I. Capitol Observations

Time for Leaders To Step Up To The Plate

It’s quite apparent that over the past decade Alabama has fallen behind in almost every important category. The primary reason for the decline is because those in government leadership roles have consistently taken the easy way out on the state’s fiscal problems. For years, every candidate for Governor, as well as most candidates for the Legislature, have promised “no new taxes” when seeking office. As a result, state agencies and public education in our state have been sorely neglected and grossly underfunded for years. But during the same time the demand for services has increased sharply. Those agencies living out of the General Fund have been funded with a series of poorly planned budgets with the approach being mostly to patch, borrow and depend on federal funds. Rather than solving problems, we have “borrowed from Peter to pay Paul” in most budgets and recently have depended heavily on stimulus money from the federal government to make ends meet in state government.

Few in positions of authority in state government seem to comprehend that increasing services in our state over a period of years, with no corresponding increases in revenues, was a massive fiscal disaster waiting to happen. Such an approach had to eventually lead exactly to where our state is today. To put that in plain terms, we are “broke as a haint.” While “cussing the federal government,” our state leaders were receiving and using hundreds of millions of dollars in federal funds to put temporary patches on the state’s budgets to make things work. The federal stimulus money was used in the most recent budgets—knowing full well that those funds wouldn’t be available this year—with no plan to replace that money in this year’s budgets.

A few years back, the Alabama Legislature—with the approval of the people of Alabama—amended the state Constitution to set up a rainy-day account to avoid having to declare proration in the general fund or to have mid-year budget cuts in 2010 and 2011. The money was to be repaid by 2015. Thus far, the state Legislature hasn’t repaid any of that money. With three years to go before the rainy-day note comes due, there doesn’t appear to be a plan on how this loan will be repaid.

For years political leaders in our state have avoided asking Alabamians to pay for adequate state services, including our public schools. State government has lived far below its means for decades. Alabama—per capita—has the lowest taxes in the nation, and while it may sound good politically to brag about that fact, it has created monumental fiscal problems for state agencies and for public education.

I am convinced that the state needs to raise additional revenues during the current session, use the additional funds wisely and then plan ahead for the future operation of state government. It’s time for our political leaders in Alabama to step up to the plate—admit that the state needs additional revenues—and then take the necessary steps to put state government on sound fiscal ground. To do otherwise may sound good from a purely “political perspective,” but failing to act responsibly will do tremendous damage to our state.

II. A Report on the Gulf Coast Disaster

BP Oil Spill Update

Just as this issue of the Report was being made ready to be sent to the printer, the oil spill trial, which had been scheduled to start on February 27th, was postponed for one week by Judge Carl Barbier. The PSC and BP issued a joint statement concerning the new trial date. If there is no settlement, the trial continues.

Given the Gulf Coast Claims Facility’s (GCCF) treatment of residents along the coast, the lawsuit presented a staggering account of just how hard the Plaintiffs’ Steering Committee (PSC) has worked on behalf of folks throughout the Gulf Coast. Specifically, 72 million pages of phase 1 documents have been produced since discovery began almost a year ago. Over the same time, 303 depositions have been taken and 7,278 documents have been marked as deposition exhibits.

The parties are also designating deposition testimony and conducting depositions for phase 2 discovery, which will continue even as the phase 1 trial continues.
Gulf Coast, this process is a necessity. Those trying to discount the PSC’s work simply ignore the immense time and expense that goes into a case of this magnitude which affects every person throughout the Gulf Coast. Aside from the sheer volume of documents and deposition work, there are complex layers of arguments that the PSC must maneuver so folks hurt by the disaster have their day in court. Across the aisle are some of the most powerful companies in the world that would love nothing more than to have claims dismissed and damage awards chopped down. Without the PSC’s efforts, Gulf Coast residents would be at the mercy of the GCCF and BP.

- BP’s Profits Climb to $23.9 Billion. As many Gulf Coast residents may recall, rumors were rampant that BP would go bankrupt as a result of the Deepwater Horizon oil spill. Those same residents felt pressure to settle early to ensure they would get at least some form of compensation from the oil giant. There were even calls to limit BP’s liability in order to protect the company and its shareholders, and to ensure that the company would not go bankrupt. Now, just over a year later, BP has recently reported that its net profits exceeded $23 billion in 2011 following the Deepwater Horizon oil spill.

Perhaps a lesson can be learned from this—maybe America should focus more on helping the people, and their businesses, that were devastated by events caused by negligence rather than the company is committed to paying all legitimate claims and helping economic and environmental restoration efforts in the Gulf Coast. That is most interesting considering that BP has fought long and hard in this litigation to do exactly the opposite.

Source: The Economic Times, London

- BP Liable For Civil Penalties For Oil Spill. Judge Barbier ruled on February 22nd that BP PLC and one of its minority partners in the blown-out Macondo well are liable for civil penalties under the Clean Water Act. He ruled that Transocean Ltd., the rig owner, may be liable under the same law as an “operator” of the well. But the judge said he couldn’t decide at this juncture—before trial—whether Transocean meets the definition of that term.

The Justice Department argued that BP, minority partner Anadarko Petroleum Corp. and Transocean are each liable for per-barrel civil penalties for oil discharged from the well. Judge Barbier rejected Anadarko’s argument that oil discharged from Transocean’s rig, not the well. “Pressure within the earth drove hydrocarbons up the Macondo Well, through the (blowout preventer), and finally out the riser,” the judge wrote. “Thus, the uncontrolled movement of oil began in the well. The riser and (blowout preventer), by contrast, were merely passive conduits through which oil flowed.”

Judge Barbier also ruled that BP and Anadarko—but not Transocean—are “responsible parties” under the Oil Pollution Act for oil that flowed from beneath the surface of the water. In response to the ruling, a BP spokesman said that the company is committed to paying all legitimate claims and helping economic and environmental restoration efforts in the Gulf Coast. That is most interesting considering that BP has fought long and hard in this litigation to do exactly the opposite.

Source: Associated Press

- BP Safety Head stepped down. BP safety committee head William Castell has stepped down and plans to leave the board in April. Castell, chair of BP’s safety, ethics and environment assurance committee since 2008, stated he would not seek re-election at the company’s annual meeting in April. Andrew Shilston will succeed Castell in the role of senior independent director, the company added, while Ann Dowling, head of the Department of Engineering at the University of Cambridge, will join the board and safety committee.

The changes follow significant adjustments to the company’s board over the last two years, many of which came after BP’s Macondo well gushed 4 million barrels of oil into the Gulf of Mexico after an explosion in April 2010. Castell was head of the committee at the time of the spill, when BP’s safety standards were vigorously questioned. He passed leadership of the committee to fellow board member Paul Anderson in December 2011.

Investors expressed their displeasure at Castell last year when 25 percent of investors who voted ahead of BP’s annual meeting, representing 60 percent of shares, voted against his re-election.

Source: Reuters

- The Defendants Want to Hide Critical Documents and Evidence From The Public. As the phase one liability trial drew closer, BP, among other Defendants, worked to seal any evidence of its bad conduct from ever reaching public airwaves. At the same time, BP was spending millions in new advertising in an effort to control public perception of the company, and its response to the oil spill. As the trial has come closer to a reality, BP’s defense strategy has shifted to turning the phase 1 proceeding into a secret trial. If the company cannot seal testimony and documents from public viewing, it moves to option 2—strike otherwise critical and relevant evidence from the record.

While the stack of motions to exclude evidence and testimony, at press time, was still under consideration by Judge Barbier, Magistrate Judge Sally Shushan told the parties at a conference that the Court intended to conduct a public proceeding. Judge Shushan followed up with an order saying that unless a party to the litigation can demonstrate that an exhibit causes “serious competitive harm”—and she noted that the Court expects such instances to be “very few in number”—all of the nearly 21,000 exhibits proposed so far will be entered into the record. Similarly, all excerpts of the 303 depositions deemed relevant to the trial will be entered into the public record, except for sections of testimony directly linked to documents deemed confidential. “The emphasis at trial will be on the public disclosure of all information,” Judge Shushan has written.

As the parties prepared for the massive trial to determine the proportion of fault among the companies involved in the ill-fated Macondo well, issues of evidence and the scope of the trial have been key. BP has already been declared a “responsible party” for the April 2010 explosion and sinking of the Deepwater Horizon drilling rig. But in the liability trial, BP’s goal has been to limit the amount of blame that falls on the company and to minimize the chances that it will be found to have acted with “gross negligence” or “willful misconduct.”

Findings of egregious fault would subject BP to enhanced penalties under the Clean Water Act of $4,300 per barrel of oil spilled instead of $1,100 per barrel, and would increase the risk that Judge Barbier could impose punitive damages on the company. As a result, the battle by BP has been to limit the most damaging pieces of evidence and testimony and make it more difficult for federal and state governments and other Plaintiffs to
Depositions revealed that BP executives were rewarded for cutting costs, that a process safety specialist was fired in November 2009, and his boss was asked to leave the company shortly thereafter and was given “hush” money.

Source: The Times-Picayune

New Publically Released Documents Reveal BP’s Efforts to Conceal the Spill Flow Rate. It’s long been suspected that BP low-balled oil flow estimates during the 2010 disaster. Indeed, aside from the public relations nightmare the spill was creating, BP had a very good reason to conceal the actual spill rate numbers—federal fines and penalties against BP are based on the volume of oil spilled into the Gulf. Now, on the eve of trial, recently disclosed company correspondence proves that BP officials knew how disastrous the spill could be—and chose to hide that critical information—and obviously that is extremely damaging to BP’s defenses.

Internal e-mail messages disclosed in a federal lawsuit reveal that as the Deepwater Horizon rig sank on April 22, 2010, an expert reported to BP that the well would spill 82,000 barrels a day if unobstructed. Instead of sharing the data with government officials preparing the disaster response, BP executives demanded that the estimate be kept secret. Shortly thereafter, the first official spill rate estimate of 1,000 barrels a day was released on April 24, 2010. Since that time, an expert task force determined that the true flow at that time was 62,000 barrels a day, a figure closer to the maximum flow estimate BP had received on April 22. That’s something Justice Department officials who are pursuing criminal and civil probes of BP should take into account. They need to make sure the company pays appropriate fines to repair the damage it caused, and that anyone who broke the law is brought to justice.

BP’s efforts to spin the flow rate number and minimize the spill were evident later in the disaster. But the new documents are the first public indication that BP knew early on that the spill would most likely be enormous. Well into the summer of 2010 company executives were still dodging the flow rate issue. That September, BP chief operating officer Doug Suttles told The Times-Picayune that estimating the flow rate “is horribly difficult to do, you can’t put a meter on it.” Suttles insisted that the flow rate was irrelevant to the disaster response anyway, because BP had marshaled adequate resources even without having an estimate. “I know this is so hard to believe,” Suttles said of his argument.

It was hard to believe because it wasn’t true. BP’s efforts to hide the gravity of the disaster affected the urgency and magnitude of the government response. The public is going to learn during the trial with intimate detail just how much BP hid, and how bad BP’s conduct was. For that, the company must be held accountable.

Source: The Times-Picayune

MOEX Offshore $90 Million Partial Settlement. MOEX Offshore 2007 LLC has agreed to settle its liability in the Deepwater Horizon oil spill in a settlement with the federal government valued at $90 million. About $45 million of the money will be focused on the Gulf of Mexico area, through penalty payments or expedited environmental projects, including at least $6.5 million that will be used to acquire and protect sensitive coastal property in Louisiana.

The proposed settlement, which is subject to a 30-day public comment period, calls for MOEX to pay $70 million in civil penalties to resolve violations of the Clean Water Act resulting from the spill, and to spend $20 million for land acquisition projects in several Gulf Coast states that will preserve and protect habitat.

MOEX Offshore, the U.S. subsidiary of Japan’s Mitsui Oil Exploration Co., owned 10 percent of BP’s Macondo well. MOEX and Anadarko, which owned 25 percent of the well, were investors in the BP-run project and had input on financial questions. Last May, MOEX entered into a separate settlement with BP, agreeing to pay $1.1 billion that BP used to cover damage claims. Anadarko entered into a similar settlement with BP last October, for $4 billion.

Terms of the settlement won’t affect the potential liability of, or recoveries from, other parties involved in the spill. “The Department of Justice has not wavered in its commitment to hold all responsible parties fully accountable for what stands as the largest oil spill in U.S. history,” said Attorney General Eric Holder. “This landmark settlement is an important step—but only a first step—toward achieving accountability and protecting the future of the Gulf ecosystem by funding critical habitat preservation projects.”

The settlement calls for $45 million of the penalty money to go to the federal government, where it will be used to replenish the Oil Spill Liability Trust Fund, to pay for response actions, cleanup and damages caused by future spills. The remaining money will be divided among the states, with Louisiana getting $6.75 million, $5 million each going to Florida and Mississippi, and $3.25 million to Texas. The company also agreed to secure and protect properties of ecological significance in Louisiana, Texas, Mississippi and Florida, with the land to be either transferred to or acquired by state governments, non-profit groups, land trusts, or other appropriate entities.

The proposed settlement is subject to a 30-day comment period and final court approval.

Source: The Times Picayune

House Votes to Wall Off Penalty Money for Gulf Restoration. Billions of dollars in Deepwater Horizon spill fines would be walled off in a special trust fund that could only be tapped to pay for Gulf Coast restoration, under a measure approved by the U.S. House of Representatives. This will dedicate 80 percent of the resulting Clean Water Act fines to Gulf Coast economic and environmental restoration.

The Senate must take up and approve its own legislation. Sen. Mary Landrieu (D-La.), sponsor of the RESTORE Act in the upper chamber, put the full committee-passed bill forward as an amendment to the Senate transportation bill.

The House bill calls for devoting 80 percent of the fines, which could exceed $20 billion, to be deposited in a newly created “Gulf Coast Restoration Trust Fund.” Only an act from Congress could draw from the fund and only for the purpose of economic or environmental restoration in the five Gulf states of Alabama, Florida, Louisiana, Mississippi and Texas.

Source: Associated Press
III.
DRUG MANUFACTURERS LITIGATION

OUR FIRM CONTINUES TO INVESTIGATE Medicare/Medicaid OVERBILLING FRAUD

It’s apparent that the fraudulent billing of Medicare/Medicaid, primarily by pharmaceutical companies, are increasing our nation’s healthcare costs. Over the past few years, we have seen numerous cases filed by whistleblowers on behalf of the United States government and state governments to recover taxpayers money. Lawyers in our firm are continuing to investigate claims of incorrect or mislabeled National Drug Codes used fraudulently to bill the government. This practice has badly hurt the American taxpayers.

Whistleblowers have helped recover hundreds of millions of dollars in a time where both federal and state governments, due to budget shortfalls, are having to cut back on prosecutors’ resources. Omnicare Inc., which is no stranger to allegations of fraudulently charging Medicare and Medicaid, settled allegations of fraud in November 2009 for nearly $100 million. According to a recently-filed whistleblower lawsuit, their getting caught hasn’t deterred them from committing additional fraud against the taxpayers.

A recent whistleblower case filed in the Northern District of Illinois by Peter Ordeanu, alleges that Omnicare “defrauded the government by dispensing drugs with different National Drug Code [numbers] on the label than the actual drug dispensed in order to inflate government reimbursements.” The National Drug Code is a unique ten digit numeric identifier assigned to each drug listed under Section 510 of the federal Food, Drug, and Cosmetic Act. The National Drug Code is assigned to drugs for identification purposes.

Ordeanu claimed in his suit that “Omnicare regularly inflated the amount of money billed for by dispensing drugs with a National Drug Code number on the label that was different from the drug dispensed.” This use of an incorrect National Drug Code number allegedly allowed Omnicare to fraudulently receive millions of dollars from the government.

While American taxpayers are already suffering from tough economic conditions, it’s outrageous that all too many companies are profiteering through fraudulent billing methods in government programs. It’s more than likely that many other schemes—similar to what is alleged in the Omnicare suit—are occurring throughout the healthcare industry. The use of incorrect National Drug Codes is illegal and badly hurting economic recovery efforts.

Whistleblowers helped the government recover $2.3 billion in 2011. Since 1986 the amounts recovered in these lawsuits were over $34 billion. Fortunately, the federal False Claims Act gives citizens who know of fraudulent schemes against the government the right to file a complaint and keep between 15% and 30% of the ultimate recovery. Any person having any information regarding the rampant fraud occurring in the healthcare industry against the federal or state governments, can be a whistleblower. Andrew Brashier, a lawyer in our firm, has been investigating False Claims Act cases. If you have any questions or believe you may be a whistleblower, Andrew can be reached at 1-800-898-2034, 354-269-2345, or Andrew.Brashier@beasleyallen.com


IV.
PURELY POLITICAL NEWS & VIEWS

THE GOP BATTLE FOR THE PRESIDENTIAL NOMINATION CONTINUES

Most observers agree that the battle for the Republican nomination for President is more confusing today than ever before. Many still believe the GOP will wind up with a brokered convention. I wrote last month that the race was between Mitt Romney and Newt Gingrich. It now appears I was quite wrong in that assessment. I was reminded by one of my GOP buddies recently that Rick Santorum was still alive and kicking. She was certainly correct, or at least she was at the time of that conservation. The race—at least at this writing—now appears to be between Romney and Santorum with the former Pennsylvania senator slightly in the lead.

In fact, Santorum was enjoying a comfortable lead in Romney’s one-time home state of Michigan. Since this issue was sent to the printer on February 27th, we don’t know how the vote went in Michigan and Arizona. But after watching the debate on February 22nd, I am now firmly convinced that none of the four remaining GOP candi-

dates are qualified to be President of the United States. Their collective debate performance reminded me of a fuss between teenagers—instead of a contest between grown men who want to be President—and it was sort of scary. What they saw had to put the candidates’ handlers in a state of panic, and I suspect the men who run the GOP are busy trying to find a real candidate for the general election.

CLOSE THREE-WAY RACE IN ALABAMA FOR GOP PRESIDENTIAL PRIMARY

Alabama is pretty much like the rest of the country when it comes to the GOP candidates for President. It appears that Republicans in my state are divided almost evenly among Mitt Romney, Newt Gingrich and Rick Santorum. According to the results of a new poll from Capital Survey Research Center in Montgomery, it’s pretty much a dead heat between these three candidates. In a survey of 421 likely GOP voters in Alabama, 27 percent said they favored Romney; 25 percent went for Santorum; 22 percent were for Gingrich; and Texas Congressman Ron Paul received 7 percent. Similar polls by the Center in August and November showed a totally different picture. I am not sure what this says about how Alabama Republicans feel about their state of candidates.

In August, Texas Gov. Rick Perry was the favorite in Alabama with 30 percent. He has since dropped out. And in November, Gingrich was favored with 43 percent. Gerald Johnson, director of the polling center, observed: “The national pattern of a ‘candidate of the month’ fits Alabama as well.” It’s significant that Rick Santorum skyrocketed from 1 percent in August and November to 25 percent in February. The poll, which was in early February, included calls to GOP voters and it came after Santorum’s three-state sweep in Colorado, Missouri and Minnesota. Just as I was beginning to believe Santorum would likely carry Alabama, things changed again.

In fact, I felt like he might just lead the pack with a comfortable lead over Romney and Gingrich. But if folks in Alabama watched the last debate in Arizona, and saw what I saw, I am now not so sure about the outcome here. In fact, based on performance—and sincerity—Alabamians might go for Rep. Paul. I will be interested to see how the votes in Michigan and Arizona affect Alabama’s vote.

Source: AL.com

THE PRIMARY ELECTIONS FOR STATEWIDE
AND LOCAL OFFICES IN ALABAMA

With Election Day just around the corner and literally staring Alabamians in the face, it appears that most folks don’t even know that the primary elections in Alabama will take place on the 13th of this month. I am concerned there will be a very low voter turnout and that those folks who do go to the polls will know very little about some of the candidates. I have heard less about state and local political races this year than ever before. That I suppose is because of the change in the voting dates. Hopefully, folks will get more engaged, but time is running out. Those who have the money for a run of heavy television ads should really like the current political climate in Alabama. Their ads will likely be the difference in the races because of a low voter turnout and a general lack of interest.

APPELLATE COURT RACES

The only contested races in Alabama involving our appellate courts are for the Supreme Court. There are three candidates running for Chief Justice; Chuck Malone, the incumbent, who was appointed by Gov. Robert Bentley; Roy Moore, a former holder of the office; and Charlie Graddick, a circuit judge from Mobile. The only other race is for the seat being vacated by Justice Tom Woodall. The candidates are Judge Tommy Bryan, who currently serves on the Court of Civil Appeals, and Circuit Judge Debra Jones from Anniston.

V. LEGISLATIVE HAPPENINGS

THE REGULAR SESSION IN ALABAMA STARTS

The Regular Session of the Alabama Legislature got underway last month, and by most standards, the first few weeks were fairly tame. Thus far, most of the attention in both the House and Senate has been on trying to deal with the fact that the state is broke. The inability to fund the state’s budgets will continue to be the main topic of conversation in both chambers. From all accounts, the prospects for a very rough session seem high.

Those in the GOP leadership—in both the House and Senate—are proposing drastic budget cuts in the state operating budget. An alternative to the budget proposed by Gov. Robert Bentley will cut General Fund spending for non-education agencies next year even more than the Governor proposed. Some say the cuts will be as high as 29% instead of the 25% reported earlier. All in leadership positions continue to say there will be no tax increases, and therein lies the real problem.

One proposal, that being to use education money to bail out the General Fund, simply won’t work and is dead in the water. While it’s hard to project how the extremely severe and most serious General Fund problems will be solved, it’s certain that the state’s Education Trust Fund, the main source of state tax dollars for public schools and colleges, won’t be used to bail out Medicaid, prisons, courts and other non-education areas.

I don’t believe anybody who understands state government, and specifically financial matters, really believes the Legislature can cut state agencies by 29% and not cripple the operations of government. General Fund revenues available to spend in the 2013 fiscal year, which starts October 1st, are forecast to be almost $400 million short. And as mentioned in the Capitol Observations Section, more than $300 million in windfalls supporting the General Fund won’t be available this year. Those in authority have to know that certain agencies can’t be cut drastically and certainly not by 29%. That means other agencies would have to be cut more than the proposed 29% which would literally shut them down.

It’s estimated by the Legislative Fiscal Office that a spending cap imposed by a new law, creating what is referred to as a rolling recession, will cut spending for education by $152 million, which would be 2.7%, next year. It’s projected that revenues for the Education Trust fund will exceed the cap by $190 million, which under the new law, would repay part of the $437 million borrowed by then Gov. Bob Riley for the Education Trust Fund in fiscal 2009. And as we mentioned, that $437 million must be repaid by fiscal 2015.

If the General Fund budget is cut by 29%, or even the previously mentioned 25%, the people of Alabama will be badly hurt. There is absolutely no way that the Legislature can expect the proposed budget to fund the necessary services that Alabama citizens are entitled to with this level of cuts. It may be an understatement to say that it’s not a good time for the “faint of heart” to be in leadership roles in state government. It will take a courageous stand by those in power to say to the people of Alabama that more revenues are needed for both the Education and General Fund budgets. We have ignored that solution for far too long. There have been reports of a total reorganization of state government, and while that would be a good thing, it’s not the final word on our state’s financial problems. A reorganization would likely help a in certain areas, but it would not significantly reduce the costs of running the state. Neither would it have any immediate effect on the current fiscal crisis.

CONSTITUTIONAL REFORM COMMISSION WILL SEEK CHANGES TO TWO ARTICLES

The Alabama Legislature established the Constitutional Reform Commission in 2011 and the new group went right to work. The Commission met seven times and will resume meeting after the Legislative session of 2012. So far the Commission has recommended amendments to rewrite and repeal sections of the Banking Article (XIII) and the Corporation Article (XII).

These amendments will be introduced in the Legislature and, if approved, will go to voters as constitutional amendments in November. The Commission has not recommended changes to Article III, the Distribution of Powers. In its latest meeting, January 18, the Commission discussed Article IV, the Legislature. In that Article, there will be a chance to provide some home rule.

The Commission includes the Governor, Speaker of the House, President Pro Tem of the Senate, Chairs of the Judiciary Committees and Constitution and Election Committees of both Houses, plus nine persons appointed by the Governor, Speaker of the House, and President Pro Tem of the Senate. Gov. Robert Bentley appointed former Gov. Albert Brewer; Becky Gerrits from Wetumpka; and Vicki Drummond from Jasper, who is an Alabama Policy Institute supporter and Heritage Foundation member. Appointed by Senate President Pro Tem Del Marsh were: Carolyn McKinstry (Sixteenth Street Baptist Church bombing survivor and Vice Chair of the ACCR Mock Convention); Matthew Lembke, a lawyer from Birmingham; and Jim Pratt, another Birmingham lawyer, who is President of the Alabama State Bar. House Speaker Mike Hubbard appointed: Rep. Patricia Todd; John Anzalone from Montgomery; and Greg Butrus, a lawyer from Birmingham.

Source: constitutionalreform.org
ALABAMA MAY LOSE ONE BILLION DOLLARS IN UNCOLLECTED TAXES FROM ONLINE PURCHASES

Uncollected sales and use tax revenue from online purchases in Alabama will amount to more than $1 billion over the next five years, according to a new analysis from the University of Alabama at Birmingham. That study shows untaxed online purchases cost the state, counties and cities about $200 million per year in taxes. Additionally, the study says the potential is lost for 3,500 to 4,000 jobs annually, as the loss of sales at retailers in the state stunts job growth.

Online sellers who have a nexus—a link or connection through retail or other operations—in a state do collect and remit sales tax, but retailers that have no physical presence in a state cannot be required to do so. This came about as the result of a 1992 Supreme Court opinion. But the Court in that case did not exempt buyers from the obligation to pay sales tax to their state for online purchases.

Last year, Alabama collected $700,000 in sales tax from people who reported their online purchases, which is only a fraction of what was actually owed. Loss of sales tax revenue affects schools, police and fire protection and other services within a community. Unfortunately, local stores are also hurt by current laws. There is legislation pending in Congress that would establish a national Internet sales tax. States can't address the issue on their own, because a law passed in one state can't be enforced on sellers in other states.

Nearly 5 percent of all retail sales, in dollar volume, are online, according to U.S. Census data. The study projects that number to grow about 7 percent each year, and by the end of the decade, as many as one in ten retail purchases will be made online. That means Alabama businesses, including bankers, developers, real estate brokers and others whose business is affected by retail sales, will continue to lose. Meanwhile, states that are home to the Internet sellers win. When Alabamians buy products from California, Colorado, Texas or Florida, that means we ship money straight to those states. Unless their businesses have a nexus in Alabama, our state gets not one cent in taxes. That's not good for a state that's broke and badly in need of money with which to fund state government and public education.

Source: AL.com

VI.
COURT WATCH

ALABAMA STATE BAR CALLS ON LEGISLATURE TO FULLY FUND COURTS

The Alabama State Bar has called on the Alabama Legislature to fully fund the court system in the budget expected to be approved during the legislative session that started on February 7th. The court system is one of several areas of state government facing drastic cuts. The state's General Fund is projected to be at least $360 million short on revenue and that will make this one of the most difficult sessions ever. A series of state funding cuts over the last decade has left the court system in our state severely understaffed statewide. This limits the systems ability to perform its duties under the state Constitution. It is a fiscal crisis that can't be ignored.

"An underfunded court system chills investment, slows job creation and reduces tax revenue in our state," a news release by the Alabama State Bar said. It was pointed out that the "high-volume" courts that hear family and juvenile cases, misdemeanors and small-claims disputes are especially hard hit and affected by the cuts. The release stated:

Battered women unable to receive protection orders against abusive partners; children in foster care unable to have timely adoption hearings; abused and neglected children unable to have their interests protected; and vandalism, petty theft and drug offenses going unheard—all threaten the rule of law and safety and well-being of our communities.

Jim Pratt III, a Birmingham lawyer who is president of the Alabama State Bar, had this to say in the statement:

The state bar will work to protect the independence of the judiciary, enhance access to the courts, promote affirmative legislative proposals that improve the administration of justice and oppose those proposals that burden it.

The Legislature has a constitutional duty to adequately fund Alabama's court system. To fail in its responsibility weakens the very fabric of our state government and violates the constitution. Hopefully, the legislators will do the right thing during this session and properly and adequately fund the court system. If you agree on this issue, let your Senators and House members know how you feel.

Source: Claims Journal

END OF YEAR REPORT RELEASED ON THE FEDERAL COURT SYSTEM

Chief Justice John Roberts recently released his 2011 Year End Report on the Federal Judiciary, detailing the activity of the federal court system. The Chief Justice provided the statistics for the federal court system, which are most interesting. The report says that in 2011, caseloads increased in the U.S. district courts and in the probation and pretrial services offices, but decreased in the U.S. appellate and bankruptcy courts. Total case filings in the district courts during 2011 grew 2 percent to 367,692. The number of persons under post-conviction supervision rose 2 percent to 129,780. Cases opened in the pretrial services system also went up 2 percent, reaching 113,875. In the U.S. courts of appeals, filings dropped 1.5 percent to 55,126. Filings in the U.S. bankruptcy courts, which had climbed 14 percent in 2010, declined 8 percent last year to just below 1.5 million petitions. The following comes from the report:

• The Supreme Court of the United States. The total number of cases filed in the U.S. Supreme Court decreased from 8,159 filings in the 2009 Term to 7,857 filings in the 2010 Term, a decrease of 3.7 percent. The number of cases filed in the Court’s in forma pauperis docket decreased from 6,576 filings in the 2009 Term to 6,299 filings in the 2010 Term a 4.2 percent decrease. The number of cases filed in the Court’s paid docket decreased from 1,583 filings in the 2009 Term to 1,558 filings in the 2010 Term, a 1.6 percent decrease. During the 2010 Term, 86 cases were argued before the court and 83 were disposed of in 75 signed opinions, compared to 82 cases argued and 77 disposed of in 73 signed opinions in the 2009 Term.

• The Federal Court of Appeals. Filings in the regional courts of appeals fell 1.5 percent to 55,126. Growth occurred in original proceedings and bankruptcy appeals. Appeals arising from the district courts decreased. Although civil appeals remained fairly stable, reductions occurred in many types of criminal appeals. Appeals of administrative agency decisions declined as a result of the continued drop in filings related to the Board of Immigration Appeals.

• **The Federal District Courts.** Civil filings in the U.S. district courts grew 2 percent to 289,252 cases. Fueling this growth was a 2 percent increase in federal question cases, which resulted mainly from cases addressing civil rights, consumer credit, and intellectual property rights. The federal question cases are actions under the Constitution, laws, or treaties of the United States in which the United States is not a party in the case.

• **Cases filed with the United States as a party.** It was reported that cases involving the United States as a party climbed 9%. Those with the United States as Plaintiff increased in response to a surge in defaulted student loan cases. Cases with the United States as Defendant rose largely because of growth in Social Security cases.

• **Criminal Case Filings.** Although criminal case filings (including transfers) remained stable (up by 12 cases to 78,440), the number of criminal Defendants increased 3 percent to set a new record of 201,931. Growth in filings occurred for Defendants charged with drug crimes, general offenses, firearms and explosives offenses, sex offenses, and property offenses. Filings for Defendants charged with immigration offenses fell for the first time since 2006, decreasing 3 percent. The southwestern border districts accounted for 74 percent of the nation's total immigration Defendant filings, up from 73 percent in 2010.

• **The Bankruptcy Courts.** Filings of bankruptcy petitions declined 8 percent to 1,467,221. This was the first reduction since 2007, when filings plunged after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect. Filings for 2011 were lower in 87 of the 90 bankruptcy courts. Nonbusiness petitions fell 8 percent, and business petitions dropped 14 percent. Bankruptcy petitions decreased 10 percent under chapter 7, 16 percent under chapter 11, and 4 percent under chapter 13.

• **The Federal Probation and Pretrial Services System.** The 129,780 persons under post-conviction supervision on September 30, 2011, represented an increase of 2 percent over the total from the previous year. The number of persons serving terms of supervised release after their departure from correctional institutions grew 2 percent to 105,037, and amounted to 81 percent of all persons under supervision. Cases opened in the pretrial services system in 2011, including pretrial diversion cases, rose 2 percent to 113,875. Source: Report from Chief Justice Roberts

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**VII. THE NATIONAL SCENE**

**Big Banks Agree To A $25 Billion Foreclosure Settlement**

Bank of America Corp., JPMorgan Chase & Co., Wells Fargo & Co., Citigroup, Inc., and Ally Financial Inc. (formally GMAC) reached a $25 billion settlement last month with 49 states and the U.S. government. This settlement ends a probe of abusive foreclosure practices stemming from the collapse of the housing bubble. The U.S. Justice Department, Department of Housing and Urban Development and state Attorneys General announced the agreement on February 9th. This settlement comes after more than 16 months of investigations by state Attorneys General. The state prosecutors started the investigation of bank foreclosure practices in 2010 with the federal government joining the probe in 2011. President Obama, when making the settlement announcement, said:

*We need to keep doing everything we can to help homeowners and our economy. The landmark agreement will begin to turn the page on an era of recklessness that led to the housing bubble.*

The President was joined for the announcement by Attorney General Eric Holder, other administration officials and attorneys general from several states. The banks settling are the nation's five largest mortgage servicers. With 49 state Attorneys General on board, U.S. Attorney General Eric Holder called the agreement the largest federal-state civil settlement in U.S. history. Interestingly, Oklahoma entered into a separate agreement worth $18.6 million with the banks and didn't sign the federal settlement. All other states are on board with the settlement.

The $25 billion agreement includes $1.5 billion payment to some 750,000 borrowers who lost their homes to foreclosure. About $17 billion will pay for mortgage debt forgiveness, forbearance, short sales and other assistance to homeowners. The mortgage servicers will also refinance $3 billion in refinancings to lower interest rates for homeowners. Bank of America committed as much as $11.8 billion, including a cash payment of $3.24 billion, to the settlement. The balance will be applied toward mortgage modifications, principal reductions and other benefits for borrowers. Other banks also committed funds to the settlements: Ally as much as $310 million; Citigroup $2.2 billion; JPMorgan $5.29 billion; and Wells Fargo $5.35 billion.

It was reported that the total amount of the settlement could reach $40 billion. But that depends on whether the next nine largest mortgage servicers sign on to the agreement. In a best-case scenario, if all banks participate fully, according to reports, the settlement could be worth $45 billion to homeowners and people who lost their homes to foreclosure. That remains to be seen.

The settlement comes more than a year after Attorneys General from all 50 states announced an investigation into foreclosure practices following disclosures that banks were using faulty documents and sometimes false information to seize homes. A federal website has been set up to provide information on the settlement. Interestingly, it was reported that JPMorgan, the largest U.S. bank, won't need to set aside additional costs to cover its share of the agreement. The bank says it expects that the financial impact on results for this quarter and future periods won't be material.

The goal was to punish banks responsible for botched foreclosures and repair damaged neighborhoods, according to HUD Secretary Shaun Donovan. Hopefully, the settlement will make the banks clean up their acts. Borrowers whose loans are owned by banks, and weren't pooled into the highly suspect mortgage bonds, will be those most likely to benefit from the agreement. Borrowers who suffered foreclosures from the start of 2008 through 2011 will be eligible to receive payments. The actual amount of restitution to individual borrowers will depend on how many of them actually make claims. Each borrower could get between $1,500 and $2,000, according to reports, and that really doesn't seem like very much for the banks' victims. As I understand it, the banks must spend the money within three years or face a fine.
The settlement must be approved by a federal judge and that’s good. Prior to the settlement, California and New York had been the biggest critics of the proposal. When the Attorneys General for those states signed on, things quickly fell in place and the settlement was agreed to. Interestingly, California will get $18 billion under the settlement.

It appears that the settlement won’t release any criminal liability or grant any criminal immunity. Nor will it release any private claims by individuals or any class-action claims, according to Attorney General Holder. The claims related to the packaging of mortgage loans into securities won’t be released by the settlement, according to the website outlining the agreement. The settlement agreement establishes a monitor, Joseph A. Smith Jr., North Carolina’s top banking regulator, to track compliance with the terms of the agreement.

Many believe the conduct by the banks, which caused so many bad mortgages to be issued and so many homes to be lost, was very close to criminal. Depositions in lawsuits challenging foreclosures revealed all sorts of wrongdoing. For example, it was revealed that employees were signing affidavits containing information they didn’t personally know was true. In December 2009, a GMAC employee testified in a deposition in a foreclosure case filed in West Palm Beach, Fla., that his team of 13 people signed about 10,000 documents a month without verifying their accuracy. Some of the information used by the banks has been found to be false. The Attorneys General first began settlement talks with the five largest servicers because they held almost 60 percent of home loans.

All of the mortgage servicers, including those in this settlement, have been required by the Office of the Comptroller of the Currency (OCC) to improve their foreclosure procedures. In April 2011, the OCC announced enforcement actions against the companies for “unsafe and unsound” practices related to loan servicing and foreclosures. Attorney General Holder had this to say about bank practices:

_They fueled the downward spiral of our economy and of communities nationwide. They eroded faith in our financial system. And they punished American taxpayers who have had to foot the bill for foreclosures that could have been avoided._

A most serious question remains—how good will the settlement turn out to be for persons who have already lost their homes and for those who find themselves with balances on their mortgages greatly in excess of the market value of their homes? Hopefully, this settlement will prove to be good for the American people. At first look, it definitely appears to be very good for the big banks. The court approval process must be carried out in a manner to assure that this really is a good settlement for the victims and not just for the big banks. My assessment at this juncture is that the jury is still out on this settlement.

Source: Bloomberg

**Banks Should Still Have Massive Legal Exposure**

While the $25 billion settlement over foreclosure abuses referred to above is getting all of the media attention, even if the settlement receives court approval, the big banks’ legal problems shouldn’t be over. As I understand it, the settlement, if approved, will allow the very large banks to resolve only one aspect of their mortgage-related problems. These banks should still have tremendous civil exposure in a wide range of lawsuits related to the housing crisis. The national agreement appears to only settle a number of civil violations related to the servicing of mortgages, but it shouldn’t prevent state and federal authorities from filing criminal actions over related activities. If it does more than what I understand the settlement to do, it won’t be good for most individuals affected by the banks’ wrongdoing.

If my understanding is correct, the banks will still face a number of civil lawsuits and investor requests to buy back defective loans that had been packaged into securities and sold under highly questionable circumstances. This is an area of concern that must be addressed and not swept under the rug. Thus far, I don’t believe this facet of the overall problem has received the attention it deserves. While those persons in that area of concern may not have been involved in criminal activity, in my opinion, some came very close. In any event, there should remain massive civil exposure for lots of banks and other companies that were involved in bundling bad mortgages and selling them as securities.

The national settlement also leaves open the probability of future claims in excess of this settlement on securitization issues. There are also lots of investors who bought the bundled mortgage bonds who have claims. Hopefully, the agreement won’t impede the task force launched last month by the Obama Administration to investigate the banks’ packaging of loans into securities. As we reported last month, this was a major source of investor losses in the collapse of the nation’s housing boom. New York Attorney General Eric Schneiderman, who leads the mortgage-backed securities task force, says that banks are getting very limited immunity. The settlement won’t stop investigations or legal action against the banks over misconduct that led to the housing crisis, according to General Schneiderman.

The New York Attorney General will be able to continue a separate lawsuit against the banks for their use of the mortgage registry MERS in allegedly deceptive practices. He said that on multiple fronts, his office will continue “to investigate the mortgage crisis, and ensure that justice and accountability prevail.” The U.S. Securities and Exchange Commission is also probing residential mortgage-backed securities activities.

Banks still face billions of dollars in claims from investors to buy back soured mortgage securities issued during the housing boom. In addition, banks still face securities fraud lawsuits filed by investors who allege they were misled about the quality of the loans they were buying. The regulator that oversees Fannie Mae and Freddie Mac filed such a suit against 17 large banks last year on behalf of the government-controlled housing finance entities. In a recent report, a Citigroup analyst admitted that Bank of America alone still faces $12 billion to $32 billion in losses related to investor claims to buy back loans and related securities. So, while there was a national settlement, the banks are still under investigation on a number of fronts and in several areas of concern.

The global settlement agreement releases the banks from civil claims by the government over faulty foreclosures and mishandling of requests for loan modifications. Gary Townsend, chief executive of Hill-Townsend Capital, which invests in banks, said the settlement is a positive for the banks in that it allows the banks to put one more issue behind them. Hopefully, that’s all it does.

Source: Insurance Journal

**SuperPACs Are Running Wild In The GOP Presidential Primaries**

While most folks probably don’t realize it, the SuperPACs have been heavily involved in the Republican primary. Those supporting Mitt Romney and Newt Gingrich have been spending obscene amounts of money. These PACs have been bankrolling a heavy dose of ads in the
It's not surprising that outside money comprises a greater share of overall spending than it has before. According to the Wesleyan Media Project, actual spending by the candidates in the GOP Presidential primary has decreased in this cycle compared to 2008. At this juncture four years ago, the candidates had already spent over $48 million in advertising. But that figure is only $13 million this year. It should be noted that so far, five individuals have donated 25% of the money given to the SuperPACs. The total given by these five donors is over $40 million and all of it has been spent in the GOP presidential primaries through February 21st.

It's apparent that the public doesn't realize how bad the Citizens United decision really was for ordinary folks. According to a recent Pew Research poll, only 54% of registered voters say they have heard about "a 2010 Supreme Court decision allowing corporations and individuals to spend as much as they want on political ads for or against candidates as long as they don't coordinate with the candidates or campaigns." Those who have heard about the ruling, however, don't like it and believe it has had a negative effect on the 2012 Presidential campaign. The poll reveals that 65% of the people feel that way. The more folks learn about the effects of Citizens United on the 2012 presidential race, the more they dislike it and that is good news for the Obama reelection campaign. Those saying the ruling is having a negative effect rises to 78% among those who have heard "a lot" about the ruling.

Interestingly, the dislike is pretty much along non-partisan lines. Roughly half of Republicans, Democrats and independents alike have heard of the Court's decision. Among those who have, a majority of each partisan group says it is having a negative effect on the campaign cycle. The polls show voters have remained overwhelmingly anti-Citizens United after being exposed to its effects.

It's obvious that folks around the country are greatly concerned over the massive spending we are seeing in political campaigns. Voters' concerns about SuperPACs seem to feed on the long-standing mistrust of big money's influence on government. In a perfect world, candidates would denounce SuperPAC spending. But we all know that is not going to happen under the current system. In fact, in a perfect world, we wouldn't even need campaign finance reform, but we certainly do at this time. The Democrats can't afford to allow the GOP to use the SuperPAC money and have their own candidates unilaterally reject SuperPAC money. A SuperPAC ceasefire would be good news for the voters who could then decide on candidates based on qualifications.

The public is very supportive of campaign finance reform, according to all of the polls. Democracy Corps finds that 81% of likely voters agree that "there is too much big money spent on political campaigns and elections today and reasonable limits should be placed on campaign contributions and spending." Lawmakers might also take note that two-thirds of independents surveyed in that poll agree that "reducing the influence of money in politics and special interest lobbyists is a very important factor in my vote."

Even though SuperPACs have already taken in over $160 million this cycle, it's important to note that that is just the tip of the iceberg compared to what we'll see in the general election. There will be much more money spent because of the many more states in play. With SuperPACs poised to serve as a glaring example of why people are so concerned about the influence of corporate and special interest money in politics, members of Congress might be more inclined to take on reform in 2013.

Unfortunately, because of the elections, campaign finance reform won't happen this year. We can only hope for reform in 2013. The GOP has made it clear that there will be no reform this year. Nobody should expect the Democrats to unilaterally disarm since it would be political suicide for them to do so. It will be up to the voters in the General Election to let Congress know that reform is badly needed and must happen. So for now we should be prepared for the barrage of negative advertisements paid for by the SuperPACs. I watched some of the ads in Michigan and Arizona run by both Romney and Santorum and was shocked at how negative and mean-spirited they were. Those ads made previous ones run both by and against Gingrich look pretty tame and I thought those were very bad. It will be most interesting to see how things go between now and the GOP convention.

Source: anzaloneresearch.com

**Oglala Sioux Tribe Files Alcohol-Related Lawsuit**

The Oglala Sioux Tribe has filed a most interesting lawsuit against brewers, retailers and distributors of alcohol sold in Whiteclay, Neb. The lawsuit was announced at a news conference last month set up by Nebraskans for Peace. It is alleged in the suit that the Defendants named are engaged in a common enterprise focused on assisting and participating in the illegal importation of alcohol, sold at Whiteclay, onto the Pine Ridge Indian Reservation. The sale, possession and consumption of alcohol is illegal on the reservation, where tribal members suffer from crippling poverty and alcoholism rates.

Interestingly, Whiteclay is located less than 250 feet from the reservation border. Tom White, a lawyer with the White and Jorgensen Law Offices in Omaha, is legal counsel for the Oglala, and he had this to say about the suit:

"The Oglala Sioux Tribe seeks compensation for all of the damages the Lakota people have suffered as a result of illegal alcohol sales. The Defendants have failed to make reasonable efforts to ensure their products are distributed and sold in obedience to the laws of the State of Nebraska and the Oglala Sioux Tribe.

The Tribe’s vice president, Tom Poor Bear, said the tribe can “now begin to address the terrible harm to the Lakota people caused by Whiteclay alcohol sales.” Two of Poor Bear’s brothers were murdered and found outside Whiteclay in 1999. Since then Poor Bear has fought to bring their killers to justice and to close the Whiteclay beer stores.

Poor Bear has been assisted by Frank LaMere, a Winnebago Tribe activist, and Nebraskans for Peace, a statewide peace and justice organization. Mark Vasina, pres-
ident of Nebraskans for Peace, putting things in perspective, said:

Whiteclay has fewer than a dozen residents, yet in 2010 its four licensed retail stores sold the equivalent of 4.9 million 12-ounce servings of beer—or over 13,000 cans a day—to a population that has no legal place to drink them. Much of the beer is bootlegged onto Pine Ridge for resale.

The struggle by Native American activists to address this situation was featured in Vasina’s award-winning 2008 documentary “The Battle for Whiteclay.” It was pointed out by Frank LaMere, who has directed attention to Whiteclay since 1997, that “those involved in the sale of alcohol in Whiteclay are knowingly contributing to this notorious, illegal behavior and preying upon the Lakota people.” I hope this lawsuit is successful. It’s quite obvious that the Defendants knew exactly what they were doing in providing easy access to alcohol on the reservation.

Source: Sacbee.com

VIII. THE CORPORATE WORLD

CITIGROUP TO PAY $158 MILLION IN WHISTLEBLOWER FRAUD CLAIM

Citigroup Inc. has agreed to pay $158.3 million to settle U.S. civil claims that it defrauded the government into insuring thousands of risky home loans made by its CitiMortgage unit. The settlement resolves claims under the federal False Claims Act against the bank in a “whistleblower” lawsuit brought by Sherry Hunt, a CitiMortgage employee in Missouri. In the settlement, CitiMortgage “admits, acknowledges and accepts responsibility” for misleading the government into insuring risky home loans. The suit was filed in U.S. District Court in New York. According to investigators, the misconduct lasted for more than six years.

Claims brought under the False Claims Act have recovered more than $34 billion in federal and state cases since the law was amended in 1986, according to the Taxpayers Against Fraud Education Fund. In this case, the government accused Citigroup of falsely certifying that many of its loans qualified for insurance from the Federal Housing Agency, which is part of the U.S. Department of Housing and Urban Development. Investigators said 9,636 (more than 30%) of nearly 30,000 HUD-insured mortgage loans that CitiMortgage made or underwrote since 2004 have defaulted, costing the agency nearly $200 million in insurance claims.

The government also contended that even after a 2008 HUD audit found “numerous defects” in CitiMortgage’s oversight of loans in default, quality control deteriorated. It said this was in part because the unit pressured workers to encourage quality control personnel to ignore problems, rewarding them with higher salaries if they succeeded. In January 2011, for example, CitiMortgage held a “Star Players Award” ceremony for the efforts of some workers to challenge defects reported by the quality control unit. According to the complaint, even after Citi’s fraud unit confirmed that loans were fraudulent, another unit responsible for self-reporting the loans to HUD rarely did. Some of the loans that Citi failed to report included mortgages that defaulted when their first payment was due and had other signs of mortgage fraud.

It should be noted that this $158.3 million settlement is separate from Citigroup’s agreement to pay as much as $2.22 billion under the national settlement with five big mortgage servicers over foreclosure abuses.

Source: Insurance Journal

LAWYER WHO BLEW THE WHISTLE ON SAFETY ISSUES MUST PAY TOYOTA $2.6 MILLION

A federal appeals court has ordered Dimitrus Peter Biller, a former in-house lawyer for Toyota Motor Corp., to pay the carmaker $2.6 million for disclosing confidential information. The U.S. Court of Appeals for the Ninth Circuit upheld an award by an arbitrator in a ruling on February 3rd. Biller accused the automaker of withholding evidence in rollover cases and made public evidence that he said supported his claims. It certainly appeared that Toyota had withheld evidence in its litigation history, and it certainly involved safety issues. But Biller’s agreement with the carmaker seems to have created a big problem for him.

The arbitrator ruled that regardless of the content, the public disclosures violated Biller’s severance agreement with the automaker. Toyota paid Biller $3.7 million in 2007 when he left the company after defending the company for four years in rollover lawsuits. In exchange, Biller agreed to return all confidential documents and not disclose their contents. The

Appeals Court rejected Biller’s position that the disclosures furthered public safety, which trumped the nondisclosure agreements. The documents that were made public clearly put Toyota in a very bad light.

It was quite obvious that serious safety hazards had been hidden by the carmaker from public view. I strongly believe that any significant information involving highway safety hazards should be made public. It’s impossible to justify allowing any automaker to keep such information secret. The courts have an obligation to protect the public on issues that involve safety and hazards. While the lawyer in this case may well have violated his agreement with Toyota, the carmaker should have disclosed the information in prior lawsuits.

Source: Claims Journal

ERNST & YOUNG TO PAY $2 MILLION IN AUDIT SETTLEMENT

The Public Company Accounting Oversight Board, the watchdog agency for the accounting industry, has fined big firm Ernst & Young $2 million for alleged lapses in three audits of a pharmaceutical company. The Board said the civil fine against the accounting firm was the largest it has levied since it began operating in 2003. At issue are audits of Medicis Pharmaceutical Corp. in 2005, 2006 and 2007.

The independent agency also censured Ernst & Young. Three current firm partners and one who has retired were also sanctioned by the Board. Censure generally brings the possibility that a firm or individual could face a stiffer sanction if the alleged violation is repeated. In the audits, Ernst & Young failed to properly evaluate a significant element, the amount Medicis set aside to account for the cost of product returns, according to the oversight board. Medicis, based in Scottsdale, Ariz., makes drugs for skin conditions such as acne and facial wrinkles.

Ernst & Young is one of the Big Four accounting firms that dominate the market, along with PricewaterhouseCoopers, KPMG and Deloitte. Ernst & Young has been Medicis’ outside auditor for more than 20 years. It was contended that the firm and the four partners “failed to fulfill their bedrock responsibility.” PCAOB Chairman James Doty said in a statement:

The auditor’s job is to exercise professional skepticism in evaluating a public company’s accounting and in conducting its audit, to ensure that investors receive reliable informa-
It was reported that the Obama budget sticks to the caps on annual appropriations approved in August that will save $1 trillion over the next decade. It also puts forward $1.5 trillion in new taxes, primarily by allowing the Bush-era tax cuts to expire at the end of this year for families making $250,000 or more per year.

President Obama, as he has in the past, also proposed eliminating tax deductions the wealthy currently receive. The budget proposed would also put in place a rule named for billionaire Warren Buffett that would seek to make sure that households making more than $1 million annually pay at least 30 percent of their income in taxes. The President would also impose a new $61 billion tax over ten years on big banks aimed at recovering the costs of the financial bailout and providing money to help homeowners facing foreclosure on their homes. The budget would raise $41 billion over ten years by eliminating tax breaks for oil, gas and coal companies and it claims significant savings from ending the wars in Iraq and Afghanistan.

The budget would cut spending by $2.50 for every $1 in extra taxes it seeks. Among the areas targeted for increases, President Obama is proposing $476 billion in increased spending on transportation projects including efforts to expand inner-city rail services. To spur job creation in the short-term, he is proposing a $50 billion “upfront” investment in transportation, $30 billion to modernize at least 35,000 schools and $30 billion to help states hire teachers and police, rescue and fire department workers. Republicans in Congress have blocked these proposals in the past.

President Obama will also ask for $8 billion to create a fund to encourage community colleges and businesses to work together to train workers in high-growth industries. The Obama budget seeks $360 billion in savings in Medicare and Medicaid mainly through reduced payments to health care providers. Everybody agrees it’s necessary to restrain health care costs.

Fortunately, in a rare bi-partisan show of common sense and decency, the leaders in both parties agreed to do something President Obama and Democrats in Congress have been fighting very hard for. Negotiators on Capitol Hill reached an agreement last month on legislation to renew a payroll tax cut for 160 million workers and jobless benefits for millions more. The legislation would continue a 2 percentage-point cut in the Social Security payroll tax, renew jobless benefits averaging about $300 a week for people languishing for long periods on unemployment rolls and protect doctors from a huge cut in their Medicare reimbursements.

Extending the payroll tax cut and renewing long-term jobless benefits were key planks in President Obama’s jobs program, which he announced last September. The measures will help the economy by giving people more money to spend, increasing a typical bimonthly paycheck by about $40, and giving the unemployed critical cash. The measure also includes a key adjustment to the badly broken Medicare payment formula for doctors, which would otherwise impose a 27 percent cut on March 1 under a 1997 budget law. The $20 billion cost would be covered in part by cuts to a fund created under the new health care law that awards grants for preventive care and by curbs on Medicaid payments to hospitals that care for a disproportionate share of uninsured patients.

It’s almost certain that we will have to wait until next year—for the elections are over—for Congress to get down to work on other critically important issues facing our nation. That’s most unfortunate, but a fact of political life in this county.

Source: Associated Press

IX. CONGRESSIONAL UPDATE

PRESIDENT OBAMA SENDS HIS BUDGET TO CONGRESS

President Barack Obama sent Congress a new budget last month that would achieve $4 trillion in deficit reduction over the next decade through a combination of cuts in government spending and higher taxes on the wealthy. The President wants to increase spending in key areas such as transportation and education and that’s a good thing. But primarily because it’s an election-year, Republicans will oppose the budget regardless of merit. In fact, the opposition surfaced even before the ink was dry on the papers. The GOP leadership immediately announced that the budget was “dead-on-arrival.”

Everybody in Congress should realize that there is an ongoing battle to protect and save the middle class in this country. Without a strong and viable middle-class, our country will suffer greatly. Unfortunately, there are some members in both the House and Senate who are working hard to protect the super-rich, and seem to have no concern for those in the already shrinking middle class. Neither do they have any concern whatsoever for the poor in our country. President Obama says the federal budget should focus on “the solid foundation of educating, innovating and building,” and I believe most Americans agree with him. It certainly appears that this budget is based on that foundation.

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shows that these faulty hip joints pose adverse health effects for some patients even after they are removed. In addition, the FDA has issued warnings about so-called bladder slings, surgical mesh products used to repair organ tears.

As we have reported previously, the vast majority of medical devices are approved for sale in the U.S. based on a manufacturer’s claim that the new product is “substantially similar” to an already approved device. Although medical devices have been regulated by the FDA since 1976, rules designed to streamline the approval process, called Pre-Market Notification—or 510k—have allowed designs and materials combinations to enter the marketplace with no clinical testing or proof of efficiency. Under Pre-Market Notification, or 510k, new medical devices that were “substantially equivalent” to devices—called “predicates”- could be approved if the predicate was already on the market by 1976.

Many new versions of older Class III devices, the most invasive and life-supportive devices, such as hip implants, were grandfathered by the Medical Device Amendments. Therefore, they are regulated under the 510k process until the FDA can complete a more rigorous scientific review, called a Pre-Market Approval (PMA).

In 2002, as a result of the aggressive deregulation efforts by the Bush Administration, a further loosening of the 510k process was allowed. The FDA was directed to take “the least burdensome approach to medical device regulation,” and the definition of “substantially equivalent” now included products made using different materials and mechanics than the predicate device. That has created lots of problems for persons having a need for certain medical devices.

Predicates no longer had to be in the marketplace in 1976. Any device already cleared—either by 510k or PMA—applied. In reality, 510k became the de facto route to FDA approval, with 99 percent of all devices approved under this scheme. As a result, the regulations allowed patients to be exposed to devices that had never been subjected to clinical trials, testing or any standards.

The FDA gives wide latitude to what may be considered substantially equivalent. A medical device manufacturer could submit a 510k if the device has a different intended use than the predicate. It can seek approval under 510k “if there is a change or modification of a legally marketed device and that change could significantly affect its safety or effectiveness.” Many clinicians and public health advocates have been highly critical of the 510k process, and rightfully so. They have documented the increased risk of patient harm created by the release of problematic health devices.

The SOUND Devices Act would give the FDA the authority to review and reject a 510k based on a predicate that has been recalled or is being removed from the market for safety reasons. It would require companies to inform the FDA if any of the new device’s past predicates have caused serious harm and to explain how the new device would not cause the same harm. Under this provision, the FDA would have to maintain a publicly accessible database so that companies can determine if a device can be used as a predicate.

The bottom line is that the SOUND Devices Act would strengthen recall reporting requirements. If you need more information on medical devises, contact Navan Ward, a lawyer in our Mass Torts Section. Also, if you agree that the public should be protected, and that medical devices should be safe for use, contact your members of Congress and ask them to support this badly needed legislation.

Source: Public Citizen

X. PRODUCT LIABILITY UPDATE

OCCUPANT DETECTION SENSORS CONFUSING ADULTS FOR CHILDREN

In the 1990’s, the National Highway Traffic Safety Administration mandated that auto manufacturers install “smart airbag systems.” These airbag systems contain occupant detection sensors that deactivate the airbag or deploy the airbag with less force if a person under a certain weight is sitting in the passenger seat. This requirement was a response to the increase in deaths among children and small stature adults due to aggressive airbag deployment. While occupant detection sensors have many benefits, they also have many defects. These sensors are mistaking adults for children and are failing to deploy in high impact crashes for those who are well above the weight of a child.

On January 3, 2010, a defective occupant detection sensor claim the life of Donna Lynn Hopkins. She was a front-seat passenger in a 2008 Hyundai Accent. Her husband was driving when another car smashed into them from the side, forcing the driver-side airbag to deploy. Ms. Hopkin’s airbag failed to deploy. Despite the fact that she was a 165-pound adult, the occupant detection sensor determined that the woman was a child, and this prevented the airbag from deploying.

An occupant detection sensor can fail for many reasons. Some may have bugs in the system. Some may fail due to the occupant not sitting correctly in the seat. Others fail because the sensor detects pressure instead of weight which can be altered by the type of seat covering, moisture, temperature, and the occupant’s position and body type.

Defective occupant detection sensors have prompted several recalls in the last decade including the following:

- 2002: 2000 Chevrolet and GMC C/K models were recalled because the driver and passenger’s air bag failed to deploy in some frontal collisions
- 2004: 13,000 Nissan Quest minivans were recalled because the airbag system deactivated even with adults
- 2010: 2010 Hyundai Tucson vehicles and 2005-2007 Nissan Infiniti G35 sedans were recalled for defective air bag sensors
- 2011: 2007-2008 Kia Sorento were recalled because the occupant sensors were turning off the passenger air bags even with adults.

Airbags have significantly decreased the number of deaths related to motor vehicle accidents. Since 1990, airbags have saved a total of 28,244 lives. However, airbags are also responsible for 296 fatalities since 1990, with the majority of those passengers being children. It remains to be seen how many fatalities will result from airbags failing to deploy in high-impact crashes. If you would like more information on defective occupant detection sensors or defective airbag systems, please contact Cole Portis at Cole.Portis@beasleyallen.com or Stephanie Stephens at Stephanie.Stephens@beasleyallen.com.

Source: U.S. Department of Transportation, Safety Research and Strategies

LAWSUIT SEeks RECORDS FROM TOYOTA INVESTIGATION

Concerned that regulators are dismissing electronic problems in Toyota vehicles, Safety Research and Strategies, an auto safety firm, has sued the federal government to get records of an investigation into the unintended acceleration of a Prius last year. The freedom-of-information lawsuit
filed by the firm said that the National Highway Traffic Safety Administration was withholding documents and videos that may depict an acceleration incident caused by electronic systems in a Prius instead of the floor mats or pedals covered by Toyota recalls. The suit seeks transcripts, recordings, photographs and videotapes generated by a visit of two federal investigators to the home of Joseph H. McClelland, a senior government official who had complained about sudden, unexplained acceleration of his own Prius.

Federal investigators visited McClelland's home on May 17, 2011, and documented the sudden acceleration problem. They also recorded evidence of the problem. Although other Toyota owners have suspected that sudden acceleration was caused by electronic systems, federal regulators have said they have found no evidence of such a cause. The lawsuit, filed in federal court in Washington, is the latest effort by Safety Research to force the government to release internal records that could cast doubt on whether it sufficiently investigated possible electronic problems in Toyota vehicles. Sean Kane, co-founder of Safety Research, an auto consulting firm in Rehoboth, Mass, had this to say:

This is all about transparency. This is an agency that selectively releases data that fits its narrative that electronics are not at fault in sudden acceleration.

NHTSA has admitted that it did conduct an investigation of McClelland's Prius, but said it did not find any link to known causes of unintended acceleration. The agency closed a lengthy investigation of the company's electronic throttle systems. McClelland last year without finding defects in the vehicle. The agency closed a lengthy investigation of causes of unintended acceleration. The agency did not find any link to known causes of unintended acceleration. McClelland said in a sworn statement given to NHTSA that "the engine started to rev—actually almost roaring—and the vehicle picked up speed."

McClelland noted in the statement that the accelerator pedal was neither stuck nor constrained by the floor mat. Each time the car sped up, he said he was able to apply the brakes, turn the vehicle off and restart it. After researching NHTSA's website about Toyota's acceleration issues, McClelland contacted the agency. Two investigators came to his home and accompanied him on a test drive of the Prius.

According to McClelland, his car over-accelerated three times during the drive and its electronic displays began blinking wildly. The investigators videotaped the events and inspected the floor mats for interference. At the end of the test, they connected a computer to the car to read its software codes. McClelland had this to say concerning the investigation:

They (the NHTSA investigators) generally seemed excited. They said they hadn't seen a vehicle display this type of behavior before, capturing the information in real time, and they said this could be an important vehicle for the sudden accelerations and it might help put some of the pieces together.

NHTSA did not follow up until McClelland received a call from one of the investigators in August. He was told that the vehicle's age and high mileage were the probable causes of its problems. When Safety Research learned of the inquiry, it asked that a formal defect complaint be lodged in the agency records and made a legal request for documents. While Safety Research was denied photos and videos, it did receive six of 22 pages in the case file, including one handwritten note that described how the Prius "started racing wildly" during the test drive.

Safety Research has since bought the car for $27,000 from McClelland. Sean Kane believes that electronic malfunctions in the throttle system were to blame for the unintended acceleration. He believes that data withheld by NHTSA could yield evidence of that and observed:

This car took off with two NHTSA engineers in the vehicle. The dash-board went crazy, and they recorded it with video cameras. Then three months later, they're not interested and don't even file a complaint.

In a statement, NHTSA said investigators "did not find any evidence linking the car to known causes of unintended acceleration cases." It also noted that the vehicle "could easily be controlled by the brakes" and "displayed ample warning lights" indicating engine trouble. Safety Research has identified more than 300 other unintended acceleration complaints about Toyota vehicles reported to NHTSA last year that bear scrutiny. In December, the firm sued NHTSA to get documents related to an unintended acceleration case involving a 2007 Lexus RX in Sarasota, Fla., in 2010.

In response to the suit, NHTSA said it "carefully reviews" more than 40,000 consumer complaints each year. But the agency made it clear that it has no plans to reopen its acceleration inquiry, saying in a statement:

While there are some groups that are continuing to raise the specter of potential electronic issues around unintended acceleration, the exhaustive ten-month study made clear there are two mechanical causes of sudden, high-speed unintended acceleration in certain Toyota vehicles: pedal entrapment and sticky pedals.

Hopefully, Safety Research will be successful in its efforts to obtain the information it seeks. It's good to know that there are groups and firms such as this one that are both willing and able to stand up for the public on safety issues. Safety Research should be commended for its efforts.

Source: New York Times

XI. MASS TORTS UPDATE

TRANSVAGINAL MESH LITIGATION

As we have reported in an earlier issue, 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 (POP) and stress urinary incontinence (SUI) may present greater risk for the patient than other non-mesh procedures. This is also called transvaginal mesh.
The FDA recently wrote to C.R. Bard, Johnson & Johnson and 31 other manufacturers asking them to conduct safety trials regarding these products which should last three years. Last year, the FDA issued a report which showed a five-fold increase in deaths and other serious injuries as a result of these products. The FDA has asked each manufacturer to gather data from these procedures to help determine whether these devices provided a benefit over older methods.

According to the FDA, 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. Quite often, women require surgery to remove the mesh and oftentimes it’s impossible to remove all of the mesh involved. Currently, we are investigating cases involving mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldera, and Johnson & Johnson. If you need more information, contact Chad Cook or Leigh O’Dell, lawyers in our firm’s Mass Torts Section, at 800-898-2034 or at by email at Chad.Cook@beasleyallen.com or Leigh.Odell@beasleyallen.com.

Suits Are Consolidated in West Virginia

Lawsuits against three major vaginal mesh device manufacturers have been centralized in multidistrict litigations in West Virginia. Over 100 cases involving a variety of products made by American Medical Systems, Inc., Boston Scientific Corp., and Ethicon Inc. will be consolidated and transferred to federal court in the Southern District of West Virginia. Litigation against a fourth manufacturer, Bard, over its Avaulta vaginal mesh product has already been consolidated in the same jurisdiction. Chief Judge Joseph R. Goodwin will oversee the four MDLs. Hundreds of cases are also pending in state courts around the country, and several bellwether trials in state court are set for in the coming months.

Source: Lawyers USA Online

An Update on Actos Litigation

In June 2011, the FDA warned the public that Actos usage for more than one year may be associated with an increased risk of bladder cancer. Actos, manufactured by Takeda, is in a class of insulin-sensitizing drugs known as thiazolidinediones and was approved to treat Type 2 diabetes. Since gaining FDA approval in July 1999, Actos has been included in the top ten best selling medications in the United States in various years. The FDA has indicated that approximately 2.3 million prescriptions were filled from January 2010 to October 2010 alone.

In December 2011, the Judicial Panel on Multidistrict Litigation met to decide whether to consolidate in one court all Actos cases filed in federal courts across the country. On December 29, 2011, the Panel decided that consolidation would promote the just and efficient administration of the cases and assigned the consolidated litigation to Judge Rebecca F. Doherty in the Western District of Louisiana. The first status conference will be held by the Court on the 22nd of this month.

In addition to the Actos MDL, litigation is pending in state courts across the country as well. On January 4, 2012, Actos cases filed in California state courts were consolidated by the Los Angeles Superior Court. We anticipate a trial judge to be appointed very soon from the Complex Litigation Panel of the Los Angeles Superior Court.

Numerous cases have also been filed in the Circuit Court of Cook County, Ill. The corporate headquarters of Takeda Pharmaceuticals is located in Illinois. The litigation in Illinois has been assigned to Judge Deborah Dooling. The second status conference was held on February 23, 2012.

Lawyers in our firm are currently investigating claims involving bladder cancer and usage of Actos, Actoplus Met, Actoplus Met XR, and/or Duetact. If you have any questions or would like for us to review potential claims, contact Roger Smith, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com.

New NuvaRing Lawsuit Filed

A recently filed NuvaRing lawsuit blames the contraceptive for a woman’s DVT, also known as deep vein thrombosis. The lawsuit, seeking damages, is one of many NuvaRing lawsuits that have been filed. Dawn Kregel, of Denton, Texas, filed the lawsuit in a Texas court against NuvaRing makers Organon USA Inc., Organon Pharmaceuticals USA Inc., Organon International Inc., Schering-Plough Corp., and Merck & Co. Inc. Ms. Kregel alleges that she suffered a DVT shortly after using the device.

Ms. Kregel used the monthly birth control device for a little over one month in 2010 and she was subsequently diagnosed with a DVT. It’s alleged that the DVT was caused by the NuvaRing device. The lawsuit was filed in the Eastern District of Texas, Sherman Division. NuvaRing is a transparent, flexible vaginal ring that provides month-long birth control by emitting a continuous dose of estrogen and progestin for 21 days. The device releases a combination of ethinyl estradiol, a form of the hormone estrogen, and etonogestral. NuvaRing is marketed as providing the same efficacy as birth control pills, but with the convenience of month-long protection.

Ms. Kregel contends that the Defendants neglected to warn that NuvaRing was linked to more thrombotic events than the pill. The Defendants were accused of marketing, promoting, and advertising NuvaRing as having a relatively low level of estrogen in order to mask the fact that it had a high level of dangerous third-generation progestin. Ms. Kregel, had she been aware of the increased risks connected to NuvaRing, would have used a different form of birth control.

Other NuvaRing lawsuits claim the birth control device caused the sudden deaths of users. An FDA study, published on October 2011, found that the NuvaRing was associated with a significantly higher risk of deep vein thrombosis and pulmonary embolism relative to standard low-dose estrogen birth control pills. The study also mentioned that continuous exposure to combined hormonal contraceptives such as the NuvaRing “potentially result in higher sustained exposure to estrogen and hence, increased thromboembolic risk. According to the Mayo Clinic, side effects of NuvaRing may include: Vaginal infection or irritation; Vaginal secretion; Increased risk of blood clotting problems, heart attack, stroke, liver cancer, gallbladder disease and high blood pressure; fluid retention; break-through bleeding or spotting; weight gain; headache; depression; nausea; breast tenderness; and decreased sex drive.

It’s alleged in the NuvaRing lawsuits that, because the device delivers a constant stream of hormone unmediated by the digestive system or the liver, patients end up receiving higher doses than they do from older pills. High estrogen doses create a greater risk of blood clots, which can be fatal. Hundreds of NuvaRing lawsuits, similar to the one filed by Ms. Kregel, are currently pending in a multidistrict litigation in U.S. District Court, Eastern District of Missouri.

Sources: PRWeb.com and The Southeast Texas Record
Since the recall of the DePuy ASR, there has been extensive discussion surrounding the alarmingly high failure rates of all-metal hip implants. The all-metal prostheses have grown in popularity since the early 2000s, as they were perceived to have greater advantages and fewer limitations than the conventional polyethylene-on-metal hip implants. In particular, those advantages included bone conservation, restoration of normal joint mechanics and superior wear properties. As a result, approximately 500,000 individual are estimated to have an all-metal hip prosthesis, with 40,000 being performed between 2005 and 2006. As many of you will already know, the DePuy ASR was introduced to the U.S. market in 2005.

Medical literature and recent data show a significant number of all-metal prostheses have been failing due to accelerated wear of the articular surface, i.e., the all-metal ball and socket. This accelerated wear causes metal debris to release into the soft tissue surrounding the hip joint. A study from the Netherlands, where 614 all-metal hip implant patients participated, found that 53% of patients suffered from some adverse tissue reaction. Adverse reactions from this metal debris often lead to revision surgeries.

In addition to the need for a revision surgery, new research suggests that this exposure to metal debris can cause long-term health consequences in some patients, even after revision surgery to replace the all-metal hip implant. This is particularly true for those patients who have revision surgery because of a pseudotumor. Pseudotumors are tumor-like masses that represent an inflammatory reaction to metal debris. They are often destructive, causing tissue death and marked necrosis around the hip joint. One study found that 70% of patients presenting with an inflammatory pseudotumor would have a revision; nearly half of those patients would encounter major complications post-revision, with nearly a third requiring additional surgery. In addition to revision, major complications included dislocations, palsy of the femoral nerve, and early loosening of the acetabular component.

Symptoms of hip implant failure include groin and hip pain, swelling and walking with a limp. Any person who has had a hip replacement should contact his or her orthopaedic surgeon to determine whether they received a DePuy ASR or Pinnacle metal-on-metal hip implant. For more information on this subject, contact Navan Ward at 800-898-2034 or by email at Navan.Ward@beasleyallen.com, or Melissa Prickett at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

Sources: USA Today and The Journal of Bone & Joint Surgeries

**Drug Companies Should Have To Report Money Paid To Doctors**

The Obama Administration is proposing legislation that would require pharmaceutical companies to disclose payments made to doctors for research, consulting, speaking, traveling and entertainment. The intent of the legislation is to head off medical conflicts of interest. The New York Times reported that some researchers found that payments to doctors may influence the way doctors treat patients and contribute to higher costs by encouraging the use of more expensive drugs. According to the Times, doctors who take money from pharmaceutical companies may be more inclined to prescribe drugs in risky and unapproved ways.

*Consumer advocates have long demanded details of the financial ties between doctors and pharmaceutical companies. Under the new standards, if a company has one product covered by Medicare or Medicaid, it will be required to disclose all payments made to doctors other than its own employees. The payment data will be posted on a website by the government where it will be available to the public. The law will also require companies to report "any ownership or investment interest" held by doctors or their immediate family members.

Companies that do not fully comply will be subject to a penalty of up to $10,000 for each payment they fail to report. A company that knowingly fails to report payments will face a penalty of as much as $100,000 for each violation, up to a total of $1 million a year. Hopefully, Congress will pass this legislation. If you agree, let your Senators and House members know how you feel and ask them to support the legislation.*

*Source: New York Times*

**Drugmaker Pays $442 Million In Plavix Patent Case**

Apoplex Corp., a major generic drugmaker, has paid Bristol-Myers Squibb Co. and Sanofi SA more than $442 million to end a decade-long patent infringement lawsuit over blockbuster blood thinner Plavix, the world’s second-best-selling drug. Apotex Corp., which is Canada’s biggest drugmaker, paid the two brand-name drugmakers $442.2 million in damages for selling a generic version of Plavix in 2006.

Apoplex launched its copycat version while it was still in litigation with Bristol and Sanofi, partners who jointly market Plavix. Apotex contended in the lawsuit that key patents on Plavix were invalid. Apotex was doing what is referred to as an “at-risk launch” of its generic version of Plavix. But a federal judge later ruled in the lawsuit that the Plavix patent was valid. That ruling led to the payment by Apotex of damages to the brand manufacturers, which will end the litigation.

*Source: CBS News*

**Class Action Status Granted in Bank Of America Investor Lawsuit**

Investors suing Bank of America Corp. have won class-action status in their lawsuit which accuses the bank of fraudulently misleading them about the 2008 takeover of Merrill Lynch & Co. and the size of Merrill’s losses and bonus payouts. U.S. District Judge P. Kevin Castel in Manhattan, last month, rejected the Bank of America’s argument that the investors could not prove they suffered losses by relying on materially misleading statements or omissions.

Among the other Defendants who were also sued and opposed class certification were former Bank of America Chief Executive Kenneth Lewis, former Merrill Chief Executive John Thain, former Bank of America Vice Chairman Roger鬈. The new ruling means that the investors can move forward with their case as a class action.

*Source: CBS News*

**Business Litigation**

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**Long Term Consequences Of Failed All-Metal Hip Implants**

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www.BeasleyAllen.com
In re: Bank of America Corp

The Financial Industry Regulatory Authority (FINRA) has filed a complaint against Charles Schwab & Company, charging the firm with violating FINRA rules by requiring its customers to waive their rights to bring class actions against the firm. The complaint alleges that in October 2011, Schwab amended its customer account agreement to include a provision requiring customers to waive their rights to bring or participate in class actions against the firm. It's alleged that Schwab sent the amended agreements to nearly 7 million customers. The agreement also included a provision requiring customers to agree that arbitrators in arbitration proceedings would not have the authority to consolidate more than one party's claims. Each provision violates FINRA rules concerning language or conditions that firms may place in customer agreements, according to FINRA.

An expedited hearing was sought because Schwab's conduct is ongoing. It appears the firm has continued to use account agreements containing these provisions in opening more than 50,000 new customer accounts since October 2011. The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings in the complaint have not been made, and does not represent a decision. Under FINRA rules, a firm or individual named in a complaint can file a response and request a hearing before a FINRA disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations and payment of restitution.

Source: Justice.org

XIV. INSURANCE AND FINANCE UPDATE

Bank Of America Owes Former Financial Advisors Millions

As previously reported, during the height of the meltdown on Wall Street, Bank of America negotiated a deal to acquire Merrill Lynch. While this was but one of many buyouts, bailouts and washouts that occurred during that period, the adverse effect on former Merrill Lynch employees, and specifically financial advisors, is still important today.

Financial Advisors who worked for Merrill Lynch participated in several deferred compensation plans, including plans with names like FACAAP, Growth Award, Wealth Award, and other Long Term Compensation Incentive Programs (LTICPs). The Advisors worked hard to accumulate benefits in the LTICPs with the expectation that Merrill Lynch and its successors would honor their obligations under the plans. Most folks would say that was a most reasonable expectation. Unfortunately, those obligations have not been honored by Bank of America.

Bank of America's acquisition of Merrill Lynch triggered what was defined as a “Change in Control” within the LTICPs. According to plain language in the plans, that event affected the vesting of deferred compensation so that any participating broker who resigned for “Good Reason” following the buyout was due to be paid the deferred compensation they worked so hard to build up. However, this didn't happen, resulting in thousands of former Merrill Lynch Financial Advisors being owed millions of dollars in unpaid benefits.

Our firm is currently investigating potential claims on behalf of former Merrill Lynch brokers against Bank of America. These former employees often left the company either because of the changes that occurred or in some cases because they were pressured or pushed out by the incoming management. In either case, they were wrongfully denied deferred compensation to which they were entitled. That entitlement continues to this day. During these tough economic times, it's a sad commentary that any hard working person must fight huge corporations for what is rightfully due to them. Our firm is available to help those former Merrill Lynch employees win their fight against Bank of America. We have already been contacted by several. If you have any questions on this matter, or need help, contact Chad Stewart at 800-898-2034 or by email at Chad.Stewart@beasleyallen.com.

Insurance Update

Class-Action Lawsuit Filed Against Citizens Insurance Over Home Valuation Practices

Citizens Property Insurance Corp. has been in the news recently and, unfortunately, not in a good light. The insurer is...
Kodak’s board members and other fiduciaries, employee, has filed a civil lawsuit against the company for spiraling toward bankruptcy. It’s alleged in the complaint.

The lawsuit, filed in U.S. District Court for the Western District of New York, seeks class-action status. It’s alleged in the suit that:

- the directors and officials did not disclose to stock-plan participants complete information about Kodak’s dire financial condition;
- they kept its investments in the company’s equity when it was no longer prudent;
- the company should have known it was suffering from a dying technology;
- the company was unable to bring new, profitable products to the market quickly enough;
- the agency could not generate enough cash from patent lawsuits and was suffering from a liquidity crisis; and
- those factors caused the stock price to collapse and caused significant losses to the plans and the plans’ participants.

Among those named in the lawsuit as Defendants are Kodak Chief Executive Officer Antonio Perez, members of the company’s board of directors, the chairpersons for the savings and investment plan, and the plan administrator. Separately, a group of Kodak debtholders disclosed their stakes in the company in a court filing. Among the three biggest investors that make up the group—which had been pushing Kodak for change before the bankruptcy—are the Blackstone Group’s GSO Capital Partners, D.E. Shaw and JPMorgan Chase.

It should be noted that there are two separate lawsuits. One is Mark Gedek v Antonio Perez et al, U.S. District Court for the Western District of New York in Rochester. The other, the bankruptcy case, is in re: Eastman Kodak Co et al, U.S. Bankruptcy Court, Southern District of New York, No. 12-10202.

Source: Insurance Journal

Rulings in Favor of Truckers Who Were Not Paid Minimum Wage

Gerald Davis was a long-haul truck driver for Louis Broadwell, LLC in Charleston, S.C. He was a “leased” employee and Broadwell had leased him through PeoPLease Corporation. Davis and the other truck drivers for Broadwell were compensated based upon a percentage of the company’s revenue for each load. Broadwell would then designate a portion of the compensation as a “per diem” payment. Specifically, Broadwell and PeoPLease designated $52 per day in compensation as a per diem payment.

In the case, Raniere v. Citigroup Inc., the Court found that the FLSA’s opt-in provision creates substantive rights that employees cannot waive. As a result, a provision that waives the rights of employees to proceed collectively under the FLSA is unenforceable. An arbitration agreement cannot become a vehicle for employers to invalidate the Congressional purposes of the collective-action provision or the policies upon which that provision is based.

Only time will tell if other courts follow the Raniere logic. While other courts have found that the FLSA’s opt-in provision provides substantive rights to employers—often in cases involving simultaneous Rule 23 class actions and FLSA collective actions—it’s unclear whether courts will find that the opt-in provision provides substantive rights to employees. If they do, employers could find themselves doing the unthinkable—arbitrating FLSA collective actions.

Source: Insurance Journal
On October 12, 2011, Judge Richard M. Gergel issued an Order agreeing with our contentions, granting summary judgment in favor of Davis. The judge found that the $52 daily per diem payment should have been paid over and above Davis’ regular pay. Judge Gergel ruled that the Defendants’ inclusion of the per diem in Davis’ regular rate of pay violated the FLSA. The Defendants, Broadwell and PeopLease, filed a Motion to Reconsider. That motion was denied by Judge Gergel on December 14, 2011.

On January 18, 2012, Judge Gergel issued an Order granting Davis’ Motion to Certify the case as a collective action. The case has now been scheduled for trial on or after June 18, 2012. Since Judge Gergel has already issued a judgment in favor of Davis and the class, the only issues remaining to be determined are damages and attorneys’ fees. Bill Hopkins, a lawyer in our firm’s Consumer Fraud section, and Robyn Madden, a lawyer with the Strom Law Firm, are representing the Plaintiffs in this case.

In another case, the Supreme Court of Arizona recently affirmed the certification of a class of truck drivers, who were not paid minimum wage, against Swift Transportation. If you or someone you know is a long distance truck driver and has questions regarding compensation, contact Bill Hopkins, a lawyer in our firm, at 800-898-2034 or by email at Bill.Hopkins@beasleyallen.com.

XVII.
PREMISES LIABILITY UPDATE

INDIANA STAGE BUILDER CITED IN STATE FAIR COLLAPSE

More information has become available relating to the deadly Indiana State Fair collapse. It was reported last month by the state Department of Labor that the company that built the stage appeared to be indifferent to safety standards. The agency cited Mid-America Sound Corp. with three major safety violations in connection with the collapse of outdoor stage rigging in August of last year, when a powerful storm swept into the fairgrounds. The stage fell onto the large crowd of people who had gathered to watch the country duo Sugarland perform. Seven people were killed and 58 injured in the incident. When announcing the release of the report, State Labor Commissioner Lori Torres stated:

Source: Insurance Journal

The evidence demonstrated that the Mid-America Sound Corp. was aware of the appropriate requirements and demonstrated a plain indifference to complying with those requirements.

The Indiana Occupational Safety and Health Administration performed the investigation leading to the report on the stage collapse. The Labor Department issued a $63,000 fine against the company. Commissioner Torres said the OSHA report investigated workplace violations, but was not attempting to determine what caused the collapse.

The Department also issued a small fine against the Indiana State Fair Commission for failing to conduct proper safety evaluations of its concert venues. The International Alliance of Theatrical Stage Employees Local 30 also came under fire, accused of five workplace violations. The report found that the union, not the commission, was the employer of the stagehands who were working on the date when the stage collapsed. It was pointed out that the commission controls the fairgrounds. The union was also issued a small fine. Sugarland was not penalized. The agency said the band didn’t employ the workers and wasn’t responsible for building the stage.

State officials have hired two out-of-state companies to review the stage collapse and the state’s emergency response to the disaster. International engineering firm Thornton Tomasetti is conducting an investigation of the rigging collapse and national emergency planning advisers Witt Associates are reviewing the state’s emergency plans and its response to the collapse. Commissioner Torres said fair officials didn’t have an adequate plan for evacuating the area as a severe thunderstorm packing high winds and lightning approached the fairgrounds. She observed: “Plan or no plan, the wind blew over the stage structure. It was their duty to evacuate timely.”

Source: The Atlanta Journal-Constitution

COURT REDUCES DAMAGES IN GAS-LEAK CASE

A Maryland appeals court has thrown out part of a $147 million jury award to the Plaintiffs who sued over a massive 2006 gasoline leak. But the Court of Special Appeals, the state’s second-highest court, left intact about $60 million in property damage claims against Exxon Mobil Corp. The Court struck down emotional distress damages because of improper jury instructions. Dozens of households were Plaintiffs in the suit which stemmed from the leak at a Jacksonville gas station that spilled 26,000 gallons into groundwater supplying wells in northern Baltimore County. The Appeals Court ordered a new trial in Baltimore County Circuit Court on the emotional distress damages for most of the Plaintiffs. The Appeals Court also disallowed damages to cover health checks for the residents.

Source: UPI.com

MOTHER OF CHILD SUES APARTMENT COMPLEX

The mother of a murdered seven-year-old girl has filed suit against a Cherokee County, Ga. apartment complex. It was alleged in the Complaint that the River Ridge at Canton complex hired a maintenance man with a history of crimes against children. That man, Ryan Brunn, confessed to the brutal killing of Jorelys Rivera days after her body was found in a trash compactor. The child’s mother, Joselinne Rivera, contends that the complex failed to do an adequate background check on Brunn. It’s alleged in the civil lawsuit, filed in Fulton County State Court, that despite residents’ complaints about Brunn lingering at the complex playground watching children, the complex retained the 20-year-old.

McCormack Baron Salazar is the management company for the complex. Investigators have previously said that Brunn had no

criminal history as an adult. But in a videotaped interview with GBI agents moments after being sentenced, Brunn admitted he had molested two girls while babysitting years earlier. Jorelys was last seen alive on December 2nd while at the playground, located across from the apartment where she lived with her mother and two younger sisters. The child was reported missing later that evening.

The lawsuit, which will be tried before a jury, contends that the complex should have informed Joselinne Rivera that registered sex offenders were among the residents. The little girl’s body was found inside a trash compactor on December 5th. Investigators determined she had been sexually assaulted and beaten to death. Brunn was arrested two days later and charged with the girl's killing. He later confessed, but served only hours of his life sentence before hanging himself with his prison-issued sweatshirt.

Source: Atlanta Journal Constitution

$20 Million Verdict Upheld In Massachusetts Pool Slide Lawsuit

A Massachusetts judge has upheld a $20 million jury award to the family of a Colorado woman who died after a Toys 'R Us inflatable pool slide partially collapsed. In October, a jury returned a verdict against Toys 'R Us in favor of the family. The slide had not been tested to determine if it met certain safety standards. The woman was visiting family in Andover in 2006 when she slid head-first down the slide and it partially collapsed. She suffered fatal injuries when she struck her head on the pool's deck. Lawyers for Toys 'R Us argued at trial that the regulations did not apply to that inflatable slide. But last month, the trial judge denied a motion for a new trial and a verdict reduction filed by Toys 'R Us. There can still be an appeal by the Defendant.

Source: Insurance Journal

New York Landscaper Awarded $11.2 Million In Civil Suit

A New York landscaper who lost his legs on the job has been awarded $11.2 million by a Westchester County jury. The landscaping company was found by the jury to be 60 percent liable for the worker’s injuries. Robert Loja, who worked for a landscaping company, was unloading a trailer on October 24, 2008, when he was struck by a car.

The driver said she was blinded by sun glare, hit a safety cone and a “men working” sign before striking Loja. The jury found the driver and her mother, who owned the car, 10 percent liable. The Plaintiff was found to be 30 percent liable for the crash, because the jurors found he could have parked the trailer in a safer place.

Source: Claims Journal

Publix Cited By OSHA After Worker’s Hand Amputated

Publix Supermarkets Inc. has been cited by OSHA for 16 safety and health violations at its distribution facility in Jacksonville. This comes as a result of a complaint in September that a worker's hand was amputated while cleaning conveyor equipment. The proposed penalties total $182,000. One willful violation with a $70,000 penalty was cited for failing to utilize procedures for the control of potentially hazardous energy when employees service or clean equipment. A willful violation is one committed with intentional knowing or voluntary disregard for the law’s requirements, or with plain indifference to worker safety and health.

Two repeat violations with penalties of $66,000 include failing to develop, document and utilize lockout/tagout procedures and not conducting an annual inspection of the energy control procedures. A repeat violation exists when an employer previously has been cited for the same or a similar violation of a standard, regulation, rule or order at any facility in federal enforcement states within the last five years. The company’s Dacula, Ga., location was cited for the same violation in April 2008.

Publix Supermarkets also has been cited for six serious violations with penalties of $39,400 for failing to adequately train employees in procedures for the lockout/tagout of machine energy sources, install machine guarding on equipment where employees could come into contact with rotating and ingoing nip points, protect

W.R. Grace Proposes $19.5 Million Asbestos Settlement

A proposed settlement in the W.R. Grace and Co. bankruptcy case would pay $19.5 million into a trust for people sickened by asbestos exposure from the company's now-shuttered vermiculite plant in Libby, Mont. Jon Heberling, who is with McGarvey, Heberling, Sullivan and McGarvey in Kalispell, Mont., the lawyer representing the Libby claimants, says that the Libby Medical Program Trust would ensure that the company doesn’t terminate the Libby Medical Program, which began in 2000 after news reports first documented widespread disease and deaths among residents of the northwestern Montana town. The Libby Medical Program is a voluntary plan that can be terminated whenever Grace chooses, though it has operated while bankruptcy proceedings have gone on since 2001.

When final settlement documents are approved by the bankruptcy court, all objections to the plan of reorganization from the Libby claimants will be settled and will be withdrawn. Claimants also will be eligible to receive distributions from the separate Asbestos Personal Injury Trust to be established as part of Grace’s reorganization plan.

The company said in a statement that the money for the trusts will come from a variety of sources, including cash, insurance, stock, payments from third parties, and deferred payment obligations. Grace said that its reorganization plan had been approved by the U.S. District Court of Delaware, but is subject to appeal. The settlements also are subject to the approval of the Libby claimants. The bankruptcy agreement came four months after a Montana judge approved a $43 million settlement for 1,128 asbestos victims who said state officials knew that dust from the mine was killing people but failed to intervene.

That settlement involves more than 200 lawsuits filed against Montana agencies for failing to protect victims in Libby. The state claimed in its defense that it had no legal obligation to provide warning of the mine’s dangers. An estimated 400 people have been killed by asbestos released from the vermiculite mine. Lethal dust from the mine once blanketed the small community about 40 miles south of the Canadian border, and asbestos illnesses were still being diagnosed more than two decades after the mine was shuttered. The Center for Asbestos Related Diseases in Libby has a caseload of more than 2,800 patients with asbestos disease and is still adding more patients.

Source: Claims Journal

W.R. Grace proposes $19.5 million asbestos settlement

Claims Journal

$20 million verdict upheld in Massachusetts pool slide lawsuit

Insurance Journal

XVII. Workplace Hazards

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workers from struck by hazards by not anchoring equipment to the floor, protect workers from electric shock by having damaged electrical equipment repaired, use appropriate electrical outlet boxes in wet/damp locations and use receptacles that did not have weatherproof enclosures. A serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known.

Publix has had previous inspections in several locations. They have had over 12 fatality investigations and 41 have resulted in several violations being issued, according to OSHA Area Director Brian Sturtecky. Six other-than-serious safety violations with penalties of $6,600 have been cited for failing to complete an OSHA 301 log injury and illness incident report or its equivalent for 2007, 2008, 2009 and 2010, and have a company executive sign the OSHA 300 log of injuries and illnesses for 2007 and 2008. One other-than-serious health violation, with no monetary penalty, has been cited for failing to have a written hazard communications program that listed hazardous chemicals in the workplace. An other-than-serious violation is one that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm.

Publix was well aware of the hazards the cleaning crew was exposed to, yet took no steps to safeguard employees by controlling the conveyor equipment’s energy source, according to Brian Sturtecky, OSHA’s area director in Jacksonville. He said that “exposing workers to amputation hazards is unacceptable, and corrective action must be taken immediately.” Due to the repeat violations and the nature of the hazards, OSHA has placed Publix in its Severe Violator Enforcement Program, which mandates targeted follow-up inspections to ensure compliance with the law. The program focuses on recalcitrant employers that endanger workers by committing willful, repeat or failure-to-abate violations.

Publix’s Jacksonville distribution center employs about 450 workers and has a small fresh foods manufacturing process area. The company had 15 business days from receipt of the citations and proposed penalties to comply. It could request a conference with OSHA’s area director or contest the findings before the independent Occupational Safety and Health Review Commission. From all accounts, Publix needs to clean up its act!

Source: news4jax.com

WORKERS INJURED IN EAST TEXAS BIOMASS PLANT ACCIDENT

Two workers were critically injured in an electrical explosion and fire at a biomass power plant in East Texas last month. The incident occurred at a facility in Sacul, which is located about 165 miles northeast of Houston. Fagen Inc. of Granite Falls, Minn. operates the unit. The cause of the explosion is under investigation. The fire was extinguished, but the two workers were in critical condition.

Source: Claims Journal

AN EXPLOSION AT A KANSAS GRAIN ELEVATOR

A grain elevator exploded last month in southcentral Kansas, injuring one worker. The explosion was at the Cairo Coop in Arlington, which is about 15 miles southwest of Hutchinson. One employee was taken to a Wichita hospital with burns that appeared to be minor. The injured employee was at the base of the elevator when the explosion occurred. Another employee was at the grain elevator at the time, but was not hurt. Fortunately, there were no deaths or serious injuries. It’s unclear if the elevator was full at the time of the explosion, which is still under investigation.

Source: Claims Journal

TRUCKING INDUSTRY OPPOSES OBAMA RULES ON DRIVER FATIGUE

Trucking companies are trying to block Obama Administration rules designed to assure that commercial truckers on the road get proper rest. The American Trucking Association (ATA) filed a petition last month with the U.S. Circuit Court of Appeals for the District of Columbia asking the Court to review the Federal Motor Carrier Safety Administration’s recently published final rule changing the hours-of-service regulations for commercial truck drivers. The trucking industry group maintains that the new rules are based on faulty assumptions and research and that any benefits are outweighed by the extra costs they will incur.

ATA claims the new rules are not necessary because rules already in place are working to reduce crashes. FMCSA’s new hours-of-service (HOS) rule reduces by 12 hours the maximum number of hours a truck driver can work within a week. Under the old rule, truck drivers could work on average up to 82 hours within a seven-day period. The new HOS final rule limits a driver’s work week to 70 hours. It also mandates a 50 minute rest period within every eight hour period.

ATA says it will support FMCSA’s move toward mandated electronic on-board recorders to ensure greater compliance with the current HOS rules. ATA also said it also supports a new government requirement for large trucks to be electronically speed limited; a return to a national maximum speed limit of 65 mph for all vehicles; and greater deployment of automated speed and traffic enforcement technologies.

The Department of Transportation’s FMCSA announced the HOS changes last December in an attempt to help prevent fatigue-related truck crashes. FMCSA Administrator Anne S. Ferro at the time said:

This final rule is the culmination of the most extensive and transparent public outreach effort in our agency's history. With robust input from all areas of the trucking community, coupled with the latest scientific research, we carefully crafted a rule acknowledging that when truckers are rested, alert and focused on safety, it makes our roadways safer.

Actually, the new rules, while criticized by the industry, fell short of what some safety advocates wanted. Advocates had opposed letting truckers stay on the road for 11 hours per day, but the FMCSA retained the 11-hour daily driving limit. FMCSA has said it will continue to examine any risks associated with the 11 hours of driving time. In addition to limiting number of hours truckers may work in a week to 70, the FMCSA’s revised rules say that truck drivers cannot drive after working eight hours without first taking a break of at least 30 minutes. Drivers can take the 30-minute break whenever they need rest during the eight-hour window.

The rules also require truck drivers who maximize their weekly work hours to take at least two nights’ rest when their 24-hour body clock demands sleep the most—from 1:00 a.m. to 5:00 a.m. This rest requirement is part of the rule’s “34-hour restart” provision that allows drivers to restart the clock on their work week by taking at least 34 consecutive hours off-duty. Drivers may use the restart provision only once during a
seven-day period. Trucking companies that allow drivers to exceed the 11-hour driving limit by three or more hours could be fined $11,000 per offense, and the drivers themselves could face civil penalties of up to $2,750 for each offense. Commercial truck drivers and companies must comply with the new HOS requirements by July 1, 2013. Based on the experiences of lawyers in our firm who handle personal injury and death cases involving large trucks, I believe the new rules are needed and should be upheld. In fact, I agree with the safety advocates who say the government didn’t go far enough when the new rules were promulgated.

Source: Insurance Journal

**Rail Safety Improvement Act of 2008**

On September 12, 2008, one of the worst-ever U.S. rail disasters occurred in Chatsworth, Calif. A head-on collision occurred between a Union Pacific freight train and a Metro-link commuter train. The National Transportation Safety Board (NTSB) found the engineer of the Metrolink commuter train had run through a red signal while texting on his cell phone. As a result, 25 people were killed and 135 others injured in the collision.

In late 2008, Congress passed the Rail Safety Improvement Act. This Act mandated rail companies to install a technology known as Positive Train Control (PTC), a system that automatically applies the brakes on trains that are about to collide or derail. This mandate had a projected cost of 13 billion dollars, which the rail companies would have to pay in updating 70,000 miles of track which carried passengers or extremely hazardous material by the end of 2015. The PTC technology has been advocated by the NTSB since the early 1990s to prevent accidents resulting in human error, which is the main cause of rail crashes.

The NTSB has identified 21 rail crashes since 2001 that would have been averted by the PTC technology. These 21 crashes caused 53 deaths and approximately 1,000 injuries. This is obviously an area of great concern. But the rail industry and its allies have continued to argue that the project is unaffordable and collectively they have put up stiff opposition. The rail industry has argued for delaying the installation of PTC for three years, exempting 14,000 miles of train tracks and advocating a much cheaper and less effective system. The rail industry has spent over 80 million dollars in lobbying efforts from 2009 to 2011 on this issue and others.

The PTC system includes GPS and wireless communication technology with a central control center. The central control center monitors trains and stops them if they are entering the wrong track or are about to run a red light. The Transportation Department’s Federal Rail Administration concedes that PTC increases safety, but says PTC would save only four to five lives a year and that, it says, is not nearly enough to justify the cost. PTC advocates contend that the agency’s analysis ignores business benefits that the technology would provide, not only preventing accidents, but coordinating train traffic more efficiently and cutting shipping times.

Rep. John Mica (R-Fla.) is the Chair of the House Transportation Committee. His committee is working on the authorization bill for this project. Rep. Mica has voiced support for extending the PTC deadline by three years and allowing rail companies to use a non-technological safety system.

Another critic of the PTC is Rep. Bill Schuster (R-Pa.) who chairs the Railroad Subcommittee. He is on record as criticizing the PTC technology from the time it was adopted. Rep. Schuster has even advocated extending the deadline beyond 2015 and reducing the number of tracks covered.

In conclusion, if the PTC technology had been in place in 2008, the Chatsworth disaster would not have occurred and countless others lives would have been saved. Hopefully, there will be enough support for the PTC technology—and for full implementation of the Act—to overcome the efforts of the lobbying forces against it.

If you would like more information on this subject, contact Mike Crow, a lawyer in our firm, at 800-898-2034 or by email at Mike.Crow@beasleyallen.com.

Source: www.fairwarning.org

**Problem Found by Boeing in the Tails Of 787s**

It was reported last month that repairs are needed in the tail sections of some of Boeing’s new 787s. But the company says there is no immediate safety concern and that the planes will keep flying. Boeing has delivered five of the planes since September and all of them went to Japan’s All Nippon Airways. It was reported that Boeing has had to rework dozens of 787s that rolled off its assembly line. The company said that the most recent issue involves shims, which act as spacers between the 787’s skin and the parts that support it. A spokeswoman says Boeing is still inspecting planes to see how many will need to be repaired. The issue was first reported by aerospace news website FlightGlobal.com.

Source: Claims Journal

**Few Guidelines Exist on When to Shut Down Roads**

The multi-vehicle series of crashes that took place in Florida recently brought national attention to a most serious question. It’s one that must be looked at carefully by public officials. The question is: When should the government shut down a major highway in bad weather? There are a number of occurrences that can be bad enough to cause a major highway to be shut down. Whether it’s a dust storm in Arizona, a whiteout in Maine or wildfire in Florida, the call for a shut down of a highway usually rests with local officials. Unfortunately, in some cases, they have little, if any, written guidelines to follow. In many cases, officials rely on what officers at the scene are seeing—or what they can’t see—when they make the decision.

The multi-vehicle crashes in Florida have received tremendous media attention. They occurred on a foggy, smoke-filled stretch of Interstate 75 in Gainesville, which was closed in both directions for three hours early on January 29th. Shortly after troopers decided to reopen the highway, cars slammed into tractor-trailers on both sides of the interstate in two pileups that killed ten people.

Florida officials said they were willing to review their protocols. The Florida Highway Patrol, however, was quick to point out that conditions can change in an instant and that motorists must be prepared to quickly make good decisions. Federal transportation agencies have never issued guidelines on when to close roads due to fog, fires or dust storms. Neither national groups representing insurance companies, the Federal Highway Administration, the National Highway Transportation Safety Administration nor the National Transportation Safety Board have ever had such a policy. As reported, the NTSB is investigating the Gainesville crash.

Florida is vulnerable to smoky roads since it has one of the nation’s most active prescribed fire programs. It has a 16-item checklist for “smoke/fog incidents” that is part of a larger 28-page policy manual for Florida Highway Patrol shift commanders. Closing a road, which can be costly for tractor-trailers shipping goods, is decided by a supervisor who consults with troopers at the scene. But any patrolman can make the call if there is imminent danger, accord-
ing to Capt. Mark Brown, chief of the patrol’s media relations. In the I-75 pileup, a district lieutenant based in Gainesville, who was the supervisor at the scene, made the decision. A day earlier, a different spokesman said a sergeant and lieutenant determined after about three hours that conditions had cleared enough for drivers. Capt. Brown had this to say:

We rely on the members on the ground, and their physical presence, people who are actually there— their feedback. The person that can actually see what is going on.

Troopers also use information and forecasts from the National Weather Service. One key piece of information is an index estimating the humidity and smoke dispersion on a scale of one to ten. If the score is seven or higher, the road should be closed. The index score for the early morning hours on January 29th had been forecast to be six in a four-county region that includes the crash area, according to the National Weather Service.

The Low Visibility Occurrence Risk Index was introduced to Florida troopers following a deadly crash in 2008 on Interstate 4 between Orlando and Tampa, about 125 miles south of the latest pileup. Four people were killed and 38 injured in that crash, which was caused by heavy smoke and fog. “The index was added to get a more scientific approach to decision-making than what was used before,” according to Sgt. Steve Gaskins, a Florida Highway Patrol spokesman based in the Tampa area. More than anything, he says that troopers rely on the conditions they are seeing.

Source: Associated press

ALABAMA STATE TROOPERS LAUNCH SAFETY CAMPAIGN

Alabama State Trooper officials have joined two other Southeastern states in a campaign to teach motorists the importance of “moving over” to protect emergency vehicles stopped on the side of the road. More than 170 law enforcement officers in the U.S. since 1999 have died after being struck by motorists, and thousands more have been injured, according to a statement released today by Col. Hugh McCall, director of Alabama’s Department of Public Safety.

The Alabama highway department teamed up with the Florida Highway Patrol and the Georgia State Patrol during February to draw attention to the “Move Over Law,” which requires motorists to move over one lane when authorized emergency vehicles—including police, fire, EMS vehicles and tow trucks—are stopped on the roadside with emergency signals activated. Col. McCall said in prepared statement:

To do our jobs, we must work in close proximity to traffic. The ‘move over’ law provides all first responders and emergency workers the clearance they need to work safely.

This is a good program and it should be effective. If so, it will save lives. Hopefully the public will be adequately informed by the states involved. The media should help get the message out to folks in these three states.

Source: AL.com

OKLAHOMA SUPREME COURT REINSTATES JURY VERDICT IN DEATH CASE

The Oklahoma Supreme Court has reinstated a $2.8 million judgment in a wrongful death lawsuit involving the family of country music star Toby Keith. The case arose out of the 2001 interstate crash that killed H.K. Covel, who was Keith’s father. In the decision, the state’s Highest Court reinstated the damages awarded by a jury in 2007. The Court of Civil Appeals had reversed the trial court judgment in a previous ruling in the case.

The verdict had been returned against Elias Rodriguez and Pedro Rodriguez, doing business as Rodriguez Transportes of Tulsa, and Republic Western Insurance Co. of Arizona. The incident occurred in 2001 when Covel was driving northbound on Interstate 35. His pickup truck was bumped by another vehicle, knocking the Covel truck across the center median. A southbound bus owned by Rodriguez then crashed into the Covel truck. It was proved at trial that the bus’s brakes were defective and that the defect was a contributing factor to the crash.

Source: Claims Journal

CINCINNATI BUS COMPANY SETTLES DEATH SUIT

A Cincinnati-based school bus company has paid $5 million to settle a wrongful death lawsuit in Missouri, arising out of the death of a student. A driver for First Student drove a bus over and killed the teenager. It was alleged that the bus driver, a 23-year-old, failed to defrost or scrape the bus’ windshield and then drove the bus over a 16-year-old who was legally crossing a street in St. Joseph, Mo. The student, Mason Adams, a high school junior, was killed in the November 15, 2010 incident.

The wrongful death lawsuit was filed by Bridgett Blasi, the victim’s mother, against First Student. The company has a contract to transport Cincinnati public school students. First Student had failed to admit its role in the death until the settlement was reached. Ms. Blasi had been seeking an apology from First Student and an acknowledgment by the company of responsibility for the death.

The incident was captured by a video on the bus. It showed that the driver’s failure to defrost the windshield left him unable to see the teen lawfully crossing in front of the bus in a crosswalk with the light in his favor. The case was ready for trial, but ended when First Student agreed to pay Ms. Blasi $5 million to settle the case. First Student also agreed to apologize, admit the company’s role in the death and the company also agreed to allow Ms. Blasi to help the company’s drivers learn from this lawsuit. Michael Kuckelman, who represented Ms. Blasi in the lawsuit, stated:

First Student has agreed that the mother will have the opportunity to participate in training (drivers) to seeing a first-hand account of how people suffer from a company cutting corners.

The bus driver was convicted last year of a misdemeanor in connection with the death. First Student transports about 13,000 students daily for Cincinnati public schools as part of a $91,000, five-year contract. The school system is in the third year of that contract with First Student.

First Student’s website says it has 68,000 workers transporting 6 million students on 60,000 buses every day in the United States. The company is part of First Group America, also based in Cincinnati, and is a subsidiary of a British transportation company. First Group settled a lawsuit in March, agreeing to pay $5.9 million after it was sued by thousands of workers and job applicants who alleged the company illegally made background checks on them without the required written authorization.

Source: Cincinnati.com

XIX.
NURSING HOME UPDATE

JURY AWARDS $200 MILLION IN NURSING HOME LAWSUIT

A Pinellas County jury returned a $200 million verdict recently in a nursing home abuse case that resulted in an elderly woman’s death. Elvira Nunziata, a 92-year-old dementia resident at Pinellas Park Care and Rehab Center, while still belted in her wheelchair, fell down ten cement stairs to her death. Three different alarm systems—on her clothing, wheelchair and the “emergency only” exit door to the stairwell—should have been in place and turned on to alert staff to the resident’s whereabouts. But none of the systems protected her from the horrific fall that left her broken and bloody.

Mrs. Nunziata was a resident at the facility from Aug. 14, 2003 until her death on Oct. 12, 2004. The staff knew she was active despite being in a wheelchair and was prone to wandering. Testimony at trial revealed that the facility was chronically short-staffed and short of the most basic supplies. Complaints had been made by former employees to their supervisors, but no action was ever taken to remedy these problems. Caregivers confirmed that during state inspections of the home, the facility would increase staff to give the appearance that they were appropriately staffed at all times. Once the inspectors left, staffing would go back down to dangerously low levels.

After she fell, the resident could have been at the bottom of the stairwell for an hour before she was found. There was evidence that she drowned in her own blood. Investigations by the police and the Florida Agency for Health Care Administration revealed that the resident had been seen twice earlier that day trying to get through that same door. Actually a maintenance worker, not the nursing staff, found her at the bottom of the staircase. After this death, the facility spent $5,000 to install magnet locks on all of the doors. This was a simple fix that could have saved a life if it had been done sooner.

The Defendant in this case was Trans Health Management, Inc., which was part of a large conglomerate comprising a Chicago private equity firm, New York investor magnates, and various financiers. Through various mergers and acquisitions, the company grew from 23 homes in two states in 1999 to having more than 200 facilities in 20 states by 2003—making it one of the largest private nursing home chains in the United States. Once this lawsuit and a number of other lawsuits around the country were filed against the Defendant Trans Health Management, Inc., the company was stripped of its assets in an effort to avoid responsibility.

Bennie Lazzara Jr., Isaac Ruiz-Carus, and Joseph Ficarrotta, lawyers with Wilkes & McHugh, P.A. in Tampa, represented Mrs. Nunziata’s family in the case. They did a good job in this and got a very good result for their client.

$8 MILLION VERDICT RETURNED AGAINST LOUISVILLE NURSING HOME

A state court jury in Tennessee awarded $8 million in damages last month to the estate of a retired surgeon whose legs were broken while he was in the care of Treyton Oak Towers in Louisville. The verdict against the nonprofit nursing home was returned after a two-week trial before Judge Brian C. Edwards. Dr. David Griffin died less than two months after he was improperly transferred from a chair into his bed—and it appears that Treyton Oak tried to cover up what happened.

After Dr. Griffin’s legs were broken in the September 2008 incident, he was put back in bed “like it didn’t happen” and employees were ordered to change medical records and cover up the incident. Because of a stroke, Dr. Griffin couldn’t tell anybody “about the agony he was in.”

After being found with two broken bones on Sept. 24, 2008, Dr. Griffin was treated at a hospital and later transferred to a different nursing home. He died on November 3rd. Dr. Griffin had severe osteoporosis and the nursing home said doctors failed to inform its employees of this diagnosis. The jury verdict included $2 million for pain and suffering, $1 million for violating the state nursing home statute and $5 million in punitive damages. The Plaintiffs claimed Dr. Griffin was transferred without a lift and by only one nursing assistant, in violation of the nursing home’s care plan, which required two assistants.

The nursing home denies any liability and claims its employees did nothing wrong. Dr. Griffin, who was in his mid-80s and had retired many years before he was injured, was a patient in Treyton Oak Tower’s skilled residential facility. William Garmer and Matt Minner, lawyers with the Birmingham firm, Hare Wynn, represented the doctor’s family. They did a very good job in this case for their clients.

XX. HEALTHCARE ISSUES

TANNING SALONS MUST BE REGULATED

A new Congressional report has accused tanning salons of lying to customers just to get their business. The investigation found that tanning salons don’t always downplay the risks of tanning, but instead, they are promoting benefits that don’t exist to a young clientele that may not know better. It’s reported that 28 million people use tanning beds each year. It appears that young women between 16 and 29 are the ones who are referred to as the “backbone” of the $2.6 billion industry. They are targeted with student specials, homecoming specials, even deals for the prom and many other marketing gimmicks.

When Congressional investigators contacted 300 tanning salons, identifying themselves as fair-skinned teenage girls, they were routinely given bad information about the health risks involved. Ninety percent of the salons told them indoor tanning posed no health dangers. Seventy-eight percent claimed indoor tanning would actually improve health, preventing diseases ranging from arthritis to lupus. Fifty-one percent denied that indoor tanning increased the risk of skin cancer. That sort of thing can’t be tolerated.

Dermatologists say nothing could be more misleading. “It is so false,” according to Dr. Rhonda Rand, who told CBS News:

“We know that skin cancer, especially melanoma, is on the rise, especially in women in their 20s, because they went to tanning salons in their teenage years.

Studies show the risk of melanoma goes up 75 percent when tanning bed use begins before the age of 30. Melanoma is the most common form of cancer among white women between 15 and 29 years of age. And the rate of melanoma in that age group has risen 50 percent since the 1980s, as tanning salons have proliferated. Last year, California became the first state to ban the use of indoor tanning devices for anyone under 18. Thirty-one more states have placed restrictions on teen tanning, such as requiring parents to accompany their children.

Some members of Congress, including Calif. Rep. Henry Waxman, are now urging the Food and Drug Administration to consider reclassifying tanning beds as unsafe

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for minors. Rep. Waxman had this to say about the need for regulation:

_We've got to start regulating these industries that are trying to target—especially girls to come in and get a tan in a tanning salon and not reveal the risks involved when young people use these tanning salons._

I hope that the FDA will consider carefully the request for stronger and more effective regulation of this industry. It would be a fairly simple, in the regulation, to make the industry tell the truth about the risks associated with the use of tanning devices.

_Source: CBS News_

**STOMACH ACID DRUGS SAID TO INCREASE RISK OF BACTERIAL INFECTIONS**

The Food and Drug Administration warned consumers last month that certain stomach acid drugs may increase the risk of a serious intestinal bacteria infection. The drugs, including Nexium, Prilosec, Prevacid, Zegerid and others, fall into a category called proton pump inhibitors (PPIs). They are prescribed to treat acid reflux, stomach ulcers and other conditions, and work by reducing the amount of acid in the stomach.

The bacterial illness is called Clostridium difficile-associated diarrhea (CDAD), and its main symptom is diarrhea that does not improve, according to an FDA statement. The bacteria are commonly referred to as “C. diff.” Dr. Edith R. Lederman, who authored a study published in October linking C. diff infections to stomach acid drugs, in an interview with MyHealthNewsDaily, said: “Stomach acid is a very important defense mechanism against pathogens. It kills them.”

Patients taking PPIs who develop diarrhea that does not improve may have CDAD, according to the FDA. The agency says it’s working with manufacturers to include information in the drug labels about the increased risk with use of PPIs. It should be noted that PPIs are the third highest-selling class of drugs in the U.S., according to 2010 findings from Consumer Reports.

Dr. Lederman’s study, published in the journal Clinical Infectious Diseases, showed nearly half of 485 patients hospitalized at a medical center over a four-year period who had C. difficile infections had previously been prescribed an acid suppressing drug, most of which were either PPIs, such as Prilosec and Prevacid, or histamine-2 antagonists, such as Tagamet and Zantac. The FDA is also reviewing the risk of CDAD in users of histamine H2 receptor blockers.

The elderly, and people with certain medical problems, have the greatest chance of developing C. diff infections, according to the Centers for Disease Control and Prevention. The infection can spread in hospitals because C. diff spores can live outside the human body for a very long time, and may be found on items such as bed linens, bed rails, bathroom fixtures and medical equipment.

There are antibiotics that can be used to treat C. diff, according to the CDC, but in some severe cases, surgery to remove the infected part of the intestines may be needed. In Dr. Lederman’s study, 23 patients died from their C. diff infections. Nineteen of them had taken prescription acid suppressants during the 90 days before their hospital stay. The CDC points out that hand washing, alcohol-based sanitizers, and taking only antibiotics that are prescribed by a doctor can lower a person’s risk of getting or spreading C. diff.

_Source: Fox News_

XXI. **ENVIRONMENTAL CONCERNS**

**CHILDREN NEAR DUPONT PLANT EXPOSED TO MORE PFOA THAN THEIR MOTHERS**

A recently published study revealed children living near DuPont’s plant in West Virginia are exposed to much higher concentrations of an industrial chemical than are their mothers. Children under five, who are exposed from drinking water as well as their mothers’ breast milk, had 44 percent more of the chemical in their blood than their mothers. The study was undertaken by a court-approved panel of three scientists who have spent seven years trying to determine whether the DuPont chemical is making people sick in the Mid-Ohio Valley.

The chemical is perfluorooctanoate, (PFOA), also known as C8, which is used in the manufacture of Teflon nonstick cookware, waterproof clothing, food packaging and other products. Nearly everyone worldwide has traces of perfluorinated chemicals in their bodies. But folks near the DuPont plant have extraordinary levels of PFOA—about seven times more than the U.S. average—because the compound, used at the plant since 1951, has contaminated drinking water supplies.

The scientists studied 4,943 child-mother pairs who drank water for at least one year in communities near the plant where water wells were known to contain PFOA. “Children seemed to concentrate the chemical more than their mothers up to about age 12. This is probably due to exposure via drinking water as well as exposure in utero and via breast milk,” the team from the London School of Hygiene & Tropical Medicine wrote in the article, published online recently in the journal Environmental Health Perspectives. The lead author was Tony Fletcher, who serves on the court-approved panel.

For a related chemical called PFOS, blood concentrations were 42 percent higher in children than their mothers, and it persisted until the children were 19. The new finding about children and their mothers comes at the same time that other scientists, studying children in the North Atlantic’s Faroe Islands, linked perfluorinated compounds to reduced effectiveness of childhood vaccinations. That is a possible sign that the chemical suppresses the immune system.

Environmental health scientists say that fetuses, infants and young children are the most vulnerable to the toxic effects of industrial chemicals such as PFOA and PFOS because they might interfere with development of their brains, reproductive tracts, immune systems and hormones. The panel of scientists was created as part of a settlement after residents from West Virginia and Ohio communities filed a class action lawsuit against DuPont in 2001, alleging health damage from contaminated water.

The panel is scheduled to reach a conclusion in July about the probability of health effects from PFOA exposure. Under a settlement between DuPont and the Plaintiffs, if the scientists conclude that a “probable link” exists between the chemical and any diseases, DuPont will fund a medical monitoring program for the residents. In previous research in the communities, the scientists have found associations between PFOA exposure and markers that suggest potential liver disease, changes in children’s thyroid hormones and increased risk of kidney cancer deaths. In December 2011, the panel also reported “a probable link between C8 (PFOA) and pregnancy-induced hypertension and preeclampsia.” The panel found no link to birth defects, preterm births, low birth weight or pregnancy loss.

The chemical is ubiquitous and long-lasting in the environment, which led to an
agreement between the Environmental Protection Agency and DuPont and other manufacturers to eliminate emissions by 2015. DuPont paid a $10.25 million fine in 2005 for violating federal environmental statutes, which is the largest civil administrative penalty on record for the EPA, along with more than $6 million for environmental studies. The EPA accused the company of hiding information on public health threats.

Source: environmentalhealthnews.org

**Union Pacific To Pay $1.5 Million In Fines**

Union Pacific Railroad will pay $1.5 million in fines for environmental damage in Provo and other areas of the Intermountain West. The U.S. Environmental Protection Agency announced the settlement, which is part of a Clean Water Act enforcement action, in a news release last month. The funds repay the national emergency fund for cleanup costs at 20 rail yards in Colorado, Utah and Wyoming. It also covers damage from spills of oil and coal along tracks in all three states. In a statement on its website, Union Pacific says it works to ensure compliance with all laws and regulations. According to Regional Administrator Jim Martin, the EPA is monitoring Union Pacific’s efforts to improve safety and prevent environmental damage.

Source: Insurance Journal

**XXII. THE CONSUMER CORNER**

**Chase Agrees To Settle Lawsuit Involving Overdraft Fees**

J.P. Morgan Chase has agreed to pay $110 million to settle a class-action lawsuit challenging the way Chase charged debit card fees to customers who spent more than what was in their accounts. The settlement will have to be approved by the court. Bank of America agreed last year to pay $410 million to settle its liability in the suit. More than a dozen banks were Defendants in the suit which was filed in Federal District Court for the Southern District of Florida.

The issue addressed in the suit is the manner in which banks have traditionally processed customer transactions. By processing payments in the order from largest to smallest, banks can maximize the amount of overdraft fees charged, if a customer spends more than is available in the account. That practice resulted in a public outcry over the so-called “$38 dollar cup of coffee,” in which a customer overdraws his or her account by buying a $3 beverage with a debit card and is hit with a $35 overdraft fee.

Chase, like other banks, has moved away from that processing practice, and now pays debit transactions in the order in which they occur. In addition, federal rules now require banks to get customers’ permission to receive overdraft protection, which allows them to overspend, but pay a fee. Even with the changes, a recent study found that overdraft fees are still quite high. Many Americans have paid very large overdraft fees for a relatively small purchase.

Source: New York Times

**A Needed Crackdown On Bank Overdraft Fees**

It was announced last month that the new U.S. Consumer Financial Protection Bureau would be cracking down on the checking account overdraft fees charged by banks. The agency says the charges can “inflict serious economic harm” on consumers and, based on the result in the Chase settlement reported above, that must be true. The agency will begin collecting information to determine if banks are manipulating the system to “goose fees” and whether they are making it clear to customers how they can incur overdraft charges.

The fees have brought in about $30 billion in annual revenue for the banking industry over the past few years. Overdraft fees have been a source of tension between regulators and banks in recent years, and the CFPB’s announcement follows steps taken by other regulators, including the Federal Reserve and Federal Deposit Insurance Corp., in response to complaints. The Fed cracked down on the practice by banning overdraft fees on automated-teller-machine and debit-card transactions unless consumers have actively selected an overdraft protection service. Those rules went into effect in July 2010, but they did not include credit cards, checks or online bill payments. Also in 2010, the FDIC issued guidance to banks to ensure excessive fees are not being charged. The new agency wants to build on this work and will use the information to determine if additional steps are needed. CFPB Director Richard Cordray said in a statement:

Overdraft practices have the capacity to inflict serious economic harm on the people who can least afford it. We want to learn how consumers are affected, and how well they are able to anticipate and avoid paying penalty fees.

The agency said it will seek information directly from the large banks. It’s also putting out a request for input from the public. The agency said one area it will focus on is whether banks at the end of each day are processing large transactions first so that they can then charge a customer more overdraft fees for each subsequent smaller bill payment, check or ATM withdrawal. The FDIC also focused on this issue in its 2010 guidance.

The fees collected by banks totaled $37.1 billion in 2009 and are estimated to have fallen about 20 percent to $29.5 billion in 2011, according to the research firm Moebs Services. The information collection effort also focuses on whether consumers are being given enough information to understand and anticipate the overdraft fees they are being charged. The agency will seek feedback on a sample “penalty fee box” that could be included in a checking account statement detailing the amount that has been overdrawn and what fees have been charged. As we have reported, the bureau was created by the 2010 Dodd-Frank financial oversight law and is charged with overseeing consumer financial products, such as credit cards and mortgages.

Source: MSNBC

**New Consumer Finance Watchdog Targets Debt Collectors**

The Consumer Financial Protection Bureau is also zeroing in on debt collectors and credit reporting companies. The agency has proposed to add debt collectors and credit bureaus to the list of industries that agency officials can supervise in-person. The agency now has the power to oversee payday lenders, mortgage companies and private student lenders since President Obama used a recess appointment to install its director. The agency also can write rules to supervise companies.

Officials say they chose debt collectors and credit bureaus because those industries touch a vast number of consumers. Consumers can’t shop around if a debt collector is abusive or unfair. It’s the first time
Federal safety regulators are investigating reports of fires in the driver's side doors of 2007 Toyota Camry sedans and RAV-4 crossover SUVs. The probe could affect as many as 830,000 vehicles, according to the National Highway Traffic Safety Administration. Documents relating to the probe were posted on the agency’s website. The vehicles have not been recalled. The fires appear to start in the power window switch on the door. Six fires have been reported to NHTSA, but the agency has no reports of anyone being hurt. The investigation by NHTSA was started on February 6th.

Toyota said in a statement that it is cooperating with NHTSA in the investigation. Customers with concerns should call Toyota at (800) 331-4331. Toyota has had more than 14 million vehicles recalled worldwide over the past few years. Most of the six fires were minor with damage limited to the doors, but a Camry was destroyed in one case, according to complaints filed with NHTSA. Several owners reported that they were afraid to drive their vehicles because of the threat of fires. In one case, on Nov. 19, 2011, a Camry owner reported seeing flames coming from the door right after starting the car. Firefighters were called, but the car was reported destroyed, the complaint said.

A RAV4 owner reported that in August of last year, the master power window switch caught fire, burning a hole the size of a dime. The owner had been having trouble with the power window since July of 2009. Names and locations are not listed on the complaints.

The Camry has been the top-selling car in the U.S. The RAV-4 also is a big seller. The probe also includes the Solara, which is a coupe version of the Camry. Toyota sold 473,108 Camrys and 172,752 RAV-4s in 2007, according to Autodata Corp. Some 2007 models may have been sold in 2006.

### U.S. Probes Door Fires In 2006 And 2007 TrailBlazers

Federal safety regulators are investigating reports of fires in the driver's side doors of Chevrolet TrailBlazer SUVs from the 2006 and 2007 model years. The National Highway Traffic Safety Administration says more than 309,000 vehicles could be affected. So far the vehicles have not been recalled. The fires appear to have started in the driver’s side power window switch and related electrical parts.

Regulators began investigating the 2007 Toyota Camry and RAV4 for the same problem last week. Safety regulators have gotten 12 complaints about the problem, including ten fires. GM says no one has been hurt and no vehicles were destroyed. Company spokesman Alan Adler says he doesn’t know if GM bought its switches from the same supplier as Toyota.

### BMW Fined $3 Million By NHTSA For Delaying 2010 Recalls

German automaker BMW has agreed to pay $3 million for delays in reporting safety defects and recalls to federal regulators, according to the National Highway Traffic Safety Administration. An examination of 16 recalls issued by BMW of North America LLC in 2010 found a pattern in which the automaker failed to meet federal requirements that known defects be reported within five days, NHTSA said in a written statement. As part of the settlement, BMW and its parent company, Bayerische Motoren Werke AG, agreed to make internal changes to its recall process. NHTSA Administrator David Strickland said:

> It's critical to the safety of the driving public that defects and recalls are reported in short order. NHTSA expects all manufacturers to address automotive safety issues quickly and in a forthright manner.

Despite NHTSA's claim that some recall filings were late, BMW said in a statement that “in every case where a defect was identified by the company a voluntary recall had been conducted.” A summary report of NHTSA's investigation said the agency noticed in late 2010 a "troubling trend" in the automaker's recall filings over the course of the previous year—the company's initial recall filings were missing important information. Each time the problem was brought to BMW's attention, the automaker would promise to provide the information but then would take “an inordinate amount of time to do so,” the summary said.

For example, the summary said that in only six out of 16 recall reports in 2010 was BMW able to say how many vehicles were affected and how many were expected to be recalled. In only five of the reports did the automaker supply the required chronology of events, and all but one of the five were missing dates or other important information, according to the summary. NHTSA investigators also complained it was taking BMW on average over 30 days to supply “fundamental” information missing from recall updates. The recalls involved motorcycles, as well as sport utility vehicles.

### Faulty Fire-Causing Appliances

Consumer Reports says that home appliances cause an estimated 150,000 fires a year, resulting in 150 deaths and more than $500 million in property damage. A new Consumer Reports investigation turned up some disturbing findings. While some of those fires are due to human error, a significant number are caused by defective appliances.

Consumer Reports reviewed 69,000 reports of house fires blamed on appliances between 2002 and 2009. Its investigation found at least 23 percent of the fires were clearly attributable to problems with the appliances—mechanical, electrical, or design flaws. In some instances the appliances turned on by themselves. Faulty appliances causing the most fires were ranges, followed by dryers, air conditioners, refrigerators, and dishwashers.

In the past five years, more than 7 million dishwashers have been recalled because of defects that could cause a fire. And almost 8 million other appliances have been recalled for fire risks. Consumers can find out whether an appliance they own has been recalled by going to www.recalls.gov. All consumers should register their appliances with the manufacturer so that they will be notified in the event of a recall.

According to Consumer Reports, the reason for so many recalls due to fire hazards is because appliances have gotten a lot more complex. That means lots more can go wrong. Also many recalled products are being manufactured abroad, the majority in China, and that’s a real problem. Until appliance design and quality are improved, according to Consumer Reports, homeowners will be left to wonder whether appliances in their homes are safe.

In response to Consumer Reports’ investigation, the Association of Home Appliance Manufacturers said that “designing and manufacturing safe products” is a top priority of its members. Consumer Reports says that homeowners should register new appliances with the manufacturer so the...
Brazilian Blowout hair-straightening treatments have been under scrutiny due to potential health risks. The treatment involves applying a liquid solution containing formaldehyde, which can cause severe burns if not handled properly.

According to Dr. Warren Garner, director of the burn unit at University of Southern California's County Hospital in Los Angeles, the treatment poses significant hazards. Dr. Garner notes that the solution can cause burns with the slightest pull, and the risk is particularly high when the solution is spilled on a child's body, causing more severe burns than hot liquid alone.

It was reported that burns from instant noodle soup are not rare injuries. Dr. Garner's findings are based on his observation of patients brought to the hospital by their parents. He says that about one in five children who suffer instant noodle soup burns will need surgery. These injuries could have permanent scarring and limited mobility as a result of the burns. The warning is necessary to prevent such accidents from occurring.

The products now have to say on labels that the solutions “will expose you to formaldehyde [gas], a chemical known to cause cancer.” The warning will remind hairstylists to take precautions when handling the products.

According to Dr. David Greenhalgh, Chief of Burns at Shriner's Hospital for Children in Northern California, and the author of a study entitled “Instant Cup of Soup: Design Flaws Increase Risk of Burns,” some manufacturers have virtually unchanged designs for most instant noodle cups. This design does not change even though they have no legal obligation to do so. In 2010, a survey released by the Environmental Working Group revealed that 28 of 41 top salons offered Brazilian Blowout treatments. The treatment became very popular after it became known that several celebrities had used the treatments. This increase in popularity has led to a rise in injuries related to this product.

Instant noodle soup is a cheap and convenient way to warm up on a cold night. But this cheap and convenient product comes with a price—a price that your child might have to pay. The design of the instant noodle soup cup allows for the cup to be easily tipped over, making it especially attractive and dangerous to a young child. Most instant noodle cups are made of styrofoam, have a wide top, and a narrow base. When a child reaches for the cup on top of a counter or table, the cup easily tips over with the slightest pull. When the hot liquid spills out, it can burn the child's arms, torso, and legs. What makes this product very dangerous is that the cup contains hot noodles that stick to the child's body, causing more severe burns than hot liquid alone.

It was reported that burns from instant noodle soup are not rare injuries. Dr. Warren Garner, director of the burn unit at University of Southern California's County Hospital in Los Angeles, says that he sees instant noodle soup burns on two to three patients per week. He says that about one in five children who suffer instant noodle soup burns will need surgery. These children could have permanent scarring and limited mobility as a result of the burns. Dr. Garner says this particular injury is directly related to the design of the soup cup.

It appears that some soup cups are more dangerous than others. Soup cups that are tall with a wide top and narrow base tip over three times more easily than soup cups that are square or have a wide base. Instant noodle soup has been on the market for 40 years. The design of the cup has remained virtually unchanged for most manufacturers. Dr. David Greenhalgh, Chief of Burns at Shriner's Hospital for Children in Northern California, and the author of a study entitled “Instant Cup of Soup: Design Flaws Increase Risk of Burns,” recommends that manufacturers invert the soup cup to resemble a Yoplait yogurt container. The cup would be narrow at the top and wide at the bottom. According to Dr. Greenhalgh, this design would be a low-cost solution to the current designs that are tip-over prone. If you would like more information on instant soup cup defects, please contact Cole Portis at Cole.Portis@beasleyallen.com.

Source: NPR.org

Source: Los Angeles Times

Widow Harassed By Collection Firm

Bank of America Corp., and a debt collector it hired to go after deceased customers' debts, violated state law by repeatedly calling a Florida woman about paying the credit-card bill of her late husband, according to a ruling by a Florida state court judge last month. Judge Keith R. Kyle in Lee County, Fla., found that collection attempts by West Asset Management, an Omaha, Neb., firm, working on behalf of Bank of America, rose to the level of harassment. The ruling clears the way for the Plaintiff to get punitive damages from the collector, a unit of West Corp., and Bank of America. A civil jury will determine the size of the award next year.

The ruling comes in a lawsuit filed by Linda Long, a 68-year-old retired office worker, alleging that the debt-collection firm harassed her by calling as many as ten times a day about $16,651.52 that her husband Millard had accumulated on a Bank of America credit card before his death from colon cancer in March 2010. William Howard, Mrs. Long's lawyer, called the judge's ruling a "stunning victory for Mrs. Long and other widows and family members."

The case could set a precedent across the U.S. and discourage lenders from using debt collections to get money from surviving relatives on debts left behind by the deceased, according to other state-court judges. Bank of America and other major U.S. lenders hand over accounts of the deceased to firms specializing in death-debt collection. The collection firms then zero in on family members who they think might agree to pay some of what the dead person owed even though they have no legal obligation to do so.

In a 2010 investigation of the industry, the Federal Trade Commission found that some death-debt collectors flout federal and state laws by duping relatives into thinking that they have to pay the debts of the deceased. Surviving family members typically have no legal obligation to pay unless they co-signed a loan. This case illustrates the unethical and illegal methods that banks will employ to recover unpaid loans—loans that banks made willingly and with the knowledge that the debtors may never repay the loans for any number of legitimate reasons. If you need more information on this subject, contact Clay Barnett, a lawyer in our firm, at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

Source: Wall Street Journal

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 February 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.

Source: Wall Street Journal
**Nissan Recalling 39,000 Versa Small Cars**

Nissan is recalling 39,000 Versa small cars because the transmissions can be shifted out of park without the driver’s foot on the brake. The 2012 model cars were made from June 9, 2011 through Jan. 13, 2012 and sold in the U.S. and Canada. Federal safety regulations require that a driver’s foot must be on the brake before a car can be shifted into gear.

The National Highway Traffic Safety Administration says on its website that a driver could inadvertently put the car into gear, increasing the risk of a crash. Nissan said that no crashes or injuries have been reported. The company says it will replace the shifter knob for free and make sure the car works properly. The problem affects cars with automatic and continuously variable transmissions.

**Another Nissan Recall**

Nissan has recalled more than 79,000 vehicles in the U.S. to fix possible gasoline leaks. The recall involves certain Nissan Juke small crossover SUVs, Infiniti QX large SUVs and Infiniti M sedans from the 2011 and 2012 model years. The National Highway Traffic Safety Administration says fuel pressure sensors on the vehicles may not be tight enough and gasoline could leak and cause a fire. Nissan says no fires have been reported. Dealers will tighten the sensors or replace gaskets free of charge to take care of the problem. The vehicles were made between Oct. 5, 2009 and Dec. 27, 2011. The recall was scheduled to start on March 19. Owners with questions may call Nissan at 615-725-1000.

**Chrysler Recalls Police Cars To Fix Electrical Flaws**

Chrysler Group LLC has recalled certain Dodge Charger police vehicles from the 2011 and 2012 model year to fix electrical problems that could lead to failure of their low-beam headlights or the loss of antilock braking. In a document filed with the National Highway Traffic Safety Administration, the car maker said the possible light problem stems from overheating in the bulb harness connector. Overheating can also occur in a component called a power distribution module, which can result in the loss of antilock-brake and electronic stability control functions.

Chrysler said it built the affected cars between July 5, 2010, and Dec. 20, 2011. The recall includes 9,688 vehicles. The company said it is not aware of any accidents or injuries resulting from the problems. Under the recall Chrysler dealers will replace the headlamp jumper harnesses and relocate the antilock brake and electronic stability control fuse within the power distribution module. The service is free of charge. The recall is expected to begin next month. Customers can contact Chrysler at 800-853-1403.

**Honda Recalls 46,000 Odyssey Minivans**

Honda has recalled 46,000 Odyssey minivans because their power tailgates, when open, can drop unexpectedly, potentially injuring anyone standing underneath. Due to a manufacturing error by the part supplier, the gas-filled struts that hold the tailgates open can leak, reducing their ability to hold up the heavy tailgate. If the struts leak, the tailgate can suddenly drop several inches, a Honda spokesman said. At that point, the electric motor that powers the tailgate into the open position will slow the tailgate’s fall.

Honda says it’s aware of two minor injuries resulting from falling tailgates. The recall involves model year 2008 and 2009 vans equipped with power rear liftgates. Recall letters will be sent to owners beginning this month. Owners with affected vehicles will be asked to go to a dealership to have the struts inspected and possibly replaced.

**Honda SUVs Recalled For Fuel-Tank Fix**

Honda Motor Co. is recalling about 8,700 copies of the 2012 Honda Pilot and Acura MDX SUVs to fix a problem in the fuel tank. The flaw is with the vent-shut-valve valve case in the fuel-tank assembly. Honda says the part doesn’t meet the proper design specifications, which could result in a fuel leak and possibly a fire.

This recall comes one day after the company launched a recall to fix tailgate strut rods on the Honda Odyssey minivan. Honda will notify dealers and owners of affected vehicles. Dealers will inspect the assembly and replace it if necessary. The recall is expected to begin on March 13. Concerned owners can contact Honda Customer Service at (800) 999-1009. Owners can also go to www.safercar.gov to check out the recall or call the NHTSA vehicle safety hotline at (888) 327-4236.

**Porsche Cayennes Recalled Because Of Bad Headlights**

Porsche is recalling more than 100,000 of its Cayenne SUVs worldwide due to a headlights problem. The issue affects Cayenne, Cayenne S, Cayenne S Hybrid and Cayenne Turbo Vehicles from model years 2011 and 2012. The headlights on these vehicles may become loose and detach from their housings, according to NHTSA.

According to a Porsche spokesman, 22,099 vehicles in the U.S. and Canada and 101,953 worldwide are affected by the problem. Porsche plans to notify affected owners, and dealerships will fix the problem for no charge. The company said in documents submitted to NHTSA that it was not aware of any injuries or crashes associated with the problem. For more information, car owners can contact NHTSA’s vehicle safety hotline at 1-888-327-4236 or visit www.safercar.gov. They can also contact Porsche at 1-800-767-7243.

**Dorel Recalling Nearly 800,000 Child Safety Seats**

Dorel Juvenile Group (DJG) has recalled 794,247 child safety seats because the harness locking and release button does not always return to its locked position. A button that is not in the locked position can allow the harness adjustment strap to slip back through the adjuster as a child moves around in the seat and results in a loose harness, increasing the risk of being injured a crash. DJG said the problem involves certain restraint systems manufactured from May 1, 2008, through April 30, 2009, which have a “Center Front Adjuster” (CFA) for the harness. These include infant, convertible, and booster child restraint systems which were sold both as stand-alone seats or part of a travel system (with a stroller).
DJI said it intends to provide consumers with a remedy kit consisting of a small tube of non-toxic, food-grade lubricant to be applied to the CFA to prevent sticking and allow it to properly engage the CFA strap. Instructions on how to apply the lubricant will be provided, along with a label to indicate that the repair has been completed. Until the remedy has been applied, NHTSA says consumers can continue to use the seats. But it says parents and caregivers should make sure the harness is properly adjusted and the lock/release button is fully in the locked position. After adjustment, pull on the shoulder part of the harness to make sure it is secure and does not loosen.

NHTSA began a formal investigation of this issue on March 5, 2010, and indicated it would continue to keep the investigation open to further evaluate the adequacy of the recall scope. Consumers who want more information about this recall should contact the manufacturer directly at 1 866-623-3139 or via email to harnessadjustment@dijgsusa.com.

Consumers can get additional information about all child safety seat recalls, and recalls for all vehicle makes and models as well as tires at NHTSA's safety web site: www.safercar.gov. Consumers can also sign up at this site to receive free, automated electronic notification of specific vehicle, child seat and tire recalls as soon as they are announced.

**STIHL RECALLS CHAIN SAWs DUE TO RISK OF INJURY**

About 3,000 MS 391 Chain Saws have been recalled by manufacturer STIHL Inc., of Virginia Beach, Va. The flywheel on the chain saw can crack causing parts of the flywheel to separate and strike users or bystanders, posing a risk of injury. This recall involves STIHL MS 391 gas-powered chain saws with an orange top casing, gray base and black front handle and hand guard. “STIHL” and “MS 391” are printed in an orange circle on the middle of the front access panel. The number is written on a faceplate, found by removing both front access panels. The faceplate is found mounted on the left inside surface behind the lower panel.

The saws were sold at authorized STIHL dealers nationwide from March 2011 through July 2011 for between $530 and $550. Consumers should immediately stop using the recalled chain saws and return them to an authorized STIHL dealer for the installation of a free replacement flywheel. For additional information, consumers should contact STIHL at (800) 610-6677 between 8 a.m. and 8 p.m. ET Monday through Friday, or visit its website at www.stihlusa.com.

**SPECTRUM HOME FURNISHINGS RECALLS CHANDELiers DUE TO INJURY HAZARD**

Spectrum Home Furnishings of Farmingdale, N.J. has recalled about 165 Crystal chandeliers. The recalled chandeliers contain a mounting loop that can fail during use causing the chandeliers to fall from the ceiling and injure bystanders under the chandelier. The firm has received five reports of the chandeliers falling from the ceiling. No injuries have been reported. Approximately $1,000 in property damage has been reported. The recall involves three models of chandeliers with model numbers a83-21502/36+1, a83-1502/36+1 and a46-490/30 printed on the exterior of the box in which the products were shipped. Models a83-21502/36+1 and a83-1502/36+1 are clear crystal chandeliers measuring about 52-inches wide and 60-inches high. Both models have identical appearance, with one model number containing a different type of crystal. Model a46-490/30ed is black wrought iron with clear crystals measuring about 46 inches wide and 46 inches in height.

The chandeliers were sold online from January 2007 through December 2010 for about $1,000 to $2,500 on the websites www.spectrumhome3.com, www.spectrumhome4.com or www.gallery84.com. Consumers must prevent people from going into the immediate area under the chandeliers. Contact Spectrum Home Furnishings to receive a free replacement part, $150 to cover costs with replacement of the defective part, and a $25 incentive credit. Spectrum Home Furnishings says it has contacted all known purchasers. For additional information, contact Spectrum Home Furnishings at (800) 524-1539 between 9 a.m.
and 5 p.m. ET Monday through Friday, or visit its website at www.spectrum-home3.com, www.spectrumhome4.com or www.gallery84.com and click the “recall” link in the top menu of the page.

**HP Recalls Fax Machines Due To Fire And Burn Hazards**

Hewlett-Packard Co., of Palo Alto, Calif., has recalled HP fax 1040 and 1050 machines. The fax machines can overheat due to an internal electrical component failure, posing fire and burn hazards. Hewlett-Packard says it’s aware of seven reports of fax machines overheating and catching fire, resulting in property damage, including one instance of significant property damage and one instance of a minor burn injury to a consumer’s finger. Six incidents were reported in the U.S. and one in Canada. This recall involves HP Fax 1040 and 1050 models.

The HP logo and the model number are printed on the front of the fax machine. The fax machines are dark gray and measure about 11 inches high x 14 1/2 inches wide. The fax machines were sold at electronics, computer and camera stores nationwide, and online at www.shopping.hp.com and other websites from November 2004 through December 2011 for between $90 and $120. Some of the recalled fax machines were replacement units for a previous recall involving HP fax model 1010 in June 2008. Consumers should immediately stop using the recalled fax machines, disconnect them from the electrical outlet and contact HP for a rebate on the purchase of an authorized replacement HP fax machine or a partial rebate of certain HP inkjet printers. For additional information, contact HP toll-free at (800) 927-8699 between 8 a.m. and 6 p.m. MT Monday through Friday, or visit its website at www.meijer.com.

**Gas Cylinders Recalled By Worthington Cylinders Wisconsin Due To Fire Hazard**

Map Pro, Propylene and MAPP Gas Cylinders have been recalled by the manufacturer Worthington Cylinders Wisconsin, LLC, of Chilton, Wis. The seal on the cylinders can leak after torches or other fuel consuming equipment are disconnected from them, posing a fire hazard. The cylinders contain propylene gas and are used for soldering, brazing, cutting and welding. They contain 14.1 oz Map-Pro, 14.1 oz Propylene or 16 oz MAPP (Methyl Acetylene Propadiene Stabilized). The cylinders are approximately 5” in diameter and 11” tall and are either yellow or black in color. They were sold alone and in kits that include a torch and a cylinder.

The cylinders were sold at various pluming/HVAC distributors, Home Depot, Lowes and Ace Hardware Stores nationwide and in Canada from October 2004 through January 2012 for about $7 to $13 for cylinders and $45 to $75 for the torch kits. **Unused cylinders:** If the cylinder has never been connected to a torch or other device, do not use the cylinder. Return the cylinder to the store where it was purchased for exchange or full refund. **Partially-used cylinder currently connected to torch or other device:** Do not disconnect torch or other device. Take the tank outdoors and ignite the torch and burn off entire contents of the cylinder. Disconnect the torch from the empty cylinder and dispose of empty cylinder per cylinder label instructions or return it to store where it was purchased for exchange or a full refund.

**Meijer Recalls Touch Point Fan Heaters Due To Fire And Shock Hazards**

About 6,102 Forced Air Heaters have been recalled by Meijer Inc., of Grand Rapids, Mich. Exposed and unshielded electrical components can cause the heater to overheat and melt, posing fire and electrical shock hazards.

Meijer received one report of a unit’s base burning, melting and damaging the carpet beneath it. No injuries have been reported. This recall involves Touch Point brand oscillating forced air fan heaters with model number HW-218 and date code 0811. The model number and date code are on a silver sticker on the bottom of the heater. Universal Product Code (UPC) 7-13733-30927-1 is on the bottom of the packaging. The heaters are white, 12 inches tall, 9 inches wide and 8 inches deep. They have two round control knobs and a red warning light on the top front, and a black on/off switch on the front base that controls the fan’s oscillation. The words “Touch Point” appear on the right front of the heater’s base. The heaters were sold exclusively at Meijer stores in Illinois, Indiana, Kentucky, Michigan and Ohio from September 2011 through November 2011 for about $20. Consumers should immediately stop using the recalled heaters and return them to any Meijer store for a full refund. For additional information, contact Meijer at (800) 927-8699 between 8 a.m. and 6 p.m. ET Monday through Friday, or visit its website at www.meijer.com.

**Konica Minolta Recalls Printers Due To Fire Hazard**

Konica Minolta Business Solutions U.S.A., Inc., of Ramsey, N.J., has recalled about 8,430 Konica Minolta Printers. The printers can short circuit and overheat during use, posing a fire hazard. The company is aware of two reports of the printers overheating. No injuries have been reported. This recall involves four desktop models of laser color printers: Magicolor 4750DN, Magicolor 3730DN, Bizhub C35 and Bizhub C35P. Model numbers are located on the plate attached to the side of the printer as well as the bottom of the front door. The printers are dark and light gray in color and have “Konica Minolta” printed on the top of the front door.

They were sold at various value-added resellers, direct retail sales and autho-
rized Konica Minolta dealers from June 2010 through March 2011 for between $900 and $3,500. Consumers of Magicolor 3750DN and 4750DN should stop using the printers immediately and contact Konica Minolta to schedule a free replacement. Consumers of Bizhub C35 and C35P will be visited by an authorized service agent for repair and replacement of the faulty component. For additional information, contact Konica Minolta toll-free at (800) 825-5664 between 8:00 a.m. and 8:00 p.m. ET, Monday through Friday, or visit its website at www.kmbs.konicaminolta.us

**OVERARCHING FLOOR LAMPS RECALLED DUE TO SHOCK HAZARD**

About 5,750 overarching floor lamps have been recalled by West Elm, a division of Williams-Sonoma Inc., of San Francisco. A short circuit can occur in the lamp’s wiring, posing a shock hazard to consumers. The firm says it’s aware of at least 39 reports of short circuits in the lamp, including three reports of shock, one report of a minor burn to a consumer’s finger and two reports of minor property damage.

The Overarching Floor Lamp is 77 inches tall with a 19-inch diameter base and a curving arm that extends the lamp about five feet from the base. The arm and base are made of polished nickel. It was sold with a linen shade in the colors natural, white or charcoal. The lamp has a three-way on/off switch. They were sold by West Elm retail stores nationwide, West Elm catalogs and westelm.com from March 2011 through November 2011 for about $250. Consumers should immediately stop using the lamp and return it to West Elm for a full store credit. For additional information, contact West Elm toll-free at (855) 236-1941 between 7 a.m. and midnight ET seven days a week, or visit its website at www.westelm.com.

**TASSIMO BREWERS AND ESPRESSO PADS RECALLED AFTER BURN INJURIES**

More than 1.7 million single cup coffee brewers made by Tassimo and another 4 million Tassimo espresso coffee pads have been recalled after reports that dozens of consumers were sprayed with hot liquid and some were severely burned, according to the U.S. Consumer Product Safety Commission. Among the more than 160 consumers injured was a ten-year-old girl from Minnesota who was hospitalized with second-degree burns on her face and neck and a two-year-old girl from Canada with second-degree facial burns. Two recalls were posted on the consumer watchdog website.

The first recalled 835,000 Tassimo Single-Cup Brewers in the United States and an additional 900,000 in Canada, and was issued by the manufacturer, BSH Home Appliance Corp., of Irvine, Calif. “The plastic disc, or T Disc, that holds the coffee or tea can burst and spray hot liquid and coffee grounds or tea leaves onto consumers using the brewer and onto bystanders, posing a burn hazard,” said a statement on the consumer website. Recalled were Tassimo brewers with the Bosch brand name, which have either “BOSCH” or “TASSIMO” printed on the front, with codes of FD8806 through FD9109. Also recalled were Tassimo Professional brewers, with “TASSIMO PROFESSIONAL” on the front and codes of FD8905 through FD9109.

The brewers, made in Slovenia and China, were sold in stores and online from June 2008 through February for $100-$250. The bursting appliances resulted in 140 reports of consumers sprayed with hot liquid, coffee grounds or tea leaves. Of those, 37 reported suffering second-degree burns, including the ten-year-old girl, the website said. The agency advised consumers to immediately stop using the affected models and to contact the company to order a free replacement T Disc holder for the brewing mechanism.

The second recall was issued by Kraft Foods Global Inc., of Northfield, Ill., maker of the Tassimo espresso T Discs, which are pre-packaged ground beans in their own filter. Kraft recalled about 2.1 million packages in the U.S. and another 1.9 million in Canada, saying they can get clogged and spray hot liquid and coffee grounds, posing a burn hazard. Of the 21 reports of consumers and bystanders injured, four suffered second-degree burns, the consumer website said.

The recalled product, which is made in the U.S., involves brands including Gevalia, Maxwell House and Nabob. Each has a code ending with 11213 through 12020 and was sold in stores and online from August 2011 through February for $8-$11 per package. Consumers should stop using the discs immediately and contact the seller for a refund.

**DESIGNS DIRECT RECALLS ROOSTER-THEMED LAMPS DUE TO RISKS OF SHOCK AND FIRE**

Designs Direct, of Covington, Ky., has recalled about 2,000 Living Traditions 21-inch Rooster Lamps. The electrical cord can fray near the base of the lamp, posing a fire or shock hazard to consumers. This recall involves Living Traditions 21-inch rooster-themed lamps. The brown polyresin lamps have an off-white shade and a carved nine-inch rooster affixed to the base. A label on the underside of the base reads “Distributed By Fred’s Inc” and “SKU 61589.” The lamps were sold exclusively at Fred’s Inc. stores nationwide between October 2011 and November 2011 for about $20. Consumers should immediately stop using the recalled lamp and contact Designs Direct for a refund. For more information, contact Designs Direct toll-free at (888) 770-7062 between 7 a.m. and 6 p.m. CT Monday through Friday or visit its website at www.regcen.com/roosterlamp.

**GANZ RECALLS DANCING TEAPOTS DUE TO BURN HAZARD**

Ganz U.S.A. LLC, of Cheektowaga, N.Y., has recalled its dancing teapots. This includes about 2,100 in the United States and 170 in Canada. The teapot’s handle can get extremely hot when there is hot water in the teapot, posing a burn hazard to consumers. This recall involves Ganz ceramic teapots that are tilted to appear as if they are dancing. Only 32-ounce teapots that measure about 10 inches tall and 8 inches wide are included in this recall. Recalled teapots have SKU number “ER19252” and UPC “661371626062” printed on a sticker on the bottom of the teapot. They were sold in the following colors: blue, yellow, green, orange, pink and black. The teapots were sold at tea and coffee specialty stores, gift stores, drug stores, kitchen supply stores, hospital gift shops and other retailers nationwide from December 2011 through January 2012 for about $30. Consumers should stop using the
re-called teapots immediately and contact Ganz for instructions on returning the teapot for a full refund. For additional information, contact Ganz at (800) 724-5902 between 9 a.m. and 7 p.m. ET Monday through Thursday, and between 9 a.m. and 5 p.m. ET on Friday, or visit its website at www.ganz.com.

**Children’s Slides Recalled by Landscape Structures Due To Fall Hazard**

About 900 Slalom Gliders have been recalled by Landscape Structures Inc., of Delano, Minn. The Slalom Glider is a playground slide that lacks a transition platform on the top and sides of the chute. Children can fall when moving from the ladder to the slide and when descending the chute. CPSC and the firm have received 16 reports of injuries to children under eight years old, including one bruised arm, 14 fractures to arms and legs, one fractured collar bone and one bruised spleen. The Slalom Glider is a distinctive six-foot high playground slide that is curved in shape and made from molded plastic. It includes an arched, tubular steel access ladder. The recalled product comes as a stand-alone slide or as an attachment to other playground equipment. The recalled products have model numbers 156456 and 172627 and were sold in combinations of colors, including red, blue, tan, green, granite and white.

The gliders were sold to schools and other facilities with playground equipment nationwide between January 2006 and December 2011 for about $2300. Consumers should immediately stop children from using the recalled gliders. Owners will be contacted by Landscape Structures regarding removal instructions. Customers will be given the option of replacing the Slalom Glider with another piece of playground equipment, receiving a refund, or receiving credit towards a future purchase. For additional information, contact Landscape Structures toll-free at (888) 438-6574 Monday through Friday between 9 a.m. and 4 p.m. CT, or visit its website at www.playlsi.com.

**Bumbleride Recalls Indie & Indie Twin Strollers Due To Fall Hazard**

About 28,000 Bumbleride Indie & Indie Twin Strollers have been recalled by Bumbleride Inc., of San Diego, Calif., in the United States. An additional 2,700 were sold in Canada. The front wheel can break at the axle hub, causing the stroller to tip and posing a fall hazard. There have been 36 incidents of the front wheel cracking, including two reports of the stroller tipping over resulting in minor injuries. The recalled Bumbleride Indie strollers are model numbers I-107, I-110 and I-205 with a DOM (Date of Manufacture) from January 2009 through August 2011 sold in multiple colors. The DOM (Date of Manufacture) can be found on a white rectangular sticker affixed to the side of the seat frame. The recalled Bumbleride Indie Twin strollers are model numbers IT-108, IT-111, and IT-305 with a DOM (Date of Manufacture) from January 2009 through August 2011 sold in multiple colors. The DOM (Date of Manufacture) can be found on a white rectangular sticker affixed to the underside of the handle.

The strollers were sold by Buy Buy Baby and other baby product stores nationwide online at BuyBumbleride.com, and other online retailers between January 2009 and January 2012 for between $500 and $700. Consumers should immediately stop using the recalled strollers and contact Bumbleride to receive a free front wheel retrofit kit. For additional information, visit the company’s website at www.support.bumbleride.com or contact Bumbleride at support@bumbleride.com or at (800) 530-3930 between 8 a.m. and 4 p.m. PT Monday through Friday.

To avoid the risk of strangulation to children, owners of Indie models (I-110, I-205) and Indie Twin models (IT-111, IT-305) with an adjustable bumper bar should never set the bar in the intermediate (car seat) position when a child is seated in the stroller. For more information, visit http://www.bumbleride.com/updates/?p=2175 or call (800) 530-3930.

**Tumblekids Toys Recalled by International Playthings Due To Choking and Laceration Hazards**

International Playthings LLC, of Parsippany, N.J. and Lishui Treetoys Trading Co. Ltd., of China, have recalled about 31,000 Tumblekins Toys. The toys can break into small pieces with sharp points, posing choking and laceration hazards to children. The firm says it has received one report of a toy breaking into small pieces. No injuries have been reported. This recall involves all Tumblekins toy vehicles and playsets, including the farm playset, fire station, police car, roadster, off-roader, fire truck and school bus. The toys are wooden, and painted in bright colors. The toys range from 6 to 12 inches long and 4 to 9 1/2 inches tall. “Tumblekins,” “Made in China” and manufacturing code “171111461502” or “346101461502” are printed on the toys. The item number and UPC are printed on the toy’s packaging. If you need this information contact Shanna Malone at Shanna.Malone@beasleyallen.com.

The toys were sold by juvenile product stores, mass merchandisers and other stores nationwide and on various websites from March 2011 through December 2011 for between $14 and $35. Consumers should take the recalled toys away from children immediately and contact International Playthings to receive a free replacement toy. For additional information, contact International Playthings at (800) 445-8347 between 8 a.m. and 5 p.m. ET Monday through Friday, or email them at recall@intplay.com.

**Weeplay Kids Recalls Infant Bodysuits Due To Choking Hazard**

About 128,000 Carter’s Watch the Wear Bodysuits and Sleep ‘n Play Garments by Weeplay Kids LLC, of New York, N.Y. have been recalled. The snaps can detach from the fabric of the garment, posing a choking hazard to infants and young children. The company has received approximately 30 reports of snaps detaching from the garments. No injuries have been reported. This recall involves H.W. Carter & Sons/Carter’s Watch the Wear bodysuits and sleep ‘n play one-piece garments. “Carter’s Watch the Wear” is printed on the front of the package and on the inside neckline.
The garments are pastel blue, pink and yellow, and packaged as solids, stripes and patterns. They are sold in packages of two, three or five. The style numbers are located on the rear of the packaging.

They were sold by Big Lots, Century 21, Conway, Cookies, Cost Mart, DD’s Discount, Edison Childrenswear, Gabriel Bros., Kiddy Time, Kids Place, Kidstown, National Stores, Pamida Stores, Real Value, Regine’s, R.H. Reny, Ross, Shoppers World, Valley Wholesale, Variety Wholesalers and Youngland stores nationwide. Recalled garments sold from November 2010 through August 2011 for about $4 to $9. Consumers should immediately discontinue use of garments and contact Weeplay to receive free replacement garments. For additional information, consumers should contact Weeplay toll-free at (888) 226-2200 between 9 a.m. and 5 p.m. ET Monday through Friday or by e-mail at info@weeplaykids.com.

**All Infant Tylenol Being Recalled**

Johnson & Johnson has recalled all infant Tylenol off the U.S. market because some parents have had problems with redesigned bottles, introduced four months ago, that the company touted as a big safety improvement to make measuring doses easier. Instead, 17 parents or caregivers have complained that a protective cover on the top of the bottles didn’t work correctly. It’s meant to limit how much of the liquid pain and fever reducer can be drawn into a plastic syringe. But when those consumers inserted the plastic syringe, it pushed the protective cover, or flow restrictor, into the bottle.

J&J’s McNeil Consumer Healthcare unit, which has had about 25 product recalls since September 2009, recalled all 574,000 bottles of grape-flavored liquid Infants’ Tylenol from stores nationwide. Infants’ Tylenol is one of the first nonprescription medicines reintroduced after all the recalls and an ongoing factory shutdown have kept most McNeil medicines off the market, some for nearly two years.

The company said customers can continue to use the infant Tylenol if the bottle’s flow restrictor remains intact. If not, they can request a refund by contacting McNeil at 1-888-222-6036 or www.tylenol.com. While babies are particularly vulnerable to excessive doses of medicine, J&J said there have been no reports of anyone being harmed.

The new infant Tylenol bottle comes with a plastic syringe that’s to be inserted into the flow restrictor at the top to help measure the right dose. The syringe has an opening in the tip but no needle. Consumers are to insert the tip of the syringe into the flow restrictor, turn the bottle upside down and then draw out the right dose using the milliliter markings on the syringe. That’s then squirted into the baby’s mouth. McNeil changed the design to make it easier to get the dose right and to limit spillage if the bottle is knocked over, according to a McNeil spokeswoman.

The prior version had an open-topped bottle and a dropper with a flexible bulb at the top, similar to a turkey baster. McNeil is part of the consumer health business segment at J&J, which is based in New Brunswick, N.J. The company’s prescription drug and medical device divisions each have issued at least two recalls in the last couple of years. Reasons for the recalls have included nauseating package odors, small glass or metal particles in liquid medicines and wrong levels of active ingredients.

**Pfizer Recalls Lo/Ovral and Norgestrel Birth Control Pills**

Pfizer has recalled 28 lots of two kinds of birth control pills because some of the blister packs might contain an inexact count of inert or active ingredients and the tablets might be out of sequence. The company said 14 lots of Lo/Ovral-28 (norgestrel and ethinyl estradiol) Tablets and 14 lots of Norgestrel and Ethinyl Estradiol Tablets (generic) were distributed to warehouses, clinics and retail pharmacies in the United States. About one million packets are involved in the recall.

The tablets were manufactured and packaged by Pfizer Inc., marketed by Akrimax Rx Products and labeled under the Akrimax Pharmaceuticals brand. “As a result of this packaging error, the daily regimen for these oral contraceptives may be incorrect and could leave women without adequate contraception, and at risk for unintended pregnancy.” Pfizer says the packaging defects do not pose any immediate health risks. Consumers exposed to affected packaging should begin using a non-hormonal form of contraception immediately, according to Pfizer. Patients who have the affected product should notify their physicians and return the product to the pharmacy.

These products are packaged in blister packs containing 21 tablets of active ingredients and seven tablets of inert ingredients. Correct dosing of this product is important in avoiding the associated risks of an unplanned pregnancy. Anyone suffering an adverse event related to the use of these products should report it to Akrimax Medical Information at 1-877-509-3935 (8 a.m. to 7 p.m. Central time, Mon-Fri) or to FDA’s Med Watch Program, which can be found online.

**Minnesota Food Company Recalls Eggs In 34 States**

A Minnesota food company has recalled more than a million hard-cooked eggs distributed to 34 states after testing revealed some may be contaminated with listeria. Some 15,000 pails of eggs in brine, sold for institutional use, are being recalled by Michael. The U.S. Food and Drug Administration said the eggs were produced at the company’s plant in Wakefield, Neb., and were bought by food distributors and manufacturers and not sold directly to retailers. There have been no reports of illness connected to the eggs, according to the agency.

Lab testing by a third party revealed that some eggs may have been contaminated and the company determined that a repair project in a packaging room was the likely source of contamination. More than a million eggs are being recalled. Michael Foods says it has taken a number of corrective steps to address the issue and prevent recurrence.

Listeria can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. Although healthy people may suffer only short-term symptoms such as high fever, severe headache, stiffness, nausea, abdominal pain and diarrhea, the infection can cause...
miscarriages and stillbirths among pregnant women.

The eggs are sold under six brand names: Columbia Valley Farms; GFS; Glenview Farms; Papetti’s; Silverbrook; and Wholesome Farms. The states included in the recall include: Alabama; Arkansas; Arizona; California; Colorado; Florida; Georgia; Iowa; Illinois; Indiana; Kansas; Kentucky; Louisiana; Michigan; Minnesota; Missouri; Mississippi; Montana; North Carolina; North Dakota; Nebraska; New Jersey; Nevada; Ohio; Oklahoma; Oregon; Pennsylvania; South Carolina; Tennessee; Texas; Utah; Washington; Wisconsin; and West Virginia.

**Walmart Crullers Recalled Due To Missing Milk Ingredient On Label**

Walmart has recalled packages of cruller bakery pastries because the word “milk” was not listed following the words “sodium caseinate,” a milk derivative, on the ingredient label. People who have milk allergies and do not recognize sodium caseinate as a milk derivative run the risk of serious or life-threatening allergic reactions if they consume it, according to the U.S. Food and Drug Administration. One adverse reaction has been reported by a customer, according to Walmart.

All stores affected by the recall have been notified to remove and discard the mislabeled products. Corrective action has been taken to ensure all current and future products are properly labeled to reflect the common name of milk as an ingredient. Customers with questions about this recall may call the Walmart Customer Service at 1-800-Walmart (1-800-925-6278) or return the product to their nearest store for a full refund.

The eight-count packaged bakery items affected by this recall have a UPC code of 787429847 which can be found on the box label. The items affected by this recall have expiration dates of on or before Feb. 9, 2012. The pastries can be recognized as a ring-shaped twisted sweet cake similar to a doughnut. The products were labeled and sold in Walmart store bakeries in Puerto Rico and all US states with the exception of Hawaii, Maine, New Hampshire, Rhode Island and Vermont. For more information, contact the Walmart Customer Service at 1-800-Walmart (1-800-925-6278) or return the product to the nearest Walmart store for a full refund.

Once again, there have been a good number of recalls since the February issue and we were unable to get them all in this issue. If you need more information on any of the recalls listed above, or would like information on a recall that you are aware of that we haven’t listed, please visit our firm’s web site at www.BeasleyAllen.com/recalls. We would also like to know if we have missed any significant recall that involves a safety issue this month. If so, please let us know. As indicated at the outset, you may also contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information.

**XXIV. FIRM ACTIVITIES**

**EMPLOYEE SPOTLIGHTS**

**MATT TEAGUE**

Matt Teague, a lawyer in our Mass Torts section, joined the firm on March 1, 2011. Since coming on board, Matt has been heavily involved in the firm’s Hormone Replacement Therapy litigation, representing women who have been diagnosed with breast cancer as a result of ingesting combination hormone medications. Matt played an integral part on the Hormone Therapy trial team that recently won a $72.6 million verdict on behalf of three plaintiffs in Philadelphia who took HRT drugs and later developed breast cancer.

Prior to joining the firm, Matt practiced law in both Birmingham and Montgomery, where he worked as a solo-practitioner and gained invaluable trial experience. Matt handled a wide range of cases involving fraud, personal injury and motor-vehicle accidents, and breach of contract claims in state and federal courts. Prior to entering into private practice, Matt served as law clerk to the Honorable William H. Thompson, Presiding Judge of the Alabama Court of Civil Appeals.

Matt is a graduate of the Cumberland School of Law and earned his undergraduate degree from the University of Alabama. Matt was a member of the University of Alabama football team from 1994 to 1998 and played for Hall of Fame Coach Gene Stallings. Matt was named to the Academic All-Southeastern Conference honor roll in 1996.

Active in both professional and charitable organizations, Matt served two terms as an elected member of the Birmingham Bar Association’s Young Lawyers Executive Committee and has served as a volunteer committee member for various Cystic Fibrosis Foundation fundraising events. Matt is married to the former Erin Stiebing. They are proud parents of three boys, Meagher, Miller and Butler. Matt is a very hard worker, who is dedicated to the cause of justice, and to representing his clients. We are fortunate to have Matt with us.

**JULIE GRIMES**

Julie Grimes is the firm’s accounting manager, which is a most important position. It’s an extremely challenging job and one that requires a talented and knowledgeable person. Julie certainly fits that description. She came to work for the firm in 1994 and has served as our Accounting Manager since 1997. Julie supervises seven employees in her department and does an outstanding job in that role. Julie graduated from Troy University in 1979.

Julie is married to Keith Grimes and they have four children: Celeste, Katie, Chris, and Casey. They also have five grandsons: Chael, Will, Sean, Jake, and Cade, and one great granddaughter, Olivia Claire. Julie and Keith enjoy traveling and they are currently attempting to visit as many different islands in the Caribbean as possible. They have plans to visit two more islands this year. Julie also enjoys quilting and cooking. Julie is a very good employee who does excellent work. We are blessed to have her with us.

**ASHLEY PUGH**

Ashley Pugh, who has been with our firm since November of 1999, is currently the Litigation Technologist for the Consumer Fraud Department. Ashley assists our lawyers and their legal assistants with their trial preparation and provides them with cutting edge electronic courtroom technology. She also assists with seminar and mediation presentations. Her current projects include Medicare fraud litigation in numerous states, including Alabama, Louisiana, Alaska and Mississippi and several other class-action lawsuits. Ashley also takes a very active role in assisting her department with case discovery and is always willing to lend a helping hand.

Born and raised in Montgomery, this dedicated employee is the former Ashley Age. Her parents, Wayne and Mary Frances Age, and brother, Stephen, still reside in Montgomery. Stephen welcomed his first child, Ryleigh, last March. Ashley is married to
Patrick Pugh and they currently reside in Mathews. Patrick works at Knox Kershaw as a Manufacturing Engineer and is the Captain of the Mathews division of the Pike Road Volunteer Fire Dept. They have one son, J.P., who is eight years old. J.P is in the 2nd grade at Macon East Academy.

In their spare time, Ashley and Patrick are very active in supporting the Alabama Boys and Girls Youth Ranch and several other charities through the local motorcycle chapter they ride in. They also participate in hunting, farming, and baseball. The Pughs also enjoy spending time relaxing with their family and friends. Ashley, a very good and dedicated employee, works hard and also does excellent work. We are fortunate to have Ashley with us.

XXV.
SPECIAL RECOGNITIONS

SENATOR WENDELL MITCHELL WAS A DEDICATED PUBLIC SERVANT

My longtime friend Wendell W. Mitchell passed away last month following an extended illness. Wendell's life was characterized by a life of public service, having served the 30th District in the Alabama Senate for 28 years. He was devoted to higher education, having served Faulkner University as a board member, Law Professor and Dean of the Thomas Goode Jones School of Law.

Wendell was born in Montgomery, but grew up in Luverne. He received a bachelor's degree from Auburn University and a Juris Doctor from the University of Alabama. Wendell served as the Chief of Staff to both Alabama Congressman Tom Bevil and later to United States Senator Jim Allen. In 1974, Wendell won the State Senate seat for the 30th District and served his district with this slogan, "I'll go with you or I'll go for you." He earned the nickname "Walking" Wendell for walking from Dothan to Montgomery during a race early in his political career.

As one of the most longstanding members of the Alabama Senate, Wendell served as the Deputy President Pro Tempore of the Senate from 2007-2010. During his legislative career, he chaired or served on almost every committee in the Senate, ending his career as the chairman of the standing committee on Governmental Affairs. Wendell was named "Legislator of the Year" by numerous organizations, and he was chosen six times by his peers to serve as Alabama's chief spokesman in the Southern Legislative Conference and the Council of State Governments, two of the leading national legislative organizations.

Wendell was an active member of the Luverne Church of Christ and later, Vaughn Park Church of Christ where he served as a Sunday School teacher of the "Auditorium Class" for a number of years. The Crenshaw County native will be missed by his many friends. He was a good man and a true public servant.

THE DEATH OF JOCK SMITH LEAVES A VOID IN THE LEGAL COMMUNITY

The death of Jock Smith, who was a partner with the late Johnnie L. Cochran Jr., has left a void in the legal community. Jock was a lawyer who had a passion for representing people he called "the least of these." Born in 1948, Jock grew up in New York, where his late father, Jacob Smith, was a lawyer. In 1970, Jock graduated from what is now Tuskegee University. He earned his law degree from the University of Notre Dame and spent a year in New York as a lawyer.

Jock returned to Alabama in 1974 to work in the state Attorney General's office. He left state service in 1977 to open his law practice in Tuskegee. Jock became friends with Johnnie Cochran in 1996 and later became his law partner. Eventually Jock, to nobody's surprise, became president of the Cochran Firm. Jock's death leaves a void in the legal community. He will be missed!

LOUISIANA SIKORSKY HELICOPTER CRASH CASE

Last month we wrote about the case our firm worked on involving a helicopter crash that happened in Louisiana. We represented the family of the pilot who was killed in the crash. Our case was filed and pending in Federal Court in Montgomery, Ala., when it was settled. There were seven others on the helicopter, a co-pilot and six passengers. Only one passenger survived and he was badly injured and is now totally disabled.

We now have permission to write about the outstanding work done by the lawyers on behalf of the other victims whose cases were in a New Orleans federal court. In the early stages of this litigation, there was an agreement between all of the law firms that all discovery would be shared in both venues and that any pretrial disputes would be handled by Judge Carl Barbier, a federal judge in New Orleans. This was a good decision and there has been excellent cooperation between all of the lawyers representing Plaintiffs in the separate cases.

The lawyers representing Plaintiffs in Louisiana, led by Paul Sterbcow and Ronnie Penton from New Orleans, played a huge role and were instrumental in prosecuting the cases on behalf of the Plaintiffs. The assistance from Ross Cunningham, a lawyer representing PHI, the owner of the helicopter, also was very important to all of us. We were impressed by the wisdom, and talent, as well as the dedication of these lawyers in pursuing their cases. It was a true pleasure to work with these lawyers, each of whom worked tirelessly in this important litigation. Proving the defects in the Sikorsky helicopter was truly a team effort and the work by the Louisiana lawyers was critically important to the overall undertaking.

As we mentioned in our previous article, which related only to our individual case, this was a long, hard-fought battle on behalf of the families of the victims of this crash. Many of the key victories took place in the New Orleans court. One such victory deserves a closer look. Paul and the other New Orleans lawyers were relentless in their efforts to force Sikorsky to comply with document production requests. This resulted in hundreds of thousands of pages of documents being produced. All of these documents were essential in understanding the various technical issues in the case. The excellent work by all lawyers representing clients in this litigation is a terrific example of teamwork and how lawyers can work together to achieve a common goal.

In a public interview regarding his efforts and those of Ross Cunningham, the PHI lawyer, in collecting the missing documents, Paul had this to say:

Since September 2009 we [have] continued to ask Sikorsky to produce documents relevant to the crash, including any and all documents relevant to analysis testing, anything the [company] did internally to determine why this happened, and additionally to identify any witnesses who participated in, or have knowledge of, such testing. Sikorsky has all of this data internally and it just sat on it. I guess they thought we weren't going to catch them. All Sikorsky had to do was download its data from a hard drive. Had it given us the data, we could have saved a tremendous amount of time, and I allege over $600,000 in expert expenses. We had to pay our experts to recreate the data and the testing that Sikorsky
already bad and just didn’t give to us. Our experts had to do complicated computer simulations of this crash. Our experts re-invented the wheel while Sikorsky was basically holding onto it.

Paul characterized an internal Sikorsky report, obtained during a deposition, as particularly damning. He points out that the report concluded two major things: that the sill canopy structure of the helicopter likely failed before the windshield did, which is significant. The second thing Sikorsky concluded is that it takes very little force on the canopy sill, where a bird hit the helicopter, to move the engine control levers out of fly far enough that both engines suddenly and simultaneously fail. This helicopter has a unique throttle quadrant design; there is not another one like it. Their experts came up with that.

This was a tragic loss, but everyone involved should be proud of the effect these cases will have on aviation safety. The NTSB concluded that the helicopter’s sudden loss of power was caused by the hawk strike near the engine control quadrant. The impact jarred the fire extinguisher T-handles into the engine control levers and pushed the levers toward the flight-idle position. The Board recommended stricter helicopter windshield bird-strike resistance standards and additional protection for the fire extinguisher T-handles and engine control quadrants for the S-76C++ and similarly configured helicopters.

Lawyers working on the cases in Louisiana were Ross Cunningham, Ronnie Penton, Benny Agosto, Jr., Brian Sherman, Charles Norris, Duke Williams, Fidel Rodriguez, Jr., John Denenea, John Charrrier, Jr., Michael Samanie, Nick Nichols, Paul Sterbcow, Richard Putnam, Jr., Richard Mithoff, Scott Bickford, Stephen Stipelovich, and William Dodd. All of them did a tremendous job for their clients. We appreciate their efforts and it was a real pleasure to work with such good, dedicated lawyers.

If you have further questions about this case or about helicopter crashes in general, you can contact Paul Sterbcow at sterbcow@lksalaw.com or Greg Allen, in our firm at Greg.Allen@beasleyallen.com. Either of these lawyers will be happy to talk with you.

A Needed Resource For Alabama Citizens

Corky Pugh, who had a long and distinguished career with the State of Alabama, has formed a Foundation and Advocacy Group for Alabama citizens. At the end of a 35-year career as the head of Alabama’s Wildlife and Freshwater Fisheries Division, Corky established two non-profit corporations: the Hunting Heritage Foundation and H.U.N.T. Alabama (Hunter United Now and Tomorrow). The Hunting Heritage Foundation was created to build participation in hunting in Alabama and to educate the public about the values that accrue to natural resources and to society from sustained support for hunting.

Corky is dedicated and deeply committed to standing up for hunters, and he believes the Hunting Heritage Foundation will be a positive voice for hunting. Formed as an advocacy group to lobby in the Legislature for sound public policy on hunting issues, H.U.N.T. Alabama, is a grass-roots political organization, representing rank-and-file hunters across the state.

In 1937, Congress passed the historic Pittman-Robertson Act, otherwise known as the Wildlife Restoration Act. That Act dedicates a federal excise tax, collected from manufacturers of firearms and ammunition, for wildlife management purposes. These federal funds are available to the states to match state hunting license dollars on a basis of $3 in federal funds for each $1 in state funds for wildlife-related work carried out by the states.

Maintaining a broad base of hunters is critically important in continuing to provide funding for management and protection of wildlife resources. The formula for allocation of Wildlife Restoration dollars is essentially based on the number of hunting licenses sold in each state. Every individual licensed hunter, regardless of how frequently the licensee hunts, counts exactly the same for license revenues and matching federal funds.

Corky is serving as Executive Director of both non-profits. The following persons serve on the Board of Directors for each of the entities: Robert Almon, Tuscaloosa; Quincy Banks, Eufaula; Rebecca Pritchett, Birmingham; Ross Self, Gulf Shores; and Doug Smith, Minter. Corky had this to say when he announced the new endeavor:

2012 marks the 75th year that hunters have paid for wildlife management and protection. Yet, most people don’t even know about the Wildlife Restoration program and how it works. All Americans benefit in many ways from this hunter-funded program.

We wish Corky the very best in this endeavor. I can think of no better person to stand up for hunters and hunting rights than this man. Corky served our state extremely well and was dedicated to his work.

XXVI. Favorite Bible Verses

My longtime friend, Dr. John A. Kline, who teaches at Troy University, sent in a verse for this issue. John is a devoted Christian who walks the walk daily and a man who has been an inspiration to many folks.

But you are a chosen generation, a royal priesthood, a holy nation, His own special people, that you may proclaim the praises of Him who called you out of darkness into His marvelous light; 10 who once were not a people but are now the people of God, who had not obtained mercy but now have obtained mercy.

1 Peter 2:9-10

Trey Cary, who is an Associate Pastor at St. James United Methodist Church, sent in the following verse. Trey works with the young people at our church and does a tremendous job.

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

Matt. 22:36-40

Beverly Larkin, one of our employees, gave me the following verse. She said it’s one of her favorites.

Remain in me, as I also remain in you. No branch can bear fruit by itself; it must remain in the vine. Neither can you bear fruit unless you remain in me. I am the vine; you are the branches. If you remain in me and I in you, you will bear much fruit; apart from me you can do nothing.

John 15:4,5

XXVII. CLOSING OBSERVATIONS

PROFESSIONAL VALUES TAUGHT AT LAW SCHOOL

John Carroll, Dean of the Cumberland School of Law, makes sure students at the school understand fully the importance of being a lawyer and the obligations that they will have both in school and later in practice. John gave us permission to include a paper he gives to each new student when they enter the study of law at Cumberland. The following is the message John conveys to the students.

Lawyers Core Values

You today become a member of the legal profession. Membership in the legal profession:

• Is a privilege (that gives its members a monopoly on the provision of certain services and permits them to set the standards for entry into the profession);
• Carries obligations (to serve both one’s clients and the welfare of the greater community).

Among the obligations of being a member of the legal profession is adherence to certain core values that should define a lawyer’s behavior. These include integrity, service, competence and expertise, balance, and professionalism.

Starting today, you should begin to think about these core values and to display them in your actions as a law student, a lawyer, and a person. Throughout your career, you must continue to think about these values and how they relate to what it means to be a lawyer; and you should continue to develop them for the rest of your life.

Your application of these values will evolve as your career progresses and you take on different roles. Here are some quick thoughts on how they apply during your tenure as a law student here at Cumberland.

• BE HONEST & TRUSTWORTHY
  • Always be truthful.

• Avoid the appearance of impropriety.
• Timely perform tasks you undertake and be present at meetings and events you say you will attend.
• SERVE OTHERS
  • Engage in some service activity that benefits the community.
  • Join a group that supports issues that are important to you and work to make a difference.
  • Set a personal goal for a number of volunteer hours and achieve that goal.
• EMBRACE THE STUDY OF LAW
  • Prepare diligently and thoroughly for class and other academic endeavors.
  • Participate in discussions both in and outside of class with your professors and classmates.
  • Join extracurricular activities that will enhance your understanding of the law and the profession (such as journals, competitions).
• PRACTICE PROFESSIONALISM
  • Attend speaker programs and symposia.
• RESPECT OTHERS
  • Take responsibility for your actions.
  • Always take the high road.
  • Take pride in your profession.
• FIND BALANCE
  • Measure your success by more than your grades.
  • Find time for family, friends, and pets.
  • Do something that improves your well-being.

It’s real good to know that this message is conveyed to the students at Cumberland. It wouldn’t hurt for all practicing lawyers—young and old—to read what John had to say, especially the part on professionalism.

THE BEST AND WORST OF SUPER BOWL XLVI

I will confess up front that I am not a big fan of professional football. In fact, the only games I usually watch during the season are when those teams make the playoffs. I do watch the Super Bowl each year and always look forward to seeing what the commercials will be like. The Super Bowl has become the most promoted sporting event of the year and some times the game doesn’t live up to the promotions. But the game on the field this year was a good one and one that was certainly worth watching.

The New York Giants and New England Patriots played well enough to keep folks watching until the last play of the game. Interestingly, the winning touchdown was uncontested and was one that shouldn’t have even been made. The Giants wanted the ball for a final chance at victory. Most thought the Giants would run the clock down and kick a game-winning field goal in the last seconds. But the Giants’ running back gave New England a chance since he scored with about a minute left on the clock. As a result of his performance in the game, Eli Manning proved that he belongs among the elite when it comes to NFL quarterbacks.

The Super Bowl has become a daylong event with everything involved in the broadcast—from the game itself to all of the other elements put together by the public relations and marketing folks—designed to sell “something” or “somebody.” Actually, it’s about as much non-stop TV as a person can endure in one day. I am told by some of my friends in marketing that a good percentage of viewers watch the Super Bowl largely because of the commercials. I have to confess that I can’t always figure out exactly what some of the commercials are attempting to sell. Nor am I always able to understand the message intended to be conveyed by some of the ads.

The half-time shows, over the years, have become quite interesting to say the least. I’m not exactly sure which audience the producers were trying to reach this year with the half time show, featuring Madonna, which was almost as long as the game itself. Many believe the show this year to have been one of the worst so far. Even so, the corporations that paid for the commercials must have believed the costs of the show would bring in huge returns. I watched the Hyundai ad since it involved talent and have to shock their audiences with tasteless and often vulgar antics. Perhaps during one of the future Super Bowl XLVIs, that is something that will be the exception rather than the rule. While watching the Super Bowl, I was interested to see how much of what we have come to expect from today’s half-time shows would be like.
Bowls, there will a half-time performance with really good performers and a good message.

**A Monthly Reminder**

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

2Chron7:14

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

**XXXVIII PARTING WORDS**

As we approach Easter Sunday, it’s important for each of us to place special attention on the significance of Easter. Oftentimes we get caught up in the commercialization of the season, and as a result, we don’t place the proper emphasis on the real meaning of Easter for us. For centuries, the most recognized verse in the Bible has been John 3:16 which reads: “For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish but have everlasting life.” That statement is one of God’s promises to all of us and it’s a critically important one. We can choose to believe it or not believe it. It’s really that simple—there’s no in between—and that’s the truth. Personally, I do believe it.

Jesus died on a cross to take on the sins of the world and those of each one of us. But Jesus’ death on that cross, without the following resurrection, would have no real meaning. In reality, this is what Easter is all about. When I surrendered my life to Jesus, it was a life-changer for me. It was the most important decision I have ever made and it’s the most important decision that any of us can ever make.

My hope and prayer for each of our readers is that if they haven’t already done so, each will make a personal decision to accept Jesus as their Lord and Savior. The decision has to be a personal one, because unfortunately, no one can make it for us. My mother told me years ago, when I was a young fella, that “you can lead a horse to water, but you can’t make him drink it.”

Certainly, that applies to our salvation. It’s as personal a decision as one can ever make. It’s also a very simple concept—either we accept Jesus as our Savior and have eternal life—or we choose to reject Him and we will perish. I don’t want any of my friends and family to perish. In fact, I feel the same way about all persons, including folks I don’t even know and also about those who are considered to be my enemies. As we approach Easter, I hope what I have written in this issue will help make a difference in somebody’s life.

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.

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