I. CAPITOL OBSERVATIONS

BINGO TRIAL ENDS WITH NO CONVICTIONS

It came as no real surprise that there was not a single guilty verdict in the State House Bingo Trial that ended last month in Alabama. In fact, each of the six remaining Defendants was found not guilty by a jury. This was the second trial in the costly and highly political ordeal which lasted for over two years. Sadly, the cost to taxpayers was at least $35 million to prosecute this case. Based on the testimony presented by the government during each of the two trials, it’s quite evident that the charges against the defendants were baseless and ill-advised.

Everything that surfaced during the two trials dealt, directly or indirectly, with conduct that certainly appeared, under existing law, to have been legitimate campaign contributions. Many observers believe the criminal charges were politically inspired and that the investigation and prosecution were designed and timed in a manner to help the Indian gambling facilities gain a total hold on their territory in Alabama. Some even say the prosecutions helped the Indians in Mississippi, but that is purely speculation at this point.

Joe Espy and his team of Defense lawyers whipped the federal prosecutors at every turn and in every way imaginable. In fact, I don’t believe I have ever seen a worse courthouse and public relations whipping. Joe’s performance, in and out of the courtroom, was as good as it gets. All of the lawyers for the Defense did extremely well according to folks who sat in on the trials. The word around the Capitol is that at least one person is already writing a book about the trials and all that led up to them. That should be most interesting.

All Alabamians should hope that something good will come as a result of the bingo battles. Perhaps, the situation that led to the wire-taps, the indictments and two lengthy trials could have been avoided had the leaders in state government at the time pushed harder for real campaign finance reform. While it’s quite obvious that there was never a basis for any criminal charges, there certainly is a need to clean up our campaign finance laws.

Hopefully, those now in charge of the Alabama Legislature will see fit to pass some meaningful campaign finance reform. A good place to start would be to limit the amounts any person or political action committee can donate to a candidate for statewide office or to a person running for legislative office. Also, restricting the expenditures by third-party groups in state elections would help clean up a broken system. Regardless of what the Republican-controlled Alabama Legislature does, or fails to do, you can rest assured that most Alabamians are glad the criminal trials are finally over. Lots of folks, including the families of the Defendants, were unjustly hurt by the events surrounding the prosecutions. That’s the shameful part of the debacle.

THE ADVERSE EFFECTS OF PRORATION IN ALABAMA

Alabama is now facing proration in the state’s General Fund and that is something that no Governor wants to deal with. I am sure Gov. Bentley will agree with that assessment. His having to declare proration in the state’s general fund—amounting to a 10.6% cut in spending—will hurt the people of Alabama badly. As Capitol observers know, the Governor inherited a fiscal mess. It must be noted that this cut in funds is over the rest of the current fiscal year. As a result, the effect of the cuts will be much worse than the stated 10.6%. This is because the cuts will be spread over the last six and a half months of the 2012 fiscal year. That means the cuts will have a doubling impact—over 20% in reality and that’s a devastating and crippling blow.

Unfortunately, proration will likely lead to laying off state employees in large numbers. Remember we are talking about agencies including Medicaid, Human Resources, State Troopers, Mental Health, and Public Health. Which of these agencies would be considered unimportant insofar as the delivery of services to the people of Alabama is concerned?

While the cuts for the current fiscal year are certainly very bad and will hurt badly, next year’s General Fund budget will be a total disaster. Senator Arthur Orr, who heads up the General Fund budget committee in the Senate, observed: “This is a significant shock wave in a series of shock waves that are going to occur across state government today and in the months ahead.” Senator Orr is in a position to be fully aware of how bad things will be in the next fiscal year.

Next year’s General Fund revenues are projected to total about $1.36 billion. That is primarily because the windfalls that were plugged into this year’s budget won’t be available next year. The expected spending in this year’s General Fund was $1.92 billion before proration. After prorations, it will total $1.73 billion and that assumes a $45.3 million supplemental appropriation for prisons if it is approved.

We are in deep trouble in Alabama from a fiscal perspective and are now paying for past sins in state government. I had hoped our political leaders would come to realize that additional revenues are badly needed in state government. But it appears that there will be no attempt to raise any additional funds. I fear that some will regret taking the “ostrich approach” when it comes to dealing with the financial affairs of state government. We simply can’t allow our state to be run any longer without some badly needed revenues. If the pro-
posed cuts hurt as deeply as many project they will, the people of Alabama will demand that a different approach be taken to solving the state’s fiscal problems.

**MY VIEWS ON THE NEED FOR SEPARATION OF CHURCH AND STATE**

There has been a great deal of discussion in the GOP presidential primary battles relating to the separation of church and state. Most all that has been said on the subject by three of the candidates appears to have been for their own political gain. If the truth were known I’m not sure any of those candidates wants to defend their real position on this subject. Regardless of an individual’s personal convictions, there clearly is a need for separation of church and state. A good example of why it’s so important can be found in the words of James Madison, who has been called the “Father of the Constitution.” Madison, who served as the fourth President of the United States, writing on the subject in 1822, had this to say:

*Every new and successful example, therefore, of a perfect separation between the ecclesiastical and civil matters, is of importance; and I have no doubt that every new example will succeed, as every past one has done, in showing that religion and government will both exist in greater purity the less they are mixed together.*

I firmly believe that the religious and spiritual beliefs of a person mold that person’s thought process as well as their conduct. That includes the conduct of persons who are elected to public office. But I also believe there has to be a clear division between spiritual beliefs and the convictions that accompany those beliefs and the imposition by elected officials of their religious beliefs and convictions on their fellow citizens. That certainly applies to the person elected as President of the United States. Most all Presidents, including George Washington, Thomas Jefferson and even Ronald Reagan, saw the need to have a wall of separation between church and state.

Let’s suppose that the American people were to elect Mitt Romney as President this fall. In that unlikely event, I suspect there are some who wouldn’t want him to force his Mormon religion on the American people. But you could also say the same for the religions of the other candidates. President Madison’s observation is still sound advice and I believe we should listen to the real meaning of what he said almost 200 years ago.

**CHARTER SCHOOLS ARE NOT THE ANSWER TO THE PROBLEMS IN PUBLIC EDUCATION**

Gov. Robert Bentley and the GOP leadership in the Alabama Legislature are pushing hard for the creation of charter schools in the public school system. They claim charter schools will give more power to local school officials and that their creation will bring about more accountability from school districts. I haven’t read the proposed legislation that must be passed in order for the concept to go forward. But I do have a general understanding of the concept of charter schools. I have great difficulty comprehending how creating charter schools in Alabama can really improve the overall quality of public education in our state. In fact, it may have the potential to do great harm to a system that badly needs to be supported.

When you consider how we have neglected the public schools in Alabama over the years—and how the entire state has suffered as a result—it doesn’t really make sense to consider the charter school approach as the solution to the major problems we currently face in education. First of all, we have never adequately funded public education in Alabama. Neither have we established priorities for the spending of the funds that were appropriated by the Legislature. Some say we have never demanded real accountability from those responsible for running the various segments of the overall system of public education. That may be true. In any event, I really can’t see charter schools as any real answer on the accountability issue. Perhaps the concept of charter schools reminds me too much of something called “Freedom of Choice,” which was proposed at that time to be good for public education, and was pushed by some politicians several years back, for me to support it.

A prime example of how neglect of the public schools badly hurts a community can be found right here in the Capital City. If the citizens in Montgomery County, over the years, had demanded better and stronger public schools, rather than building a private school system that has pulled both students and funding from the public schools, we would be in much better shape today, economically and socially, in Montgomery.

I may be in the minority, but I believe adequate funding and strong leadership by those in positions of authority—combined with total support by private citizens—can bring about the changes needed in our current system. We already have dedicated teachers who can get the job done. It’s our responsibility to support them and the children they are responsible to teach. Hopefully, that will happen soon. I just don’t see charter schools as the answer.

**IMPACTS OF THE AFFORDABLE CARE ACT**

As this issue was being sent to the printer, the U.S. Supreme Court was already at work taking up the appeal of the Patient Protection and Affordable Care Act. There has been a great deal said and written in the media and by the politicians about this Act. Since it was passed and signed by President Obama, it has certainly created a great deal of attention and much of it misguided. Unfortunately, much of what has been said has been totally or partially false. Some don’t realize that certain provisions have taken effect, while others still have two years before they take effect. I find that few people understand the law and that very few have even read a summary of its many provisions. Sadly, that may apply to lots of politicians who now oppose it. I have every reason to believe the Supreme Court rulings will be non-partisan and will follow the applicable law.

The American people have strong feeling on the Act. In a recent poll by the Kaiser Family Foundation, two in three Americans said they have yet to be affected by the law. In fact, only 14% said they have benefited and 21% said they have been affected negatively. The following are some provisions of the new law that might help those of us who haven’t read it:

- **Pre-existing conditions.** People uninsured for at least six months can join a new federal or state insurance plan. Children with pre-existing conditions must be covered.
- **Lifetime limits.** Insurers cannot impose lifetime dollar limits on essential benefits, such as hospital services. More than 20,000 people hit their lifetime limits in 2009.
- **Preventive care.** All new health plans must provide certain preventive services, such as mammograms and colonoscopies, without deductibles or co-payments. This affected about 54 million people in 2011.
- **Young adults.** About 2.5 million young adults without private insurance can stay on their parents’ plans until they turn 26.
Early retirees. Employers are eligible for federal assistance to provide health coverage to early retirees not yet eligible for Medicare.

Medicaid. States are eligible for federal aid to cover certain additional low-income individuals and families.

Small business tax credits. Up to 4 million small businesses are eligible for federal tax credits if they offer insurance coverage to their workers.

Health care costs. A study by Aon Hewitt estimates that the law raised costs by an average of 1.5% in 2011. Projection for 2012: 0.6%.

There are a number of provisions that will be effective in 2014 and beyond. Those include the following:

Insurance exchanges. Federal and state health insurance exchanges will offer a marketplace of insurance options for people without employer-sponsored coverage.

Individual mandate. Most people will be required to buy insurance or pay a penalty.

Pre-existing conditions. Insurers will be prohibited from denying coverage to anyone because of a pre-existing condition.

Annual limits. Insurers issuing group plans and new individual-market plans will be banned from imposing annual limits on essential benefits.

Medicaid. The program will be open to Americans with incomes up to 133% of the federal poverty level—now about $15,000 for individuals and $30,700 for a family of four.

Tax credits. People with incomes up to 400% of poverty—now about $44,680 for individuals and $92,200 for a family of four—will be eligible for tax credits.

 Newly insured. The Congressional Budget Office estimates that by 2016, the law will increase the number of Americans with health insurance by 30 million to 33 million.

I don’t pretend to be an expert on healthcare law. Neither do I consider myself a Constitutional scholar. But I do know that affordable healthcare should be available for all Americans and I also know that hasn’t been the case. Hopefully, the above information will assist our readers who are not familiar with the new law to gain a little bit of knowledge on the subject.

Majority Of Alabamians Want Changes In The Immigration Law

A majority of Alabamians support our state’s immigration law, but only 19% believe the law needs no changes, according to a recent poll that was made known on March 21st. Fifty-four percent of respondents said they favor the law, while 35% said they oppose it. The poll was done by Anzalone Liszt Research, a national public opinion and political consulting firm. It’s significant that more than half of voters statewide believe the immigration law needs changes. Nineteen percent of poll respondents said the law needs no changes and 13% believed it should be repealed entirely. I happen to fall in that latter group.

John Anzalone says a respectable majority of Alabamians favor the law, but that the percentage has likely narrowed in recent months because of intensive news scrutiny of the law on “things like the crop stories and farmers not being able to harvest.” The poll results did not differentiate the types of changes that voters want. John likens public opinion on the immigration law to views on federal healthcare reform. Folks have strong opinions, but might not know the specifics of what they want changed. John also says that significant numbers of both Democrats and Republicans polled said they favor changes and that “it really defies political party.” According to the poll:

- Sixty percent of independent voters prefer changes.

The immigration law has badly hurt our state in a number of areas. With all of the problems facing Alabama, it really makes me wonder why getting rid of folks in our state had to be such a top priority. Perhaps, if our elected leaders had spent as much time keeping drugs from crossing our borders from Mexico as they have on keeping folks out and sending those who are already here back, our country would be in a better shape.

Jefferson County Bankruptcy Is Bad For Alabama

Based on a recent court order, it appears that the Jefferson County bankruptcy is now going forward. U.S. Bankruptcy Judge Thomas Bennett issued an order last month stating that Jefferson County is authorized under Alabama law to file for bankruptcy. Lawyers for creditors had contended that Jefferson County was not eligible for bankruptcy. The question before the court was whether a city or county must have bond debt in order to be allowed under Alabama law to file for bankruptcy. Creditors including The Bank of New York Mellon (the indenture trustee for holders of the warrants issued to expand and improve the county sewer system) objected to the county’s petition to file for bankruptcy.

Judge Bennett denied the creditors’ objections and said in his order that any form of debt—bonds, warrants, promissory notes—can be the basis for an Alabama county to file for bankruptcy. Jefferson County has $4.23 billion in total debt including $3.14 billion in sewer debt. As a result, Alabama has earned a place in the record books, but it’s not a place to brag about. The case far eclipses the previous biggest municipal bankruptcy—a $1.7 billion filing by Orange County, Calif., in 1994—even when inflation is factored in.

Jefferson County’s enormous debt does not include bonds, Judge Bennett wrote. He also stated that the vast majority of the county’s debt is in the form of warrants. But the Judge, in his opinion, addressed various aspects of more than 80 years of Alabama state law concerning bankruptcy. He noted in his opinion that until a 2010 ruling in a case involving the City of Prichard, no court had restricted the application of the Alabama bankruptcy law “to only municipal entities that had bond indebtedness as of the date of the filing of a bankruptcy case.”
Judge Bennett ruled in his formal order that Jefferson County is a municipality, and is authorized under the laws of Alabama “to be a debtor under Chapter 9 of the Bankruptcy Code.” Judge Bennett wrote further that the county is “insolvent, desires to effect a plan of adjustment of its debt, and has negotiated in good faith with creditors and failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class intended to be impaired under a plan of adjustment of its debt under Chapter 9 of the bankruptcy code.” The creditors, who also include JP Morgan Chase Bank, Bank of America, the Bank of Nova Scotia and bond insurers Financial Guaranty Insurance Company and Assured Guaranty Municipal Corp., can appeal the decision.

I don’t believe the bankruptcy of our state’s largest county is good for Alabama. Some see Judge Bennett’s eligibility ruling as a positive step forward in the ultimate resolution of Jefferson County’s financial crisis. But others—including this writer—see bankruptcy of Alabama’s largest county as a black eye for the entire state. It’s difficult to see how the county got into the financial mess that led to the filing for bankruptcy. It’s even more difficult to understand how the county’s political leaders refused to do whatever necessary to avoid bankruptcy.

Source: Birmingham News

II.
A REPORT ON THE GULF COAST DISASTER

The PSC SETTLES WITH BP

The Plaintiffs’ Steering Committee (PSC) spearheading the litigation surrounding the 2010 BP Gulf Oil Spill announced on March 3rd that a settlement in principle had been reached with BP that will fully compensate hundreds of thousands of victims of the tragedy. The settlement will be fully funded by BP, with no cap on the amount BP will pay. BP is obligated to fully satisfy all eligible claims under the terms of the court supervised settlement, irrespective of the funds previously set aside.

The agreement will resolve the majority of private economic loss, property damage and medical injury claims stemming from the Gulf Oil Spill. It will hold BP fully accountable to individuals and businesses harmed by the spill. Rhon Jones, who heads up our firm’s Toxic Torts Section, serves on the PSC in the MDL. Rhon helped in the tremendously difficult job of putting the settlement together. Stephen J. Herman and James P. Roy, Plaintiffs’ Co-Liaison Counsel in the MDL, did a tremendous job and are due to be commended for their hard work and leadership. They had this to say in a statement:

“We are extremely pleased to bring justice to those harmed by the BP Gulf Oil Spill. This settlement will provide a full measure of compensation to hundreds of thousands—in a transparent and expeditious manner under rigorous judicial oversight. It does the greatest amount of good for the greatest number of people.

Two separate settlement agreements have been reached with BP. The first settlement compensates private economic losses due to the Gulf Oil Spill. These claims include businesses and individuals that lost profits; sustained damage to coastal property, wetlands and personal property; sustained real property sales losses; lost subsistence use; and have claims for failure to pay under BP’s Vessels of Opportunity Program. The second settlement compensates people with medical claims related to the spill and provides periodic medical consultation for the next 21 years. Claimants can participate in either or both settlement programs.

There will be no delay in the processing of economic loss claims while the heart of the claims process shifts to New Orleans, where Court supervision will ensure independence, fairness, transparency of process, and accountability. During the transition period claimants will be able to accept a percentage of their existing GCCF (Gulf Coast Claims Facility) offers while preserving their right to participate in the economic loss settlement. Under the new program, eligible claimants will generally be paid greater benefits than under the GCCF.

Details of the Settlement in Principle

• Economic Loss Claims

Individuals and businesses that suffered financial losses from the oil spill will be compensated within a framework intended to encompass all economic losses reasonably related to the oil spill. It is presumed that losses suffered by businesses and individuals in close proximity to the Gulf Coast, or in the seafood industry, were caused by the oil spill without further proof. To account for the specific circumstances of other claimants, there are a variety of ways to demonstrate that losses were caused by the oil spill. There is no “one-size-fits-all.” The intent of the framework is to be inclusive.

Under the settlement, the formula for calculating the amount of compensation allows each claimant to select the months used to measure lost income or profits based on historical earnings. Most importantly, the formula allows claimants to recover for lost growth potential. Again, there is no “one size fits all.” Generally speaking, for claimants eligible for compensation, a Risk Transfer Premium (RTP) or “multiplier” will be used to account for ecological and economic uncertainty. The specific RTP multiplier depends on the location and nature of the claimant’s business.

• Medical Benefits

The Medical settlement will potentially benefit hundreds of thousands of Gulf Coast residents and Clean-Up Workers who suffered acute or chronic illnesses from exposure to oil and chemical dispersants in the weeks and months after the oil spill. Residents in the coastal and wetlands areas of Louisiana, Mississippi, Alabama and the Florida Panhandle will be compensated for a broad range of specific medical conditions such as respiratory, skin, stomach, headaches and a host of other ailments. At one end of the spectrum, Clean-Up Workers can submit a claim with a Declaration under penalty of perjury describing the conditions or symptoms after exposure even if they did not seek medical treatment at the time of exposure. At the other end, residents and workers who suffer chronic symptoms or conditions from exposure will be required to submit medical records from the time of exposure and for ongoing medical care. Coastal residents and Clean-Up Workers who experience future manifestation of illness retain the right to sue BP without proof of liability for the spill and exposure.

The settlement also establishes a periodic medical consultation program for 21 years for people affected by the spill to ensure access to appropriate healthcare throughout the Gulf Coast region. A grant of more than $100 million will be used to establish a five-year program to enhance access to physical and mental health care ser-
services in the Gulf Coast region—with an emphasis on integrated and sustainable community-based primary and mental health care and environmental and occupational health services. These services will benefit families in the entire region for years to come.

- Affected Property Owners

Property owners and long-term lessees of waterfront properties in the affected coastal and wetlands region are eligible to receive compensation for loss of use and enjoyment of their property. This compensation was not available through the GCCF and recognizes that residents in the affected region were unable to fully enjoy their homes in the aftermath of the oil spill.

Source: PSC

Court Takes Over Oil Spill Claims From Ken Feinberg

Judge Carl Barbier has issued an order that relieves Kenneth Feinberg of his duties as administrator of BP’s $20 billion compensation fund for victims of the oil spill in the Gulf of Mexico. The order signed last month by Judge Barbier calls for a court-supervised administrator to take over the claims process from the Feinberg-led Gulf Coast Claims Facility.

The move is part of the proposed multi-billion-dollar settlement between BP and lawyers on behalf of more than 100,000 individuals and businesses. In his order, Judge Barbier appointed Lynn Greer, a Richmond, Va.-based lawyer, to fill in for Feinberg during the transition period. Patrick Juneau, a Lafayette, La.-based lawyer, will take over for Greer and serve as the court-appointed administrator for economic loss claims if Judge Barbier gives preliminary approval to the settlement.

Source: WKRG

Congress Must Act On The RESTORE Act

The U.S. Senate passed the RESTORE Act as an amendment to the transportation bill last month so that the work of restoring the Gulf of Mexico can begin. The RESTORE Act will direct 80% of Clean Water Act fines paid by BP and other responsible parties toward the places in the Gulf where it’s needed most. This funding will enable the implementation of a comprehensive ecosystem restoration plan and ensure the future health of the wildlife and the local communities that greatly depend on our ocean. The RESTORE Act is simply about fairness for the Gulf. Nobody really knows with certainty the full impact of the BP oil disaster. What is known is troubling for the Gulf—and it’s clear that these resources are urgently needed.

While the vast majority of the fines BP and other responsible parties must pay should be rightly directed to the Gulf Coast region, this program—if passed—will promote the environmental and economic prosperity of all of America’s coastal waters and Great Lakes. In addition, many of America’s special places and natural resources will receive funding under the RESTORE Act amendment. But I can’t emphasize strongly enough—it must become law and that may not happen.

With the Senate’s passage of the transportation bill, the RESTORE Act cleared a major hurdle with overwhelming bipartisan support—a 76-22 vote. Thus far, the House has done virtually nothing and that’s the bad news. The ball is now in their court. Now that the RESTORE Act has such momentum, it’s vital for the House to act promptly and pass the Senate version of this bill. It’s critically important that the important work of restoring the Gulf be allowed to go forward.

The RESTORE Act does what’s fair and right for the Gulf. This legislation is moving forward because of a catastrophic oil disaster, and the anticipated funds will be generated because those responsible are being held accountable. In fact, passing this bill would provide some certainty for those involved in settlement negotiations right now. Once this legislation is put into action, it will greatly increase our ability to protect our coasts, the Great Lakes and the Gulf of Mexico.

Sources: Al.com and Associated Press.

Presidential Spill Panel Regroups To Push For Reform

It was reported last month that the seven-member commission selected by President Obama to investigate the Gulf Oil Spill is getting back together. It appears the commission will press for action to improve drilling safety. The group will issue a report card on actions taken by Congress, the administration and the industry in May. It will be interesting to see what grades are assigned.

William K. Reilly, a Republican and co-chair of the panel, said the group had become “increasingly concerned” that efforts to implement its safety recommendations are falling short of their intended mark. That’s certainly not good news. Last January, the panel called for a series of steps from boosting budgets and training to increasing the liability cap for companies drilling offshore. Because of high gasoline prices, the focus of the White House and the Republicans has turned to boosting domestic oil and gas production. While that is a worthy goal, steps must be taken to assure that safety is not pushed under the rug, so to speak. We saw what happened during the Bush-Cheney years when regulation of the oil industry became virtually non-existent.

Source: Associated Press

III. DRUG MANUFACTURERS FRAUD LITIGATION

Experts Look for Effective Ways To Deal With Drug Companies

Most Americans would be shocked if they knew that the politically powerful pharmaceutical industry has seen almost all of its companies accused of fraud at some point in time by both the federal and state governments. Hopefully, that message is beginning to be conveyed to the public. Much of the fraud has involved the Medicare and Medicaid programs. Many of the companies, when accused of fraud, simply agree to a corporate integrity agreement with the government and then pay a fine to avoid being excluded from doing business with the specific federal program that was cheated. More effective measures are badly needed to make the drug companies follow the law.

We know from having litigated cases against the drug companies in several states, including Alabama, that the nation’s largest drug manufacturers have committed wholesale fraud in government programs. It was reported by USA Today recently that the drug companies have paid at least $8 billion in fines for repeatedly defrauding Medicare and Medicaid over the past decade. But the very same companies continue to do business with the federal government, even though many are repeat offenders. It was stated in the USA Today story that this is because the drug companies are often the sole suppliers of critical products. While that may be a reason, I am convinced the political power and influence of the drug industry are also major factors. In fact, that may well be the real
reason the companies are able to stay in the
government programs after repeat
offenses.
Instead of exclusion, it’s quite obvious
that the government has resorted to the
use of corporate integrity agreements. But
the penalties associated with these agree-
ments haven’t been enough to stop the
companies from continuing to cheat the
government. In reality the companies make
much more in profits than they lose in
fines. The government—including the
Justice Department and the FDA—must be
given the tools necessary to stop the com-
panies from committing fraud in govern-
ment programs. It is costing the taxpayers
huge sums each year since they pick up the
tab when the drug companies cheat the
government.
Many of the fraud cases involving the
drug industry involve off-label marketing of
prescription medications. For example,
Pfizer was accused of marketing Bextra, a
painkiller, for uses other than the actual
uses the FDA had approved. A prime
example of how the system works involves
Pfizer, which has paid almost $3 billion in
fines since 2002, and has entered into
three corporate integrity agreements with
the Department of Health and Human Ser-
tices aimed at preventing future fraud.
Some may be shocked to learn that Pfizer
is still doing business with the government in
spite of its record of fraudulent conduct.
According to USA Today, Merck, another
pharmaceutical giant, has paid $1.6 billion in
fines since 2008, to resolve claims that it
was not paying proper rebates to the gov-
ernment. Merck’s 2008 settlement involved
claims that the company paid illegal kick-
backs to health care providers in exchange
for prescribing its drugs.
Pfizer, Merck, and other companies are
currently fighting attempts by Congress to
exclude them from government business
because of their history of having com-
mitted fraud against the government. Gregory
Demske, assistant inspector general for
legal affairs for Health and Human Services,
had this to say:
We’re seeing some of the big compa-
nies a second and third time. The
corporate integrity agreement is not
sufficient to deter further miscon-
duct.
The fraudulent conduct involved with
off-label use of drugs by the industry is
widespread. Such uses constitute fraud
because they take government money for
purposes the FDA has not approved.
Instead of excluding a company from doing
business with the government, the govern-
ment could at least exclude the drug from
being marketed off-label.
We know firsthand that litigating cases
against drug companies is labor- and cost-
intensive because the companies fight,
often for years, to avoid an exclusion. In an
effort to change that trend in 2010, the gov-
ernment announced that, rather than
exclude an entire company, investigators
would go after individuals within a
company. The Justice Department and the
Food and Drug Administration have come
up with some concepts to use within the
scope of the rules—such as taking away a
company’s patent rights as a condition of a
settlement—but it doesn’t appear that it
has been used very often—and I doubt that this
concept will be used more frequently in
the future.
Sen. Chuck Grassley, R-Iowa, introduced
a bipartisan bill that would make it easier
for the government to find a middle
ground, saying the law now forces “the
inspector general to use all-or-nothing,
mandatory exclusion penalties against cor-
porations that have committed fraud.” His
bill, if passed, would allow the exclusion of
individuals from working with the gov-
ernment even after they have left the
company where the fraud occurred. A
major aspect of the fraud involves the AWP
litigation. Drug prices are fraudulently
increased, costing taxpayers millions of
dollars. Our firm has been heavily involved
in this litigation.
Pharmaceutical companies spent more
than $200 million lobbying Congress in
2011, including $12 million spent by Pfizer
alone. According to USA Today, at least 12
pharmaceutical and medical device compa-
nies are lobbying specifically against a
House bill (HR 675) that complements
Grassley’s Senate bill. The industry’s trade
group, the Pharmaceutical Research and
Manufacturers of America, says excluding
an individual should occur only when there is
“significant wrongdoing” that the indi-
vidual knew about and did nothing to stop.
Hopefully, Congress will give the FDA and
the Justice Department the authority to
adequately regulate the pharmaceutical
industry and to punish the companies when
they lie, cheat and steal.
Source: USA Today

Merck settles a shareholder class action
concerning the alleged suppression of
certain clinical trial results for the
blockbuster anti-cholesterol drug Vytomin.

U.S. District Judge Thomas J. Cavanaugh
has given final approval to the settle-
ment. The settlement addressed a share-
holder derivative class action filed in 2008
by the Plymouth County Contributory
Retirement System against Schering-Plough,
which became part of Merck in 2009.
It was alleged in the Complaint that a
study conducted for Schering in April 2006
showed that Vytorin, rather than lowering
the accumulation of fatty plaques in the
arteries, actually caused fatty plaques to
accumulate nearly twice as fast, thus
increasing the patient’s chances of suffer-
ing a heart attack and/or stroke. The
results of the study weren’t made public
until nearly two years later. It was alleged
in the suit that investors saw the value of
their Schering-Plough shares drop 23% in
the week following the disclosure. The key
term of the settlement addresses this
problem by requiring Merck to institute a
particular corporate governance reform.
The reform requires Merck Research
Laboratories to make an annual report to a
committee of the company’s board of direct-
ors concerning delays in the release of
certain clinical trial results, the reason for
those delays, and any corrective action
taken. Interestingly, the settlement does
not provide for damages. In approving the
Plaintiff’s request for $5.1 million in attor-
neys’ fees, Judge Cavanaugh noted that
“Plaintiff’s counsel has actually requested
an award of fees in an amount less than
their actual lodestar and expenses.”
The settlement, which requires Merck to
institute a number of corporate reforms,
puts an end to just one of a number of law-
suits that accuse Merck and Schering-
Plough of making exaggerated claims about
and overpricing their Vytomin and Zetia
cholesterol medications. In 2009, Merck
and Schering-Plough paid $41.5 million to
settle lawsuits alleging that they violated
state consumer protection laws by delaying
unfavorable Vytomin study results.
Source: Lawyers USA Online

LOUISIANA ATTORNEY GENERAL RECOVERS
$25.2 MILLION FROM DRUG COMPANIES
CHARGED WITH FRAUD

Louisiana Attorney General Buddy
Caldwell has recovered $25.2 million from
corporate giants that were sued for alleged
unlawful inflation of drug costs paid by
Louisiana taxpayers through the Medi-
caid program. The companies—
Actavis, Boehringer Ingelheim, Dey, Glaxo-
SmithKline, and Schering-Plough—will pay
Louisiana a combined total of $25.2 million
for misreporting drug price information in
order to improperly increase reimburse-
ments paid by Louisiana’s Medicaid program. The claims involved Medicaid reimbursements based on average wholesale prices.

Attorney General Caldwell has aggressively pursued the recovery of taxpayer funded Medicaid program dollars. Over the last four years, the Louisiana AG’s office has recovered a total of $138 million for the Medicaid Program. These five most recent recoveries come as a result of the 2010 lawsuit against 109 drug manufacturers. The suit accused the Defendants of committing fraud and violating the Louisiana Unfair Trade Practices and Consumer Protection Act and Louisiana’s Medical Assistance Programs Integrity Law. Hopefully, several of the more than one hundred remaining Defendants will go to trial in the 19th Judicial District Court later this year. Attorney General Caldwell had this to say about the litigation:

These settlement funds are just the tip of the iceberg. We will continue to fight to recover our taxpayer dollars until every cent is accounted for.

The Attorney General’s office has done an outstanding job of standing up for Louisiana citizens and protecting them. I am reasonably sure there will be more good news to report very soon.

WELLCARE $137 MILLION WHISTLEBLOWER DEAL NOW OFFICIAL

WellCare Health Plans Inc. will pay $137.5 million to settle a whistleblower lawsuit. This will resolve investigations by the U.S. Justice Department and the states of Florida and Connecticut. The health insurer, which was sued over accusations that it had been overcharging for its Medicare and Medicaid programs, will pay the $137.5 million plus interest over a period of 36 months. The company said that the settlement won’t have a material impact on 2012 financial results. Settlement of the civil action was held up when a whistleblower objected to the settlement. The objection was withdrawn last month and the whistleblower signed off on the federal settlement, making the resolution effective on March 23rd.

Source: Insurance Journal

IV. PURELY POLITICAL NEWS & VIEWS

THE GOP PRESIDENTIAL RACE

I must confess that watching the results of the various primaries and caucuses in the race for the GOP presidential nomination has been highly entertaining. Frankly, I really hate to see it come to an end. The Romney campaign is limping to the finish line with Santorum and Gingrich constantly nipping at Gov. Romney’s heels. Even so, Romney is virtually certain to become the nominee. Many believe the bitterly negative campaigns run by these three candidates will make the Obama campaign’s task much easier this Fall. The GOP primary race has actually made the Bush-McCain battles, which were pretty rough, seem sort of tame.

Mitt Romney is the most liberal candidate to have been in a position to become the GOP nominee for President in my lifetime. His claims of being a real conservative and having been a conservative governor in Massachusetts just don’t correspond to his actual record, nor do they ring true.

The good news for the Republican Party is that one of the four remaining candidates now appears to be headed toward winning the nomination. But the bad news for the party bosses is that it’s Mitt Romney, and I believe they are finally coming to grips with that reality. Many Democrats and Independents seem to believe that President Obama will be easily reelected. But when one considers that a certain percentage of the voters are against Obama regardless of who the GOP nominates as its standard bearer, it could still be a close race in the Fall.

STATE SEN. CAM WARD HAS INTRODUCED A BILL TO TOUGHEN THE STATE’S ANTI-BULLYING LAW

State Sen. Cam Ward has introduced a bill to toughen the state’s anti-bullying law. The Alex Moore Anti-Bullying Act is named after a Jemison 15-year-old who committed suicide last spring by leaping from an Interstate overpass. Family and friends of the teenager say she was constantly bullied at school. Sen. Ward drafted the legislation after meeting with Alex’s parents, Jim and Jill Moore, earlier this year. Major components of the bill would:

• Require the Department of Education to develop a statewide policy related to student harassment and post it on its website.

• Require teachers and other school employees who witness suspected harassment to report it to the school principal.

• Grant civil immunity to anyone who reported suspected harassment or bullying.

• Transfer students guilty to repeated harassment to other schools.

Sen. Ward believes it’s important to let schools handle things on a local level, but that one statewide policy would make things clearer for everyone. He wants there to be one policy across the state giving some guidelines “to help parents and students deal with bullying.” Jill Moore believes the law, if passed, would make a difference in schools. I agree with her.

An important part of the bill to Mrs. Moore is the requirement of school employees to report suspect harassment. She believes that if someone had reported it in Alex’s case, it could have made a big difference. The full text of Senate Bill 25 can be found online at the Alabama Legislative Information System Online website, alisondb.legislature.state.al.us/acas. Hopefully, the Legislature will pass this bill so that Gov. Bentley can sign it into law.

V. LEGISLATIVE HAPPENINGS

THE LEGISLATURE IS AT THE MID POINT IN THE REGULAR SESSION

The Alabama Legislature has reached the halfway point of its Regular Session. Most of the heavy work awaits the members of the House and Senate when they return from their spring break. All of the important measures, including the budgets, are yet to be passed. I predict a
Roy Moore Wins The Chief Justice Race In Alabama

Judge Roy Moore won his race for Chief Justice in the GOP primary without a runoff. He received a little more than 50% of the vote to gain the Republican nomination for Chief Justice. Judge Moore defeated two very good candidates, incumbent Chuck Malone and Mobile County Circuit Judge Charlie Graddick, and did it without using any television ads. The Moore campaign was run on a shoestring budget and that made Judge Moore’s victory even more impressive. It was without any doubt a classic grassroots effort. Judge Moore will be heavily favored over Democrat Harry Lyons, the Democratic nominee, in November.

The Newest Member Of The Alabama Supreme Court

Judge Tommy Bryan won his race and will become a Justice on the Alabama Supreme Court. That’s because he has no Democratic opposition in the Fall. Judge Bryan defeated Debra Jones, a very good and well-respected circuit judge from Anniston, in the Republican primary. Judge Bryan has done an excellent job on the Court of Civil Appeals. His close friends and supporters are convinced the Crenshaw County native will be fair and reasonable when he joins the Supreme Court.

Alabama Supreme Court Sends The Pre-Paid College Tuition Lawsuit Back To The Trial Court

The Alabama Supreme Court has sent the lawsuit involving Alabama’s financially troubled Prepaid Affordable College Tuition plan back to the trial court. A settlement had been reached between the parties and approved by the trial judge. An objection to the settlement was before the Supreme Court. The Court issued a 6-1 decision saying the settlement, approved by the trial judge, was void because it conflicts with state law. The Court said the Legislature provided extra funding to PACT in 2010 to make tuition payments fully funded and not violate the contract relationship between the PACT board and PACT contract holders. In its opinion, the Supreme Court said the settlement violates that because it calls for PACT to pay tuition at 2010 levels and for the students’ families to make up the difference.

Source: Associated Press

A Good Court Ruling In New Jersey

On February 27th, the New Jersey Supreme Court released an opinion addressing the effect of the New Jersey Product Liability Act, N.J.S.A. 2A:58C-1 to -11 ("PLA") on New Jersey’s discovery rule applicable to the statute of limitations in an action against a drug company. In this case, Kendall v. Hoffman-La Roche, Inc., the Court confirmed that the New Jersey statute of limitations, which is the period of time an injured person has to bring a lawsuit against another person or corporation, is based on whether a reasonable person would have been aware of facts that would have led to discovery of the injury before the statute of limitations expired.

If a Plaintiff can show that a reasonable person would not have been aware of the injury, the statute of limitations does not bar his or her claims. This case involved the use of Accutane and whether it caused the Plaintiff’s inflammatory bowel disease. The Court held that the Plaintiff had produced sufficient facts to overcome her burden of proving she did not know and should not have known of the injury more than two years before she filed her lawsuit. In my opinion, this is a good opinion, and one that is badly needed. It definitely takes away a drug company Defendants’ ability to hide its wrongful conduct and deny justice by claiming the time to file a claim had run.

More On The Federal Courts Jurisdiction And Venue Clarification Act of 2011

We promised in the February issue to give a more detailed report on the Federal Courts Jurisdiction and Venue Clarification Act of 2011. President Obama signed this legislation into law on December 7, 2011. The Act, which went into effect on January 6, 2012, codifies a number of common law rules dealing with the removal of civil cases from State Court to Federal Court. Chad Stewart, a lawyer in our firm, who formerly worked with the federal courts, has looked carefully at this Act. Here are some of the changes that will be of most interest to practitioners:

• Each Defendant has 30 days from the date that particular Defendant received service of the complaint in which to file its notice of removal. If the case is not initially removable, but later becomes removable, the Defendant(s) must file its notice of removal within 30 days after it receives a copy of an amended pleading or other paper demonstrating that the case has become removable. After one year from the date the case was filed, the case cannot be removed based on diversity jurisdiction unless the Federal Court “finds that the Plaintiff has acted in bad faith in order to prevent a Defendant from removing the action.. 28 USC § 1446(b)-(c). This new bad faith exception will likely give rise to heated litigation in the future.

• Every Defendant must consent to removal before a case can be properly removed from State Court. 28 USC § 1446(b)(2)(A). This codifies the general rule previously applied by most Courts.

• The Act also codifies a number of common law rules regarding the “amount in controversy” requirement and provides that a Defendant must establish that the amount in controversy exceeds $75,000.00 by a ‘preponderance of the evidence’. 28 USC § 1446(c). This marks a change from the general rule requiring Defendants to prove the amount in controversy to a “legal certainty”.

• The Act makes numerous revisions to the federal venue statute, 28 USC § 1390 et seq., including a provision that Federal Courts may transfer cases to “any district or division to which all parties have consented”. 28 USC § 1404(a). This is a substantial change from the old law which restricted transfers to Courts where the case could have been originally commenced.

• When a State Court case is removed to Federal Court on federal question grounds, the Federal Court must now sever all claims not within its jurisdiction and remand such claims to the State Court from which it was removed. Prior to the Act, Federal Courts could choose to keep the entire case.

• Federal Court decisions to remand cases to State Courts remain largely unappeal- able. 28 USC § 1447(d).

In sum, the Act brings about significant changes with which lawyers should become familiar because every case filed after January 6, 2012, could be affected.
Lawyers should also get a complete copy of the Act (112 P.L. 63; 125 STAT. 758). If you would like more information on this Act, contact Chad Stewart, a lawyer in our firm, at 800-898-2034 or by email at Chad.Stewart@beasleyallen.com.

AN EDITORIAL IN THE TUSCALOOSA NEWS IS WORTH READING

An editorial appeared in the Tuscaloosa News on March 19th dealing with the funding of Alabama’s judicial system that is certainly worth reading. The writer pretty much hit the nail on the head relating to the issue of funding Alabama’s court system. I got the impression that the writer believes the system is important and should be adequately funded. Clearly, the Legislature has a duty to meet the system’s needs. I am including the editorial in its entirety for your edification.

Court Funding A Pressing Issue In Alabama

Unless you are charged with a criminal offense, or become involved in a civil lawsuit, why should you care if Alabama’s court system grinds to a halt for lack of funding? The reasons may be more pressing than you think. Last week, Gov. Robert Bentley invoked proration of 10.6% in the General Fund budget, an unavoidable move as tax revenues have not met expectations. Across state agencies, that will feel like a cut of more than 20% because the fiscal year is half over.

The state court system may not feel the full weight of proration because of a court ruling in the 1990s that limits how much can be cut through proration. But that won’t protect Alabama courts from cuts next fiscal year. The governor’s proposed budget for state courts next year is $126 million—15% less than Chief Justice Chuck Malone requested. In the 2010-11 fiscal year, state courts received $152 million.

Already in Tuscaloosa County, criminal cases are routinely delayed because courts are overcrowded. The Circuit Court needs an additional judge to handle the case load that is a natural result of our growing population. For those who are innocent of the offenses for which they have been charged, such delays are unjust. Whether they are held in jail or waiting trial on bail, they deserve their day in court as soon as possible.

Those who are guilty, of course, aren’t so eager. They know their best chance of avoiding justice is to delay it. Witnesses move away or their memories fade. Investigators take new jobs or evidence grows cold. But even more significant, there is no real threat of a jury trial. The reality is that only a small minority of cases ever come to trial. Most are settled out of court. As a practical matter, it would be impossible to try all the charges brought by grand juries. As court dockets back up, prosecutors lose their best leverage—threat of a trial—to get a guilty plea from a guilty defendant.

Businesses, families, employers and employees—citizens in general—depend on our court system to establish civil rights and protections of all sorts. Our courts also face a leadership challenge. Republican voters chose Roy Moore as their candidate for chief justice of the Alabama Supreme Court. Democrats will have Harry Lyons. It isn’t clear that either possesses the wisdom, tact and demeanor to manage the impending crisis for state courts.

Moore, who served as chief justice from 2001-03 until he was removed from office, said last week that he would seek to educate the public and lobby the Legislature for adequate funding. That’s a good answer, and we hope he possesses those skills. Lyons said he might consider challenging the Legislature’s authority to cut funding, creating a constitutional crisis. That doesn’t sound so promising. Alabama’s courts need adequate funding. With the time remaining in his job, we hope Malone can work with the Legislature to avert a crisis.

While I may not agree with everything the editorial writer said, I totally agree that the court system must be adequately funded. I also believe the Legislature has a constitutional duty to do so. I believe most Alabamians agree that the courts must remain open and that adequate funding must be made available.

VII. THE NATIONAL SCENE

DRUNK DRIVERS HURT ALL AMERICANS

It’s been reported that the annual cost of drunk driving to the American people over the years has been staggering. In addition to the human costs of drunk driving—which is huge and very personal to the families of victims who are killed each year in traffic crashes caused by drunk drivers—the financial cost affects all of us. A recent report by the Pacific Institute of Research and Evaluation says that drunk driving costs Americans $132 billion each year. That’s more than $400 for each man, woman and child in the U.S. The costs will be paid by the federal, state and local governments.

The costs to employers are very high—estimated to be over $10 billion—from crashes involving work trips and crashes outside of work involving employees and benefit-eligible dependents. It’s quite obvious that all of us have a stake in the fight to lessen the bad effects brought on by drinking and drinking. We should all encourage our elected officials if they haven’t already done so, to join this fight to stamp out drunk driving.

Source: MADD

WTO RULES BOEING GOT $5 BILLION IN ILLEGAL US SUBSIDIES

The World Trade Organization ruled last month that Boeing received more than $5 billion in illegal government subsidies, much less than the amount received by European arch-rival Airbus. Interestingly, the world trade body’s appeals panel has now ruled on both sides of the dispute. It had earlier determined that the European Union subsidies to Airbus—based in Toulouse, France—totaled some $18 billion over more than a quarter-century.

Perhaps, the latest ruling will bring to an end the long-running transatlantic trade battle between the world’s foremost commercial aircraft makers over a market believed to be worth more than $3 trillion over the next two decades. As is usually the case, both sides claimed a measure of victory. The European Commission, whose complaint to the WTO was the subject of the ruling, said it welcomed the confirmation that Chicago-based Boeing also
received billions of dollars in illegal subsidies between 1989 and 2006.

A WTO appeals panel had ruled last May on a U.S. complaint that European governments provided $18 billion in subsidies to Airbus that hurt Boeing, even though not all of them were illegal under international rules. EU Trade Commissioner Karel De Gucht called this most recent ruling vindication of the “EU’s long-held claims that Boeing has received massive U.S. government handouts in the past and continues to do so today.”

But his counterpart, U.S. Trade Representative Ron Kirk, called the ruling “a tremendous victory for American manufacturers and workers.” He noted the WTO appeals panel had determined that the support from the United States for Boeing was “far below” the amount of EU help for Airbus. He said the disproportionate nature of the U.S. versus European handouts were further illustrated by the appeals panel’s finding that U.S. subsidies to Boeing cost Airbus 118 lost aircraft sales, while EU subsidies for Airbus cost Boeing 342 lost aircraft sales.

Source: Associated Press

VIII.
THE CORPORATE WORLD

GOVERNMENT SEEKS APPROVAL OF $25 BILLION SETTLEMENT WITH BANKS ON MORTGAGE ABUSES

We reported last month that the federal government and 49 state Attorneys General had reached a settlement with five big banks. Now the Attorneys General have asked a federal judge to approve the $25 billion settlement with mortgage lenders over foreclosure abuses that helped contribute to the worst housing crisis since the 1930s. The request was filed in the U.S. District Court for the District of Columbia. The Department of Justice called the settlement “the largest federal-state civil settlement ever obtained.”

The settlement with Bank of America, J.P. Morgan Chase, Wells Fargo, Citigroup and Ally Financial was said to resolve violations of federal and state law stemming from such practices as “robo-signing.” Interestingly, the banks have not admitted to the charges against them. I still am not sure about how good this settlement really is for the individuals who were the victims of the big banks. When you consider how little money each victim will receive—which is said to be between $1500 and $2000—it doesn’t seem like a great settlement for them. Perhaps the other features of the settlement are such that it is good for the thousands of victims.

The settlement requires a judge’s approval. At press time, that hadn’t happened. Iowa’s Attorney General Tom Miller had this to say:

“The complaint we filed sets the stage for what we anticipate will be a series of powerful federal court orders. We expect that many consumers across the country will soon start to see the significant direct relief and the new mortgage servicing standards that we negotiated as part of this settlement.

The agreement would require the lenders to provide relief to foreclosed borrowers to the tune of $20 billion. The relief proposed in the settlement includes the following:

• Reducing principal on loans for borrowers who are delinquent or at imminent risk of default and underwater on their loans. Refinancing loans for borrowers who are current on their mortgages but underwater;

• Forbearance of principal for unemployed borrowers (meaning that borrowers can tack some of the principal on the end of the loan as a zero-interest balloon payment);

• Anti-blight provisions;

• Short sales;

• Transitional assistance; and

• Benefits for service members.

The lenders will also be required to pay federal and state governments an additional $5 billion in cash, of which $1.5 billion will be used to establish a borrower payment fund to provide cash payments to borrowers whose homes were sold or taken in foreclosure between Jan. 1, 2008, and Dec. 31, 2011, and who meet other criteria.

The DOJ says the settlement also requires lenders to prevent mortgage abuses in the future, including prohibiting “robo-signing,” improper documentation and lost paperwork. The lenders’ standards would also make foreclosure a last resort after other options were explored; would stop banks from foreclosing on a home while the owners were being considered for a loan modification; would set protocol and a timeline for reviewing loan modification applications; would give owners the right to appeal if they are denied; and would create a single point of contact and adequate staff to handle questions.

According to information supplied by the DOJ, the settlement includes the payments set out below from the banks involved in the settlement to the federal and state governments:

• Ally will pay $110 million;

• Bank of America will pay $5.24 billion;

• Citigroup will pay $4.15 million;

• JPMorgan will pay $1.08 billion;

• Wells Fargo will pay $1.01 billion.

In addition to these amounts, the banks will give certain mortgage relief to their victims. The parties to the settlement claim this cost could be about $220 billion. But I am not sure this aspect of the settlement will cost the banks anywhere near that much. I am afraid the big banks will have dodged a bullet if this settlement is approved.

Source: MSNBC.MSN.com

JP CHASE SETTLES WHISTLEBLOWERS’ LAWSUIT

J.P. Morgan Chase will pay $45 million to settle whistleblower claims by two metro Atlanta mortgage executives contending that the bank defrauded the federal government through a program that helped veterans refinance their homes. JPMorgan is the first of ten of the nation’s largest banks sued in federal court in Atlanta to settle. The banks were accused of illegally billing legal fees and other barred costs to an estimated 1.2 million veterans who refinanced their homes through the U.S. Veterans Administration. The lawsuit is pending before U.S. District Judge Amy M. Totenberg in Atlanta.

It was reported that 74% of the settlement will go to the federal government to reimburse it for fraudulent VA loans it guaranteed that fell into default. The whistleblowers, Victor E. Bibby and Brian J. Donnelly, will receive 26% of the settlement award. These men are executives of Veterans’ Mortgage Co., a Georgia mortgage broker that arranged thousands of veterans’ loans in the Southeast. The suit by Donnelly, vice president of operations at the Veterans’ Mortgage Co., and Bibby, the company president and CEO, was filed in 2006. But it was not unsealed until last fall, some five years later. Donnelly and Bibby uncovered billing improprieties by the big
banks that financed the loans, which were guaranteed by the VA.

The VA program, known as the Interest Rate Reduction and Refinancing Loans Program (IRRRL), was intended to encourage retired and active-duty veterans to take advantage of low interest rates by exempting them from legal fees and other costs typically associated with refinancing their VA home loans. Because the loans are federally guaranteed, lenders originating IRRRL loans may collect only a flat rate of 1% of the loan amount as an origination fee, plus a limited number of allowable fees for recording a loan, obtaining a title search and insurance, and acquiring a borrower’s credit report.

The banks’ legal fees can’t be charged to veterans. That’s because the VA is barred by law from guaranteeing any refinanced loans for which veterans were charged the banks’ legal fees. Interestingly, the banks hid these fees in the loan paperwork. In addition to overcharging veterans who refinanced their homes, the suit also accuses the Defendant banks of securing federal loan guarantees by falsely certifying to the VA that they weren’t charging veterans the disallowed fees. Because of the federal loan guarantees, the refinanced loans were very attractive to the banks. The risk to the lender was diminished and that appealed to the banks.

It was reported that as much as 18% to 20% of the refinanced VA mortgages have been driven into default by the faltering economy. In connection with the resulting foreclosures, the federal government has reimbursed the banks for 25% of each guaranteed loan up to $417,000—even though, loans that contained hidden legal fees didn’t qualify for the federal loan guarantees. According to data submitted to Congress by the VA, the agency has paid more than $2.5 billion since 2001 to banks that have made guarantee claims in connection with IRRRL loans to veterans.

The guarantees are void because the banks failed to follow the rules related to the VA loan guaranties. The fraudulent practices that Bibby and Donnelly uncovered “was industry-wide fraud” on the part of the Defendant banks that had occurred over the past decade. If Bibby and Donnelly had not come forward and reported the fraud, it’s quite probable the fraud would have not come forward and reported the over the past decade. If Bibby and Donnelly of the Defendant banks that had occurred ered “was industry-wide fraud” on the part of the Defendant banks that had occurred over the past decade. If Bibby and Donnelly had not come forward and reported the fraud, it’s quite probable the fraud would have not come forward and reported the over the past decade. If Bibby and Donnelly of the Defendant banks that had occurred ered “was industry-wide fraud” on the part of the Defendant banks that had occurred over the past decade. 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**Flagstar Mortgage Fraud Lawsuit Settled For $133 Million**

The U.S. government has reached a $133-million settlement with Flagstar Bank, resolving a civil fraud lawsuit which accused the bank of fraudulent mortgage lending practices. The lawsuit, filed by the U.S. Attorney for the Southern District of New York and the U.S. Department of Housing and Urban Development, alleged that Flagstar used unqualified employees to approve mortgage loans backed by HUD, approved mortgage loans that did not comply with HUD and Federal Housing Administration underwriting requirements, and made false certifications on mortgage loans. Preet Bharara, U.S. Attorney for the Southern District of New York, said in a statement:

> The lawsuit is another stark example of how certain lenders put profit ahead of responsibility by recklessly churning out mortgage loans without regard to the risk that those loans would default or the significant consequences for the individual homeowners who would inevitably default on their loans.

Flagstar’s CEO and president Joseph Campanelli said in a statement that the bank “is one of the leading originators and servicers of FHA-insured loans, and we remain committed to continuing in that capacity. This agreement with the Department of Justice allows us to move forward and to continue to focus on core operations and on serving our customers.”

This is the fourth lawsuit brought by the U.S. Attorneys’ office in New York against residential mortgage lenders. The government also has sued Deutsche Bank, Allied Home Mortgage and CitiMortgage, a subsidiary of Citibank. CitiMortgage reached a $158-million settlement with the government. Under terms of the Flagstar settlement, the company agreed to pay $15 million within 30 business days and to pay an additional $118 million as soon as it is available due to appeals and reserves.

**New York Mets Owners Settle In The Madoff Case**

The owners of the New York Mets baseball team has agreed to pay $162 million in order to settle a lawsuit by the trustee seeking money for the victims of Bernard Madoff’s fraud. The settlement was announced in U.S. District Court in New York last month just as the trial of the case was set to start. The Mets owners were accused by the trustee of turning a blind eye to signs of Madoff’s fraud while enriching themselves as long-term investors in his funds.

Fred Wilpon and Saul Katz, the primary owners of the Mets, will not have to pay any money immediately. The terms of the settlement call for payments over a five-year period. This settlement will provide an additional $162 million to pay back former Madoff customers. The case had been in mediation prior to the trial date. Interestingly, former New York State Gov. Mario Cuomo oversaw mediation of the dispute and helped get the case settled. Thus far the trustee has recovered about $9.1 billion in this litigation, but about $6.4 billion of that amount is unavailable due to appeals and reserves.

Madoff, who ran a multibillion-dollar Ponzi scheme over decades, is in prison after pleading guilty. He ran a Ponzi scheme in which many of his relatives and associates were lured to invest with the promise of steady high returns. Madoff paid old clients with the money from new investments and investigators found that the returns were fictitious. Wilpon and Katz were accused of ignoring warning signs that Madoff was running a fraud during their 25 years of investing with him. They claimed they did not know...
Madoff was running a Ponzi scheme. The settlement was approved by the court on April 13th.

Source: Insurance Journal

**Securities Fraud Settlements in 2011 Were Lowest In The Decade**

The number and size of securities fraud settlements that won final U.S. court approval fell in 2011 to the lowest in a decade. This came along with a drop in cases linked to accounting problems and U.S. Securities & Exchange Commission enforcement activity. According to a study released last month by Stanford Law School and Cornerstone Research, courts in 2011 approved 65 such settlements totaling $1.36 billion, which was down from 86 settlements totaling $3.21 billion in 2010.

The dollar amount is less than half the $2.78 billion recovered in 2003, which had been the lowest since the adoption of the prior year of the Sarbanes-Oxley corporate governance law. According to Laura Simmons, a business professor at the College of William & Mary and co-author of the study, the large settlements involving American International Group Inc. And other companies, as well as increased SEC enforcement activity, may make 2012 a more promising year for victims of investment fraud. She had this to say in an interview:

> As we look at the potential impact of whistleblower lawsuits, we expect a further increase in SEC activity, which could result in a greater amount of private settlements.

Last year, the SEC filed 735 enforcement cases, up 8.6% from 2010 and the most in its history, according to the regulator's annual report. The largest 2011 settlement in Cornerstone's study was a $208.5 million accord by officers, directors, underwriters and an auditor for Washington Mutual Inc., the largest U.S. bank or thrift to fail. Joseph Grundfest, a Stanford University law professor who works with Cornerstone, said in a statement:

> Lawyers will debate whether this decline is a result of Plaintiffs having brought weaker claims or pro-Defendant changes in the legal regime, or some combination. The really big litigation buckets were not in the class-action securities fraud market in 2011.

The drop in accounting-related cases may stem from fewer restatements, accord-

ing to Professor Simans, which in turn may be attributed in part to improved corporate governance under Sarbanes-Oxley. She also said that some Plaintiffs' lawyers may have focused more in recent years on housing-related litigation, including the sale of risky mortgage-backed securities, rather than more traditional securities fraud cases. Cornerstone's study excludes settlements challenging mergers. Those cases accounted for 43 of the 188 new securities fraud lawsuits filed last year.

Settlement totals for 2012 will include AIG's $725 million settlement to resolve claims accusing the insurer of accounting fraud and stock price manipulation. Other settlements over $100 million that may also be included are with Lehman Brothers Holdings Inc.; wireless equipment company Motorola Solutions Inc.; National City Corp., a bank now owned by PNC Financial Services Group Inc.; and private education company Apollo Group Inc. The peak years for settlements were 2005 and 2006, when settlements over WorldCom Inc.'s and Enron Corp.'s collapses contributed to respective total payouts of $10.5 billion and $19.19 billion, according to Cornerstone.

Source: Insurance Journal

**IX. PRODUCT LIABILITY UPDATE**

**$7.3 Million Verdict Returned by Jury Against Toyota**

A Federal Court jury in Mississippi has awarded a family more than $7.3 million in a lawsuit against Toyota. In 2009, Wayne, Mary and Will Graves sued Toyota Motor Corp. And Toyota Motor Sales USA Inc., alleging among other things that design defects were responsible for Will Graves' paralysis following a rollover. Will Graves, then 16, was driving on U.S. 84 in Jones County when his 1995 Toyota 4Runner sports utility vehicle flipped several times. He suffered spinal injuries that left him paralyzed from the sternum to the lower extremities, according to the lawsuit.

This case involved an un-tripped rollover on flat, dry pavement. The jury found the 4Runner was “in defective condition and unreasonably dangerous to the Plaintiff,” and that the defects and unreasonable danger was a “proximate cause” of Will Graves’ injuries. Combining future lost earnings, pain and suffering, medical costs and loss of enjoyment of life, the jury computed a compensation amount of more than $12.2 million. But the jury also found that contributory negligence on the part of Will Graves was responsible for 40% of the accident, reducing the total amount to around $7.35 million.

District Judge Keith Starrett did not let the awarding of punitive damages go to the jury, ruling that the Plaintiffs did not meet the burden of proof. The case centered around the vehicle’s propensity to overturn in certain situations because of its high center of gravity and the likelihood of the roof crushing down into the passenger compartment during such an incident. The roof crushed down on the occupancy space in the passenger compartment.

Toyota’s testing of the 4Runner’s danger to drivers came only as a result of lawsuits. When the company started more serious rollover tests in 1997, Toyota protected its test drivers with an additional roll bar. Toyota claimed in the case that driver error caused the accident, that the vehicle was well-designed and well-tested, that it was safe in its resistance to rollover, that it was safe in its regard to roof strength, and that Graves’ injuries occurred before the rollover deformed the roof. Toyota also argued that gouges in the road indicated one of the tires was under-inflated, leading to the rollover. Biloxi lawyers, Robert P. Myers and Joe Sam Owens, represented the Plaintiff and did a very good job in this case.

**Golf Cart Injuries Are a Major Problem**

It has been reported that golf cart injuries are occurring at an alarming rate. There are approximately 13,000 golf cart-related emergency room visits in the United States per year. Approximately 40% of the injuries occur to children under the age of 16. About 50% of these injuries result from falling from a moving cart. Only about half of the accidents occur on golf courses. The other half are taking place at home or on streets or other public property. With the advent of bedroom communities, many people are now using electric golf carts and other electric Personal Transportation Vehicles (PTVs) as a mode of transportation within their community.

Golf carts are designed for use off of public roads where the speed should never exceed 15 MPH. There are no uniform state or local regulations governing golf carts. There are new federal regulations that cover low speed vehicles, but those rules only apply to vehicles with speed
ranges between 20 to 25 miles per hour. Most golf carts are not subject to the rules because they travel at less than 20 mph.

Golf carts are increasingly being used on the road for short trips in affluent subdivisions and senior citizen communities because they are relatively inexpensive, quiet and have low emissions. Recommendations have been made to ban children under the age of six from riding in golf carts. Studies have revealed that passenger ejection is a dominant mode of injury in a golf cart. Golf carts generally do not have seat belts but instead rely on handles on each end of the seat as hip retention devices.

Unfortunately, if an operator of a golf cart accelerates quickly in a left-hand turn, passengers may flip over the seat retention device and land on their head. Researchers have recommended that if children are to ride on a golf cart with no seat belts, at the very least, mounted hand holds should be provided to reduce the likelihood of an ejection. There is a need for the passive hip restraint affecting this to be improved on all golf carts to improve occupant retention. For vehicles that are not used strictly on the golf course, there should be seat belts, doors or netting to improve occupant retention.

There are companies that modify golf carts to make them suitable for hunting and other off-road use. These vehicles especially need doors and seat belts because the utility is not diminished by these features as it may be with golfers, who need to get on and off the vehicle frequently. There have been numerous injuries and even deaths occurring from these modified golf carts. Some of the recommendations coming out of the research and testing of golf carts include the need to monitor children operating golf carts; seat belts becoming mandatory; safety netting; and the use of helmets. Without better designs by the manufacturer, we will continue to see these injuries occur at a high rate. If you would like more information on this subject contact Greg Allen at 800-898-2034 or by email at Greg.Allen@beasleyallen.com.

CAR SEATS SHOULD BE REGISTERED FOR RECALL NOTICE

Britax, a child car seat manufacturer, recently issued a recall on 14,220 of its newer Chaperone seats. The recall was because a rivet can become loose and cause the harness adjuster to detach from the seat. Without the harness adjuster, the harness straps cannot properly restrain the baby during a crash, which increases the risk of injury or death for the infant. Models E9L692J, E9L692K, E9L692L and E9L692M manufactured from Sept. 1, 2010, through April 30, 2011 are affected by this recall. Britax will provide consumers and retailers with a remedy kit to correct the harness adjuster problem. This recall is only the latest in what has become an ongoing safety problem. Thousands of car seats are recalled each year, but most parents are not even aware that they are entrusting their children’s lives to a defective car seat. To make sure that a child’s car seat has not been recalled, parents must either search for the car seat on the recall list or register the child’s car seat for recall notifications. To search for a child’s car seat on the recall list, parents can go to http://www.carseat.org/Recalls/179NP.pdf and look for the child’s car seat model on the recall list. However, the best solution is to register the child’s car seat with the manufacturer. Parents can register with the following manufacturers on their website:

- Britax: http://www.britaxusa.com/registeration/
- Clek Inc.: http://clekinc.com/register/
- Combi: http://www.combiusa.com/Customer-Care/Product-Registration-Car-Seats.aspx
- Dorel: http://www.djgusa.com/registration/
- Evenflo: https://plweb.evenflo.com/ProductRegistration/Default.aspx
- Graco: http://www.gracobaby.com/Product%20Registration/Pages/ProductRegistration.aspx?productType=1
- RECARO: http://www.recaro-registry.com

Parents can also register the child’s car seat with the National Highway Traffic Safety Administration. From 1975 to 2008, an estimated 8,959 lives were saved by child restraints. To maximize child safety, parents should do the following:

- Use a car seat on every trip regardless of distance;
- Read and follow the car manufacturer’s instructions;
- Use a car seat that is appropriate for the child’s weight and height;
- Keep the child in a car seat for as long as the child meets the car seat’s weight and height specifications; and
- Keep all children under the age of 12 in the backseat.

If you would like additional information on child car seat safety and recalls, contact Stephanie Stephens, a lawyer in our Personal Injury Section, at 800-898-2034 or by email at Stephanie.Stephens@beasleyallen.com.

Sources: NHTSA; SafetyBeltSafe USA; and AI.com

CNN SAYS TOYOTA MEMO SHOWS CONCERN OVER ELECTRONIC ACCELERATION ISSUES

It was reported by CNN last month that Toyota engineers found an electronic software problem that caused “sudden unintended acceleration” in a test vehicle during pre-production trials. CNN said this information came from to a company engineering document it obtained which was translated for the news organization. The 2006 document, marked “confidential,” was said to recount the results of an adaptive cruise-control software test in a model internally designated the 250L, a vehicle later sold as the Lexus 460 in Japan and Europe. The document reportedly said a “fail-safe overhaul” would be needed for another model in production, internally designated the 180L, which the company says was later sold as a Toyota Tundra.

Toyota insists that the document shows no such thing. The automaker continues to deny that any sudden unintended acceleration in any of its vehicles was caused by electronic systems. But it was reported that three translations of the report, including two commissioned by CNN after Toyota’s objections, found that engineers raised concerns that the adaptive cruise control system would start the car moving forward on its own. CNN says the document states that “the cruise control activates by itself at full throttle when the accelerator pedal position sensor is abnormal.”
Our firm has been investigating a number of cases involving sudden, unintended accelerations reported in Toyota vehicles. In each of those cases the crashes were severe, resulting in fatalities. To date Toyota has never conceded that an electronics or software problem could be responsible in any way for sudden acceleration in its cars and trucks. In fact, it strongly denies it.

Michael Pecht is director of the CALCE Electronics Products and Systems Center at the University of Maryland. Pecht, a mechanical engineering professor, was assigned to look into the sudden acceleration of Toyota vehicles as a consultant for Congress. He said the newly-found document should have been included in any investigation, and he questioned why it wasn’t shared with NHTSA, NASA (which assisted the highway safety agency’s review) and Congress. Pecht stated, referring to the document, that it “looks like an example of electronics causing a car to suddenly accelerate.”

Toyota has said it didn’t share the document with the NHTSA because “the test and the document had nothing to do with unintended acceleration, or a defect, or a safety flaw of any kind.” The company says the document was meant to alert other engineers to the pre-production problem, so lessons learned could be shared. Neither the test vehicle nor the adaptive cruise-control system cited in the document have been sold in the United States, according to Toyota.

The engineering document was originally provided to CNN in Japanese, with an English translation. When Toyota complained about what it said were inaccuracies in the original translation, CNN says it retained a Tokyo-based translation house with expertise in automotive and technical matters to independently retranslate the document. That translation, according to CNN, backed up the first, which found that Toyota engineers recorded a “sudden unintended acceleration” in the 250L’s adaptive cruise control. That control was designed to slow the vehicle if sensors detected an object ahead and accelerate the vehicle when the obstacle clears.

After Toyota claimed that both of the translations were in error, CNN says it commissioned a third translation by another firm in the United States with expertise in automotive and engineering translations. CNN said that, according to the third translation, Toyota’s engineers stated that a test was conducted on the 180L “to prevent the accelerator malfunction that caused the vehicle to accelerate on its own” in an earlier test of the 250L.

Neil Hanneman, an independent automobile safety engineer based in California, examined all three translations of the document at CNN’s request and concluded that in 2006, Toyota did in fact have an electronics issue. He stated:

_This is a tangible, repeatable, fixable issue that they’ve identified in this vehicle. It’s related to software issues, which is something Toyota has said is infallible in their systems._

Clarence Ditlow, the executive director of the Center for Auto Safety, is another analyst who reviewed all three translations and who is concerned over the safety issues at Toyota. Ditlow, who is well-respected in the auto safety field, had this to say:

_What the memo tells me is that there was an electronic problem that caused unintended acceleration in an earlier-model Lexus—the 250—and they wanted to avoid the same problem occurring in the 180._

To say that Toyota isn’t very happy about the CNN report is perhaps an understatement. In fact, the auto maker is extremely upset and has said so. But it’s undisputed that the 2006 document—labeled “confidential”—was never turned over to government investigators at NHTSA. The agency later investigated accelerator problems in Toyota vehicles and concluded—as Toyota had—that the causes were not electronic, but rather sticky gas pedals, bad floor mats, and driver error. I suspect we will be having more to say on this matter in future issues.

Source: CNN

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**TOYOTA LAWSUITS HEADED FOR TRIAL**

Judge Anthony Mohr, who is overseeing some 100 sudden acceleration lawsuits against Toyota Motor Corp. in state courts in California, has set a trial schedule. A high-profile wrongful death case will go to trial by January 1, 2013. The judge scheduled jury selection in the first bellwether case to begin as early as November 1st in Los Angeles. The case involves the death of a woman whose 2006 Toyota Camry hit a telephone pole. Judge Mohr said in his order last month that jury time-qualification will begin between Nov. 1 and Nov. 30 and that the trial will begin after Jan. 1, with the specific date to be determined. The so-called bellwether trial involved the claims by the family of Noriko Uno, who died in 2009 when, they allege, her Camry unintentionally accelerated and struck a telephone pole.

Simultaneously with the wrongful death case, Judge Mohr will hear evidence for the lawsuit filed by the Orange County District Attorney against Toyota in 2010. It was alleged in that suit the carmaker endangered the public by knowingly selling defective vehicles. Witnesses who testify in the Uno case will testify if needed in the District Attorney’s case without the jury present, according to the judge.

Judge Mohr also selected two other bellwether cases, one proposed by the Plaintiffs, as was the Uno case, and one proposed by Toyota. U.S. District Judge James V. Selna, who is in Santa Ana, Calif., and who oversees the coordinated federal lawsuits against Toyota over unintended-sudden acceleration, has scheduled the first of three trials in his court for Feb. 19, 2013. So things will be very busy on the Toyota front.

As has been widely reported, Toyota, the world’s second-largest automaker, recalled at least 8 million U.S. vehicles starting in 2009, after claims of defects and incidents involving sudden unintended acceleration. The recalls resulted in hundreds of economic-loss suits and claims of injuries and deaths.

Source: CLTMAG.com

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**70 SETTLEMENTS BY BAYER IN YAZ AND YASMIN CASES**

Bayer has agreed to settle about 70 of the approximately 11,300 product liability claims involving the oral contraceptives Yaz and Yasmin, according to the drug company’s latest annual report. “As of Feb. 13, 2012, Bayer had reached agreements, without admission of liability, to settle the claims of approximately 70 Plaintiffs in the U.S. At terms and conditions which Bayer views to be reasonable,” the company said in the legal risks section of its 2011 annual report. The terms of those settlements were not disclosed in that report.

According to the report, as of February 1, there were about 11,300 lawsuits pending in the U.S. filed on behalf of those alleging injury or death as a result of the use of Yaz and Yasmin, or the generic versions of the drugs, Ocella and Gianvi. As we have stated in prior issues, Yaz and
Drug Maker To Settle Suits Over Contaminated Vials For $285 Million

Drug maker Teva has agreed to pay $285 million to settle cases alleging that oversized vials of the anesthetic propofol caused an outbreak of hepatitis C in 2008. The settlement resolves over 80 lawsuits involving more than 150 patients at endoscopy clinics in Southern Nevada who developed hepatitis C. Health officials linked the outbreak to contamination of propofol vials. Teva had lost three consecutive 9-figure cases in front of juries before it agreed to this settlement.

Law suits filed by the patients alleged that the drug maker made large 50 ml and 100 ml vials to save money even though it knew that clinics performing minor surgeries would double-dip into the same vials for multiple procedures and cause contamination. The first case that went to trial was brought by a Las Vegas prep school principal who got infected after a routine colonoscopy. A jury awarded him $505 million in 2010. The next two trials also ended in giant verdicts within a few days of each other, one for $182.5 million to three patients and the other for $104 million to a 71-year-old patient and his wife. A fourth trial involving 41 patients was underway before the company agreed to settle with the Plaintiffs for a confidential sum.

Source: Lawyers USA Online

An Update On The Pradaxa Litigation

Approved by the FDA in October 2010, Pradaxa (Dabigatran) is marketed by Boehringer Ingelheim Pharmaceuticals, Inc., to reduce the risk of strokes and blood clots in people who have atrial fibrillation, a common heart rhythm abnormality. Pradaxa is in a class of anticoagulant medications known as ‘blood thinners.’ Pradaxa is a direct thrombin inhibitor. It prevents the formation of blood clots by counteracting the effects of thrombin, which is responsible for clotting. Boehringer Ingelheim Pharmaceuticals markets Pradaxa as the preferred blood thinner. According to Boehringer, it is easier to dose, requires less monitoring, and is more effective at preventing clots compared to Warfarin (Coumadin). However, unlike Warfarin, Pradaxa’s anticoagulation effect cannot be reversed with vitamin K, significantly increasing the odds that a bleeding event will turn fatal.

As you may know, atrial fibrillation is the most common heart rhythm condition. Patients with this condition typically require blood-thinning medications. Warfarin is one such blood-thinner that is commonly used. Pradaxa is the first alternative to that drug. In November 2010 the drug manufacturer confirmed at least 260 fatal bleeding events in patients taking Pradaxa.

Pradaxa side effects have prompted safety advisories in Japan and Australia and have led to labeling updates in Europe and the United States. The FDA recently required the German pharmaceutical manufacturer Boehringer Ingelheim to update its Pradaxa label after receiving a large number of adverse event reports from consumers. The January 2012 label change added minimal information regarding the dangers of bleeding events and the lack of a reversal agent for Pradaxa.

To date, there have been significant numbers of fatal bleeds reported to the FDA. The lack of a reversal agent is believed to be the cause of the significant number of bleeding-related adverse events. While various reports have linked 260 bleeding deaths to Pradaxa, Boehringer, in an official statement on November 2, 2011, linked about 50 bleeding deaths to Pradaxa, which Boehringer asserted is consistent with expectations from the Pradaxa clinical trials. Earlier this year, the FDA required Boehringer to modify the Pradaxa warning label to reflect the lack of a reversal agent, which, amazingly, had not been included in the original warnings. The FDA is currently evaluating the reports of bleeding deaths and investigating whether the rate of severe bleeding reports is higher than what was seen in the Pradaxa clinical trials. At this point, there is no black box warning for Pradaxa.

An Update On The Actos Litigation

Approved by the FDA in July 1999, Actos (Pioglitazone) is manufactured by Takeda to treat Type 2 diabetes. Actos is in a class of insulin-sensitizing drugs known as thiazolidinediones, and is currently marketed as a stand-alone drug and/or in combination with metformin (ActoPlus Met), metformin extended release tablets (ActoPlus Met XR), and glimepiride (Duetact). Since its introduction to the market, millions of prescriptions of Actos have been written, and Actos has been included in the top ten best-selling medications in the United States for several years.

In September 2010, the FDA announced that Actos may be linked to urinary bladder cancer based upon data from a ten-year epidemiological study. Thereafter, the FDA and the EMA (European Medicines Agency) required revised Actos warning labels to include the risk of urinary bladder cancer. And 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.

Lawyers in our Mass Torts Section continue to investigate and file Actos cases involving individuals who have been diagnosed with bladder cancer after ingesting Actos. We currently have cases pending in Illinois and Louisiana. Andy Birchfield, who heads up the Mass Torts Section in our firm, has been selected to oversee the consolidated litigation as part of the Plaintiffs’ Steering Committee (PSC) for In re: Actos (Pioglitazone) Products Liability Litigation MDL 2299. This litigation, which encompasses hundreds of cases against Takeda, involves bladder cancer, and is consolidated under U.S. District Judge Doherty.
in the Western District of Louisiana. The initial status conference in the Actos MDL took place on March 22nd.

Lawyers in our Mass Torts Section are currently investigating potential claims. If you or someone you know has been diagnosed with bladder cancer after taking Actos, you can contact Roger Smith at 800-898-2034 or by email at Roger.Smith@beasleyallen.com. We would appreciate the opportunity to evaluate any potential claim.

**Progress Is Being Made In Pinnacle MDL**

In May of last year, the Judicial Panel on Multidistrict Litigation (JPML) formed the second metal-on-metal Multidistrict Litigation (MDL). The JPML centralized pretrial proceedings of all actions involving DePuy’s Pinnacle Acetabular Cup system in the Northern District of Texas. Currently, approximately 984 DePuy Pinnacle claims are pending before Judge James E. Kinkeade in the U.S. District Court for the Northern District of Texas (MDL 2244).

There are various configurations of the DePuy Pinnacle articulating surface, including polyethylene-on-metal and metal-on-metal. The Pinnacle metal-on-metal articulation has sparked the most controversy as patients have reported issues similar to those reported in DePuy ASR patients, including pain, swelling, component loosening and need for premature revision surgery. As with the ASR, there is also a danger for metallosis, a condition involving the build-up of metallic debris in the soft tissues of the body.

In June 2011, Judge Kinkeade ordered a stay of all discovery and motion proceedings until further order of the Court. He lifted his stay in January, 2012, allowing all involved with the Pinnacle MDL to proceed with the litigation. In response to the order lifting the stay, a group of lawyers leading the charge in the Pinnacle MDL for claimants met last month to discuss the administration of the Pinnacle litigation. Those in attendance included the members of the Plaintiffs’ Executive Committee (PEC) and Plaintiffs’ Steering Committee (PSC), which were selected in January to oversee the coordination of the Pinnacle MDL. Navan Ward, a lawyer in our firm’s Mass Torts Section, had been selected by the Court to serve on the PSC.

Many issues were discussed at the meeting of the Plaintiffs’ lawyers, including various administrative matters aimed at moving the MDL toward discovery. A Scheduling Order is expected to be finalized soon. The good news is that the start of the discovery process is now on the horizon. Many of the PEC and PSC members are also heavily involved in the ASR litigation. These lawyers are using the experiences earned and information gathered in that ACR litigation to help lead the Pinnacle MDL.

Consolidating the cases into a MDL allows the committee overseeing the process to put more pressure and focus on moving the cases toward resolution. Lawyers will coordinate the litigation and work together on resolving issues that come up during the course of the litigation. Navan not only serves on the PSC for the Pinnacle MDL, but he is also serving on the PSC for the DePuy ASR Recall MDL located in the Northern District of Ohio. Navan is helping to coordinate both litigations, and working with other lawyers on science and discovery issues. Navan also serves as Co-Chair to the DePuy Metal-on-Metal Hip Implant Litigation Group for the American Association for Justice.

Anyone with either the ASR or Pinnacle hip should have his or her case investigated to determine its merits. If you need more information, or would like for us to work on a claim, contact Navan Ward at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

**Medtronic Defibrillator Claim May Proceed In Missouri**

Because of a ruling by the Missouri Court of Appeals, Medtronic may be liable for manufacturing a defibrillator that allegedly confused users as to the appropriate setting for restoring a patient’s heart beat to a normal rhythm. The Court reversed a summary judgment which had been granted by the trial court. The Plaintiff in the case alleged that he suffered a brain injury because an emergency room doctor using a Medtronic LifePak 9P defibrillator failed to promptly restore his heartbeat. The Plaintiff says the delay was due to the fact that the defibrillator automatically reset to deliver asynchronous shocks when his doctor thought he had set the device to deliver the synchronous shocks the Plaintiff needed.

In suing Medtronic for a defective product under Missouri law, the Plaintiff alleged that the company’s defibrillator was defective because it confused users as to when it was set to deliver synchronous shocks instead of asynchronous shocks. Medtronic argued that it was not a fault because the Plaintiff’s doctor failed to follow the instructions provided with its device. But the Appeals Court concluded that this fact alone did not insulate Medtronic from liability. The Court, in its opinion, stated:

*In this case, the [plaintiff’s] expert testified that Medtronic unreasonably relied on its printed instructions to inform users of the proper means of operating the device. Instead of such passive materials, the [plaintiff’s] expert opined that Medtronic should instead have provided active notification through explicit messages that the device had reverted to asynchronous mode on the defibrillator’s monitor or through audible alarms, or by requiring users to manually override the device’s default settings. ... In light of this testimony, as well as the evidence concerning the reasonably anticipated misuse of the LifePak 9P and the potentially fatal consequences of such misuse, it is a question of fact for the jury to decide as to whether or not a defibrillator sold without these safeguards constitutes a defective condition.*

This case will now be sent back to the trial court where it will proceed. It will be up to a jury to determine liability based on the facts presented at trial.

Source: Lawyers USA Online

**TVM Update**

Currently, we are investigating cases involving mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldera, and Johnson & Johnson. We have a number of cases filed in federal and state courts. Specifically, we have filed cases in the Southern District of West Virginia, where four separate MDL venues are located, and in Atlantic County, N.J., where there is consolidated state court litigation. We continue to investigate and file cases involving clients who were implanted with Transvaginal mesh or a bladder sling device and have suffered serious adverse events. 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.
XI. AN UPDATE ON SECURITIES LITIGATION

JUDGE REFUSES TO APPROVE PROPOSED CONSENT JUDGMENT INVOLVING CITIGROUP

In October, the Securities and Exchange Commission filed a Complaint against Citigroup Global Markets, Inc., accusing Citigroup of substantial securities fraud. This was based on Citigroup's creation of a billion-dollar fund used to dump some dubious assets on misinformed investors. These “assets” were mortgage-backed securities that Citigroup was trying to sell to investors while the company had taken a short position itself on the same investments. Citigroup made profits of around $160 million on this Fund while, according to the SEC, investors lost more than $700 million. Simultaneously with the filing of its Complaint, a proposed consent judgment was jointly filed by Citigroup and the SEC agreeing to settle the claims. The Consent Judgment requested District Judge Rakoff of the Southern District of New York to approve the following.

• permanently restrained and enjoined Citigroup and its agents, employees, etc., from future violations of Sections 17(a) (2) and (3) of the Securities Act,

• required Citigroup to disgorge to the S.E.C. Citigroup's $160 million in profits, plus $30 million in interest thereon, and to pay to the S.E.C. A civil penalty in the amount of $95 million, and

• required Citigroup to undertake for a period of three years, subject to enforcement by the Court, certain internal measures designed to prevent recurrences of the securities fraud here perpetrated.

The Court refused to approve the proposed Consent Judgment, rather than rubber stamp it, as is done quite often in this type settlement. Judge Rakoff's opinion focused a spotlight on what he clearly sees as the SEC's lack of true enforcement. In most all SEC Consent Judgments the Defendant is not required to admit any wrongdoing and the fine is just chalked up as a cost of doing business. Judge Rakoff stated:

“As for common experience, a consent judgment that does not involve any admissions and that results in only very modest penalties is just as frequently viewed, particularly in the business community, as a cost of doing business imposed by having to maintain a working relationship with a regulatory agency, rather than as any indication of where the real truth lies. This, indeed, is Citigroup's position in this very case.

The opinion goes further and calls out the entire practice of accepting settlements without any admissions as basically a “bankrupt approach to regulation.” It was stated by Judge Rakoff in his ruling:

Of course, the policy of accepting settlements without any admissions serves various narrow interests of the parties. In this case, for example, Citigroup was able, without admitting anything, to negotiate a settlement that (a) charges it only with negligence, (b) results in a very modest penalty, (c) imposes the kind of injunctive relief that Citigroup (a recidivist) knew that the S.E.C. bad not sought to enforce against any financial institution for at least the last 10 years, and (d) imposes relatively inexpensive prophylactic measures for the next three years. In exchange, Citigroup not only settles what it states was a broad-ranging four-year investigation by the S.E.C. of Citigroup’s mortgage-backed securities offerings, but also avoids any investors’ relying in any respect on the S.E.C. Consent Judgment in seeking return of their losses. If the allegations of the Complaint are true, this is a very good deal for Citigroup; and, even if they are untrue, it is a mild and modest cost of doing business.

It is harder to discern from the limited information before the Court what the S.E.C. is getting from this settlement other than a quick headline. By the S.E.C.’s own account, Citigroup is a recidivist, and yet, in terms of deterrence, the $95 million civil penalty that the Consent Judgment proposes is pocket change to any entity as large as Citigroup. While the S.E.C. claims that it is devoted, not just to the protection of investors but also to helping them recover their losses, the proposed Consent Judgment, in the form submitted to the Court, does not commit the S.E.C. To returning any of the total of $285 million obtained from Citigroup to the defrauded investors but only suggests that the S.E.C. “may” do so. In any event, this still leaves the defrauded investors substantially short-changed...

An application of judicial power that does not rest on facts is worse than mindless, it is inherently dangerous. The injunctive power of the judiciary is not a free roving remedy to be invoked at the whim of a regulatory agency, even with the consent of the regulated. If its deployment does not rest on facts—cold, hard, solid facts, established either by admissions or by trials—it serves no lawful or moral purpose and is simply an engine of oppression.

[In any case like this that touches on the transparency of financial markets whose gyrations have so depressed our economy and debilitated our lives, there is an overriding public interest in knowing the truth. In much of the world, propaganda reigns, and truth is confined to secretive, fearful whispers. Even in our nation, apologists for suppressing or obscuring the truth may always be found. But the S.E.C., of all agencies, has a duty, inherent in its statutory mission, to see that the truth emerges; and if it fails to do so, this Court must not, in the name of deference or convenience, grant judicial enforcement to the agency’s contrivances.

Judge Rakoff summarized his holding quite well, leaving no doubt as to how he viewed the proposed deal, writing:

The Court concludes, regretfully, that the proposed Consent Judgment is neither fair, nor reasonable, nor adequate, nor in the public interest. Most fundamentally, this is because it does not provide the Court with a sufficient evidentiary basis to know whether the requested relief is justified under any of these standards. Purely private parties can settle a case without ever agreeing on the facts, for all that is required is that a plaintiff dismiss his complaint. But when a public agency asks a court to become its partner in enforcement by imposing wide-ranging injunctive remedies on a defendant, enforced by the formidable judicial power of contempt the court, and the public, need some knowledge of what the underlying facts are: for otherwise, the court becomes a mere handmaiden to a settlement privately
negotiated on the basis of unknown facts, while the public is deprived of ever knowing the truth in a matter of obvious public importance.

The court’s refusal to approve the Consent Judgment has made some rather strange bedfellows. Both Citigroup and the SEC have appealed the court’s ruling. The Second Circuit has stayed proceedings at the District Court level pending the outcome of the appeal. Whatever the outcome, lawyers in our own firm who handle these cases are hopeful that this opinion will curtail the perceived practice of agencies settling with wrongdoers on a cost of doing business basis and without any real thought as to the recovery for wronged investors. If you need additional information on this opinion or the subject generally, contact Scarlette Tuley, a lawyer in our Consumer Fraud Section, at 800-898-2304 or by email at scarlette.tuley@beasleyallen.com.

PRELIMINARY APPROVAL GIVEN TO $75 MILLION ACCORD IN CIT GROUP FRAUD CASE

CIT Group Inc. has received preliminary court approval of a $75 million settlement to resolve allegations the commercial lender fraudulently misled shareholders about its exposures to risky mortgages and student loans. The class includes investors who owned CIT shares between Dec. 12, 2006, and March 5, 2008, and who bought preferred stock under an October 2007 offering. Shareholders claimed the New York-based company falsely assured that it maintained conservative loan portfolios and had set aside adequate reserves for expected losses. They said CIT's share price tumbled as the truth became known and losses grew.

CIT filed for bankruptcy protection in November 2009, resulting in the loss of $2.3 billion of taxpayer bailout money, and emerged from Chapter 11 the following November. CIT Group Inc. has received preliminary approval for the settlement. A hearing to consider final approval is scheduled for June 13. The lead Plaintiff is Pensioenfonds Horeca & Catering, a pension fund for the Dutch hospitality and catering industry. The case is In re: CIT Group Inc Securities Litigation, U.S. District Court, Southern District of New York, No. 08-06613.

ACTIVITY IN THE FIRM’S CONSUMER FRAUD SECTION

XII.

AN UPDATE ON WHAT IS GOING ON IN THE FIRM’S CONSUMER FRAUD SECTION

Our firm’s Consumer Fraud Section has been very busy and is currently investigating a number of potential claims for clients in a number of different areas. The claims are also in a number of states. Many of the claims are already in litigation with trials pending. The following are some of the areas in which the lawyers are working.

AWP LITIGATION

We represent the States of Alabama, Alaska, Hawaii, Kansas, Louisiana, Mississippi, South Carolina, and Utah in a series of cases against pharmaceutical companies, known as the AWP litigation. Each of these states alleges that pharmaceutical companies’ falsely pricing information which caused State Medicaid agencies to grossly overpay for prescription drugs. The drug manufacturers’ false and inflated Average Wholesale Prices (AWPs) caused pharmacies to shop for drugs offering the highest reimbursement from the states. In turn, the inflated AWP prices for brand name prescription drugs, the States of Alaska, Hawaii, Kansas, and Louisiana have filed lawsuits against the major drug wholesaler, McKesson Corporation, for its role in the AWP scheme. It’s alleged in these cases that from 1991 to 2009, McKesson associated itself with First Data Bank to unlawfully and artificially increase the Wholesale Acquisition Cost (WAC) to Average Wholesale Price (AWP) markup factor for a number of brand name prescription drugs.

The deceptive practices of McKesson and First DataBank resulted in the publication of false and misleading AWP prices. Each of the four states relied on those prices in making payments for brand name prescription drugs. The scheme by McKesson and First DataBank created overpayments for most brand name prescription drugs. This is in addition to the overpayments induced by the manufacturers’ fraudulent prices, which are the subject of separate, but related AWP litigation filed by numerous states.

Lawyers: Dee Miles, Roman Shaul, Clay Barnett, Alison Douillard, Bill Hopkins, and Chad Stewart

Primary Staff Contacts: Beth Warren and Jessica Sutherland

MORTGAGE CASES

Bill Robertson, a lawyer in the Section, is currently handling cases involving mortgage fraud. He is especially inter-
investigated antitrust

The lawyers in the Section continue to investigate and litigate antitrust. Antitrust law is the law of competition. It’s recognized that society is better off if buyers and sellers act independently, not in concert. Antitrust law focuses on the promotion of competition through restraints on monopoly and cartel behavior. Typical cases involve attempts to monopolize, price fixing, exclusive distributorships, refusals to deal, tying arrangements, and mergers and acquisitions. We believe that antitrust is a growing area, as corporations increasingly tend to “cross the line” as they seek to gain advantage in this tough economy.

We are currently involved in antitrust litigation involving an illegal tying arrangement whereby a major pharmaceutical company requires users of its patented method of administering a cardiac drug to also purchase the pharmaceutical company’s unpatented cardiac drug (as opposed to cheaper generic drugs offered by competitors). The result is that our client, a hospital, is forced to pay four times as much for the branded (but unpatented) drug as it could for identical generic drugs.

The case is filed as a class action on behalf of all healthcare providers affected by this conduct. We are also involved in price-fixing litigation where we represent a state’s Attorney General, on behalf of the state and its consumers, against manufacturers of LCD screens used in televisions, computer monitors, and cellular phones. The Federal Trade Commission and Department of Justice have already investigated and sanctioned a number of LCD manufacturers for blatant collusion in setting prices for LCD products. Other states are involved in separate litigation against these manufacturers, and we envision that all states Attorneys General will file similar claims to recoup excess prices paid by state agencies and consumers for LCD products.

Lawyers: Archie Grubb and Andrew Brasher
Primary Staff Contact: Mandy Cook

Dongwon AutoPart Technology Litigation

The timesheets of Dongwon employees are sometimes docked for a 1-hour meal period, yet the employees only receive 45 minutes. Over the course of weeks, months, and years, this 15 minutes of work without pay for an employee really adds up. We have filed a lawsuit against Dongwon on behalf of a former employee, and have handled similar cases in the past. Whether caused by interrupted meal periods or duties performed off-the-clock, perhaps before or after a shift, we are always investigating cases where employees have not received the pay due for all of their work.

Lawyer: Lance Gould
Primary Staff Contact: Holly Busler

Bank of America Litigation

Lawyers in the Section are handling a number of cases against Bank of America. As we have mentioned in prior issues, Bank of America now owns Merrill Lynch. Financial Advisors who worked for Merrill Lynch participated in several deferred compensation plans, including plans with names like FACAAP, Growth Award, Wealth-Builder, and other Long Term Compensation Incentive Programs (LTCIPs). The Advisors worked hard to accumulate benefits in the LTCIP’s with the expectation that Merrill Lynch and its successors would honor their obligations under the plans. Unfortunately, those obligations have not been honored.

Bank of America’s acquisition of Merrill Lynch triggered what was defined as a “Change in Control” within the LTCIP’s. 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 did not happen and resulted in thousands of former Merrill Lynch Financial Advisors being owed millions of dollars in unpaid benefits.

Lawyers in the Section are investigating potential claims on behalf of former Merrill Lynch brokers against Bank of America. These former employees often left either because of the changes that occurred or in some cases were pressured or pushed out by the incoming management. In any case, they were wrongfully denied deferred compensation to which they were and may still be entitled. During these tough economic times, it is a sad commentary that any hard working person must fight for what is rightfully due to him or her. Our lawyers are ready to help those former Merrill Lynch employees win that fight against Bank of America.

Lawyers: Chad Stewart and Larry Golston
Primary Staff Contact: Jodi Turner

Dec Miles, as Section Head, is in charge of the Section. Michelle Fulmer serves as the Section Head Administrator. They have a very good group of lawyers and staff personnel in this section. As one can readily
see, things have been very busy in the Section. If you have any questions about any of the areas covered above, contact either the lawyer or staff person working in that specific area at 800-898-2034.

XIII. INSURANCE AND FINANCE UPDATE

CITIGROUP PAYMENTS SOARING IN HEDGE FUND CLAIMS

Citigroup has been guilty of fraudulent conduct involving risky hedge funds which were marketed as the safety equivalent of municipal bonds. At last count, Citigroup had paid out around $85 million with more payouts very likely in the near future. The payments were awarded either in arbitrations or settlements since 2008. There have also been a large number of confidential settlements, which if made public, would push the total payouts thus far much higher. There are dozens of additional cases set for FINRA arbitrations through 2013. The SEC has been investigating Citigroup’s management and marketing of these investments for almost four years.

The investors were never told that the funds were highly leveraged—borrowing roughly $8 for every $1 invested—and that created huge losses when the bond market plunged in 2008. A separate group of Citigroup hedge funds sold to top investment clients, called Falcon Strategies, also fell sharply on losing mortgage investments in 2007. Internal documents—including emails—were very damaging to Citigroup. The bottom line is that the bank misled its customers about funds it knew were risky and didn’t meet the customers’ needs or expectations.

Source: USA Today

LIBERTY MUTUAL CONTINUES TO OPPOSE THE $450 MILLION WORKERS’ COMPENSATION SETTLEMENT BY AIG

A federal judge has formally approved a $450 million workers’ compensation class-action settlement between American International Group (AIG) and its rival companies. It appears that Liberty Mutual will continue its fight in opposition to the settlement. The class action alleged that AIG and its subsidiaries intentionally under-reported workers’ comp premiums to state regulators for decades, in an attempt to pay smaller premium taxes and residual market charges before 1996. In the class action lawsuit, insurers said AIG’s scheme hurt them financially because AIG, with its under-reporting, was allowed a smaller share of the high-risk residual market assessments.

According to the settlement, approved by U.S. District Court Judge Robert Gettleman on Feb. 28, AIG will pay $450 million, which will be divided among commercial insurers that were affected by AIG’s scheme. The settlement class was certified in July 2011 by Judge Gettleman and the $450 million settlement was given preliminary approval last December. But Liberty Mutual, one of the insurers in the class action, contends that the settlement is inadequate. The settlement assumes that AIG under-reported its workers’ comp premiums by $2.1 billion, an amount that the opponents of the settlement are calling too small.

Liberty Mutual has filed an appeal in the case. A spokesman for Liberty Mutual told the Insurance Journal.

We respectfully and vigorously disagree that the settlement is fair, reasonable and adequate. The settlement was negotiated by conflicting parties and it is unfair because it reflects damages of $2.1 billion, far less than the $6.1 billion in actual damages demonstrated by the court-approved statistical model. Liberty Mutual remains committed to making sure that AIG is held accountable for knowingly under-reporting workers’ compensation premiums to various insurance pools for more than two decades.

In addition to AIG, those in favor of the current settlement include Hartford Financial Services Group, Travelers Indemnity, Technology Insurance, Ace Ina Holdings, Auto-Owners Insurance, Companion Property & Casualty Insurance and Firstcomp Insurance. It will be interesting to see what happens on appeal.

Source: Claims Journal

$8.5 BILLION MORTGAGE SETTLEMENT SENT BACK TO NEW YORK COURT

A U.S. Appeals court ruled that a proposed $8.5 billion settlement by Bank of America Corp. with investors in mortgage-backed securities should be reviewed in New York state court, not federal court. Bank of America, the nation’s second largest bank, is seeking to resolve liabilities from its purchase of Countrywide Financial Corp. in 2008. The settlement has been viewed as a template for other banks to address claims by investors who bought risky pools of mortgages before the housing market collapsed. The ruling by the U.S. Court of Appeals for the Second Circuit reverses an October decision by U.S. District Judge William Pauley who had taken the case from state court.

Chief Judge Dennis Jacobs of the 2nd Circuit wrote in the decision that the case was being dismissed for lack of jurisdiction. The judges said it was up to the state court to confirm whether BNY Mellon had the authority to enter into the settlement, and acted reasonably and in good faith, as the trustee requested. The decision made it clear that the relief sought in this case was an issue for the New York state courts.

Bank of New York Mellon, which made the deal with 22 institutional investors, including BlackRock Inc. And MetLife, sought approval in New York State Supreme Court. Other investors, led by a group called Walnut Place LLC, which was not part of settlement talks but would be bound by the terms, complained the $8.5 billion payout was too low and sought Manhattan federal court as the venue for the proceedings. Walnut Place is a name used by Baupost Group, a Boston-based hedge fund run by Seth Klarman.

Gibbs & Bruns, the Houston, Texas, law firm that negotiated the Bank of America deal for institutional investors, also has sent demands for investigations of mortgage-backed securities sponsored by JPMorgan Chase & Co., Morgan Stanley and Wells Fargo & Co. If the settlement is ultimately approved, it could possibly set the stage for other institutions to resolve claims.

Source: Insurance Journal

FORMER PLAYER SUES OVER INSURANCE POLICY

A former Louisiana State University football player has filed suit against his ex-financial planner for allegedly obtaining an inadequate insurance policy meant to protect the athlete in the event of a career-ending injury during his final year of college football. Ciron Black, a standout offensive lineman who was projected as a first-round NFL draft pick, suffered such an injury against Alabama in his senior season in 2009. His claim under the policy was denied by the company. Black never played professional football.

The lawsuit against Benjamin McConley of Fort Lauderdale, Fla., filed in Baton Rouge state court, accuses McConley of breach of contract and “failing to provide
XIV. EMPLOYMENT AND FLSA LITIGATION

NEW YORK CITY COULD OWE OVER $128 MILLION IN FDNY LAWSUIT

According to a court ruling in a New York federal court last month, the amount of back wages owed minorities affected by discrimination in the city’s firefighter entrance exams could be more than $128 million. In a decision, U.S. District Judge Nicholas Garaufis said hearings will be held to determine how much individual claimants will receive, which could lower the total amount the city will have to pay. Judge Garaufis ruled previously that the Fire Department of New York discriminated against minorities in its entrance exam, saying black and Hispanic applicants had disproportionately failed the written examinations and those who passed were placed disproportionately lower down the hiring lists than white applicants.

Of the 11,200 uniformed firefighters in the city, 9% are black or Hispanic. More than half the residents in the city of 8 million identify with a racial minority group. The judge appointed an independent monitor in October to keep an eye on the Department’s effort to improve diversity in recruiting officers. In January, in an interesting move, the city filed a brief asking an appeals court to remove the judge, saying he had abandoned his neutral role.

In his recent ruling, Judge Garaufis appointed four special monitors to oversee the back pay hearings, and said the proceedings could not be delayed by the city’s appeal. He criticized the city, saying it had opportunities to “avoid financial liability of this magnitude.” Judge Garaufis wrote in his order:

“It has been in the City’s power to prevent or remedy the need for damages proceedings for a decade, and it has not done so. The partial summary judgment on the aggregate amount of gross back pay, and the need for individual proceedings to evaluate mitigation, are consequences of the city’s decision to ignore clear violations of federal law.”

Richard Levy, lead counsel for the Plaintiffs, said the amount the city had to pay out could actually grow because the ruling dealt only with back pay. He said the city might have to eventually pay compensatory damages or interest on the wages.

Source: Insurance Journal

FORMER PHYSICIAN’S ASSISTANT AWARDED $168 MILLION IN LAWSUIT

A federal jury awarded a physician’s assistant $168 million in damages because of the hostile work environment that she says she endured at Mercy General Hospital, a Sacramento hospital. The Plaintiff, Ani Chopourian, alleges that she was also repeatedly sexually harassed during the two years she worked at the hospital as a cardiac surgeon’s assistant. She was dismissed in 2008 and her employment terminated, on grounds of misconduct. Ms. Chopourian strongly denied any misconduct on her part. She said that she lost count of the number of complaints that she filed with Human Resources, but said there were at least 18. The verdict included $125 million in punitive damages.

During the trial, hospital managers alleged that it was in fact Ms. Chopourian who was guilty of professional misconduct. They claimed that was the reason she was fired. They also tried to deny her unemployment benefits. Ms. Chopourian was fired a week after she documented the abuse and delivered a formal complaint to the Human Resources Department at the hospital.

During the three-week trial, a number of witnesses depicted a culture of vulgarity and arrogance that they said humiliated female employees and put patients at risk. It should be noted that Mercy General is one of 40 hospitals in California, Nevada and Arizona operated by Catholic Healthcare West—now Dignity Health—employing some 7,000 people. Hopefully, the bosses will have learned a valuable lesson from this case.

Source: The Sacramento Bee

CELEBRITY CHEF BATALI SETTLES NEW YORK LAWSUIT FOR $5 MILLION

Celebrity chef Mario Batali and his business partner have agreed to pay $5.25 million to settle a lawsuit that alleged the two men conspired to defraud a portion of their restaurant workers’ tips. It was reported that the settlement could compensate as many as 1,100 waiters, captains and other staff at the restaurants. The settlement must still be approved by a judge.

The lawsuit against Batali and Joseph Bastianich, filed in a Manhattan federal court in 2010, claimed the Defendants’ res-
Batali's Manhattan restaurants include Babbo, Bar Jamon and Del Posto.

Source: Claims Journal

MORE THAN 1,000 WORKERS MAY JOIN ELECTROLUX LAWSUIT

It's been estimated that as many as 1,500 former employees of a washer and dryer plant in Webster City, Iowa, which has been shut down, are expected to join a class-action lawsuit seeking back pay for time spent putting on protective equipment before their shifts. U.S. District Judge Mark Bennett has ordered appliance-maker AB Electrolux to produce names and addresses of hourly production workers at the plant between December 2008 and December 2011 so they can be notified of their right to join the case. It was reported that approximately 1,000 workers have already expressed an interest. Workers say the company required employees to arrive 15 minutes before their shifts to put on equipment such as armguards and gloves, but without pay. The plant was closed last March after its work was moved to Mexico.

Source: Claims Journal

JURY RETURNS VERDICT AGAINST DRUG COMPANY IN EMPLOYMENT LAWSUIT

A Las Vegas pharmaceutical drug sales executive has won his age discrimination lawsuit against drug company Hoffmann-La Roche Inc. Randy Dossat sued the company in 2009, claiming he had an excellent employment record and regularly earned performance-based raises since joining the company in 1997 as a division sales executive. His lawsuit, his new manager repeatedly told him he was not a good fit, and he was subjected to unlawful retaliation and intentional infliction of emotional distress. After a hotly contested trial, a federal jury on March 5th awarded Mr. Dossat $168,000 for lost pay and $1.7 million in damages for mental or emotional pain and suffering for a total verdict of $1,868,000.

The law offices of Esteban-Trinidad Law in Las Vegas and Bononi Law Group in Los Angeles represented the Plaintiff in this case and did a very good job.

Source: Las Vegas Sun

FEDEX UNITS PAY $3 MILLION TO SETTLE BIAS CLAIMS

The ground delivery unit of FedEx Corp. will pay $3 million to settle federal charges of hiring discrimination. The settlement involves the Labor Department’s Office of Federal Contract Compliance Programs covers wages and back interest to more than 21,000 job applicants who were rejected for positions at 23 facilities in 15 states. The agreement stems from a seven-year investigation into hiring practices at FedEx Ground Package System Inc. And FedEx SmartPost Inc. FedEx has agreed to offer jobs to about 1,700 of the affected workers as openings become available. The Labor Department says the allegations involved discrimination on the basis of race, sex and national origin, as well as record-keeping violations.

Source: Associated Press

WOMEN ALLEGED RAPE AND HARASSMENT IN MILITARY LAWSUIT

Eight current and former members of the military allege in a new federal lawsuit that they were raped, assaulted, or harassed during their service and suffered retaliation when they reported it to their superiors. The lawsuit, filed last month in US District Court in Washington, accuses the military of having a “high tolerance for sexual predators in their ranks” and fostering a hostile environment that discourages victims of sexual assault from coming forward, and punishes them when they do. The suit contends the Defense Department has failed to take aggressive steps to confront the problem despite public statements suggesting otherwise.

The eight women include an active-duty enlisted Marine and seven others who served in the Navy and Marine Corps. The women allege they have suffered depression, anxiety, and posttraumatic stress disorder because of the assaults. One woman said she tried to commit suicide after being raped inside her home by a senior officer and his civilian friend.

It is important that everyone in uniform be alert to the problem and have the leadership training to help prevent these crimes. The lawsuit names as Defendants past and present military leaders, including Defense Secretary Leon Panetta and his predecessors. A Defense Department spokeswoman said the military has no tolerance for sexual assault. Under a policy announced in December, service members who report a sexual assault have the option of quickly transferring to another unit or installation.

The Department has also increased funding for investigators and judge advocates to receive specialized training in sexual assault cases and has appointed a two-star officer to direct a sexual assault response and prevention office. The Pentagon is assembling a data system to track reports of sexual assault and is reviewing how commanding officers are trained in preventing and responding to rape cases.

Source: Boston Globe

XV. PREMISES LIABILITY UPDATE

PG&E WILL PAY $70 MILLION IN SETTLEMENT FOR DEADLY CALIFORNIA PIPELINE BLAST

Pacific Gas & Electric Co. has agreed to pay $70 million in restitution to San Bruno, Calif., for the 2010 pipeline explosion that killed eight people in the San Francisco suburb. In a joint statement, PG&E and San Bruno said the money will be used to establish a nonprofit organization to help the community recover from the Sept. 9, 2010 blast, which also injured dozens of people and destroyed 38 homes. Mayor Jim Ruane said that the funds will help San Bruno “get beyond the tragedy and devastation caused by PG&E’s explosion and fire.” He added that as a community and as a city, “we remain fully dedicated to assuring our community’s full recovery.”

There are about 90 civil lawsuits that victims of the explosion have filed against the San Francisco-based company. The settlement does not affect those cases. A trial has been set for July 23 in San Mateo County Superior Court. The new nonprofit organization will determine how the restitution is spent for the benefit of the community as a whole. PG&E was to make the $70 million payment within 30 days and agreed not to seek to recover the money through insurance or customers' utility rates.

The company previously set up a $100 million fund to support emergency needs in the aftermath of the explosion in a quiet neighborhood overlooking San Francisco Bay. PG&E officials have said the company plans to compensate blast victims and hopes to settle the civil lawsuits without going to trial. But it has not specified how much the company will pay victims. Federal investigators blame PG&E for the explosion, saying a litany of failures led to the blast. They concluded the explosion was the result of an “organizational accident,” not a simple mechanical failure.

Escaping gas fed a pillar of flame 300 feet tall for more than 90 minutes before workers were able to manually close valves that cut off gas to the ruptured pipeline. Investigators said the damage would have been less severe had automatic valves been in place. The California Public Utilities Commission voted unanimously in January to open a top-level legal investigation into whether PG&E violated any laws. If it did, that ultimately could result in large fines for the company. Agency staff issued a scathing report saying the natural gas line blew up in part due to what they called the systematic failures of PG&E’s corporate culture, which they said emphasized profits over safety. Staff also cited the utility’s woeful record-keeping, haphazard emergency response and failure to follow both federal pipeline safety laws and accepted industry practices.

Source: Associated Press

**Wrongful Death Lawsuit Filed Against South Carolina Restaurant**

The family of a South Carolina man who was killed in a fiery car crash has filed a wrongful death lawsuit against a Charleston restaurant. Quentin Miller, 32, was killed on December 17 when his car was struck from behind and burst into flames on a bridge near Charleston in an early morning collision. Miller died at the scene.

Adam Joseph Brunelle, the driver of the vehicle that struck Miller’s vehicle, was an assistant manager for Husk Restaurant at the time. Husk had been recognized by *Bon Appétit* magazine as the top restaurant in the U.S. Brunelle has been charged with felony driving under the influence. In the suit, Miller’s family said that Husk allowed Brunelle to drink alcohol at the restaurant past the legal bar closing time of 2 a.m. A police report shows Brunelle’s blood alcohol level was .24, three times the legal limit in South Carolina. Interestingly, the restaurant takes the position that it was only responsible for its employee while he was working. That does not in my opinion address the legal theory upon which the lawsuit is based.

Source: Reuters

**Family Of Man Killed In Gas Explosion Suing Texas Gas Service**

A lawsuit has been filed arising out of a natural gas explosion that killed a home owner, Renald Ferrovecchio, 45, who died when his home in Austin, Texas, exploded on January 9th. The suit, filed by his family, seeks damages against Texas Gas Service and Oneok and H&T Utilities. Texas Gas Service blames the drought and shifting soil for the explosion. The decedent had reported the smell of gas weeks before the deadly blast. A crew from the Defendant company had come out to investigate and fix the problem. Neighbors say they smelled gas coming from the house as early as October of last year.

**$8 Million Awarded To Families In Wrongful Death Lawsuit Against Virginia Tech**

A jury has awarded $8 million to the families of two victims of the 2007 Virginia Tech shootings in a wrongful-death lawsuit. The suit, brought by relatives of students Erin Peterson and Julia Pryde, who were killed, alleged Virginia Tech officials were negligent in taking too long to notify the campus that a gunman was on the loose. The Virginia Tech massacre began when two students were shot and killed in a dorm on April 16, 2007. Virginia Tech’s lawyers said that school officials did not alert the campus because they believed the shootings were an isolated incident.

Subsequently, Seung-Hui Cho, a student, shot and killed 30 more people, including Peterson and Pryde, before turning the gun on himself. This was the deadliest school shooting in U.S. history. It was contended by the families that Virginia Tech’s failure to warn anyone about a gunman on campus led to the killing of their children. But the school’s lawyers argued there was no evidence that a warning would have changed what happened that day. They argued that no one could have reasonably foreseen Cho’s massacre. The issue of foreseeability was for the jury to determine, and it ruled for the families.

Source: Reuters

**A Settlement In Walker County, Ala.**

Our firm was scheduled to begin trial last month in Walker County, Ala. We represented Johnny and Lorra Huffman, a family from Montgomery, in that case. Johnny Huffman was working in 2007 for Stone & Webster as a union carpenter. A forced outage occurred of one at the boilers at the Gorgas Power Plant in Walker County. That plant is operated by Alabama Power Company. A contract was entered into by Alabama Power Company with Scaffold Concepts, Inc. for that company to provide the scaffolding necessary to allow the boilermakers access to the boiler components to make necessary repairs. Stone & Webster, another company, provided the labor to construct and disassemble the scaffolding. Scaffold Concepts provided the scaffolding and agreed to provide the person to ensure the scaffolding was constructed appropriately and safety.

Scaffold Concepts failed to provide all of the needed materials to construct the scaffolding. It also failed to construct the scaffolding in a safe manner pursuant to industry standards and failed to provide a competent person (or safety person) to be on site to ensure the proper disassembly of the scaffolding. During the disassembly process, a large wooden board was dropped from above and struck Mr. Huffman in the head. Even though he was wearing a hard hat, Mr. Huffman suffered serious and permanent brain injury. He will be unable to return to work.

Scaffold Concepts has agreed to pay $1.5 million to settle the claims against the company. Under the settlement Stone & Webster’s workers’ compensation carrier will continue to pay Mr. Huffman’s medical expenses, which are related to his head injury, for the rest of his life. That is very significant and an important aspect of the settlement. The case was handled by Ben Locklar, a lawyer in our Personal Injury Section, and he did a very good job for his clients.

**Texas Company Fined $164,000 For Safety Violations**

The U.S. Department of Labor’s Occupational Safety and Health Administration has cited Houston-based IFCO Systems North America Inc. with ten serious, three repeat

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and six other-than-serious violations for exposing workers to safety and health violations at its facility on Tacco Drive in San Antonio. The proposed penalties total $163,900. The serious violations include failing to refile employees for and retrain them on hearing protection when annual tests revealed that they had experienced notable hearing loss, secure dock boards when driven over by forklifts and ensure that copies of material safety data sheets were on hand.

As we have mentioned in prior issues of The Report, 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. The repeat violations include failing to provide machine guarding for rotating shafts on a wood chipping machine, and failing to properly maintain an electrical conduit that was pulled back, exposing internal conductors on a terminal box. 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 other facility in federal enforcement states within the last five years.

In February and June of 2010, the company’s San Antonio facility was cited for similar violations with penalties totaling $17,500 and $4,620, respectively. Additionally, OSHA cited the company’s Henderson, Colo., facility in March 2011 for machine guarding and other violations with penalties of $67,765. The other-than-serious violations at the San Antonio site include failing to adequately describe occupational injuries and illnesses on the OSHA 300 log, and failing to record a case on the log when an employee experienced a work-related hearing loss.

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. IFCONorth America performs pallet recycling, reverse logistics, and crating and packaging operations. The company, which employs about 70 workers in San Antonio and about 3,000 workers nationwide, had 15 business days from receipt of the citations to comply, request an informal conference with OSHA’s San Antonio Area Office, or contest the citations and penalties before the independent Occupational Safety and Health Review Commission.

**NEW HAMPSHIRE FIRM FACES $167,000 OSHA FINE AFTER WORKER’S DEATH**

OSHA has issued fines totaling $167,000 against a New Hampshire construction company. The agency alleges the company violated safety standards when a worker fell from scaffolding and died. The 58-year-old employee, Steven Sawyer, was working in September for Keene-based MacMillin Co. Inc., helping to erect scaffolding at a local school. A plank on which he was working snapped, resulting in a 27-foot fall. An inspection found the scaffold had not been inspected for defects, and that the workers had not been adequately trained to erect it. MacMillin was found to have determined the feasibility of the use of fall protection. The company did not provide this protection. MacMillin has been cooperating with OSHA. The company says it has not received any safety or health violations from OSHA in six inspections since 2005.

**$146,000 IN PENALTIES PROPOSED AGAINST LOUISIANA MILL**

The federal Occupational Safety and Health Administration has proposed $146,000 in safety and health penalties against an Amite, La., steel mill. OSHA said Monday it cited Bradken Inc. with 27 serious and seven other-than-serious violations at the company’s steel alloy casting mill. OSHA said it found that workers melting and pouring casts were exposed to mechanical, welding, electrical and confined space hazards, and a lack of machine guards. Bradken is based in Waratah, Australia. According to OSHA, Bradken has about 270 employees at its Amite plant. The company had 15 days to comply, request a meeting with OSHA or contest the citations.

Source: Associated Press

**DRUNK DRIVER SETTLES WRONGFUL-DEATH LAWSUIT**

A Houston millionaire, who adopted his own girlfriend, has settled a wrongful-death lawsuit against him, but his legal problems didn’t end there. John Goodman ran a stop sign and crashed his Bentley into another car in Florida two years ago. He killed the driver of that car while driving drunk. Goodman’s blood alcohol level was .20, more than double the legal limit in Florida, at the time of the crash. He subsequently adopted his girlfriend in an apparent attempt to protect his assets. Goodman has now settled with the victim’s parents. The amount of the settlement is confidential.

But Goodman didn’t fare so well in his criminal case. He was tried on the criminal charges and a jury found him guilty of manslaughter and vehicle homicide. He could face up to 30 years in prison. This man’s victim was totally innocent, losing his life to a drunk driver. Justice certainly appears to have been done in this case.

Source: The Huffington Post

**$6 MILLION SETTLEMENT IN RAIL CROSSING DEATH**

The family of a young dance instructor who was killed when a train crashed into her vehicle at a crossing where the warning signals had been turned off has reached a $6 million settlement in its wrongful death lawsuit. Katie Ann Lunn, 26, was driving over the railroad tracks on April 16, 2010 when an Amtrak train traveling 79 mph crashed into her SUV. An investigation found that the warning signals had been deactivated by maintenance workers.

The wrongful-death lawsuit was filed in Cook County Circuit Court against Illinois Central Railroad Co. And Wisconsin Central Ltd. in July 2010. The settlement was reached one day after a trial started in the case. A crew performing maintenance on the crossing had neglected to turn the signals back on. An investigation by the Federal Railroad Administration found that crossing gates, flashing lights and warning bells had mistakenly been disabled before

Source: Claims Journal

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**SETTLEMENT REACHED IN 2007 WASHINGTON HELICOPTER CRASH**

A confidential settlement has been reached in the case of a 2007 Washington helicopter crash that killed four people and ignited a 485-acre forest fire. The settlement came just days before jury selection began in a lawsuit pending in King County, Wash. The lawsuit was filed in 2009 by the family of Si Young Lee, the president of a South Korean lumber company, who was visiting the state to purchase timber for export. It was alleged that design flaws in the R44 helicopter caused the crash and that the helicopter fuel tanks should not have erupted on impact. All four occupants burned to death.

Source: Insurance Journal
the crash. Illinois Central Railroad said in a statement that it took responsibility for “improper operation of the Stuenkel Road crossing gates ... which resulted in Ms. Lunn’s death.”

Ms. Lunn taught at the Joffrey Ballet School and the School of Performing Arts in Naperville. She also performed with the Hip Hop ConnXion in Chicago and the Chicago Dance Theater. The night she was killed, Ms. Lunn was driving home after watching her students perform in a competition at Governors State University. Proceeds from the settlement will help support the Keep the Smile Alive Katie Lunn Fund, founded by Ms. Lunn’s family in her memory. Michael Demetrio, a lawyer with the Chicago firm of Corboy & Demetrio, represented the Lunn family and did a very good job.

Source: Chicago Tribune

CITY SETTLES SUIT WITH MOTORCYCLE CRASH VICTIM’S FAMILY

The city of Columbia, Mo., will pay $1.4 million to settle a wrongful death lawsuit brought by the family of a man who was killed in 2010 after he crashed his motorcycle into a city bus. The city reached the settlement with the family of Michael Heaston, 34, who died a day after his Harley-Davidson struck the side of a city bus on a city street. The lawsuit alleged that the city bus driver, Archie Smith Jr., was careless and negligent during the operation of the bus.

Smith was driving southbound on one street when he attempted to make a left-hand turn onto the eastbound lane of another street on July 12, 2010. The bus driver told investigators that he stopped at the stop sign, but did not see Heaston when he pulled out. The bus driver said he then heard a screeching sound and a loud bang before looking to his left and seeing the man on the road.

Smith was convicted of careless and imprudent driving for his involvement and was sentenced to six months in the Boone County Jail. The execution of the sentence was suspended in exchange for two years of supervised probation. Columbia’s Transit Safety Committee also reviewed evidence and has assessed points to the driver’s record. The committee’s investigation and penalty phase, pursuant to Federal Transit Administration regulations, determined the accident to be preventable. Heaston, a father of three, had attempted to swerve and avoid the collision when the bike struck the side of the bus. The Columbia law firm of Harper, Evans Wade and Netemeyer represented the family and did a very good job in the civil case.

Source: Columbia Tribune

XVIII. HEALTHCARE ISSUES

DO CHOLESTEROL LOWERING MEDICATIONS INCREASE RISK OF DIABETES?

It’s not too surprising to read that HMG-CoA reductase inhibitors (statins) are taken by millions of people worldwide. The drugs are taken to prevent heart attack, stroke and cardiovascular disease. In fact, Pfizer’s Lipitor was the highest grossing product on the market for years until it went generic. It was reported recently that Astra Zeneca’s statin, Crestor, accounts for approximately $4.5 billion in annual sales. Based on these numbers, considering the huge sales volumes, it’s quite evident that even a small increase in risk could result in significantly higher numbers of a particular adverse event each year.

Following the publication of a meta-analysis in 2010, which reported that statin therapy overall was associated with an increased risk of development of new onset diabetes (NOD), some regulatory agencies looked into all available data, both published and unpublished. The CHMP Pharmacovigilance Working Party (PhVWP) held a meeting in December 2011 to discuss this safety concern for European Medicines Agency.

From the analysis of the non-clinical and clinical data, the PhVWP concluded that there was sufficient evidence to support a causal association between the use of statins and NOD. However, according to the PhVWP, the risk does appear to be in patients already at an increased risk of developing diabetes. The committee did report that the benefits of statins still outweigh the risks, including this newly identified risk of NOD. The committee has recommended that the product labeling on all statins include a warning for patients at a higher risk of diabetes should be monitored both clinically and biochemically according to established guidelines to detect diabetes.

The Food and Drug Administration has now raised safety concerns about statins, warning that patients taking the drugs may face a “small increased risk” of higher blood sugar levels and of being diagnosed with diabetes. The FDA plans to add the diabetes-risk language to the “warnings and precautions” sections of labeling for the statin drugs. The drugs that will get the warning include brand names such as Lipitor, Lescol, Pravachol, Crestor, Mervacor, Altoprev, Livalom and Zocor.

The FDA also said that labels for statin drugs now will contain information about patients experiencing memory loss and confusion, though this side effect was classified as an “adverse reaction” rather than being put in the more serious warnings and precautions category. Dr. Amy Egan, the FDA’s deputy director for safety of metabolic and endocrinological products, said “these cognitive changes can be quite dramatic” and “sustained,” but that they do disappear when statin therapy is stopped. She cautioned that the agency isn’t able to identify a specific drug or age group of people who might be prone to such cases of memory loss and confusion, but that patients should notify their doctors if such symptoms occur.

Source: European Medicines Agency

A NEW STUDY ON METAL-ON-METAL HIP IMPLANTS

A new study warns metal-on-metal hip implants are much more likely to need repair or replacement. The study authors are calling on doctors to stop using the implants—which have also been linked to high levels of potentially toxic metals in the bloodstream—once and for all. For the study, British researchers looked at data for more than 400,000 hip replacements from the National Joint Registry of England and Wales between 2003 and 2011, one of the world’s largest databases on joint implants. More than 31,000 of the procedures were metal-on-metal devices, the researchers found. Most artificial hip joints are plastic or ceramic.

The metal-on-metal implants didn’t fare very well. After five years, almost 6% of people with the metal-on-metal variety needed surgery to fix or replace them. That compares with just 1.7% to 2.3% of people who had ceramic or plastic joints. Doctors usually expect hip joints to last at least a decade. The study was published online last month in The Lancet and funded by the National Joint Registry.

Study author Ashley Blom, head of orthopedic research at the University of Bristol, emphasized that most people with a metal hip haven’t needed a replacement. But with so many alternatives, he said there was no reason to take that risk. Dr. Blom said if he were a patient, he wouldn’t choose a metal-
on-metal hip. He said the rates of failing metal hips were likely an underestimate since not all patients report symptoms or get surgery to fix the problem.

All metal hip joints were already under scrutiny over questions about how long they last. As we have reported, one major manufacturer recalled its product over a year ago. Last year, regulators in the U.S. asked makers to conduct safety studies on these medical devices. An investigation by the British Medical Journal and BBC News Night found that metal ions from this type of artificial hip could seep into surrounding tissue, destroying muscle and bone, and for some causing damage to the lymph nodes, spleen, liver and kidneys.

Those findings prompted a warning from the British regulatory group. The Medicines and Healthcare Products Regulatory Agency recommended patients with these joints should have yearly blood tests to make sure no dangerous metals are seeping into their bodies. It also advised patients with symptoms such as pain, swelling or reduced movement to get MRI scans to check for muscle damage in case the joints need to be removed. In 2010, DePuy, a division of Johnson & Johnson, recalled a metal hip implant after it was linked to high failure rates. Dr. Blom said the new analysis suggests the problem applies to all metal-on-metal hips, not just one brand. Doctors began using metal-on-metal implants after laboratory tests suggested the devices would be more resistant to wear and reduced the chances of dislocation. They aren’t sure why that isn’t the case once they are used in patients.

Last year, the U.S. Food and Drug Administration asked all manufacturers of metal-on-metal hips to conduct safety studies. Use of the devices has dropped dramatically in recent years worldwide. In the United Kingdom, only about 5% of patients are believed to be getting the metal hips. In the United States, it’s estimated that about 500,000 people have them. Some experts called for tighter regulation, warning there might be similar problems with other joint replacements, such as those for knees and shoulders. Dr. Art Sedrakyan, an associate professor of public health at Weill Cornell Medical College in New York, who authored an accompanying commentary in Lancet, stated:

*I wouldn’t be surprised if this was just the beginning of the storm. A lot of products have been allowed onto the market without clinical evidence they work.*

Hopefully, Congress will take action and pass the legislation needed in this area of concern. The approval process for all medical devices must be changed and made stronger. If you need additional information on any aspect of the metal hips litigation, contact Navan Ward at 800-898-2034 or by email at Navan.Ward@beasleyallen.com.

Source: CBS News

**XIX. THE CONSUMER CORNER**

**NHTSA STARTS SAFETY PROBE OF FORD TAURUS STUCK THROTTLE**

The National Highway Traffic Safety Administration has opened an investigation into an estimated 360,000 Ford Motor Co. Taurus sedans. The inquiry involves a potential problem with the throttle getting stuck in an open position. NHTSA opened the preliminary investigation of the Taurus from model years 2005 and 2006 after receiving 14 consumer complaints alleging incidents of a stuck throttle resulting from cruise control cable detachment. A preliminary investigation is the first step in a process that could lead to a recall if regulators determine that a manufacturer needs to address a safety issue.

Ford says it’s cooperating with NHTSA. The complaints allege engine speeds as high as about 4,000 revolutions per minute after shifting the car into park or neutral, according to documents filed with NHTSA. Some complaints say it was difficult to slow the car with the service brakes during the incident. One report indicated that when the car was finally stopped, it was partially in an intersection after going through a red light. Some drivers said they had to shut off the engine or shift into neutral to stop the car, according to NHTSA.

Source: Claims Journal

**FORD BEING SUED OVER TRUCK FUEL TANK DEFECT**

A lawsuit has been filed against Ford Motor Co. for allegedly selling trucks with defective fuel tank linings over a ten-year period, and hiding the problem from consumers even as it warned dealers. The lawsuit filed in a New Jersey federal court said fuel tank linings on 10 E- and F-series truck models made between 1999 and 2008 would “separate and flake off” and that this would clog fuel systems with debris and rust, causing a sudden loss of engine power, and potentially causing vehicles to buck or kick or suddenly stall.

Plaintiffs allege that in 2007 Ford issued a “secret” technical service bulletin to dealers advising them of the problem, but neither recalled the affected trucks nor offered to repair them for free. The complaint alleges that: “Hundreds, if not thousands, of drivers have experienced the defect.”

The F-series pickup is the best-selling U.S. car or truck. The E-Series is a truck-based full-size van. The Complaint seeks class-action status on behalf of the vehicle owners, and alleges fraud, breach of warranty, and unjust enrichment, among other charges. Plaintiffs seek compensatory, punitive and triple damages, and other remedies. The Plaintiffs are Chester, New Jersey-based Coba Landscaping and Construction Inc. And its principal Galo Coba. The case is Coba et al v. Ford Motor Co., U.S. District Court, District of New Jersey.

Source: Claims Journal

**TOUGHER SAFETY RULES NEEDED FOR KEYLESS IGNITIONS**

The American Association for Justice has urged federal regulators to adopt a rule requiring keyless ignition engines in automobiles to shut off after 30 minutes of idling. In comments to NHTSA submitted on March 12th, AAJ said the proposed rule regarding theft protection and rollaway protection, which would only require that an audible alert sound after the engine idles for a certain period of time, is not enough to protect against risks such as carbon monoxide poisoning. AAJ President Gary M. Paul, in the comments submitted to NHTSA, said:

*The dangers surrounding unknowingly failing to turn off the car engine, combined with the lack of sensory prompts, such as engine noise, in newer vehicles have been proven to be a fatal combination.*

According to AAJ, several deaths have been linked to idling keyless ignitions. Most of these deaths involved drivers who left their car engines running in attached garages for lengthy periods of time, causing carbon monoxide poisoning. Keyless ignitions pose an increased danger of carbon monoxide poisoning because they take away the deeply ingrained habit to turn a key in order to shut down the car engine. Additionally, newer cars are
Consumer Reports is taking a look at the approval process for medical devices. The 76-year-old publication is trying hard to galvanize the American public into protesting the way these devices are approved by the U.S. Food and Drug Administration. It was pointed out that during the past couple of years, there has been a steady drumbeat of concerns by some lawmakers that health regulators are doing too little to protect consumers from hastily approved devices that can cause injury or even death. Consumer Reports President Jim Guest wrote in an email blast to 1 million Americans earlier this year:

"It's a nightmare scenario. The implant that fixed your knee or your heart may actually be a ticking time bomb that could disable or kill you. This isn't science fiction. Millions of medical devices including artificial hips, contact lens solution, heart stents, and pacemakers are being recalled—700 different products a year. And the vast majority of recalled products were never safety tested in humans, because the manufacturers claimed they were 'similar' to products already on the market.

For decades, certain devices have been cleared by the FDA without the manufacturers ever having to test them in human beings in clinical trials, which take time and money. The fast-track approval process is known in the industry as Pre-market Notification, or 510(k), named for the number that identifies devices. Hip implants and heart valves, for example, are categorized as "moderate risk," which allows them to go through the 510(k) process. That's most significant.

Most new medical devices—some 4,000 in 2009—are cleared through the accelerated program. AdvaMed, the trade group representing medical device makers, is against more regulation, but it apparently agrees that streamlining the process is necessary to move the large volume of products awaiting approval through the system.

Possible changes to medical device regulations are especially relevant this year, as Congress is reviewing the fees the industry pays to the FDA in exchange for speedier review times. Since fees from makers of drugs and medical devices provide more than a third of the FDA's funding, the bill often serves as a vehicle for broader FDA-related changes. Republicans Edward Markey (D-Massachusetts), Henry Waxman (D-California) and Jan Schakowsky (D-Illinois), have introduced legislation—the Safety Of Untested and New Devices Act of 2012, dubbed SOUND Devices Act—that would give the FDA more authority to reject a manufacturer's application for a new device if it was based on a similar product that was recalled.

Mr. Guest said any new law should also require rigorous testing of the devices upfront and a national registry that would track device performance over time. Raising manufacturers' user fees that fund FDA could help fund a registry, he said. Some 93,000 people have been implanted with DePuy's ASR hip system worldwide and J&J faces more than 2,000 lawsuits in state and federal court.

AdvaMed cites a September 2010 study by Battalle, a research organization it commissioned to look at the issue, that found that Class I recalls, the most serious kind, accounted for only 77 out of 46,690 (0.16%) of the medical devices—including low risk devices—that were cleared through the 510(k) process between Jan. 1, 2005 and May 1, 2010. But Consumer Reports points out that a more recent study of the same data had a far different result. The study by Diana Zuckerman and Paul Brown of the National Research Center for Women and Families, and Dr. Steven Nissen, the cardiovascular medicine chair at Cleveland Clinic, was published in the peer-reviewed medical journal, Archives of Internal Medicine, in February 2011.

Dr. Zuckerman said Battalle understates the problem because many products are often recalled after they have been on the market for five years or more. In addition, she noted that the Battalle study only looked at raw numbers of device approvals and did not consider how many people were affected by recalls. Dr. Zuckerman observed:

"If you care about public health, you look at how many devices were recalled and how many lives were put at risk."

Dr. Zuckerman said her study concluded that more than 70% of the high-risk recalls were for medical devices that the FDA categorized as “moderate risk” and therefore went through the 510(k) process for approval. AdvaMed, however, said the real problem at FDA is growing delays and inconsistency in product reviews.

Sources: Consumer Union and the Claims Journal

Walgreens Sued For Fatal Prescription Mix-Up

Walgreens has been sued in a lawsuit involving the death of an elderly Kentucky woman whose pharmacist allegedly gave her the dangerous antihistamine Hydroxyzine instead of the high blood pressure medication Hydralazine prescribed by her doctor. The Complaint, filed in Jefferson County Circuit Court, alleges that Mary Moore received the Hydroxyzine when she went to fill a prescription for Hydralazine at a Walgreens store in Louisville on Nov. 10, 2010. Ms. Moore had just been released from a hospital after being treated for high blood pressure, congestive heart failure and kidney failure. Her doctor had prescribed Hydralazine to treat her high blood pressure.

Source: AAJ News Release
According to the Complaint, Hydroxyzine is classified as a “high risk” medicine for the elderly and is frequently confused with Hydralazine. Ms. Moore’s hypertension went untreated for two weeks before the pharmacy discovered the error and gave her the correct medicine. It’s alleged in the Complaint, that by the time Ms. Moore was actually placed on Hydralazine, “it was too late” because she could no longer tolerate the prescribed dosage. The woman’s blood pressure allegedly could not be controlled and the consequent stress on her heart resulted in “decompensation of congestive heart failure, which caused decompensation of her chronic kidney disease.”

Ms. Moore was hospitalized several days after starting her Hydralazine prescription and died on December 6, 2010. Apart from alleging that Walgreens negligently dispensed the wrong drug, the Complaint filed by the estate of Mary Moore, also alleges that a Walgreens’ pharmacist violated state law by not providing her with counseling at the time she had her prescription filled. It is alleged further that “had Plaintiff’s decedent been given counseling, the pharmacist would have noticed the dosage was inappropriate for an elderly consumer, and that it was contraindicated for [a] person with hepatic, renal and cardiac problems … and that Hydroxyzine is a medication often negligently substituted for Hydralazine.”

The Complaint was filed on February 15th and includes claims for strict liability, breach of warranty and negligent failure to warn. Richard J. Head, a Simpsonville, Ky., attorney, represents the Moore estate in the lawsuit against Walgreens.

Source: Lawyers USA Online

**FDA Issues Warning To Inhalable Caffeine Maker**

Food and Drug Administration officials have issued a warning letter to the makers of the inhalable caffeine product AeroShot, saying they have questions about its safety and concerns about how children and adolescents may use it. The lipstick-sized AeroShot went on the market in January in Massachusetts and New York, and it’s also available in France. Consumers put one end of the plastic canister in their mouths and breathe in, releasing a fine powder that dissolves almost instantly. The product’s website calls it “a revolutionary new way to get your energy.”

According to the FDA, the Massachusetts-based company behind AeroShot, Breathable Foods, misled consumers by claiming the product can be both inhaled and ingested, which is not possible. The agency said it is concerned consumers may try to inhale it into their lungs, which may not be safe. The letter also pointed out that the company’s website says it is not recommended for those under the age of 18, while the product label says it is not recommended for those under 12. At the same time, the FDA said, the company targets both age groups by suggesting it be used while studying.

Another problem cited by the FDA related to links on the company’s website to articles that mention using the caffeine product with alcohol. The FDA has attempted raise awareness about the dangers of the combination of caffeine and alcohol in recent years, saying it can lead to “a state of wide-awake drunk” and has caused alcohol poisoning, car accidents and assaults. The agency cracked down on the sale of the energy-alcohol drink Four Loko in 2010, forcing the makers of that product to remove the caffeine.

Since AeroShot is sold as a dietary supplement, it didn’t require FDA review before hitting the U.S. market. FDA regulations require supplement manufacturers to be responsible for their products’ safety. If the agency decides a product isn’t safe, it can take action, including taking the product off store shelves. The company had 15 days to respond to the letter, which asked Breathable Foods to correct the violations the FDA cited and to submit its research on the product’s safety to the agency.

Sen. Charles Schumer, D-N.Y., urged the FDA to crack down on the product, which is being sold in his state, saying children and adolescents may abuse it. He had this to say:

> This stern warning is the clearest indication yet that AeroShot needs to be taken off the market until these concerns can be addressed and the product’s safety can be confirmed.

I have never believed leaving a product of any sort to the manufacturer works well when it comes to safety issues. Hopefully, there will be changes in this industry giving the FDA authority to fully regulate the products made and sold.

Source: USA Today

**FDA Warns Of Imported Skin Creams Containing Mercury**

The FDA has warned that Skin creams, soaps and lotions that are manufactured overseas and sold in some U.S. shops might contain toxic amounts of mercury. The products are usually marketed as skin lighteners or anti-aging creams to remove blemishes and acne creams, according to Gary Coody, National Health Fraud Coordinator at the FDA. The agency says skin products containing mercury have been found in at least seven states.

The products are manufactured overseas, but sold illegally in U.S. shops. These
sales quite often are in Latino, Asian, African or Middle Eastern neighborhoods, according to the FDA. In the past few years, more than 35 products that contain “unacceptable” levels of mercury have been found by the FDA and local health officials. It’s obvious that there are changes needed in dealing with this problem.

The FDA says in order to protect themselves, consumers shouldn’t use any unlabeled skin care products, and should stop using any products that mention mercury. Any person who suspects they have used a mercury-containing skin product, should wash their hands and the area immediately and then call their doctor or local health department. The product shouldn’t just be thrown away—seal it in a plastic bag or leak-proof container and check with a local waste agency about disposal.

Source: FDA

JPMORGAN CHASE INVESTIGATED OVER CREDIT-CARD COLLECTIONS

The federal government is investigating JPMorgan Chase for allegedly having tried to recover outstanding credit-card debt in excess of what customers owed and engaging in other faulty collection practices. According to the American Banker, the industry newspaper, the Office of the Comptroller of the Currency, which regulates national banks, has been gathering information on Chase’s credit-card collection procedures since late last year. The probe follows a federal whistle-blower complaint filed last year by Linda Almonte, a former executive with the bank. She accused the company of illegally “robo-signing” paperwork used to seek legal judgments against credit-card users, among other improprieties.

Other problems include discrepancies in Chase’s records of what borrowers owe and inaccurate record-keeping by outside law firms the company uses to sue cardholders. In 2011, following the revelations, Chase suspended lawsuits it had filed to recover credit-card debt and fired employees in its collection unit. These and related errors raise questions about Chase’s right to collect on billions of dollars in credit-card claims, including court rulings the bank has already won. Federal and state authorities have yet to target a major bank for how it collects credit-card debt. The OCC’s findings also could have repercussions for any other financial institutions suspected of improper debt-collection practices.

The bank has defended its debt-collection practices, saying that it started examining its procedures following incidents of robo-signing related to its home foreclosure activities. Chase said in a statement:

Following issues raised with mortgage documents, we conducted an internal review across the firm and found other procedural issues. We immediately alerted our regulators and worked to address them. We have since done a number of tests and found that in the overwhelming majority of cases, the amount collected from customers was correct.

But American Banker’s Jeff Horwitz, who obviously had a different perspective, had this to say:

Chase’s legal unit in charge of recovering overdue credit-card debt was allegedly plagued by unreliable external attorneys, management’s disregard for accuracy, and patchy technology. The bank’s computer systems frequently disagreed about how much debtors actually owed, several of the Chase sources say.

As a result, nearly a quarter of borrower files misstated that amount. Ms. Almonte alleged, with the actual debt in most of those cases being lower than Chase claimed. Chase also allegedly lost or destroyed correspondence from customers, including notification that borrowers had declared bankruptcy. Ms. Almonte claimed to have been fired after alerting the bank that it was missing key legal documents required to sell credit-card debt. The bank settled her wrongful-termination suit last spring after a court refused to dismiss the case.

Source: CBS News

RECALLED PRODUCTS HAVE BEEN RESOLD BY DISCOUNTERS AFTER RECALL DATE

The U.S. Consumer Safety Commission has warned consumers that certain recalled products, originally sold at Meijer, Inc., were resold after the recall date due to an error. These recalled products were improperly disposed of by offering them for sale at discount retailers, dollar stores, liquidation firms, flea markets and thrift stores nationwide at various prices. The recalling firms fully complied with the negotiated terms of their original recall. Consumers should stop using these recalled products immediately. It should be noted it’s illegal to resell or attempt to resell a recalled consumer product. You can get a list of the items and information on each item by contacting Shanna Malone at Shanna.Malone@beasleyallen.com.

Source: CPSC News Release

FTC TARGETS CAR DEALERS FOR MISLEADING ADS

The Federal Trade Commission has targeted five car dealers in four states for deceiving consumers by promising to pay off their car loans, no matter what was owed on the cars traded in. According to the FTC, the balance was usually rolled right into the new car loan. One dealer later required customers to pay the balance out of pocket. This is the first case of this kind to be brought by the FTC. The FTC has previously brought cases against automobile dealers, but not for this kind of advertising.

Settlements agreed to by the dealers would require them to stop running the ads on their web pages and other sites such as YouTube. The settlements remain subject to a final vote by the Commission after a 30-day public comment period. The Commission named the following companies: Billion Auto, Inc., in Sioux Falls, S. D.; Frank Myers AutoMaxx, LLC, in Winston-Salem, N.C.; Key Hyundai of Manchester, LLC, in Vernon, Conn., and Hyundai of Milford LLC, in Milford, Conn.,—which advertised jointly; and Ramey Motors, Inc., in Princeton, WV.

Rosemary Shahan, president of California-based Consumers for Auto Reliability and Safety, says this kind of misleading advertising pitch is a common practice among dealers, and that people who are upside down on their loans—owing more on the old car than its actual value—are especially vulnerable. Ms. Shahan observed:

A huge percentage of people are upside down. What they don't realize is that they are just getting deeper and deeper into debt.

According to the FTC, despite the claims, consumers still ended up being responsible for paying the difference between the trade-in loan balance and the vehicle’s value. As part of the proposed settlements, the dealers would be barred from future deceptive ads. They also would not be allowed to misrepresent any other facts in the leasing and financing of a car. It’s usually better—as a practical matter—to
keep the old car and pay off the loan before buying a new car.

Source: Claims Journal

**WAL-MART TO PAY $2.1 MILLION FOR CALIFORNIA OVERCHARGING**

Wal-Mart Stores Inc. has agreed to pay a $2.1 million penalty for charging California customers prices higher than those posted. This was in violation of a 2008 judgment ordering the retail chain to stop the practice. The agreement came after an investigation that began in November 2010 found that Wal-Mart stores in 11 counties made checkout scanning mistakes that left customers paying more than listed prices. The investigation by Attorney General Kamala D. Harris was a follow-up to the 2008 judgment, where 164 stores in 30 counties were found to have overcharged customers.

Wal-Mart agreed at the time to knock $3 off the lowest listed price of an item for any customer who was overcharged. If the item cost less than $3, the item would be free. That program, set to expire in November of this year, will now be extended to November 2015. Wal-Mart will be required to post signs describing the policy in English and Spanish at every checkout counter in all 180 of its California outlets. The company also has agreed to designate a person at every store to ensure pricing accuracy. Consumers should feel confident that the price on the shelf will be the same price they are charged at the cash register. Californians who shop at Wal-Mart should know that they have the right to ask for the appropriate discount. The Attorney General’s office, along with the local agencies involved, should be commended for their efforts.

Source: CBS News

**DEBT COLLECTOR SETTLES WITH THE GOVERNOR’S OFFICE OF CONSUMER PROTECTION**

Dorsey Thornton & Associates, LLC, a Georgia debt collections company, and its principal officers Wyteria Dorsey and Michael Thornton, have entered into an Assurance of Voluntary Compliance with the Governor’s Office of Consumer Protection (OCP), resolving charges that the company committed multiple violations of the federal Fair Debt Collection Practices Act and the Georgia Fair Business Practices Act. OCP’s investigation stemmed from a series of reports from consumers that Dorsey Thornton & Associates harassed and deceived consumers by:

- Threatening consumers with arrest or imprisonment if they did not pay the debt;
- Refusing to send customers written proof of the debt owed;
- Identifying themselves as “Investigators” rather than disclosing that they were debt collectors attempting to collect a debt;
- Contacting third parties and divulging information about the debtor’s account;
- Calling consumers before 8:00am or after 9:00pm; and
- Continuing to contact consumers even after they told the company to stop calling them.

Under the Assurance, Dorsey Thornton & Associates has agreed to forego collection of 31,433 accounts, representing a total of $15,491,899.36 in consumer debt. The Assurance also requires the company to pay a civil penalty and to reimburse OCP for investigative and legal expenses. John Sours, Administrator of the Governor’s Office of Consumer Protection, stated:

Debt collectors who engage in this kind of harassment, deception and other illegal behavior in the state of Georgia must and will pay a steep price.

It’s good to see the Governor’s office in Georgia actively protecting consumers in the Peach State. My friend Tammy Massingale, who works with the OCP, says the action taken in this case is typical of how they work to protect consumers in Georgia. That’s certainly good news!

Source: Dorsey Thornton & Associates

**XX. 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 March 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.

**TOYOTA RECALLING 680,000 VEHICLES**

In two separate recalls, Toyota Motors has recalled about 680,000 vehicles in the United States. One recall involves airbags in pickups, the other is for faulty brake lights in sedans and crossovers. The larger of the two recalls involves almost 500,000 2005 to 2009 Toyota Tacoma trucks. Part of the trucks’ steering wheel mechanism may rub against a cable assembly. That could result in damage to the electrical connection for the driver’s airbag module, causing the airbag to deactivate. If this happens, an airbag warning light on the dashboard will be illuminated and the airbag won’t work in a crash.

The second recall involves about 70,500 2009 Toyota Camry sedans and 116,000 2009 to 2011 Toyota Venza crossover SUVs. Brake lamp switches on some of these vehicles were incorrectly installed so that silicon grease may have gotten inside the switch. The grease impedes the electrical flow inside the switch. The vehicles’ “shift interlock” safety systems rely on that electrical signal. The shift interlock system is designed to prevent the car from being started and shifted into Drive or Reverse without the brake being firmly pressed. The purpose of the system, which virtually all modern cars have, is to prevent accidental acceleration when a vehicle is first being started up.

While the brakes will work normally without electricity flowing through the switch, the vehicles’ interlock systems may not recognize that the brake pedal is pressed, which will prevent the vehicle from shifting out of Park. If that happens, a warning lamp on the instrument panel will light up, the vehicle may not start and the gear selector lever may not shift out of the Park position. In some cases, the brake lamp itself may also not work. No accidents or injuries have been reported as a result of either problem, according to Toyota.
CHRYSLER RECALLS 210,000 JEEP SUVs FOR CORROSION ISSUE

Chrysler has recalled nearly 210,000 Jeep Liberty sport utility vehicles due to potential problems resulting from excessive corrosion that could lead to a loss of control by the driver. Chrysler, which is controlled by Fiat, is recalling the estimated 209,724 Jeep SUVs from model years 2004 and 2005. Some may be equipped with rear lower control arms that can fracture due to corrosion caused by road salt used in certain states, according to documents filed with the National Highway Traffic Safety Administration.

Chrysler says it’s not aware of any accidents or injuries related to the issue, NHTSA said. The recall is expected to begin by the end of April and the rear lower control arms on all affected vehicles will be replaced, according to NHTSA. The agency opened a preliminary investigation of the issue in April 2011 based on nine complaints about fractures due to excessive corrosion. The probe was upgraded to an engineering analysis in September 2011. The cars affected in the recall were originally sold or are currently registered in Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, Wisconsin and Washington, D.C., according to the documents.

NISSAN IS RECALLING 2003-05 INFINITI Q45

Infiniti parent Nissan is recalling 1,349 2003-05 Infiniti Q45 sedans for potential issues with their seat-mounted dual front side airbags. In the affected vehicles, the wiring connecting the airbags could face increased electrical resistance that could result in the seat-mounted side airbags failing to deploy in the event of a crash. This increases the risk of injury. No related injuries or fatalities have been reported, according to Nissan.

Nissan will notify owners and fix the wiring connectors free of charge. The automaker says it has already fixed the issue on 75% of the affected vehicles through a voluntary remedy offered in 2009 and 2010. Owners can call Nissan at 800-647-7261 or NHTSA’s vehicle safety hotline at 888-327-4236 for more info.

NISSAN RECALLS INFINITI M45 SEDANS

Nissan is recalling about 8,100 Infiniti M45 luxury sedans from the 2003-4 model years because an electronic malfunction could cause the fuel gauge to indicate a higher amount of fuel than actually exists in the tank. NHTSA began investigating the issue late last year after receiving complaints from owners. In a report posted on the agency’s Web site, Nissan said that as it gathered information requested by the agency, the automaker confirmed there was a problem that would require a recall.

VOLVO RECALLS 17,000 VEHICLES BECAUSE OF AN AIR BAG ISSUE

Volvo has recalled 17,000 of its 2012 S60, XC60, S80 and XC70 vehicles because the driver-side air bag may not deploy properly. On the affected vehicles, which were manufactured from May 16 through Oct. 6, 2011, the wiring harness under the driver’s seat may not be attached properly. If the wires are loose and are hanging low, they could get caught in the seat track when the seat is adjusted by the driver, potentially causing the wires to disconnect.

If the wires disconnect, the Supplemental Restraint System (SRS) warning light could go on. And in a crash, the driver-side air bag and side curtain air bags may not deploy correctly, or at all, increasing the risk of injury. The wiring harness may cause an issue with the seat-belt pretensioner as well, Volvo says. Volvo will start notifying owners by March 30, and dealerships will secure the seat wire harness for free. Owners can call Volvo at 800-458-1552 or NHTSA’s vehicle safety hotline at 888-327-4236 for more info.

VOLVO RECALLS 2012 S60 AND XC60 MODELS

Volvo has recalled about 2,700 of its 2012 S60 and XC60 models because of possible fuel leaks caused by what amounts to an exuberant application of rust proofing. In its report to the agency, Volvo said “an incorrect mixture of underbody coating in a combination with over-application can result in iciclelike areas of underbody coating hanging from the undercarriage of the vehicle.” This coating could penetrate a fuel line and cause a leak, Volvo said. The problem was discovered at the assembly plant.

210,000 JEEPS RECALLED FOR POSSIBLE LOSS OF REAR WHEELS

Chrysler has recalled 2004-05 Jeep Liberties because the lower control arms that keep the rear wheels in place may break. The 209,724 Liberties were built from July 3, 2003 through July 14, 2005 and were originally bought in and now are registered in Salt Belt states, NHTSA defines these states as Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, Wisconsin and Washington, D.C. The build date is on the plate by the drive door.

The problem is that some are fitted with rear lower control arms that can rust through and break, causing a loss of control of the vehicle and a potential crash. Chrysler says that it has 83 complaints of control arm fractures, but that it knows of no accidents or injuries. Chrysler will notify owners starting by the end of April and replace the arms. You can call Chrysler for more information at 800-853-1403 or call NHTSA’s safety hotline at 888-327-4236.

INFINITI RECALLS M45 BECAUSE GAS GAUGE GIVES FALSE READINGS

Nissan has recalled 8,120 of its 2003 and 2004 M45 sedans because the fuel gauge can read full even if the car is running on fumes. According to the National Highway Traffic Safety Administration, the recall covers cars built from March 7, 2002, through June 3, 2004. You can find the date on the driver door jamb plaque. NHTSA says a bad circuit board could cause the gas gauge reading to be wrong and let the driver unexpectedly run out of fuel, increasing the risk of a crash. NHTSA has 43 complaints of wrong readings, including 26 in which the car ran out of gas and stalled even though the gauge registered “full.” Nissan will notify owners this month and dealers will fix the circuit board.
**Subaru Recalls 320,000 Foresters To Replace Noncompliant Part On Rear Seat Belt**

Subaru has recalled about 320,000 of its 2009-12 Foresters because the rear seat belt may not securely hold a child safety seat or restraint. In a notice posted on the NHTSA's Web site, Subaru said the seat belt for the center position in the back seat may not lock “depending on the shape and size” of the child restraint being used. Subaru told the safety agency that a parts shortage would prevent the last of the affected vehicles from being repaired until February 2013.

Michael McHale, a spokesman for Subaru, wrote in an e-mail that NHTSA discovered the problem during its testing. The locking mechanism is a federal safety standard. Because there are so many standards pertaining to vehicle safety and so many automobiles, automakers are entrusted with certifying to the agency that their vehicles comply with those standards. The agency then conducts what amounts to spot checks to ensure the vehicles’ compliance. Mr. McHale said Subaru was not aware of any incidents, accidents or injuries related to the problem.

**BMW Recalls 1.3 Million Cars Worldwide**

BMW AG, the world’s largest premium carmaker, has recalled about 1.3 million cars for repair worldwide due to a possible problem with a battery cable cover in the trunk. The recall affects 5- and 6-Series BMWs built between 2003 and 2010. The battery cable cover inside the boot of these vehicles may be incorrectly mounted. This can result in the electrical system malfunctioning, the vehicle failing to start and, in some cases, to charring or fire, according to the company. But BMW says it’s not aware of any accidents or injuries to people due to the problem. Fewer than 1 percent of the cars BMW has so far inspected for the issue have exhibited the problem, according to BMW. So far, there have been no reports of fires.

BMW is writing to car owners. The repair procedure in a BMW partner workshop will take about 30 minutes to an hour and will be free of charge to customers. The recall affects about 368,000 cars in the United States and about 293,000 cars in Germany. Another 109,000 cars are subject to the recall in Britain and about 102,000 in China.

**GM Recalls Buick Regals**

General Motors has recalled about 3,600 Buick Regals from the 2012 model year with high-intensity discharge headlamps because the parking lamps may not work. The automaker attributed the problem to a calibration change in the body-control module. Nissan described its recall as voluntary, but under federal regulations, once a manufacturer is aware of a safety problem it has no choice but to inform the agency within five business days of its plan for a recall.

**GM Recalls More Than 6,000 Vans And SUVs Over Steering**

General Motors has recalled 6,159 big vans and sport-utility vehicles in the United States for possible loss of steering. The recall includes certain 2012 model-year Chevrolet Express and GMC Savana vans, and Chevy Suburban and GMC Yukon XL SUVs. The gear shaft could fracture, which could lead to a loss of steering and increased risk of an accident. According to GM, the issue was discovered by the supplier during the testing of steering gear units and testing suggested a failure would not occur until at least five months after the most severe use. The automaker says there have been no known crashes, injuries or complaints related to the recall. GM said its dealers will inspect the steering gear shaft and replace it if necessary.

**Porsche Recalling 1,200 Sports Cars For Fuel Leaks**

Porsche has recalled more than 1,200 of its 911 Carrera S sports cars because a fuel line can come loose and cause a fire. The National Highway Traffic Safety Administration said on its website that the line can come apart at a connection and leak fuel. According to NHTSA, that could cause loss of power and a crash, or it could cause a fire. Porsche says it doesn’t know of any fires or accidents.

The 2012 cars have a starting price of more than $96,000. Porsche says the problem happens because a coolant pipe can touch a connection on the fuel line and loosen it. Dealers will either replace the fuel line or make sure the connections are tight. They will also install a spacer to keep the lines apart. The recall was expected to begin this month.

**Honda Recalls 2006 CR-V**

Honda has recalled 1,316 of its 2006-model CR-V crossover SUVs because a faulty part could cause the vehicles to go out of control. Honda says the right front lower control arm on some CR-Vs was improperly welded and could break. The control arm is part of the suspension. It also affects the steering.

Honda will inspect and, if necessary, replace the right front lower control arm. Over time and with extended use, an improper welding process used when manufacturing the control arm may allow the right front lower control arm to break at the weld. If the lower control arm breaks, vehicle handling could be affected, increasing the risk of a crash. No crashes or injuries have been reported related to this issue. Owners should take their affected vehicles to an authorized dealer as soon as they receive notification of this recall from Honda. Mailed notification to customers was to begin in mid-April. In addition to contacting customers by mail, in mid-April, owners of these vehicles will be able to determine if their vehicles require repair by going on-line to www.recalls.honda.com or by calling (800) 999-1009, and selecting option 4.

**Kawasaki Recalls Utility Vehicles**

About 3,500 Utility Vehicles have been recalled by Kawasaki Motors Corp. USA, of Irvine, Calif. Consumers should stop using the product immediately unless otherwise instructed. The fuel tube can scrape against the air cleaner housing and develop holes, posing a fire hazard. Kawasaki says it has not received any reports of incidents or injuries.

The vehicles are model year 2012 Kawasaki four-wheeled, off-highway utility vehicles with side-by-side seating for two people and automobile style controls. Each model has a bench.

The brand name appears on the sides and tailgate of the cargo bed and the model name appears on the sides of the front cowl. The model number can be found on a label under the seat, which flips up. The abbreviation “4WD” also appears on the sides of the cargo bed of the 610 models. The vehicles being recalled include the MULE 600, model number: KAF400BCF, colors Green; MULE 610 4x4, model number: KAF400ACF, colors Red or Green; and the MULE 610 4x4 XC, model numbers: KAF400DCF or KAF400ECF, colors Black or Camouflage.

The recalled lawn tractors and contact them for instructions on obtaining a repair from an authorized service provider. For additional information, please contact them toll-free at (888) 848-6038 between 8 a.m. and 5 p.m. ET Monday through Friday, or visit www.cubcadet.com, www.troybilt.com or www.MTDproducts.com. Consumers can also visit Hydro-Gear’s website at www.hydro-gear.com.

LENOVO RECALLS THINKCENTRE DESKTOP COMPUTERS DUE TO FIRE HAZARD

About 50,500 Lenovo ThinkCentre M70z and M90z desktop computers have been recalled. A defect in an internal component in the power supply can overheat and pose a fire hazard. The computers were manufactured and imported by Lenovo, of Morrisville, N.C. The firm received reports of one fire incident and one smoke incident in the U.S. No injuries have been reported. The recalled all-in-one desktop computers, or PCs, are flat-panel monitors with the PC integrated into the monitor housing itself. The power supplies are also inside the monitor or PC housing. The computer chassis has a matte black finish with the brand name “ThinkCentre” in the lower left hand corner of the monitor front.

The recalled desktop model numbers are M90z and M70z. The serial number and manufacturing date code can be found on a label on the underside of the unit. The computers were sold online at Lenovo’s websites, by telephone and direct sales through Lenovo authorized distributors nationwide from May 2010 through January 2012 for about $500 for the M70z model and $800 for the M90z model. Consumers should immediately stop using the computers, unplug the power supply and contact the firm to determine if your computer is included in the recall and to schedule an appointment for a free replacement of the power supply. For additional information, contact Lenovo toll-free at (855)248-2194 anytime, or visit their website at www.lenovo.com/aiopsurecall.

CEILING FANS RECALLED BY WESTINGHOUSE LIGHTING DUE TO SHOCK AND FIRE HAZARDS

Westinghouse Lighting Corp., of Philadelphia, Penn., has recalled about 7,000 ceiling fans. The two 60-watt light bulbs included with the ceiling fans exceed the fan’s maximum wattage, which can cause the ceiling fans to overheat or fail. This poses fire and shock hazards to consumers. “Westinghouse” is printed on the fan’s ceiling canopy. The item number is printed on the fan’s motor housing. The ceiling fans were sold by home improvement and hardware stores, home centers and electrical product suppliers nationwide and online at www.amazon.com from January 2011 through January 2012 for between $135 and $150.

Consumers should immediately stop using the recalled ceiling fans and contact Westinghouse Lighting for two free replacement 40-watt light bulbs. For additional information, contact Westinghouse Lighting toll-free at (888) 417-6222 between 8:30 a.m. and 5 p.m. ET Monday through Friday, or visit www.westinghouselighting.com.

GUIDECRAFT RECALLS CHILDREN’S PLAY THEATERS DUE TO TIP-OVER HAZARD

The importer Guidecraft Inc., of Winthrop, Minn., and manufacturer Mega Profit Trading Ltd., of China, have recalled their 4-in-1 Dramatic Play Theater Toys. The recalled children's
toys can unexpectedly tip over during play, posing an entrapment hazard to young children. Guidecraft has received two reports of tip-over incidents, including one report of a child who suffered minor contusions and abrasions. This recall involves all 4-in-1 dramatic play theaters with model number G51062. The model number is printed on a sticker affixed to the bottom of the center crossbar and on the assembly instructions. The toy has two interchangeable panels with different themes on each side: a puppet theater and diner, or a doctor’s office and post office. An assembled play theater measures 4-feet high by 3-feet wide and weighs about 46 pounds.

The Play Theaters were sold by various catalogs, Guidecraft.com and other Internet retailers nationwide from July 2010 through April 2011 for about $180. Consumers should immediately take the recalled product from children and contact Guidecraft to receive a refund or a replacement product. For additional information, contact Guidecraft toll-free at (888) 824-1308 between 9 a.m. and 4:30 p.m. CT Monday through Friday, or visit www.guidecraft.com.

**LED NIGHT LIGHTS RECALLED BY AMERTAC**

About 227,000 LED Night Lights have been recalled by American Tack & Hardware Co. Inc. (AmerTac), of Saddle River, N.J. An electrical short circuit in the night light can cause it to overheat and smolder or melt, posing fire and burn hazards to consumers. AmerTac has received 25 reports of the night lights smoking, burning, melting and charring. No injuries have been reported. Three AmerTac night lights being recalled. Each has a model name and two model numbers. The model name and a secondary model number appear only on the packaging. The basic model number appears on the back of the night light. The night lights are rectangular, about 2-3/16 inches high, 3-1/2 inches wide and 1-1/4 inches deep.

The front housings for each are either white- or nickel-colored plastic with four horizontal vents and a round light sensor above the top vent. The backs of the night lights are gray plastic with the AmerTac™ logo, the basic model number, “SY” identification code and “ETL” molded into them. Only models bearing “SY” on the back are being recalled. The lights were sold at hardware stores, home centers and lighting showrooms from March 2009 through October 2010 for about $6. Consumers should immediately stop using the recalled night lights, remove them from the wall sockets and contact them for instructions on receiving a full refund. For additional information, contact AmerTac at (800) 420-7511 between 8 a.m. and 5 p.m. CT Monday through Friday, or visit AmerTac’s website at www.recall-center.com or www.amergetc.com.

**CHILDREN’S PAJAMAS RECALLED BECAUSE OF FAILURE TO MEET FLAMMABILITY STANDARDS**

The U.S. Consumer Products Safety Commission has issued a recall for 10,000 Papa Bear Loungeabouts Children's pajamas and sleepwear. This recall involves all styles of pajama sets (tops and bottoms), separate pajama pants and nightgowns sold in boys and girls sizes 0-6X and 7-14. A garment label with the name “Papa Bear Loungeabouts” and a picture of a bear is sewn into the center back neckline on the outside of the garments. A hanging label features the same name and image. The pajamas were sold at children’s clothing and specialty retailers nationwide and online from January 2004 to December 2011.

The sleepwear is 100% cotton poplin or 100% cotton flannel and the different styles come in a variety of colors and novelty print designs, including: bling, cows, Scotty dogs, hotrods, basketball, sports, vintage, rodeo, rock and roll, ballerinas, popcorn and more. The garments fail to meet federal flammability standards for children’s pajamas and sleepwear, posing a risk of burn injury to children. Consumers should stop using the recalled sleepwear immediately and return the product to the retailer where the product was purchased for a refund, exchange or store credit. For additional information, please contact the retailer from whom you purchased your recalled products.

**UMBRO BOYS’ JACKETS WITH DRAWSTRINGS RECALLED**

About 240 Umbro Boys’ outerwear jackets have been recalled by the manufacturer Hong Kong Genexy Group Co. Ltd., of Hong Kong and distributor Umbro USA, of Beaverton, Ore. The boys’ jacket has a retractable elastic drawstring at the waist with a toggle that could become snagged or caught in small spaces or doorways, which poses an entrapment hazard to children. In February 1996, CPSC issued guidelines about drawstrings in children’s upper outerwear. In 1997, those guidelines were incorporated into a voluntary standard. Then in July 2011, based on the guidelines and voluntary standard, CPSC issued a federal regulation.

This recall involves boys’ nylon jackets sold in sizes medium to extra large that can fit children through size 14. “Umbro” is printed on the front upper right side of the jackets. The bottom of the jacket has a drawstring with toggles. The jackets were sold in five color combinations: black, black/royal, black/Tabasco, black/cedar, and navy. The jackets were sold at Ross Stores nationwide from April 2011 through January 2012 for about $8. Consumers should immediately remove the drawstring and return the jacket to Umbro for a full refund. For additional information, contact Umbro toll-free at (866) 217-6800 between 7 a.m. and 4 p.m. PT Monday through Friday or visit www.umbro.com.

**GREENLEE POCKET UTILITY KNIFE RECALL**

Greenlee Textron Inc., of Rockford, Ill., has recalled 1,800 Folding Pocket Utility Knife. Consumers should stop using recalled products immediately unless otherwise instructed. It is illegal to resell or attempt to resell a recalled consumer product. The blade locking mechanism can fail, allowing the blade to fold inward toward the handle, posing a laceration hazard. Greenlee has received one report of the blade lock failing. No injuries have been reported.

This recall involves Greenlee Hawk Bill folding pocket utility knives with model numbers 0652-27 and UT652-27. The models are identical. Each has a single curved 2-6-inch stainless steel blade and a 4-inch green and black plastic handle. The Greenlee name and logo are printed on the blade. Model numbers are printed in the upper right corner of the boxes in which the knives are packaged. The
knives were sold by distributors of professional tools and products nationwide from September 2011 through November 2011 for about $20. Consumers should immediately stop using the recalled knife and return it to the distributor for a full refund. For additional information, contact Greenelee toll-free at (800) 435-0786 between 8 a.m. and 5 p.m. CT or visit the firm’s website at www.greenlee.com.

**Locker Brand Recalls Rx Lockers**

Locker Brand Inc. of Henderson, Nev., has recalled about 59,600 Medicine Bottle Storage Containers. The medicine container can open by applying pressure to the latch when it is locked. This could result in unauthorized access to medicine bottles in the container. The Rx Locker is a medicine bottle storage container. It is made of orange plastic with a white top resembling four pill containers. It has a metal, three-number combination lock on the front. Production batch numbers are printed on the bottom of the container.

The recalled containers were manufactured between May 2010 to December 2010 and can be identified by the last six numbers in the production batch number. Recalled batch numbers end with: 052 010, 062 010, 082 010 and 122 010. The containers were sold at Bed Bath & Beyond, CVS, Walgreens and the Locker Brand website from June 2010 through October 2011 for about $15. Consumers should immediately stop using this product and contact Locker Brand for a free return mailer. When the product is returned, Rx Locker will provide a full refund. For additional information, contact Locker Brand toll-free at (888) 491-6617 between 9 a.m. and 5 p.m. PT Monday through Friday, e-mail them at admin@lockerbrand.com, or visit www.rxlocker.com.

**Safety 1st Cabinet Locks Recalled**

Nearly 1 million Safety 1st Push ‘N Snap cabinet locks have been recalled. The locks were recalled because young children can disengage them, allowing access to cabinet contents and posing the risk of injury. There have been 200 reports of locks that did not adequately secure the cabinet, including reports of damaged locks.

Of the reported incidents, Dorel Juvenile Group (DJG) Inc., of Columbus, Ind., the company that distributes Safety 1st products, is aware of 140 children between the ages of nine months and five years who were able to disengage the locks and gain access to the cabinet’s contents. In three of the reported incidents, the children who gained access swallowed or handled dishwashing detergent, window cleaner or oven cleaner, and were treated, observed and released from emergency treatment centers.

The recall involves Safety 1st Push ‘N Snap cabinet locks with model numbers 48391 and 48442. The model numbers are printed on the back of the product and on packaging. The locks are used to secure cabinets with two straps that wrap around the knobs or handles on a cabinet door. When the product is in the “lock” position, a green triangle is shown through a window on the device. The Safety 1st logo is embossed on the front of the lock. Locks manufactured between January 2004 and November 2010 are included in the recall. The date of manufacture is embossed on the back. The arrow on the date wheel points to the month and the numbers of either side of the arrow represent the year of manufacture.

The locks were sold at Bed Bath & Beyond, Lowes and other retail stores nationwide and online at Amazon.com from January 2004 through February 2012 for between $2 and $4. Consumers should immediately remove the recalled locks from cabinets and contact DJG for a free replacement Push ‘N Snap lock with model numbers HS158 or HS159. For additional information, contact DJG toll-free at (866) 762-3212 between 8 a.m. and 5 p.m. ET Monday through Friday or visit www.djgusa.com.

**Gerber Good Start Gentle Infant Formula Recalled**

Gerber Products Company has recalled some Gerber Good Start Gentle powder infant formula because, according to the company, it might have an “off odor.” Gerber has received complaints that the odor has caused some infants to spit up or have gastrointestinal issues. The recalled formula is in a 23.2 ounce plastic package from batch GPX1684 with an expiration date of March 5, 2013. Consumers should call the Gerber Parents Resource Center at 1-800-487-7763 for replacement. Additionally, Gerber says it is working with retailers to retrieve any remaining product from this batch. No other Gerber or Gerber Good Start products are involved in the recall.

**Ready-To-Eat Beef Sausage Products Recalled Due To Listeria Concerns**

Approximately 2,373 pounds of ready-to-eat beef sausage products have been recalled because they may have been contaminated with Listeria monocytogenes. Southside Market & BBQ of Elgin, Texas have recalled 16 oz. packages of Southside Market & BBQ Original Beef Sausage, Lot # 065-E; 16 oz. And 48 oz. packages of Southside Market & BBQ Original Beef Sausage, Lot #’s 065-A, 065-B, 065-C, and 065-D and 16 oz. packages of Southside Market & BBQ 1882 Hot Recipe Beef Sausage. Lot # 065-D. The smoked and fully cooked products were produced on March 5, 2012, and distributed to retail warehouses in Texas, as well as through Internet sales. For more information contact Bryan Bracewell, CEO of Southside Market & BBQ, at 512-285-3407.

There have once again been a good number of recalls since the March 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.

**Firm Activities**

**David Byrne**

David Byrne is a shareholder in our firm’s Mass Torts Section. His current focus is on product liability actions involving medical

www.BeasleyAllen.com
David and his wife Betty Bobbitt have been married for 19 years, and they have two beautiful children, Betsy and Bryson. The family attends Young Meadows Presbyterian Church in Montgomery, Ala, where David serves as a deacon. David is a hard worker and an excellent trial lawyer. He cares deeply about the causes he undertakes and the clients he represents. We are blessed to have David with the firm.

**LASHUNDA COBB**

LaShunda Cobb has been with the firm now for one year. She works as a Legal Assistant in the Mass Torts Section and primarily handles HRT cases. LaShunda works with Ted Meadows, Navan Ward, Danielle Mason and Matt Teague, all lawyers in the Section, on these cases. The HRT Litigation is complex and quite challenging. LaShunda is doing a good job in these cases.

LaShunda has enjoyed serving as a volunteer at the First Light Shelter for over ten years. Preparing, bringing and serving meals has been a humble and gratifying experience, according to LaShunda. LaShunda now serves on the Special Events Committee. As she works on this committee LaShunda is reminded of what Jesus said in Matthew 25: 36-40:

> For I was hungry, and you gave Me something to eat; I was thirsty, and you gave Me something to drink; I was a stranger, and you invited Me in; naked, and you clothed Me; I was sick, and you visited Me; I was in prison, and you came to Me. ‘Then the righteous will answer Him, ‘Lord, when did we see You hungry, and feed You, or thirsty, and give You something to drink? And when did we see You a stranger, and invite You in, or naked, and clothe You? When did we see You sick, or in prison, and come to You?’ “The King will answer and say to them, ‘Truly I say to you, to the extent that you did it to one of these brothers of Mine, even the least of them, you did it to Me.’

Prior to joining our firm, LaShunda worked for 12-year terms. Dr. Jack Hawkins, Jr., Chancellor, had this to say about the appointment:

> We are pleased to welcome Mr. Vance to our Board of Trustees. As an alumnus, he has served as a wonderful ambassador for Troy University, and we look forward to the vision and leadership he will provide as a Trustee.

Gibson Vance practices in our firm’s personal injury and consumer fraud sections, concentrating in actions against those who negligently or intentionally harm others. His clients include both individuals and small businesses. Gibson said he was “thrilled and honored” to be given the opportunity to serve Troy University. He was born in Troy and graduated from Troy State University 25 years ago. Gibson said that Troy University is a first class institution and that he looks forward to being part of its future.
Ralph Cook Receives a Well-Deserved Public Service Award

Alabama Appleseed is honoring former Alabama Supreme Court Justice Ralph D. Cook of Birmingham as the 2012 recipient of the Albert Brewer/Bo Torbert Public Service Award. This award is given annually to an individual in Alabama who has demonstrated a substantial commitment to public service. Ralph was chosen as this year’s Honoree because of his distinguished 24-year career as an Alabama jurist and his lifelong commitment to public service that has benefited and improved the lives of Alabamians from all walks of life.

Gov. Bentley Declares March 21st Octavia Spencer Day In Alabama

Gov. Robert Bentley declared March 21st as “Octavia Spencer Day” in Alabama. The Oscar-winning actress, a native of Montgomery, visited the State House in Montgomery for this special occasion. Ms. Spencer, a graduate of Jefferson Davis High School and Auburn University, was obviously quite pleased to be back in Alabama. Ms. Spencer won the Academy Award for her tremendous performance in the movie “The Help.” Mayor Todd Strange also presented Ms. Spencer with a key to the City of Montgomery.

Bo Jackson Will Raises Money for 2011 Tornado Relief

Auburn football great Bo Jackson, who won the Heisman Trophy as college football’s best player in 1985, will ride his bicycle 300 miles throughout the state to raise $1 million for tornado relief. The ride was announced on the Auburn University athletic website. Bo also details the endeavor on a website to promote the ride. The money will go to the Governor’s Emergency Relief Fund. Bo had this to say on his website:

The reason for this ride is for state unity and to pay homage to the great Alabamians who lost their lives on April 27th, 2011. I am my brothers’ and sisters’ keeper.

The ride will take place this month and will begin in Henagar in DeKalb County and end in Tuscaloosa. The route will take Bo through tornado-damaged regions Lake Guntersville State Park, Arab, Cullman, Jasper, Hueytown, Bessemer and Tuscaloosa. A limited number of spots are available to ride along with him. According to the website, a finish line celebration in Tuscaloosa will also include Cam Newton, the 2010 Heisman Trophy winner. Lance Armstrong, a record seven-time winner of the Tour de France—the world’s premiere bicycle race—is also expected to be with Bo when he completes his ride.

It’s great to hear good news coming from a person associated with the athletic world. Bo was one of the greatest players to ever play the game of football. He was also a major league baseball star until he was forced to retire much too early because of a football injury. Since that time he has had a great career in business. Bo is a good man and is doing a good thing!

Gov. Bentley Declares March 21st Octavia Spencer Day In Alabama

Gov. Robert Bentley declared March 21st as “Octavia Spencer Day” in Alabama. The Oscar-winning actress, a native of Montgomery, visited the State House in Montgomery for this special occasion. Ms. Spencer, a graduate of Jefferson Davis High School and Auburn University, was obviously quite pleased to be back in Alabama. Ms. Spencer won the Academy Award for her tremendous performance in the movie “The Help.” Mayor Todd Strange also presented Ms. Spencer with a key to the City of Montgomery.

Our friends at the Friendship Mission in Montgomery sent in a verse for this issue. The work done by this group helps hundreds of folks in the Montgomery area each year.

Therefore we were buried with Him through baptism into death, that just as Christ was raised from the dead by the glory of the Father, even so we also should walk in newness of life.

Romans 6:4

Johnny Houston, who has worked at Pickwick Antiques in Montgomery for 20 years, is a strong Christian. He sent in one of his favorite verses for this issue.

God the Sovereign Savior. To the Chief Musician. A Psalm of David the servant of the Lord, who spoke to the Lord the words of this song on the day that the Lord delivered him from the band of all his enemies and from the band of Saul. And be said. I will love You, O Lord, my strength. The Lord is my rock and my fortress and my deliverer; My God, my strength, in whom I will trust; My shield and the born of my salvation, my stronghold.

Psalm 18:1-2

Pam Sexton, who is an interior decorator, sent in a verse for this issue. Pam also works at Pickwick Antiques and is extremely talented in her field of work.

I thank my God upon every remembrance of you.

Philippians 1:3

Rush Limbaugh Has Reached a New Low

It amazes me that any thinking person would even listen to Rush Limbaugh and it’s more amazing that many do so on a regular basis. Apparently, his fans like what they hear and see. It’s become abundantly clear that this man has become the voice of the National Republican Party. Sadly, it’s also quite evident that the leaders of the party—including their candidates for President—have been afraid to cross this man.

Limbaugh’s last antic—when he called a female law student a “slut” and a “prostitute”—crossed the line by any standard. Even for Limbaugh, who has mostly operated out of the gutter, this was a new low and was inexcusable. Fortunately for America, his advertisers are cancelling their sponsorships in droves. His lame apology—which wasn’t really a true apology—came only because the self-appointed King of the Conservative Right saw that he was about to lose money. Obviously, his belated apology hasn’t worked for him and that’s real good news.

I believe Limbaugh fully intended to say exactly what he said and don’t believe he really has any real remorse for his hurtful comments. David Frum—a highly respected conservative pundit—called Lim-
baugh's conduct “a new kind of low.” He wrote on CNN.com:

This was not a case of a bad ‘word choice.’ It was a brutally sexualized accusation, against a specific person, prolonged over three days.

Any media outlet that puts a man like Limbaugh on should be boycotted by both advertisers and the public. That’s all the media bosses really understand and it really works. Interestingly, Ms. Flutk may have a very good lawsuit against Limbaugh and I suspect that also was a primary reason for his so-called apology. It has been interesting to see how the Republican candidates for President handled their relationship with Limbaugh. It appears they tried to ignore him, but not offend the king. All with the exception of Ron Paul, submissively “kissed his ring” in the past. But now it appears Rush won’t survive, I suspect folks like Romney will turn on him and join with the vast majority of Americans who really believe Limbaugh has been bad news all along.

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.

2 Chron. 7:14

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

Edmund Burke

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

Isaiah 10:1-2

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

XXV.
PARTING WORDS

As we celebrate Easter I believe it would be a good time to read the Book of John. In this Gospel, the author, who was one of the apostles, discusses the ministry of Jesus. John starts with the baptism of Jesus by John the Baptist who recognized that Jesus was the Son of God. In the chapters that followed John describes seven of the many miracles performed by Jesus. These miracles demonstrate the awesome authority and power of God. Jesus also has seven statements in John that describe exactly who He is. In that regard, Jesus said:

• I am the Bread of Life (John 6:35).
• I am the light of the world (John 8:12).
• I am the gate (John 10:9).
• I am the good shepherd (John 10:11).
• I am resurrection and the life (John 11:25).
• I am the way, and the truth, and the life (John 14:6).
• I am the true vine, and my Father is the vine grower (John 15:1).

I suggest that you read the entire Gospel of John and pay special attention to the complete picture as laid out by the verses mentioned above. It would be well to wind up your reading of John on Good Friday by going to Chapters 19, 20 and 21. The account there by John will not only lift your spirits, but it will encourage you to spread the Gospel message and let all know that Jesus has indeed risen.

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