,” the report said. The board was not able to determine whether or to what degree fatigue played a role in the crash because it did not have complete evidence on how rested the pilot was before the crash.

Source: Claims Journal

NO BIG CHANGES IN AIR SHOW SAFETY RULES LIKELY

Air shows and air races are sufficiently regulated despite tragedies like the September crash at a Reno race that killed 11 people, the National Transportation Safety Board was told last month. John McGraw, deputy director of the Federal Aviation Administration for flight standards, told the board that current regulations are enough for overseeing shows and races. FAA officials review standards after every crash to see if there is some risk that was missed, according to his testimony. But, he pointed out that the FAA’s goal is to make it clearer what standards and requirements are already in place. McGraw had this to say:

At this point, I’m not aware of any changes—at least any significant or substantive changes — to the policy and guidance we have in place. If we become aware of a risk that exceeds the boundary of what we think is acceptable, we will make those changes. But not currently.

The FAA, he said, stepped in after the Reno crash and separated the regulation of air shows, where planes simply perform aeronautics, and races, where pilots race up to 700 mph in a closed course. The NTSB, which investigates crashes and watches over transportation safety, held the January hearing because of the Sept. 16 Reno crash and the deaths of five performers at other air shows last year.

Eleven people died and about 70 others were badly injured at the Reno race after a souped-up World War II-era fighter crashed in front of VIP boxes and sent debris into the crowd. The events are popular, but feature risky flying. The $500 million industry attracts 12 million spectators a year at about 300 shows. Nobody died at air shows in 2009 or 2010.

NTSB members are looking in particular at whether planes should fly farther away from spectators and whether flight directors at air shows and races should be regulated. Deborah Hersman, chairman of the NTSB, observed:

Performers are assuming a certain level of risk. But when spectators come to an event, they are coming to be entertained and they don’t expect to be in a situation where their lives are at risk.

The FAA doesn’t have certification standards for air bosses, who direct the aircraft during air races and shows much like air-traffic controllers. That appears to have come as a surprise to NTSB board members. Michael Umstead, FAA’s national aviation events specialist, said waivers for customary flight standards are provided to air shows, which then hire people to direct planes in flight.

George Cline, president of Air Boss Inc., said these flight directors are typically former air-traffic controllers with a great deal of aviation experience. Cline said there are briefings for pilots before each show to review flying patterns, weather and directions. But he also said there is no training in place right now for an air boss. That disturbed NTSB board member Robert Sumwalt.

Source: USA Today

XX. HEALTHCARE ISSUES

THE FDA APPROVAL PROCESS FOR NEW MEDICAL DEVICES SHOULD BE STRONGER

The public should be up in arms over the ongoing activities by the global, multi-billion medical device manufacturing industry in the U.S. This lobbying is like a modern-day Industrial Complex. It has been going on for years and it is being used to push the already-insufficient approval process of the medical devices that would put millions of lives at risk.

Weak regulation of medical devices causes serious health and safety problems for the public. For example, consider the defective artificial hips manufactured by the DePuy division of multinational pharmaceutical company Johnson & Johnson. Two years ago, the company’s metal-on-metal hip implants were recalled because they carried the risk of releasing metal toxins into the hip tissue, which caused inflammation and serious internal damage. Just a few years after receiving the hips, which were implanted in 40,000 patients in the United States (and tens of thousands more worldwide), many patients required costly, painful and risky operations to replace the devices.

This is just one of many examples of medical devices that fell through the cracks of our nation’s system for regulating these devices, injuring or killing thousands of patients. Catastrophic failures, such as the all-metal hip implants, show that the FDA approval process should be strengthened and not weakened. Shockingly, lobbyists representing the powerful medical device industry are trying to persuade lawmakers to make the already-insufficient approval process even weaker than it is. Their aim is to push their products through a weakened process and get them to market as quickly as possible, even without undergoing adequate
testing to assure that they are reasonably safe for patients. In other words, they are putting profits first and neglecting safety.

Unfortunately, the regulatory problems are not confined to medical devices. New prescription drugs are often rushed to market—many being put on what is referred to as the Fast-Track by the FDA—and approved by the agency without being adequately tested. There are hundreds of examples of drugs that were approved, rushed to market and later had to be recalled because of serious health and safety issues. We are badly in need of an overall of the FDA, and the public should insist that Congress properly fund the agency. Only when that is done, can the FDA do its job.

Source: Public Citizen

Watchdog Cites Conflicts In Calling For New Yaz Panel

An independent watchdog group has asked the Food and Drug Administration to disregard a safety panel's recommendation to keep the popular birth control drugs Yaz and Yasmin on the market. Evidence was cited that several panel members operated under conflicts of interest. Danielle Brian, Executive Director of the Project of Government Oversight, stated in a letter to the FDA:

Because of the [pharmaceutical] industry ties of these members, the joint committee's conclusion—which amounted to an endorsement of the safety of these oral contraceptives—should be disregarded.

The Jan. 11 open letter was e-mailed to FDA Commissioner Margaret Hamburg and addressed concerns over the outcome of the December joint meeting of two federal advisory panels to address the safety of drospirenone-containing oral contraceptives like Bayer's Yaz and Yasmin. The FDA sponsored the meeting of the agency's Reproductive Health Drugs Advisory Committee and Drug Safety and Risk Management Advisory Committee. The joint panel voted 15 to 11 against a Yaz and Yasmin recall, but also voted 21-5 in favor of increased information on the potential risk of blood clots on the labeling of Bayer's popular birth control pills.

Recent studies have found that drospirenone causes a greater risk of blood clots than similar ingredients used in previous types of birth control pills. Thousands of lawsuits are pending across the country alleging that Yaz, its predecessor, Yasmin, and the generic Ocella cause heart attacks, strokes and gallbladder failure. According to the watchdog's letter, at least four members of the committee either were paid as consultants by Bayer or received research funding from the drug company or one of its subsidiaries. It was stated in the letter:

In the future, if a reasonable person would have questions about the impartiality of any member of an advisory committee regarding a matter before the committee, the FDA should not allow that member to participate in the matter and should make public the relevant information about that committee member.

In light of the evidence concerning Bayer's financial ties to committee members, the watchdog's letter stated that a "new advisory committee—without questionable impartiality or any conflicts of interest—should re-evaluate the safety of Yaz and Yasmin.

Source: Lawyers USA Online

J & J Halted Doribax Trial Due To Safety Issues

The FDA has reported that Johnson & Johnson shut down a clinical trial of its anti-biotic Doribax for a type of pneumonia after patients taking the drug had higher rates of death and a lower cure rate than those who got an alternative medicine. Doribax is currently approved in the United States to treat adults with complicated urinary tract or abdominal infections. It's not approved by the FDA for any type of pneumonia. In a clinical trial, testing Doribax on patients with ventilator-associated pneumonia, those who received the drug had a 6.7% higher rate of death from any cause than patients getting an alternative.

Patients taking Doribax also had an 11.2% lower rate of being cured than patients getting imipenem-cilastatin, the generic version of Merck & Co Inc's Primaxin. Doribax, known generally as doripenem, is approved for hospital-acquired pneumonia in Europe. The trial was conducted as part of a post-marketing requirement from the European Medicines Agency, according to a spokesperson at Janssen, the J&J unit that markets the drug. Japanese drugmaker Shionogi & Co manufactures Doribax.

The trial, which had study sites in several countries, including the United States, was halted in May 2011. This was said to have been based on the recommendation of an independent data monitoring committee. The company says it has now finished analyzing the results. In the halted trial, the 28-day all-cause mortality rate was 21.5% for those who received Doribax, compared with 14.8% in the control group. The Janssen spokesman claims that Doribax was safe and effective for its approved uses in the United States.

In June 2007, Johnson & Johnson applied for U.S. Approval of Doribax for the treatment of pneumonia acquired in the hospital, known as nosocomial pneumonia, which includes ventilator-associated pneumonia. In August 2008, the FDA asked the company for more information. The company says it resubmitted its application and is still in discussions with the FDA.

Source: Claims Journal

J&J Delayed Reporting Insulin Pump Problems

The widening quality problems at Johnson & Johnson are causing concerns as yet another J&J business — at least the seventh — has come under scrutiny. The lapses are hard to reconcile with what once was J&J's stellar image. Executives at J&J cite the corporate credo, prominently displayed at headquarters, stressing the company's responsibility to the doctors, patients and parents who use its products.

Animas Corp., the J&J unit that makes insulin pumps for diabetics, is currently being investigated. The Food and Drug Administration has warned Animas that unless it corrects violations soon, it could face fines and other sanctions for selling faulty insulin pumps and delaying disclosures of serious injuries to patients using its OneTouch Ping and 2020 pumps. The FDA ordered Animas to explain by Jan. 20 why it kept selling pumps known to fail and also to submit a plan to rectify its failure to promptly report cases where its device might have caused or contributed to death or serious injury.

In a Dec. 27 warning letter posted online by the FDA, the agency wrote to Animas and J&J CEO Bill Weldon that inspectors found Animas, based in West Chester, Pa., never reported on one complaint about serious patient injury and delayed reporting on two others. Those patients were hospitalized with dangerously high blood sugar, respiratory failure and coma, and a life-threatening complication called diabetic ketoacidosis caused by lack of insulin to break down blood sugar.

The problems follow a string of nearly 30 product recalls announced by New Brunswick, N.J.-based Johnson & Johnson since September 2009, with the latest just three weeks ago. The recalls have included millions of bottles of Tylenol, Motrin and other nonprescription medicines for children and adults, prescription drugs for seizures and HIV, faulty hip implants and contact lenses that stung the eyes. Reasons ranged from contamination with metal shards and glass particles to nauseating odors and inaccurate levels of active drug ingredients.
Insulin pumps, which are about the size of a cell phone, automatically inject small amounts of insulin through a tiny needle under the skin throughout the day to keep diabetics' blood sugar at a safe level. Patients program the device to inject additional insulin right before a meal or snack, according to the amount of carbohydrates about to be eaten.

An Animas spokeswoman, Caroline Pavis, says that the company did not report the three patient incidents to FDA as required within 30 days because each involved patient was not using the pumps according to directions. In one case, she said, the patient ignored an alarm signaling the cap had come off the insulin cartridge inside the device, preventing insulin from being pumped into the body. She did say that Animas will now report all patient complaints promptly. In a separate issue, some pump keypads for controlling how much insulin is injected were deteriorating prematurely, leading to failures.

Animas decided to go with a new keypad “because it’s more durable,” according to Ms. Pavis. But while Animas was lining up the new keypad supplier, it was still selling the older ones. The FDA has demanded documents about the company’s decision to do that. Companies are required to continuously evaluate a product’s safety over its life span. They should have infrastructure in place to process, review and classify complaints, because they could be indicative of a larger issue with the product.

The recalls have cost J&J $900 million in 2010 alone in lost revenue from products not being in stores, plus millions more for factory upgrades and legal expenses. The FDA and Congress have been investigating the handling of the manufacturing problems as well as the recalls. J&J has said there have been no reports of serious patient harm from the recalled products, although as we have reported, the company is now being sued by a couple alleging their toddler died from taking a “super dose” of defective Children’s Tylenol.

The FDA’s warning letter states that the initial Animas response to the problems cited in the August inspection report was not adequate. Animas was to respond before the January 20th deadline. The letter states that if the company doesn’t promptly correct the violations, it could face seizure, injunction, and fines, and could be denied future contracts from federal agencies.

Source: Yahoo News

**FDA FINES RED CROSS NEARLY $9.6 MILLION FOR ALLEGED BLOOD SAFETY LAPSES**

It was reported last month that federal health officials fined the American Red Cross nearly $9.6 million for blood management practices described as “sloppy and unsafe.” This is the second multi-million-dollar penalty levied against the Red Cross in the last two years. This most recent fine by the Food and Drug Administration came after inspections at 16 Red Cross blood centers between April and October 2010, which were said to reveal ongoing problems. According to the FDA, those problems appeared to endanger donors and to allow potentially contaminated blood into the nation’s blood supply. But, an FDA spokeswoman said the agency found no evidence of actual harm to blood recipients. Red Cross officials say they remain confident about sources of blood in the U.S. The Red Cross supplies 40% of the nation’s blood.

The FDA said in a letter to the Red Cross that the blood collection system was plagued with “poorly trained staff and inadequate record-keeping,” and that donated blood was “mishandled or misplaced and, in some cases, potentially infected blood was trans-fused into patients.” The letter stated further that the Red Cross “has known of these continuing problems and has failed to take adequate steps to correct them.”

A Red Cross spokeswoman said in a statement that the problems primarily centered on an inspection at a Philadelphia site conducted 15 months ago and that the agency has since addressed many of the issues. The spokesperson said the Red Cross was “not aware of any adverse donor reactions or patient issues due to the problems in the FDA report.” The latest fine, however, follows a $16 million fine in June 2010 for similar failures.

For almost two decades, trouble at the Red Cross has been reported. About 17 million units of blood are donated each year and about 15 million units are transfused, according to a 2009 survey conducted by AABB, an international association of blood products groups. The Red Cross has been operating under terms of a consent decree first issued in 1993 and then amended in 2003 to allow the FDA to impose stiff fines for ongoing failures to meet regulations and laws governing quality and safety of the nation’s blood supply.

While I believe the public generally trusts the Red Cross, and considers what it does to be very important, a number of problems have been reported. The problems detected in previous years included: overworked staff, sloppy clinical practices and inadequate record-keeping. Despite repeated heavy fines and even the informal threat of criminal penalties from some FDA officials, the Red Cross appears to still have problems. The latest sanctions at least demonstrate the existence of problems. Due to the subject matter and the potential for harm, this is a matter that needs to be resolved.

Source: MSNBC

**XXI. ENVIRONMENTAL CONCERNS**

**WEST VIRGINIA COURT TO HEAR CHEMICAL PLANT TESTING CASE**

A West Virginia jury will have to decide whether the owners of a former chemical plant will have to pay to test thousands of current and former residents of Nitro, W. Va., for disease. A class-action suit, filed in 2004, alleges that Monsanto unsafely dispersed dioxin, exposing residents to unsafe levels of the toxic chemical. The lawsuit seeks periodic medical monitoring for at least 5,000 current and former Nitro residents. It was reported that the total number could reach as many as 80,000.

The monitoring would determine whether exposure to the harmful chemicals caused any one or more of 12 different diseases. According to Monsanto, it will claim that the residents can’t prove their allegations and, as a result, it says the company shouldn’t have to pay. Jury selection started on January 10th in Putnam County, W. Va., and the trial is expected to last for several weeks.

Source: Charleston Gazette and Claims Journal

**XXII. THE CONSUMER CORNER**

**GM ANNOUNCES FIX TO STOP CHEVROLET VOLT FIRES**

General Motors will modify its Chevrolet Volt plug-in car in order to eliminate the possibility that its batteries can catch on fire hours or days after a serious side-impact crash. GM calls it a “customer satisfaction” action, which it says doesn’t make this action a recall. According to the automaker, battery coolant could leak on an electronic board, causing a fire. The leaks were discovered by GM in tests in which a Volt was rotated until it was inverted. According to GM, only a small amount of coolant, a few cupfuls, were involved.

Source: Charleston Gazette and Claims Journal

Source: Charleston Gazette and Claims Journal

Source: Charleston Gazette and Claims Journal

Source: Charleston Gazette and Claims Journal
To fix the problem, GM says it will modify the cars to strengthen the protection around the battery. This will only add a few pounds of weight to the car, according to GM, which says “it is a structural reinforcement that distributes the load.” According to GM’s North American chief Mark Reuss, the battery itself is safe and won’t need modification. He says only about 250 owners asked GM for loaners or to have their car bought back. GM has sold more than 8,000 Volts, which can travel 25 miles or more on electric power alone before a backup gas engine kicks in.

Hopefully, this is a problem that can be fixed. It appears NHTSA believes it since the agency has closed its preliminary investigation. NHTSA has issued some guidelines for firefighters on how to deal with fires involving electrical cars.

Source: USA Today

**U.S. Regulators Upgrade Jeep Liberty Airbag Probe**

The National Highway Traffic Safety Administration has upgraded an investigation into almost 387,000 Jeep Liberty sport utility vehicles for potential inadvertent airbag deployment. This increases the possibility of a recall. NHTSA is upgrading its investigation of the 386,873 Chrysler SUVs to an engineering analysis, which is a step in a process that could lead to a recall if regulators determine a safety issue needs to be addressed by a manufacturer. According to NHTSA, there have been 87 reports of inadvertent driver or passenger front airbag deployment, resulting in 50 injuries, including burns, cuts and bruises to the upper body.

NHTSA says 42 of the 87 incidents involved the driver front airbag deploying without a crash, occurring at vehicle startup and while driving on the road. It says the remaining 45 involved both the driver and passenger front airbags. Some drivers noted that the airbag warning light had illuminated just prior to airbag deployment, while others did not observe one, according to NHTSA. An inspection conducted by Chrysler indicates an internal electronic chip that controls airbag deployment failed, possibly due to a voltage spike. NHTSA says the automaker, which is controlled by Fiat, is in the process of identifying root causes. NHTSA initially opened a probe into the Jeep SUVs in September after receiving seven consumer complaints.

Source: Claims Journal

**Hewlett-Packard Agrees To $425,000 Civil Penalty For Failure To Immediately Report Lithium-Ion Battery Packs**

Hewlett-Packard Company (HP), of Palo Alto, Calif., has agreed to pay a civil penalty of $425,000. The settlement agreement has been provisionally accepted by the U.S. Consumer Product Safety Commission. The settlement resolves CPSC staff allegations that HP knowingly failed to report immediately to CPSC, as required by federal law, that certain lithium-ion battery packs contained a defect or created an unreasonable risk of serious injury or death. The lithium-ion battery packs can overheat, posing a fire and burn hazard to consumers. The packs were shipped with new HP Notebook computers, sold as accessories or provided as spare parts for various HP models.

CPSC staff alleges that by September 2007, HP knew of about 22 incidents associated with the lithium-ion battery packs. At least two of these incidents resulted in injuries to consumers. HP was also aware that at least one consumer apparently went to the hospital, but says it didn’t receive any information on the consumer’s injuries or treatment. According to CPSC staff, between March 2007 and April 2007, HP conducted a study, from which it obtained additional information about the lithium-ion battery packs. HP did not notify the Commission about the incidents or the study until July 25, 2008. By that time, CPSC staff says that the firm was aware of at least 31 incidents involving the lithium-ion battery packs. In October 2008, HP and CPSC announced a recall of about 32,000 lithium-ion battery packs.

Source: CPSC

**Claims Of Whirlpool Dishwashers Catching Fire Prompts Investigation**

The Consumer Products Safety Commission has started an investigation into Whirlpool after a lawsuit claims dishwashers made by the company caught fire. The complaint says a design defect in the control panel can cause fires in the machines. The brands involved in the complaint are KitchenAid, Kenmore, and Whirlpool. Whirlpool also has begun an internal investigation into the reports. The CPSC wants anyone who has had a problem or concern with a Whirlpool dishwasher to call them. The Consumer Products Safety Commission can be reached toll free at (800) 638-2772 Monday—Friday from 8 a.m.—5:30 p.m.

Source: CPSC

**U.S. Supreme Court Allows Credit Card Arbitration**

The U.S. Supreme Court has ruled that consumers who sign credit card agreements that contain an arbitration clause cannot dispute fees or charges in court. The 8-to-1 decision justifiably drew immediate fire from a number of consumer advocates. To get a credit card, a consumer generally must sign a detailed agreement. In the fine print, which sometimes is not only too small to read, but often in a long, wordy document, there will almost always be an arbitration clause. It will say that if consumers want to dispute fees, they must do so through arbitration, not in court. A 1996 federal law allowed consumers to take those disputes to court. But in this most recent ruling, the Supreme Court said arbitration clauses in those agreements trump that law.

Michael Calhoun, president of the Center for Responsible Lending, says the ruling gives companies that provide credit cards, student loans and car loans the ability to exact any fee, because consumers will have no legal recourse. He points out that almost every loan agreement now includes an arbitration clause. “These arbitration clauses have become a ‘get out of jail free’ card,” according to Mr. Calhoun. The main exception is for mortgage loans, where such clauses are currently prohibited, and hopefully that won’t change.

Lauren Saunders, the managing attorney at the National Consumer Law Center, correctly states that the arbitration process itself is unfair largely because the arbitrators usually have a financial incentive to rule against consumers. She says the desire to stay on good terms with the industry and stay on the list of arbitrators has to be a motivation for the arbitrators who hear these claims. Ms. Saunders asks an interesting question: “Who are you (the arbitrator) going to favor, the company that might send you more business, or the consumer who you’ll never see again?” How did you think an arbitrator would answer that question?

I don’t believe this ruling will be the last word on this issue. Hopefully, the new Consumer Financial Protection Bureau will study arbitration clauses and then ban them from credit card agreements. If anybody believes a consumer has a real chance of winning in arbitration in a dispute with a large corporation, including a big bank, they have never been involved in such a dispute.

The reality is a person who needs a credit card really has no real choice on the arbitration issue because all credit card companies are including arbitration clauses in their agreements. Where would that person go to get a credit card if he or she refused to sign an agreement containing an arbitration clause? Unfortunately, few folks even read
the fine print when asking for a card. This decision by the High Court was very bad for consumers. 
Source: NPR.org

**Mandatory Arbitration Clauses Violate Federal Labor Law**

On a more positive note, the National Labor Relations Board ruled last month that employers will be blocked from requiring workers to sign arbitration agreements that prevent them from later pursuing a class action claim in court. The Board ruled that it is a violation of federal labor law — the National Labor Relations Act — to require employees to sign arbitration agreements that prevent them from joining together to pursue employment-related legal claims in any forum, whether in arbitration or in court. The ruling does not require employees to seek relief through class arbitration as long as the employment agreement allows employees to pursue their claims in court.

The decision examined one such agreement used by nationwide homebuilder D.R. Horton, under which employees waived their right to a judicial forum and agreed to bring all claims to an arbitrator on an individual basis. The agreement prohibited the arbitrator from consolidating claims, fashioning a class or collective action, or awarding relief to a group or class of employees. The board found that the Horton agreement unlawfully barred employees from engaging in “concerted activity” protected by the National Labor Relations Act.

The board emphasized that the ruling does not require class arbitration as long as the agreement leaves open a judicial forum for group claims. Horton will now have to rescind the agreement or revise it to make clear to employees that they are not waiving their right to pursue a class or collective action in all forums. This is a very good ruling and one that protects workers’ rights.

Source: Insurance Journal

**Honda Gets Victory In Class Action Suit**

American Honda Motor Co. won a victory when a divided U.S. Appeals court ruled last month that a nationwide lawsuit over a brake system used in some Acura RL vehicles was improperly certified as a class-action. The 2-1 decision by the 9th U.S. Circuit Court of Appeals is a setback for consumers, who have seen their ability to sue collectively curtailed after a U.S. Supreme Court ruling last June in favor of Wal-Mart Stores Inc. That narrowed class-action litigation. The 9th Circuit said a Los Angeles district court judge was wrong to find that California’s tough consumer protection laws should apply to a nationwide class of consumers who bought or leased Acura RLs equipped with the optional Collision Mitigation Braking System from Aug. 17, 2005 to Dec. 16, 2008.

The Appeals Court also said the lower court wrongly found that consumers could have relied on advertising by American Honda about the system, part of a $4,000 technology package. Lawyers for the roughly 2,000 Plaintiffs did not immediately respond to requests for comment. American Honda is part of Japan’s Honda Motor Co. Ltd. The brake system was designed to warn Acura RL drivers with an alarm and flashing indicator that a crash may be imminent, and tighten seat belts and apply brakes automatically if a frontal crash appeared unavoidable. But drivers claimed that the system might deploy or fail to warn too slowly, and would shut off in bad weather.

The lower court found enough in common among the claims to certify a class. It also said American Honda failed to show why the laws in other states should prevail, even though the purchases and leases took place in 44 separate states. But writing for the 9th Circuit majority, Judge Ronald Gould said it was unfair to apply California law everywhere. Judge Gould said other states had strong interests in regulating similar transactions, often under materially different consumer protection laws.

The judge also said there were no “common issues of fact” because drivers nationwide could not have relied on Honda’s “small scale” advertising for the brake system. Circuit Judge Dorothy Nelson dissented, citing California’s “compelling interest” in regulating the conduct of American Honda, which has headquarters in Torrance, Calif. The 9th Circuit returned the case to the Los Angeles district court for further proceedings. Judge Gould and U.S. District Judge James Gwin, who normally works in Cleveland, made up the majority.

Source: Insurance Journal

**Judge Approves Initial Class Action In South Carolina Defective Stucco Lawsuit**

A state judge in South Carolina has granted preliminary class-action status to lawsuits alleging defective stucco work on homes in Sun City Hilton Head. The order issued by Judge J. Michael Baxley could affect as many as 4,000 homes. Judge Baxley ruled a class action would prevent similar cases from clogging the courts. Currently, there are about 140 cases now pending. In 2010, the state Supreme Court overturned a lower court ruling and said the initial suit filed by Anthony and Barbara Grazia, could be made a class action. Defendants in the case include a plastering company, the community’s developer, a home builder and an architect. The class action ruling is preliminary because, under South Carolina law, the builders have a chance to first offer repairs, money or some other solution.

Source: Claims Journal

**News Corp. Admits Guilt In Hacking Scandal**

The British newspaper arm of Rupert Murdoch’s News Corp. has agreed to settle at great expense a series of legal claims. The company admitted wide-scale phone hacking, something that was both known about and concealed by senior management. For years, Murdoch’s News International had claimed that the hacking of voicemails to generate stories was the work of a single “rogue” reporter who went to jail for the crime in 2007. But, as a result of a wave of damning evidence revealed last year, the company has finally admitted that the problem was widespread. This scandal has rocked the company, the British press, police and the political establishment in Great Britain.

In a statement that could further damage the firm’s reputation, lawyers for victims who have reached settlements said on January 19th that their agreements were based on News Group Newspapers, publisher of some of News International’s newspapers, acknowledging that its senior management were at fault. A statement by the lawyers reads:

> News Group has agreed to compensation being assessed on the basis that senior employees and directors of NGN knew about the wrongdoing and sought to conceal it by deliberately deceiving investigators and destroying evidence.

Judge Geoffrey Vos heard the basis for the settlement in each case in a London Courtroom. At the end of each statement, a lawyer for News Corp confirmed the details outlined to the court. Settlements announced in court generally ranged from around 30,000 pounds ($46,000) to 60,000 pounds, while some of them were not revealed. These admissions could lead to increased scrutiny of James Murdoch, who has been heavily criticized for his handling of the situation.

While he was not in charge of News International at the time of the hacking, James Murdoch has been accused of leading a cover-up by the company. James Murdoch has denied all knowledge of the scale of the problem and blamed many of those around

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www.BeasleyAllen.com
him for the failings. It will be interesting to see how his attempts to shift blame will stand up. Lawyers for the victims who settled had obtained documents from News International that revealed its attempts to destroy evidence.

Source: Insurance Journal

ZAPPOS SAYS CUSTOMER DATABASE HACKED

Online shoe seller Zappos.com says a hacker may have accessed the personal information of up to 24 million customers. The company says that customers’ credit card and payment information weren’t stolen. But it said in an email sent by CEO Tony Hsieh that names, phone numbers, email addresses, billing and shipping addresses, the last four digits from credit cards and more may have been accessed in the attack.

Zappos is contacting customers by email and urging them to change their passwords. Zappos said the hacker gained access to its internal network and systems through one of the company’s servers in Kentucky. Zappos, based in Las Vegas, is owned by Seattle-based Amazon.com Inc. Hsieh said in his email:

“We’ve spent over 12 years building our reputation, brand, and trust with our customers. It’s painful to see us take so many steps back due to a single incident. I suppose the one saving grace is that the database that stores our customers’ critical credit card and other payment data was not affected or accessed. This is an another example of what appears to be a huge problem for customers of big and small companies which are unable to keep hackers out of their networks and systems.

Source: Claims Journal

PRESIDENT OBAMA ANNOUNCES THREE RECESS APPOINTMENTS TO NLRB

President Barack Obama used his recess powers on January 4th to fill three vacancies on the National Labor Relations Board (NLRB). Labor groups, including the AFL-CIO, applauded the President for “exercising his constitutional authority to ensure that crucially important agencies protecting workers and consumers are not shut down by Republican obstructionism.” Similarly, Secretary of Labor Hilda Solis praised the President for making the NLRB appointments and said that if he had not made the recess appointments, Republicans would have continued blocking nominees to the detriment of the economy. In a statement explaining his decision, President Obama said:

“The American people deserve to have qualified public servants fighting for them every day—whether it is to enforce new consumer protections or uphold the rights of working Americans. We can’t wait to act to strengthen the economy and restore security for our middle class and those trying to get in it. I join with those commending the President for these appointments. Congress has an obligation to the American people to allow appointments to be either approved or rejected within a reasonable time. Holding up appointments—solely for partisan political reasons—to important boards and agencies is not the way to do business.”

Source: Huffington Post

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

FORD RECALLING 450,000 MINIVANS AND SUVS

Ford has recalled 450,000 older model minivans and SUVs for risks from fire and loss of power. The affected vehicles are the 2001 and 2002 Ford Escape compact SUV, and the 2004 and 2005 Ford Freestar and Mercury Monterey minivans. The Escape has a reservoir cap on its brake master cylinder that can leak brake fluid, which could lead to smoking or even a fire, according to the recall notice from the National Highway Traffic Safety Administration. There are about 245,000 Escapes on the road.

The minivans, of which there are 205,000 on the road, have a torque converter output shaft that can fail, which can cause the vehicle to lose power, increasing the risk of a crash. Ford says it’s aware of two minor accidents attributed to the minivan recall, with minor injuries reported in one and no injury in the other. The company says it’s not aware of any accident or injury involved in the Escape recall, only reports of property damage.

GM RECALLING CHEVROLET SONICS TO CHECK BRAKE PADS

General Motors Co. has recalled more than 4,000 of its 2012 Chevrolet Sonic subcompact cars to check for missing brake pads. Some Sonics could be missing an inner or outer brake pad, which could increase stopping distance. GM said there are no known crashes or injuries related to the issue. The recall involves 4,296 of GM’s 2012 Sonics sold in the U.S. Affected models are from the Orion Township, Mich., assembly plant, which makes Sonics for the U.S. And Canadian markets. Dealers will inspect front brakes on Sonics for missing inner or outer pads and install new pads, if necessary. Customers affected by the recall should have received dealer letters which were scheduled to go out beginning January 14th.

$100,000 ELECTRIC CARS RECALLED OVER FIRE RISK

Fisker Automotive has recalled its 2012 Karma because of a potential coolant leak. The plug-in hybrid cars cost about $100,000. Fisker has sold about 50 of the cars and says 1,200 more are in production or waiting to be sold. Improperly installed hose clamps in the car’s battery pack could cause coolant to leak, which could start a fire. Fisker says no incidents have been reported by customers or retailers. The company says it will replace the battery pack. Fisker was founded in 2007 and is privately held. It’s based in Irvine, Calif.

FIRE RISK SPARKS RECALL OF 89,000 TURBOCHARGED MINIS

BMW of North America has recalled nearly 89,000 Mini vehicles because of a water pump malfunction that could cause a fire. The company says that the water pump that cools the turbocharger in some of its cars has a circuit board that can malfunction and overheat. That could cause smoldering and potentially a fire. No accidents or injuries have been reported. BMW will replace the pump at no cost to owners. The recall

Kia Recalls 146,000 Vehicles For Airbag Issue

Kia Motors has recalled 145,755 Optima sedans and Rondo crossover vehicles in the United States because of potentially faulty driver-side airbags. The model years affected are 2006-2008 Optimas and 2007-2008 Rondos. Kia Motors America, a unit of Kia Motors Corp, said it is not aware of any injuries or airbags not deploying because of the issue.

Affected are 95,569 Optimas and 50,186 Rondos. Kia, an affiliate of Hyundai Motor Co, said the clock spring contact assembly for the driver’s side air bag supplemental restraint system may become damaged over time, potentially causing the driver’s air bag not to deploy. The recall is to begin in March.

Mazda Recalls Tribute SUVs

Mazda Motor Corp was recalling more than 52,000 Tribute SUVs for potential brake fluid leaks that could lead to a fire. Mazda has notified owners of 52,390 Tributes from model years 2001 and 2002 about the potential brake fluid leaks that could come into contact with the anti-lock brake system module wiring harness. In the case of a leak, corrosion could develop and lead to melting, smoking or a fire, according to NHTSA. The affected vehicles were built at Ford Motor Co’s Kansas City Assembly Plant in Missouri. Until the repairs are made, NHTSA says owners are being told to park their vehicles outside.

Columbia ParCar Recalls Golf, Service And Utility Vehicles Due To Crash Hazard

Columbia ParCar Corporation, of Reedsburg, Wis., has recalled about 1,400 golf, service and utility vehicles. The lower steering yoke can loosen where it attaches to the steering rack and pinion, causing the driver to lose control of the vehicle and crash. The recalled items are 2009, 2010 and 2011 Columbia ParCar golf carts, low-speed service and utility vehicles. They are 36- or 48-volt electric vehicles manufactured from July 1, 2008 through June 30, 2011. Vehicles can be identified by their Vehicle Identification Numbers (VINS) located either on the passenger’s side left kick panel, in the driver’s side storage compartment or on the steering wheel beneath the center cap.

The vehicles were sold by ParCar dealers from July 1, 2008 to July 31, 2011 for between $5,000 and $12,000. If you need a list of the vehicles recalled contact Shanna Malone at Shanna.malone@beasleyallen.com. Consumers should contact local ParCar dealer for a free inspection and repair as required. For additional information, contact Columbia ParCar Corp. At (800) 222-4653 between 8 a.m. And 4:30 p.m. CT Monday through Friday or visit the firm’s website at www.parcar.com.

Kymco Recalls Utility Vehicles Due To Fire Hazard

Kymco USA, of Spartanburg, S.C., has recalled about 1,876 Utility Vehicles. An exposed portion of the exhaust system can allow debris such as leaves, brush or other flammable materials to enter the opening and ignite, posing a fire hazard. Kymco USA has received three reports of vehicles catching on fire and being damaged. No reports of injuries have been received. The recall involves 2009 through 2012 Kymco utility task vehicles (UTVs). The vehicles are gasoline-powered, off-road vehicles with two side-by-side seats, a cargo bed and a steering wheel. The vehicles come in red, blue, black, gray, orange, silver and green and have the model and brand name “Kymco” on both sides of the rear fender area and the front of the hood. The VIN is located on the frame behind the right front wheel. The tenth alphanumeric character of the VIN is the model year of the vehicle.

They were sold by Kymco dealers nationwide from June 2008 to October 2011 for between $7,600 and $10,100. Consumers should stop using these vehicles and return them to a Kymco dealer for the free installation of a repair kit. For more information, contact Kymco USA at (888) 235-3417 between 9 a.m. And 5 p.m. ET Monday through Friday, by email at info@kymcousa.com, or visit the firm’s website at www.kymcousa.com.

Toyo Tire Recalls Nearly 69,000 Tires


Cypress-based Toyo Tire U.S.A. Corp. has recalled nearly 69,000 tires because of a possible kink near the rim area that could cause a crack and lead to tire failure. The recall involves the Toyo Extensa A/S tires that were manufactured at the Toyo Tires plant in Georgia and have a “Made in U.S.A.” mark on the sidewall. The defective tires can be identified by the last four digits of the tire’s identification number, ranging from 3809 to 4410. If the tire has the “Made in Japan” or “Made in China” mark on the sidewall, they are not being recalled. The company will replace the recalled tires at no charge if returned on or before May 31st.

Child Bicycle Trailers And Conversion Kits Recalled

Thule Child Transport Systems Ltd., d/b/a Chariot Carriers, of Calgary, Canada, have recalled their Chariot bicycle trailers and bicycle trailer conversion kits. The bicycle trailer’s hitch mechanisms can crack and break, causing the trailer to detach from the bicycle. This poses an injury hazard to children in the bicycle trailer. The firm has received 24 incident reports worldwide, three of which occurred in the United States, involving the bicycle trailers and the conversion kits. No injuries have been reported. Chariot Carriers convert to strollers, jogging strollers and bike, hike or ski trailers.

This recall involves Chariot bicycle trailers and bicycle trailer conversion kits. Recalled trailers have serial numbers from 1205-xxxx to 0710-xxxx (representing manufacture dates December 2005 through July 2010) located on the left side on the frame. Recalled conversion kits have hitch arms that attach the carrier to the bicycle with model number “20100503” printed on a label attached to the aluminum tube next to the warning label. Older conversion kits without a label, but with a release push button located where the hitch arm inserts into the carrier, are also being recalled.

The carriers were sold at specialty bicycle stores nationwide and on various websites from December 2005 through August 2010 for between $400 and $925 for Chariot bicycle trailers and from October 2002 through August 2011 for Chariot bicycle conversions.
between $40 and $70 for bicycle trailer conversion kits. Consumers should immediately stop using the recalled bicycle trailers and bicycle trailer conversion kits and contact Chariot Carriers for a free repair kit which the consumer can install.

**GIANT BICYCLE RECALLS TWO BICYCLE MODELS**

Giant Bicycle, Inc., of Newbury Park, Calif., has recalled about 900 2012 Model Year Giant Defy Advanced and Avail Advanced Bicycles. The fork can crack, posing a fall hazard to riders. This recall involves all 2012 model year men’s Giant Defy Advanced 0, 1 and 2 model bicycles and the women’s Giant Avail Advanced 0, 1, and 2 model bicycles. “Giant” and the model name are printed on the bicycle. The bicycles are various colors and sizes. The bikes were sold by authorized Giant Bicycle dealers nationwide from August 2011 through November 2011 for between $3,000 and $4,550. Consumers should immediately stop riding the recalled bicycles and contact any authorized Giant Bicycle dealer for a free inspection and replacement of the fork. For additional information, contact Giant Bicycle toll-free at (866) 458-2555 between 9 a.m. and 4 p.m. PT Monday through Friday or visit its website at www.giant-bicycles.com.

**BICYCLE PEDALS RECALLED DUE TO FALL HAZARD**

Performance, Inc., of Chapel Hill, N.C., has recalled about 2,900 2011 Forte Pro Carbon Road Pedals. The pedal body can break or crack during use, causing the rider to lose control and posing a fall hazard. Performance has received three reports of the pedals breaking. No injuries have been reported. Forte Pro Carbon Road Pedals are sold in sets of two bicycle pedals that attach to cycling shoes. The pedal body is black and is made of lightweight carbon injected thermoplastic. The axle is black and made of chromium molybdenum steel with a black steel axle. The front, top of the pedal has “Carbon” printed in red; the top middle has “EPS-R” embossed in the body with the “R” in red and on the top rear of the pedal the word “Forte” printed in white. The outer edge of the pedal has the Forte logos, crossed F’s, in white. The catalog number, 50-8128, is used in all catalogs.

The pedals were sold on Performance’s website, catalogs and Performance retail stores from February 2011 through October 2011 for about $100. Consumers should immediately stop using these bicycles pedals and contact Performance to obtain a full refund. For additional information, contact Performance at (800) 553-8324 between 9 a.m. and 8 p.m. ET Monday through Friday, or visit the company’s website at www.performancebike.com.

**WEST ELM RECALLS DOVER DINING TABLE DUE TO INJURY HAZARD**

West Elm, a division of Williams-Sonoma, Inc., of San Francisco, has recalled their Dover Dining Table. The wooden base of the table can collapse, causing the glass table top to fall. This poses an injury hazard to consumers. The firm says it is aware of 14 reports of tables collapsing or breaking, including one report of a bruise to a consumer’s leg. The Dover dining table is a tempered glass-top table with a brown wooden base. The base has four legs, four buttress support bars and three glassstop support bars. “West Elm” and “SKU: 2188233” are printed on a white label on the underside of the long, center beam. The tables were sold by West Elm retail and online stores nationwide from July 2011 through October 2011 for about $500. Consumers should contact West Elm for a full store credit. West Elm will schedule a free return pickup of the table. For additional information, contact West Elm toll-free at (855) 369-4335 between 7 a.m. and midnight ET seven days a week or visit its website at www.westelm.com.

**IKEA RECALLS TO REPAIR HIGH CHAIRS DUE TO FALL HAZARD**

IKEA North America Services LLC, of Conshohocken, Pa., has recalled their ANTILOP High Chairs. The high chair’s restraint buckle can open unexpectedly, posing a fall hazard to the child. IKEA has received eight reports worldwide of restraint buckles that opened unexpectedly, including three reports of children who received minor injuries after falling from the high chair. This recall involves ANTILOP high chairs sold in red, blue or white. The plastic high chair has detachable silver-colored metal legs. High chairs included in the recall have a manufacture date between 0607 and 0911 (YYMM format) from supplier number 17589. The production date and supplier number are molded into the underside of the seat.

The high chairs were sold exclusively at IKEA stores nationwide from August 2006 through January 2010 for about $20. Consumers should immediately stop using the high chairs and contact IKEA to obtain a free replacement seat restraint. For additional information, contact IKEA toll-free at (866) 966-4532 anytime, or visit its website at www.ikea-usa.com.

**POTTERY BARN KIDS RECALLS MADELINE CANOPY BED**

Pottery Barn Kids has issued a safety recall of the Madeline Canopy bed. A notice on the retailer’s website says, “The connections of the posts to the top rails of the canopy can come apart and allow components of the canopy to fall, posing an impact hazard to consumers.” The U.S. Consumer Product Safety Commission said the connections of the posts to the top rails of the canopy can come apart, allowing components of the canopy to fall and posing an impact hazard to consumers.

There have been 33 reports of components of the canopy falling, including one report of a cut that required stitches and nine other reports of minor cuts, bruises and/or bumps. About 7,700 of the beds were sold in the United States and 230 were sold in Canada from December 2003 until August 2011. People who purchased the bed should remove the canopy and contact Pottery Barn Kids to schedule a free repair. The company can be reached toll-free at 888-367-4114 from 6 a.m. to 11 p.m. CST daily. Pottery Barn Kids is a division of Williams-Sonoma Inc., which is based in San Francisco, Calif.

**FOOD CARRIERS RECALLED DUE TO POSSIBLE GEL LEAK**

California Innovations Inc., has recalled about 55,000 Travelin’ Chef Expandable Thermal Food carriers sold at Walmart. Gel that contains diethylene glycol and ethylene glycol, can leak out of damaged freezer gel packs posing a poisoning hazard if ingested. The recalled product is a four-piece food carrier set, which includes a light blue thermal carrier with black carrying handles, a medium plastic food container, a large plastic food container and a freezer gel pack. The recalled thermal carrier has the code “1-38018-69-07” printed on a white label on the inside of the main compartment on the left hand side. The thermal carrier is 18 inches wide, 10.5 inches
deep and 4.7 inches high and made of vinyl and polyester. The gel pack is an 8.5-inch by 8-inch, opaque blue plastic pouch filled with liquid gel. The words “Cryofreeze” and “Ice Pack/Hot Pack” are printed in white letters on the front of the pouch.

The company has also recalled about 248,000 Expandable Insulated Lunch Box with Freezer Gel Pack. Gel that contains diethylene glycol and ethylene glycol can leak out of damaged freezer gel packs, posing a poisoning hazard if ingested by children or adults. The firm has received two separate reports of a dog chewing and ingesting gel from the gel pack. One dog reportedly died from ingestion of the gel. The other was reported to have received treatment and has recovered.

This recalled product is a Ci Sport three-piece, expandable, insulated lunch box set, which includes the lunch box, aluminum bottle and the freezer gel pack. The lunch box of the recalled set has the code “1-61731-99-57” printed on one of the two white labels that are sewn under the white fastener inside the main compartment. The lunch box is 8 inches wide, 5 inches deep and 10.25 inches high. It is made of vinyl, polyester nylon and crushed nylon and has a logo with the words “Ci Sport” attached to the upper left corner. The lunch box has a carrying handle on the top and a mesh carrying pouch for the aluminum bottle on the side. The aluminum bottle measures 2.75 inches in diameter and 7.5 inches tall. The gel pack is a 6-inch by 4-inch transparent plastic pouch filled with blue liquid gel. The words “Cryofreeze” and “Ice Pack/Hot Pack” are printed in white letters on the front of the pouch. The lunch box was available in four colors: navy blue, red, black and denim blue.

These lunch boxes were sold at Costco Wholesale Clubs, Leon Korol and Cost U Less stores between May 2007 and September 2008 for about $10. Consumers should immediately stop using the gel packs and dispose of them according to federal, state and/or local regulations. It is recommended that consumers contact their local waste disposal authority for instructions. Consumers may return the lunch box set to Costco for a full refund or may receive a $5 cash refund for the gel pack only by contacting California Innovations customer service at (800) 722-2545 for the same refund. For additional information, call California Innovations at (800) 722-2545 between 9 a.m. and 5 p.m. ET Monday through Friday or visit its website at www.californiainnovations.com.

## Lead Painted Mexican Wrestling Action Figures Recalled

Lee Carter Co., of San Francisco, Calif., has recalled about 7,000 packs of Super Luchamania Action Figures. The surface paints on the action figures contain excessive levels of lead which is prohibited under federal law. The recalled Mexican wrestling Super Luchamania action figures were sold in packs of 12. The multi-colored action figures are plastic, have plastic caps and measure about four inches tall. “Super Luchamania” is printed on the action figures’ packaging. The figures were sold at various Mexican specialty craft stores nationwide from June 2000 through October 2011 for between $12 and $14 per pack. Consumers should immediately take the recalled action figures away from children and return them to Lee Carter Co. for a full refund or credit towards a replacement product. For additional information, consumers should call Lee Carter Co. collect at (415) 824-2004 anytime, or visit the firm’s website at www.leecartercompany.com.

## Lawnmower Replacement Blades Recalled

Blount International Inc., of Kansas City, Mo., has recalled about 950 Oregon® Replacement Lawnmower Blades. The replacement lawn mower blades can break during normal use, posing a laceration hazard to the user and bystanders. Blount has received seven reports of replacement blades breaking during use. No injuries have been reported. This recall involves Blount lawn mower replacement blades for Ariens 48-inch lawn mowers. The replacement blades are sold under the Oregon® brand name. “Oregon®,” part number “91-003” and “PA” or “PJ” are printed on the surface of the recalled blades. They were sold at Independent lawn and garden sales and service stores nationwide from January 2010 through September 2011 for about $20. Consumers should immediately stop using lawnmowers with the recalled blades and return the blades to the store where purchased or directly to Blount for a free replacement. For additional information, contact (866) 685-5449 between 6 a.m. and 4 p.m. CT Monday through Friday, or visit its website at www.blount.com.

## Portable Gas Grills Recalled Due To Fire And Burn Hazards

Uni-O (Xiamen) Industries Corporation of Xiamen, China, has recalled their O-Grill Portable Gas Grills. The regulator on the grill can leak gas which can ignite, posing a fire and burn hazard to consumers. Uni-O has received ten reports of grills catching fire. No injuries or property damage have been reported. This recall involves Iroda O-Grill models 1000 and 3000 produced before 2010. Some were also sold under the Tailgating Gear brand. Both models are lightweight, portable, clamshell-type propane grills with steel bodies, cast iron cooking surfaces, retractable legs and a handle. They can be used with either 1-pound propane cylinders or 20-pound propane tanks. The grills come in orange, red, green, blue, silver and black and have the words “O-Grill” stamped on the metal grill cover. Recalled O-Grills do not have ventilation slots in the regulator cover where the propane bottle screws in. Grills with ventilation slots in the regulator cover are not subject to the recall. The grills were sold by LL Bean, Stone-
man, BBQG, Walgreens, REI, Dillards and Dick’s Sporting Goods nationwide from November 2008 through December 2010. The O-Grill 1000 sold for $149 and the O-Grill 3000 sold for $189. Consumers should immediately stop using the grills and contact Uni-O to receive a free replacement grill. For additional information, contact the firm toll-free at (888) 847-8968 between 7 a.m. and 6 p.m. CT Monday through Friday, or visit its website at www.regcen.com/ OGRILL. The U.S. Consumer Product Safety Commission (CPSC) is still interested in receiving incident or injury reports that are either directly related to this product recall or involve a different hazard with the same product. You can tell the CPSC about your experience with the product on SaferProducts.gov. Firm’s Recall Hotline: (888) 847-
Nearly 20,000 portable electric heaters have been recalled because the internal housing can detach, causing a burn hazard to consumers. Honeywell Surround Select Portable Electric Heaters, distributed by Kaz USA, were sold at Best Buy, Meijer and Walmart stores nationwide from July 2011 through December 2011 for between $50 and $70. The recall includes Honeywell Surround Select Series portable electric heaters with model numbers HZ-420, HZ-430, and HZ-440 and five-digit date codes that have 11 as the last two digits. The heaters are black or white cylinders with a handle on top. The model number is stamped into the plastic on the bottom of the heater. The date code is located on the metal prongs of the heater’s electrical plug. “Honeywell” and “Surround Heat” are printed on the front of the heaters.

Consumers should immediately unplug and stop using the heaters and contact Kaz for a full refund. For additional information, contact Kaz at (800) 570-8137 from 8:30 a.m. to 5 p.m. ET Monday through Friday, or visit its website at www.kaz.com/recall.

Target Corporation, of Minneapolis, Minn., has recalled about 55,000 6-pc. LED Flashlight Sets. They are made of silver plastic with black rubber around the handle and light base. The flashlight sets have UPC code 688730992775 printed on the back of the package. They were sold in sets of six, including two small flashlights measuring about 3 inches long, two medium flashlights about 6 inches long and two large flashlights about 7 1/2 inches long.

The lights were sold exclusively at Target stores nationwide from October 2010 through December 2011 for about $10 per set. Consumers should immediately stop using the flashlights and return them to any Target store for a full refund. For additional information, contact Target at (800) 440-0680 between 7 a.m. and 6 p.m. CT Monday through Friday, or visit the firm’s website at www.target.com.

Honeywell Portable Electric Heaters Recalled Due To Burn Hazard

Five-Light Floor Lamps Recalled

Big Lots, of Columbus, Ohio, has recalled Five-Light Floor Lamps. The wiring for the lamp’s light sockets can become exposed, posing a risk of electric shock to consumers. In addition, use of the recommended standard 40 watt light bulbs can generate excessive heat, which can melt the double plastic shades over the bulbs. The firm has received four reports of melting lamp shades. No injuries have been reported. This recall involves Classic Quarters Five Light Floor Lamps. The lamps stand about five feet tall and have a gunmetal or chrome colored metal pole and five adjustable lights mounted on flexible metal tubes at the top. Dark plastic or multi-colored double plastic shades cover each of the five lights. Recalled lamps use standard incandescent or CFL bulbs and have labels marked with the model number “G-1843-5” affixed to the underside of the lamp base. These lamps can be further identified by SKU numbers 612007239, 612007829 or 612008982 at the beginning of the instructions. Lamps that use candelabra bulbs are not subject to this recall and can be identified by labels marked with the model number “G-1844-5B” and SKU numbers 612009036 or 612009037 in the instructions.

The lights were sold exclusively at Big Lots stores nationwide from April 2010 through November 2011 for between $30 and $50. Consumers should immediately stop using the lamps and return them to a Big Lots store for a full refund. For additional information, contact Big Lots toll-free at (866) 244-5687 between 8 a.m. and 5 p.m. ET Monday through Friday, or visit its website at www.biglots.com.

Target Recalls LED Flashlight Sets Due To Fire And Burn Hazards

Carruth Candleholder Collection Tea Light Candles Recalled

Steelcase Recalls Desk Chairs

About 11,000 Amia desk chairs have been recalled by Steelcase Inc., of Grand Rapids, Mich. The pivot pins installed in the control mechanism under the chair seat can fall out, posing a fall hazard to the user. This recall includes the model 482 Series Steelcase Amia desk chairs manufactured between March 1, 2011 and June 6, 2011. The model number and manufacture date are printed on a label on the underside of the chair seat. The seats are available in various colored fabric options as well as leather. The chairs were sold at authorized Steelcase dealers and retail outlets including Healthy Back Store, CSN, Home Office Solutions, Office & Company and Sam Flax stores nationwide and online at www.store.steelcase.com. Consumers should immediately stop using the chairs and contact Steelcase to receive adhesive covers to apply over the pivot pins on their chairs. These pin adhesive covers can be applied without the use of a tool in less than five minutes. Steelcase is contacting all known purchasers. For additional information, contact Steelcase toll-free at (800) 391-7194 between 8 a.m. and 5
**Children’s Chairs and Stools Recalled by Elegant Gifts Mart**

Elegant Gifts Mart Inc., of Los Angeles, Calif., has recalled their Children’s Chairs and Stools. The yellow surface paint on the metal frame of the children’s chairs and stools contains excessive levels of lead which is prohibited under federal law. The children’s folding chairs and the stools have yellow metal tube frames. The plastic seat, seat backs and stool have a cartoon-like scene with monkeys, teddy bears, mushrooms and heart-shaped balloons. “PENGKO” is printed on the chair’s heart-shaped seatback. Item number “JCA8036” is printed on a white sticker underneath the chair’s seat. Item number “JCA8037” is printed on a white sticker underneath the stool.

The chairs and stools were sold exclusively by Naturalizer stores nationwide from July 2011 through November 2011 for between $25 and $50. Consumers should immediately stop wearing the shoes and return them to any Naturalizer store for a full refund. For additional information, contact Naturalizer toll-free at (888) 443-2019 anytime, visit their website at www.naturalizer.com, or email them at NaturalizerDare@BrownShoe.com.

**Infant Rattles Recalled**

Lee Carter Co., of San Francisco, Calif., has recalled about 25,000 Infant Rattles. The rattle’s handle is small enough to fit into a child’s throat, posing a choking hazard and violating federal rattle standards. The recalled rattles are made out of multi-colored, wooden plastic and have a bell inside. They measure about 4 1/2 inches long. “Made in Mexico” and “Lee Carter Company” are printed on a tag on a purple plastic loop at the end of the rattle’s handle. The rattles were sold at various Mexican specialty craft stores nationwide from February 2001 through October 2011 for about $4. Consumers should immediately take the recalled rattles away from infants and return them to Lee Carter Co. for a full refund or credit towards a replacement product. For additional information, consumers should call Lee Carter Co. collect at (415) 824-2004 anytime, or visit their website at www.leecartercompany.com.

**Naturalizer Recalls Women’s Dress Shoes Due to Fall Hazard**

Brown Shoe Company, Inc., of St. Louis, Mo., has recalled their Naturalizer “Dare” Women’s Dress Shoes. This includes about 6,100 pairs in the United States and 700 pairs in Canada. The heels of the shoes can lean to either side, posing a fall hazard when worn by consumers. They have received one report of a consumer in Canada who received a minor leg injury when she fell while wearing the shoes. This recall involves women’s faux patent leather dress shoes with the style name “Dare.” They have a three-inch heel, open toes and a decorative faux patent leather bow across the front. The shoes were sold in sizes 5M to 10M, 11M, 7W to 9W and in gray, nude, scarlet and black colors. “Naturalizer” is printed inside and on the bottom of the shoe. The following stock numbers are printed inside the shoes below the size number: A3279S1020 Dare (gray), A3279S1250 Dare (nude), A3279S1600 Dare (scarlet) and A3279S2001 Dare (black).

The shoes were sold exclusively by Naturalizer stores nationwide from July 2011 through November 2011 for between $25 and $50. Consumers should immediately stop wearing the shoes and return them to any Naturalizer store for a full refund. For additional information, contact Naturalizer toll-free at (888) 443-2019 anytime, visit their website at www.naturalizer.com, or email them at NaturalizerDare@BrownShoe.com.
through many challenging and stressful situations. Her years of “adventuring” with the
Lord in vocational ministry have been transformational as she continues to serve Him in
law practice. Leigh returned to the firm in 2005 to join the Vioxx litigation team.

Leigh earned a degree in Accounting from Auburn University in 1990. She graduated
from the University of Alabama School of Law in 1993. While in law school, Leigh
served as Managing Editor of the Alabama Law Review and received the Dallas Sands
Outstanding Senior Award. Following law school, Leigh had the honor of serving as a
law clerk for the late Honorable Ira DeMent, United States District Judge for the Middle
District of Alabama.

Leigh is a member of the Alabama Trial Lawyers Association, Montgomery County
Trial Lawyers Association, American Bar Association and Christian Legal Society.
Leigh also was selected for inclusion on the 2011 and 2012 Best Lawyers in America list,
published by U.S. News & World Report. Leigh is originally from Prattville, Ala. The
daughter of the late Billy O’Dell and Beverly O’Dell Malone, Leigh enjoys spending time
with her large family, reading, playing tennis, as well as participating in other sporting
activities. We are truly blessed to have Leigh in our firm.

SANDY JACOBS

Sandy Jacobs, who has been with the firm for over seven years, currently serves as a
Staff Assistant to Roger Smith in our Mass Torts Section. At present Sandy is involved in
the Actos litigation, which is a medication prescribed to treat Type II Diabetes. Sandy is
responsible for working up case files for the lawyer and ordering and reviewing medical
records in a timely fashion. She also maintains communication with their clients and
updates the database on a daily basis.

Sandy graduated with honors from Zion Chapel High School, which is located in Jack,
Ala. She attended Enterprise State Community College in pursuit of a Paralegal Degree
and is enrolling at Troy University to continue her education. Her favorite pastimes
include those spent with her boyfriend, Anthony. They love the outdoors and enjoy hunting,
working with their horses and spending time with Anthony’s two sons, Justin and Jonathan.
In addition, Sandy enjoys staying fit, fishing, 4-wheeling, spending time with her family and spending time
with Noodles, her dog. Sandy is a very good, dedicated, and hard-working employee. We are fortunate to have her with us.

TABITHA MCGUIRE

Tabitha McGuire has been with the firm for five years. She currently serves as Litiga-
tion Assistant to Lance Gould in the Fraud Section. Tabitha assists on Fair Labor Stan-
dard Act Cases, Employment Class Action
lawsuits and various fraud cases. She is
responsible for collecting, organizing and
reviewing documents, maintaining client
contact, helping to get cases ready for media-
tion, arbitration and trial. Tabitha also does
any other tasks that come her way as a Litiga-
tion Assistant.

Tabitha is married to Brennon L. McGuire,
who is on active duty in the United States Air
Force, currently being stationed at Maxwell-
Gunter Air Force Base in Montgomery. They
have two daughters Ceara, 14, who attends
Wetumpka High School and Kaylee, nine, who
attends Wetumpka Elementary School.

Tabitha graduated from Paint Valley High
School in Bainbridge, Ohio, and Pickaway
Ross Vocational Center in Chillicothe, Ohio. Tabitha enjoys bowling, competing in
bowling tournaments, riding with her husband on their Harley, and spending
quality time with her daughters, family and friends. Tabitha is a very good employee who
works hard and is dedicated to helping clients with their cases. We are fortunate to have
Tabitha with us.

THE BEASLEY ALLEN REPORT

Our readers in Central Alabama can join us
each week on WSFA-TV 12 for The Beasley
Allen Report. Hosted by Gibson Vance, a
Beasley Allen Shareholder and Past President
of the American Association for Justice, this
30-minute show shares information about
important cases, talks with lawyers with
expertise in various fields and public officials,
and provides valuable insight about topics affecting the public’s rights and access
to the Civil Justice solution. The show also
will feature other Beasley Allen lawyers as
well as governmental and community
leaders. Look for the show in the old Law Call
time slot, each Sunday evening on WSFA-TV,
following the 10 o’clock news.

XXV. SPECIAL RECOGNITIONS

NAVAN WARD TO HELP LEAD PINNACLE HIP IMPLANT LITIGATION

Navan Ward, Jr., a shareholder in our Mass Torts Section has been selected to serve on the
Plaintiffs Steering Committee (PSC) for multidistrict litigation (MDL) involving the
DePuy Pinnacle hip implant. The litigation involves more than 500 cases consolidated
under Judge James E. Kinkeade in the U.S.

District Court for the Northern District of Texas. Pinnacle litigation involves allegations
of serious adverse events associated with the Pinnacle Acetabular Cup System, a metal-on-
metal hip implant. DePuy Orthopaedics is a subsidiary of Johnson & Johnson.

Patients who received the Pinnacle implants report problems including loosening
of the implant, fracture at the implant site, dislocation of the implant, as well as
pain, swelling and trouble walking. Additionally, some of these cases allege illnesses possibly
related to the release of tiny metal particles resulting from friction where the
metal parts rub together. Consolidating the cases into a MDL allows the committee over-
seeing the process to put more pressure and focus on moving the case forward, moving
cases more quickly to resolution. Lawyers will coordinate the litigation and work
together on issues of science and discovery. Navan is also serving on the Plaintiffs Steering
Committee for the DePuy ASR Hip Implant Recall multidistrict litigation, consolidated under District Court Judge David A.
Katz in the Northern District of Ohio, which is a separate MDL regarding claims against the same Defendants for a similar defective
hip device. Navan also serves as Co-Chair to the DePuy Metal-on-Metal Hip Implant Litigation Group for the American Association for Justice.

JUDGE VIRGIL PITTMAN WAS A GREAT JURIST

Judge Virgil Pittman will be remembered
as a talented jurist and as a man who not only loved the law, but followed it to the letter
throughout a long and distinguished career.

Judge Pittman served both as a Circuit Judge
in the Alabama state court system and also as a U.S. District Court Judge in the federal
system. He was appointed to the federal bench by President Lyndon Johnson in 1966.
While his actions on the federal bench weren’t always well received by the public,
there are two things for certain: Judge Pittman was always “right” and he never
backed down. The Coffee County native held the title of “Judge” for almost six decades.

Judges Pittman died on Jan. 6, 2012. His was a
timeless service to his fellow man and that
nobody can deny.

JONES SCHOOL OF LAW GAINS NATIONAL RATING

Thomas Goode Jones School of Law,
located on the campus of Faulkner University
in Montgomery, has been named one of the
15 best law schools in the United States when it comes to preparing students for public
service in government. The rating came from the National Jurist, a publication which is referred to as “The voice of legal education.” The ratings were based upon each school’s employment data, curricula and other information in creating the list.

The law school trains law students for careers in public service, preparing them both to engage critically with difficult legal and policy questions and to deal practically with the challenges of public service. Interestingly, nearly 50% of the graduating class of 2010 chose public service careers when they graduated, Jones is widely recognized as an exceptionally good law school. The school is doing extremely well under the leadership of Dean Charles Nelson.

Source: ALABAR.org

Kathy Eckermann, who is my Executive Assistant, sent in a verse for this issue. Kathy says this verse has been on her mind a great deal during this New Year. In order to be changed into the person God wants us to be, Kathy says we must renew our minds through reading his Word. She is correct in saying that’s how we can find His will for our lives.

Do not conform any longer to the pattern of this world, but be transformed by the renewing of your mind. Then you will be able to test and approve what God’s will is—his good, pleasing and perfect will.

Romans 12:2

Krystin McHenry, who is a clerical assistant in our Toxic Torts Section, sent in a verse that she says has a very special meaning to her. It not only gave her strength during some difficult times, but the verse was also her best friend’s favorite verse. Her friend, who died about a year ago, wrote it on everything she ever signed, according to Krystin. The verse is one of the many things that remind Krystin of her friend.

I can do all things through Christ who strengthens me.

Philippians 4:13

Stephanie Stephens, a lawyer in our Personal Injury/Products Liability Section, also sent in a verse for this issue. Stephanie handled her very first court hearing in December and said that she was very apprehensive since it was her first real hearing. As she prepared for the hearing, Stephanie says God revealed Isaiah 41:9-10 to her and that she repeated it over and over to herself all weekend. On the day of the hearing, Stephanie says she had complete peace and calm. She says God chose her and chose a path in the legal field for her. And through this verse, Stephanie says God told her not to fear things chosen by Him.

I have chosen you and have not rejected you. So do not fear, for I am with you; do not be dismayed, for I am your God.

Isaiah 41: 9-10

I agree with Stephanie, who says: “What an amazing Father we serve!” It’s unfortunate that many of us fail to recognize that truth.

Garnett Turner, a long time member of St. James United Methodist Church, and a good friend, sent in a verse for this issue. Garnett has been in the insurance business for years and is a good man.

I am the true vine, and My Father is the vine dresser. By this My Father is glorified, that you bear much fruit; so you will be My disciples.

John 15:5, 8

The broadcast networks want the U.S. Supreme Court to turn them loose and not make them abide by the standards currently in place, calling them “vague” and “anti-quated.” I don’t believe the standards are considered antiquated to the millions of parents who want broadcast TV and radio to be a relatively safe place to entertain and inform their families. I also believe most folks want the networks to be regulated. I firmly believe that a failure to regulate the industry would be a huge mistake and that it would result in great damage to the moral fiber of our country.

Those in charge of the TV and radio broadcast industries want the broadcast networks to be free to show anything and at any time with no restrictions. Eliminating the law entirely would allow broadcasters to pump nonstop profane language, disgusting vulgar and off-color references and sexual content, including pornography, into virtually every living room in the country. That’s something that our government simply can’t afford to allow. Nor should the public tolerate it.

The broadcast networks have asserted a “right” to use the airwaves to air whatever they want, regardless of who might be in the viewing audience, and regardless of how it might impact viewers. They want all the privileges that come from the licensed use of a public resource, including billions of dollars of annual revenue, but none of the responsibility. The networks’ freedom of expression isn’t threatened, and never was, by the federal government. FCC regulations only limit what can be shown when children are most likely to be in the viewing audience—between 6 p.m. and 10 p.m. Simply put, that which is at stake in this case is whether broadcasters will be allowed to air indecent and obscene material on television with no restrictions and with children watching.

The networks would also claim that they must be able to compete with unregulated cable networks. But the same companies that own the broadcast networks (Disney, News-Corp, Comcast, Viacom) also own nearly all of the cable channels they claim to compete against. In my opinion, the federal government has a duty to protect those who cannot protect themselves.

Only when the public gets involved, will the networks listen. They pay attention when an advertiser pulls its ads. Even though the high court justices are supposed to be immune from political influence, and I sincerely hope they are, they should realize how serious this matter is. Hopefully, they will rule in a manner that will protect our nation’s children.

Our children deserve protection

While I may be the only person who feels this way, I believe we in America had better do whatever it takes to clean up the television industry and do it without delay. If we fail on this front, I fear we will pay a steep price for our refusal to get involved. I really believe most folks want children protected from the filth and garbage being shown daily on television screens, with much of it coming during prime time hours. No longer is the exposure of this junk limited to cable and satellite broadcasters. It’s now almost a daily part of the regular broadcast networks’ programming.

There have been laws, designed to protect children from broadcast indecency, in place for years. But unfortunately those laws have lots of loopholes and without any doubt they have been fully exploited. Instead of weakening those laws, however, we should strengthen them. We are now facing a most serious crisis in this country dealing with this subject.
children is paramount in my opinion and it should be a priority for our elected officials.

Source: USA Today

**Some Important Monthly Reminders**

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

2 Chron 7:14

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

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortune, Which they have prescribed. To rob the needy of justice, And to take what is right from the poor of My people, That widows may be their prey, And that they may rob the fatherless.

Isaiah 10:1-2

**The Only Title in Our Democracy Superior to that of President is the Title of Citizen.**

Louis Brandeis, 1937

U.S. Supreme Court Justice

XXVIII. PARTING WORDS

**The FCA Does Good Work**

The Fellowship of Christian Athletes, one of my favorite organizations, does a tremendous job nationwide. FCA works hard to bring glory to God and minister to young people in schools and universities around the country. Its vision is to see the world impacted for Jesus Christ through the influence of athletes and coaches. Athletes and coaches have a tremendous influence on people—especially on young people—and that influence can either be good or it can be bad. FCA wants to make sure that the influence is good. I commend them for their hard work and dedication.

My friend John Gibbons serves as Director for the FCA in Alabama. John, and all of the others on staff for FCA in the state, live by the words of Jesus when he says in John 15:8: “this is to my Father’s glory, that you shall bear much fruit, showing yourself to be my disciples.” Those who work in FCA are truly disciples who spread the Gospel message to student athletes and coaches on a constant basis.

The FCA had the opportunity in Alabama to minister on over 400 campuses throughout the state last year. There were approximately 475 coaches in Bible studies, and over 50,000 student athletes who attended FCA huddles, special events and summer camps. The goals in Alabama for this year are much higher. If reached, it will give FCA the opportunity to reach even more young people. Fortunately, they have a solid foundation from 2011 to build on.

In order for FCA to reach its goal in Alabama, they need an additional four staff members for this year. I believe their desire to take the life-transforming power of the Gospel into the junior high schools, high schools and colleges in Alabama will be fulfilled. That is my hope and prayer. If you would like to help FCA take its needed message into our schools, contact them at (334) 279-9399. You can get more information by going to Alabamafca.org or to the website of the National FCA which is FCA.org. Of course, you can also contact the National FCA by calling them at (800) 289-0909 or writing to 8701 Leeds Road, Kansas City, Mo. 64129.

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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.