I.

CAPITOL

OBSERVATIONS

PUBLIC EMPLOYEES HAVE UNFAIRLY BECOME 
TARGETS OF THE GOP

It should be of concern to all Americans that public employees in our country are being treated like second class citizens by many elected officials. It’s obvious that an attack strategy was devised by the GOP leadership to be carried out initially in a number of key states. While I am sure there are exceptions, by and large most folks who work as state employees or as school teachers are dedicated, work hard and earn their pay.

It became very clear that the men who run the National Republican Party believed that making public employees a target would help the party politically in those key states and ultimately would reap benefits nationwide. Public employees were made the target of overly-harsh criticism and budget cuts in the legislative bodies controlled by Republicans. That is simply wrong and shouldn’t be tolerated.

I have some very good friends, both in government service and in the education field in Alabama, who tell me it has been very hard on them and their families over the last two years. Many are now trying to find another way to make a living and feed their families. Some are even considering a move to another state. I can certainly understand how they feel. It’s time for the GOP to get off the backs of public employees and support them in their work.

THE ALABAMA LEGISLATURE IS TAKING THE 
WRONG APPROACH

Laying off employees, cutting benefits and reducing salaries has become the easy way out for politicians who refuse to face reality and take the needed steps required to right the ship of state in Alabama. That’s because those steps would require increasing revenues. The attitude of some of the key legislative leaders on things like The real effect of proration and 25% to 30% budget cuts is troubling. Some of the comments reported recently by the media attributed to several GOP legislators—if true—relating to the plight of the poor and especially children who depend on Medicaid for healthcare services show a lack of compassion and concern for those in our state who are less fortunate and in dire need. But when prisons are the top priority from a budgetary perspective, maybe we should expect this sort of thing.

It’s now quite obvious that there are much bigger financial problems in state government than appeared to be the case when then-Gov. Bob Riley left office in January of 2011. At that time, few people realized what terrible shape the finances of state government were actually in. But most all Alabamians certainly do now. Unfortunately, the current group of legislative leaders have done little—if anything—to remedy a very bad situation. That’s true both for the short and large range. It’s abundantly clear that our state needs:

• A permanent set of priorities that makes and keeps public education the top priority;
• A short-term plan of survival to make it through the current fiscal year;
• Another broader plan to meet the needs of the next fiscal year;
• Additional revenues for the short term;
• A long-range plan which must include both tax reform and additional revenues; and
• Some needed reform of a few government functions.

Hopefully, some good can come from the current financial crisis. Gov. Bentley, and those in control of each legislative body, can use the crisis to really set state government in Alabama on the right course. Our state’s financial problems—the result of poor planning and misplaced priorities, which finally reached the breaking point this year—can be fixed. Hopefully that will happen, and if it does, all Alabamians will be much better off in the long run. Those solving the short-term problems and then establishing a permanent long-range plan would also help themselves politically. But it’s real hard for some career politicians to see past the next election.

ALABAMA FAMILIES AT POVERTY LINE PAY 
MORE

A recent study by a nonprofit research group finds Alabama families living at the federal poverty line paid more in state income taxes in 2011 than similar families living in any other state. According to the study by the Center on Budget and Policy Priorities, a family of four making $23,018 owed $548 in Alabama income taxes. Only 15 states levy state income taxes on families making less than the federal poverty level. It’s shameful that Alabama does and nobody in state government, including the Legislature, should accept that. Consider that a similar family in Georgia would pay $273 and a Mississippi family would pay $103 and it’s quite evident that things in Alabama must be changed.

The executive director of the Alabama Citizens’ Policy Project, Kimble Forrister, said Alabama’s income tax for families at the poverty line is a stark reminder of how much the state’s tax system requires of low-income citizens. We have a regressive tax structure in our state and a system that favors the wealthy. It’s time for tax reform in Alabama and hopefully a move in that
direction will start during the Bentley Administration. If that happens, Gov. Bentley will go down in history as a leader who actually led!

Source: Associated Press

**THE ALABAMA SECURITIES COMMISSION PROTECTS THE PUBLIC**

The Alabama Securities Commission (ASC) released a report to the Alabama Legislature recently that highlights last fiscal year’s enforcement numbers and revenue brought to the Alabama General Fund. You can view the entire report at www.asc.alabama.gov. Concerning states’ securities regulation and enforcement, Alabama has probably secured more jail time for white collar criminals than any other state in proportion to population. Many who are prosecuted for violations of the Alabama Securities Act are brought back from other states or foreign countries by the long arm of Alabama law.

During Fiscal Year 2011, enforcement actions led to 26 arrests, 15 convictions with 31 awaiting trial, and helped secure 170 years’ incarceration for Defendants found in violation of the Alabama Securities Act. During the past five years the professional abilities and hard work of the Enforcement and Legal Divisions and ASC staff led to:

- over 110 criminal indictments/warrants obtained for violations of securities law;
- the courts ordering over $20 million in victim restitution on behalf of Alabama investors;
- an order of over $67 million in victim restitution from joint state and federal cases; and
- $1.6 billion going to Alabama holders of auction rate securities (ARS) accounts, including full payment of ARS accounts involving the Jefferson County scandal.

Most violations of the Alabama Securities Act involve people offering investment opportunities without being properly registered with the ASC and many violations involve obvious fraud. With few exceptions, anyone offering to sell securities, providing financial advice for a fee or who offer investment products to any Alabama citizen, must be registered with the ASC. In FY 2011, registration fees for financial professionals and investment products, in addition to fines and settlements, produced a total of $17,776,255 in revenue, with $9,824,611 going directly into the State General Fund. Shortly after the arrival of its director, Joe Borg, in 1994, the ASC became a self-sufficient state agency. It hasn’t received any state tax funding or General Fund money since Joe came on board and has actually delivered almost $140 million to the State General Fund.

In FY 2011, the ASC relied on the investigative efforts of the Enforcement Division to help secure some of the largest securities-related financial settlements in the state’s history. Working tirelessly with a multi-state task force of securities regulators in the southeastern U.S. region, the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority, the division investigated complaints related to seven large proprietary mutual funds administered by Morgan Keegan and Company and Morgan Asset Management. The companies were ordered to pay $200 million to establish administratively administered funds for the benefit of investors who had lost money, including approximately 5,800 Alabama investors.

After recovery of all expenses, the State received an additional $1.7 million in penalties.

The ASC’s Education and Public Affairs Division is very proactive in support of the agency’s objective to inform and educate Alabamians of all ages and economic backgrounds on the many aspects of saving and investing and about making informed and prudent financial decisions. Programs are structured to offer the most timely and relevant financial education information available to Alabama’s youth (K-12 and college students), working adults and retired seniors. The ASC provides these groups free financial educational seminars and printed materials. The Division averages 70 financial education presentations each fiscal year to Alabama citizens, as well as to social, civic and professional groups throughout our state.

During FY 2011, the Education and Public Affairs Division and ASC staff conducted a record 79 events that provided direct outreach and instruction to 5,505 citizens and helped acquire more than $200,000 in grant money from the Investor Protection Trust and the Financial Industry Regulatory Authority which is based in Washington, D.C. Grant funds supported Alabama business for the purchase of advertising, media outreach, and to support the expense of investor education and fraud prevention events throughout Alabama.

All Alabamians should be proud of the expertise, dedication and support Joe Borg and his highly professional staff of 50 personnel have provided for the security and benefit of the citizens of Alabama. Joe and his team are all to be commended for their excellent work on behalf of Alabama and its citizens.

Source: Dan Lord, ASC

**ALABAMA ATTORNEY GENERAL ANNOUNCES CREATION OF ANTI-CORRUPTION UNIT**

Attorney General Luther Strange announced last month that several state agencies will work with a newly created division of his office to fight public corruption. The partnership is designed to provide a more comprehensive and efficient approach to the investigation and prosecutions of public corruption, by drawing from the knowledge and skills of each agency. The Attorney General had this to say in a statement:

*Crimes involving the breach of trust by public officials and employees have a substantial and detrimental effect on the general welfare of the citizens of Alabama. In these times of scarce resources, it is even more imperative that we protect the integrity of our own government and of taxpayers’ money. Our partner agencies bring an array of capabilities and expertise, and offer valuable investigative, analytical, technical and legal resources. Working together in this alliance, we will maximize our resources to more effectively combat crimes of public corruption. Those who violate the public trust will be held to account.*

Special Prosecutor Matt Hart was selected to lead the new anti-corruption division, which will include prosecutors and investigators. State agencies that will serve partners in the effort are the Department of Examiners of Public Accounts, the Ethics Commission, Department of Revenue, Department of Public Safety, Insurance Department, Office of Prosecution Services, Alabama Securities Commission, Department of Economic and Community Affairs and Criminal Justice Information Center. So long as this effort is carried out in a bi-partisan and professional manner, it will be good for our state. Those who violate the public trust should be held accountable for their actions without regard to political affiliation or position. Hopefully political prosecutions in Alabama are a thing of the past.

Source: Associated Press

Source: Associated Press
II. A REPORT ON THE GULF COAST DISASTER

STEERING COMMITTEE FILES LANDMARK OIL SPILL CLASS SETTLEMENT

Two years ago, as all America knows, the Gulf Coast was devastated by the worst environmental disaster in United States history. When the Deepwater Horizon drilling rig suffered a catastrophic explosion on April 20, 2010, 11 people died and thousands of businesses and individuals lost millions due to the oil spill's economic impact during the tourism season. In addition, the Gulf seafood industry was brought to a standing halt. Adding insult to injury, a tremendous number of business owners and people were never compensated nor did they receive even a fraction of what they were entitled to in the claim centers set up around the Gulf Coast.

Recently, the Plaintiffs' Steering Committee in the MDL reached a landmark class settlement with BP that will compensate businesses and individuals throughout the Gulf Coast for losses associated with the oil spill. Under the settlement, every individual and business claim will stand on its own based on its unique losses. The settlement will pay thousands of workers in the fishing and seafood industry, as well as workers and businesses throughout the tourism and commercial business sector from Texas to Florida. In addition, property owners on the Gulf Coast will be entitled to compensation for loss of use and enjoyment of their property.

Except for the seafood harvesting sector, the settlement is capped—meaning that as long as a Claimant has a compensable claim, BP must pay them fully. Even for seafood harvesters, the settlement fund of $2.3 billion dwarfs the average seafood output for the entire Gulf region over the past few years.

In addition, all persons who worked in the cleanup or who live within a half mile of the Gulf Coast, and were sickened from the oil spill, will be entitled to up-front compensation, a 21-year medical consultation program, and a back-end litigation option against BP if they develop a hidden illness years later. Traditionally, toxic exposure cases take years to resolve. This resolution—reached in record time—is a tribute to the PSC and especially to Judge Barbier who has presided over this massive case in a fair and impartial manner. We believe the medical settlement, as well as the economic settlement, are tremendous victories for all Gulf Coast residents.

Our firm is still taking in a wide variety of claims, including those from persons and businesses that may not have filed a GCCF claim or a Short Form Joinder in the MDL. These cases include economic loss claims for a wide variety of commercial and tourism-related businesses, as well as commercial and charter fishermen, seafood processors and seafood wholesalers. In addition, our firm is helping Gulf-front property owners obtain compensation for the loss of use and enjoyment of their property as a result of the oil spill.

We believe the settlement will ultimately receive final approval by Judge Barbier. But there are certain steps that will have to take place. A hearing on the proposed settlement started on April 25th, the day we sent this issue to the printer, and that was the first step in the process. We are confident that preliminary approval of the settlement will be granted by Judge Barbier. Once that's done, a fairness hearing will be scheduled for a later date. Final approval will most likely follow that hearing in fairly short order. We feel real good about how things have gone thus far. Tremendous progress has taken place and it's the result of lots of very hard work by the lawyers on the PSC.

If you have any questions about the settlement, or would like to learn more about the types of cases our firm is still looking at, contact Rhon Jones, John Tomlinson, Parker Miller, or Chris Boutwell at (800) 898-2034 or by email at Rhon.Jones@beasleyallen.com, John.Tomlinson@beasleyallen.com, Parker.Miller@beasleyallen.com or Chris.Boutwell@beasleyallen.com. These are only four of the 19 lawyers in the firm who have been working virtually full time on the BP Litigation.

CONGRESS SLAMMED OVER INACTION ON SAFETY

The Presidential commission that investigated the Gulf oil spill blasted Congress for inaction last month as it issued a report card on industry government response to the massive BP oil spill. The Presidential panel has reformed itself as Oil Spill Commission Action and has received money from a foundation set up by the founders of Wal-Mart. But much of its work is being done on a volunteer basis. It’s not clear how long the group will stay together. It was reported that no decisions have been made in that regard. Florida Sen. Bob Graham, who co-chaired the Presidential commission, had this to say about Congress:

Across the board, we are disappointed with Congress’s lack of action. Two years have passed since the explosion on the Deepwater Horizon killed 11 workers, and Congress has yet to enact one piece of legislation to make drilling safer.

Congress earned a “D” from the seven former commissioners, who have reunited to press for action to improve drilling safety. The group accused Congress of failing to provide either leadership or financial support for safety improvement efforts. Congress’s failure to act stands in contrast to the Obama Administration, which has made important safety advances. Even the oil industry fared better than Congress in the report.

The Interior Department, which oversees offshore drilling, has taken a series of steps to improve safety and environmental protection, including separate leasing and environmental review functions from regulatory oversight. The oil industry improvements include installation of capping stacks in the Gulf of Mexico that can be used if an underwater well experiences a blowout. There were no capping stacks in place when the Deepwater Horizon disaster occurred in April 2010. Interestingly, another group, the conservation group Oceana, in a separate report gave Congress an “F.”

Only one proposal appears to have a chance in Congress. That’s a bill that would divert 80% of the water pollution fines from the disaster to Gulf Coast states affected by the spill. So far that proposal has been held up in the GOP-controlled House. It is critically important for that legislation to pass.

Source: Claims Journal

THE FIRST BP OIL SPILL ARREST

A BP engineer intentionally deleted more than 300 text messages that indicated the amount of oil flowing into the Gulf of Mexico was much greater than what the company later reported and that BP’s efforts to control the spill were failing. These are the claims by the U.S. Justice Department in the first criminal charges arising out of the deadly explosion of the Deepwater Horizon rig. Kurt Mix, the engineer, was arrested last month and charged with two counts of obstruction of justice for allegedly destroying evidence sought by federal authorities.

www.BeasleyAllen.com
The charges came on April 24th, the day before Judge Barbier started the hearing on whether to give preliminary approval to the multi-billion civil settlement between BP and the PSC. Criminal penalties that could be levied against BP and its corporate partners in the operation would be based in part on estimates of the amount of oil that spilled from the Macondo well. Mix, who was a BP project engineer, allegedly deleted more than 200 messages sent to a BP supervisor from his iPhone in October 2010 containing information about how much oil was spilling out. He then erased 100 more the following year after receiving numerous legal notices to preserve the information, the Justice Department said in a news release. I have great difficulty knowing exactly what this engineer did.

On the very first day in May of 2010 that BP began to use the “top kill” method to plug the leaking well by pumping heavy mud into the blown-out well head, Mix estimated in a text to his supervisor that 15,000 barrels of oil per day were spilling—an amount greater than what BP said the method could likely handle. More than 200 million gallons of crude oil flowed out of the well off the Louisiana coast before it was capped. More will likely be written in the well off the Louisiana coast before it was capped. More will likely be written in the news broke just as we were winding up the battle stop this massive fraud.

**ARKANSAS JUDGE FINES JOHNSON & JOHNSON $1.1 BILLION IN RISPERDAL CASE**

An Arkansas judge fined Johnson & Johnson and a subsidiary more than $1.1 billion last month after a jury found that the companies downplayed and hid risks associated with taking the antipsychotic drug Risperdal. Circuit Judge Tim Fox determined that Johnson & Johnson and its subsidiary, Janssen Pharmaceuticals Inc., committed nearly 240,000 violations of the state’s Medicaid fraud law—or one for each Risperdal prescription issued to state Medicaid patients over a 3 1/2-year period. Each violation carried a $5,000 fine, the state’s mandatory minimum amount, bringing the total to more than $1.1 billion.

Judge Fox issued an additional $11 million fine for more than 4,500 violations under the state’s deceptive practices act, but he rejected the state’s request to levy fines in excess of the $5,000 minimum for the Medicaid violations. Attorney General Dustin McDaniel said in a statement:

_The ruling sends a clear signal that big drug companies like Johnson & Johnson and Janssen Pharmaceuticals cannot lie to the (U.S. Food and Drug Administration), patients and doctors in order to defraud Arkansas taxpayers of our Medicaid dollars._

Arkansas was one of several states to sue over Risperdal. A South Carolina judge upheld a $327 million civil penalty against Johnson & Johnson and Janssen in December. Meanwhile, Texas reached a $158 million settlement with the companies in January. Jurors in the Arkansas case were told that Janssen could have seen a $200 million swing in its revenues if it issued alarming warnings that the drug could cause weight gain, diabetes and other health effects. If upheld, the award would go into the state’s Medicaid fund, which is facing a projected $400 million deficit next year.

Risperdal, introduced in 1994, is a “second-generation” antipsychotic drug that earned Johnson & Johnson billions of dollars in sales before generic versions became available several years ago. It is used to treat schizophrenia, bipolar disorder and irritability in autism patients. Risperdal and similar antipsychotic drugs have been linked to increased risk of strokes and death in elderly dementia patients, seizures, weight gain and diabetes.

The companies argued that the penalty portions of the Medicaid fraud laws were unconstitutional. But Judge Fox pointed out that the Arkansas Supreme Court had ruled in a 1969 case that fines could not be found excessive, and thus unconstitutional, based solely on a large number of violations. Matt DeCample, a spokesman for Gov. Mike Beebe, said it’s too early to say how the money will be distributed if the fines are upheld. Janssen said if its motion for a new trial is denied, it will appeal. From all accounts it’s believed that the Arkansas’s Supreme Court will do the right thing and affirm the lower court in this case. It’s refreshing to see a state’s High Court do the right thing in cases involving the powerful drug industry.

**JUDGE APPROVES $158 MILLION DRUG SETTLEMENT IN TEXAS**

Johnson & Johnson was also on the paying end recently in Texas. Final approval was given recently by the court to a $158 million settlement between Texas and a subsidiary of the health care giant. This settlement was in a Medicaid fraud lawsuit filed in federal court and it also includes the anti-psychotic drug Risperdal. The agreement, reached during a January trial, settled a lawsuit that alleged J&J and its subsidiaries were guilty of fraud by false or misleading statements about the safety, cost and effectiveness of the drug. The lawsuit was filed by a whistleblower, Allen Jones, who worked as an inspector for the Pennsylvania Office of Inspector General. He was fired from his job in his home state because he complained about what was going on there. He successfully sued there. Texas will receive 40% and the federal government will get 31% of the settlement. The whistleblower gets 17% with 12% going as attorneys’ fees. Tom Melsheimer, a lawyer with Fish & Richard- son, who is in the firm’s Dallas office, represented Mr. Jones in this lawsuit and did a very good job.

**TENET HEALTHCARE PAYS $43 MILLION IN OVERRIDDING CASE**

Tenet Healthcare Corp. has agreed to pay $42.8 million to settle claims that it overbilled the federal Medicare system at 25 facilities from 2005 to 2007. The settle-
ment arose from disclosures Tenet made in 2007 to the Inspector General of the U.S. Department of Health and Human Services. Tenet was under a corporate integrity agreement after paying more than $900 million in 2006 to resolve allegations of overbilling made under the False Claims Act. Apparently, that didn’t have the desired effect.

In the new case, Dallas-based Tenet settled claims that it improperly billed Medicare for patient treatment at inpatient rehabilitation facilities, which require higher levels of care that acute-care hospitals or skilled nursing facilities. This case is the largest ever arising from admissions to inpatient rehabilitation facilities, according to the Justice Department. The settlement came under the False Claims Act, which more typically involves allegations filed by a whistleblower who sues on behalf of the government and shares in any recovery.

Since 2009, the Obama Administration has recovered more than $6.6 billion in False Claims Act cases relating to health-care fraud, according to the Justice Department. The U.S. Attorney’s office in Atlanta joined this investigation, which began after Tenet disclosed improper billing at a facility in that state. Atlanta U.S. Attorney Sally Quillian Yates had this to say in the statement concerning the case:

**Inpatient rehabilitation facilities are expensive, and Medicare dollars should be reserved for patients who need the services—not for hospitals seeking to make money through improper billing.**

While the agreement resolves overbilling claims at 25 facilities, Tenet still owes only eight of them. Healthcare fraud hurts all Americans and can’t be tolerated. Over the years the drug companies apparently believed they could cheat when dealing with government programs and many companies did cheat. There have been many settlements over the past few years and that’s good news for all of us.

Source: The Birmingham News

**ACTOS BLADDER CANCER WHISTLEBLOWER LAWSUIT UNSEALED**

A doctor under contract with Takeda Pharmaceuticals claims in a whistleblower lawsuit that she met with resistance from her superiors at Takeda when she attempted to report Actos bladder cancer findings. Dr. Helen Ge, in a *qui tam* lawsuit recently unsealed, said that Takeda hired her under contract in September 2008, charging her with the task of reviewing various drugs in the Takeda portfolio—including Actos and bladder cancer—for various adverse reactions.

In her whistleblower complaint, which was filed under seal on June 18, 2010, Dr. Ge asserts that at a time when in excess of 100 cases of Actos bladder cancer had been reported to the company, the FDA only received 72 of those reports. Actos became the golden child in Takeda’s drug portfolio and hit the jackpot after GlaxoSmithKline’s Avandia was linked to a greater risk for heart attack and other cardiac events. Doctors switched their Type 2 diabetes patients to Actos in droves, believing that Actos carried less risk for heart failure and other adverse reactions to their patients. Takeda took full advantage of that belief.

Dr. Ge also alleges in her Actos lawsuit that Takeda failed to report all cases of Actos heart failure to the FDA. It was further alleged that “Takeda instructed its medical reviewers not to report hundreds of non-hospitalized or non-fatal congestive heart failure cases as ‘serious adverse events’ and thus avoided its responsibility of accurately analyzing and reporting these hundreds of serious adverse events to the FDA.” When Dr. Ge approached Takeda with the accusation that the pharmaceutical company was underreporting cases of Actos heart failure and congestive heart failure events to the FDA, her contract with the firm was abruptly terminated.

The FDA issued a safety bulletin last year relating to the concern that taking Actos for more than 12 months is associated with an increased risk for bladder cancer. Type 2 diabetes is one of the maladies affecting some of the largest pockets of the US population and the treatment to manage diabetes is an ongoing process. Mitigating the risk for Actos bladder cancer, therefore, would require coming off Actos after a year and switching to other medications. Dr. Ge alleges in her complaint:

**Takeda’s motivation to fraudulently report and underreport the serious adverse events was driven by an economic desire to falsely enhance Actos’ safety profile and to increase sales.**

The Actos lawsuit, filed in the U.S. District Court for the District of Massachusetts, under the False Claims Act, seeks to recover funds paid to Takeda by Medicaid, Medicare and other federally funded health care programs. It is alleged in the lawsuit:

**Takeda has caused thousands, if not millions, of false claims to be made on federal and state health care programs.**

The case asserts causes of action under false claims statutes of no fewer than 24 states. The qui tam whistleblower lawsuit for Actos bladder cancer and other Actos side effects was unsealed by US District Court Judge F. Dennis Saylor.

Source: Lawyers and Settlements

**AMMED DIRECT TO PAY $18 MILLION PENALTY IN BAIT-AND-SWITCH SCHEME**

Diabetic supply firm AmMed Direct will pay an $18 million penalty to settle government claims that it wrongly billed Medicare for diabetes testing supplies and other products in a bait-and-switch scheme. Most of the money — $17.6 million — will go to the U.S. government, with the state of Tennessee getting $439,003 as part of the civil settlement. The penalties, which also include a $2.8 million payment to a whistleblower in the long-running dispute, were revealed last month by the U.S. Attorney’s Office in Tennessee.

According to federal authorities, Nashville-based AmMed ran a marketing scheme from 2008 through early 2010 in which it advertised free cookbooks, without any mention of Medicare supplies, to induce Medicare customers to call AmMed or its telemarketing sales team. Once AmMed’s representatives confirmed that a beneficiary calling for the free cookbook was covered by Medicare, they tried to sell the caller supplies and then improperly billed Medicare for the merchandise that was ordered. If a customer later returned his or her diabetic supplies to AmMed, the company would fail to refund money to Medicare or TennCare (the state’s poverty health program) in a timely manner, according to investigators.

Before the company learned of the federal and state inquiry, AmMed informed Medicare that it had failed to refund money for returned supplies. The company then started paying refunds to Medicare and TennCare. The $18 million settlement value includes refunds made voluntarily by AmMed Direct during the past two years, according to the company. As part of the case, whistleblower Bryan McNeese will get payments of roughly $2.8 million under provisions of the federal False Claims Act. Derrick L. Jackson, special agent in charge of the U.S. Department of Health and Human Services’ Office of Inspector General in Atlanta, had this to say:
This company deceived Medicare beneficiaries by offering them free cookbooks, when they were really selling diabetic supplies. These types of deceptive marketing practices are a type of bait and switch that are designed to trick the most vulnerable members of our society.

The case was investigated by the Department of Health and Human Services-Office of Inspector General, the Tennessee Bureau of Investigation—Medicaid Fraud Control Unit, the Office of Inspector General of the U.S. Department of Defense, the U.S. Attorney's Office for the Middle District of Tennessee, and the Tennessee Attorney General's Office. Source: Tennessean

WellCare Health Plans Inc. will pay $137.5 million to the federal government and nine states to settle lawsuits alleging violations of the False Claims Act. WellCare provides managed health care services for approximately 2.6 million Medicare and Medicaid beneficiaries nationwide. The four lawsuits were filed by whistleblowers, known as relators, under the qui tam provisions of the False Claims Act. As we have reported in previous issues, private parties are allowed to file suit on behalf of the United States and can share in any recovery received in the case.

The lawsuits alleged that WellCare submitted false claims to Medicare and various Medicaid programs, including falsely inflating the amount WellCare claimed to be spending on medical care in order to avoid returning money to Medicaid and various other state programs. The lawsuits also alleged that WellCare knowingly retained overpayments it had received from Florida Medicaid for infant care, as well as falsified data that misrepresented the medical conditions of patients and the treatments they received.

The settlement requires that Wellcare pay the United States and nine states—Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Missouri, New York and Ohio—a total of $137.5 million. WellCare may also be required to pay an additional $35 million in the event that the company is sold or experiences a change in control within three years of the agreement. This is the second monetary settlement reached with WellCare since the government initiated criminal and civil investigations of WellCare in 2006. To date, the total recovery from WellCare as a result of these civil suits is now $217.5 million. Robert E. O’Neill, U.S. Attorney for the Middle District of Florida, had this to say:

The monies recovered in restitution and from this settlement agreement will go to the federal and state programs which suffered these losses, while the forfeited funds will go to law enforcement to help fund future investigations. This settlement should serve as notice to those defrauding state and federal health-care programs that, in addition to appropriate criminal prosecutions, we will utilize civil suits to root out their conduct and recover their ill-gotten gains.

Stuart F. Delery, Acting Assistant Attorney General for the Justice Department’s Civil Division, added:

Government health plans increasingly rely on managed care organizations to provide patient care. This case illustrates our commitment to ensure that government funds are in fact used to render care and not to line the pockets of those more concerned with the bottom line.

David B. Fein, U.S. Attorney for the District of Connecticut, who was involved in this matter, made a very good point as to how this fraud affects the public, when he said:

Fraud committed by managed care companies burdens the integrity of the Medicare and Medicaid programs and increases the healthcare burden for all of us. The government is committed to preventing fraud in federal and state health care programs, and managed care companies that are dishonest will be held accountable.

Lawyers in our firm have also been committed to fighting on behalf of states that have been subject to Medicaid fraud. Beginning in 2005, our firm has represented the Attorneys General of Alabama, Alaska, Hawaii, Kansas, Louisiana, Mississippi, South Carolina, and Utah in litigation against several drug manufacturers for the fraudulent pricing of prescription drugs reimbursed by those states’ Medicaid programs. These lawsuits have not only brought about a positive change in our country’s Medicaid programs, but importantly, billions of dollars in overpayments have been recovered for the states who filed suits as a result of fraudulent price reporting schemes.

Source: The United States Department of Justice; Office of Public Affairs

Walgreens Settles Illegal Kickback Claims

Walgreens will pay the federal and state governments $7.9 million in a settlement arising out of allegations the drugstore chain illegally paid kickbacks so that prescriptions would be transferred to its pharmacies. Investigators had been looking into whether Walgreens had given people enrolled in government-run health programs—such as Medicare, Medicaid and Tricare (for military families)—$25 gift cards if they moved their prescriptions over to Walgreens’ pharmacies. These inducements violate federal law.

The drugstore chain’s advertisements typically noted that such offers didn’t apply to those insured via Medicaid, Medicare and similar programs. But the government claimed “Walgreens employees frequently ignored the stated exemptions on the face of the coupons and handed gift cards to customers who were beneficiaries of government health programs.” The government learned of the allegations in lawsuits filed by two whistle-blowers: Cassie Bass, a pharmacy technician who worked at Walgreens in Detroit, and Jack Chin, an independent pharmacist in Florida.

Federal prosecutors from California and Michigan, the U.S. Justice Department’s commercial litigation branch, the National Association of Medicaid Fraud Control Units and the U.S. Health and Human Service Department’s inspector general participated in the joint investigation. Bass and Chin will receive about $1.28 million from the United States for their actions under parts of federal and state False Claims Acts statutes. The federal government will receive just under $7.5 million from Walgreens as part of the settlement, with participating states also receiving some payment from the drugstore chain.

Source: CNN

New York To Get $61 Million In Settlement On Vioxx

New York will receive $61 million from a national settlement with Merck & Co. This will resolve an investigation into the marketing of the painkiller Vioxx. A federal court has accepted Merck’s guilty plea to one misdemeanor count of violating mar-
keting laws. Merck marketed Vioxx as a treatment for rheumatoid arthritis without federal approval for almost three years and, according to the Justice Department, made false statements about its cardiovascular safety. As we know all too well, Vioxx was taken off the market in September 2004 after evidence showed it doubled the risk of heart attack and stroke.

Source: Insurance Journal

Average Wholesale Price Settlements

Our firm has settled a number of AWP-based cases over the past several weeks in several states. We will have more to say on this in the June issue. In the meanwhile, if you would like more information on the AWP (Medicaid fraud) cases filed by our firm on behalf of a number of states, contact Dee Miles, who heads up the AWP litigation for the firm, or Alison Douillard at 800-898-2034 or by email at Dee.Miles@beasleyallen.com or Alison.Douillard@beasleyallen.com. Our firm will continue to work to see that justice is done in each state we represent for the wrongdoing done to the states’ Medicaid programs.

As I stated at the outset of this section, these are just a few of the many examples of how drug manufacturers and other healthcare and service providers are cheating the government and the taxpayers. Hopefully, people—and the Congress—will demand that we put a stop to such rampant fraud and abuse.

IV. PURELY POLITICAL NEWS & VIEWS

The GOP Presidential Sweepstakes

Now that the GOP Presidential nomination is finally assured for Mitt Romney the general election fireworks can begin. With Rick Santorum pulling out, rather than facing a possible loss in his home state, the primary battles were over and the general election campaign was unofficially on. Both Romney and President Obama came out swinging shortly after Santorum withdrew. At that time there seemed little doubt but that things would heat up very quickly and they have. In fact, Romney came out much stronger in his attacks on the President after he won five primaries on April 24th. This promises to be one of the most interesting Presidential elections since the Bush-Gore epic battle a few years back. It will also be the most costly ever and that’s not a good thing for the American people.

If given his choice of an opponent, I don’t believe President Obama could have picked a better person to run against than Romney. But even with Romney as the nominee—with all of the baggage he brings from his most interesting past and his inability to connect with regular folks—the GOP will likely make the race a close one. That’s because of the huge amounts of money that will be made available to the Republican candidate regardless of who it is. I really thought Romney—with all of his “goofy” statements and constant mistakes—might be trying to make the Obama campaign folks overconfident. But the more we see I am now convinced we are seeing the real Romney. His ever becoming President of the United States is a scary thought.

Looking Ahead To 2014 In Alabama

On the Alabama scene, even though Gov. Robert Bentley hasn’t even completed his second year of a four-year term, Capitol-insiders are saying that several men are already measuring the drapes in the Governor’s office. Some say privately that former Governor Bob Riley would like another term, but I suspect he is making too much money as a lobbyist to take a severe pay cut. However, in the event he doesn’t run, Riley is rumored to have a full slate of candidates ready to run in 2014. That includes a hand-picked person for Governor.

Mike Hubbard, the current Speaker of the House of Representatives, is said to be the Riley choice. If he isn’t the choice, Mike is certainly acting like a candidate, having his own agenda. It’s clearly an agenda that is separate and apart from that of the Bentley Administration. It will be interesting to see how long it will be before the public figures out that Alabama doesn’t need two chief executives.

It will also be interesting to watch what happens during the rest of this year’s legislative session. I understand some legislative leaders are blaming Gov. Bentley for the state’s financial woes, which is most difficult to understand. But that may well be part and parcel of the Riley plan. Nevertheless, Gov. Bentley still enjoys a very good favorable rating around the state. He inherited a financial mess when he took office and to his credit, Gov. Bentley didn’t blame it on his predecessor. But the fact remains, the state was in terrible financial shape when Riley left office. All Alabamians are now suffering because of the resulting protraction and things will get worse, starting in October, because of the badly underfunded budgets for the next fiscal year.

V. LEGISLATIVE HAPPENINGS

Budget Priorities In Alabama Are Badly Misplaced

I wrote earlier that the top priority for the Alabama Legislature seems to have become funding the state’s prison system. Lots of folks are having a most difficult time understanding that approach. When one considers all of the huge financial problems facing state government, it’s clear that the Legislature’s priorities are way out of kilter. I suspect most of Alabama citizens really believed public education was our state’s top priority. But, it hasn’t been far a long time and that’s a sad state of affairs. Today—in a state that is flat broke—the truth is prisoners are in much better shape than are students and school teachers. That must change and soon.

Our state is badly in need of additional revenues, and that really shouldn’t even be disputed. Essential services of government will be drastically cut, both in the current budget because of proration, and in next year’s budget which will likely be reduced by at least another 25% to 30%. The people of Alabama will suffer tremendously as a result of what is happening in the State House. I don’t believe most folks fully realize what is going on, but they soon will when the drastic cuts in state services begin to take effect.

When prisons become the top priority over children, the elderly, the disabled and all other functions of government, the state’s priorities are definitely misplaced. Reducing the prison population—both short and long range—is certainly needed and it’s something that will require the passage of legislation. Sen. Cam Ward is working on this project. Hopefully, he will be successful. But there are many other critically important issues that must be addressed during the current session. The Medicaid program’s plight should be of great concern to those in control of the House and Senate. It’s a problem that can’t be ignored since it affects all Alabamians, directly or indirectly, and one that will have lasting adverse effects if not dealt with now.
Being an eternal optimist, I still believe that eventually a non-partisan effort will take over in the Statehouse and replace politics as usual. When that happens, the people of Alabama will be the real winners and our children and grandchildren will reap the benefits. I believe most Alabamians agree on this needed approach regardless of political leanings.

**Redrawing Of Alabama's Legislative District Lines**

While the subject hasn't received a great deal of attention, the Alabama Legislature is in the process of redrawing the legislative district lines. While this is a most difficult task, it's one that must be done. After the census every ten years, state lawmakers are required to draw new legislative and Congressional districts to reflect shifts in population, a process called redistricting. The new districts will determine who Alabamians elect to the Statehouse. It's being predicted by a number of political insiders in Montgomery that the new maps will wind up in court once they are approved. Legislative redistricting is highly political and that should come as no surprise to anyone who has followed the Alabama Legislature.

Republicans — who have overwhelming majorities in both chambers of the Alabama Legislature — have total control over the redistricting process. Based on a historical perspective, and the manner in which things have been run in both Houses so far, I don't see much hope for a bi-partisan approach to this exercise. But in fairness, the Democratic majorities in past Legislatures have always taken full advantage of their positions of power.

Most observers believe it will require a special session to address redistricting and that it will be held before the end of the Regular Session. The Redistricting Committee should try to keep cities and counties as intact as possible. Nothing should be done that would weaken existing districts with high minority populations. We should all hope for fairness and equitable treatment for both the persons currently serving in the Legislature and, more importantly, for the people of Alabama. Is that too much to ask?  

Source: Associated Press

**Bill Becomes Law and May Salvage PACT Settlement**

Governor Robert Bentley has signed into law a bill designed to salvage a settlement with participants in the state's ailing Prepaid Affordable College Tuition (PACT) program. The bill strikes language from a 2010 law that the Alabama Supreme Court made the basis for refusing to approve the settlement. Justice said the language prohibited the PACT contracts from being altered.

The settlement in the lawsuit called for PACT to cover tuition at 2010 levels—instead of the full tuition that families thought they would be getting—and for students or families to make up the difference. PACT is faced with running out of money after being hit with rising tuition prices and falling investment returns. The program will go into the red in about three years, according to an recent actuarial report.

Alabama Treasurer Young Boozer is asking the Supreme Court to reconsider its decision related to the settlement, and to let the settlement stand. Legislators put the bill on the fast track so the change would be made by the time briefs are filed with the Court. The bill also would remove tuition caps for PACT participants that the 2010 legislation put in place at some universities in the state. It will now be interesting to see what happens in the Supreme Court. Hopefully, the settlement can be approved since it appears to be the best ending to a very bad situation. The settlement is far from perfect, and lots of folks will still have to pay substantially more than they should. But apparently it’s the best that could be worked out for those in the program considering all of the circumstances.

My good friend Doyle Fuller represented the Plaintiffs in this case and he has done a very good job, especially under some most difficult and politically-charged circumstances.

Source: Associated Press

**VI. Court Watch**

**An Alabama Judge Did The Right Thing And For The Right Reason**

Autauga County Circuit Court Judge John Bush says he was shocked by the national attention he received after he sent a Prattville man to jail for three days. The order for jail time by Judge Bush was handed down because the man’s blue jeans were sagging too low. Judge Bush, a very good jurist with more than 25 years on the bench, says that his office has had media calls from all over the U.S., including CNN, Associated Press and other national news outlets. The three-day contempt of court citation for disrespecting the court system received national attention. Judge Busch took exception to the fact that the young man’s jeans were sagging and reportedly told him:

> You are in contempt of court because you showed your butt in court. You can spend three days in jail. When you get out you can buy pants that fit, or at least get a belt to hold up your pants so your underwear doesn’t show.

A quick Internet search revealed the story was printed or broadcast in newspapers and on television stations across the country. It also became a popular topic on blogs dealing with subjects ranging from politics to cultural issues. I believe Judge Bush should be commended for his action. Folks who come into a courtroom should treat the court, as well as others in the room, with respect. In fact, the need for that respect should hold true for any public building. But it’s especially applicable for a judicial building. Hopefully, Judge Bush’s action will send a message that needs to be heard by lots of folks. It doesn’t just apply to sagging pants, but to attitudes of folks who don’t respect the law or the judicial system. Unfortunately, it’s not just how some young men wear their pants. That’s because we have a much deeper problem affecting our judicial system and that comes from the constant attacks on the system by powerful special interests who want to weaken if not destroy the system.

Source: Montgomery Advertiser

**VII. The National Scene**

**There Is A Way To Derail Super-PACs**

The only good news concerning the super-PACs flooding the 2012 Presidential race with negative ads funded by huge contributions from the super rich is that these “vehicles for corruption” can be eliminated. So far most of the attention directed toward stopping the super-PAC has
involved passage of a constitutional amendment that, if passed by Congress and approved by the voters, would solve the problem. But there is another way to derail the Super-PACs. Congress can also pass a law to end these candidate-specific super-PACs. That’s something well within the bounds of the Citizens United decision.

Citizens United is doing great damage to our nation’s well-being. The Supreme Court’s decision paved the way for the creation of super-PACs—federally registered political action committees that raise unlimited contributions and use these funds to make expenditures in federal elections. To legally spend these funds, the High Court said that outside groups must operate “independently” of the candidates they are supporting. If anybody believes the Super-PACs are truly independent, they would be good candidates for the sale of ocean-front lots in a desert.

The 2012 Presidential campaign has brought us a virulent species of these groups in the form of the candidate-specific super-PAC. It’s very clear that the super-PACs are far from being independent. They function as nothing more than extensions of the Presidential candidates’ campaigns. Take a look at the people running the super-PACs and you will find former close political associates of the candidates. They raise and spend unlimited contributions to support only that candidate. It’s been reported that campaign aides, political associates and sometimes the candidate himself appear at events held to raise contributions for the super-PAC. It’s obvious to those giving huge sums to a super-PAC that supports a Presidential candidate, that the contributions directly benefit that candidate just as if the contributions were being given directly to the candidate. I don’t see how anybody can deny that. As you may know, a contribution to a candidate is limited to $2,500 per election.

The Presidential candidate-specific super-PACs are vehicles for avoiding the limits on contributions to federal candidates—limits that are supposed to prevent government corruption. In a 1976 U.S. Supreme Court case (Buckley v. Valeo) that upheld the constitutionality of limits on contributions to candidates, the Court said limits were necessary to deal with the “reality or appearance of corruption inherent in a system permitting unlimited financial contributions.” That certainly made sense, was a good thing then, and it hits the nail squarely on the head at present.

The inherently corrupt system envisioned by the Court in 1976 is precisely what our country faces with the advent of candidate-specific super-PACs. The key to saving the day for the American people is to make the super-PACs illegal. Even without a constitutional amendment, the type of candidate-specific super-PACs currently being used in the Presidential campaign can be eliminated. Democracy 21, a non-profit, non-partisan organization dedicating to making democracy work in the U.S., has drafted legislation that would accomplish this goal.

The linchpin of the Citizens United decision is the requirement that expenditures by an outside group, such as a super-PAC, must be made independently from the candidate the group supports. The Court left it to Congress to define what constitutes illegal “coordination.” The candidate-specific super-PACs in this year’s Presidential contest have common characteristics that closely tie them to the candidates they support, and include the following:

- They are informally, if not formally, established, suggested, encouraged or signed off on by the Presidential candidate or his agents.
- They are created or run by former close political associates of the candidate and spend their money to support that candidate.
- They share fundraising lists and/or fundraisers in soliciting unlimited contributions from donors.
- The candidates or their agents appear at or otherwise participate in their fundraising and other events.
- They discuss campaign strategy, plans, needs, activities or expenditures with the candidate or his agents.

These indications of coordination can and should be incorporated into a new statutory definition of coordination that denies the presence of any such behavior that establishes illegal coordination between the super-PAC and the candidate. It’s been said that candidate-specific super-PACs are returning this nation to the system of “legalized bribery” of federal officeholders that existed before the Watergate scandals. Congress can keep this from happening, but its members must have the will to do the job.

Nobody can deny that these third-party attack groups—funded by anonymous billionnaires and powerful corporations, and led by the likes of Karl Rove and the Koch brothers—have become the dominant force in American politics. Corporations are now considered “people,” a concept which is impossible to comprehend, and that has changed the political landscape in this country. Grassroots progressive voices are being drowned out by the super-PACs with their hundreds of millions of dollars available to be spent for the candidates they support.

Hopefully, the American people will realize what is happening—wake up—and get actively involved to put things right. The place to start is in the general election process and that includes supporting candidates who agree Citizens United was bad for America. A record turnout at the polls this fall would offset the hundreds of millions of dollars spent by the super-PACs. The American people have too much at stake not to respond in a manner that will level the playing field in our Nation’s Capitol.

Source: Mobile Press Register

REGULATORY SAFEGUARDS IN THE U.S. MUST BE STRENGTHENED

If one believes the claims of the National Republican Party and its political lackies, it would appear that the federal government over-regulates all companies—large and small—in the U.S. But that’s far from reality. In fact, almost every day brings new evidence of the real need for America to strengthen our system of health, safety, environmental, financial and other regulatory protections. Such things as dangerous products, tainted food, rip-off credit card terms, and polluted air and waters are causing folks a great deal of hurt and misery in this country. Much of that is due to poor and inadequate regulation. Yet there is a movement underway led by the U.S. Chamber of Commerce and its Republican allies in Congress that is bad news for the American people. These groups have put together a major campaign designed, not to improve, but to undermine the regulatory system in the U.S. If that happens, the health and safety of the consuming public will be put in serious jeopardy.

One of my favorite groups, Public Citizen, has led the counter-charge to fend off this assault on the rules and regulations that make all of us safer and our country stronger. The Coalition for Sensible Safeguards, a broad alliance created to unite public interest organizations against the Chamber-led effort, has had some success. But there is much yet to be done. The urgent need for stronger regulatory protections will remain the focal point in the battle.

Big Business has improperly leveraged its political influence in many instances to
block new safeguards. It’s claimed that regulation hurts the economy, but that is far from true. In reality, strong regulation, which is fairly administered, actually improves the efficiency of business and spurs innovation. That’s not a message that those who want to weaken—and in many cases destroy—the regulatory system want the public to hear. That’s why groups like Public Citizen are so important and so badly needed.

It’s essential that both Congress and the Obama Administration get this message. Folks must demand that our regulatory system be defended and improved. That won’t be easily done, and for that reason, public support must be mobilized. The stories of the victims of regulatory failures—the child suffering from pollution-induced asthma, the woman sickened and nearly killed by food poisoning, the family of the mother killed by an unsafe truck lift, and there are many more—must be told in order to make clear to the public what is at stake.

The policy disputes over regulation aren’t about abstract concepts. Instead, they determine matters of the greatest consequence to real people, including matters of life and death. I encourage all of our readers to join with Public Citizen, join the fight to make our nation’s regulatory system strong and fair, and let the President and members of Congress know how you feel. For more information on this subject go to Citizen.org.

ALEC Is A Powerful Organization That Few People Know About

For many years, the American Legislative Exchange Council (ALEC) has been a powerful and influential organization that has promoted the agenda of corporate America and the political right in state legislatures nationwide. As powerful and influential as ALEC has been, it’s quite apparent that the public has known little about the organization. ALEC’s members, who work together to draft model bills, consist of state legislators (who pay little to join) and corporations and trade associations, (which pay huge membership fees). These fees paid by the latter groups purchase influence for ALEC’s agenda and provide access to lawmakers.

Because ALEC’s issue-areas are quite broad—voter ID’s, consumer protection, healthcare, education, the environment and guns, to name a few—not every ALEC bill connects to a particular company’s financial interests. But you can rest assured that the interests of ordinary folks are not a priority by any stretch of the imagination for ALEC. ALEC’s issues are all those that benefit Corporate America and the far right. For most companies, their investment in ALEC is well worth it when they have their favored bills promoted.

ALEC has been a strong advocate of taking away ordinary citizens’ access to the civil court system. In fact, preventing access to the civil courts for everyday Americans is a pervasive theme that runs through ALEC’s entire, corporate-backed agenda. ALEC has an entire division devoted just to preventing injured people from holding wrongdoers accountable in court. Its very active Civil Justice Task Force is co-chaired by Victor Schwartz, general counsel of the American Tort Reform Association, a corporate group seeking to limit the liability of its corporate members. The legislation generated by this task force has been nothing short of a gift to the companies in our nation that put profits over safety. Many of the supporters of ALEC have been successfully sued over and over for recklessly causing death, injury and harm to their customers.

The problem with these laws pushed by ALEC is not only that they allow wrongdoers to escape accountability for what they do, they also discriminate on the basis of race, gender, age and income. Some ALEC bills target certain kinds of jury awards, specifically those that compensate for “non-economic” injuries like permanent disability, loss of a woman’s reproductive system, disfigurement, trauma, loss of a limb or blindness.

Source: Reuters

Indian Tribes To Get $1 Billion In Federal Settlement

The Pawnee Nation of Oklahoma is one of 41 tribes that have agreed to settle claims against the federal government involving the management of tribal assets in trust accounts. The government will pay about $1 billion to the tribes to resolve lawsuits and other claims, some of which have been hanging around for over a century. The trust accounts administered by the government contain tribal income from a range of activity involving tribal resources, such as oil and gas leasing on Indian land. At press time it was not clear how the settlement will be divided among the tribes.

U.S. Attorney General Eric Holder said the settlements “fairly and honorably resolve historical grievances over the accounting and management of tribal trust funds, trust lands and other non-monetary trust resources.” Holder said the claims had created distrust and division between tribes and the U.S. government and that the settlements would mark further progress in the relationship. The settlement is the latest in a series of resolutions under the Obama Administration to long-running and acrimonious disputes with tribes. The biggest was the $3.4 billion settlement in 2009 of the lawsuit involving an estimated 500,000 individual American Indians who had trust accounts with the federal government. Then, last year, the Administration agreed to pay the Osage Nation of Oklahoma $380 million to settle trust account claims that had been litigated for 12 years.

More than 40 tribes were named as Plaintiffs in a lawsuit filed in 2006 by the Native American Rights Fund seeking a full accounting of the tribal trust funds. According to sources in the Obama Administration, settlement talks are under way with other tribes suing the federal government.

Source: New York Daily News

VIII. THE CORPORATE WORLD

The Ten Worst Corporate Tax Avoiders

Most folks would find it hard to believe, as our government in Washington fights to stay fiscally afloat, how GE got away with paying no corporate federal taxes in 2010. Actually GE was able to get a $3.2 billion rebate. But unfortunately, most Americans don’t realize how corporations like GE get away with this sort of thing on a regular and recurring basis. Folks hear lots from too many politicians who claim that companies like GE pay 35% in federal taxes and say that the companies should be allowed to pay at a lower rate.

The reality is that it’s a rare company that pays the current 35% corporate rate. In fact, from 2008 through 2011, it has been reported that 25 Fortune 500 companies paid no federal taxes during those years. Let’s take a look at ten huge corporations and see how they fared in recent years when it comes to profits, paying taxes to the federal government and receiving rebates:

• Exxon Mobil. In 2009, Exxon Mobile made $19 billion in profits. Not only did Exxon avoid paying any federal income taxes that year, according to its SEC
Citigroup. Last year, Citigroup made $16 billion in profits from the IRS, even though it paid only 11 percent of its income tax.

**Bank of America.** Last year, Bank of America received a $1.9 billion tax refund from the IRS, even though it made $4.4 billion in profits. Just a couple of years ago, the huge company received a bailout from the Federal Reserve and the Treasury Department.

**General Electric.** Over the past five years, while General Electric made $26 billion in profits in the United States, it received a $4.1 billion refund from the IRS.

**Chevron.** In 2009, Chevron received a $19 billion refund from the IRS after it made $10 billion in profits.

**Boeing.** Last year, Boeing, which received a $50 billion contract from the Pentagon to build 179 airborne tankers, was able to get a $124 million refund from the IRS.

**Valero Energy.** Last year, Valero Energy, the 25th largest company in America with $68 billion in sales, last year received a $157 million tax refund check from the IRS and, over the past three years, it received a $134 million tax break from the oil and gas manufacturing tax deduction.

**Goldman Sachs.** In 2008, Goldman Sachs paid only 1.1 percent of its income in taxes even though it earned a profit of $2.3 billion bailout from the Federal Reserve and U.S. Treasury Department.

**Citigroup.** Last year, Citigroup made more than $4 billion in profits but paid no federal income taxes, even though it received a $476.2 billion in cash and guarantees from the TARP, Federal Reserve and U.S. Treasury. This was more than any other bank.

**ConocoPhillips.** ConocoPhillips, the fifth largest oil company in the United States, made $16 billion in profits from 2007 through 2009, but received $451 million in tax breaks through the oil and gas manufacturing deduction during those years.

**Carnival Cruise Lines.** Over the past five years, Carnival Cruise Lines made more than $11 billion in profits, but its federal income tax rate during those years was just 1.1 percent.

I am convinced that working men and women, who not only work hard for their pay, but also pay their fair share of taxes, believe that huge corporations should also pay their taxes and not be given special treatment by the government. Unfortunately, very few folks in this country know how the giants in Corporate America receive special treatment when it comes to the U.S. Tax Code. It will take getting the truth out to the public on this issue if this sort of thing is ever to be changed by Congress. Presently, Corporate America gets its way in Congress and that overwhelming influence will have to be curtailed before we will see tax reform on the national level in this country.

Source: Washington Post

---

**CFTC ORDERS JPMORGAN CHASE BANK TO PAY $20 MILLION PENALTY**

The U.S. Commodity Futures Trading Commission (CFTC) has settled charges against JPMorgan Chase Bank for its unlawful handling of Lehman Brothers, Inc.’s customer segregated funds. The CFTC order imposes a $20 million civil monetary penalty against JPMorgan. The order also requires the company to implement undertakings to ensure the proper handling of customer segregated funds in the future and to release customer funds upon notice and instruction from the CFTC.

The CFTC alleged that from November 2006 to September 2008, JPMorgan was a depository institution serving Lehman Brothers, a futures commission merchant (FCM) registered with the CFTC. During this time, Lehman Brothers deposited its customers’ segregated funds with JPMorgan in large amounts that varied in size, but almost always more than $250 million at any one time. During the same time period, JPMorgan continued to refuse to release these funds for approximately two weeks thereafter, and only released the funds after being directly instructed to do so by CFTC officials. The CFTC order does not find that there were any customer losses. The laws applying to customer segregated accounts impose critical restrictions on how financial institutions can treat customer funds, and prohibit these institutions from standing in the way of immediate withdrawal. These laws must be strictly observed at all times, whether the markets are calm or in crisis.

Source: Corporate Crime Reporter

**MONSANTO SUED FOR ALLEGEDLY CAUSING DEVASTATING BIRTH DEFECTS**

Monsanto has been sued by dozens of Argentinean tobacco farmers who contend that the biotech giant knowingly poisoned them with herbicides and pesticides. The farmers say that as a result, this caused “devastating birth defects” in their children. The farmers are now suing, not only Monsanto on behalf of their children, but a number of the big tobacco giants as well. The birth defects that the farmers say occurred as a result of the Defendants’ actions include cerebral palsy, Down syndrome, psychomotor retardation, missing fingers, and blindness. The suit was filed by the Plaintiffs in a Delaware Court.

The farmers come from small family-owned farms in Misiones Province and sell their tobacco to many United States distributors. The family farmers allege that major tobacco companies such as the Philip
Morris company asked them to use Monsanto's herbicides and pesticides, assuring them that the products were safe.

In their claim, the farmers allege that the tobacco companies were "motivated by a desire for unwarranted economic gain and profit," with zero regard for the farmers and their infant children — many of whom are now suffering from severe birth defects from Monsanto's products. It will be most interesting to see how this case develops as it goes through the judicial system.

Source: infowars.com

CITIGROUP CEO AND DIRECTORS SUED OVER EXECUTIVE PAY

Citigroup Inc. Chief Executive Vikram Pandit and the bank's directors have been sued by a shareholder, who has accused them of awarding outsized pay to top executives. The complaint, filed last month in Manhattan federal court, contends that the directors breached their fiduciary duties by awarding more than $54 million of compensation in 2011 to the executives, including $15 million to Pandit, though the bank's performance did not justify it.

At Citigroup's annual meeting, about 55 percent of shareholders participating in an advisory vote, rejected Pandit's pay package. That marked the first time investors had rejected a compensation plan at a major U.S. bank. As you may know, shareholders won the right to vote on executive pay at most public companies under the 2010 Dodd-Frank Act. The lawsuit seeks to force the Citigroup directors to pay damages to the bank and for Citigroup to improve internal controls.

Source: Insurance Journal

IX. PRODUCT LIABILITY UPDATE

STOPPING OCCUPANT EJECTION IN MOTOR VEHICLES SAVES LIVES

There is no question that it is far safer to remain inside a vehicle during a crash than being ejected or partially ejected. That basic principle goes back to the origins of automotive safety. The first principle of crashworthiness, as defined by Hugh DeHaven in a 1952 paper presented to the Society of Automotive Engineers, states that the occupant compartment should not break open and spill its contents. This occurs when some component of the occupant compartment fails to keep an occupant from being ejected. This can occur with the failure of the vehicle door and even glass. We have seen numerous examples exist of properly belted and otherwise restrained occupants who received grievous injuries as a result of an unwanted door opening. Automobile manufacturers know that vehicles must be designed and manufactured so that ejection from the vehicle is prevented.

An automobile's safety restraint system plays a critical role in preventing ejection and partial ejection in addition to the design of the vehicle's structure. A properly designed and operating seat belt will keep a passenger from being ejected out of the vehicle. Unfortunately, many seatbelt systems are not designed for rollovers but only frontal collisions. Those same systems that work well in frontal collisions are unable to prevent ejection and partial ejection in rollovers. Side rollover airbags have been providing ejection mitigating safety since 2002. Sadly, there are still cars that have failed to implement this technology and others that have poorly performing systems.

Cars must be designed to prevent occupant ejection and partial ejection. This won’t be accomplished until cars are designed to protect occupants in rollovers. This is because the most frequent incident of ejection and partial ejection occurs in vehicle rollovers. Statistically, rollovers represent a small percentage of vehicle crashes, but a relatively high proportion of fatalities. More than half of fatal sport utility fatalities involve rollovers. Passengers who are ejected are ten times more likely to be killed than those who remain inside the vehicle. These statistics are evidence of why it’s critical that cars be designed to keep occupants from leaving the vehicle. If you need additional information on this subject, contact Chris Glover, a lawyer in our firm who handles product liability cases, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

HEAVY TRUCK CAB GUARDS SAVE LIVES

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

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

Lawyers in our firm pursue claims against cab guard manufacturers under a number of theories:

• First, the Plaintiff can allege design defect in the manufacturer's choice and usage of aluminum since the material fails when put to its intended use of protecting occupants from shifting cargo. An alternative design would be to use steel since steel will bend and stretch, unlike aluminum, which breaks when not properly engineered. In addition, welded aluminum products are susceptible to fatigue, whereas welded steel products have nearly an infinite fatigue life.

• Second, the Plaintiff can challenge the manufacturer's use of non-certified welders in welding the aluminum cab guard. In many cases, cab guard manufacturers train welders on the job instead of hiring welders who have already been certified even though aluminum welding is more difficult than welding steel.

• Third, the Plaintiff can challenge the manufacturer's failure to follow the American Welding Society's specific standards for welding aluminum.

• Finally, the Plaintiff can allege that the manufacturer was negligent in testing its product.

Lawyers in our firm have worked on a defective cab guard cases over the past several years. Currently, they are working on a case involving a single vehicle accident involving an 18-wheeler with a heat-treated aluminum cab guard. When the 18-wheeler was forced off the road, the cargo of logs shifted forward, impacting the cab
An Invisible Danger Exists With Aging Tires

Just because a tire looks brand new doesn't always mean it's actually brand new. In fact, a tire can look flawless on the outside and be ready to rip apart on the inside. This is a deadly lesson that many have come to know all too well. For example, in 1999, Linda Rowan had a flat tire on her SUV. She used her ten-year-old spare, which looked like a brand-new tire with good tread. But the tire was not in good shape. The tire failed two days later while her son was driving. He lost control of the SUV and died in a rollover crash even though he was wearing his seatbelt.

This is not news to the tire industry, which has known for decades that tires more than six years old are dangerous, even if the tread is not worn. Aging tires begin to deteriorate, dry out and develop adhesions. The breakdown of the tire leads to tread separation, which causes catastrophic tire failures such as the one that occurred with Mrs. Rowan's SUV.

Unfortunately, most tire manufacturers have chosen not to warn consumers of the danger of tire aging. Further, even many tire service technicians are unaware of the dangers of tire aging and often replace flat tires with those that are older than six years. Despite all of this knowledge, there is no mandate from NHTSA that tires carry an invisible danger warning.

As a result, there are several liability theories lawyers in our firm can pursue against a tire manufacturer. First, the Plaintiff can allege that the tire was defective under the Alabama Extended Manufacturers Liability Doctrine (AEMLD), which governs product liability actions in Alabama. The more common defect alleged in tire-aging cases is design defect, which means that the entire line of tires is unreasonably dangerous. Further, the Plaintiff can allege failure to warn since the tire industry is aware of the problems with tire aging and fails to warn consumers publicly. To establish a failure-to-warn claim under the AEMLD, a Plaintiff must prove that:

- a Defendant had a duty to warn Plaintiff of the tire's danger when used in its intended manner;
- any warning provided by the Defendant breach that duty because the warning was inadequate; and
- that the breach of that duty caused Plaintiff's injuries.

If you would like more information on the danger of tire aging, please contact Cole Portis, Rick Morrison, or Stephanie Stephens, lawyers in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com, Rick.Morrison@beasleyallen.com, or Stephanie.Stephens@beasleyallen.com.

Companies To Pay $14.8 Million In FEMA Trailer Settlement

Nearly two dozen companies that manufactured government-issued trailers for storm victims after Hurricane Katrina have agreed to pay almost $15 million in a class-action settlement of claims that the temporary shelters exposed occupants to hazardous fumes. The proposed settlement would benefit tens of thousands of Gulf Coast residents who lived in travel trailers provided by the Federal Emergency Management Agency after hurricanes Katrina and Rita in 2005.

Twenty-one trailer makers or their insurers will pay a total of $14.8 million to resolve the claims without any admission of wrongdoing. U.S. District Judge Kurt Engelhardt had been asked to preliminarily approve the deal, which would be the largest mass settlement of claims over formaldehyde levels in FEMA trailers. Gerald Meunier, a lawyer who is with the New Orleans firm Gainsburgh, Benjamin, David, Meunier & Warshauer, represents the Plaintiff in the lawsuit giving rise to this settlement.

Source: Claims Journal

Another Riding Lawnmower Tragedy

As we head into the summer months, it's important to remember lawnmower accidents always increase dramatically this time of year. Unfortunately an estimated 9,400 children are injured in lawnmower-related accidents each year and many of the accidents result in amputations of legs, hands, fingers, feet and toes. Safety experts say that the most serious accidents occur when operators back up riding mowers with the mower blades engaged and inadvertently run over small children they can't see. According to the American Academy of Pediatrics, back-over accidents alone account for 560 injuries to children each year. As a result of numerous studies, the lawnmower industry has known for years of the risk to children and the tragic consequences.

In 2003, the lawn mower industry adopted a voluntary industry safety standard requiring new riding mowers to include a "no-mow-in-reverse" feature to prevent the mower from backing up while the cutting blades are engaged. Although the standard is certainly a step in the right direction, the safety standard also allows manufacturers to install a device that overrides that feature. Logically, experts point out that the override device defeats the purpose of the no-mow-in-reverse system. A recent study by the American Academy of Pediatrics found that the rate of lawnmower related injuries to children remained constant from 1990 through 2004.

Current safety features on these products are not adequate to prevent lawnmower-related injuries. Because most override switches are located on the front control of the mower, the academy recommended that manufacturers locate the override switches on either the posterior wheel well or behind the seat, which would force the operator to look behind the mower before disengaging the no-mow-in-reverse feature. Because consumer safety must be held paramount in the design of riding lawn mowers, mower manufacturers must do more to protect the safety of intended users and the children who are so often injured as a result of a foreseeable tragedy.

Lawyers in our firm are preparing to file another tragic mower back-over case in Colbert County, Ala. In this case, a little girl's leg was traumatically amputated above the knee when her grandmother inadvertently backed over her with the family riding mower. During our investigation we have learned that the subject mower was manufactured during a time period when most other manufacturers already included the no-mow-in-reverse feature. Sadly, the mower in our case was not equipped with this simple, proven device which would have prevented this child's life-altering injuries.

Mike Andrews, one of our product liability lawyers, who has handled several such
cases in the past, is representing this family. Mike says that “because riding mowers often last many years, sadly we will continue to see unspeakable tragedies involving mowers that were built before the safety standard took effect.” We will keep our readers updated as this case develops. Mike can be reached at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com.

**HOPEFULLY RELIEF WILL COME SOON FOR REGLAN VICTIMS**

Plaintiffs whose claims are filed in the Philadelphia Court of Common Pleas against the manufacturers of the drug Reglan must continue to wait for their day in court. Judge Sandra Moss recently issued an order staying all litigation until all appellate matters can be resolved. Despite the Pennsylvania Superior Court’s denial of the Defendants’ appeals brought under sections 702(b) and 742 of the Pennsylvania Judicial Code, four collateral order appeals on the Mensing issue remain pending. Plaintiffs’ counsel have filed motions to quash these appeals. But, the motions were denied.

In addition to the collateral appeals before the Superior Court, both the generic and brand Defendants have taken their arguments to the Pennsylvania Supreme Court to determine whether claims against them are viable under Mensing. The briefing schedule will take up most of the summer. Therefore, it’s not expected that any discovery or bellwether trials will resume before the fall of this year.

Outside of Philadelphia, Reglan litigation continues to experience a mixed bag of results. Many cases that are not a part of consolidated state court litigation in Pennsylvania, New Jersey or California have been dismissed on summary judgment based on the Mensing decision. But about a third of these dismissals were unopposed by the Plaintiff.

In Alabama, some Reglan cases have been stayed pending a question before the Alabama Supreme Court involving brand name manufacturer liability in these cases. Specifically, brand name drug manufacturers Wyeth and Pfizer have put the following issue before the Alabama Supreme Court: whether a brand name manufacturer can be held liable for harm caused by a generic drug. This argument is rooted in whether or not a brand name manufacturer owes any duty to the injured Plaintiff since the brand manufacturer did not make the drug that the Plaintiff ingested that caused the harm. If the Alabama Supreme Court rules in favor of brand Defendants on this issue, and if Alabama courts find that under Mensing, claims against generic drug manufacturers are preempted, then Alabama residents in particular may have no remedy for injuries caused by generic prescription drugs. That would be a terrible result for them and in my opinion, a miscarriage of justice. Reglan victims deserve their day in court.

**LAWSUIT FILED BY PARENTS OF BABY WHO DIED AFTER TAKING TYLENOL**

The parents of a three-month-old who died after taking infant-formula liquid TYLENOL have sued drugmaker McNeil PPC and parent company Johnson & Johnson. Markus Cherry got a clean bill of health from his pediatrician at a checkup in April 2010, when he also received vaccinations and a prescription for Tylenol to alleviate the crankiness and discomfort the shots sometime cause infants, a lawsuit filed in Cook County states. But Markus soon became sick and died three days later, the lawsuit states.
Two weeks later, the drugmaker issued a recall for the concentrated Tylenol Infants Drops after the FDA noted bacteria contamination in the drugs. The lawsuit claims the drugmaker was aware of contamination problems at its Fort Washington, Pa., plant and alleges the company engaged in a “stealth recall”—hired a private company to simply buy the entire stocks of the tainted drugs from retailers—instead of issuing a formal recall notice.

Source: Chicago Tribune

THE QUIET WAR ON MEDICAL DEVICE SAFETY

We have written about the numerous safety and health problems involving medical devices in past issues. The companies manufacturing medical devices have known for a long time that regulation by the FDA was not very effective. Many have taken full advantage of that fact. According to a recently released Public Citizen report, the number of moderate and high-risk devices recalled in the past fiscal year was 1,201, nearly double the 566 recalls in fiscal year 2007. The increasing rate of recalls and the tragic cases outlined in Public Citizen’s report, titled “Substantially Unsafe: Medical Devices Pose Great Threat to Patients; Safeguards Must be Strengthened, Not Weakened,” show that current FDA regulations are failing to protect the public from dangerous medical devices.

It appears Congress has turned its focus to medical device policy. As you may recall, a U.S. House of Representatives Energy and Commerce subcommittee held a hearing earlier this year to discuss the reauthorization of the medical device user fee program (MDUFA). Unfortunately for the American people, lawmakers are under constant and heavy pressure from the medical device industry to weaken medical device oversight. In response, lawmakers have introduced numerous bills that would lower standards for clinical testing of new medical devices and would water down conflict-of-interest regulations for reviewers of devices. These are only some of the changes being attempted. For example, one proposal goes so far as to change the mission of the FDA to favor industry interests over public health. These bills would leave the public even more vulnerable to dangerous devices. As I have written in prior issues, the public is pretty much in the dark on what happens in Congress. That is also true as to the FDA’s work.

The FDA has two chief processes for reviewing moderate and high-risk devices for sale: 510(k) and premarket approval (PMA). Each process has serious deficiencies. The 510(k) clearance process, used to approve at least 95 percent of moderate and high-risk devices, fails to provide safeguards most Americans would expect for medical products. The process relies primarily on a manufacturer’s demonstration that a proposed device is “substantially equivalent” to a device already on the market, called a “predicate device.”

This process provides very little assurance that the new device is safe or effective because the process permits modified devices to enter the market without adequate clinical testing. A prime example is the metal-on-metal hip replacement device, sold by DePuy Orthopaedic, a subsidiary of Johnson and Johnson. As we have reported, that device was recalled from the market. The FDA cleared DePuy’s metal-on-metal hip implant for market under the 510(k) process, rather than the more rigorous PMA process intended for such devices. This was despite the fact that the device displayed novel technological features, which should have required further studies and evaluation.

Such technological deviations from predicate devices should be cause for clinical testing. Yet the device went on to be implanted in thousands of patients even though it degraded faster than any other competitor hip implant on the market at the time. Many patients experienced extreme pain due to the wear and tear of the metal inside the hip and shedding of metal fragments into the tissues surrounding their hip joints. Many lost their full mobility.

The PMA process used by the FDA is more stringent that the 510(k) process, but it also has its weaknesses. It’s reserved for the relatively few devices that are deemed both as posing a high risk and incorporating novel technology. PMA generally requires clinical testing, but the standard is significantly lower than the standard for approval of new prescription and over-the-counter drugs. For example, the FDA approved Medtronic’s Sprint Fidelis implantable cardiac defibrillator leads (thin wires that connect the defibrillator to the heart to protect patients against cardiac arrest) as a modified version of a previous Medtronic defibrillator that had received premarket approval in 1993.

It was soon discovered that the leads were prone to fracture, delivering unnecessary and painful electric shocks to the heart or failing to work at all. Approximately 1,000 injuries and at least five deaths were reported as associated with use of the device. Medtronic recalled 268,000 units of the defective device in 2005. As of 2011, half remained implanted in patients. Some patients implanted with the recalled device eventually filed lawsuits against Medtronic, seeking to hold the company accountable for the injuries caused by the faulty devices.

However, relying on Riegel v. Medtronic, the 2008 U.S. Supreme Court decision, a federal court in Minnesota held that the Medical Device Amendments to the Federal Food, Drug, and Cosmetic Act preempted most state tort law claims because the device was subject to the FDA’s PMA process. Thus, patients with claims for injuries caused by Medtronic’s Sprint Fidelis are barred from seeking redress in court. Another significant loophole in device regulation is the difficulty of tracking defective devices once they are on the market. One might expect that recalled devices would be easily traceable to affected patients, similar to the ease with which recalled automobile parts can be traced back to affected cars, but so far a comparable tracking system has yet to be implemented.

Recalled devices today can be traced only to a distributor or user facility (such as hospital or clinic), not to the specific patients who received the device. In 2007, Congress mandated the FDA implement a unique device identifier system to speed up detection of dangerous devices on the market and facilitate recalls. Rules implementing such a system still have not been finalized. The FDA has only drafted a proposed rule, which is currently awaiting approval at the Office of Management and Budget.

The medical device industry’s campaign to expedite medical devices’ path to the marketplace involves loosening regulatory loopholes and advocating subpar standards. As Congress prepares to take up medical device policy as part of the reauthorizaton of MDUFA, the industry has stepped up its lobbying efforts. In 2011, the medical device industry spent $33.3 million lobbying Congress. In just the third and fourth quarters, at least 225 industry lobbyists—including 107 who previously worked for the federal government—lobbied members of Congress or executive branch officials on issues relating to the medical device approval process.

Efforts are underway to counteract the aggressive efforts by the medical device industry lobbyists. Safety experts, advocates and researchers from Public Citizen continue to provide critical information about the device safety process to Congress and to the public. Public Citizen is galvanizing thousands of activists to contact their members of Congress and let them know that the medical device approval process

www.BeasleyAllen.com
must be strengthened, not weakened. That’s most important. It’s time to replace the current device approval process with one that puts patient safety over company profits.

Source: Public Citizen

XI. BUSINESS LITIGATION

MERRILL LYNCH SUES 5 FORMER FINANCIAL ADVISERS

Merrill Lynch has filed suit against five employees of rival Morgan Stanley in a Birmingham federal court. This came after the defection of these financial advisers from Merrill Lynch who reportedly were running a $216 million book of business for wealthy clients. Merrill Lynch sued its former employees last month, alleging they stole customer account information from their Birmingham office, quit their jobs and immediately began working in Birmingham for rival Morgan Stanley.

The quintet being sued is referred to in the complaint as the “Vise Team,” named after leader Stephen Vise, who was called a 30-year Merrill veteran and “high-performing financial advisor.” The suit alleges that the group plotted for weeks to make off with valuable customer information in violation of their employment agreements, with the idea of using it to benefit themselves and their new employer. Merrill Lynch says in the lawsuit that stolen account information is for customers with $216 million in assets whose business accounted for $830,000 in commissions in the previous 12 months. It is alleged in the complaint:

As a condition of their employment with Merrill Lynch, the Vise Team executed a number of agreements and attestations confirming the confidentiality of Merrill Lynch’s customer information. Vise Team is engaging in this conduct in an effort to gain an unfair advantage in soliciting Merrill Lynch customers to transfer their business to the Vise Team at Morgan Stanley.

This will be a most interesting lawsuit. It’s also very interesting to see how even those in Corporate America, who believe they have been wronged, like our judicial system. That’s certainly good to know. It’s just too bad these corporations don’t believe ordinary folks should have the same access to the system when they become victims of corporate wrongdoing or abuse.

Source: Birmingham News

COURT REVIVES ROSSETTA STONE SUIT AGAINST GOOGLE

A federal appeals court has revived the bulk of language-software maker Rosetta Stone’s trademark infringement lawsuit against Google Inc. This opinion is the first appellate decision to address whether Google’s sale of other companies’ trademarks for sponsored links could give rise to liability for trademark infringement. In a lawsuit filed in 2009, Rosetta Stone accused Google of committing trademark infringement by selling the language-software maker’s trademarks to third-party advertisers for use as search keywords. In 2010, a Virginia district court dismissed the case, finding that the sale of the keywords was not likely to confuse consumers.

But the U.S. Court of Appeals for the 4th Circuit has now overturned most of the lower court’s ruling, reviving claims that Google committed direct trademark infringement and diluted the Rosetta Stone brand. Chief Judge William Traxler, writing for the three-judge panel, said:

A reasonable trier of fact could find that Google intended to cause confusion in that it acted with the knowledge that confusion was very likely to result from its use of the marks.

Rosetta Stone accused Google of profiting by allowing rivals to purchase trademarked keywords that generate links to their sites when users enter those search terms. Google allows advertisers to buy the top “sponsored link” ad on search result pages. Rosetta Stone argued that people searching for its products on Google were being redirected to competitors and software counterfeiters.

The language-software maker presented deposition testimony of five consumers who attempted to buy bogus Rosetta Stone software after Google started allowing use of trademarks in the text of sponsored links in 2009. It appears that evidence persuaded the 4th Circuit panel to revive the trademark infringement and dilution claims. The panel also cited an internal Google study finding that even sophisticated consumers were sometimes unaware that sponsored links were advertisements.

The appeals court also reinstated Rosetta Stone’s trademark dilution claims. The lower court had granted summary judgment in Google’s favor, finding that the Internet giant was not trying to pass off its own goods and services as Rosetta Stone’s. But the 4th Circuit ruled that fact could not defeat the dilution claims. The panel directed the lower court to reconsider when Google first appeared to dilute the Rosetta Stone trademark, and whether that trademark was “famous” at the time.

Cliff Sloan, a lawyer with Skadden, Arps, Slate, Meagher & Flom, located in Washington, D.C., represents Rosetta Stone. He has done a very good job in getting this case back on track. The case is Rosetta Stone Ltd v. Google Inc, U.S. Court of Appeals for the 4th Circuit (No. 10-2007).

Source: Claims Journal

REEBKOK GIVES UP THE TEBOW FIGHT WITH NIKE

It appears that New York Jets fans who want Tim Tebow jerseys will have to wait a little longer before they can stock up on gear featuring the team’s new “backup quarterback.” Reebok International Ltd., which had hoped to cash in on Tebow mania after he was traded to New York in March, has agreed to recall and repurchase from retailers any of its Jets apparel featuring Tebow. This is part of a settlement with rival Nike Inc. As you may already know, Nike, which became the National Football League’s official jersey supplier in April, sued Reebok in March after the unit Adidas AG began offering Jets jerseys and T-shirts featuring Tebow’s name and number.

Reebok previously had separate agreements with the NFL and its players to sell player apparel, but those agreements have since expired. A sell-off provision in those agreements gives Reebok a limited window to sell its remaining stock of NFL jerseys and apparel, such as Tebow’s jerseys from his old team, the Denver Broncos. The apparel maker had hoped to add Tebow’s name and number to its existing inventory of blank Jets jerseys and other apparel after he was traded to New York, and had considered doing the same for Peyton Manning and other traded players.

Nike, said to have paid more than $1 billion for the right to be the league’s official supplier, challenged the move in court. Nike said Reebok had no right to use the Tebow name in this manner and that it would hurt Nike’s chances to sell official Jets gear to Tebow fans. Nike, which has unveiled its redesigned line of NFL jerseys,
had its line of NFL apparel ready for sale on April 26th, the first day of the NFL draft. As do all good companies—after a battle in court—Reebok and Nike said that they were “pleased to have reached a mutually agreeable resolution.”

Source: Wall Street Journal

XII.

SECURITIES, INSURANCE AND FINANCE LITIGATION UPDATE

MORGAN KEEGAN SETTLES PENSION PLAN CLAIMS

Morgan Keegan Co., a former Regions Financial Corp. subsidiary, has agreed to pay more than $600,000 to settle claims it steered pension plans it advises into investing in hedge funds from which it received kickbacks. Morgan Keegan will pay $653,715 to the ten plans following an investigation by the Employee Benefits Security Administration which found the company violated federal law when it recommended the investments.

According to the Labor Department, the hedge funds paid Morgan Keegan “revenue-sharing and other fees.” The violations happened between 2001 and 2008. Morgan Keegan, based in Memphis, was the brokerage and investment banking arm of Regions Financial. As you may know, Morgan Keegan was bought this year by Tampa’s Raymond James Financial for $1.2 billion.

Source: AL.com

WOMAN AWARDED $34 MILLION IN INSURANCE LAWSUIT

A 90-year-old woman, residing in an assisted-living facility in Billings, Mont., has won a $34.2 million verdict against Ability Insurance Co., an Omaha, Neb.-based insurance company. The case was over the company’s suspending payments for the woman’s dementia care. Arlene Hull and her daughter filed the suit against Ability Insurance Co. in 2010, after the company ended the woman’s assisted-living benefits. Ability claimed that Ms. Hull no longer qualified after a review found she didn’t require “substantial supervision.”

The company obviously misinterpreted its own policy and misapplied the rules. The benefits were restored last year, but the company still refused to pay for the time during which coverage was denied. The jury awarded Hull $250,000 for breach of contract; $2 million for violation of Montana’s Unfair Trade Practices law; and $32 million in punitive damages. Mike Abourezk, a lawyer with Abourezk & Garcia, a firm located in Rapid City, S.D., represented the Plaintiffs and did a very good job.

Source: Associated Press

METLIFE SETTLES WITH STATES

MetLife Inc. has agreed to pay nearly $500 million in a settlement with 20 states over allegations the company didn’t pay life insurance benefits to some of its policyholders. The largest life insurer in the United States will pay about $188 million of the approximate $478 million this year, with the remainder being paid over the next 17 years. California was the lead state in this matter. According to California Controller John Chiang, a state investigative hearing held last year revealed MetLife had information about the deaths of some beneficiaries, but failed to pay what was owed.

The investigation related to the use of the Social Security “Death Master” file, which lists people who have recently died. A number of states have accused insurers of using the list to stop making annuity payments to dead customers, but at the same time not using the list to check whether any life insurance policy holders had passed away.

New York officials have said their own probe into Death Master abuses had led insurers to make more than $260 million in payments to policy beneficiaries who may not have been aware they had money due to them. The recent settlement requires MetLife to restore the full value of any account that was improperly drawn down, comply with state unclaimed property laws and pay 3 percent compounded interest on held amounts from the later of the policy owner’s death or Jan. 1, 1995.

I understand there are still eight active investigations underway into insurance companies’ usage of the Social Security Death Master file. This information comes from the president of the National Association of Insurance Commissioners (NAIC), Kevin McCarty, who is also Florida’s insurance commissioner. He says the NAIC is hoping for global settlements with each of those companies very much like the one announced with MetLife.

Source: Associated Press

EXECUTIVE LIFE LIQUIDATION PLAN APPROVED BY THE COURT

A New York judge has approved a plan to liquidate the long-insolvent Executive Life Insurance Co of New York and pay out most of the money owed to beneficiaries under the company’s life insurance policies. The plan proposed by Benjamin Lawsky, New York’s superintendent of financial services, would pay out the remainder of about $900 million in Executive Life’s estate, as well as another $730 million in contributions from state life insurance guaranty associations. Insurers also agreed to contribute about $70 million. Lawsky’s plan won approval by Nassau County Supreme Court Justice John Galasso, over the objection of a variety of Executive Life payees. Justice Galasso said it would allow for about 85 percent of the roughly 10,000 payees to receive full payouts on the present value of their annuity benefits. He wrote in his order:

The court cannot apologize for applying the law as it pertains to everyone involved. Their individual, understandable frustrations cannot be resolved in this proceeding.

Beneficiaries whose claims are larger than maximum recovery rates in certain states may still be under water. Those people will be able to apply for additional reimbursement from a $100 million “hardship fund” paid for by members of the life insurance industry, according to James Wrynn, who had been New York’s insurance superintendent. Wrynn said in September:

Simply put, Executive Life does not have enough assets to meet all its obligations. We have devised a plan that will maximize payments and ensure the fairest possible outcome for everyone.

New York’s insurance and banking departments merged in October into the Department of Financial Services, which Lawsky oversees. Executive Life was seized by New York insurance regulators in 1991, a casualty of the junk bond market crash. Its California-based parent filed for bankruptcy protection the same year. The insurer initially was to be rehabilitated, with policyholders receiving full payouts over time. But the recent economic down-
During the height of the Wall Street meltdown, Bank of America negotiated a deal to acquire Merrill Lynch. This was but one of many buyouts, bailouts and washouts that occurred during that period. The harsh consequences of this particular buyout on former Merrill Lynch employees is still being felt today.

Merrill Lynch Financial Advisors participated in several deferred compensation plans, including plans with names like FACAAP, Growth Award, WealthBuilder, and other Long Term Compensation Incentive Programs. The Financial Advisors worked hard to accumulate benefits with the expectation that Merrill Lynch/Bank of America would honor its obligations under the plans. Unfortunately, this did not happen, and as a result, thousands of former Merrill Lynch Advisors are owed millions of dollars in unpaid compensation.

Merrill Lynch/Bank of America was recently hit with several adverse rulings, and, in some of the most egregious cases, was ordered to pay combined amounts in unpaid compensation, fines, and punitive damage awards up to $10 million! In one of the latest cases decided against Merrill Lynch/Bank of America, a FINRA arbitration panel had this to say:

Merrill Lynch directly and indirectly...intentionally, willfully and deliberately engaged in a systematic and systemic fraudulent scheme to deprive [its Financial Advisors] of their rights and benefits under its Deferred Compensation Programs (FACAAP, Growth Award and WealthBuilder) as well as other benefits to avoid liability after the change in control, September, 2008.

Our firm has been handling claims on behalf of former Merrill Lynch Financial Advisors. These former Advisors often left because of the changes that occurred. In some cases they were pressured or pushed out by the incoming management. In any case, they were wrongfully deprived of deferred compensation to which they were and may still be entitled. In these tough economic times, it is shameful that any hard working person must fight for what is rightfully due to them. Our firm is ready to help those former Merrill Lynch Financial Advisors win that fight. We are available to investigate and evaluate potential claims. If you need additional information on this subject, contact Chad Stewart at 800-898-2034 or by email at Chad.Stewart@beasleyallen.com.

LoAN OFFICERS SUE METLIFE

A former mortgage consultant has filed a class action lawsuit in Maryland, claiming that MetLife wrongly withheld sales commissions from consultants who were terminated when MetLife Home Loans abruptly closed. In January, MetLife Home Loans, a division of MetLife Bank, announced it was getting out of the business of originating residential mortgages. The complaint alleges that MetLife promised to pay commissions to hundreds of mortgage consultants for sales that were closed by March 31st.

According to the complaint, MetLife is now trying to change its promise by telling the consultants that the loans had to be funded by March 31st. Funding requires an additional step in the loan process which occurs several days after the closing. The lawsuit claims that hundreds of mortgage consultants likely closed deals on or before March 31st, believing they had beat deadline and would receive the commissions they were promised.

Also, another group of loan officers have filed a collective action lawsuit in Minnesota against MetLife to recover overtime wages. That complaint alleges that MetLife misclassified its loan officers across the country as exempt from overtime pay. According to the complaint in that case, loan officers routinely worked in excess of 40 hours per week but did not receive overtime compensation to which they are entitled.

If you need additional information about this type legislation, contact Lance Gould, a lawyer in our Consumer Fraud Section, at 800-898-2034 or by email at Lance.Gould@beasleyallen.com.

Source: Insurance Journal

XIV.
PREMISES LIABILITY UPDATE

Jury Awards $1.9 Million In Construction Accident

A jury in Alleghany County, Va., recently awarded $2,664,573 in a construction site lawsuit. On a spring day in 2006, the Plaintiff in the lawsuit, Michael Boguess, was helping his brother Todd pour concrete at a friend’s house. The 39-year-old mill worker was struck in the head by a falling tree limb and was paralyzed from the neck down. The facts of the incident were undisputed but liability was the issue. The concrete delivery company acknowledged that its truck driver backed into the tree when he started to leave the premises. The company further acknowledged that the truck’s contact caused the large branch to fall and hit the Plaintiff.

But, the concrete company denied any liability and claimed the incident was not its fault. Instead, it blamed Todd Boguess, the brother who had been acting as a spotter while the truck was backing up. The company also blamed the homeowner, who it claimed had improperly pruned the tree. The case had been pending for nearly six years when it came to trial. The jury’s verdict consisted of $1,959,971 in damages, plus more than $680,000 in interest. The six-year time lapse between the accident and the trial allowed the jury to add interest to the award, bringing the total recovery to $2,644,573.

The accident occurred on May 18, 2006. Construction Materials Co. had just completed a concrete delivery and the concrete truck was turning around to leave the premises when the “pony axel” on top of the truck came into contact with the canopy of the tree. This caused a large limb to dislodge. The Plaintiff, who was standing beneath the tree, was struck in the head by the falling branch and was immediately paralyzed. The Plaintiff’s medical expenses were approximately $133,000, and he had about $46,000 in lost wages.

Construction Materials Co., not only denied all liability for the accident, it also filed counterclaims against the Plaintiff’s
brother and the property owner. The Defense claimed Todd Boguess should have alerted the driver before he came into contact with the tree branches. It also used an expert at trial, an arborist, who testified that improper pruning of the tree caused the limbs to weaken from rot. The parties went to mediation, but negotiations were unsuccessful. Russell W. Updike, Nolan R. Nicely Jr. And Jennifer Crawford, lawyers with Wilson, Updike and Nicely, located in Covington, Va., represented the Plaintiff in this case and they did a very good job for him.

Source: Lawyers USA Online

SECOND LAWSUIT FILED OVER CARBON MONOXIDE LEAK AT WEST VIRGINIA HOTEL

A man who claims a carbon monoxide leak left him with health problems has filed suit against a West Virginia hotel and several other companies. This is the second lawsuit filed in Kanawha County Circuit Court over the leak earlier this year at the Holiday Inn Express Hotels Suite in South Charleston. The other case was filed by the widow of a Rhode Island man who was killed by the leak. This latest lawsuit was filed by Bain Edmondson and his wife, Dawn Edmondson. According to investigators, an exhaust pipe became dislodged due to improper installation of a heating unit for the hotel’s swimming pool. This caused the carbon monoxide leak and led to this lawsuit.

Source: Claims Journal

WORKERS FILE SUIT OVER MEMPHIS REFINERY EXPLOSION

A lawsuit has been filed arising out of an explosion that killed a worker at a Valero oil refinery in Memphis. The wrongful death and injury lawsuit was filed by Richard Cuevas and Luis Santos, who were working at the refinery when the March 6th explosion occurred. In addition to his own claim, Cuevas also sued on behalf of his two brothers, one who died and another who remains hospitalized with burns over 70 percent of his body. The lawsuit claims severe and gross negligence, alleging that there was a failure to ensure that there were no hazardous or flammable gases in a flare line and there was a failure to provide timely firefighting assistance.

The lawsuit, which was filed in San Antonio, Texas, also alleges that the fire on March 6th was the third fire at the refinery in less than two years. It alleges there was no automatic firefighting equipment in place at the time of the recent explosion. Daniel Reyes Cuevas is currently in a Memphis hospital with burn wounds. His brother Nicolas Cuevas died. Another man, Guadalupe Torres, also remains hospitalized, but he is not involved in this lawsuit. All five men worked for subcontractor JV Industrial of Pasadena, Texas.

Source: Associated Press

WATERBORNE BACTERIA IN SWIMMING POOLS

Most people are unaware of the guidelines and regulations that apply to the operation of public swimming pools, spas and water parks. Public swimming pools are widely utilized in this country. Apartment complexes, neighborhoods, gyms, YMCAs, and water parks commonly provide swimming pools for patrons and members.

A facility which manages or operates a public swimming pool is required to have, on staff, a certified pool operator and to follow certain requirements in checking, maintaining and assuring adequate chlorine and pH levels. Every swimming pool (or body of water) has bacteria. Bacteria can be introduced into the water by swimmers, by environmental conditions (such as rain or water runoff), or by animals. The number of occupants in a pool, the sun’s UV rays and the temperature are factors that contribute to survivability of bacteria and the breakdown of chlorine levels.

The properly maintained chlorine and pH levels help to minimize or avoid the risk of bacteria being ingested by swimmers or patrons of water parks. Failure to do so, however, can result in exposure to the bacteria, including Cryptosporidium, Escherichia coli (e. coli) and other dangerous bacteria. E. coli can cause nausea, vomiting, diarrhea, or worse conditions, such as kidney failure.

While young children and the elderly are at greatest risk of developing serious complications from exposure to e. coli and other bacteria, anyone can become ill to the point of having gastrointestinal upset. According to the Centers for Disease Control and Prevention (CDC), these illnesses are referred to as “recreational water illnesses (RWI).” According to the CDC, RWIs “are caused by germs spread by swallowing, breathing in mists or aerosols of, or having contact with contaminated water in swimming pools, hot tubs, water parks, water play areas, interactive fountains, lakes, rivers, or oceans.”

While it has been known for decades about the presence of bacteria in water samples, the issue first became prevalent in 1982, following a pool party at a mobile home park in Georgia. Following the party, 18 of the 51 attendees became ill with GI issues. Some of the participants contracted hemorrhagic uremic syndrome (HUS), which resulted in renal failure. The investigating authorities determined that the pool was not adequately maintained and was the source of the infection.

Our firm recently settled the claims of two children with a local municipality. The children developed HUS after attending a camp, which included activities in the city’s splash park. As many as 16 children developed some form of GI issues, with three of the children becoming very ill. The Alabama Department of Public Health and the CDC did an excellent job in investigating the matter. The ADPH determined that the exposure source to the children was the water quality at the municipal facility. Since this lawsuit has been filed, the municipality has changed its procedures to check and maintain the water quality.

If you need more information on this subject, contact Ben Locklar, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com.

Source: www.cdc.gov

XV. WORKPLACE HAZARDS

JURY AWARDS $14.6 MILLION TO SEVEN WORKERS HURT IN PLANT BLAST

A North Carolina jury has awarded $14.6 million to seven people hurt in an explosion at a now closed ConAgra Slim Jim factory in Garner, N.C. The jurors awarded more than $12 million to two former ConAgra workers, Leonard Spruill and Anthony Smith, for medical care and lost wages. Five other workers will receive the rest of the compensatory damages award.

The jury will return in June to consider punitive damages against Jacobs Engineering, Group Inc. And one of its employees. The company was held responsible for the blast which happened as its workers were purging a gas line to install water heaters. Three people were killed in the

www.BeasleyAllen.com
June 2009 explosion, and 38 of the 300 workers in the plant were injured. Source: Claims Journal

**Concrete Truck Accident In Indiana Results In Fatality**

A construction worker died recently after a concrete delivery truck tipped over into the pit for an in-ground swimming pool near Lafayette, Ind. The incident occurred at a home in the community of Shadeland. The worker had been inside the hole for an in-ground pool when the ground gave way. The concrete truck tipped onto its side and into the pit. The worker, who was trapped in the pit, was pronounced dead at the scene. Source: Claims Journal

**Ohio Casino Receives Citations and Fines**

According to federal safety inspectors who investigated a floor collapse at a casino construction project in Cincinnati, Ohio, six companies involved have been cited for safety violations and will be fined more than $108,000. More than a dozen workers were injured in the accident at the downtown Horseshoe Casino project earlier this year. Fortunately, most of the injuries were minor. A spokesman for the Occupational Safety and Health Administration said that certified letters about the violations have been mailed out. Neither the companies nor the range of violations were named by OSHA, pending their notifications. But, a spokeswoman for one of the companies, Cincinnati-based Messer Construction, says it has been notified of four citations totaling $25,200 in fines. Source: Claims Journal

**OSHA Fines Illinois Pasta Plant After Explosion**

Federal workplace-safety officials have levied a $231,000 fine against a company that operates a southern Illinois pasta plant for violations linked to an explosion that injured two workers last October. The U.S. Department of Labor’s Occupational Safety and Health Administration announced the penalties, saying that the fine stems from six safety violations at Gilster-Mary Lee Corp.’s plant in Steeleville. Two workers at the plant were doing equipment maintenance last October when a welding spark caused an operational dust collector to explode, severely burning the workers. Steeleville is located about 65 miles southeast of St. Louis. Source: Claims Journal

**XVI. TRANSPORTATION**

**$30.3 Million Verdict in Texas**

A jury in Texas last month awarded a South Texas couple more than $30 million in damages in a lawsuit arising out of a construction site collision. Bick’s Construction, a Fort Worth-based general contractor, was repaving a stretch of road on State Highway 44 in Duval County in June of this year when Joseph C. Drennan collided into a vehicle being driven by James Roberts, the Plaintiff in this case. The Plaintiff contended that the construction company was at fault for failing to use state-mandated signage to ensure the roadway was safe for motorists because of construction hazards.

The Plaintiffs produced about ten witnesses during the trial, including a state trooper and two passing motorists who testified that no construction caution signs were present at the time of the accident. Drennan was traveling westbound, approaching construction when the vehicle in front of him slowed to a stop because of traffic buildup. Drennan failed to control his speed, clipping the vehicle in front of him before entering the eastbound lane, where he impacted the Roberts’ vehicle head-on. The Roberts’ vehicle was launched off the road and rolled multiple times before coming to rest on its side.

Mr. Roberts was badly injured in the collision and is now paralyzed. The jury found both Bick’s and Drennan at fault and awarded Roberts and his wife, Yolanda Ann, $23.5 million in actual damages and $10 million in punitive damages. Mr. Roberts, a retired football coach, incurred $1 million in past medical bills and will have an additional $2.5 million in future medical bills.

The parties had entered into a high-low agreement prior to the trial. This capped the amount of damages to be paid at $6 million. Under the agreement, there will be no appeal and the $6 million will be paid to Mr. & Mrs. Roberts. Mike Guerra and Jody Mask, lawyers with Guerra & Mask, a firm located in McAllen, Texas, represented the Plaintiffs. They did a very good job in the case. Incidentally, Mike is a very good friend of Russ Abney, a lawyer in our firm.

**Oregon Jury Returns A $177 Million Verdict In 2008 Helicopter Crash Case**

An Oregon jury has determined that a problem with an engine was responsible for the 2008 helicopter crash that killed nine firefighters during a wildfire in Northern California. A pilot who survived and the widow of one who was killed sued General Electric. The Plaintiffs contended the company knew the engines it made for the Sikorsky S-61N helicopter had a design flaw making them unsafe. GE countered that the helicopter crashed because it was carrying too much weight when it took off after picking up a firefighting crew on the Iron 44 wildfire in the Shasta-Trinity National Forest near Weaverville, Calif. Based on media reports it appears that William Coultaus and Roark Schwanenberg, the pilot and co-pilot, saved as many people as they could. The helicopter was airborne less than a minute when it clipped a tree and fell from the sky, bursting into flames. Four people survived, including Coultaus.

The lawsuit was brought by Coultaus, his wife and the estate of Schwanenberg, who died in the crash. The jury awarded $28.4 million to the estate. Coultaus was awarded $37 million and his wife $4.3 million by the jury. The jury put most of the blame—57 percent—on GE. But the jurors also found the helicopter’s owner and its manufacturer to be partially at fault. Helicopter operator Carson Helicopters was dismissed from the case, and Sikorsky Aircraft Corp. previously settled with the Plaintiffs in this case. Interestingly, Carson Helicopters had blamed GE’s engine for the crash.

During the trial it was shown that GE knew for at least six years that there was a problem with a fuel control valve on the engine. But rather than correct the problem, the company treated it like a service issue. A GE internal email dated August 6, 2008, the day after the crash, was introduced into evidence. The email discussed the size of the fuel filter, noting that the military version removes much smaller particles than the commercial version.

The families of eight men who were killed and three who were injured had reached out-of-court settlements with three of five defendants in lawsuits they filed after the crash. Those defendants included Carson Helicopters and Sikorsky. GE Aviation has indicated it will appeal the verdict in this case.

Source: Associated Press

BUS RIDERS SUBJECT TO SECOND-CLASS SAFETY

In August 2008, 55 members of Houston’s Vietnamese Catholic community were traveling on a charter bus near Sherman, Texas to a retreat in Missouri. Suddenly, the bus swerved out of control and went over a highway bridge, killing 17 people and injuring many others. The cause of the accident was a blown tire on the front right axle. During its investigation, the National Transportation Safety Board found that the bus had passed inspection eight days earlier despite the fact that a retread tire was illegally affixed to the front axle and one of the brakes had grease contamination.

The company that inspected the truck was owned by Alam and Cesar Hernandez. After the crash, the Hernandez brothers shut down their business only to open a new one in the same Houston neighborhood. Despite their previous negligent inspection that wound up causing 17 deaths, the Texas Department of Public Safety approved their business license in May 2010. The Hernandez brothers are once again inspecting buses. This is just another example of the lack of oversight for the businesses that inspect buses used for public use.

There is little doubt that federal regulations on the inspection of commercial vehicles are very lax. Buses like the one involved in the Texas crash are only required to be inspected annually. The inspections can be conducted by the companies actually operating the buses. The inspections are not subject to oversight or quality assurance. Jacqueline Gillan, president of Advocates for Highway and Auto Safety, described the lack of oversight as follows:

If you can’t afford to take a plane and have to take a bus, you are going to be subject to second-class safety standards, both in terms of equipment and oversight by the federal government.

Even though 40 people have died in bus crashes in recent years, the Federal Motor Carrier Safety Administration has refused to answer the National Transportation Safety Board’s call for better oversight. The FMCSA claims that better oversight of state bus inspections is unnecessary, although more than half of the states have no formal inspection requirements. Lawyers in our firm have successfully handled cases involving bus crashes caused by negligent maintenance and inspections. If you would like more information, please contact Cole Portis, Ben Baker, or Stephanie Stephens, lawyers in our firm, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com, Ben.Baker@beasleyallen.com or Stephanie.Stephens@beasleyallen.com.

Source: Associated Press and MSNBC

COCKPIT TURBULENCE CAN PRESENT SERIOUS SAFETY PROBLEMS

We have read and heard in recent weeks of incidents in the cockpit of airplanes that created serious problems. One incident involved an in-flight fatal heart attack by a general aviation pilot. Another dealt with disturbing behavior by a commercial airline pilot. These separate incidents have helped to spotlight the potential danger that can arise due to pilot medical problems during the flight of an airplane. It’s something that few of us, as passengers on commercial or even on private flights, even think about when we board our airplane.

But statistics suggest that there may be many pilots now flying who have undisclosed medical issues that could lead to in-flight problems. According to a Federal Aviation Administration report, hundreds of fatal accidents have been documented in which pilots failed to disclose potentially disqualifying medical conditions on their Airmen Medical Certificate Applications. In one study, FAA researchers found toxicology evidence of serious but undisclosed medical conditions in nearly ten percent of all pilots involved in fatal accidents during a ten-year period. With approximately 650,000 foreign and domestic pilots holding FAA Airmen Medical Certificates, if an average of ten percent don’t disclose medical conditions, up to 65,000 pilots could have undisclosed medical issues. That presents the potential for serious problems for passengers on board an airplane with one of those pilots in the cockpit.

In a separate undertaking, the United States Department of Transportation investigated 40,000 airmen and found that eight percent failed to disclose medical conditions for which they were receiving disability benefits from the Social Security Administration. The FAA does require pilots to possess a valid pilot certificate, to have a valid airmen medical certificate, and to periodically renew their medical certificates depending upon the type of airmen privileges they exercise. But during the period between medical exams, monitoring is generally limited to self-reporting by the pilots themselves.

Brake Override Proposed for All Passenger Autos

NHTSA has announced a proposal that would require brake override systems on all new passenger cars and trucks. This will likely happen with the 2015 model year. The agency, in a 98-page proposal, said costs to auto manufacturers are expected to be “close to zero” because most automakers already install brake override systems that can stop a vehicle if the accelerator pedal gets stuck open. Almost all 2012 model year automobiles sold in the United States are equipped with brake-throttle override systems, according to a notice on the proposed rule change. NHTSA says once the proposed rule change is published in the Federal Register, the public can comment on it.

NHTSA says that if the proposed rule passes a 60-day comment period and becomes a final rule by October 1, the brake-throttle override requirement would go into effect on Sept. 1, 2014. The proposal “aims to minimize the risk that drivers will lose control of their vehicles as a result of either accelerator control system disconnections or accelerator pedal sticking or floor mat entrapment,” according to a NHTSA press statement. DOT Secretary Ray LaHood said in the same statement:

By updating our safety standards, we’re helping give drivers peace of mind that their brakes will work even if the gas pedal is stuck down while the driver is trying to brake.
Hopefully, this proposal will become a rule. If so, I believe it will help to make our highways safer for the traveling public. I would also remind Secretary LaHood that the rule would help in the event a vehicle defect caused by an unintended sudden acceleration.

Some Disturbing Findings Relating To Texting While Driving

A new survey done for State Farm Insurance Co. showed 57 percent of teen drivers admit to texting while driving. The nationwide survey was conducted by Harris Interactive and involved 652 teenagers from 14 to 17 years old, including 280 who have a driver’s license or permit and 362 who plan to get a driver’s license. Despite laws banning texting and driving, and research showing that the consequences of texting while driving are comparable to drunken driving, it appears that many teenagers ignore the obvious dangers involved. In fact, 35 percent strongly agree that if they regularly text and drive, they will be killed someday. But interestingly, 57 percent strongly agree that drinking and driving is fatal. And more teens (83 percent) believe they’re more likely to have a wreck while drinking and driving as opposed to 65 percent who strongly agree they’ll have a wreck if they regularly text and drive.

Unfortunately, it’s not just teenagers who are “distracted drivers.” Other studies suggest that distraction from cellphone use while driving—handheld or hands free—extends a driver’s reaction as much as having a blood alcohol concentration at the legal limit of 0.08 percent. Even so, millions of people still drive distracted each day. In fact, distracted driving is said to be responsible for more than 5,000 deaths and close to 450,000 vehicle crashes in the United States every year. It’s not good news that these numbers are trending upward. It’s no coincidence that boosting numbers corresponded with the rapid rate with which technology is advancing. Most folks believe there isn’t much they can do without a cellphone in today’s busy world.

In 2009, 16 percent of fatal crashes involved reports of distracted driving, according to NHTSA. While numbers have not yet been released for 2011, the chances of a higher fatality rate seem likely. In fact, a 2011 Virginia Tech study found that a driver is 23 times more likely to crash if he or she is texting while driving. Consider that there are an estimated 210 million drivers in the United States alone and that puts the problem in its proper safety perspective.

Sources: The Safety Report and AL.com

Woman Injured In Football Tailgating Accident Files Suit

A woman who was struck by a U-Haul truck in a tailgating area at the Harvard-Yale football game in November has filed suit against the driver and U-Haul. It was alleged in the suit filed by the Plaintiff, Sarah Short, that the truck was being driven too fast at the New Haven site, was not under proper control, and was unsafe. The suit was filed in New Haven Superior Court. According to the police, Brendan Ross was driving the U-Haul truck, carrying beer kegs, through a popular tailgating area before the football game. Witnesses saw the U-Haul vehicle turn a corner, speed up and then hit three women, including 30-year-old Nancy Barry, who was killed.

Ms. Short suffered severe and deep bone bruising and a fracture, skin loss and other injuries. She had surgeries requiring skin grafts and other corrective measures. Ms. Short, a Yale student from New Haven, alleged that her injuries were caused by the negligence of Ross and the U-Haul Company of Connecticut. The driver, at the time of the accident, reportedly said that the vehicle had malfunctioned. As a result of the accident, Ms. Short seeks recovery for lost wages and time from school, past and future medical care and rehabilitation.

Since this incident, Yale has since tightened tailgating rules. It bans kegs at university athletic events and other functions and oversized vehicles, such as box trucks or large commercial vehicles, from university lots at athletic events unless driven by a preapproved authorized vendor. That was a good move on the school’s part.

Source: Claims Journal

XVII. Arbitration Update

Judge Awards $6 Million In Fatal Crash

A judge in northern Illinois has awarded more than $6 million to the family of a 17-year-old girl who was killed by a drunk driver. Judge Edward Prochaska made the award last month to the family of Amanda Kordich, a Harlem High School student. Ms. Kordich was killed in July 2008 in an accident involving driver Wesley Hanson. The judge called Hanson’s actions “the definition of willful and wanton misconduct.” He is serving a nine-year prison sentence and isn’t expected to be paroled until 2016.

Hanson didn’t have insurance when the accident happened. Under the civil judgment, Hanson’s future wages will be garnished. The victim’s young mother, Diane Kordich, says she hopes the judge’s award “will send a message that drinking and driving won’t be tolerated in this country.”

Source: Claims Journal

Westford Family Files Suit Against National Grid In Backhoe Accident

A family has filed a wrongful death lawsuit against National Grid arising out of an August 2011 incident in which a woman was crushed to death by a backhoe that fell off a trailer and landed on the family’s van on an interstate highway in Southborough, Mass. Sharon Wang, her two children, and her mother, were trapped inside their Toyota Sienna minivan when a National Grid supervisor lost control of a company-owned dump truck that was towing the backhoe on a flatbed trailer. The backhoe fell off the trailer and the van traveled down an embankment 20 feet. The backhoe landed on top of the van.

It appears that the National Grid driver was ordered by his superiors to conduct a test drive of the combination of a six-wheeled dump truck and flatbed trailer with the backhoe on it. That will be hard to explain. To conduct a “test drive” on a busy Friday afternoon on one of the most congested roadways in Massachusetts makes little sense. Bradley M. Henry, a lawyer with Meehan, Boyle, Black & Bogdanow, a Boston firm, represents the family in this lawsuit.

Source: Boston.com

Arbitration Clauses In Consumer Contracts Targeted

The Consumer Financial Protection Bureau (CFPB) has set its sights on mandatory arbitration clauses in consumer financial products. The agency announced on April 24th that it is launching a public inquiry into how consumers and companies are affected by using arbitration to resolve disputes. CFPB Director Richard Cordray had this to say in a news release:

Arbitration clauses are found in many contracts for consumer financial products. We want to learn how arbitration clauses affect consumers, and how effective arbitration is in resolving consumers' issues. This inquiry will help the bureau assess whether rules are needed to protect consumers.

The Dodd-Frank Act that created the CFPB gives the agency explicit authority to study pre-dispute arbitration clauses in consumer financial products. The law also gives the agency the power to issue regulations to protect consumers based on the findings of the study. The CFPB is now asking the public for input on:

- The prevalence of arbitration clauses in consumer financial products and services;
- What claims consumers bring in arbitration against financial services companies;
- If claims are brought by financial services companies against consumers in arbitration;
- How consumers and companies are affected by actual arbitrations; and
- How consumers and companies are affected by arbitration clauses outside of actual arbitrations.

Responses are due by June 23. After the CFPB completes the study, the agency said it will "assess whether imposing conditions or prohibitions on arbitration clauses would better protect consumers and serve the public interest." Hopefully, this is good news for all consumers.

Source: The National Law Journal

TOYOTA NOT ALLOWED TO ARBITRATE SUDDEN ACCELERATION CLAIMS

As the result of a court ruling, Toyota can't compel the arbitration of class claims brought by customers who seek damages for diminution in the market value of their vehicles as a result of alleged defects that lead to incidents of sudden, unintended acceleration. U.S. District Court Judge James Selna in California made this significant ruling. As has been widely reported, Toyota became the target of numerous personal injury and consumer protection lawsuits after being forced to recall millions of vehicles due to reports of sudden acceleration problems. As we have reported, the cases were consolidated for multi-district litigation in U.S. District Court for the Central District of California.

The MDL court addressed Toyota’s motion to compel arbitration against 20 putative class representatives whose economic loss claims are scheduled for a bellwether trial set to begin on July 31, 2013. The arbitration provisions that were at issue are in new and used vehicle purchase and lease agreements. Toyota is not a party to any of those agreements. The court concluded that Toyota, by its “full engagement” in mounting a defense in the case, waived its right to arbitration with respect to 15 of the Plaintiffs. The court said in its order:

"By continuing to actively defend the present MDL and, more specifically, the economic loss claims, without a whisper of the intent to seek an order compelling arbitration, Toyota has engaged in numerous acts that are inconsistent with the right to compel arbitration."

With respect to the remaining five bellwether Plaintiffs, the court decided that Toyota, as a non-signatory, could not enforce the arbitration agreements found in their purchase and lease agreements with Toyota dealers.

Source: Associated Press

U.S. APPEALS COURT CHANGES A DECISION ON CAR ARBITRATION

Car owners with warranty claims got a setback last month when a federal appeals court withdrew a ruling that had struck down a requirement for arbitration. The appellate court said it would now wait for the California Supreme Court to decide on a similar issue. The 9th U.S. Circuit Court of Appeals, which dealt a blow last year to dealers who force arbitration on their customers, said it would issue a replacement opinion only after the higher court makes its ruling.

The 9th Circuit—which covers nine western U.S. states—had sided with a Porsche 911 Turbo owner who claimed that her sales contract requiring her to submit warranty claims to mandatory arbitration violated a federal law. The Magnuson-Moss Warranty Act governs consumer product warranties.

The ruling in September was at odds with those by two other federal appeals courts that upheld similar arbitration clauses. Supporters of arbitration say the process is a more efficient way to resolve disputes, but it’s become obvious the panels are too business friendly.

In a separate case, a California appellate court had found that a Mercedes-Benz dealer’s mandatory arbitration clause was “unconscionable.” But, the California Supreme Court decided to review that ruling—after the 9th Circuit panel had already ruled in the Porsche case. Porsche and the dealership argued that its mandatory arbitration clause should stand, partly because of a recent U.S. Supreme Court ruling upholding individual arbitration clauses in phone contracts that prohibit class action lawsuits.

Source: Claims Journal

XVIII. HEALTHCARE ISSUES

FDA REFUSES TO BAN BPA CHEMICAL IN PACKAGING

The U.S. Food and Drug Administration has refused to ban bisphenol A (BPA), which, as we have previously reported, is the controversial chemical that is widely used in food packaging. The agency rejected a petition by the Natural Resources Defense Council (NRDC) that called for a ban on BPA as an ingredient in food packaging. The FDA said in a statement that the Council didn’t have the scientific data needed for the agency to change current regulations on the chemical. But the FDA did say it would continue to review the safety of BPA. Hopefully, this will be a thorough review.

Source:

FDA WILL REQUIRE PRESCRIPTIONS FOR LIVESTOCK ANTIBIOTICS

For the first time, farmers and ranchers will now be required to get a prescription from a veterinarian before using antibiotics in cattle, pigs, chickens and other animals. The FDA made this significant announcement last month. Officials hope the move will slow the indiscriminate use of the drugs, which has made them increasingly ineffective in humans. The FDA has been moving slowly, taking small steps in its efforts to curb the use of antibiotics on farms. Federal officials believe requiring prescriptions will lead to mean-
From the page:

“...allergic reductions in the agricultural use of antibiotics.

As has been widely reported, the use of antibiotics is given both to reduce sickness and to promote animal growth. The drug resistance that has developed from that practice has been a growing problem and has rendered a number of antibiotics used in humans less and less effective, with deadly consequences. Initially, the FDA is asking drugmakers to voluntarily change their labels to require a prescription. According to the FDA, drugmakers have largely agreed to the change. Michael Taylor, the agency’s deputy commissioner for food, who has predicted that the new restrictions will save lives, had this to say:

“We’re confident that it will result in significant reductions in agricultural antibiotic use and reductions in resistance pressure from dangerous bacteria. That’s why we’re doing this.”

It will be interesting to see how this rule works. The fact that it allows the drug companies to change their labels voluntarily does give me some concern. I have never felt that approach worked very well and in many cases it didn’t work at all. But hopefully, they will do the right thing and change their labels.

Source: Associated Press

XIX. ENVIRONMENTAL CONCERNS

$2.3 MILLION JURY VERDICT RETURNED FOR PLAINTIFFS HARMED BY LANDFILL

Bill Hopkins, a lawyer in our firm, along with Gary Poliakoff, a South Carolina lawyer, obtained a $2.3 million verdict last month on behalf of Bishopville area residents harmed by a huge landfill in Lee County, S.C. The jury found in favor of the Plaintiffs against Lee County Landfill SC LLC, a division of waste management company Republic Services. The jurors found the company to be responsible for “nuisance landfill odors that affect people’s enjoyment of their property.”

After two weeks of testimony and two days of deliberations, the jury awarded the affected residents $532,500 in actual damages and $1.8 million in punitive damages. The jury’s verdict—which is rare, if not unprecedented in South Carolina—was both historic and courageous. This verdict will help other citizens in South Carolina who suffer damages as a result of landfill companies. In the past, landfill companies have looked at South Carolina as an easy target without tough restrictions on landfills.

Bill and Gary said they were proud to represent these six Lee County residents who took it upon themselves to stand up to this landfill not only to seek justice, but also to improve the quality of life for all those who live in Lee County, S.C. The Lee County landfill takes more out-of-state waste than any other garbage dump in South Carolina, and has drawn fire in the past when residents complained of its overwhelming odor. Even passing motorists have remarked on the stench, according to local news reports.

Republic Services is a Fortune 500 company worth more than $1 billion. Headquartered in Arizona, Republic has about 200 landfills nationally. Lee County Landfill SC LLC, an arm of Republic, has a net worth of $15.78 million. Bill joined our firm in 2010 in the firm’s Consumer Fraud section. He has developed a successful class action practice, being appointed by several different courts as lead counsel or liaison counsel in many different class action cases. In fact, Bill had a long-standing relationship with our firm prior to coming with us, going back to 1995 when we joined forces in a class action suit against Life of Georgia Insurance Company. Bill was named one of America’s “Best Lawyers” by U.S. News & World Report for 2011 and 2012. He and Gary did a very good job for their clients in this case.

SMELTERS EXPOSE COMMUNITIES TO TOXIC LEVELS OF LEAD

Five environmental groups—Sierra Club, California Communities Against Toxics, Frisco Unleaded, the Missouri Coalition for the Environment Foundation, and the Natural Resources Defense Council—represented by the public interest law firm Earthjustice, have filed an intervention to oppose industry groups’ efforts to weaken the final rule. They also filed their own legal challenge to try to ensure that affected communities get the full health protection they need. Lead is a persistent pollutant that builds up in the environment and is particularly dangerous for children. Exposure to lead in the air and other environmental sources can cause neurological harm to brain function and learning disabilities in children, and also is associated with impairment of the cardiovascular, reproductive, kidney, and immune system for adults.

Lead is highly toxic and causes irreversible damage to the brains of young children. Children are particularly vulnerable to lead pollution because normal play activities bring them in greater contact with lead contamination and their nervous systems are still developing. Our children and our environment should not be the dumping grounds for this toxic air pollution.

The EPA issued the revised rule as a result of a settlement Sierra Club and Earthjustice reached with the EPA in 2010 which required the EPA to review and revise regulations for toxic air pollution from over two dozen major industrial sources, including lead smelters. This settlement set deadlines for the EPA to engage in rulemaking required by the Clean Air Act, but it did not address the substance of the final rule. It’s believed that the final rule that the EPA issued represents an improvement over the prior standards, but does not lower emissions of lead to the extent necessary to provide an “ample margin of safety to protect public health” as the Clean Air Act requires. Neither does it match the lead reductions achieved by the best-performing sources in the indus-

try. The groups also filed a petition for reconsideration to urge the EPA to engage in further rulemaking to strengthen the final rule.

This recent legal action is being taken amid a current push from the EPA's Children's Health Protection Advisory Committee and the Centers for Disease Control Advisory Committee on Childhood Lead Poisoning Prevention to strengthen federal measures to lessen children's exposure to lead based on the best available current science. The EPA has banned lead in gasoline but exposure continues to occur from lead smelting, coal burning, older plumbing fixtures, paint in buildings, and aviation fuel, among other sources. The EPA has recognized that there is “no safe level of exposure” to lead.

In a January 4, 2012, report, the CDC Committee recommended revising the way lead exposure is treated because of “a growing body of scientific literature that adverse health effects may arise from blood lead levels lower than 10 μg/dL.” and emphasized “the need to prevent children from being exposed to lead before their blood lead levels can become elevated.” There are currently 15 secondary lead smelters located in Alabama, Pennsylvania, Florida, Minnesota, California, Indiana, New York, Louisiana, Missouri, Texas, and Puerto Rico. Another new facility is scheduled to open this year in South Carolina.

Source: Earthjustice.org

U.S. ENVIRONMENTAL GROUPS SUE EPA OVER COAL ASH RULES

A coalition of environmental groups has filed a lawsuit to force the Obama Administration to finalize new rules regulating the containment and disposal of coal ash, a power plant byproduct that many believe threatens public health. I happen to be in that group. Earthjustice, the Sierra Club, the Environmental Integrity Project, and several other groups want the Environmental Protection Agency to finalize coal ash disposal to the states. A bipartisan group of senators backed the bill, but the attention relating to the bill was short-lived. I have a hard time believing the states— with their limited resources—should have to take on this added burden. A national approach seems to be better suited for regulating coal ash in this country.

Source: Reuters

The EPA proposed regulating coal ash, or byproducts of coal combustion in power plants, in 2010, after the spill at a storage site at a Tennessee Valley Authority power plant. Our firm had been heavily engaged in litigation relating to that disaster. The 2008 accident caused a flood of sludge for which cleanup was estimated to cost more than $1 billion. Environmental groups contend that coal ash disposal can lead to groundwater contamination from improperly built storage ponds and landfills. The EPA has said contaminants such as mercury, arsenic and cadmium in coal ash could cause cancer if they get into the water supply.

Earthjustice has released data obtained from the EPA that shows previously unknown instances of contaminated groundwater at 29 U.S. power plants. The report shows arsenic, lead, and other pollutants in water near the coal-fired plants. Ms. Evans stated:

"When plants are monitoring they're generally, much more often than not, finding the contamination. Which then, of course, begs the question of, why aren't there federal protections to stop this contamination?"

Some Republicans in Congress have attacked the EPA, accusing the agency of a war on coal-fired power plants due to new emissions rules. The EPA has proposed two versions of the coal ash rules. One version would be tougher on existing facilities. But both versions would require liners and groundwater monitoring at new storage sites.

The final rules are expected during the summer. But Ms. Evans believes that the EPA should to set a hard deadline to finish the project. Lawmakers from both parties have criticized the proposed changes. Some say regulating coal ash would stifle industries that use recycled waste. In a letter to EPA Administrator Lisa Jackson in 2010, 35 senators contended that the proposal would place unfair burdens on utilities and could cost jobs. The U.S. House of Representatives passed a bill in October that would hand the responsibility for regulating coal ash disposal to the states. A bipartisan group of senators backed the bill, but attention relating to the bill was short-lived.

Source: Insurance Journal

XX.
THE CONSUMER CORNER

NHTSA IS INVESTIGATING FIRE REPORTS IN CRUZE AND WRANGLER

The National Highway Traffic Safety Administration reported in early April that it was investigating reports of engine fires in the Chevrolet Cruze small car and Jeep Wrangler SUV. As we have reported on numerous occasions, NHTSA investigations can lead to vehicle recalls. To date there has been no recall.

Source: Insurance Journal

Sunoco Will Pay $2.2 Million To Settle Hazardous Waste Dispute

Sunoco, a petroleum and petrochemical manufacturing giant, will pay $2.2 million in Massachusetts to resolve a hazardous waste dispute. The company was alleged to have sought payment from a state fund for hazardous waste cleanup, while at the same time it was also seeking and obtaining reimbursement from its insurers. The state's fund for hazardous waste cleanup is called Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund program (UST Fund).

The fund was established to expedite the cleanup of environmentally dangerous leaks from underground storage tanks — such as those found at gasoline stations — by reimbursing owners and operators for expenses incurred in their response. Massachusetts charges tank registration and delivery fees to fund the program. The UST fund's regulations stipulate that claimants must disclose if they sought reimbursement from another source including insurance for expenses they submit to the UST fund. If claimants do recover money from both insurance and the fund for the same expenses, they must pay back the UST fund.

According to Massachusetts Attorney General Coakley, Sunoco failed to disclose its insurance coverage litigation and settlements reached between 1997 and 2001, even as it sought and obtained reimbursements from the UST Fund program. Under the settlement agreement, Sunoco will pay $970,000 to the fund and $1.23 million to the state's Commonwealth General Fund. It appears from all accounts that Sunoco cooperated fully with the Attorney General's investigation.

Source: Insurance Journal

Sunoco Will Pay $2.2 Million To Settle Hazardous Waste Dispute

Sunoco, a petroleum and petrochemical manufacturing giant, will pay $2.2 million in Massachusetts to resolve a hazardous waste dispute. The company was alleged to have sought payment from a state fund for hazardous waste cleanup, while at the same time it was also seeking and obtaining reimbursement from its insurers. The state's fund for hazardous waste cleanup is called Massachusetts Underground Storage Tank Petroleum Product Cleanup Fund program (UST Fund).

The fund was established to expedite the cleanup of environmentally dangerous leaks from underground storage tanks — such as those found at gasoline stations — by reimbursing owners and operators for expenses incurred in their response. Massachusetts charges tank registration and delivery fees to fund the program. The UST fund's regulations stipulate that claimants must disclose if they sought reimbursement from another source including insurance for expenses they submit to the UST fund. If claimants do recover money from both insurance and the fund for the same expenses, they must pay back the UST fund.

According to Massachusetts Attorney General Coakley, Sunoco failed to disclose its insurance coverage litigation and settlements reached between 1997 and 2001, even as it sought and obtained reimbursements from the UST Fund program. Under the settlement agreement, Sunoco will pay $970,000 to the fund and $1.23 million to the state's Commonwealth General Fund. It appears from all accounts that Sunoco cooperated fully with the Attorney General's investigation.

Source: Insurance Journal

XX.
THE CONSUMER CORNER

NHTSA IS INVESTIGATING FIRE REPORTS IN CRUZE AND WRANGLER

The National Highway Traffic Safety Administration reported in early April that it was investigating reports of engine fires in the Chevrolet Cruze small car and Jeep Wrangler SUV. As we have reported on numerous occasions, NHTSA investigations can lead to vehicle recalls. To date there has been no recall.

Source: Insurance Journal
The agency has received two reports of fires in the 2011 model year Chevrolet Cruze. In both cases, the fires started while the cars were moving and destroyed the vehicles. A GM spokesman says the company knows of no deaths or injuries related to the issue and that GM is cooperating with the investigation. When the Wrangler investigation was announced, NHTSA had only received eight reports of fires in 2010 model year Jeep Wranglers, but that investigation was soon expanded. The investigation now includes 23 complaints of fires in Jeep Wrangler SUVs. NHTSA says it hasn’t figured out what caused the fires, but it’s asking Chrysler for information on Wranglers from the 2007 through 2012 model years. When it began March 28, the probe centered on vehicles from the 2010 model year.

The classic Wrangler is among Chrysler’s more popular models, appealing to people who like its rugged looks and want to go off-road. Chrysler sold more than 532,000 Wranglers from 2007 through March 2012. It’s unknown how many are affected by the investigation. The probe comes at a critical time for Chrysler, which has had quality problems in the past, but showed improvement in an annual study by Consumer Reports magazine. The company, which incidentally is majority owned by Italian automaker Fiat SpA, is making a good comeback from its 2009 bankruptcy and restructuring. It posted a net profit last year for the first time since 1997.

According to the NHTSA website, the agency has received 23 complaints about fires in Wranglers from the six model years. Four people were hurt, including three who received minor burns and one whose injuries were not explained in the complaints. Two houses were damaged. NHTSA is focusing on overheated transmission fluid and electrical wiring as possible causes. It has asked Chrysler for information about allegations of smoke or fire in Wrangler engine compartments. The company has until the 22nd of this month to respond. It’s common for the agency to expand investigations to include similar vehicles. The investigation could lead to a recall, but there isn’t one yet.

According to Chrysler, the company was aware of a small number of fires in Wranglers and it has been cooperating with the investigation. Vehicle fires, the company says, are complex and can occur for many reasons unrelated to the vehicle’s design and manufacture. As mentioned above, the safety agency also is investigating reports of engine fires in the Chevrolet Cruze small car from the 2011 model year.

### 16 Crashes In BMW Probe Found By NHTSA

NHTSA has found 16 crashes and five injuries in an eight-month investigation of transmission control problems with BMW 7-Series luxury cars. The agency began the probe in August and has now upgraded it to an engineering analysis, which is a step closer to a recall. But so far, the cars have not been recalled. The investigation covers nearly 122,000 BMWs from the 2002 through 2008 model years.

The cars have push-button start and electronic transmission controls. In some cases the owners may think the cars are in park when they actually are in neutral. According to NHTSA’s website, the cars can roll away unexpectedly and crash. BMW says it’s cooperating in the investigation. The documents on the NHTSA website show that BMW and investigators have received 50 complaints about the problem. NHTSA said it upgraded the investigation to an engineering analysis “to further assess the potential safety consequences of the alleged defect.”

Source: Claims Journal

### U.S. Government Investigating Stalling School Buses

The National Highway Traffic Safety Administration is investigating 5,000 school buses from the 2008 model year that could stall without warning. There have been no accidents or injuries reported. But in at least three cases, high-pressure oil lines that connect the oil pump to the fuel injectors allegedly failed on International CE-brand buses. NHTSA has posted a notice about the investigation on its website Sunday.

In one case reported to NHTSA, a bus full of students was going 55 miles per hour when it started smoking and stalled. The driver pulled the bus to the side of the road. International CE buses are made by Lisle, Illinois-based Navistar Inc. The company has said it will cooperate fully with the investigation. As you know government investigations sometimes lead to vehicle recalls and on many occasions they don’t. This one will be watched closely.

Source: NHTSA

### Eighth Consumer Advisory Issued About Dangers Of 15-Passenger Vans

The National Highway Traffic Safety Administration has issued another warning about the proper use of a 15-passenger van. The agency once again, urged “colleges, church groups, and other users of 15-passenger vans to take specific steps to keep drivers and passengers safe.” This was the agency’s eighth consumer advisory about the dangers of 15-passenger vans since 2001. Never overload a 15-passenger van because they “are particularly sensitive to loading.” Interestingly, NHTSA fails to define “overload” for the consumers they presumably want to warn. Fifteen-passenger vans have the dubious distinction of being a vehicle that is inherently unsafe if used for its intended purpose. Back in 2001, the agency issued specific information related to overloading, and emphasized the deadly consequences of failing to heed this warning:

*Dangers of 15-Passenger Vans*

*The results of a recent analysis by NHTSA revealed that 15-passenger vans have a rollover risk that is similar to other light trucks and vans when carrying a few passengers. However, the risk of rollover increases dramatically as the number of occupants increases from fewer than five occupants to over ten passengers. In fact, 15-passenger vans (with 10 or more occupants) had a rollover rate in single vehicle crashes that is nearly three times the rate of those that were lightly loaded. NHTSA’s analysis revealed that loading the 15-passenger van causes the center of gravity to shift rearward and upward increasing the likelihood of rollover. The shift in the center of gravity will also increase the potential for loss of control in panic maneuvers.*

If more than ten passengers in a van designed and sold for 15 passengers is unsafe, how in the world can NHTSA not just order that these vans be pulled from use? Instead, consumers get a vague message: Don’t overload the van—it’s sensitive. That message is odd, because NHTSA says it sets great store by the efficacy of its warnings. In 2005, it bragged that “the public is responding to safety information about 15-passenger vans. Fatalities from 15-passenger van rollover crashes have declined 35 percent since advisories began in 2001.” In 2009, the agency again touted the steady decline in fatalities since 2001.
But, actually the decline in deaths has not been steady.

Statistician Randy Whitfield, of Quality Control Systems Corp., who has published a statistical analysis of cumulative death rate of 15-passenger vans, has noted that the decline has not been consistent. He says:

Annual fatalities in 2007 and 2008 were about half of the totals in the peak years of 2000 and 2001. However, the number of persons killed actually increased in 2004, 2007, and 2008 compared with the previous years. 39% of all of the 15-passenger van rollover fatalities during 1982-2009 (454 of 1,153) occurred after the first Consumer Advisory was issued by NHTSA in 2001.

Any decline is more likely attributable to other factors—such as Dodge’s decision to get out of the 15-passenger van business and Ford and General Motors’ decisions to make standard Electronic Stability Control in later model 15-passenger vans. So, here we have warnings, coupled with the retirement of the older, less safe vans, as the agency’s only real action items in its apparent strategy of managed attrition.

According to NHTSA, as of July 1, 2007, there were about 564,000 15-passenger vans registered in the US, and only 7 percent of the fleet was 2004 or newer. That percentage has no doubt grown over the last five years, but there’s also likely to be a healthy percentage of pre-2004 model year vans, that are now five years older. Source: The Safety Report

**Homeowners Should Keep Tabs On Appliances and Electronics**

Home appliances and electronics provide us with unprecedented convenience in our daily lives. Yet, along with the benefits of these products come certain risks. The Home Safety Council estimates that 21 million injuries and 20,000 deaths occur each year from home-related incidents. It is important for consumers to identify potential safety threats within their homes and familiarize themselves with preventive measures to protect against accidents.

- **Kitchen Appliances:** Recent consumer incident reports to the Consumer Product Safety Commission (CPSC) indicate that lights and control panels in some refrigerators and dishwashers have malfunctioned and caught fire, leading to home fires and electrical burns and injuries. Inspect the lights and control panels in your refrigerator and dishwasher to ensure they are properly working.

- **Water Heaters:** The flues on a limited number of water heaters produce extreme heat in the venting unit, presenting a fire hazard. Have your water heater inspected annually for fire hazards.

- **Space Heaters:** The CPSC reports that space heaters cause 21,800 home fires and approximately 300 deaths annually. Many of these incidents occur from malfunctioning heaters or flammable objects left too close to the heater. Keep space heaters at least four feet away from any flammable objects. Do not leave the heater running when you are not in the room.

- **Falling Hazards:** Unstable televisions, appliances and furniture present falling safety hazards, particularly to children. Between 2008 and 2010, an average of 22,500 injuries resulted from the instability of these items in the home, with 19,200 injuries involving unstable televisions, according to a September 2011 CPSC study. Check that appliances and home electronics—particularly top-heavy televisions—are adequately secured to prevent toppling.

- **Furnaces & Heaters:** Component electrical parts in certain direct-vent wall furnaces and other fuel-generated heaters can fail and create a risk of fire or carbon monoxide poisoning in the home. Have the safety and operations of any panel of wall-heating product in your home inspected annually.

- **Washers & Dryers:** Clogged clothes dryer exhaust hoses and lint filters cause approximately 15,500 fires and ten deaths each year, according to the CPSC. Clean out the dryer lint filter after every use and inspect the dryer vent hose for lint accumulation every few months.

- **Malfunctioning Products:** If an appliance or electrical product appears to be malfunctioning, smoking or on fire, exit your home if your safety is at risk, and turn off the electrical circuit breaker to that area of the home.

- **Flammable Objects:** Check around your home to ensure that flammable objects are removed from the vicinity of heat-producing appliances and products. Test the positioning of furniture, appliances and televisions to protect against falling hazards.

- **Smoke Detectors:** Install smoke and carbon monoxide detectors in all major rooms, hallways and bedrooms and in the vicinity of the HVAC systems. Place fire extinguishers in strategic locations. Inspect the detectors quarterly.

- **Up to Code:** The CPSC recommends that consumers make sure that appliances are installed and operated to the manufacturer’s instructions and local building codes by having a licensed professional install your home appliances. By abiding by these few, simple rules, you’ll have a safer home. Source: The Safety Report

**FDA Seizes Contaminated Medical Imaging Gel**

Federal law enforcement officials have seized several lots of ultrasound gel from a New Jersey company after the product tested positive for bacterial contamination. According to the Food and Drug Administration, the gel tested positive for two strains of dangerous bacteria. The agency reports at least 16 patients at one hospital were infected with bacteria from the product. The gel is used to enhance ultrasound medical images.

U.S. Marshals seized all lots of Other-Sonic generic ultrasound gel made between June 2011 and December 2011 by Newark, N.J.-based Pharmaceutical Innovations. The FDA has urged health care professionals not to use containers labeled with lot numbers: 060111, 090111 and 120111. The FDA also says doctors should identify and assess the health of patients who may have been treated with contaminated gel. Source: MSNBC

**Toning Shoes Litigation**

The Judicial Panel for Multidistrict Litigation has formed MDL 2308 in the Western District of Kentucky with Judge Thomas B. Russell. The Defendant is Skechers, USA, Inc. And the product is the “Shape-Ups” line of shoes. These shoes have a pronounced rocker bottom that dramatically alters an individual’s gait mechanics.

It’s alleged in the lawsuits that Skechers marketed and promoted the shoes as a means of causing muscle development and weight loss through their gait altering properties, but did so despite a lack of any empir-
This case involved a discharge of a Knight muzzleloader that didn’t have a trigger pull. Ken Jain, the Plaintiff, while hunting, attempted to put a cushion into his jacket. Prior to setting the butt of the rifle on the ground, he checked to see if the primary safety was working by raising the gun to his shoulder and giving the trigger a light “tap.” He then proceeded to give the trigger a firm pull. The gun did not discharge. He then lowered the gun to the ground to place the cushion in his jacket. While his left forearm was momentarily passing over the barrel of the muzzleloader, the gun spontaneously discharged, without the trigger being pulled. Mr. Jain suffered extensive damage to his left forearm. The case was tried for over two weeks in Eau Claire, Wisconsin.

The manufacturer of the trigger assembly has manufactured over 500,000 similar trigger assemblies. Of note, during the course of this litigation, the manufacturer continued and continues to make thousands of these trigger assemblies with defective safeties. Plaintiffs were represented by Thomas K. Guelzow, a lawyer with the Guelzow Law Offices, in Eau Claire, Wis. He did a very good job in this most interesting case.

XXI.
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 April 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.

HONDA RECALLS 554,000 SUVs OVER HEADLIGHTS

When it comes to safety-related quality problems, 2011 wasn’t a good year for Honda, and 2012 hasn’t gotten off to a better start. The Japanese maker has recalled about 550,000 of its Pilot and CR-V crossover due to problems that could cause the low beam headlights to suddenly stop working. It’s the latest of a half-dozen safety-related service actions Honda has announced during the first three months of 2012—and comes in the wake of Honda recalling more vehicles than any other auto manufacturer operating in the U.S. in 2011, a dubious distinction held by Toyota the previous two years.

According to Honda, the newest recall is the result of wiring problems and that they are limited to 2002 to 2004 model-year versions of the small CR-V, and to the 2003 model-year Pilot. Apparently, there is not enough slack in the wiring and, over time, routine vehicle jouncing can lead to a break in the wiring leading to the headlight switch. Owners can visit dealers so they can inspect their vehicles and, if necessary, make repairs. There have been no reports of crashes or injuries but the problem could leave a motorist vulnerable at night—though the potential defect does not affect the high-beam lamps.

In 2011, Honda recalled a total of 3.8 million vehicles in the U.S., including a large number equipped with potentially defective airbags. The problems this year have covered a wide range of issues, from headlight wiring to faulty fuel tanks—nearly 9,000 new Honda Pilot and Acura MDX models recalled last month due to potentially faulty fuel tanks that pose the risk of a spill or fire. Up until now, the 2012 recalls have involved relatively few vehicles but the latest wiring service action is nearly double the size of the airbag recall Honda announced last December. That service action put it over the top as the maker with the most recalls in 2011. Honda owners can check if their vehicles require repairs by going to http://www.recalls.honda.com or calling 800-999-1009.

RECALL ISSUED FOR FORD FOCUS CARS

Ford Motor Co. has recalled more than 140,000 Focus compact cars because the passenger side windshield wiper can fail. Federal safety regulators say a seal in the wiper motor wiring may be missing. Water can get inside and cause the wiper to stop working. The company said there haven’t been any crashes or injuries from the problem. Those cars included in the
BMW Recalls 2,800 Cars For Fire Risk

BMW has recalled about 2,800 cars because a circuit board can overheat and cause a fire. The recall covers some 2011 and 2012 models of the 5-Series, 5-Series Gran Turismo, 6-Series convertible, 7-Series, X5 SAV and X6 SAV. The company says there have been no injuries. The circuit board is for the electric auxiliary water pump. BMW dealers will replace the pump for free. Owners can call BMW at 800-525-7417 for details.

Cooper Tire & Rubber Company Recalls Tires

Cooper Tire & Rubber Company has recalled certain Discoverer H/T tires, size LT245/75R16, manufactured from February 12, 2012, through March 10, 2012. Some of the subject tires may have been produced with an incorrect load range, maximum permissible inflation pressure, and maximum load molded onto the intended inner sidewall. The affected tires fail to conform to the requirements of Federal Motor Vehicle Safety Standard No. 139, “New Pneumatic Radial Tires For Light Vehicles.” Inaccurate tire labeling may lead to the tire being over-loaded and/or under-inflated, increasing the risk of a vehicle crash. Dealers will replace the noncompliant tires free of charge. Free mounting and balancing will also be included, as applicable. The recall begins on April 11, 2012. Owners may contact Cooper Tire & Rubber Company’s Consumer Relations Department at 1-800-854-6288. Cooper’s recall number is 155.

Michelin Recalls 77,000 Tires For Safety Problem

Michelin is recalling more than 77,000 bus tires because sidewall defects can cause them to lose air rapidly, increasing the risk of a crash. The Michelin XZU2, XZU3, and XM505 tires involved in the recall were produced from 2005 to fall 2011 at Michelin’s plant in Spartanburg, S.C. Michelin North America Inc. says its lease fleet customers complained that some of the tires had lost air rapidly during use as retreads over the past two years, prompting a company investigation. It did not cite any instances of crashes. The National Highway Traffic Safety Administration announced the voluntary recall on its website. Michelin, based in Greenville, S.C., is expected to begin the recall April 30. Customers with questions can call the traffic safety agency at 888-327-4236 or go to http://www.safercar.gov.

Company Recalls 36,000 Tires For Safety Problem

Multistrada Arah Sarana has recalled more than 36,000 light truck tires because sidewall defects can cause them to lose air, increasing the risk of a crash. The 16-inch tires were sold under the name of Achilles Desert Hawk and Radar Radial RLT-9. Blisters can develop on the side of the Achilles tires. The Radar tires have a defective sidewall design that can cause tread separation. According to NHTSA, both tires could lose air suddenly. The company says that it doesn’t know of any crashes or injuries from the problems. The tires will be replaced free of charge starting this month. We are told that both tires have been redesigned to fix the problem.

XS Scuba Recalls Miflex High Pressure Diving Hoses Due To Drowning Hazard

About 17,000 Miflex High Pressure Scuba Diving Hoses have been recalled by XS Scuba, Inc., of Santa Ana, Calif. The diving hose can rupture reducing the available air supply to the diver, posing a drowning hazard. XS Scuba has received reports of 189 hose failures. There have been no reports of injuries. The high pressure hose is used to monitor cylinder pressure for the air supply in tanks for scuba diving. The hoses have MFX stamped on the hose’s end fitting. They were sold as individual replacement gauge hoses and as cascade hoses and in the following kits and model numbers: Deluxe Cylinder Equalizer w/ Miflex HP hose P/N AC366; Miflex Two-Gauge Console HL300/HL300M; and Miflex Rebreather Kits MRB-EVO-LG, MRB-EVO-MD & MRB-ISP-POST-LG. The hoses were sold by scuba diving retailers and online between May 2009 and April 2012 for between $44 and $60 for individual hoses. Consumers should immediately stop using the hoses and contact XS Scuba to receive instructions for obtaining a free replacement hose. For additional information, contact XS Scuba toll free at (888) 249-5404 between 8 a.m. and 5 p.m. PT Monday through Friday and, or visit the firm’s website at www.xsscuba.com.
HUSQVARNA RECALLS GRASS AND HEDGE TRIMMERS DUE TO FIRE HAZARD

About 19,500 grass trimmers and 6,500 hedge trimmers have been recalled by Husqvarna Professional Products Inc., of Charlotte, N.C. Fuel can leak from the rubber spacer holding the fuel lines in the fuel tank, posing a fire hazard. Husqvarna has received seven reports of fuel leaking. No injuries have been reported. This recall involves the Husqvarna Grass TrimmerModel 122C with serial numbers that range from 2011 17 00001 to 2011 52 99999. “Husqvarna” and the model number are written on top of the tool. The serial number is located on a black plate on the bottom of the muffler side of the tool.

The recalled Husqvarna Hedge Trimmers are Models 122HD60 and 122HD45 with serial numbers that range from 2011 17 00001 to 2011 52 99999. “Husqvarna” and the model number are written on top of the tool. The serial number is located on a black plate on the gear box, which is on the lower portion of the tool. The trimmers were sold at Lowes, Sears and Husqvarna dealers and distributors nationwide for between $150 and $320 from May 2011 to January 2012. Consumers should immediately stop using the recalled products and return them to the place of purchase for a free repair. For additional information, please contact Husqvarna toll-free at (800) 867-9624 between 8 a.m. Through 5 p.m. ET Monday through Friday, or visit their website at www.stokgrills.com.

TOY TRUCKS SOLD AT KOHLS RECALLED BECAUSE OF FIRE HAZARD

A toy truck that came as a gift with the purchase of a T-shirt has been recalled due to the possibility that the battery compartment could catch fire. Big Movers Super Car toy trucks, sold exclusively at Kohls, was a gift with the purchase of Big Movers T-shirts. The 4-inch long blue trucks have oversized tires and a flashing light on top and were sold with a yellow, red and blue logo on the hood. The navy T-shirts were sold in boys’ sizes 8, M and L.

Consumers should immediately take the toy trucks from children and remove the battery. Consumers can contact Happy Shirts for instructions on returning the truck for a refund. For additional information, contact Happy Shirts toll-free at (888) 863-2252 between 10 a.m. And 7 p.m. ET Monday through Friday, or visit the ir website at www.bajamotorsports.com.

STOK GAS GRILLS RECALLED BY ONE WORLD TECHNOLOGIES DUE TO FIRE AND BURN HAZARDS

One World Technologies Inc. of Anderson, S.C., has recalled their Gas Grills. This includes about 87,600 in the U.S. And some 1,400 in Canada. The regulator on the grill can leak propane gas, which can ignite, posing a fire and burn hazard to consumers. The firm is aware of 569 reports of regulators leaking propane gas. No injuries have been reported. This recall involves STOK Island and STOK Quattro gas grills. The STOK Island has a round grill base and two burners. “STOK” is written on the grill cover and a label on the bottom of the grill stand. The STOK Quattro gas grill is a rectangular, four-burner grill. “STOK” is printed on the grill’s lid. To identify whether a specific Island or Quattro grill is included in this recall, you will need to look at the grill’s regulator. The recalled grills have regulators on them with the model number “AZF” on the front and a date code between 1046 and 1143 on the back of the regulator.

The grills were sold at Home Depot stores nationwide and in Canada and Direct Tools Factory Outlet stores nationwide from March 2011 through February 2012 for between $79 and $350. Consumers should immediately stop using the recalled grills and contact One World Technologies for a free replacement gas regulator for the grill. For additional information, please contact One World Technologies toll-free at (800) 867-9624 between 8 a.m. Through 5 p.m. ET Monday through Friday, or visit their website at www.stokgrills.com.

Baja Inc. d/b/a Baja Motorsports, of Anderson, S.C., has recalled about 4,300 Dirt Bikes. The fuel tank can leak, posing a fire and burn hazard to consumers. The firm has received 16 reports of fires from leaking fuel, including two reports of minor burns to consumer’s legs and one report of a minor burn to a consumer’s finger. Ten of the reported incidents, including two of the burn injuries, were received after the March 2011 recall announcement. This recall involves all model DR50 and DR70 Baja dirt bikes with vehicle identification number (VIN) beginning with “198,” the letter “B” as the 10th character of the VIN and having a yellow dot or line marked on or near the VIN. The model number and VIN are located on the product data plate, which is located on the side of the “goose neck”—where the handle bars meet the body of the bike. The bikes were sold at Pep Boys and other motor sports stores nationwide from December 2010 through January 2012 for between $450 and $650. Consumers should immediately stop using the recalled dirt bikes and contact Baja Motorsports to schedule a free repair. For additional information, please contact Baja Motorsports toll-free at (888) 863-2252 between 10 a.m. And 7 p.m. ET Monday through Friday, or visit the ir website at www.bajamotorsports.com.

SPECIALIZED BICYCLE COMPONENTS RECALLS BIKE BRAKE LEVERS DUE TO CRASH HAZARD

Specialized Bicycle Components Inc., Morgan Hill, Calif., has recalled about 600 Bicycle Brake Levers. The adjuster cap and brake cable can slide out of position and make the brakes non-operational. This can cause a rider to lose control of the bicycle and crash. Specialized is aware of one incident worldwide in which the rider lost the function of both brakes. The firm has received no reports of injury or property damage. The recalled products are Tektro TL-83 brake levers. TL-83 levers are designed exclusively for use with aerodynamic handlebars (aero-bars) sold as original equipment on 2010 and 2011 S-Works Shiv bicycle frame modules and 2012 S-Works Shiv
TT bicycle frame modules. They are also sold as aftermarket service parts for these modules. The levels are modified versions of the TL-720 brake lever. They are black aluminum and have a quick release slot at the top of the lever arm. Model number “TL-720” can be read on the side of the lever arm when braking action is applied.

The brake levers were sold at authorized Specialized Bicycle Components retailers from April 2010 to February 2012. The bicycle frame modules sold for between $5,500 and $6,100. The brake levers sold for about $80 as service parts. Consumers should immediately stop riding bicycle frame modules equipped with TL-83 brake levers and return the levers or modules to authorized Specialized Bicycle Components retailers for free replacement brake levers. For more information and to find the nearest authorized Specialized Bicycle Components retailer, contact Specialized customer service between 8 a.m. and 5 p.m. PT Monday through Friday or visit their website at www.specialized.com.

SAKAR INTERNATIONAL RECALLS
BATTERY CHARGERS

Sakar International Inc. of Edison, N.J., has recalled about 48,000 Digital Concepts Compact Travel Charger. The plastic holding the screws can break, causing the screws to come loose and the casing to separate. This can expose energized components, exposing users to electric shock. Sakar International says it has not received any reports of the charger falling apart, or of electrocution or electric shock. No injuries have been reported. The charger holds two AA or AAA batteries, is silver colored and has a sticker on the top which says “Digital Concepts” and “Compact Travel Charger”. This recall involves item numbers CH-1600S and CH-1600-RS which are identified with the date code MID#: 0801110. Both numbers can be found on the white label on the underside of the charger. Also the underside are three screws and a retractable power plug. The chargers were sold at Cobra Digital, Lot-Less, Ocean State Jobbers and RadioShack from January 2011 through February 2012 for about $10. Consumers should immediately stop using the recalled battery charger and contact Sakar International Inc. for a replacement product. For additional information, contact Sakar International Inc. Toll free at (877) 397-8200 at any time or visit their website at www.sakar.com/recall.

VIKING RANGE RECALLS DISHWASHERS

Viking Range Corporation has recalled 2,000 dishwashers built in Greenwood. Company officials said the affected models were sold at appliance and specialty retail stores nationwide from June of 2010 through March of 2012. The recall notice says an electrical component can overheat, posing a fire hazard.

The company has received 21 reports of the problem, including five reports of property damage from fires. No injuries have been reported. The Viking 24 inch Professional, Designer, and Custom Panel dishwashers were sold in black, white and 24 other custom colors, stainless steel and with custom wood panels. The name “Viking” appears on the control panel at the top of the door.

IRWIN RECALLS 10-INCH CIRCULAR SAW BLADE 3-PACK DUE TO LACERATION HAZARD PosED BY DEFFECTIVE PACKAGING

Irwin Industrial Tool Company, Huntersville, N.C., has recalled about 55,260 Classic Series Circular Saw Blade 3-Pack. The saw blades can fall out of the bottom of the plastic packaging, posing a laceration hazard. Irwin has received three reports of the saw blades falling out of the packaging. No injuries were reported. This recall involves Irwin Classic Series 10-inch Circular Saw Blade Limited Promotion 3-Packs. The blister packs contain one 10-inch trim and finish saw blade with 40 teeth (40T) and two 10-inch general purpose saw blades with 40 teeth (40T). The blades are stacked offset in the packs. The packaging is blue, orange and yellow and has the words “Irwin” and “Classic Series” on the front top left corner and “3 Circular Saw Blades” on the front lower left corner. Model number “ICSLD3PK” is located on the front top right corner.

The blades were sold exclusively at Lowe’s stores nationwide from approx-
Importers Office Depot has received 11 reports of the chairs breaking and consumers falling while seated, resulting in reports of injuries, including minor contusions and abrasions. This recall involves Office Depot® brand leather desk chairs. The mid-back height leather chairs were sold in black and have SKU number 130548. “REG. No. PA-25498 (CN)” and “Made in China” are printed on a label located on the underside of the seat.

The chairs were sold exclusively at Office Depot retail stores nationwide and online at www.OfficeDepot.com from January 2002 through December 2008 for about $55. Consumers should immediately stop using the chairs and contact Office Depot’s recall hotline to receive a $55 store card that may be used for a replacement chair or other store merchandise. For additional information, contact Office Depot’s recall hotline toll-free at (866) 403-3763 between 8 a.m. and 8 p.m. ET Monday through Friday, or visit their website at www.office depot.com.

RECALL SEATS TYLENOL LAWSUIT

The parents of a three-month-old who died after taking infant-formula liquid Tylenol have sued drugmaker McNeil PPC and parent company Johnson & Johnson. Markus Cherry got a clean bill of health from his pediatrician at a checkup in April 2010, when he also received vaccinations and a prescription for Tylenol to alleviate the crankiness and discomfort the shots sometime cause infants. But Markus soon became sick and died three days later.

Two weeks later, the drugmaker issued a recall for the concentrated TYLENOL INFANTS DROPS after the FDA noted bacteria contamination in the drugs. The lawsuit claims the drugmaker was aware of contamination problems at its Fort Washington, Pa., plant and alleges the company engaged in a “stealth recall”—hired a private company to simply buy the entire stocks of the tainted drugs from retailers — instead of issuing a formal recall notice and warning consumers that the drugs were tainted.

ODWALLA CHOCOLATE PROTEIN DRINK RECALLED

Odwalla Inc. has recalled its Odwalla Chocolate Protein Monster beverage because four customers who have peanut allergies experienced severe allergic reactions after drinking it. A news release from the Coca-Cola-owned company says it is recalling 12-ounce and 32-ounce bottles, with “enjoy by” dates prior to and including May 23, 2012. The drink was distributed nationwide. The company says people who have an allergy or severe sensitivity to peanuts and/or tree nuts may run the risk of a serious or life-threatening reaction if they consume the drink. Odwalla says it’s working with the FDA to investigate the cause of these allergic reactions since the drink contains no peanut or tree nut ingredients.

TUNA LINKED TO SALMONELLA OUTBREAK RECALLED

A yellowfin tuna product used to make dishes like sushi and sashimi sold at restaurants and grocery stores has been linked with an outbreak of salmonella that has sickened more than 100 people in 20 states and the District of Columbia, federal health authorities. The Food and Drug Administration said 116 illnesses have been reported, including 12 people who have been hospitalized. No deaths have been reported.

A Maine meat distributor recalled more than a ton of beef products that may be contaminated with the E. coli bacteria. Just over 2,000 pounds of recalled meat distributed by Town and Country Foods of Greene were shipped from April 4 to April 10. The products recalled include hamburger patties, stewing beef and sirloin fillets with the establishment number “EST. 9710” inside the USDA mark of inspection and packaging codes 10952, 10962, 10972, 11002 and 11012. The problem was discovered after company lab testing confirmed a positive result for E. coli. No illnesses have been reported from the recalled beef. As all should now know, E. coli can cause illness and even death.
Moon Marine USA Corp. of Cupertino, Calif., also known as MMI, has recalled 58,828 pounds of frozen raw yellowfin tuna. It was labeled as Nakauchi Scrape AA or AAA when it was sold to grocery stores and restaurants and is scraped off the fish bones and looks like a ground product. The product is not available for sale to individual consumers but may have been used to make sushi, sashimi, ceviche and similar dishes available in restaurants and grocery stores. Many of the people who became ill reported eating raw tuna in sushi as “spicy tuna,” according to the FDA.

Reports of the foodborne illness caused by salmonella bareilly have mainly come from the Eastern Seaboard and South, though cases have been reported as far west as Missouri and Texas. But by mid-April, illness had been reported in these states and the District of Columbia: Alabama, Arkansas, Connecticut, District of Columbia, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and Wisconsin. Dole said that it’s coordinating with regulatory officials and that no illnesses have been reported. The company said the bags are being recalled because a random sample tested by the State of New York came back positive for Salmonella. No other Dole salads are included in the recall. Consumers should throw out the recalled bags. Dole said it’s also contacting retailers to make sure the bags in question are not available for sale.

The fresh vegetables division of Dole Food Co. has recalled 756 cases of bagged salad, because they could be contaminated with salmonella. The bags of Seven Lettuces salad are stamped with a use-by date of April 11, 2012, UPC code 71430 01057 and product codes 0577N08911A and 0577N08911B. The product code and use-by date are located in the upper right-hand corner of the package, while the UPC code is on the back of the package, below the barcode.

The salads were distributed in Alabama, Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, Mississippi, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and Wisconsin. Dole said that it’s coordinating with regulatory officials and that no illnesses have been reported. The company said the bags are being recalled because a random sample tested by the State of New York came back positive for Salmonella. No other Dole salads are included in the recall. Consumers should throw out the recalled bags. Dole said it’s also contacting retailers to make sure the bags in question are not available for sale.

**Taco Dinner Kits from Kroger, Winn-Dixie and Food Lion Recalled Due to Undeclared Milk**

Taco Dinner Kits has been recalled because they may contain milk that is not listed on the packaging label. People who have an allergy or severe sensitivity to milk run the risk of serious or life-threatening allergic reaction if they consume products that contain milk. No adverse reactions have been reported to date in connection with the Taco Dinner Kit products, according to the FDA.

The recalled products were distributed by retail grocery stores in the following states: **Kroger**: Indiana, Illinois, Missouri, Ohio, Michigan, Kentucky, West Virginia, Kansas, Nebraska and Tennessee. Stores under the following names where Kroger operates are included in this recall: **Kroger**, Scott’s, Payless, Owen’s, Food-4-Less in Chicago, Jay C, Dillons, Gerbets and Bakers. **Food Lion**: North Carolina, South Carolina, Tennessee, Virginia, Pennsylvania, West Virginia, Georgia, Florida, Maryland, Delaware, New Jersey and Ohio. **Winn-Dixie**: Florida, Louisiana, Georgia, Mississippi and Alabama.

Being recalled are: Kroger Taco Dinner Kit, 12-count, containing 12 white corn taco shells, taco sauce and seasoning mix with UPC code 0-11110-85474-2 dated GA AUG 10 12. Winn-Dixie Taco Dinner Kit, 12-count, containing 12 white corn taco shells, taco sauce and seasoning mix with UPC code 0-21140-20569-8 dated GA AUG 10 12. Hannaford Taco Dinner Kit, 12-count, containing 12 taco shells, taco sauce and seasoning mix with UPC code 0-41268-17572-7 dated GA AUG 10 12. Hannaford Hard & Soft Taco Dinner Kit, 12-count, containing 6 hard tacos and 6 soft tortillas, taco sauce and seasoning mix with UPC code 0-41268-17573-4 dated GA AUG 07 12. Food Lion Taco Dinner Kit, 12-count, containing 12 taco shells, taco sauce and seasoning mix with UPC code 0-35826-00661-5 dated GA AUG 10 12. Consumers should return the product to the store where it was purchased for a refund.

There have been a good number of recalls since the April 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.

**XXI. Firm Activities**

**Employee Spotlights**

**MIKE CROW**

Mike Crow, a lawyer in our Personal Injury Section, primarily handles car and truck litigation and premise liability cases. He has developed a special interest in brain injury cases. Mike is a graduate of Auburn University Montgomery, where he earned a B.S. in 1978 and M.S. in 1980. He graduated from Jones School of Law in 1986, earning his J.D. In 1987, Mike started to work with our firm, which at the time was Beasley & Wilson, during his second year in law school. At that time, Mike did a little bit of everything, including working as a law
clerk. At that time, there were eight lawyers in the firm operating out of a house on Hull Street. The firm didn’t operate in Sections then as we do now.

As soon as Mike passed the bar, he became an associate with the firm. Mike has handled a tremendous number of motor vehicle cases during his time with the firm. Over the years, he has also been very successful in litigating against the “Big Box Stores,” including Wal-Mart, Home Depot and others. As a result, Mike has a wealth of knowledge of their practices and procedures. Mike also has handled several cases against a local School Board for section 1983 violations and Title IX violations. These cases range from young female students being sexually assaulted by a substitute teacher to the local school board failing to have and implement a Title IX policy. Mike had this to say about his work:

What I like best about practicing law is how each case is different and how each case brings different challenges. When I am able to win a case for someone, I hope that I have helped someone who needed help.

Mike currently serves as co-chair of the Montgomery County Bar Association grievance committee. He has served on the committee for the past 11 years. In 2009, he was appointed to serve on the Alabama State Bar committee Disciplinary Commission. He is a member of the American Association for Justice, the Interstate Trucking Litigation Group, and the Plaintiffs Interstate Trucking Lawyers of America.

Mike also serves on the Jimmy Hitchcock Committee which annually selects an outstanding Christian student athlete from the local community. Mike is on the Executive Committee of the Auburn University at Montgomery Basketball Booster Club, which is responsible for raising funds for the basketball program. He is a former player at AUM. Mike is also an active member of the Frazer United Methodist Church, where he has been appointed to serve on the Board of Stewards.

Mike is married to the former Marla Taylor and they have two children, Cade, who is 12, and Carson Ann who is 11. The Crow family has hosted Julie Verdy, a foreign exchange student from France, for the past three years. Julie, a Junior at AUM on a tennis scholarship, hopes to remain in the U.S. To continue her studies after graduation. The Crows consider Julie a part of their family. Mike says his children “have pretty much adopted Julie as a big sister.”

In his “down time,” Mike enjoys cycling, riding 15-20 miles about four times a week. He also is avid waterfowl hunter. Mike enjoys competing in Retriever Field Trials with his three Labradors throughout the country and serves as a judge at these events two or three times a year. It’s hard to believe that Mike has been with the firm for over 25 years—time flies. Mike is a very good lawyer, who cares deeply about his clients, and who works hard for them in their cases. We are blessed to have Mike with us.

SHANNA MALONE
Shanna Malone, who has served as the Editor for the Jere Beasley Report for the past 5 years, is responsible for helping to put the report together each month. Currently, the report goes to over 45,000 persons each month. We receive a great number of responses and inquiries from our readers after each issue is received. Putting the report out each month has become a monumental undertaking, but we believe the effort is well worth it. Shanna has done a tremendous job on the project. She says that if any of our readers have suggestions on how we can do a better job with the report, they will be welcomed.

Shanna, who started with the firm in 2002, originally worked as a Public Relations Coordinator. She did excellent work in that capacity. But in 2007, Shanna went to part-time status and began working strictly as Editor of the Report. This change was so that she could stay home with her children. It has worked well for Shanna and her family and it has also worked well for us.

Shanna graduated from Troy State University with a Bachelor of Science in Print Journalism and Public Relations in August of 1999. She is married to Shannon Malone, and they have two daughters, ten-year-old Sydney and eight-year-old Shelby along with one son, three-year-old Steven. The family attends Union Baptist Church in Honoraville, where Shanna is actively involved in the Children’s Ministry. Shanna does a tremendous job in her job as Editor of the Report. She works very hard on this project and is most valuable to the firm. We are blessed to have Shanna with us.

HOLLY BUSLER
Holly Busler, who has been with the firm for almost 12 years, works as a legal secretary to Lance Gould. She has worked with Lance for the past seven years and currently works mostly on FLSA cases. Holly has three children, a daughter, Taylor (13), and two sons, Drew (10) and Pruitt (2). She and her husband just celebrated their fourth wedding anniversary. They live in Wetumpka where Taylor is a cheerleader for the Wetumpka Middle School and Drew plays baseball. They spend a lot of their time with their children’s sports. Holly says the children are constantly on the go with their sports activities. She also enjoys cooking, couponing, zumba and spending time with her family. Holly is a very good employee who is dedicated to her work. She enjoys helping clients who need help and that’s always a good thing. We are fortunate to have Holly with us.

XXII.
SPECIAL RECOGNITIONS

ALABAMA STATE TROOPERS GET THE JOB DONE AND THEY NEED HELP

The Alabama Department of Public Safety (DPS) does an outstanding job in our state, but much of their good work goes unnoticed by the public. As you may already know, helping to keep our highways safe is just one of the responsibilities of the Department. Each day state troopers in Alabama put their lives on the line to make our state a safer place in which to live. As a full-fledged, statewide law enforcement agency, DPS is comprised of six divisions: Administrative, Alabama Bureau of Investigation, Driver License, Highway Patrol, Protective Services and Service. The Department’s employees are committed to preserving the safety of Alabamians and visitors to our state. They do this through a variety of enforcement, licensing and educational programs.

The mission of the DPS is to protect and serve Alabama’s residents equally and objectively, enforcing state laws and upholding the constitutions of the United States and State of Alabama. The Department’s employees are dedicated to promoting a safe and secure environment for the public by developing and implementing programs to:

• Reduce the number and severity of crashes through education and enforcement

• Enhance traffic safety by examining driver applicants, issuing driver licenses, maintaining driving records and removing driving privileges when necessary

• Curtail criminal activity by initiating investigations, providing investigative assistance to other agencies and apprehending criminals
• Educate Alabamians—targeting schoolchildren, in particular—regarding all aspects of motor vehicle and traffic safety, drug abuse prevention, crime prevention and other public safety issues

• Preserve life and protect property by responding to natural disasters, riots and other emergencies to provide needed services in a timely manner

• Serve the public with courtesy, professionalism and in fairness to all

• Manage departmental resources effectively and efficiently.

As of April 16, DPS consisted of 682 sworn employees and 564 non-sworn employees. In addition to its headquarters in downtown Montgomery, DPS has nine Highway Patrol Posts and dozens of Driver License Examining offices located across the state. The Department is set up, according to major activities and responsibilities, in this manner:

• The Administrative Division serves all other departmental divisions. It consists of the following units: Financial Services, Legal, Homeland Security, Office of Inspections, Personnel, Public Information/Education and Fatal Analysis Reporting.

• The Alabama Bureau of Investigation is the criminal investigative division of the department. There are 71 arresting officers and 72 civilian support personnel assigned to the division. It is responsible for conducting criminal and drug investigations, often in support of city, county, state, federal and foreign law enforcement agencies.

• The Driver License Division is responsible for testing and keeping records on Alabama’s licensed drivers. These records include crash reports, traffic arrest forms, driver license applications and traffic violation convictions. There are 46 arresting officers and 105 civilian personnel within the Driver License Division. In 2010, these arresting officers were responsible for a total of 4,112 arrests, which include 597 felony arrests for the following serious violations: fraud, forgery, robbery, larceny, child neglect, rape, and parole and firearms violations.

• The Highway Patrol Division comprises nine troops made up of 17 posts and communications centers. There are 485 arresting officers and 107 civilian support personnel. The largest of Public Safety’s six divisions, this division accounts for approximately 65 percent of the total arresting officers, who patrol approximately 69,465 miles of rural roadways. The division includes the Motor Carrier Safety Unit (MCSU), Communications Unit, Traffic Investigation Unit (THI), Felony Homicide Investigation Unit (FHIP), Sex Offender Unit, Motorcycle Unit, Tactical Teams and Special Operations Units, Training and Career Development, Grants Administration and Weapons of Mass Destruction.

The Traffic Homicide Investigations Unit has 113 active investigators, who are troopers, and who have chosen to participate as an additional duty. In 2010, there were 39 THI cases adjudicated. They included: 12 manslaughter; 3 vehicular homicides; 8 murders; 10 first-degree assaults; 4 second-degree assaults; 5 criminally negligent homicides; and one making terrorist threat.

The FAP Unit is a criminal patrol unit consisting of 21 troopers, including nine narcotic K-9 teams. They are responsible for detecting criminal activity through routine enforcement activity. In 2010, the unit was responsible for significant drug seizures, including: Marijuana (7,234 pounds); Cocaine (446 pounds); Methamphetamine (89 pounds); Ecstasy (51,505 tablets); and Heroin (1,179 kilograms).

• The Protective Services Division is responsible for providing general law enforcement/police services for all state facilities, buildings and other designated properties within the Capitol complex and for providing protection for certain state officers and visitors to the state. There are a total of 44 arresting officers; 22 assigned to Dignitary Protection and 22 assigned to Capitol Police and Mansion security. Related duties include homeland security initiatives, threat assessments and operational/response planning, intelligence gathering and analysis, and investigation of persons of interest and those who have made threats against public officials/facilities. The division aids other law enforcement agencies in matters of concurrent jurisdiction, mutual interest, or upon request.

• The Service Division provides supplies, equipment, assistance and other special services necessary to the effective operation of the department. It includes the Alabama Criminal Justice Training Center, State Trooper Aviation, Communications Engineering, Inventory Services, Photographic Services, Supply and Fleet Maintenance. The pilots assigned to the aviation unit provide aerial support services to the ABI division’s Marijuana Eradication Unit. The aviation unit has joined with local sheriffs and police departments in the implementation of Project Lifesaver. This program has a 100 percent success rate in locating persons who have become lost due to mental illnesses, or dementia such as Alzheimer’s disease. These electronic transmitting bracelets are $300 each, and fundraising efforts are being made across the state to assist those in need.

We have discussed proration in the General Fund in this and prior issues and how it will hurt our state. It appears that proration and the proposed cuts for next year will badly hurt operations at the DPS. The Department is exploring all options for trimming its operations to save money. But this is a state agency that can’t afford to undergo drastic cuts in its budget. Col. Hugh B. McCall, the Director, and his staff are constantly monitoring expenditures, seeking ways to use funding as efficiently and effectively as possible and scrutinizing what effect proration and budget cuts will have on the Department.

By combining attrition and spending cuts, hopefully, DPS can avoid any further layoffs. Become what the troopers do in our state is so important. Col. McCall shouldn’t even have to consider that possibility. There are currently 38 troopers who received layoff letters and were re-employed utilizing a federally funded COPS grant for retention of these troopers. But that’s just a patching approach. Due to budgetary constraints, there are no plans to hire arresting officers or civilian support personnel unless an increase to the budget for the next fiscal year is provided by the Legislature.

The Department has not been able to purchase vehicles during the past few years, which can put a significant strain on the budget in years to come through increased maintenance and the eventual necessity for replacement vehicles. During these tough economic times, the public may encounter longer wait times for services and lives may very well be put in danger. Col. McCall is asking that everyone be patient as DPS employees do their best to meet the demands on the Department. At this time, I am told that DPS will concentrate on functions that are mandated by law, and that its employees will do their best to fulfill DPS’s mission of public
safety. Hopefully, the good work done by the Department of Public Safety won’t be curtailed by cutting badly needed funds from its budget. If you live in Alabama and agree that the state troopers need help, contact your Senator and House members and let them know how your feel.

**Dee Miles To Chair Cumberland Advisory Board**

W. Daniel “Dee” Miles, a lawyer in our firm, is currently serving as Chairman of the Advisory Board for Cumberland School of Law at Samford University. Dee was named Chair-Elect last spring. As Chair, he will work hand-in-hand with Dean John Carroll on issues involving the law school’s continued excellence, stellar reputation, vision, accreditation, general operations, faculty, students, alumni affairs, the many Bar Associations and other assorted issues related to the law school.

It’s a tremendous honor for Dee to be elected by other board members to help lead the law school into the future. Dee, a 1989 graduate of Cumberland, joined our firm in 1991. He not only has been a pioneer of consumer fraud and commercial litigation nationwide, but Dee has demonstrated great leadership resulting in the firm’s numerous record-setting verdicts for clients in many areas of law. In addition to representing clients in litigation, Dee manages the entire Consumer Fraud / Commercial Litigation Section of the firm. He is involved in every case being litigated in this section and on a national level.

Cumberland School of Law, founded in 1847 as part of Cumberland University in Lebanon, Tenn., was acquired by Howard College, now Samford University, in 1961. The law school is accredited by the American Bar Association and is a member of the Association of American Law Schools. The school has alumni living and working in more than 46 states and a number of foreign countries. Cumberland is widely recognized as one of the nation’s leading law schools.

**Coach Pat Dye Has Taken On A New Challenge**

Pat Dye and I became good friends shortly after he came to Auburn University as head football coach in 1981. That friendship has continued over the years. Pat was a great coach and his record is the best evidence of that assessment. Even with all of his success and honors, Pat is reluctant to discuss the sport which consumed most of his life. He will if you insist and he can certainly entertain you with his stories. But anybody who asks him about football today will likely find the subject turned quickly to Pat’s 740-acre farm located near Noto-sulga, Ala. Retired since 1992, Pat’s days are now spent cultivating the 42 varieties of Japanese Maples he sells retail and wholesale in addition to his hunting business. Talk of his nursery will consume any conversation you have with the man who was one of the greats in the tough business of college football.

My wife Sara and several of her friends made the trip to Pat’s farm recently and they got quite an education about the operations on the farm. Pat told the group that he is fascinated by Japanese Maples because of the many different varieties. He said each one has its own unique personality and the older they get, “the more character they develop.” You may be thinking this surely doesn’t sound like the man who was a great football player and later a highly successful college coach, but it really is. Pat’s philosophy on tree management is simple, reflecting once again the essence of his coaching mentality. He said recently:

> **If an acorn falls and lands under the parent tree, it’s always going to be dependent on the parent for nutrients and sun. But if an acorn lands away from the parent tree, its roots grow deeper in search of water during dry times so that when a natural disaster occurs, the tree is ready with strong roots. It’s kind of like children. Both will grow, but one will never reach its full potential and will become fragmented when faced with challenges.**

There is another aspect of Pat’s life that should be of interest. His place is a great location for events of all sorts. His Crooked Oaks and Auburn Oaks guest lodges host quail, deer and turkey hunting parties of up to 20. Crooked Oaks, which houses the majority of Pat’s football memorabilia, is also available for weddings, corporate retreats and special events. For information regarding the lodges, contact Chico Canady at 334.525.1593. Pat’s Japanese Maple trees are available both wholesale and retail. Prices start around $10 and go up to $2,500 for a fully developed specimen. If you would like more information, contact Casey Teel at (334) 313-6921.

**XXIII. Favorite Bible Verses**

My good friend, Major Marc McHenry, who is with the Alabama Department of Public Safety, sent in a verse for this issue. Marc says the verse is with him constantly.

> **It is better to trust in the Lord than to put confidence in man.**

Isaiah 118:8

Jessica Sutherland, an employee in the firm, furnished the following verse for this issue.

> **The grass withers, the flower fades, But the word of our God stands forever.**

Isaiah 40:8

Mike Guerra, a lawyer from McAllen, Texas, who says he reads the Report, sent in the following verse for this issue.

> **Therefore a man shall leave his father and mother and be joined to his wife, and they shall become one flesh.**

Genesis 2:24

My good friend, Dr. John Kline, sent in Matthew 28:18-20. This is really our mission in life and one that we should take seriously.

> **And Jesus came and spoke to them, saying, All authority has been given to Me in heaven and on earth. Go therefore and make disciples of all the nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all things that I have commanded you; and lo, I am with you always, even to the end of the age.” Amen.**

Matthew 28: 18-20

XXIV. CLOSING OBSERVATIONS

DEMOCRACY IS FOR PEOPLE AND NOT FOR CORPORATIONS

If a news reporter announced one day on a CNN newscast that corporations are not people, I suspect most folks would be in total agreement with that assessment. In fact, most would likely wonder why such a statement was even necessary. That’s because nobody would ever even consider that a corporation could be considered a person. But on the contrary, if the same reporter said a corporation is actually a live, breathing person, with a soul to boot, I suspect most folks would say that reporter was either drunk or trying to be funny. But in 2010, the U.S. Supreme Court ruled in the case we mentioned in this issue (Citizens United v. Federal Election Commission) that corporations have the same First Amendment right as an individual person has to influence election outcomes. So I guess the five justices who were in the majority in the case believe corporations are really people.

In any event, the High Court actually said a corporation enjoys its right under our Constitution and actually has the right to spend unlimited sums of money advocating for or against candidates. I never considered a corporation to have the Constitutional right of free speech that individuals have, but it appears I was dead wrong. We mentioned how the Court’s ruling has drastically changed the political landscape in the U.S. Now let’s explore that effect in more detail.

As a result of the High Court’s ruling, nearly $300 million of special interest money was poured into the Congressional elections in 2010 to fund attack ads that defeated many progressive opponents of the corporate agenda. But the sad fact is that the amounts spent in 2010 are just a fraction of what’s already being spent in this year’s GOP primary elections. The Republican primaries were totally dominated by Super PACs, funded by just a few corporations and super-wealthy individuals, spending millions of dollars on negative ads. We shouldn’t be surprised that most of the money spent was on behalf of Mitt Romney. Many political observers believe the amounts of super-PAC spending in the general election will exceed even the wildest predictions that have been made so far.

This sort of spending by Corporate America and the overwhelming influence of the Super PACs can’t be allowed to continue. But it won’t stop so long as Citizens United remains the law of the land. Public Citizen has been leading the fight to educate the public on Citizens United and the Democracy Is For People Campaign, designed to negate Citizens United, has been very active. More than one million signatures have already been secured on petitions calling for a Constitutional amendment to overturn the Citizens United ruling. In fact, a number of U.S. Senators and members of Congress actually signed the petition.

Over a dozen cities have passed resolutions in support of a constitutional amendment, including New York City, Albany, Los Angeles, Oakland, Duluth and Boulder. Several states are being targeted and activity in those states will intensify over the coming months. I am told the work of the campaign will be greatly expanded in the coming weeks.

Without a doubt, there will be big challenges in 2012 as the result of Citizens United. That’s because huge corporations are intensifying their assault on our democracy. While corporations deliver us many useful goods and services, it’s become most apparent that unrestrained corporate power will threaten our individual well-being, the well-being of the United States, and actually, the well-being of our planet. It’s time for the American people to get actively involved in the battle to save our Republic and fight to preserve the rights and liberties our Constitution guarantees to all Americans. No longer is it enough to observe what’s happening, complain loudly, and then go on to other activities. It will require much more than that. So, the bottom line is that it’s time for all of us to get involved and then to stay involved.

THE FCA IS ONE OF MY FAVORITE ORGANIZATIONS

The Fellowship of Christian Athletes is one of my favorite organizations and for good reason. It does tremendous work nationwide, reaching young people and spreading the good news of the Gospel. Currently, more than 300,000 students are being reached on a record 8,088 school campuses across America. For those who are interested, FCA Resources.com provides over 3,000 free ministry resources. FCA’s online proficiency has allowed FCA to partner with and equip sports ministry leaders in 80 different countries.

The expansion of FCA International Ministry has continued at a rapid rate with training, resource expansion, mission trips and valued partnerships including Operation Mobilization SportsLink and the International Sports Coalition. Since 2003, FCA has distributed 1,516,400 Bibles worldwide, which includes eight different FCA Bibles. The following will give you an overview of what the FCA does:

- **The Coaches Ministry**: Coaches are the heart of FCA. The FCA ministers to them by encouraging and equipping them to know and serve Christ.
- **The Campus Ministry**: The Campus Ministry is initiated and led by student-athletes and coaches on junior high, high school and college campuses.
- **The Camps Ministry**: FCA Camp is a time of “inspiration and perspiration” for coaches and athletes to reach their potential by offering comprehensive athletic, spiritual and leadership training. FCA offers seven types of camps.
- **The Community Ministry**: FCA has ministries that reach the community through partnerships with local churches, businesses, parents and volunteers as well as sport-specific ministries.

If you would like to learn more about FCA in your area, you can visit fca.org and search by your local zip code. You can also obtain books and Bibles from FCA by going to fcagear.com. I can tell you that in Alabama, the FCA is doing a tremendous job. John Gibbons, who serves as state coordinator, and his folks work very hard and are reaching students at the junior high, high school and college levels.

A MONTHLY REMINDER

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

2Chron7:14

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

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortune, Which they have prescribed. To rob the needy of justice, And to take what

www.BeasleyAllen.com
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 supe-
rior to that of President is the title of
Citizen.

Louis Brandeis, 1937
U.S. Supreme Court Justice

XXV.
PARTING WORDS

A PUBLIC LIBRARY FOR A SMALL ALABAMA TOWN

I am extremely pleased to report that the
Town of Loachapoka, Ala., now has a
public library. The small town in Lee
County, located a few miles west of
Auburn, had been without a library for its
citizens until Sunday, April 15th when the
new library held its official opening. My
oldest granddaughter, Sara Beasley, a junior
at Auburn University, was the driving force
behind this badly needed library for the
people in and near Loachapoka. Sara has
had the idea of helping Loachapoka create
a public library since she was a student at
Auburn High School. She explains how her
interest came about this way:

I was taking my ACT at Loachapoka
High. When I was there, I was sur-
prised to see that they barely had a
library at the school. When I found
out the town itself didn’t have a
public library, I was shocked.

At the time, Sara says she didn’t know
what she could do to help resolve that
problem. But the problem stayed on her
mind. Now majoring in Pre-elementary
Education with a Philanthropy and Non-
profit minor, Sara says she learned how to
take action. As part of her Service Learning
class, she was able to secure a spare room
at the Loachapoka Community Center and
turn it into the town’s public library. When
more books are acquired, the library will
expand to more rooms in the building.

Books for the library came from dona-
tions by friends and family once Sara began
to spread the word about her project. Help
also came from the wife of Loachapoka
Mayor Jim Grout. Ali Grout secured a
number of good books through her work at
Mission Thrift. The Auburn University Ath-
letic Department also got involved. Junior
basketball player Blanche Alverson’s
“Ballin’ for Books” donation drive secured
lots of books for the Loachapoka library, as
well as for the Pine Hills Literacy Project at
the Boys and Girls Club of Greater Lee
County. A number of employees in our
firm pitched in and donated several boxes
of books. Even “Aubie,” who is well known
to sports fans all across the county (even in
Tuscaloosa) came out to entertain the
crowd of library supporters at the opening.

Sara says the Loachapoka library now
has about 1,000 books, but it still needs
more. She says “a thousand sounds like a
lot, but it’s really not when they’re on the
shelves.” The goal is to make the
Loachapoka Public Library a nonprofit
agency so it can accept donations in return
for a tax write-off. I am very proud of the
good work Sara has done on this project.

Sara says the Loachapoka library now
has about 1,000 books, but it still needs
more. She says “a thousand sounds like a
lot, but it’s really not when they’re on the
shelves.” The goal is to make the
Loachapoka Public Library a nonprofit
agency so it can accept donations in return
for a tax write-off. I am very proud of the
good work Sara has done on this project.

My granddaughter Sara is very much like
my wife Sara. If you really want something
done, tell them they can’t do it. That
approach seems to work every time. But
seriously, I am very proud of Sara for what
she has done on this most worthwhile
project.
Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley's law firm, established in 1979 with the mission of “helping those who need it most,” now employs over 50 lawyers and more than 200 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.